



City of Covina/Covina Redevelopment  
Agency/Covina Public Finance  
Authority/Covina Housing Authority  
Mayor John King – Mayor Pro Tem Kevin Stapleton  
Council Members Walt Allen, III – Peggy Delach – Bob Low

REGULAR MEETING AGENDA  
125 E. College Street, Covina, California  
Council Chamber of City Hall  
**Tuesday, July 5, 2011**  
6:30 p.m.

- **The City Council/Redevelopment Agency/Public Finance Authority/Housing Authority will meet in closed session from 6:30 p.m.-7:30 p.m.**
- As a courtesy to Council/Agency/Authority Members, staff and attendees, everyone is asked to silence all pagers, cellular telephones and any other communication devices.
- Any member of the public may address the Council/Agency/Authority during both the public comment period and on any scheduled item on the agenda. Comments are limited to a maximum of five minutes per speaker unless, for good cause, the Mayor/Chairperson amends the time limit. Anyone wishing to speak is requested to submit a yellow Speaker Request Card to the City Clerk; cards are located near the agendas or at the City Clerk's desk.
- Please provide 10 copies of any information intended for use at the Council/Agency/Authority meeting to the City Clerk prior to the meeting.
- **MEETING ASSISTANCE INFORMATION:** In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (626) 384-5430. Services such as American Sign Language interpreters, a reader during the meeting, large print copies of the agenda and assisted listening devices are available. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.
- **DOCUMENT AVAILABILITY:** Any writings or documents provided to a majority of the Council/Agency/Authority regarding any item on this agenda will be made available for public inspection at the City Clerk counter at City Hall located at 125 E. College Street and the Reference Desk at the Covina Library located at 234 North Second Avenue during normal business hours. In addition, such writings and documents are available in the City Clerk's Office and may be posted on the City's website at [www.covinaca.gov](http://www.covinaca.gov).
- Pursuant to Government Code Section 54954.2, no matter shall be acted upon by the City Council/Redevelopment Agency/Public Finance Authority/Covina Housing Authority unless listed on agenda, which has been posted not less than 72 hours prior to meeting.
- If you challenge in court any discussion or action taken concerning an item on this Agenda, you may be limited to raising only those issues you or someone else raised during the meeting or in written correspondence delivered to the City at or prior to the City's consideration of the item at the meeting.
- The Deputy City Clerk of the Covina City Council hereby declares that the agenda for the **July 5, 2011**, meeting was posted on **June 30, 2011** near the front entrance of the City Hall, 125 East College Street, Covina, in accordance with Section 54954.2(a) of the California Government Code.

*July 5, 2011*

**CITY COUNCIL/REDEVELOPMENT AGENCY/  
COVINA PUBLIC FINANCE AUTHORITY/COVINA HOUSING AUTHORITY  
JOINT MEETING—CLOSED SESSION  
6:30 p.m.**

**CALL TO ORDER**

**ROLL CALL**

Council/Agency/Authority Members Allen, Delach, Low, Mayor Pro Tem/Vice Chairperson Stapleton and Mayor/Chairperson King

**PUBLIC COMMENTS**

*The Public is invited to make comment on Closed Session items only at this time. To address the Council/Agency/Authority please complete a yellow Speaker Request card located at the entrance and give it to the City Clerk. Your name will be called when it is your turn to speak. Individual speakers are limited to five minutes each.*

**The City Council/Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority will adjourn to Closed Session for the following:**

**CLOSED SESSION**

- A. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:
  - Property: Northeast Corner San Bernardino Road and Park Avenue (APN: 8430-024-012)
  - Negotiating parties: Hassen Development
  - Agency negotiator: Robert Neiuber, Community Development Director/CRA Deputy Director
  
- B. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:
  - Property: 626 and 602 South Citrus (APN: 8451-001-911)
  - Negotiating parties: Mike Luce
  - Agency negotiator: Robert Neiuber, Community Development Director/CRA Deputy Director
  
- C. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:
  - Property: 120 W. Rowland (APN: 8453-001-003) 611 S. Citrus Ave. (APN: 8453-001-001)
  - Negotiating parties: Al Sal Oil Company
  - Agency negotiator: Robert Neiuber, Community Development Director/CRA Deputy Director
  
- D. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:
  - Property: 635 S. Citrus Avenue (APN: 8453-001-906)
  - Negotiating parties: Jules Boand & Alex Alvarez
  - Agency negotiator: Robert Neiuber, Community Development Director/CRA Deputy Director

- E. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:  
 Property: 151 East College Street (APN: 8445-001-918)  
 Negotiating parties: Mercy Moreno  
 Agency negotiator: Robert Neiuber, Community Development Director/CRA Deputy Director
- F. G.C. §54956.9(a) - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
 Name of case: Donald Sipple, et al. v. City of Covina et al., Case No. BC462270
- G. G.C. §54956.9(a) – CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
 Name of case: Badillo Heights, LLC v. City of Covina: Case No. BC448983
- H. G.C. §54956.9(a) - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
 Name of case: Leah Diane Sanders v. City of Covina: Case No. KCO59172

**RECESS**

**CITY COUNCIL/REDEVELOPMENT AGENCY/  
 COVINA PUBLIC FINANCE AUTHORITY/COVINA HOUSING AUTHORITY  
 JOINT MEETING—OPEN SESSION  
 7:30 p.m.**

**CALL TO ORDER**

**ROLL CALL**

Council/Agency/Authority Members Allen, Delach, Low, Mayor Pro Tem/Vice Chairperson Stapleton, and Mayor/Chairperson King

**PLEDGE OF ALLEGIANCE**

Led by Council Member Low

**INVOCATION**

Led by Covina Police Chaplain David Truax

**PRESENTATIONS**

- Recognition of the Covina Relay for Life Coordinators
- Recognition of those who worked on Community Service Day

**PUBLIC COMMENTS**

*To address the Council/Agency/Authority please complete a yellow Speaker Request card located at the entrance and give it to the City Clerk/Agency/Authority Secretary. Your name will be called when it is your turn to speak. Those wishing to speak on a LISTED AGENDA ITEM will be heard when that item is addressed. Those wishing to speak on an item NOT ON THE AGENDA will be heard at this time. State*

*Law prohibits the Council/Agency/Authority Members from taking action on any item not on the agenda. Individual speakers are limited to five minutes each.*

### **COUNCIL/AGENCY/AUTHORITY COMMENTS**

*Council/Agency/Authority Members wishing to make any announcements of public interest or to request that specific items be added to future City Council/Redevelopment Agency/Public Finance Authority/Housing Authority Agendas may do so at this time.*

### **CITY MANAGER COMMENTS**

### **CONSENT CALENDAR**

*All matters listed under consent calendar are considered routine, and will be enacted by one motion. There will be no separate discussion on these items prior to the time the Council/Redevelopment Agency/Public Finance Authority/Housing Authority votes on them, unless a member of the Council/Agency/Authority requests a specific item be removed from the consent calendar for discussion.*

- CC 1.** City Council to approve the minutes of the June 7, 2011 regular meeting of the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority.
- CC 2.** City Council to approve the minutes of the June 21, 2011 regular meeting of the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority.
- CC 3.** City Council to re-establish the position of Support Services Manager to the Unaffiliated Group.
- CC 4.** City Council to approve the Memorandum of Understanding with Charter Oak Unified School District for School Resources Officer for 2011-2012 school year.
- CC 5.** City Council to approve the Memorandum of Understanding with Covina-Valley Unified School District for School Resource Officer for 2011-2012 school year.
- CC 6.** City Council to approve the Memorandum of Understanding with Azusa Unified School District for School Resource Officer for 2011-2012 school year.
- CC 7.** City Council to adopt **City Resolution No. 11-6984**, finding the City to be in conformance with the Congestion Management Program (CMP) and adopting the CMP Local Development Report for Los Angeles County.
- CC 8.** City Council to adopt **City Resolution No. 11-6985**, establishing the 2011-2012 Appropriation Limit for the City of Covina.
- CC 9.** City Council to approve the Covina Parking Study Implementation Strategies, 1 through 6.
- CC 10.** City Council to approve of Letter of Support for the Los Angeles County Department of Public Health grant proposal for the Community Transformation Grants (CTG).

- CC 11.** Redevelopment Agency to adopt **Agency Resolution No. 11-673**, approving an Exclusive Right to Negotiate Agreement (“ERN”) between the Covina Redevelopment Agency and Jules Boand and Alex Alvarez.
- CC 12.** Redevelopment Agency to adopt **Agency Resolution No. 11-680**, approving modification to criteria for a Moderate Income Housing Down Payment Assistance Program.
- CC 13.** City Council/Redevelopment Agency/Housing Authority to adopt **Agency Resolution No. 11-681**, amending the fiscal year 2011-2012 Covina Redevelopment Agency budget to reflect an appropriation of \$150,000 from housing set-aside undesignated funds to provide funding for the moderate Income Borrower, Down Payment Assistance Program.

### **PUBLIC HEARING**

- PH 1.** Public hearing of the City Council to receive and file the proposed program for expenditure of 2011 Edward Byrne Memorial Justice Assistance Grant (JAG).

Staff Recommendation:

- a) City Council to open the public hearing and take public testimony; and
- b) City Council to receive and file the proposed program for expenditure for 2011 Edward Byrne Memorial Justice Assistance Grant (JAG) awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

- PH 2.** Public hearing of the City Council and second reading to consider adoption of **Ordinance No. 11-1996**, repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City’s regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code.

Staff Recommendation:

- a) City Council to open the public hearing and take public testimony; and
- b) City Council to pass and adopt **Ordinance No. 11-1996**, repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City’s regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code.

- PH 3.** Public hearing of the City Council and second reading to consider adoption of **Ordinance No. 11-1997**, amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying “Barber and Beauty Shops” as Conditional uses.

Staff Recommendation:

- a) City Council to open the public hearing and take public testimony; and
- b) City Council to pass and adopt **Ordinance No. 11-1997**, amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying “Barber and Beauty Shops” as Conditional uses.

**PH 4.** Joint public hearing of the City Council/Redevelopment Agency to consider a Fifth Amendment to lease of real property by the Agency to WaltersBayer Automotive Group.

Staff Recommendation:

- a) City Council/Redevelopment Agency to open the public hearing and take public testimony, and
- b) City Council/Redevelopment Agency to adopt **City Resolution No. 11-6986** and **Agency Resolution No. 11-683**, making certain findings pursuant to Health and Safety Code §33433 and approving the Fifth Amendment to Lease for real property located at 626 and 602 S. Citrus Avenue, Covina, California.

**ADJOURNMENT**

The Covina City Council/Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority will adjourn to its next regular meeting, **Tuesday, July 19, 2011** at 6:30 p.m. for closed session and at 7:30 p.m. for open session in the Council Chamber of City Hall, 125 East College Street, Covina, California, 91723.



**MINUTES OF THE JUNE 7, 2011 REGULAR MEETING OF THE COVINA CITY COUNCIL/COVINA REDEVELOPMENT AGENCY/COVINA PUBLIC FINANCE AUTHORITY/COVINA HOUSING AUTHORITY HELD IN THE COUNCIL CHAMBER OF CITY HALL, 125 EAST COLLEGE STREET, COVINA, CALIFORNIA**

**CALL TO ORDER**

Mayor King called the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority meeting to order at 6:36 p.m. There was no public comment. Council Member Delach arrived at 6:54 p.m.

**ROLL CALL**

**Council Members Present:** DELACH, ALLEN, KING, LOW, STAPLETON  
**Council Members Absent:** None  
**Elected Members Present:** Kay Manning, City Clerk  
**Staff Members Present:** Human Resources Director, City Attorney, Police Chief, Fire Battalion Chief, Community Development Director/CRA Deputy Director, Finance Director, Assistant Director of Public Works, Police Captain, Sr. Redevelopment Manager, Human Resources Analyst, Redevelopment Manager, City Planner and Deputy City Clerk

**AGENDA POSTING DECLARATION**

The Deputy City Clerk of the City of Covina hereby declares that the agenda for the June 7, 2011 regular City Council/Redevelopment Agency/Public Finance Authority/Housing Authority meeting was posted on June 2, 2011 near the front entrance of City Hall, 125 East College Street, Covina, in accordance with §54954.2(a) of the California Government Code.

**CONVENED THE MEETING AND RECESSED TO CLOSED SESSION**

- A. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:  
Property: Northeast Corner San Bernardino Road and Park Ave. (APN 8430-024-012)  
Negotiating parties: Hassen Development  
Agency negotiator: Community Development/CRA Deputy Director Robert Neiuber
- B. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:  
Property: 616 S. Shoppers Lane (APN 8451-001-032)  
Negotiating parties: James Nguyen  
Agency negotiator: Community Development/CRA Deputy Director Robert Neiuber
- C. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:  
Property: 626 and 620 S. Citrus (APN 8451-001-911)

Negotiating parties: Greg Bozzani  
Agency negotiator: Community Development/CRA Deputy Director Robert Neuber

D. G.C. §54956.9 – CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
Name of Case: Robert Gilman, WCAB case No. VNO 0557215 v. City of Covina

### **CONVENE THE MEETING**

The City Council/Redevelopment Agency/Public Finance Authority/Housing Authority meeting reconvened at 7:31 p.m.

City Attorney Marco Martinez announced City/Agency/Authority met in closed session to discuss the items listed on the agenda. All members were present. City Attorney Marco reported that there was no reportable action related to closed session item A, C and D. With respect to item B, the Agency did conclude negotiations with the property owner, which involve the City/Agency providing a \$15,000 three-year agreement contingent upon expansion to the site restaurant. The Agency also authorized the City Attorney to prepare the agreement and for the City Manager to sign as Executive Director of the Redevelopment Agency.

### **PLEDGE OF ALLEGIANCE**

Council Member Allen led the pledge of allegiance.

### **INVOCATION**

Covina Police Chaplain, David Truax, lead the invocation.

### **PRESENTATIONS**

Jose Martinez representative from the California High Speed Rail Authority gave a presentation regarding the high-speed rail.

Marisa Creter representative of the San Gabriel Valley Council of Governments gave a presentation regarding the Energy Upgrade California Los Angeles County Program.

### **PUBLIC COMMENTS**

Raul Trevino, 3 Vino's, spoke on a recent violation notice he received regarding banner signage displayed (depicting local radio station) at his business. Mr. Trevino stated he understands the requirement to have less banners displayed, yet feels that the banners, along with the radio station, promote the public to visit Covina.

Council Member Delach and Council Member Allen would like to see if there is a way to work with local businesses regarding the use of banners as advertisement.

Coach Murphy, Northview High School Baseball, spoke on the Baseball Booster Club and highlighted their involvement in the community.

### **COUNCIL/AGENCY/AUTHORITY COMMENTS**

Mayor Pro Tem Stapleton spoke on the recent Memorial Day event held at Forest Lawn adding that Mayor King's speech was outstanding. Mayor Pro Tem Stapleton distributed a letter from Athens, which shows trash fees for various cities. He noted that Covina had a lower rate than the average of the other cities. Mayor Pro Tem requested the meeting be adjourned in honor and of memory of Rose De Jesus. Mayor Pro Tem Stapleton stated that he attended, along with City staff, the International Council of Shopping Centers (ICSC) conference and had an opportunity to meet with many developers and retail establishments, encouraging them to look at coming to the City of Covina.

Council Member Allen stated Mayor King's speech at Forest Lawn was excellent. Council Member Allen requested Council's support to provide a letter to Senator Ed Hernandez and Assemblyman Roger Hernandez, asking to back the two existing legislative bills supporting redevelopment.

Council Member Low spoke on the YWCA event held at the Diamond Bar Community Center and referenced how impressed he was by the heavily landscaped facility, which was lined with trees and had a magnificent parking lot. Council Member Low stated he attended the production of Rumors held at the Covina Center of Performing Arts (CCPA), noting it was an outstanding production. Council Member Low stated that CCPA is downsizing for economic reasons and requested continued involvement to help support the facility.

Council Member Delach agreed with Council Member Allen's comments and supports writing a letter to Senator Ed Hernandez and Assemblyman Roger Hernandez.

Mayor King announced the Covina Valley Historical Society would host an event to mark the 100th anniversary of the Firehouse-Jail building this Saturday, June 11, 2011 from 10:00 a.m. to 1:00 p.m., which will include tours of the museum. For additional information, contact the Parks and Recreation Department at (626) 348-5340.

Mayor King announced tickets are still available for the Wine Walk in Downtown Covina on Saturday, June 11, 2011, from 5:00 p.m. – 8 p.m. with proceeds going to local charities. For additional information, contact Azo Vina Gift Gallery at (626) 732-9827.

Mayor King stated the Covina Downtown Association, Covina Yellow Ribbon Committee and Covina Redevelopment Agency would be presenting the next Downtown Covina Cruise Night on Sunday, June 12, 2011, 4:00 p.m. – 7:00 p.m. Additional information can be found at [www.SoCalCarShowDJs.com](http://www.SoCalCarShowDJs.com).

Mayor King announced Independence Day Breakfast with the Band would be held at Covina Park on Monday, July 4, 2011 with \$5 Breakfast and free band from 8:00 a.m. - 10:00 a.m. Summer Thursday evening concerts at the Covina Park kickoff on June 30, 2011 at 7:30 p.m.

### **CITY MANAGER COMMENTS**

Human Resources Director Anthony Arroyo stated staff would prepare a letter supporting AB 1250.

**CONSENT CALENDAR**

City Attorney Marco Martinez reported that by making a finding tonight to take immediate action, which is that the legislator is convening to try to finalize the budget this week and the need arose after the posting of the agenda. City Attorney Martinez reported that by a 4/5 Council vote, the Council can add to the agenda, the title authorizing the Mayor, on behalf of the City of Covina, expressing support of AB 1250.

On a motion made by Council Member Allen, seconded by Council Member Delach, the City Council approved the recommendation to add Consent Calendar item CC13 to the agenda. **Motion carried 5-0.**

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Delach, the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar items CC1, CC2, CC3, CC5, CC6, CC7, CC8, CC9, CC11 and CC12. **Motion carried 5-0.** Consent Calendar items CC4, CC10 and CC13 were removed from the agenda for further discussion and consideration.

- CC 1.** City Council approved the summary minutes of the May 17, 2011 Joint Study Session Covina City Council/Redevelopment Agency/Public Finance Authority/Housing Authority with Covina Planning Commission.
- CC 2.** City Council approved the minutes of the May 17, 2011 regular meeting of the City Council/ Redevelopment Agency/ Public Finance Authority/ Housing Authority.
- CC 3.** City Council approved the Fiscal Year 2011-2012 maintenance contract with Caliber Commercial Pool Service in the amount of \$17,400 to maintain the Michael D. Antonovich Aquatic Center swimming pools and pool equipment.
- CC 4.** City Council approved the contract with West Coast Arborists, Inc., for Tree Trimming Services of City’s park and street trees.

Council Member Low distributed photos of trees and expressed a concern regarding the quality of landscape maintenance, adding that more attention to be made to preserve the public landscape in the City.

Following a brief discussion, the Public Works Department would review the tree sites shown in the photos and provide an update to Council.

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Delach, the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar item CC4. **Motion carried 4-1, with Council Member Low voting no.**

- CC 5.** City Council received and filed the Fiscal Year 2010-2011 3rd Quarter Update major Funds Update and Mid-Year Update.
- CC 6.** City Council awarded a contract for Covina Transit Operations Services to Diversified Transportation, LLC, dba, Tectrans, Incorporated.

- CC 7.** City Council adopted **City Resolution No. 11-6970**, approving the destruction of obsolete Human Resources Department records.
- CC 8.** City Council approved a second amendment to the Fuel Station Use Agreement with Covina Valley Unified School District.
- CC 9.** City Council approved an exception to the Covina Home Rehabilitation Loan/Grant Program and Handy-worker Program, allowing expenditure of additional funds for necessary work; and received and filed report on the Community Development Block Grant (CDBG) program.
- CC 10.** City Council approved the use of funds from the Community Development Block Grant (CDBG) funding allocation; grant award of \$50,000, between the City and The Cake Mamas, and authorized the City Manager or his designee to execute the documents necessary to complete the grant/loan transactions when all conditions are met.

Council Member Allen thanked staff for their work to secure local businesses.

On a motion made by Council Member Allen, seconded by Council Member Delach, the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar item CC10. **Motion carried 4-1, with Council Member Low voting no.**

- CC 11.** Redevelopment Agency received and filed the annual report of the Economic Development Council for Fiscal Year 2010-2011 program budget for the Covina Economic Development Council (EDC).
- CC 12.** Redevelopment Agency approved an Access Agreement with Russ Davis, Inc., Mary N. Davis, Richard R. Davis Family Trust and Paulette E. Davis, for usage of the property at 116 East San Bernardino Road for temporary operation of the Covina Farmers Market and Family Night and authorized the Executive Director to execute the agreement as well as increase subsidy to Farmers Market Operator.
- CC 13.** City Council approved the need to take immediate action and authorize the Mayor to submit a letter in support of Assembly Bill 1250.

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Delach, the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar item CC13. **Motion carried 4-1, with Council Member Low voting no.**

## **PUBLIC HEARING**

- PH 1.** Public hearing was before City Council to consider the City's proposed refuse rates and second reading to adopt **Ordinance No. 11-1994**, adjusting City of Covina July 1, 2011 – June 30, 2012 refuse rates.

At 8:45 p.m., Mayor King opened the public hearing and took public testimony.

Mayor King inquired and City Clerk Manning responded 22 written protests have been received.

Mayor King inquired and City Clerk Manning responded the number of protests submitted equals protest of less than one-percent (1%) of current customers.

Glenn Garrett, Prospero Park Owners Association (PPOA), spoke in favor of the refuse rates and thanked the city for their efforts in working with the Association to help improve the quality of life in the Prospero Park area. Mr. Garrett stated there are 72 apartment buildings, 541 units and if refuse is not taken care of adequately, the area becomes littered. Mr. Garrett spoke of the positive impact to the cleanness of the streets when cardboard trash receptacles that were placed at the location last year. Mr. Garrett requested City's support in having receptacles placed on the sidewalks, in addition to service by Athens for those trash receptacles.

At 8:50 p.m., Mayor King closed the public hearing.

Council Member Delach and Council Member Allen spoke in support of the Prospero Park Owners Association efforts. Mayor King referenced is a beatification grant from Athens that may be able to assist the Prospero Park Owners Association.

Mayor Pro Tem Stapleton stated he received public comments regarding the language, Consumer Price Index or 3%, whichever is greater. Mayor Pro Tem Stapleton clarified the language gives the city a cap in which we can act. The actual increase this year is 1.8%.

On a motion made by Council Member Allen, seconded by Council Member Delach, the City Council adopted **Ordinance No. 11-1994**, setting refuse rates for the period of July 1, 2011 through June 30, 2012 and making automatic adjustments to the proposed rates in future years by the change in Consumer Price Index or 3%, whichever is greater. **Motion carried by a roll-call vote, 4-1, with Council Member Low voting no.**

**PH 2.** Public hearing was before City Council to consider resolutions authorizing the annexation of territory to City of Covina Community Facilities District No. 2007-1 (Public Services) (Annexation No. 3) and to call and hold a special election (451 E. Badillo).

At 8:54 p.m., Mayor King opened the public hearing and invited comments from persons in the audience. There were no speakers.

Notice of the public hearing was given in accordance with law.

Mayor King inquired and Deputy City Clerk LaCroix responded that no written protests have been received from the landowners within the annexation area; therefore, a majority protest does not exist.

At 8:56 p.m., Mayor King closed the public hearing.

Mayor King stated at this time because a majority protest does not exist, it is appropriate for the City Council to consider said resolutions regarding the annexation of territory and to call a special election within the annexation area.

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Allen, the City Council adopted **City Resolution No. 11-6971**, authorizing the annexation of territory to Community Facilities District No. 2007-1 (Annexation No. 3) and authorizing the levy of special tax and submitting the levy of tax to the qualified electors; **City Resolution No. 11-6972**, calling for a special election and submitting to the voters of Annexation No. 3 of the City of Covina, Community Facilities District No. 2007-1 (Public Services), propositions regarding the annual levy of special taxes within Annexation No. 3 to finance public services, and the establishment of an appropriations limit. **Motion carried 4-1, with Council Member Low voting no.**

Mayor King inquired and Deputy City Clerk LaCroix confirmed she had received the ballots from the landowners in the annexation area. Mayor King requested Deputy City Clerk LaCroix to proceed to canvass the ballots.

Deputy City Clerk LaCroix reported the canvass on Proposition A was as follows: **one vote was cast in support** of the proposition and zero votes were cast in opposition to the proposition. Therefore, **Proposition A, was approved with a 100% vote in favor.**

Deputy City Clerk LaCroix reported the canvass on Proposition B was as follows: **one vote was cast in support** of the proposition and zero votes were cast in opposition to the proposition. Therefore, **Proposition B, was approved with a 100% vote in favor.**

On a Motion made by Mayor Pro Tem Stapleton, seconded by Council Member Delach, the City Council adopted **City Resolution No. 11-6973**, making certain findings, certifying the results of an election and adding property to Community Facilities District No. 2007-1 (Public Services), Annexation No. 3. **Motion carried 4-1, with Council Member Low voting no.**

**PH 3.** Public hearing was before City Council to consider resolutions authorizing annexation of territory to City of Covina Community Facilities District No. 2007-1 (Public Services) (Annexation No. 4), and to call and hold a special election (McGill).

At 9:02 p.m., Mayor King opened the public hearing and invited comments from persons in the audience. There were no speakers.

Notice of the public hearing was given in accordance with law.

Mayor King inquired and Deputy City Clerk LaCroix responded that no written protests have been received from the landowners within the annexation area; therefore, a majority protest does not exist.

At 9:02 p.m., Mayor King closed the public hearing.

Mayor King stated at this time because a majority protest does not exist, it is appropriate for the City Council to consider said resolutions regarding the annexation of territory and to call a special election within the annexation area.

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Delach, the City Council adopted **City Resolution No. 11-6974**, authorizing the annexation of territory to Community Facilities District No. 2007-1 (Annexation No. 4) and authorizing the levy of special tax and submitting the levy of tax to the qualified electors; **City Resolution No. 11-6975**, calling for a special election and submitting to the voters of Annexation No. 4 of the City of Covina, Community Facilities District No. 2007-1 (Public Services), propositions regarding the annual levy of special taxes within Annexation No. 3 to finance public services, and the establishment of an appropriations limit. **Motion carried 4-1, with Council Member Low voting no.**

Mayor King inquired and Deputy City Clerk LaCroix confirmed she had received the ballots from the landowners in the annexation area. Mayor King requested Deputy City Clerk LaCroix to proceed to canvass the ballots.

Deputy City Clerk LaCroix reported the canvass on Proposition A was as follows: **one vote was cast in support** of the proposition and zero votes were cast in opposition to the proposition. Therefore, **Proposition A, was approved with a 100% vote in favor.**

Deputy City Clerk LaCroix reported the canvass on Proposition B was as follows: **one vote was cast in support** of the proposition and zero votes were cast in opposition to the proposition. Therefore, **Proposition B, was approved with a 100% vote in favor.**

On a Motion made by Mayor Pro Tem Stapleton, seconded by Council Member Allen, the City Council adopted **City Resolution No. 11-6976**, making certain findings, certifying the results of an election and adding property to Community Facilities District No. 2007-1 (Public Services), Annexation No. 4. **Motion carried 4-1, with Council Member Low voting no.**

**PH 4.** Public hearing was before City Council to introduce, waiver further reading and adopt **Interim Urgency Ordinance No. 11-1993**, to extend Interim Urgency Nos. 10-1991 and 11-1992 for an additional sixty (60) days and continue for this period the moratorium on the issuance of permits and entitlements for new standalone wireless communications facilities.

At 9:05 p.m., Mayor King opened the public hearing and took public testimony. There were no comments.

At 9:06 p.m., Mayor King closed the public hearing.

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Low, the City Council adopted **Ordinance No. 11-1993**, extending Interim Urgency Nos. 10-1991 and 11-1992 for an additional sixty (60) days and continue for this period the moratorium on the issuance of permits and entitlements for new standalone wireless communications facilities for a period of sixty (60) days; and directed staff to continue studying possible

revisions to the City's existing zoning regulations to address new standalone wireless communications facilities. **Motion carried 5-0.**

### **NEW BUSINESS**

**NB 1.** City Council to introduce and waive further reading of **Ordinance No. 11-1995**, to amend sections 9.48.010, 9.48.070, 9.48.130, 9.48.160, 9.48.220 and 9.40.140 of the Covina Municipal Code, deleting Section 7.12.070 and adding sections 9.48.075-9.48.079, 9.48.085-9.48.089, 9.48.135-9.48.139, 9.48.155-9.48.159, 9.48.165-9.48.169, 9.48.225-9.48.229 and 9.48.325 to the Covina Municipal Code relating to activities in public parks.

On a motion made by Council Member Low, seconded by Council Member Allen, the City Council introduced and waived further reading of **Ordinance No. 11-1995**, first reading of ordinance to amend sections 9.48.010, 9.48.070, 9.48.130, 9.48.160, 9.48.220 and 9.40.140 of the Covina Municipal Code, deleting section 7.12.070 and adding sections 9.48.075-9.48.079, 9.48.085-9.48.089, 9.48.135-9.48.139, 9.48.155-9.48.159, 9.48.165-9.48.169, 9.48.225-9.48.229 and 9.48.325 of the Covina Municipal Code relating to activities in public parks. **Motion carried 5-0.**

**NB 2.** City Council/Redevelopment Agency to receive and file the Preliminary Budget Documents for City of Covina and Covina Redevelopment Agency for fiscal year 2011-2012.

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Allen, the City Council received and filed the Preliminary Budget Documents for City of Covina Redevelopment Agency for fiscal year 201-2012. **Motion carried 5-0.**

### **ADJOURNMENT**

At 9:10 p.m., Mayor King adjourned the Covina City Council/Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority in memory of Rose De Jesus to the next regular meeting on **Tuesday, June 21, 2011** at 6:30 p.m. for closed session and at 7:30 p.m. for open session in the Council Chamber of City Hall, 125 East College Street, Covina, California, 91723.

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Catherine M. LaCroix  
Deputy City Clerk/Agency/Authority Secretary

Approved this 5th day of July, 2011.

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John C. King, Mayor/Chairperson



**MINUTES OF THE JUNE 21, 2011 REGULAR MEETING OF THE COVINA CITY COUNCIL/COVINA REDEVELOPMENT AGENCY/COVINA PUBLIC FINANCE AUTHORITY/COVINA HOUSING AUTHORITY HELD IN THE COUNCIL CHAMBER OF CITY HALL, 125 EAST COLLEGE STREET, COVINA, CALIFORNIA**

**CALL TO ORDER**

Mayor King called the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority meeting to order at 6:34 p.m. with Mayor King absent. There was no public comment.

**ROLL CALL**

**Council Members Present:** DELACH, ALLEN, LOW, STAPLETON

**Council Members Absent:** KING (with notice)

**Elected Members Present:** MANNING

**Staff Members Present:** City Manager, Human Resources Director, City Attorney, Police Chief, Fire Battalion Chief, Community Development Director/CRA Deputy Director, Finance Director, Parks and Recreation/Library Director, Police Captain, Sr. Redevelopment Manager, Management Analyst, Human Resources Analyst, Redevelopment Manager, City Planner and Deputy City Clerk

**AGENDA POSTING DECLARATION**

The Deputy City Clerk of the City of Covina hereby declares that the agenda for the June 21, 2011 regular City Council/Redevelopment Agency/Public Finance Authority/Housing Authority meeting was posted on June 21, 2011 near the front entrance of City Hall, 125 East College Street, Covina, in accordance with §54954.2(a) of the California Government Code.

**CONVENED THE MEETING AND RECESSED TO CLOSED SESSION**

- A. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:  
Property: Northeast Corner San Bernardino Road and Park Ave. (APN 8430-024-012)  
Negotiating parties: Hassen Development  
Agency negotiator: Community Development/CRA Deputy Director Robert Neuber
- B. G.C. §54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Negotiations to include both price and terms:  
Property: 626 and 620 S. Citrus (APN 8451-001-911)  
Negotiating parties: Greg Bozzani  
Agency negotiator: Community Development/CRA Deputy Director Robert Neuber
- C. G.C. §54956.9(b) – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation  
Number of potential cases: 1 (one)

**CONVENE THE MEETING**

The City Council/Redevelopment Agency/Public Finance Authority/Housing Authority meeting reconvened at 7:30 p.m.

City Attorney Marco Martinez announced City/Agency/Authority met in closed session to discuss the items listed on the agenda, noting that Mayor King was absent. City Attorney Marco reported that there was no reportable action related to closed session item A and B. City Attorney Marco Martinez reported closed session item C relates to letters received from the law firm Fleishman and Fisher, dated May 6, 2011 and June 10, 2011, concerning the City's fortunetelling regulations and a threat of litigation concerning those regulations, adding there is no reportable action related to closed session item C.

### **PLEDGE OF ALLEGIANCE**

Police Chief Kim Raney led the pledge of allegiance.

### **INVOCATION**

Covina Police Chaplain, David Truax, lead the invocation.

### **PRESENTATIONS**

Mayor Pro Tem Stapleton and Council Member Delach presented Jody Gmeiner, Executive Director of the Pomona Valley Habitat for Humanity, a check, on behalf of Swinerton Incorporated, to help with the building of the Covina house located at 436 East Cypress Street.

Mayor Pro Tem Stapleton presented two checks to Lisa Bravo, Executive Director of YWCA San Gabriel Valley, for the remodeling project at the domestic violence shelter and transitional housing.

### **PUBLIC COMMENTS**

None.

### **COUNCIL/AGENCY/AUTHORITY COMMENTS**

Council Member Low stated that he and Council Member Allen attended the memorial for L.A. County Firefighter Brian Muir and commented on touching event.

Council Member Delach wished everyone a happy and safe Fourth of July.

Council Member Allen spoke on the memorial for the Firefighter Muir. Council Member Allen reminded everyone of the July 4th Covina Concert and Pancake Breakfast would be held at Covina Park.

Mayor Pro Tem Stapleton announced the Covina Public Library would have free children's programs: June 22, 2011 at 3:00 p.m., "The Call of the Road: Adventure, Danger and Mystery Away from Home" and June 29, 2011 at 3:00 p.m., "Yak it up with Animal Comedians."

Mayor Pro Tem Stapleton announced that summer evening events at Covina Park: Monday, June 27, 2011 enjoy Latin Jazz by Suave beginning at 7:30 p.m.; Tuesday, June 28, 2011 is

Community Picnic Night beginning at 6:30 p.m. and Wednesday, June 29, 2011 enjoy music of Christ First Church beginning at 7:30 p.m.

Mayor Pro Tem Stapleton announced that the July 4, 2011 Patriotic Concert and Pancake Breakfast would be held at Covina Park with breakfast beginning at 7:30 a.m. for a \$5 donation and the concert at 8:00 a.m.

Mayor Pro Tem Stapleton reminded residents that fireworks are not allowed in the City of Covina. In addition, City Hall offices would be closed on Monday, July 4, 2011.

### **CITY MANAGER COMMENTS**

City Manager Daryl Parrish reported CC5 provides an update regarding legislative bills that may have an impact on local government and staff continue to provide updates to Council.

### **CONSENT CALENDAR**

On a motion made by Council Member Delach, seconded by Council Member Allen, the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar items CC1, CC2, CC3, CC4, CC5, CC6, CC7, CC8, CC9, CC10, CC11, CC12, CC13, and CC15. **Motion carried 4-0, with Mayor King absent.** Consent Calendar items CC8 and CC14 were removed from the agenda for further discussion and consideration.

- CC 1. City Council approved payment of demands in the amount of \$3,527,896.30.
- CC 2. City Council authorized staff to advertise for interest and accept applications for scheduled vacancies of the City of Covina Boards, Commissions and Committees.
- CC 3. City Council determined satisfaction of Note and program requirements and terms for the program participants of the Community Development Block Grant Special Economic Development Program.
- CC 4. City Council received and filed the monthly Strategic Plan update.
- CC 5. City Council received and filed a report regarding potential fiscal impacts resulting from State legislative action.
- CC 6. City Council received and filed the Public Works Department monthly report.
- CC 7. City Council rejected all bids for Auxiliary Power Systems for Various Water Reservoir Sites and City Yard, Project F-1104.
- CC 8. City Council considered the reclassification of Senior Account Technician to Payroll Technician and authorized the creation of a Senior Human Resources Analyst classification.

Council Member Low expressed a concern, noting tough economic times, and feels it is inappropriate to reclassify employees at this particular time.

Following a brief discussion and on a motion made by Council Member Allen, seconded by Council Member Delach, the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar item CC8. **Motion carried, 3-1, with Mayor King absent and Council Member Low voting no.**

- CC 9. City Council approved a non-exclusive license agreement for the Operation of a Mobile Food Facility at 600 North Citrus Avenue to Shilo Smoothies, LLC, dba, Maui Wowi Hawaiian.
- CC 10. City Council adopted **City Resolution No. 11-6969**, authorizing the write-off of certain delinquent accounts as of June 30, 2011.
- CC 11. City Council adopted **City Resolution No. 11-6977**, approving Final Tract Map 71264 and accepting an easement for emergency vehicular ingress and egress purposes and fire lane purposes as dedicated – Citrus Walk.
- CC 12. City Council adopted **City Resolution No. 11-6978**, approving Program Supplement Agreement N012 to Administering Agency-State Agreement for Federal-Aid Projects No. 07-5118R with Caltrans for Federal-Aid Project No. STPL-5118(017); the resurfacing of Puente Street, Project P-1002.
- CC 13. Redevelopment Agency approved Payment of Demands in the amount of \$351,072.21.
- CC 14. City Council/Redevelopment Agency adopted **City Resolution No. 11-6983**, approving and authorizing loans to the Covina Redevelopment Agency for Fiscal Year 2011-2012; and adopted **Agency Resolution No. 11-682**, approving and authorizing execution of Promissory Notes made by the Agency to the City of Covina for Fiscal Year 2011-2012.

Council Member Low stated he feels that it is inappropriate use of City funds and does not support the loans.

Following a brief discussion and on a motion made by Council Member Allen, seconded by Council Member Delach, the City Council/Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar item CC14. **Motion carried, 3-1, with Mayor King absent and Council Member Low voting no.**

- CC 15. City Council/Redevelopment Agency awarded a bid for Shoppers Lane Parking Lot Public Improvements – Project No. P-1009 to Gentry Brothers, Inc., as the only responsive and responsible bidder in the amount of \$269,370.

## PUBLIC HEARING

**PH 1.** Public hearing was before City Council to consider the City's application Variance 10-011 related to a single family residence located at 247 East Edna Place and to determine if the required findings can be justified.

Community Development Director/CRA Deputy Director Robert Neiuber provided a brief staff report.

At 7:56 p.m., Mayor Pro Tem Stapleton opened the public hearing and took public testimony.

James Mihalka spoke on the Variance application reviewing the suggested changes to the property, providing photographs referencing several properties with similar findings he is proposing.

Council Member Low inquired and Community Development Director/CRA Deputy Director Neiuber responded surrounding neighbors were notified and copies are provided in the staff report.

A brief discussion took place regarding fire access and referring the application changes back to the Planning Commission.

On a motion made by Council Member Allen, seconded by Council Member Delach, to refer the Variance application back to the Planning Commission to consider the changes and continue the public hearing to the City Council Meeting of July 19, 2011. **Motion carried 4-0, with Mayor King absent**

*At 8:08 p.m., Council Member Low stated he would recuse himself from PH 2, and PH 3, as his property lies within the assessment districts, and left the dais.*

**PH 2.** Public hearing was before City Council to consider the levy and collection of assessments for Covina Landscaping District No. 1 for the 2011-2012 fiscal year.

At 8:09 p.m., Mayor Pro Tem Stapleton opened the public hearing and took public testimony. There were no speakers.

Council Member Allen stated he would like for the Oversight Finance Committee could look at alternatives on the lighting districts, to which City Manager Parrish reported there is a meeting on Wednesday, June 29, 2011 to discuss the assessments.

At 8:12 p.m., Mayor Pro Tem Stapleton closed the public hearing.

On a motion made by Council Member Delach, seconded by Council Member Allen, the City Council adopted **City Resolution No. 11-6979**, confirming the diagram and assessment for the Engineer's Report dated May 17, 2011, and ordering the levying of

assessments on the Covina Landscaping District No. 1 for the 2011-2012 fiscal year. **Motion carried 3-0, with Mayor King absent and Council Member Low abstaining.**

**PH 3.** Public hearing was before City Council to consider the levying of assessments for Covina Lighting District No. 1978-1979 for the 2011-2012 fiscal year.

At 8:13 p.m., Mayor Pro Tem Stapleton opened the public hearing and took public testimony. There were no speakers.

At 8:14 p.m., Mayor Pro Tem Stapleton closed the public hearing.

On a motion made by Council Member Delach, seconded by Council Member Allen, the City Council adopted **City Resolution No. 11-6980**, confirming the diagram and assessment from the Engineer's Report dated May 17, 2011 and ordering the levying of assessments for Covina Lighting District No. 1978-79 for the 2011-2012 fiscal year. **Motion carried 3-0, with Mayor King absent and Council Member Low abstaining.**

*At 8:14 p.m., Council Member Low returned to the dais.*

**PH 4.** Public hearing was before City Council to consider the levying and collection of assessments for Vehicle Parking District No. 1 for the 2011-2012 fiscal year.

At 8:14 p.m., Mayor Pro Tem Stapleton opened the public hearing and took public testimony. There were no comments.

At 8:15 p.m., Mayor Pro Tem Stapleton closed the public hearing.

On a motion made by Council Member Delach, seconded by Council Member Low, the City Council adopted **City Resolution No. 11-6981**, confirming the Engineer's Report dated May 17, 2011 and ordering the levying and collection of assessments for Vehicle Parking District No. 1 for the 2011-2012 fiscal year. **Motion carried 4-0, with Mayor King absent.**

## **NEW BUSINESS**

**NB 1.** City Council to consider making appointment to the Cultural Arts Advisory Commission.

On a motion made by Council Member Delach, seconded by Council Member Low, the City Council appointed Jennifer Dana to the Cultural Arts Advisory Commission. **Motion carried 4-0, with Mayor King absent.**

**NB 2.** City Council to introduce and waive further reading of **Ordinance No. 11-1996**, repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City's regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code.

Community Development Director/CRA Deputy Director Neiuber provided a brief staff report, noting for the record an e-mail received from Linda Paul of T-Mobile addressing a few minor changes to improve the recommended ordinance.

Mayor Pro Tem Stapleton noted a typographical correction for the record, 17.65.040(C) should state 17.65.040(D).

On a motion made by Council Member Low, seconded by Council Member Allen, the City Council introduced **Ordinance No. 11-1996**, repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City's regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code. **Motion carried 4-0, with Mayor King absent.**

- NB 3.** City Council to introduce and waive further reading of **Ordinance No. 11-1997**, amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying "Barber and Beauty Shops" as Conditional uses.

Community Development Director/CRA Deputy Director Neiuber provided a brief staff report.

On a motion made by Council Member Low, seconded by Council Member Allen, the City Council introduced **Ordinance No. 11-1997**, amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying "Barber and Beauty Shops" as Conditional uses. **Motion carried 4-0, with Mayor King absent.**

### **CONTINUED BUSINESS**

- CB 1.** City Council to have second reading and adoption of **Ordinance No. 11-1995**, amending various Covina Municipal Code provisions relating to activities in public parks.

On a motion made by Council Member Delach, seconded by Council Member Allen, the City Council adopted **Ordinance No. 1995**, amending various Covina Municipal Code provisions relating to activities in public parks. **Motion carried 4-0, with Mayor King absent.**

- CB 2.** City Council/Redevelopment Agency to consider adoption of the City of Covina and Covina Redevelopment Agency Annual Budget for the Fiscal Year commencing July 1, 2011 and ending June 30, 2012.

Finance Director Dilu De Alwis provided a PowerPoint presentation of the proposed budget.

City Manager Parrish highlighted \$375,000 one-time capital projects, which include a left turn pocket at Workman Street and Hollenbeck Avenue, traffic controllers for pedestrian crossings, traffic control signs that meet federal standards, ergonomic furniture and resurfacing of the jails floor.

On a motion made by Council Member Allen, seconded by Council Member Delach, the City Council/Redevelopment Agency adopted **City Resolution No. 11-6982**, adopting the City of Covina budget for July 1, 2011 through June 30, 2012; and adopted **Agency Resolution No. 11-684**, adopting the Covina Redevelopment Agency budget for July 1, 2011 through June 30, 2012. **Motion carried 3-1, with Mayor King absent and Council Member Low voting no.**

### **ADJOURNMENT**

At 8:51 p.m., Mayor Pro Stapleton adjourned the Covina City Council/Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority to the next regular meeting on **Tuesday, July 5, 2011** at 6:30 p.m. for closed session and at 7:30 p.m. for open session in the Council Chamber of City Hall, 125 East College Street, Covina, California, 91723.

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Catherine M. LaCroix  
Deputy City Clerk/Agency/Authority Secretary

Approved this 5th day of July, 2011.

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John C. King, Mayor/Chairperson

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** June 21, 2011

**ITEM NO.:** CC 3

**STAFF SOURCE:** Anthony Arroyo, Human Resources Director *YAA*

**ITEM TITLE:** Re-establish the position of Support Services Manager to the Unaffiliated Group

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**STAFF RECOMMENDATION**

Approve re-establishing the position of Support Services Manager to the Unaffiliated Group.

**FISCAL IMPACT**

The fiscal impact for the position will not exceed \$43,300. These funds are included in the Police Department's 2011 – 2012 adopted budget.

**BACKGROUND**

During the MOU negotiations with the Police Management Group, the Support Services Manager position was eliminated due to the retirement in 2010 of the employee who held that position. As a result of a recent retirement of a supervisory level position, the city is in need of bringing in a qualified individual to oversee various non-safety operations within the police department.

Police Department staff has been in communication with a retiree from another city who is capable of performing the duties and responsibilities associated with the Support Services Manager position (a copy of the job description is attached). Because this individual is a retiree from the Public Employee Retirement System, there is a limit of 960 hours in a fiscal year the individual will be able to work. This fits the requirements of Police Department staff on a temporary basis. It is anticipated this individual will work for the city up to 960 hours. When such time comes, a lower level supervisory position may be filled.

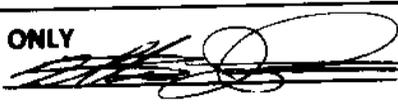
The salary range for the position is: \$37.09995 (Step A) - \$45.09053 (Step E). The individual being considered for the position will be paid at Step E.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

A. Support Services Manager Job Description

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: _____	Other: _____

## CITY OF COVINA

### SUPPORT SERVICES MANAGER

*Class specifications are only intended to present a descriptive summary of the range of duties and responsibilities associated with specified positions. Therefore, specifications **may not include all** duties performed by individuals within a classification. In addition, specifications are intended to outline the **minimum** qualifications necessary for entry into the class and do not necessarily convey the qualifications of incumbents within the position.*

#### **DEFINITION:**

Under general direction, manages, plans, directs, and coordinates the operations of the Records and Communications Units, the citywide Telephone system and the Parking Citation Processing System; prepares and administers the Department's budget; manages the maintenance of the Police/Fire Administration facility and the Animal Services Contract with Los Angeles County; serves as a member of the Police Department's Management Team; researches and prepares staff reports; develops, implements, and evaluates the Support Services systems and procedures; performs other related duties as required.

#### **DISTINGUISHING CHARACTERISTICS:**

The **Support Services Manager** is the management level class responsible for the Records and Communications Units within the Police Department. This position also has the responsibility of preparing and managing the Department's budget, and managing the Police/Fire Administration facility. Additionally, this position serves on the Department's management team. This classification is distinguished from the next higher classification of Police Captain in that the latter is a sworn position with department wide responsibility.

#### **SUPERVISION RECEIVED/EXERCISED:**

Receives general direction from the Police Captain. Exercises direct supervision over assigned personnel.

#### **ESSENTIAL FUNCTIONS:** *(include but are not limited to the following)*

- Accepts management responsibility for planning, directing, and coordinating the operations of the Records Unit and the Communications Unit, the citywide Telephone system and the Parking Citation Processing System; prepares and administers the Department's budget; manages the maintenance of the Police/Fire Administration facility and the Animal Services Contract with Los Angeles County; serves as a member of the Police Department's Management Team.
- Supervises, plans, directs, and coordinates Records Management; develops and implements Records operating procedures, ensures that Records activities are conducted in accordance with related laws, ordinances, regulations, and policies; carries out the purging and destruction of records in accordance with the City's Destruction of Records Policy.
- Manages the operation of the Communications Unit, including all functions relating to

9-1-1, telephone, and Radio systems.

- Oversees the Department's front desk operations and facility management activities; maintains all department supplies; makes purchases; oversees forms control.
- Plans and coordinates equipment installations; administers service contracts involving maintenance of Police Department facilities, Records systems, the citywide telephone system, and Animal Services; schedules mechanical repairs; ensures that the systems are maintained and operated efficiently and economically.
- Prepares and administers the Department's budget; researches and develops new procedures, proposals, etc.; prepares directives which outline these procedures; participates in the development of department goals, objectives, and policies.
- As the Police Department's Custodian of Records; provides liaison to other law enforcement agencies, the Courts and District Attorney's offices; testifies in Court as required and complies with Court Orders; certifies copies of the Department's official documents, and oversees the preparation of various statistical reports.
- Manages a number of departmental activities and programs, including the parking citation processing contract, the Administrative Adjudication Program and the overnight parking permit program.
- Oversees the applicant processing and the police clearance procedures for City Solicitor licensing.
- Answers questions from the public by phone or in person; manages the Department's cashiering services; advises and provides liaison to other departmental staff, other City departments, other agencies, and the public regarding responsible areas.
- Establishes positive working relationships with representatives of community organizations, state/local agencies and associations, City management and staff, and the public.

**PHYSICAL, MENTAL AND ENVIRONMENTAL WORKING CONDITIONS:**

Position requires prolonged sitting, standing, walking, reaching, twisting, turning, kneeling, bending, squatting, and stooping in the performance of daily activities. The position also requires grasping, repetitive hand movement and fine coordination in preparing statistical reports and data using a computer keyboard. Additionally, the position requires near vision in reading correspondence, statistical data and using a computer. Acute hearing is required when providing phone and personal service. The need to lift, drag and push files, paper and documents weighing up to 25 pounds also is required.

Some of these requirements may be accommodated for otherwise qualified individuals requiring and requesting such accommodations.

**QUALIFICATIONS:** *(The following are minimal qualifications necessary for entry into the classification.)*

**Education and/or Experience:**

Any combination of education and experience that has provided the knowledge, skills and abilities necessary for a **Support Services Manager**. A typical way of obtaining the required qualifications is to possess the equivalent of three years of full-time progressively responsible supervisory experience in a Police/Fire Communications Center, records, or office management involving the establishment and maintenance of records, procedures, and information systems in a law enforcement environment, and a bachelor's degree in business administration, public administration, criminal justice or a related field.

**License/Certificate:**

Possession of, or ability to obtain, a valid Class C California driver's license.

**KNOWLEDGE/ABILITIES/SKILLS:** *(The following are a representative sample of the KAS's necessary to perform essential duties of the position.)*

**Knowledge of:**

Modern principles and practices of municipal criminal justice systems; organization and functions of a municipal law enforcement agency; principles and practices of law enforcement records management; modern law enforcement communications techniques and equipment; automated law enforcement information systems and procedures; methods and techniques of supervision, training and motivation; basic principles of mathematics; applicable federal, state and local laws, codes and regulations; methods and techniques of scheduling work assignments; standard office procedures, practices and equipment; modern office practices, methods and equipment, including a computer and applicable software; methods and techniques for record keeping and report preparation and writing; proper English, spelling and grammar; occupational hazards and standard safety practices.

**Ability to:**

Effectively manage police records; train, evaluate and direct work of assigned staff; perform mathematical calculations quickly and accurately; interpret, explain and apply applicable laws, codes and regulations; read, interpret and record data accurately; meet the public in situations requiring diplomacy and tact; organize, prioritize and follow-up on work assignments; work independently and as part of a team; make sound decisions within established guidelines; analyze a complex issue, and develop and implement an appropriate response; follow written and oral directions; observe safety principles and work in a safe manner; communicate clearly and concisely, both orally and in writing; establish and maintain effective working relationships.

**Skill to:**

Operate an office computer and a variety of word processing and software applications; effectively operate specialized law enforcement automated information and communication systems.

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

CC 4

**MEETING DATE:** July 5, 2011

**ITEM NO.:** \_\_\_\_\_

**STAFF SOURCE:** Kim J. Raney, Chief of Police 

**ITEM TITLE:** Memorandum of Understanding with Charter Oak Unified School District for a School Resource Officer for 2011-2012 school year.

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**STAFF RECOMMENDATION**

Approve Memorandum of Understanding with Charter Oak Unified School District for a School Resource Officer for the 2011-2012 school year and authorize the City Manager and Chief of Police to execute.

**FISCAL IMPACT**

On June 21, 2011, City Council adopted the City of Covina 2011-2012 budget and this position is included (1010 1130 40 50010). The District reimburses the City on an hour for hour basis (1010 1130 40 42500).

**BACKGROUND**

The Charter Oak Unified School District has requested the continuation of the School Resource Officer Program at Charter Oak High School for the upcoming school year. This will be the seventeenth year an officer has been assigned to Charter Oak High School. Administrators report that this program continues to be highly successful and is instrumental in ensuring campus safety.

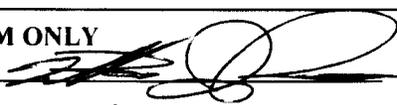
This program will continue our partnership with the school, which improves safety on campus and provides a forum for positive interaction between the police and the students. This program provides for an officer at the school full time during the school year. The officer is redeployed to police department duties during school breaks. In the past, Council approved, through the budget process, the staffing of a School Resource Officer at Charter Oak.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

A. Memorandum of Understanding, including Police Department's School Resource Officer Policy (GM#235).

<b>REVIEW TEAM ONLY</b>	
<b>City Attorney:</b> 	<b>Finance Director:</b> 
<b>City Manager:</b> 	<b>Other:</b> _____

**MEMORANDUM OF UNDERSTANDING**

**Between**

**CITY OF COVINA AND CHARTER OAK UNIFIED SCHOOL DISTRICT**

This Memorandum of Understanding (MOU) is entered into by the City of Covina (City) and Charter Oak Unified School District (District) for the purpose of providing a School Resource Officer (SRO) to Charter Oak High School, commencing on August 29, 2011. This MOU will not extend beyond June 6, 2012.

It is mutually agreed that the Covina Police Department (Department) will provide a sworn law enforcement officer to Charter Oak High School to act as a School Resource Officer (SRO). This officer will be selected by the Chief of Police and will act first and foremost as a law enforcement officer. The officer may be required to perform duties as the Principal or his/her staff designate within the parameters of Police Department General Memo #235. A copy of this memo is attached. Any conflicts in interpretation of the SRO's duties and responsibilities should be resolved jointly between the Principal and the Chief of Police. Where conflict resolution is not possible, the Chief of Police will retain the authority for the final decision.

The SRO will remain an employee of Covina Police Department with all rights, benefits, and privileges thereto. As the employer of the SRO, the Covina Police Department will provide Workers' Compensation Insurance for the SRO. Covina Police Department will pay the SRO's salary (including benefits). The District will be billed 100% of the assigned officer's actual wage, plus benefits, on an hour-by-hour basis for the time assigned to the District. The Department will bill the District for these costs on a monthly basis.

The SRO will ordinarily be attired in a police uniform, however, will work on occasion in plain clothes. The SRO will work four (4) days a week, ten (10) hours a day, and will be assigned to the Charter Oak High School campus. The SRO will coordinate all of his activities with the Principal and concerned staff members, and will seek permission, guidance, and advice prior to enacting any program within the school.

While on District property, the SRO will follow all policies, rules and regulations of the District and the laws set forth in the California Education Code.

The District agrees to protect, hold harmless, defend, and indemnify the City, employees, officers, agents, and volunteers from any and all loss, claims, liabilities, expenses or damages of any nature whatsoever, including attorney fees arising out of or in any way connected with performance of the MOU.

The City agrees to protect, hold harmless, defend, and indemnify the District, employees, officers, agents, and volunteers from any and all loss, claims, liabilities, expenses or

damages of any nature whatsoever, including attorney fees arising out of or in any way connected with the performance of the MOU.

This MOU is the final and entire agreement between the Parties. All agreements of the Parties with respect to the subject matter hereof are in writing and supersede all prior written and oral agreements and understandings. This Agreement cannot be modified except by a written document signed by both of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated Agreement.

The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Superior Court of California located in the County of Los Angeles, State of California.

I have read and understand this Memorandum of Understanding and the information contained in General Memo #235.

CITY OF COVINA  
DISTRICT

CHARTER OAK UNIFIED SCHOOL

\_\_\_\_\_  
Daryl Parrish  
City Manager

\_\_\_\_\_  
Dr. Mike Hendricks  
District Superintendent

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Kim Raney  
Chief of Police

\_\_\_\_\_  
Brian Akers  
President, Governing Board

Date \_\_\_\_\_

Date \_\_\_\_\_

**Number:** 235 (amended)

**Date:** June 24, 2002

**Subject:** School Resource Officer Program (SRO)

**Purpose:** To establish an atmosphere of communication and cooperation between Charter Oak Unified School District, Azusa Unified School District, Covina-Valley Unified School District and the Covina Police Department.

**General Provisions:**

The SRO will work in a proactive role with students to counsel and advise them on important student-police issues, as well as working on campus on a daily basis in order to reduce and prevent criminal activity.

**SRO Program Goals**

- A. To support a partnership between the police and schools to ensure a safe atmosphere for students and staff.
- B. To develop greater understanding between the police and students to bridge support between both.
- C. To balance enforcement needs and create support and confidence in the police department between school staff and students.

**SRO Program Implementation**

- A. The SRO Program was implemented February 1, 1994 in the Charter Oak Unified School District. On September 2, 1997, this program was expanded to include Gladstone High School of the Azusa Unified School District. Effective September 3, 2002, this program will be expanded to include Covina-Valley Unified School District. The SRO Program will remain in effect indefinitely. The officers selected for duty as a SRO will remain in patrol and receive an additional 5% Special Assignment Pay Bonus. The SRO's will report to the Day Shift Watch Commander.

**SRO Assignment**

- A. The SRO's will work primarily Monday-Thursday or Tuesday-Friday from 0700-1700 hours. This schedule remains flexible according to need, but is expected at minimum that the SRO's will periodically adjust their schedule to ensure our presence on the fifth weekday.
- B. Minimum staffing will not be affected by this assignment, and overtime will only be used as necessary to ensure proper coverage.
- C. Clothing will be either police uniform and plain clothes, depending on the schedule for the day.

**SRO Duties and Responsibilities**

- A. Act as an effective liaison between the schools and the Covina Police Department.
- B. Maintain a high visibility presence in order to deter crime and allow easy availability for students who wish to make contact.
- C. Act as counselor and advisor to students who are in need of guidance.
- D. Teach short courses for students in areas such as explanation of law, police procedures, drug abuse and family violence.
- E. Conduct workshops for teachers in areas such as gang awareness, drug usage, and juvenile law.
- F. Address school assemblies and be involved in programs of an educational nature.
- G. Take action to apprehend persons responsible when criminal activity occurs on campus.
- H. Assist in and attend meetings of the School Attendance Review Board (S.A.R.B.).
- I. To provide innovative programs to enhance support and cooperation with the school in a mutual effort to create a better school environment.
- J. Officers are expected to adjust their schedules, from time to time, for assignments at schools sports events.

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Kim Raney, Chief of Police

:dq

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**CC 5**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** \_\_\_\_\_

**STAFF SOURCE:** Kim J. Raney, Chief of Police 

**ITEM TITLE:** Memorandum of Understanding with Covina-Valley Unified School District for a School Resource Officer for 2011-2012 school year.

---

**STAFF RECOMMENDATION**

Approve Memorandum of Understanding with Covina-Valley Unified School District for a School Resource Officer for the 2011-2012 school year and authorize the City Manager and Chief of Police to execute.

**FISCAL IMPACT**

On June 21, 2011, City Council adopted the City of Covina 2011-2012 budget and this position is included (1010 1130 40 50010). The District reimburses the City on an hour for hour basis (1010 1130 40 42500).

**BACKGROUND**

The Covina-Valley Unified School District has requested the continuation of the School Resource Officer Program at Northview and Covina High Schools for the upcoming school year. This will be the tenth year an officer has been assigned to these campuses. Administrators report that this program continues to be highly successful and is instrumental in ensuring campus safety.

The SRO program at these two schools will continue our partnership with the schools, which improves safety on the campuses and provides a forum for positive interaction between the police and the students. This program provides an officer, shared between the two schools, full time during the school year. The officer is redeployed to police department duties during school breaks.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

A. Memorandum of Understanding, including Police Department's School Resource Officer Policy (GM#235).

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**MEMORANDUM OF UNDERSTANDING**

**Between**

**CITY OF COVINA AND COVINA-VALLEY UNIFIED SCHOOL DISTRICT**

This Memorandum of Understanding (MOU) is entered into by the City of Covina (City) and Covina-Valley Unified School District (District) for the purpose of providing a School Resource Officer (SRO) to Covina High School and Northview High School, commencing on August 29, 2011. This MOU will not extend beyond June 7, 2012.

It is mutually agreed that the Covina Police Department (Department) will provide a sworn law enforcement officer to Covina High School and Northview High School to act as a School Resource Officer (SRO). This officer will be selected by the Chief of Police and will act first and foremost as a law enforcement officer. The officer may be required to perform duties as the Principal or his/her staff designate within the parameters of Police Department General Memo #235. A copy of this memo is attached. Any conflicts in interpretation of the SRO's duties and responsibilities should be resolved jointly between the Principal and the Chief of Police. Where conflict resolution is not possible, the Chief of Police will retain the authority for the final decision.

The SRO will remain an employee of Covina Police Department with all rights, benefits, and privileges thereto. As the employer of the SRO, the Covina Police Department will provide Workers' Compensation Insurance for the SRO. Covina Police Department will pay the SRO's salary (including benefits). The District will be billed 100% of the assigned officer's actual wage, plus benefits, on an hour-by-hour basis for the time assigned to the District. The Department will bill the District for these costs on a monthly basis.

The SRO will ordinarily be attired in a police uniform, however, will work on occasion in plain clothes. The SRO will work four (4) days a week, ten (10) hours a day, and will be assigned to the Covina High School and Northview High School campuses. The SRO will coordinate all of his activities with the Principal's and concerned staff members, and will seek permission, guidance, and advice prior to enacting any program within the school.

While on District property, the SRO will follow all policies, rules and regulations of the District and the laws set forth in the California Education Code.

The District agrees to protect, hold harmless, defend, and indemnify the City, employees, officers, agents, and volunteers from any and all loss, claims, liabilities, expenses or damages of any nature whatsoever, including attorney fees arising out of or in any way connected with performance of the MOU.

The City agrees to protect, hold harmless, defend, and indemnify the District, employees, officers, agents, and volunteers from any and all loss, claims, liabilities, expenses or

**EXHIBIT A**

damages of any nature whatsoever, including attorney fees arising out of or in any way connected with the performance of the MOU.

This MOU is the final and entire agreement between the Parties. All agreements of the Parties with respect to the subject matter hereof are in writing and supersede all prior written and oral agreements and understandings. This Agreement cannot be modified except by a written document signed by both of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated Agreement.

The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Superior Court of California located in the County of Los Angeles, State of California.

I have read and understand this Memorandum of Understanding and the information contained in General Memo #235.

CITY OF COVINA

COVINA-VALLEY UNIFIED SCHOOL DISTRICT

\_\_\_\_\_  
Daryl Parrish  
City Manager

\_\_\_\_\_  
Dr. Catherine Nichols  
District Superintendent

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Kim Raney  
Chief of Police

\_\_\_\_\_  
Darrell A. Myrick  
President, Governing Board

Date \_\_\_\_\_

Date \_\_\_\_\_

**Number:** 235 (amended)

**Date:** June 24, 2002

**Subject:** School Resource Officer Program (SRO)

**Purpose:** To establish an atmosphere of communication and cooperation between Charter Oak Unified School District, Azusa Unified School District, Covina-Valley Unified School District and the Covina Police Department.

**General Provisions:**

The SRO will work in a proactive role with students to counsel and advise them on important student-police issues, as well as working on campus on a daily basis in order to reduce and prevent criminal activity.

**SRO Program Goals**

- A. To support a partnership between the police and schools to ensure a safe atmosphere for students and staff.
- B. To develop greater understanding between the police and students to bridge support between both.
- C. To balance enforcement needs and create support and confidence in the police department between school staff and students.

**SRO Program Implementation**

- A. The SRO Program was implemented February 1, 1994 in the Charter Oak Unified School District. On September 2, 1997, this program was expanded to include Gladstone High School of the Azusa Unified School District. Effective September 3, 2002, this program will be expanded to include Covina-Valley Unified School District. The SRO Program will remain in effect indefinitely. The officers selected for duty as a SRO will remain in patrol and receive an additional 5% Special Assignment Pay Bonus. The SRO's will report to the Day Shift Watch Commander.

**SRO Assignment**

- A. The SRO's will work primarily Monday-Thursday or Tuesday-Friday from 0700-1700 hours. This schedule remains flexible according to need, but is expected at minimum that the SRO's will periodically adjust their schedule to ensure our presence on the fifth weekday.
- B. Minimum staffing will not be affected by this assignment, and overtime will only be used as necessary to ensure proper coverage.
- C. Clothing will be either police uniform and plain clothes, depending on the schedule for the day.

**SRO Duties and Responsibilities**

- A. Act as an effective liaison between the schools and the Covina Police Department.
- B. Maintain a high visibility presence in order to deter crime and allow easy availability for students who wish to make contact.
- C. Act as counselor and advisor to students who are in need of guidance.
- D. Teach short courses for students in areas such as explanation of law, police procedures, drug abuse and family violence.
- E. Conduct workshops for teachers in areas such as gang awareness, drug usage, and juvenile law.
- F. Address school assemblies and be involved in programs of an educational nature.
- G. Take action to apprehend persons responsible when criminal activity occurs on campus.
- H. Assist in and attend meetings of the School Attendance Review Board (S.A.R.B.).
- I. To provide innovative programs to enhance support and cooperation with the school in a mutual effort to create a better school environment.
- J. Officers are expected to adjust their schedules, from time to time, for assignments at schools sports events.

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Kim Raney, Chief of Police

:dq

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

CC 6

**MEETING DATE:** July 5, 2011

**ITEM NO.:** \_\_\_\_\_

**STAFF SOURCE:** Kim J. Raney, Chief of Police 

**ITEM TITLE:** Memorandum of Understanding with Azusa Unified School District for a School Resource Officer for 2011-2012 school year.

---

**STAFF RECOMMENDATION**

Approve Memorandum of Understanding with Azusa Unified School District for a School Resource Officer for the 2011-2012 school year and authorize the City Manager and Chief of Police to execute.

**FISCAL IMPACT**

On June 21, 2011, City Council adopted the City of Covina 2011-2012 budget and this position is included (1010 1130 40 50010). The District reimburses the City on an hour for hour basis (1010 1130 40 42500).

**BACKGROUND**

The Azusa Unified School District has requested the continuation of the School Resource Officer Program at Gladstone High School for the upcoming school year. This will be the thirteenth year an officer has been assigned to Gladstone High School. Administrators report that this program continues to be highly successful and is instrumental in ensuring campus safety.

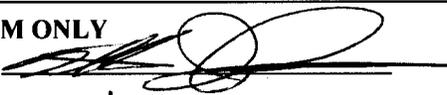
This program will continue our partnership with the school, which improves safety on campus and provides a forum for positive interaction between the police and the students. This program provides for an officer at the school full time during the school year. The officer is redeployed to police department duties during school breaks. In the past, Council approved, through the budget process, the staffing of a School Resource Officer at Gladstone.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

- A. Memorandum of Understanding, including Police Department's School Resource Officer Policy (GM#235).

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**MEMORANDUM OF UNDERSTANDING**

**Between**

**CITY OF COVINA AND AZUSA UNIFIED SCHOOL DISTRICT**

This Memorandum of Understanding (MOU) is entered into by the City of Covina (City) and Azusa Unified School District (District) for the purpose of providing a School Resource Officer (SRO) to Gladstone High School, commencing on August 30, 2011. This MOU will not extend beyond June 15, 2012.

It is mutually agreed that the Covina Police Department (Department) will provide a sworn law enforcement officer to Gladstone High School to act as a School Resource Officer (SRO). This officer will be selected by the Chief of Police and will act first and foremost as a law enforcement officer. The officer may be required to perform duties as the Principal or his/her staff designate within the parameters of Police Department General Memo #235. A copy of this memo is attached. Any conflicts in interpretation of the SRO's duties and responsibilities should be resolved jointly between the Principal and the Chief of Police. Where conflict resolution is not possible, the Chief of Police will retain the authority for the final decision.

The SRO will remain an employee of Covina Police Department with all rights, benefits, and privileges thereto. As the employer of the SRO, the Covina Police Department will provide Workers' Compensation Insurance for the SRO. Covina Police Department will pay the SRO's salary (including benefits). The District will be billed 100% of the assigned officer's actual wage, plus benefits, on an hour-by-hour basis for the time assigned to the District. The Department will bill the District for these costs on a monthly basis.

The SRO will ordinarily be attired in a police uniform; however, will work on occasion in plain clothes. The SRO will work four (4) days a week, ten (10) hours a day, and will be assigned to the Gladstone High School campus. The SRO will coordinate all of his activities with the Principal and concerned staff members, and will seek permission, guidance, and advice prior to enacting any program within the school.

While on District property, the SRO will follow all policies, rules and regulations of the District and the laws set forth in the California Education Code.

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**EXHIBIT A**

damages of any nature whatsoever, including attorney fees arising out of or in any way connected with the performance of the MOU.

This MOU is the final and entire agreement between the Parties. All agreements of the Parties with respect to the subject matter hereof are in writing and supersede all prior written and oral agreements and understandings. This Agreement cannot be modified except by a written document signed by both of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated Agreement.

The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Superior Court of California located in the County of Los Angeles, State of California.

I have read and understand this Memorandum of Understanding and the information contained in General Memo #235.

CITY OF COVINA

AZUSA UNIFIED SCHOOL DISTRICT

\_\_\_\_\_  
Daryl Parrish  
City Manager

\_\_\_\_\_  
Cynthia Cervantes McGuire  
District Superintendent

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Kim Raney  
Chief of Police

\_\_\_\_\_  
Xilonin Cruz-Gonzalez  
President, Governing Board

Date \_\_\_\_\_

Date \_\_\_\_\_

**Number:** 235 (amended)

**Date:** June 24, 2002

**Subject:** School Resource Officer Program (SRO)

**Purpose:** To establish an atmosphere of communication and cooperation between Charter Oak Unified School District, Azusa Unified School District, Covina-Valley Unified School District and the Covina Police Department.

**General Provisions:**

The SRO will work in a proactive role with students to counsel and advise them on important student-police issues, as well as working on campus on a daily basis in order to reduce and prevent criminal activity.

**SRO Program Goals**

- A. To support a partnership between the police and schools to ensure a safe atmosphere for students and staff.
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- E. Conduct workshops for teachers in areas such as gang awareness, drug usage, and juvenile law.
- F. Address school assemblies and be involved in programs of an educational nature.
- G. Take action to apprehend persons responsible when criminal activity occurs on campus.
- H. Assist in and attend meetings of the School Attendance Review Board (S.A.R.B.).
- I. To provide innovative programs to enhance support and cooperation with the school in a mutual effort to create a better school environment.
- J. Officers are expected to adjust their schedules, from time to time, for assignments at schools sports events.

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Kim Raney, Chief of Police

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**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011 **ITEM NO.:** CC 7

**STAFF SOURCE:** Steve Henley, Public Works Director   
Alex Gonzalez, Senior Management Analyst

**ITEM TITLE:** Consider Approval of Covina's Local Development Report for Los Angeles County's Congestion Management Program.

**STAFF RECOMMENDATION**

Adopt **Resolution No. 11-6984**, finding the City to be in conformance with the Congestion Management Program (CMP) and Adopting the CMP Local Development Report, in Accordance with California Government Code Section 65089.

**FISCAL IMPACT**

There is no general fund or restricted fund impact as Covina is found to be in compliance with the CMP. The City is required to remain in compliance with the CMP in order to receive the City's portion of state gas tax revenue allocated by Section 2105 of the California Streets and Highways Code.

**BACKGROUND**

Each year before September 1<sup>st</sup> the City Council must approve a resolution (Exhibit A) stating that the City of Covina does and will continue to carry out its obligations under the CMP. The CMP is a state-mandated program intended to mitigate new development impacts on traffic congestion by requiring local and regional cooperation. A Local Development Report (Exhibit B) must also be submitted.

Local jurisdictions that choose to not comply with the CMP lose their portion of state gas tax revenue and are ineligible for Los Angeles County Metropolitan Transportation Authority Call for Projects funding.

**EXHIBITS**

- A. Resolution No. 11-6984
- B. 2011 CMP Local Development Report

<p><b>REVIEW TEAM ONLY</b></p> <p>City Attorney: </p> <p>City Manager: </p>	<p>Finance Director: </p> <p>Other: _____</p>
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**CITY OF COVINA**

**RESOLUTION NO. 11-6984**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, FINDING THE CITY TO BE IN CONFORMANCE WITH THE CONGESTION MANAGEMENT PROGRAM (CMP) AND ADOPTING THE CMP LOCAL DEVELOPMENT REPORT, IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 65089

WHEREAS, CMP statute requires the Los Angeles County Metropolitan Transportation Authority ("LACMTA"), acting as the Congestion Management Agency for Los Angeles County, to annually determine that the County and cities within the County are conforming to all CMP requirements; and

WHEREAS, LACMTA requires submittal of the CMP Local Development Report by September 1 of each year; and

WHEREAS, the City Council held a noticed public hearing on July 5, 2011.

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF COVINA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City has taken all of the following actions, and that the City is in conformance with all applicable requirements of the 2010 CMP adopted by the LACMTA Board on October 28, 2010.

By June 15, of odd-numbered years, the City will conduct annual traffic counts and calculated levels of service for selected arterial intersections, consistent with the requirements identified in the CMP Highway and Roadway System chapter.

The City has locally adopted and continues to implement a transportation demand management ordinance, consistent with the minimum requirements identified in the CMP Transportation Demand Management chapter.

The City has locally adopted and continues to implement a land use analysis program, consistent with the minimum requirements identified in the CMP Land Use Analysis Program chapter.

The City has adopted a Local Implementation Report, attached hereto and made a part hereof, consistent with the requirements identified in the 2010 CMP. This report balances traffic congestion impacts due to growth within the City with transportation improvements, and demonstrates that the City is meeting its responsibilities under the Countywide Deficiency Plan consistent with the LACMTA Board adopted 2003 Short Range Transportation Plan.

SECTION 2. That the City Clerk shall certify to the adoption of this Resolution and shall forward a copy of this Resolution to the Los Angeles County Metropolitan Transportation Authority.

ADOPTED this 5<sup>th</sup> day of July, 2011.

\_\_\_\_\_  
, Mayor

Attest:

\_\_\_\_\_  
, City Clerk

Approved as to Form:

\_\_\_\_\_  
, City Attorney

**CITY OF COVINA**

Date Prepared: June 22, 2011

**2011 CMP Local Development Report**

Reporting Period: JUNE 1, 2010 - MAY 31, 2011

Contact: ALEX GONZALEZ - SENIOR MANAGEMENT ANALYST  
 Phone Number: (626) 384-5519

**CONGESTION MANAGEMENT PROGRAM  
 FOR LOS ANGELES COUNTY**

**2011 DEFICIENCY PLAN SUMMARY**

**\* IMPORTANT: All "#value!" cells on this page are automatically calculated.  
 Please do not enter data in these cells.**

**DEVELOPMENT TOTALS****RESIDENTIAL DEVELOPMENT ACTIVITY****Dwelling Units**

Single Family Residential	0.00
Multi-Family Residential	0.00
Group Quarters	0.00

**COMMERCIAL DEVELOPMENT ACTIVITY****1,000 Net Sq.Ft.<sup>2</sup>**

Commercial (less than 300,000 sq.ft.)	(60.00)
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

**NON-RETAIL DEVELOPMENT ACTIVITY****1,000 Net Sq.Ft.<sup>2</sup>**

Lodging	0.00
Industrial	(5.00)
Office (less than 50,000 sq.ft.)	2.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

**OTHER DEVELOPMENT ACTIVITY****Daily Trips**

ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

**EXEMPTED DEVELOPMENT TOTALS**

Exempted Dwelling Units	67
Exempted Non-residential sq. ft. (in 1,000s)	8

Page 1

2. Net square feet is the difference between new development and adjustments entered on pages 2 and 3.

**CITY OF COVINA**  
**2011 CMP Local Development Report**  
**Reporting Period: JUNE 1, 2010 - MAY 31, 2011**

Date Prepared: June 22, 2011

Enter data for all cells labeled "Enter." If there are no data for that category, enter "0."

**PART 1: NEW DEVELOPMENT ACTIVITY**

**RESIDENTIAL DEVELOPMENT ACTIVITY**

Category	Dwelling Units
Single Family Residential	0.00
Multi-Family Residential	0.00
Group Quarters	0.00

**COMMERCIAL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Commercial (less than 300,000 sq.ft.)	128.00
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

**NON-RETAIL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Lodging	0.00
Industrial	0.00
Office (less than 50,000 sq.ft.)	2.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

**OTHER DEVELOPMENT ACTIVITY**

Description (Attach additional sheets if necessary)	Daily Trips (Enter "0" if none)
ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

**CITY OF COVINA**

Date Prepared: June 22, 2011

**2011 CMP Local Development Report**

Reporting Period: JUNE 1, 2010 - MAY 31, 2011

Enter data for all cells labeled "Enter." If there are no data for that category, enter "0."

**PART 2: NEW DEVELOPMENT ADJUSTMENTS**

IMPORTANT: Adjustments may be claimed only for 1) development permits that were both issued and revoked, expired or withdrawn during the reporting period, and 2) demolition of any structure with the reporting period.

**RESIDENTIAL DEVELOPMENT ADJUSTMENTS**

Category	Dwelling Units
Single Family Residential	0.00
Multi-Family Residential	0.00
Group Quarters	0.00

**COMMERCIAL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Commercial (less than 300,000 sq.ft.)	188.00
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

**NON-RETAIL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Lodging	0.00
Industrial	5.00
Office (less than 50,000 sq.ft.)	0.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

**OTHER DEVELOPMENT ACTIVITY**

Description (Attach additional sheets if necessary)	Daily Trips (Enter "0" if none)
ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

Page 3

**CITY OF COVINA**

Date Prepared: June 22, 2011

**2011 CMP Local Development Report**

Reporting Period: JUNE 1, 2010 - MAY 31, 2011

Enter data for all cells labeled "Enter." If there are no data for that category, enter "0."

**PART 3: EXEMPTED DEVELOPMENT ACTIVITY  
(NOT INCLUDED IN NEW DEVELOPMENT ACTIVITY TOTALS)**

Low/Very Low Income Housing	<input type="text" value="0"/>	Dwelling Units
High Density Residential Near Rail Stations	<input type="text" value="30"/>	Dwelling Units
Mixed Use Developments Near Rail Stations	<input type="text" value="8"/>	1,000 Gross Square Feet
	<input type="text" value="37"/>	Dwelling Units
Development Agreements Entered into Prior to July 10, 1989	<input type="text" value="0"/>	1,000 Gross Square Feet
	<input type="text" value="0"/>	Dwelling Units
Reconstruction of Buildings Damaged due to "calamity"	<input type="text" value="0"/>	1,000 Gross Square Feet
	<input type="text" value="0"/>	Dwelling Units
Reconstruction of Buildings Damaged in Jan. 1994 Earthquake	<input type="text" value="0"/>	1,000 Gross Square Feet
	<input type="text" value="0"/>	Dwelling Units
Total Dwelling Units	<input type="text" value="67"/>	
Total Non-residential sq. ft. (in 1,000s)	<input type="text" value="8"/>	

Page 4

**Exempted Development Definitions:**

- Low/Very Low Income Housing: As defined by the California Department of Housing and Community Development as follows:
  - Low-Income: equal to or less than 80% of the County median income, with adjustments for family size.
  - Very Low-Income: equal to or less than 50% of the County median income, with adjustments for family size.
- High Density Residential Near Rail Stations: Development located within 1/4 mile of a fixed rail passenger station and that is equal to or greater than 120 percent of the maximum residential density allowed under the local general plan and zoning ordinance. A project providing a minimum of 75 dwelling units per acre is automatically considered high density.
- Mixed Uses Near Rail Stations: Mixed-use development located within 1/4 mile of a fixed rail passenger station, if more than half of the land area, or floor area, of the mixed use development is used for high density residential housing.
- Development Agreements: Projects that entered into a development agreement (as specified under Section 65864 of the California Government Code) with a local jurisdiction prior to July 10, 1989.
- Reconstruction or replacement of any residential or non-residential structure which is damaged or destroyed, to the extent of > or = to 50% of its reasonable value, by fire, flood, earthquake or other similar calamity.
- Any project of a federal, state or county agency that is exempt from local jurisdiction zoning regulations and where the local jurisdiction is precluded from exercising any approval/disapproval authority. These locally precluded projects do not have to be reported in the LDR.

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

CC 8

**MEETING DATE:** July 5, 2011

**ITEM NO.:** \_\_\_\_\_

**STAFF SOURCE:** Dilu De Alwis, Finance Director *Dde*

**ITEM TITLE:** Consider establishing the 2011-2012 Appropriation Limit for the City of Covina

---

**STAFF RECOMMENDATION:**

- a. Approve the County population and the State of California's Per Capita cost of Living Change as the factors to calculate the appropriation limit.
- b. Adopt Resolution No. 11-6985, establishing the 2011-2012 Appropriation Limit for the City of Covina

**FISCAL IMPACT:**

None

**BACKGROUND:**

The establishment of the appropriation limit for the following fiscal year is required by each agency per Article XIII B of the California Constitution-Gann Initiative.

The appropriation limit calculations were modified in fiscal year 1993-1994 as a result of the passage of Proposition 111 (which also increased the State Gas Tax). The measure provides several factors for the calculation of the appropriation limit. The basic factors are growth in population and inflation.

The City can select the larger of the percentage population growth of the city or county for growth.

The larger of the percentage increase in the State's per capita income or the increase in the City's new construction non-residential assessed valuation can be utilized for inflation.

The population factor for fiscal year 2010-2011 is the County's percentage population growth of .38% (compared to .21% for the City). The inflation factor is the State's Per Capita income change of 2.51% compared to the City of Covina's new construction non-residential valuation change of -8.790%.

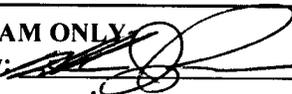
The City of Covina's appropriation limit for fiscal year 2011-2012 is \$28,778,130 (see Exhibit B). The 2011-2012 adopted appropriation subject to the limitation is \$24,255,180 that provides a safety margin of \$4,522,950.

The proceeds from taxes are \$24,255,180 and are below the appropriation limit. There is no excess of taxes over the appropriation limit as defined by Article XIII B.

Any challenge to the 2011-2012 appropriation limit calculation must be done within forty-five days of the adopted resolution effective date.

**EXHIBITS:**

- A) Resolution 11-6985 of the City Council of the City of Covina, California, Establishing the 2011-2012 Appropriation Limit
- B) Appropriation Limit and Proceeds of Taxes for Fiscal Year 2011-2012
- C) Proceeds/Non-proceeds of Taxes for Fiscal Year 2011-2012

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**RESOLUTION NO. 11-6985**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COVINA, CALIFORNIA, ESTABLISHING THE 2011-2012  
APPROPRIATION LIMIT FOR THE CITY OF COVINA**

**WHEREAS**, Chapter 1205, 1980 Statutes of the Government Code, Section 7910 requires that each local government establish its appropriation limit by resolution each fiscal year at a regular City Council meeting or a noticed special meeting; and

**WHEREAS**, any challenge to the 2011-2012 fiscal year appropriation limit must be brought within forty-five days of the resolution effective date; the City Council reviewed and approved the Fiscal Year 2011-2012 Budget on June 21, 2011; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

**SECTION 1:** The City Council does hereby determine that the annual adjustment factors to be selected in modifying the prior-year appropriation limit are the increase in the County's population and the State of California's Per Capita cost of Living Change.

**SECTION 2:** The City Council does hereby determine and declare that the City of Covina's appropriation limit for fiscal year 2011-2012 is \$28,778,130 per attached Exhibit B.

**SECTION 3:** The City Clerk shall certify to the passage and adoption of this resolution, and the same shall thereupon take effect and be in force.

**APPROVED AND ADOPTED** this 5<sup>th</sup> day in July, 2011

---

John C King, Mayor

**ATTEST:**

---

Kay Manning, City Clerk

**APPROVED AS TO FORM:**

---

Marco Martinez, City Attorney

**EXHIBIT A**

**EXHIBIT B**  
**CITY OF COVINA, CALIFORNIA**  
**2011-2012**  
**Appropriation Limit Calculation**

**Appropriation Limit Calculation**

Appropriation limit for the 2010-2011 fiscal year		\$ 27,967,210
PER Capita Cost of Living Change	1.0251	
Percent Growth in County Population	1.0038	
Total Adjustment	<u>1.0290</u>	
2011-2012 Appropriation Limit		<u>\$ 28,778,130</u>

**Appropriation Subject to Limitation**

2011-2012 Appropriation Limit		\$ 28,778,130
Less: Proceeds from taxes		(24,255,180)
Add: Users Fees in excess of costs		-
Total Appropriations Under Limitation		<u><u>\$ 4,522,950</u></u>

**EXHIBIT B**

**CITY OF COVINA**

**SCHEDULE OF ESTIMATED REVENUES  
PROCEEDS AND NON-PROCEEDS FROM TAXES  
Based on 2011-2012 Budget**

	Proceeds from Taxes	Non-Proceeds from Taxes	Total Proceeds/Non- Proceeds
General Fund			
Taxes			
Property Taxes - Current Year Secured	\$ 5,268,490		\$ 5,268,490
Sales and Use Taxes	5,618,670		5,618,670
Franchises	1,442,200		1,442,200
Utility Users Tax	5,600,000		5,600,000
Other Taxes	912,000		912,000
License & Permits		\$ 452,500	452,500
Fines & Foreitures		961,000	961,000
Intergovernmental		622,200	622,200
Property Tax in Lieu of Sales Tax	1,780,830		1,780,830
Property Tax in Lieu of MVL	3,632,990		3,632,990
Motor Vehicle In-Lieu of Fees			-
Other Inter-agency revenue			-
Charges for Current Services - User Fees		1,852,300	1,852,300
Miscellaneous Revenue		470,080	470,080
Net - Transfers		-	-
Total proceeds from taxes	<u>\$ 24,255,180</u>		
Total nonproceeds from taxes		<u>\$ 4,358,080</u>	
Total Proceeds/Nonproceeds			<u>\$ 28,613,260</u>

**EXHIBIT C**

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** CC 9

**STAFF SOURCE:** Steve Henley, Public Works Director  
Alex Gonzalez, Senior Management Analyst 

**ITEM TITLE:** Approve Covina Parking Study Implementation Strategies  
1 through 6

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**STAFF RECOMMENDATION**

Approve Covina Parking Study Implementation Strategies 1 through 6.

**FISCAL IMPACT**

Increased parking revenue and reduced capital outlay and operational costs to offset \$71,749 in yearly deficit spending in the City of Covina's municipal parking lots, as identified in the financial analysis section of the July 2010 Covina Parking Study. With the elimination of deficit spending, there will be a reduction in the probability that the City General Fund will be required to subsidize the municipal parking lots.

**BACKGROUND**

On January 18, 2011, the Covina City Council approved parking policy Goals and Objectives based on the results of the 2010 Parking Study and a series of three public input meetings that occurred in August and September of 2010 and drew comments from 28 individuals. On December 2, 2010 and January 24, 2011, Public Works and Police Department staff met to discuss proposals for execution of the approved Goals and Objectives of the Parking Study, with particular attention paid to the cost effectiveness and operational efficiency for each stated Goal or Objective. It was decided that strategies would be developed to improve the parking experience for customers and to simplify parking enforcement operations. Once these service strategies were implemented to improve the customer parking experience an analysis of the financial effects would occur. In February 2011, a survey (attached as Exhibit A) was targeted to 317 stakeholders and received 29 responses (9% response rate). On March 28, 2011 a fourth public input meeting was attended by 11 participants to discuss the results of the survey and to review suggestions for implementation. The results of this process to identify improvements to the customer parking experience are detailed below.

## Proposed Implementation Strategies

1. Daytime parking enforcement in effect in all Municipal Parking Lots from 8 AM to 8 PM Monday through Friday.
  - *Strict parking enforcement (24 hours a day / 7 days a week) as recommended by the Parking Study was considered by Police Department and Public Works staff to be cost-prohibitive. The Covina Police Department recommended parking enforcement hours of 8AM to 10PM Monday through Friday. Input during the public meetings resulted in a compromise that parking enforcement occur from 8AM to 8PM Monday through Friday.*
2. Overnight parking enforcement in effect in all Municipal Parking Lots from 2 AM to 4 AM seven days a week.
  - *Merchants expressed concerns regarding overnight parking and suggested some scenarios that could result in future issues if the overnight parking restrictions are abused. Since the greater objective of respect and equal use for all stakeholders is paramount (the recommendations advanced by merchants in the public input sessions would negatively affect homeowners and renters that live in the Downtown), Public Works and Police Department staff decided that they would monitor the purchase and use of overnight parking permits as they search for system upgrades. Police Department and Public Works staff will continue to look at coordinating parking permit sales technology to address possible abuse of monthly overnight parking permits, since at this point the available technologies do not meet all of the City's needs.*
3. Improve the customer parking experience by: 1) eliminating the split time limitations (remove all references to blue zone/white zone) in all lots and changing all off-street Municipal Parking Lots to a 4 hour time limit during enforcement hours, 2) provide short-term 1 hour on-street parking on Citrus Avenue between San Bernardino Road and Badillo Street, and 3) provide short-term 2 hour on-street parking on College Street, Italia Street, and Cottage Street between Second Street and Third Street. Keep all other time restrictions in the Downtown area as currently posted.
  - *Merchants supported keeping a 3 hour time limit over a 4 hour time limit by a small majority. However, City staff recommends a 4 hour time limit based on the assumption that customers having a sit down meal and attending a cultural or arts event Downtown would not be covered by a 3 hour time limit.*
  - *There was a desire to maintain short-term parking in the Downtown, with general agreement that the most desired spaces on Citrus Avenue should receive a 1 hour limitation with 2 hour parking remaining on College, Italia and Cottage.*
4. Improve the customer experience by removing all parking machines in the Municipal Parking Lots by August 1, 2011, except for the Civic Center Parking Structure. Customers should drive into a parking lot and see a simple time limit sign with no parking machine present to confirm free parking (with a posted time limit) in the Downtown.

- *Based on the high capital cost of improved parking technology, the small amount of funds currently received by parking permit machines in the Downtown, and the directive of the Police Department and Finance Department to eliminate cash collections in the field, parking permit machines are recommended to be removed from all municipal parking lots except for the Civic Center Parking Structure.*
5. Reduce the complexity of parking enforcement operations by limiting the sale and acceptance of daily parking permits in the Downtown to the Civic Center Parking Structure. Promote the sale of monthly parking permits by accepting monthly permits in all Municipal Parking Lots.
- *To improve the parking experience for Downtown customers, the focus of the lots will shift to time restrictions without any splits or divisions within a parking lot. The challenge created by this decision was how to then manage employee parking and collect revenue for the parking district without creating rules or barriers that would negatively affect the customer's perception when parking Downtown.*
  - *Daily parking machine revenue is a small source of revenue for the Parking District, and by selling and accepting daily parking permits only at the Civic Center Structure the City continues to provide an option for employees that do not want to purchase a monthly permit – but daily parking permit purchasers will be allowed to park only in the Civic Center Structure. The current number of daily parking permit transactions can fit within the capacity of the Civic Center Parking Structure in addition to the City Hall and Citibank employees that currently park in the Civic Center Structure.*
  - *Monthly parking permit sales account for the bulk of parking permit sales, and the capacity of the Civic Center Parking Structure is not sufficient to hold all monthly and daily parking permit holders.*
  - *The Parking Study recommended designated “employee” and “premium” parking lots at differential prices to modify parking behavior. Two-tiered pricing is not recommended by the Police Department or Public Works staff since it will complicate parking enforcement and create confusion for stakeholders and customers. In the public input sessions, merchants were requesting an equitable distribution of parking resources - divided into north/south, east/west, or possibly equal quadrants in the downtown area. City staff looked at several different scenarios to assign different monthly parking permits to roughly equal areas. However, since parking space inventory is not balanced in the Downtown, it is impossible to divide the parking resources in a balanced manner and any attempt by City staff to impose arbitrary parking lot divisions will result in significant discontent for one or more stakeholder groups.*
  - *Identifying parking lots that are close to capacity and keeping those impacted lots off limits to monthly and daily parking permit holders was recommended in the Parking Study and received uniformly negative responses from public input session participants. A wide range of opinions was expressed in public input on targeting or barring selected groups or individuals from parking in impacted areas, but in the absence of any rational and defensible alternative that would result in consensus and protect the rights of all that contribute financially to the parking district, the idea of limiting monthly permit parking in any lot is being withdrawn by City Staff since the*

*greater objective of respect and equal use for all stakeholders could not be guaranteed with the recommendations received in the public input process.*

- *Follow-up observations of municipal parking lot use in April and May 2011 by City staff and conversations regarding shifting parking use patterns with the engineers that authored the Parking Study resulted in a conclusion that restricting monthly employee permits in any one lot will have unforeseen effects on parking demand in all parking lots and will lead to discontent among merchants that purchase substantial numbers of monthly parking permits.*
  - *The merchants that purchase bulk parking permits did not attend any of the four public input sessions, so City staff contacted each merchant individually to understand how they would respond to parking in a designated employee lot. All of the merchants that purchase bulk permits responded that they would most likely stop purchasing the monthly permits and direct their employees to move their vehicles to avoid citations. There was consensus within this group of merchants that the businesses that contribute to the parking district by purchasing monthly permits for their employees should not be penalized by being forced to park farther away.*
  - *The Parking Study is a “snapshot” of parking demand, and with new developments in Downtown over time, demand will shift and parking lot demand will change over time. Instead of regulating monthly parking permit use in certain lots based on the Parking Study, it is recommended by City staff that monthly permits be accepted in all Municipal Parking Lots, and that daily parking permits be sold and restricted to only the Civic Center Parking Structure. Limiting monthly permits to certain lots will create additional friction in the Downtown and will result in a decline of parking permit sales based on the input received. Limiting the purchase of daily parking permits to the Civic Center Parking Structure will simplify parking enforcement, allow for the removal of outdated parking technology, and promote the sale of monthly parking permits.*
6. Monthly Municipal Lot Parking Lot Permits will remain at \$20 a month as approved by the Covina City Council in January 2011. Monthly Municipal Lot permits will also be valid for overnight parking in the Municipal Lots. Daily Municipal Lot permits at the Civic Center Parking Structure are recommended to increase from \$1 a day to \$2 a day. Overnight Municipal Lot permits will be introduced at the Civic Center Structure for \$3 a day.
- *With the conversion to credit card only transactions at the Civic Center Parking Structure, transaction and merchant fees will average close to \$0.50 per transaction. It is necessary to increase the daily rate to recoup the introduction of these fees and also to provide an incentive for the purchase of monthly parking permits in relation to daily permits. Daily permits at the Metrolink Parking Structure are currently \$2 and overnight permits at the Police Department and Metrolink Structure are currently \$3.*
  - *Based on the monitoring of overnight parking permits by Police Department and Public Works staff for possible abuse, a separate monthly overnight permit may be created in the future for the Municipal Parking Lots. As Police Department and Public Works staff discusses the upgrade and merging of parking permit sales technology, the capability to restrict and monitor overnight parking permit use will remain a central issue.*

- *Based on public input, there was a desire to introduce a mechanism to purchase overnight parking permits on short notice in the Downtown for the Municipal Parking Lots.*

Implementation Items 1 through 6 are directly intended to improve the customer experience in Downtown in a cost-effective manner; not to increase revenue to the Parking District. An informational parking pamphlet will be created for Metrolink and Parking District stakeholders to promote the sale of monthly permits, and it is hoped that Parking District stakeholders will choose to purchase additional monthly permits for their employees under this new parking configuration. City staff will return to the City Council with another parking update in December 2011 to assess the revenue impacts of these changes and to discuss the progress of discussions with Shoppers Lane owners and merchants towards developing a sustainable financial model for common area maintenance at Shoppers Lane.

**RELEVENCE TO THE STRATEGIC PLAN**

This item is directly related to the City's three year goal of "enhancing financial stability" by attempting to stabilize deficit spending in account 2600-2800-00.

**EXHIBITS**

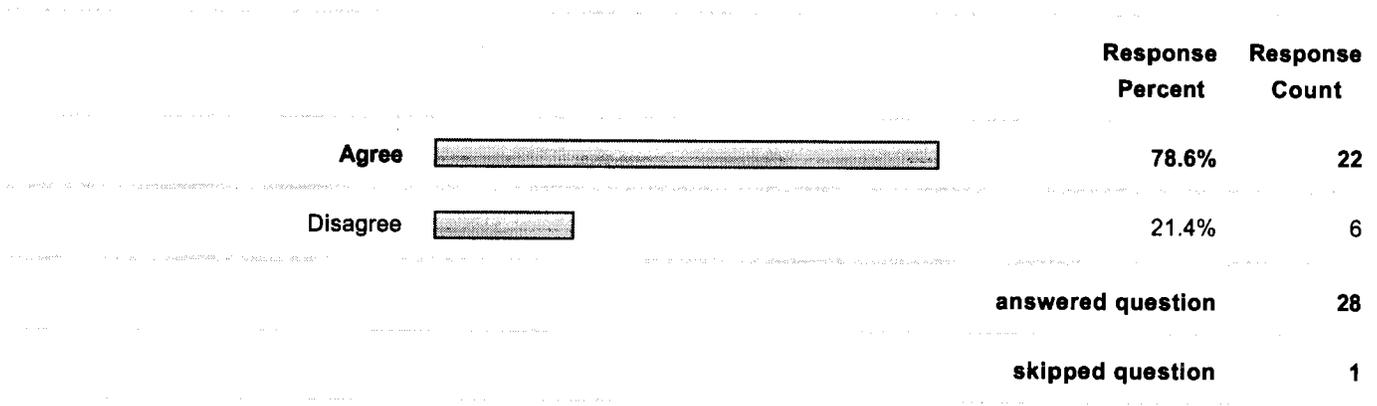
A. Municipal Parking Survey Summary, February 2011

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

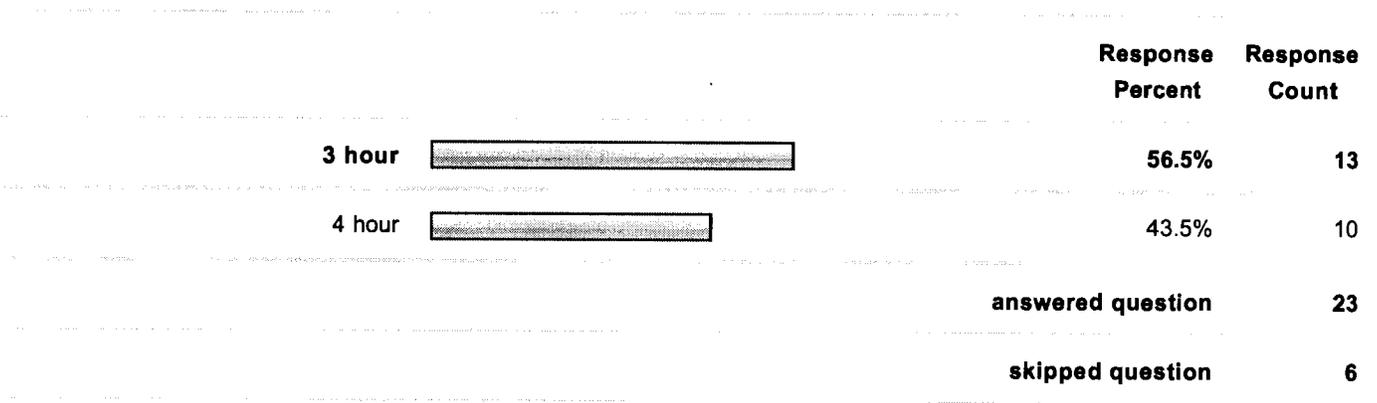
# Municipal Parking Survey



**1. The parking lots behind the businesses should have a single time limit for the whole parking lot to avoid customer confusion.**



**2. I believe that the parking would best serve our customers/visitors if the lots had the following time limit:**



**3. I believe that the parking machines should be removed from the customer parking areas, since we want our customers/visitors to clearly understand that they do not have to pay to park.**

	Response Percent	Response Count
<b>Agree</b> 	<b>82.8%</b>	<b>24</b>
<b>Disagree</b> 	<b>17.2%</b>	<b>5</b>
<b>answered question</b>		<b>29</b>
<b>skipped question</b>		<b>0</b>

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** CC 10

**STAFF SOURCE:** Robert Neiuber, Director of Community Development *RN*  
Nuala Gasser, Senior Redevelopment Manager *mg*

**ITEM TITLE:** Support of Los Angeles County Department of Public Health grant proposal for Community Transformation Grants (CTG).

---

**STAFF RECOMMENDATION**

Approve the Letter of Support for the Los Angeles County Department of Public Health (DPH) grant proposal for the Community Transformation Grants (CTG)

**FISCAL IMPACT**

None.

**BACKGROUND**

The Los Angeles County Department of Public Health (DPH) is currently developing a grant proposal to bring additional monies to our communities to make them healthier places to live, learn, work and play.

The recently announced Community Transformation Grants (CTG), funded through the Public Health Prevention Fund in the Affordable Care Act, will provide an opportunity for DPH to continue their efforts to implement evidence-based preventive services and policies and reduce the leading risk factors for chronic disease.

There are five priority areas of the grant:

1. tobacco-free living;
2. active living and healthy eating;
3. evidence-based quality clinical and other preventive services, specifically prevention and control of high blood pressure and high cholesterol;
4. social and emotional wellness, such as facilitating early identification of mental health needs and access to quality services, especially for people with chronic conditions; and
5. healthy and safe physical environments

The attached letter of support, (Exhibit A) will help DPH to continue the success of their current public health initiatives, which have helped bring healthier food to communities, provided more opportunities for biking and safe recreation, and increased the number of smoke-free environments.

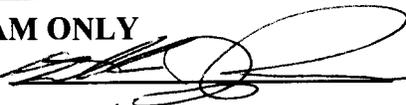
More information is available at the DPH website at <http://publichealth.lacounty.gov/chronic/index.htm> for more information about the CTG funding and DPH's application.

**RELEVANCE TO THE STRATEGIC PLAN**

This action will assist the City to reach the goal of enhancing parks and recreation services; if the DPH grant application is successful they will accept grant applications, which could include means to improve physical activity opportunities. The City can participate in the grant application process.

**EXHIBITS**

A. Letter of Support

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**EXHIBIT A**

July 5, 2011

Jonathan E. Fielding, M.D., M.P.H.  
Director and Health Officer  
Los Angeles County Department of Public Health  
313 N. Figueroa Street, Room 806  
Los Angeles, CA 90012

Dear Dr. Fielding:

On behalf of the City of Covina, I am pleased to write in support of the Los Angeles County Department of Public Health (DPH), Division of Chronic Disease and Injury Prevention's (DCDIP) grant proposal for the *Public Prevention Health Fund: Community Transformation Grants*.

As a municipality dedicated to providing responsive municipal services and management of public resources to enhance the quality of life in our community, we are deeply concerned with the health and well-being of our community. We embrace the belief that everyone should have equal opportunities to make healthy choices that allow them to live long, healthy lives and support comprehensive policy, environmental, programmatic, and infrastructure changes to achieve that goal.

The Los Angeles County Department of Public Health is a leader in developing and implementing evidence-based preventive services, policies, and strategies that significantly impact the leading risk factors for chronic disease. The Department leverages its resources and expertise by working effectively with local, state and federal government agencies, and with key community partners. The DCDIP has made important strides to reduce the prevalence of tobacco use and reduce exposure to secondhand smoke, effectively shifting the social norms around tobacco use. The DCDIP is also addressing the complex contributing factors that lead to overweight/obesity and related chronic conditions by working to improve the nutritional environment and increase physical activity opportunities.

Please accept this letter a formal recognition of the City of Covina's strong support for the DCDIP's grant proposal for the *Public Prevention Health Fund: Community Transformation Grants*. If funded, the City of Covina would be happy to collaborate with the DCDIP in achieving these important public health goals.

Yours very truly,

John C. King  
Mayor

**COVINA REDEVELOPMENT AGENCY**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** CC 11

**STAFF SOURCE:** Robert Neiuber, Deputy Executive Director *RV*  
Nuala Gasser, Sr. Redevelopment Manager *MG*

**ITEM TITLE:** Approval of an Exclusive Right to Negotiate Agreement regarding development of the property at 635 S. Citrus Avenue, 611 S. Citrus Avenue and 120 W. Rowland Street, Covina Revitalization Redevelopment Project No. 1

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**AGENCY STAFF RECOMMENDATION**

Adopt **Resolution No. 11-673** approving an Exclusive Right to Negotiate Agreement (“ERN”) between the Covina Redevelopment Agency (“Agency”) and Jules Boand and Alex Alvarez (“Developer”).

**FISCAL IMPACT**

None. Granting of an ERN does not obligate funding.

**BACKGROUND**

The subject site includes 635 S. Citrus Avenue, a parcel in Project Area One (Parcel One), and two additional adjacent parcels, 611 S. Citrus Avenue and 120 W. Rowland Street Covina (Parcel Two), which are under long-term lease by the Redevelopment Agency (collectively, the “Property”).

On July 20, 2010 and January 18, 2011, the Agency Board approved Exclusive Right to Negotiate (ERN) Agreements with Jules Boand and Alex Alvarez (Developer) on Parcel One and Parcel Two. The second ERN expired on June 30, 2011, and the Developer has requested a new ERN for a period of One Hundred Eighty (180) days, through December 31, 2011. Jules Boand and Alex Alvarez (“Developer”) are proposing to develop the Property with a single retail/service use on the site that is consistent with the adopted General Plan. Agency staff recommends that an ERN for the development and use of the Property be entered into with Developer. The ERN also requires that the Developer agrees to negotiate exclusively with the Agency.

The developer is interested in purchasing Parcel 1 and assuming the lease on Parcel 2, as shown on the attached Site Map (Exhibit B). Staff believes that entering into an ERN with Developer may bring about the development of a retail/service development to the site. The ERN will provide a period of one hundred eighty days (through December 31, 2011) in which the Developer will further define the proposal. Assuming the Agency and Developer are making progress on a proposed development, the ERN contemplates a possible sixty (60) day extension.

Section 15.1 of the ERN references possible changes in California law that would affect the ability of the Redevelopment Agency to operate, and states that if there is a change in the law, the

Agency can terminate the ERN without cost or penalty by delivering written notice to the Developer.

**RELEVANCE TO THE STRATEGIC PLAN**

Providing opportunities for economic development contributes to the City strategic plan objective of enhancing financial stability.

**EXHIBITS**

- A. Resolution No. 11-673
- B. Site Location Map
- C. Exclusive Right to Negotiate Agreement

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**EXHIBIT A**

**RESOLUTION 11-673**

A RESOLUTION OF THE COVINA REDEVELOPMENT AGENCY APPROVING AN EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT BETWEEN THE COVINA REDEVELOPMENT AGENCY AND JULES BOAND AND ALEX ALVEREZ

WHEREAS, pursuant to the California Community Redevelopment Law (Health & Safety Code Sections 33000, *et seq.*) ('CRL'), the City Council of the City of Covina ('City' ('City Council')) approved and adopted a Redevelopment Plan ("Redevelopment Plan") for the redevelopment Project Area known as the Revitalization Project No. 1 ("Project Area"); and

WHEREAS, the Governing Board of the Redevelopment Agency of the City of Covina ('Agency') is engaged in activities to implement the Redevelopment Plan for the Project Area pursuant to the provisions of the CRL; and

WHEREAS, the Agency is engaged in activities necessary to execute and implement the General Plan and Five-Year Implementation Plan under the Agency's Redevelopment Plan; and

WHEREAS, in order to implement the Redevelopment Plan, the Agency proposes to enter into an Exclusive Right to Negotiate (ERN) to explore the development of an approximate 3 acre retail project on the southwest corner of Citrus Avenue and Rowland Street, and

WHEREAS, Jules Boand and Alex Alvarez ("Developer") is proposing to develop the site with a single retail/service use.

NOW, THEREFORE, BE IT RESOLVED BY THE COVINA REDEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. The Agency hereby approves the ERN, attached hereto and incorporated herein by reference, together with non-substantive changes as many be approved by the Executive Director and Agency Attorney.

SECTION 2. The Board hereby authorizes and directs the Executive Director to execute the ERN and for the Executive Director and the Agency Attorney to take any action and execute any documents necessary to implement the ERN.

SECTION 3. The Secretary shall certify to the passage and adoption of this Resolution and the same shall thereupon take effect and be in full force.

PASSED, APPROVED AND ADOPTED this 5th day of July, 2011.

\_\_\_\_\_  
John C. King, Chairperson

ATTEST:

\_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM;

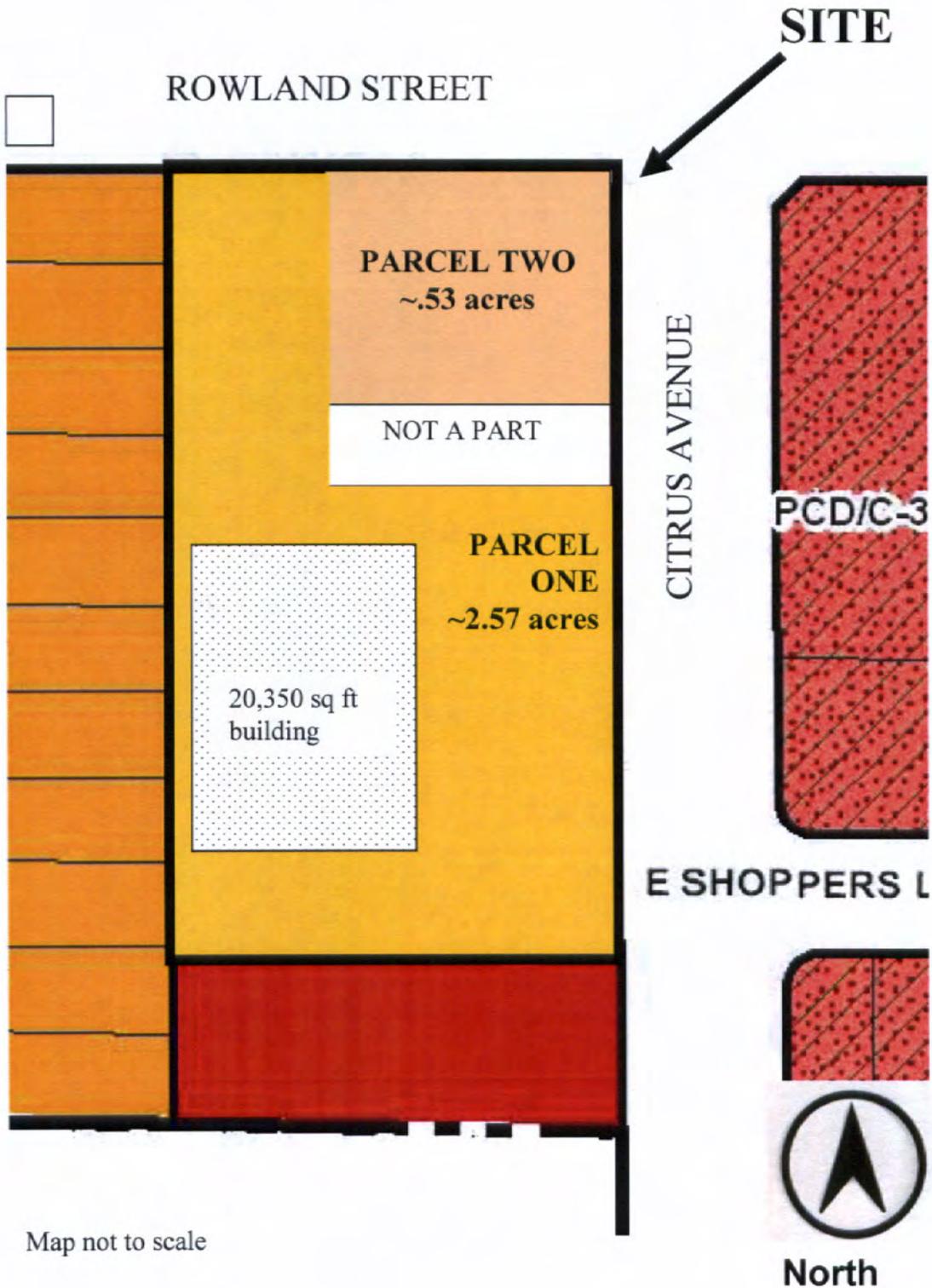
\_\_\_\_\_  
Agency Attorney

I, \_\_\_\_\_ Secretary of the Covina Redevelopment Agency, hereby CERTIFY that Resolution No. 11-673 was adopted by the Covina Redevelopment Agency at a regular meeting of the Agency held July 5, 2011, and was approved and passed by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Agency Secretary

# EXHIBIT B SITE MAP



Map not to scale

## EXHIBIT C

### EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

This EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (“ERN” OR “Agreement”) is entered into as of July 1, 2011 by and between the COVINA REDEVELOPMENT AGENCY (“Agency”), a public body corporate and politic (‘Agency’), existing and acting pursuant to the California Community Redevelopment Law (Health and Safety Code Sections 33000, *et seq.*) (‘CRL’), and Jules Board and Alex Alvarez (Developer).

#### RECITALS

A. The City of Covina, California (‘City’), approved and adopted the redevelopment plan (‘Redevelopment Plan’) for the for the redevelopment project area known as Project Area One covering a certain geographic area within the City (‘Project Area’); and

B. The Agency acquired fee title in 1990 to and remains the current owner of certain real property located within the Project Area and generally located at 635 S. Citrus Avenue, and has a long-term lease on two additional adjacent parcels, 611 S. Citrus Avenue and 120 W. Rowland Street, Covina; and

C. The Developer has proposed the redevelopment of the Property; and

D. The intent of both the Agency and the Developer in entering into this Agreement is to establish a specific, limited period of time to negotiate regarding a future agreement between them governing the potential sale of the Property from the Agency to the Developer and development of the Property, all subject to mutually agreeable terms, conditions, covenants, restrictions and agreements to be negotiated and documented a future disposition and development agreement (‘DDA’).

NOW, THEREFORE, IN VIEW OF THE GOALS AND OBJECTIVES OF THE AGENCY RELATING TO THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN AND THE PROMISES OF THE AGENCY AND THE DEVELOPER SET FORTH IN THIS AGREEMENT, THE AGENCY AND THE DEVELOPER AGREE, AS FOLLOWS:

#### 1. PROPERTY

##### 1.1 Property (Site)

Agency agrees to negotiate with Developer regarding certain real property (the “Site”) which is shown on the Site Map, Attachment No. 1 attached hereto and made a part hereof, and which is legally described on Attachment No. 2 attached hereto and made a part hereof. Entering into this ERN is not a determination to acquire any real property or interest therein.

## 2. AGREEMENT

### 2.1 Good Faith Negotiations

The Agency and the Developer agree for the period set forth below to negotiate diligently and in good faith to prepare a DDA to be entered into between the Agency and the Developer concerning the Site which is shown on the Site Map. For the period herein provided, the Agency agrees to negotiate exclusively with the Developer, and not with any other person or entity, with regard to disposition of the Site currently owned and leased by the Agency. For the period herein provided, the Developer agrees to negotiate exclusively with the Agency, and not with any other person or entity, with regard to a site for the Project (defined below).

### 2.2 Period of Negotiations

The Agency agrees to negotiate with the Developer for a period of One Hundred Eighty (180) days from the date this ERN is approved by the Agency. If a DDA is so signed and submitted by the Developer (together with such deposit and documents as may be required) to the Agency Executive Director within such period, then this ERN is extended for 60 days from the date of such submittal to enable the Agency to (1) determine whether it desires to enter into such DDA, (2) take the actions necessary to authorize the Agency Executive Director to sign such DDA if the Agency desires to do so, and (3) sign the DDA. If the Agency Executive Director has not signed the DDA by such 60th day, then the ERN shall automatically terminate, unless the 60-day period has been mutually extended in writing by the Agency Executive Director or his Designee and the Developer. Either Party may terminate without cause this ERN on thirty (30) days written notice to the other Party.

## 3. PROPOSED DEVELOPMENT

### 3.1 Development Concept

The proposed development to be negotiated hereunder shall be for a single retail/service use for the whole of the property (the "Project").

## 4. PURCHASE PRICE AND/OR OTHER CONSIDERATION

### 4.1 Purchase Price

The Developer and the Agency shall negotiate a purchase price for the Agency-owned portion of the Site prior to and as part of the DDA.

The Purchase Price will be based upon such factors as market conditions and any other matters relevant to establishing the fair market value for the purpose

permitted to be developed.

The Agency and Developer with the assistance of the Agency's reuse appraiser shall negotiate a final purchase price as part of the DDA under which the Developer will pay the Agency for the Agency-owned portion of the Site. The Developer acknowledges that the Agency and the City are seeking to maximize their financial return on any land sale and development plan. Developer shall cooperate in this effort by providing information as to estimated or actual costs, revenues, sales, financing, of the proposed development to the Agency and its consultants.

#### 4.2 Land Use and Zoning

The Agency shall request that the Planning Commission and City Council favorably consider Land Use Element and Zoning Ordinance amendments, if necessary, which will permit the development proposed by Developer on the Site.

Such initial recommendation by the Agency shall not in any way pre-commit the Agency, Planning Commission or City Council to any decision or course of action relative to this proposed development.

### 5. The Developer

#### 5.1 Nature of Developer

Jules Boand and Alex Alvarez will be the Master Developer for the Project, overseeing all aspects of the development. Jules Boand and Alex Alvarez development responsibilities will be shared between all principals. The principals thereof will be the managing and controlling general partners in the development entity. The Developer shall not transfer or assign this ERN or any part hereof without prior written approval of the Agency.

Action by the Developer to assign or transfer this agreement or part thereof shall constitute a termination of the ERN.

#### 5.2 Offices of the Developer and Agency

The principal office of the Developer and Agency are located at:

##### Developer

Jules Boand and Alex Alvarez  
P.O. Box 2869  
San Gabriel, Ca. 91776

##### Agency

Covina Redevelopment Agency  
125 East College Street

Covina, CA 91723  
Attention: Robert Neiuber, Deputy Director of Redevelopment  
(626) 384-5440

All communications shall be forwarded to the Developer and Agency at their respective addresses set forth above, by and of the following methods: first class U.S. mail or overnight express, postage prepaid, or by facsimile copy, or by personal delivery. Delivery shall be complete three (3) days after mailing or upon personal delivery, whichever is earlier. Delivery by facsimile copy must include confirmation of transmission to be effective.

6. Hold Harmless

6.1 Developer agrees to indemnify and hold the Agency and City including their officers, employees, and agents harmless for any claims, injuries, or damages arising out of any activity of the Developer, its agents, employees, and contractors, performed on or adjacent to the Site or in any way connected with or arising out of this ERN.

6.2 Agency agrees to indemnify and hold the Developer harmless for any claims, injuries, or damages arising out of any activity of the Agency, its agents, employees, and contractors, arising out of the ERN.

7. FINANCIAL CAPACITY OF THE DEVELOPER

7.1 Financial Statement

The Developer shall provide Agency with such financial materials that will permit the Agency to reasonably determine that the Developer has the financial capacity to successfully develop the Site. Developer shall update such statement(s) as new information becomes available during the course of the negotiations.

7.2 Full Disclosure

The Developer will be required to make and maintain full disclosure to the Agency of all methods of financing (construction, permanent) and the financing documents including land acquisition to be used in the development and shall make such information available to the Agency.

The Developer acknowledges the Agency's desire for an attractive, successful development of the Site, and the Agency's concern that the Project is and will be economically feasible for the long term, and will therefore provide to the Agency and consultant full information which will permit an evaluation of the Project's potential.

## 8. PLANNING AND ZONING REQUIREMENTS

### 8.1 California Environmental Quality Act

The Developer agrees to supply all information to the Agency and the Agency's consultants and to process all documents necessary to satisfy requirements of the California Environmental Quality Act. The Developer agrees to provide information to assist the Agency and its consultant in preparing appropriate environmental documents as applicable, and related traffic circulation studies, utility impact analysis, or other reports required by the City or Agency to assess or process this proposed Project.

### 8.2 Planning and Building Fees

The Developer at his expense shall prepare and pay all fees for processing of Tentative Tract Maps, Precise Plan Reviews, Development Impact Fees, Design Reviews, zone changes, or any other modifications as may be necessary to complete this planning and development process.

## 9. PUBLIC HEARING

If the negotiations hereunder culminate in a DDA, such DDA becomes effective only if and when such DDA has been considered and approved by the Agency and the City Council after public hearing, and is executed by the Agency. Nothing herein shall require either the Agency or City Council to approve the ERN or DDA. The Developer will cooperate with the Agency and Council in the preparations for and conduct of public meetings or hearings on any required environmental documents, the DDA, Final Development Plan, and any other related reports.

## 10. REAL ESTATE COMMISSION

The Agency shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. The Agency represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer agrees to hold the Agency harmless from any claim by any broker, agent or finder retained by the Developer. The Agency in the future will not utilize such services without the Developer's prior consent.

## 11. NOT A DEVELOPMENT AGREEMENT

This ERN shall not be construed to represent a "Development Agreement" with the City of Covina within the meaning of Sections 65864 through 65869.5 of the California Government Code.

## 12. PARTICIPATION BY EXISTING OWNERS AND TENANTS

Developer recognizes that certain tenant(s) or owner have or may express interest

in participating in redevelopment of the Site and Developer agrees to consider such requests with Agency in evaluating such tenant and/or owner participation. This ERN shall not preclude Agency negotiations with such owners or tenants during the period of this ERN.

13. LIMITATION ON DAMAGES AND REMEDIES.

13.1 THE DEVELOPER AND THE AGENCY ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE DEVELOPER UPON THE BREACH OF THIS AGREEMENT BY THE AGENCY. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE DEVELOPER WOULD SUFFER UPON THE BREACH OF THIS AGREEMENT BY THE AGENCY, THE DEVELOPER AND THE AGENCY AGREE THAT A REASONABLE ESTIMATE OF THE DEVELOPER'S DAMAGES IN SUCH EVENT IS TWO THOUSAND DOLLARS (\$2,000) (THE "LIQUIDATED DAMAGES AMOUNT"). THEREFORE, UPON THE BREACH OF THIS AGREEMENT BY THE AGENCY, THE AGENCY SHALL PAY THE LIQUIDATED DAMAGES AMOUNT TO THE DEVELOPER AND THIS AGREEMENT SHALL TERMINATE. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE THE DEVELOPER'S SOLE AND EXCLUSIVE REMEDY ARISING FROM ANY BREACH OF THIS AGREEMENT BY THE AGENCY.

<p>_____ Initials of Authorized Representative of Agency</p>	<p>_____ Initials of Authorized Representative of Developer</p>
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(a) THE AGENCY AND THE DEVELOPER EACH ACKNOWLEDGE AND AGREE THAT THE AGENCY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, IF IT WERE TO BE LIABLE TO THE DEVELOPER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY OTHER THAN TERMINATION OF THIS AGREEMENT AND PAYMENT OF THE LIQUIDATED DAMAGES AMOUNT. ACCORDINGLY, THE AGENCY AND THE DEVELOPER AGREE THAT THE DEVELOPER'S SOLE AND EXCLUSIVE RIGHT AND REMEDY UPON THE BREACH OF THIS AGREEMENT BY THE AGENCY IS TO TERMINATE THIS AGREEMENT AND RECEIVE THE LIQUIDATED DAMAGES AMOUNT.

(b) THE DEVELOPER ACKNOWLEDGES THAT IT IS AWARE OF THE MEANING AND LEGAL EFFECT OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM

OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(c) CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF THE DEVELOPER TO BE BOUND BY THE LIMITATION ON DAMAGES, RECOVERY AND REMEDIES SET FORTH IN THIS SECTION 13, AND THE DEVELOPER HEREBY RELEASES ANY AND ALL CLAIMS AGAINST THE AGENCY FOR MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY BREACH OF THIS AGREEMENT, EXCEPT RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO THE DEVELOPER AS OF THE EFFECTIVE DATE OF THIS AGREEMENT. THE DEVELOPER SPECIFICALLY WAIVES THE BENEFITS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT WITH REGARD TO THE LIMITATIONS ON DAMAGES AND REMEDIES AND WAIVERS OF ANY SUCH DAMAGES AND REMEDIES CONTAINED IN THIS SECTION 13.

<hr/> Initials of Authorized Representative of Agency	<hr/> Initials of Authorized Representative of Developer
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14. DEFAULT.

14.1 Failure or delay by either Party to perform any material term or provision of this Agreement shall constitute a default under this Agreement. If the Party who is claimed to be in default by the other Party cures, corrects or remedies the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default, such Party shall not be in default under this Agreement. The notice and cure period provided in the immediately preceding sentence shall not, under any circumstances, extend the Negotiation Period. If there are less than fifteen (15) days remaining in the Negotiation Period, the cure period allowed pursuant to this Section 14 shall be automatically reduced to the number of days remaining in the Negotiation Period.

14.2 The Party claiming that a default has occurred shall give written notice of default to the Party claimed to be in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. However, the injured Party shall have no right to exercise any remedy for a default under this Agreement, without first delivering written notice of the default.

14.3 Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

14.4 If a default of either Party remains uncured for more than fifteen (15) calendar days following receipt of written notice of such default, a “breach” of this Agreement by the defaulting Party shall be deemed to have occurred. In the event of a breach of this Agreement, the sole and exclusive remedy of the Party who is not in default shall be to terminate this Agreement by serving written notice of termination on the Party in breach and, in the case of a breach by the Agency, the Developer shall also be entitled to receive the Liquidated Damages Amount.

15. Acknowledgments and Reservations.

15.1 The Agency and the Developer agree that, if this ERN expires or is terminated for any reason, or a future DDA is not approved and executed by both the Agency and the Developer, for any reason, neither the Agency nor the Developer shall be under any obligation, nor have any liability to each other or any other person regarding the sale or other disposition of the Property or the redevelopment of the Project or the Property.

Termination as a Result in Change of Law. Developer acknowledges that on January 10, 2011 Governor Jerry Brown proposed legislation to eliminate Redevelopment Agencies and the related funding source. As such, Developer and Agency agree that if there is a change in the law, that in the Agency’s reasonable discretion, interferes with or prevents the Agency from performing Agency’s obligations hereunder, the Agency may terminate this Agreement without cost or penalty by delivering written notice to the Developer.

15.2 The Agency reserves the right to reasonably obtain further information, data and commitments to ascertain the ability and capacity of the Developer to lease, develop and operate the Property. The Developer acknowledges that it may be requested to make certain financial disclosures to the Agency, its staff, legal counsel or other consultants, as part of the financial due diligence investigations of the Agency relating to the potential sale of the Property and redevelopment of the Property by the Developer and that any such disclosures may become public records. The Agency shall maintain the confidentiality of financial information of the Developer to the extent allowed by law, as determined by the City Attorney.

15.3 The Developer shall not discriminate against nor segregate any person, or group of persons on account of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry in undertaking its obligations under this Agreement.

16. Warranty Against Payment of Consideration for Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 15, shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects and other consultants, when such fees are considered necessary by the Developer.

17. No Third-Party Beneficiaries. Nothing in this Agreement is intended to benefit any person or entity other than the Agency or the Developer.

18. Governing Law. The Agency and the Developer acknowledge and agree that this Agreement was negotiated, entered into and is to be fully performed in the City of Covina, California. The Agency and the Developer agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California, without application of such laws' conflicts of laws principles.

19. Attorneys' Fees. If either Party hereto files any action or brings any action or proceeding against the other arising out of this Agreement, then the prevailing Party shall be entitled to recover as an element of its costs of suit, and not as damages, its reasonable attorneys' fees as fixed by the court, in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees. For the purposes hereof the words 'reasonable attorneys' fees' mean and include, in the case of Agency, salaries and expenses of the lawyers employed by Agency (allocated on an hourly basis) who may provide legal services to Agency in connection with the representation of Agency in any such matter.

IN WITNESS WHEREOF, the Agency and the Developer have executed this Negotiation Agreement as of the date and year set opposite their signatures.

COVINA REDEVELOPMENT AGENCY,  
a public body

Date: \_\_\_\_\_

By: \_\_\_\_\_

Daryl Parrish  
Executive Director

ATTEST:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Catherine LaCroix  
Agency Secretary

DEVELOPER

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

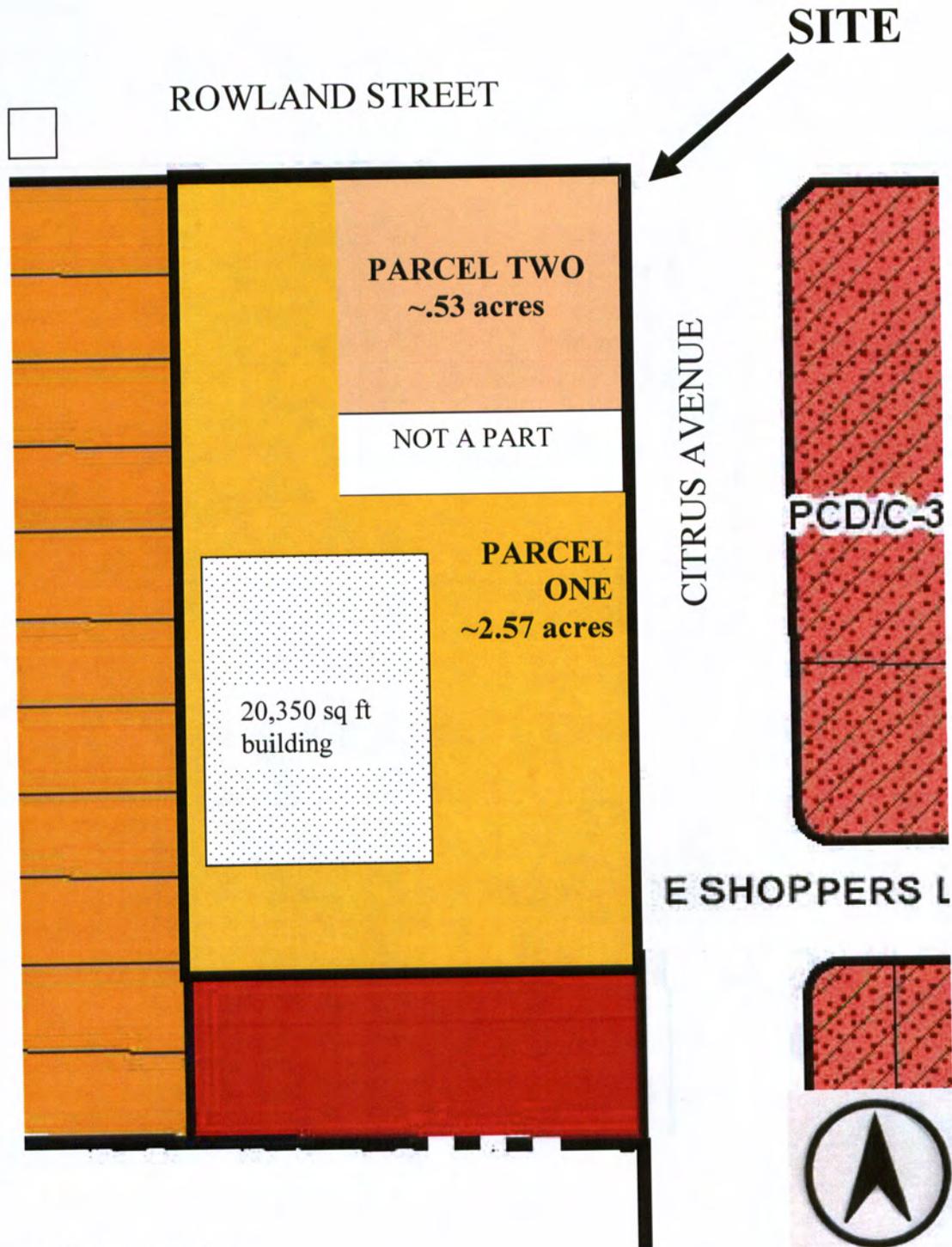
APPROVED AS TO FORM:

\_\_\_\_\_  
Agency General Counsel

**Attachment No. 1**  
**Site Map**

# ATTACHMENT NO. 1

## SITE MAP



Map not to scale

North

## ATTACHMENT 2

### LEGAL DESCRIPTION

#### Parcel One

THAT PORTION OF LOT 1, BLOCK 22 OF PHILLIPS TRACT, IN THE CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9 PAGES 3 AND 4 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT, DISTANT THEREON SOUTH 89 DEGREES 15 MINUTES 40 SECONDS EAST 335.35 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 661.05 FEET, MORE OR LESS, TO A POINT IN THE CENTER LINE OF ROWLAND AVENUE, 99.00 FEET WIDE, AS SAID AVENUE IS SHOWN ON SAID MAP; THENCE ALONG SAID CENTER LINE, SOUTH 89 DEGREES 15 MINUTES 40 SECONDS EAST 98.92 FEET, MORE OR LESS, TO A POINT IN SAID CENTER LINE OF ROWLAND AVENUE, DISTANT THEREON NORTH 89 DEGREES 15 MINUTES 40 SECONDS WEST 233 FEET FROM THE INTERSECTION THEREON WITH THE CENTER LINE OF CITRUS STREET, 66.00 FEET WIDE, AS SAID STREET IS SHOWN ON SAID MAP; THENCE SOUTH PARALLEL WITH SAID CENTER LINE OF CITRUS STREET 249.50 FEET; THENCE PARALLEL WITH THE NORTHERLY LINE OF SAID LOT, SOUTH 89 DEGREES 15 MINUTES 40 SECONDS EAST 233 FEET TO THE CENTER LINE OF SAID CITRUS STREET; THENCE SOUTH ALONG SAID CENTER LINE TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID LOT; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT AND PROLONGATION THEREOF, NORTH 89 DEGREES 15 MINUTES 40 SECONDS WEST 331.92 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THE SOUTHERLY 115.00 FEET, MEASURED ALONG THE EASTERLY LINE THEREOF.

ALSO EXCEPT THEREFROM THE INTEREST IN THAT CERTAIN STRIP OF LAND 17.00 FEET WIDE CONVEYED TO THE CITY OF COVINA BY DEED RECORDED JUNE 12, 1958 AS INSTRUMENT NO. 3887 IN BOOK D-125 PAGE 938 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ASO EXCEPT THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF LOT 1, DISTANT THEREON SOUTH 89 DEGREES 15 MINUTES 40 SECONDS EAST 335.35 FEET FROM THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 661.05 FEET, MORE OR LESS, TO A POINT IN THE CENTER LINE OF ROWLAND AVENUE 99.00 FEET WIDE, AS SAID AVENUE IS SHOWN ON SAID MAP; SAID POINT BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE SOUTHERLY

ALONG SAID COURSE OF NORTH 661.05 FEET, A DISTANCE OF 225.58 FEET, THENCE EASTERLY PARALLEL WITH SAID CENTER LINE OF SAID ROWLAND AVENUE 99.00 FEET WIDE AS SHOWN ON SAID MAP, A DISTANCE OF 73.91 FEET, THENCE NORTHERLY PARALLEL WITH SAID COURSE OF NORTH 661.05 FEET, A DISTANCE OF 225.58 FEET, MORE OR LESS TO THE CENTER LINE OF SAID ROWLAND AVENUE, 99.00 FEET WIDE AS SHOWN ON SAID MAP, THENCE WESTERLY ALONG SAID CENTER LINE 73.91 FEET TO THE TRUE POINT OF BEGINNING.

Also known as 635 S. Citrus Avenue, Covina, CA  
APN 8453-001-900 and 8453-001-906

Parcel Two

THAT PORTION OF LOT 1, BLOCK 22 OF THE PHILLIPS TRACT, IN THE CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGES 3 AND 4 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE CENTERLINE OF ROWLAND AVENUE, 99.00 FEET WIDE, WITH THE CENTERLINE OF CITRUS STREET, 66.00 FEET WIDE, AS SAID AVENUE AND SAID STREET ARE SHOWN ON SAID MAP; THENCE NORTH 89 DEGREES, 15 MINUTES 40 SECONDS WEST 233.00 FEET; THENCE SOUTH PARALLEL WITH SAID CENTERLINE OF CITRUS STREET 249.50 FEET; THENCE PARALLEL WITH THE NORTHERLY LINE OF SAID LOT SOUTH 89 DEGREES, 15 MINUTES, 40 SECONDS EAST 233.00 FEET TO THE SAID CENTERLINE OF SAID CITRUS STREET; THENCE NORTH ALONG SAID CENTERLINE OF CITRUS STREET 249.50 FEET TO THE POINT OF BEGINNING.

EXCEPT THE SOUTH 50 FEET THEREOF.

Also known as:  
611 S. Citrus Avenue and 120 Rowland Street, Covina, CA  
APN 8453-001-001 and 003

**CITY OF COVINA  
COVINA REDEVELOPMENT AGENCY  
COVINA HOUSING AUTHORITY**

**AGENDA ITEM COMMENTARY**

CC 12

**MEETING DATE:** July 5, 2011

**ITEM NO.:** \_\_\_\_\_

**STAFF SOURCE:** Robert Neiuber, Director of Community Development<sup>RN</sup>  
Nuala Gasser, Sr. Redevelopment Manager<sup>NG</sup>

**ITEM TITLE:** Agency approval of revised criteria for Moderate Income Housing Down Payment Assistance Program

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**STAFF RECOMMENDATION**

Adopt Agency **Resolution No. 11-680** approving modification to criteria for a Moderate Income Housing Down Payment Assistance Program.

**FISCAL IMPACT**

There is no immediate fiscal impact. The fiscal impact will be realized when a unit is sold and the unforgiven portion of the Down Payment program is refunded to the Agency, or a unit is sold and the Agency will fund the new resident's participation in the program.

**BACKGROUND (See Information Tables, Exhibit A and Exhibit B)**

On December 6, 2005, the Agency Board approved the Moderate Income Borrower, Down Payment Assistance Program (DPAP). The Program was modified on July 18, 2006, when the Agency Board approved an increase in the amount of assistance offered to \$30,000, and again on October 3, 2006, when the interest rate charged on the unforgiven funds was set at 1.5% simple interest.

The funds loaned under the DPAP are fully forgiven after the program participant lives in the unit for 20 years. If the program participant moves before the 20 years expires, the down payment is payable in full with interest.

**Proposed Credit for Longevity**

Under the current structure, the residents in this program receive no benefit for the years they have lived in the unit. It is recommended that in order to be more equitable, the residents receive 1/20 credit (\$1,500) for each full year that they live in the home, with 100% of the funds to be forgiven at the end of the twentieth year.

If approved, the action is recommended to be retroactive to include all buyers of affordable units in the Vintage Walk development who are participating in the Moderate Income Housing Down Payment Assistance Program.

**Proposed Continuation of Program upon Sale of Unit**

The Vintage Walk Phase One homes sold in 2006-2007. The Agency is seeing the start of the turn-over of the affordable homes. The homeowners are required to sell the homes to affordable buyers, who in some cases, have difficulty, based on the income restrictions, of qualifying for a \$200,000 + mortgage. The resale price of the property is determined by Redevelopment Law as the affordable housing cost for family size appropriate for the unit.

It is proposed that the DPAP be made available to future purchasers in the resale of the affordable homes in Vintage Walk, Phases One and Two. The program would be funded partially by the funds repaid by the sellers, with the balance to come from Redevelopment Set-Aside Funds, if available.

**RELEVANCE TO THE STRATEGIC PLAN**

Not applicable.

**EXHIBITS:**

- A. Information Matrix—current program
- B. Information Matrix—proposed program
- C. Resolution

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

EXHIBIT A  
***Information Matrix—Current Program***

<b>Down Payment Assistance Program</b>	
<b>Amount</b>	Covina Redevelopment Agency will carry back up to a \$30,000 second trust deed if requested by Buyer, or as required to allow the buyers to qualify as purchasers.
<b>Forgivable over 20 years</b>	The down payment assistance silent second is a no-interest, no-payment loan for the first twenty years the buyer lives in the home, to be forgiven at the end of 20 years of continuous occupancy by the original buyer.
<b>Repayment Conditions</b>	If the home is sold, rented, or transferred within the twenty-year period, the second will be payable with interest.
<b>Interest if repaid</b>	If repaid, interest is payable at one-and-a-half percent (1.5%) simple interest, payable from the time the loan is provided.
<b>Subordinate to First Mortgage</b>	The loan would be subordinate to the loan obtained by the eligible family for the purchase price other than the amount lent by the Agency.
<b>Loan-to-Value Ratio</b>	The loan to value ratio (i.e., the ratio between the sum of the First Lien and the Agency loan on the one hand, and the fair market value of the Property determined as the purchase price) is no more than ninety seven percent (97%).
<b>Restriction on sale</b>	<ul style="list-style-type: none"> <li>▪ For 45 years, home can be sold only to another qualified affordable buyer.</li> </ul>
<b>Buyer income restrictions</b>	<ul style="list-style-type: none"> <li>▪ The homes are priced for moderate-income households e.g.: A household of 4 earns up to \$75,600</li> </ul>
<b>Affordable Housing Cost</b>	<ul style="list-style-type: none"> <li>▪ Monthly payment cannot exceed an amount set by formula by state law.</li> </ul>
<b>Asset Restriction</b>	<ul style="list-style-type: none"> <li>▪ \$50,000 in excess of the down payment required in order to meet state affordability requirements.</li> </ul>
<b>Priority List</b>	<ul style="list-style-type: none"> <li>▪ Covina residents and workers would be given priority</li> </ul>
<b>Mortgage Type</b>	<ul style="list-style-type: none"> <li>▪ Limited to conventional loans not to exceed a period of 40 years.</li> </ul>

EXHIBIT B

***Information Matrix—Proposed (changes are underlined)***

<b>Down Payment Assistance Program</b>	
Amount	Covina Redevelopment Agency will carry back up to a \$30,000 second trust deed if requested by Buyer, or as required to allow the buyers to qualify as purchasers.
Forgivable over 20 years	The down payment assistance silent second is a no-interest, no-payment loan for the first twenty years the buyer lives in the home, <del>to be forgiven at the end of 20 years of continuous occupancy by the original buyer.</del> <u>to be forgiven at the rate of one-twentieth (1/20), or \$1,500 per year for each full year that the program participant lives in the home. At the end of 20 years of continuous occupancy by the original buyer the loan is forgiven in full.</u>
Repayment Conditions	If the home is sold, rented, or transferred within the twenty-year period, the <u>balance of the second owed</u> will be payable with interest.
Interest if repaid	If repaid, interest is payable at one-and-a-half percent (1.5%) simple interest, payable from the time the loan is provided.
Subordinate to First Mortgage	The loan would be subordinate to the loan obtained by the eligible family for the purchase price other than the amount lent by the Agency.
Loan-to-Value Ratio	The loan to value ratio (i.e., the ratio between the sum of the First Lien and the Agency loan on the one hand, and the fair market value of the Property determined as the purchase price) is no more than ninety seven percent (97%).
<u>Eligible Participants</u>	<u>The program is available to residents at the Vintage Walk Phase One and Phase Two development, as well as to resale units in that development, depending upon availability and budgeting of Redevelopment Set-Aside Funds.</u>
<b>Restriction on sale</b>	<ul style="list-style-type: none"> <li>▪ For 45 years, home can be sold only to another qualified affordable buyer.</li> </ul>
<b>Buyer income restrictions</b>	<ul style="list-style-type: none"> <li>▪ The homes are priced for moderate-income households e.g.: A household of 4 earns up to \$75,600</li> </ul>
<b>Affordable Housing Cost</b>	<ul style="list-style-type: none"> <li>▪ Monthly payment cannot exceed an amount set by formula by state law.</li> </ul>
<b>Asset Restriction</b>	<ul style="list-style-type: none"> <li>▪ \$50,000 in excess of the down payment required in order to meet</li> </ul>

	state affordability requirements.
<b>Priority List</b>	<ul style="list-style-type: none"><li>▪ Covina residents and workers would be given priority</li></ul>
<b>Mortgage Type</b>	<ul style="list-style-type: none"><li>▪ Limited to conventional loans not to exceed a period of 40 years.</li></ul>

Exhibit C

COVINA REDEVELOPMENT AGENCY

**RESOLUTION NO. 680**

**A RESOLUTION OF THE COVINA REDEVELOPMENT  
AGENCY APPROVING MODIFICATION TO CRITERIA  
FOR A MODERATE INCOME HOUSING DOWN  
PAYMENT ASSISTANCE PROGRAM**

WHEREAS, the Covina Redevelopment Agency (Agency) is engaged in activities necessary to execute and implement the Redevelopment Plan for the Redevelopment Project No. 1 and Redevelopment Project No. 2 (collectively referred to as the Redevelopment Projects);

WHEREAS, pursuant to the California Health and Safety Code Section 33334.2, the Agency has established a Low and Moderate Income Housing Fund (the Housing Fund) and the Agency is authorized to assist in the provision of housing for low and moderate income persons;

WHEREAS, by Resolution 05-532 the Agency established criteria for offering a down payment assistance program to home buyers purchasing homes for their residence, constructed in the Redevelopment Projects on or after January 1, 2006,

WHEREAS, by Resolution 06-548 the Agency modified the criteria for offering a down payment assistance program to home buyers purchasing homes for their residence, by increasing the amount of funding available to each borrower to \$30,000; and

WHEREAS, by Resolution 06-554 the Agency modified the down payment assistance program to reduce the interest rate and to make findings regarding subordination of its rights under the Declaration of Covenants, Conditions and Restrictions; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE COVINA REDEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. The Agency hereby approves the modification to the down payment assistance program set forth on Exhibit A attached hereto.

SECTION 2. Credit shall be provided against the amount of the Down-Payment Assistance Program loan at the rate of 1/20<sup>th</sup> per year for each full year the program participant lives in the home.

SECTION 3. The program shall be offered to buyers of affordable homes in the Vintage Walk development when resold, depending on availability of Agency set-aside funds.

SECTION 4. The Agency finds and determines that expenditure of housing funds for the down payment assistance program will be of benefit to the Redevelopment Projects.

SECTION 5. The Executive Director is authorized to establish the loan documents and disclosure statements to carry out the down payment assistance program for residences constructed within the Redevelopment Project after January 1, 2006.

SECTION 6. The Agency Secretary shall certify to the passage and adoption of this Resolution and the same shall thereupon take effect and be in force.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of July, 2011 .

COVINA REDEVELOPMENT AGENCY

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John C. King, Chairman

ATTEST:

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Agency Secretary

APPROVED AS TO FORM:

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Agency Counsel

**CERTIFICATION**

I, Catherine M. LaCroix, Secretary of the Redevelopment Agency of the City of Covina, does hereby CERTIFY that Resolution No. 680 was adopted by the Covina Redevelopment Agency at a regular meeting of the Agency held this 5th day of July, 2011, and was approved and passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Catherine M. LaCroix  
Secretary of the Covina Redevelopment Agency

EXHIBIT A

***Information Matrix***

<b>Down Payment Assistance Program—Vintage Walk Development</b>	
<b>Amount</b>	Covina Redevelopment Agency will carry back up to a \$30,000 second trust deed if requested by Buyer, or as required to allow the buyers to qualify as purchasers.
<b>Forgivable over 20 years</b>	The down payment assistance silent second is a no-interest, no-payment loan for the first twenty years the buyer lives in the home, to be forgiven at the rate of one-twentieth (1/20), or \$1,500 per year for each full year that the program participant lives in the home. At the end of 20 years of continuous occupancy by the original buyer the loan is forgiven in full.
<b>Repayment Conditions</b>	If the home is sold, rented, or transferred within the twenty-year period, the balance of the second owed will be payable with interest.
<b>Interest if repaid</b>	If repaid, interest is payable at one-and-a-half percent (1.5%) simple interest, payable from the time the loan is provided.
<b>Subordinate to First Mortgage</b>	The loan would be subordinate to the loan obtained by the eligible family for the purchase price other than the amount lent by the Agency.
<b>Loan-to-Value Ratio</b>	The loan to value ratio (i.e., the ratio between the sum of the First Lien and the Agency loan on the one hand, and the fair market value of the Property determined as the purchase price) is no more than ninety seven percent (97%).
<b>Eligible Participants</b>	The program is available to residents at the Vintage Walk Phase One and Phase Two development, as well as to resale units in that development, depending upon availability and budgeting of Redevelopment Set-Aside Funds.
<b>Restriction on sale</b>	<ul style="list-style-type: none"> <li>▪ For 45 years, home can be sold only to another qualified affordable buyer.</li> </ul>
<b>Buyer income restrictions</b>	<ul style="list-style-type: none"> <li>▪ The homes are priced for moderate-income households e.g.: A household of 4 earns up to \$75,600</li> </ul>
<b>Affordable Housing Cost</b>	<ul style="list-style-type: none"> <li>▪ Monthly payment cannot exceed an amount set by formula by state law.</li> </ul>
<b>Asset Restriction</b>	<ul style="list-style-type: none"> <li>▪ \$50,000 in excess of the down payment required in order to meet state affordability requirements.</li> </ul>

<b>Priority List</b>	<ul style="list-style-type: none"><li>▪ Covina residents and workers would be given priority</li></ul>
<b>Mortgage Type</b>	<ul style="list-style-type: none"><li>▪ Limited to conventional loans not to exceed a period of 40 years.</li></ul>

**CITY OF COVINA  
COVINA REDEVELOPMENT AGENCY  
COVINA HOUSING AUTHORITY**

**AGENDA ITEM COMMENTARY**

CC 13

**MEETING DATE:** July 5, 2011

**ITEM NO.:** \_\_\_\_\_

**STAFF SOURCE:** Robert Neuber, Director of Community Development *rn*  
Nuala Gasser, Sr. Redevelopment Manager *ng*

**ITEM TITLE:** Agency approval of funding for Vintage Walk Phase Two Moderate Income Housing Down Payment Assistance Program (DPAP) and DPAP availability for resale of existing affordable units in Vintage Walk

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**STAFF RECOMMENDATION**

Adopt Agency **Resolution No. 11-681** amending the fiscal year 2011-2012 Covina Redevelopment Agency budget to reflect an appropriation of \$150,000 from housing set-aside undesignated funds to provide funding for the Moderate Income Housing Down Payment Assistance Program.

**FISCAL IMPACT**

Funding for the program in the amount of \$150,000 will be budgeted in the Redevelopment Agency Low-to Moderate Income Housing Fund, Account Number 2051-4700-00-53751 (forgivable grants). The funds are being drawn down from undesignated fund balance account 2051-0000-00-33000. The budget Resolution and any agreement entered into will indicate that should Agency funds not be available then no other funding can be compelled or required by the Agreement.

**BACKGROUND**

On December 6, 2005, the Agency Board approved the Moderate Income Borrower, Down Payment Assistance Program (DPAP). The DPAP was modified on July 18, 2006, and October 3, 2006, and is being brought before the Agency Board for approval of modification tonight in a separate staff report.

In December 2005, funds were approved for the six affordable units in the first phase of the Vintage Walk program. The second phase of that project is under construction; it will include three affordable units. Approval is requested to fund the Moderate Income Housing Down Payment Program for Vintage Walk Phase Two, in the amount of \$90,000 to assist the homebuyers in buying the three affordable housing units.

Additional funding is requested in the event new buyers purchasing one of the existing affordable unit at Vintage Walk would like to participate in the DPAP in order to become a homeowner. Such participants would be subject to the DPAP guidelines. \$60,000 is requested to offset the

requested funding. Sellers of affordable housing will be required to reimburse the Redevelopment Set-Aside Fund the portion of their loan that is not forgiven.

**RELEVANCE TO THE STRATEGIC PLAN**

Not applicable.

**EXHIBITS:**

A. Resolution

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

EXHIBIT A

**RESOLUTION NO. 11-681**

A RESOLUTION OF THE COVINA REDEVELOPMENT AGENCY, TO AMEND THE FISCAL YEAR 2011-2012 COVINA REDEVELOPMENT AGENCY BUDGET TO REFLECT AN APPROPRIATION OF \$150,000 FROM HOUSING SET ASIDE UNDESIGNATED FUNDS TO PROVIDE FUNDING FOR THE MODERATE INCOME HOUSING DOWN PAYMENT ASSISTANCE PROGRAM

WHEREAS, the budget for the COVINA REDEVELOPMENT AGENCY (“Agency”) for Fiscal Year commencing July 1, 2011 and ending June 30, 2012 was approved on June 21, 2011; and

WHEREAS, the approved budget is in accordance with all applicable ordinances of the City and all applicable statutes of the State; and

WHEREAS, the reallocation of the appropriations between departmental activities may be made by the Executive Director, amendments (increases/decreases) to the Budget shall be by approval and resolution of the Agency Board; and

WHEREAS, the Agency wishes to assist in the provision of affordable housing opportunities by providing funding for the Moderate Income Housing Down Payment Assistance Program at the Vintage Walk development, and

WHEREAS, this action is based on the availability of Agency funds.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Redevelopment Agency of the City of Covina, as follows:

SECTION 1. Amend the fiscal year 2011-2012 Covina Redevelopment Agency operating budget as follows: \$150,000 from the Low-to Moderate-Income Housing Fund Undesignated Fund Balance Account 2051-0000-00-33000 to Account 2051-4700-00-53751.

SECTION 2. Should Agency funds not be available, then no other funding can be compelled or required for this project.

SECTION 3. The Agency finds and determines that the Moderate Income Housing Down Payment Assistance Program is not a project as defined under the California Environmental Quality Act (“CEQA”) (Pub. Res. Code, §§ 21000, *et seq.* and Title 14 of the California Code of Regulations, §§ 15000 *et seq.*

SECTION 4. The Agency Secretary shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of July, 2011.

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John C. King, Chairman

ATTEST:

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Catherine LaCroix, Agency Secretary

APPROVED AS TO FORM:

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Agency Counsel

**CERTIFICATION**

I, Catherine M. LaCroix, Secretary of the Redevelopment Agency of the City of Covina, do hereby CERTIFY that Resolution No. 681 was adopted by the Covina Redevelopment Agency at a regular meeting of the Agency held this 5th day of July, 2011, and was approved and passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Catherine M. LaCroix  
Secretary of the Covina Redevelopment Agency

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** PH 1

**STAFF SOURCE:** Kim Raney, Chief of Police 

**ITEM TITLE:** Proposed program for expenditure of 2011 Edward Byrne Memorial Justice Assistance Grant (JAG).

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**STAFF RECOMMENDATION:**

- a) Hold the Public Hearing; and,
- b) Receive and file proposed program for expenditure of 2011 Edward Byrne Memorial Justice Assistance Grant (JAG).

**FISCAL IMPACT:**

There is no additional appropriation needed from the General Fund; however, when final notification has been received, staff will bring back before Council a resolution to increase the Police Department's appropriation account 2211-1120-00-42090 and the revenue account 2211-1120-00-50015 by \$16,121, which is the amount allocated for the City of Covina Police Department.

**BACKGROUND:**

Notification was received from the Department of Justice, Office of Justice Programs' Bureau of Justice Assistance, that the City of Covina Police Department is eligible to receive \$16,121 from the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, FY 2011. In years past, the Department applied for these same funds under the Local Law Enforcement Block Grant Program. This figure is based on population and crime statistics.

Previous allocations have been used to fund our Police Cadet Program. Funding was not available in 2008 from JAG for this program but was available under the 2009 American Recovery and Reconstruction Act (\$85,786.85) and the 2009 Edward Byrne Memorial Justice Assistance Grant (\$21,794.37). The 2010 JAG funding was used to fund the Youth Accountability Board and the part time Community Services Officer position assigned to this program. Both of these items had been eliminated in the 2010-2011 budget due to budgetary constraints. The allocation of \$16,121 would be used to continue the Youth Accountability Board and the part time Community Services Officer position assigned to the program.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** PH 2

**STAFF SOURCE:** Robert Nieuber, Community Development Director  
William J. Priest, Assistant City Attorney

**ITEM TITLE:** Public Hearing of the City Council and second reading to consider adoption of **Ordinance No. 11-1996**, repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City's regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code.

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**STAFF RECOMMENDATION**

1. Open the public hearing and take public testimony; and
2. Pass and adopt **Ordinance No. 11-1996** (attached hereto as Exhibit "A"), repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City's regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code.

**FISCAL IMPACT**

None.

**BACKGROUND**

At its meeting on June 21, 2011, the City Council introduced Ordinance No. 11-1996, which updates the City's regulations for wireless communication facilities ("WCF's") in order to address their aesthetic and other impacts upon the community while remaining in compliance with evolving Federal and State law.

For added background leading up to this Ordinance, a copy of the June 21 Agenda Item Commentary is attached hereto as Exhibit "B" and provides the following: (i) a detailed discussion of the City's need for updated WCF regulations, (ii) a discussion of the moratorium on new standalone WCF's that has been in place since December 7, 2010, (iii) a summary of the changes Ordinance No. 11-1996 makes to the Covina Municipal Code, and (iv) an analysis of prior proceedings at the Planning Commission.

At its June 21 meeting, the City Council considered Ordinance No. 11-1996 and entertained several oral amendments to it. They have now been incorporated into the Ordinance attached to this Agenda Item Commentary in redline format for ease of review. They can be summarized as follows:

- Section 17.65.050(N) (“Application Contents”) – An applicant would be required to submit a report showing the percentage of dropped calls only when seeking a waiver under the Federal Telecommunications Act, pursuant to Section 17.65.090.
- Section 17.65.110(D) (“Standard Conditions of Approval”) – While an applicant/permittee will still be required to submit a written report certifying compliance with applicable federal, state and local regulations within 90 days after the WCF “goes live”, an applicant/permittee will no longer be required to submit further reports on an annual basis. Rather, an applicant/permittee will be required to submit a written report within 30 days after termination of any FCC, PUC or other Federal or State operating license for the WCF.
- Section 17.65.120(E) (“Revocations”) – Typographical error corrected.
- Section 17.65.140 (“Cells on Wheels”) – Originally, the Ordinance only allowed deployment of “Cells on Wheels” during a City-declared telecommunications emergency. The Ordinance would now also permit deployments of “Cells on Wheels” during certain special events requiring enhanced telecommunications coverage (ie: Thunderfest) provided the applicant obtains an administrative CUP.
- Section 8 of Ordinance (“Effective Date”) – Language has been added to expressly state that upon the effective date of this ordinance, the moratorium on new standalone wireless communication facilities is terminated.

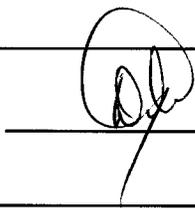
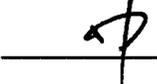
Because these amendments were made during introduction of the Ordinance, they do not require the Ordinance to be re-introduced. The City Council may proceed to pass and adopt the Ordinance this evening. Staff is now requesting that the City Council do so with the amendments identified above.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

- A. Ordinance No. 11-1996 (as revised by the Council on June 21, 2011)
- B. Agenda Item Commentary for Ordinance No. 11-1996 from June 21, 2011 Council meeting

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**ORDINANCE NO. 11-1996**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, REPEALING SECTION 17.62.193 OF CHAPTER 17.62 AND ADDING CHAPTER 17.65 TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE IN ORDER TO UPDATE THE CITY'S REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AND MAKING VARIOUS CONFORMING CHANGES TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE THERETO.**

**WHEREAS**, this Ordinance establishes updated regulations for the location, design and development of wireless communication facilities within the City, in order to address the negative secondary effects of said facilities, while remaining consistent with current Federal and State law; and

**WHEREAS**, the Planning Commission conducted a properly noticed public hearing on June 14, 2011 at which members of the public were afforded an opportunity to comment upon this Ordinance, the recommendations of staff and public testimony; and,

**WHEREAS**, after such hearing, the Planning Commission recommended that the City Council approve this Ordinance; and,

**WHEREAS**, the City Council conducted a properly noticed public hearing on July 5, 2011 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff and public testimony.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 17.62.193 of Chapter 17.62 of Title 17 of the Covina Municipal Code is hereby repealed in its entirety.

**SECTION 2.** Chapter 17.65 is hereby added to Title 17 of the Covina Municipal Code and shall read as follows:

**"Chapter 17.65 WIRELESS COMMUNICATION FACILITIES**

**Sections:**

- 17.65.010 Intent and Purpose.**
- 17.65.020 Definitions.**
- 17.65.030 Applicability.**
- 17.65.040 Approval Requirements.**
- 17.65.050 Application Contents.**
- 17.65.060 Notices(s) of Hearing/Determination.**

- 17.65.070 Location and Development Standards.**
- 17.65.080 Design Criteria.**
- 17.65.090 Waiver Request**
- 17.65.100 Findings for Denial.**
- 17.65.110 Standard Conditions of Approval.**
- 17.65.120 Revocations.**
- 17.65.130 Maintenance Requirements.**
- 17.65.140 “Cells on Wheels” Prohibited/Emergency Deployment.**
- 17.65.150 Abandonment and Removal.**
- 17.65.160 Violation/Penalty.**
  
- 17.65.010 Intent and Purpose.**

The purpose of these requirements is to provide placement, design, and screening criteria to regulate the establishment of wireless communication facilities to protect the public health, safety, general welfare, and quality of life in the City, while providing needed flexibility to wireless communication providers. Additionally, these regulations protect the visual aesthetics of the community through the promotion of stealthing techniques that architecturally integrate or camouflage wireless communication facilities with their surroundings. This chapter shall be applied on a competitively neutral and nondiscriminatory basis to all applicants for wireless communication facilities.

**17.65.020 Definitions.**

For the purposes of this chapter, the following terms shall have the following meanings:

“Applicant” means a provider of wireless communication services who applies to the City to install a wireless communication facility within the City.

“Abandonment” means inoperative or unused for a period of one hundred-eighty (180) calendar days or more.

“Antenna” means that part of a wireless communication facility designed to transmit or receive radio frequency or electromagnetic signals, and includes panels, wires, poles, rods, dishes, or similar devices.

“Cell site” or “site” means a parcel of land (or portion thereof) or public right-of-way location that contains a wireless communication facility(ies) including any antenna, support structure, accessory building, or other components associated with, or ancillary to, the use of the wireless communication facility.

“Co-location” means the sharing of one site and infrastructure for the purpose of locating two (2) or more wireless communication facilities.

“Mount” means the structure or surface upon which antennae are mounted.

“Project site” means the site on which an applicant proposes to construct a wireless communication facility, including any antenna, mount or support structure, accessory building, or other components associated with, or ancillary to, the use of the wireless communication facility.

“Roof- or top-mounted” means a wireless communication facility where the antennae are mounted on the roof or top of an existing building or structure that serves a purpose other than primarily as a standalone facility (ie: utility pole or water tank).

“Side-mounted” means a wireless communication facility where the antennae are mounted on the side of an existing building or structure that serves a purpose other than primarily as a standalone facility (ie: utility pole or water tank).

“Site plan review” means the development review process as set forth in chapter 17.64 of this Code.

“Standalone facility” means a wireless communication facility where the antennae are mounted to a dedicated ground-based structure primarily designed to elevate the antennae to a usable altitude (ie: monopole, cell tower, etc.) There shall be a rebuttable presumption that a newly constructed ground-based structure containing a wireless communication facility is a standalone facility, even if the structure should serve other purposes (ie: light pole, flag pole, etc.)

“Stealthed” means: (1) camouflaged, concealed or otherwise not identifiable as a wireless communication facility by a casual observer and (2) is aesthetically compatible and blends with the site and immediate surroundings. Stealthing may be achieved by any state-of-the-art means or combination of means including, but not limited to, the use of camouflage, textures, screening, painting or architectural integration with the surroundings (e.g., steeple or bell tower within a church, unobtrusive penthouse on a roof, false rock, false structure or a tree amongst other trees.) For purposes of this definition, “stealth” or “stealthed” does not refer to and is not intended to be used as a trade name.

“Wireless Communication Facility” or “Facility” means a facility for the provision of wireless communication services.

**17.65.030 Applicability.**

- A. Except as set forth below, the procedures and rules set forth in this chapter are applicable to all wireless communication facilities built, installed or modified within all zones of the City of Covina after the date this chapter is effective, including all wireless communication facilities built, installed or modified within all City public rights-of-way.
- B. This chapter shall not apply to the following:

1. Sites where the construction, installation or modification of a wireless communication facility is subject to a lease, license or other agreement with the City; or
2. Public safety communications facilities owned or operated by the City or any other public agency (e.g.: Sheriff, Fire, Federal or State safety authorities).

**17.65.040 Approval Requirements.**

- A. No wireless communication facility shall be built, installed or modified, in the public right-of-way or on any public property in any zone, without first applying for and obtaining an encroachment permit from the Director of Public Works. The Director of Public Works shall review all encroachment permit applications in accordance with Chapter 11.08 of this Code.
- B. Except as set forth in subsection (C) below, no wireless communication facility shall be built, installed or modified, on any private property within the City in any zone (including the City's right-of-way), without first applying for and obtaining a conditional use permit from the Planning Commission. The Planning Commission shall hear all conditional use permit applications at a public hearing in accordance with chapter 17.62 of this Code.
- C. Notwithstanding subsection (B) above, applicants requesting approval for a new co-location to an existing wireless communication facility located on private property ("base facility") shall only be required to obtain site plan review from the Chief Planning Official, pursuant to chapter 17.64 of this Code, if all of the following apply:
  1. the base facility has already received a conditional use permit;
  2. the base facility has already been reviewed and approved by the City pursuant to CEQA, resulting in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report (statutory and categorical exemptions for the base facility are insufficient);
  3. the new co-location does not require a subsequent or supplemental environmental impact report due to substantial changes to the base facility, its site, its circumstances, or new information; and
  4. the new co-location incorporates all mitigation measures that were required by CEQA for the base facility.
- D. Any decision shall be subject to appeal pursuant to the following provisions of this Code:

- (1) Decision of the Planning Commission with respect to a conditional use permit (to the City Council): Section 17.62.130
- (2) Decision of the Chief Planning Official with respect to site plan review (to the Planning Commission): Section 17.64.080
- (3) Decision of the Director of Public Works (to the City Manager) Section 11.54.010

**17.65.050 Application Contents.**

Applications for the approval of wireless communication facilities shall include that information required by this Code for the applicable land use approval (conditional use permit, site plan review or encroachment permit), plus the following information:

- A. Contact Information. The applicant shall submit and maintain current at all times basic contact information of a form to be supplied by the City. The applicant shall notify City of any changes to the information submitted within fifteen (15) calendar days following any such change. This information shall include, but is not limited to the following:
  - 1. The identity, including name, address and telephone number of the owner of the wireless communication facility including official identification numbers and FCC certifications and, if different from the owner, the identity of the person or entity responsible for operating the wireless communication facility;
  - 2. Name, address and telephone number of a local contact person for emergencies and type of service provided.
- B. Location and Zoning Information. Location of the project site, including the address and the names of two nearest cross streets, as well as the present zone designation of the project site.
- C. Description of the Proposed Project. A description of the proposed wireless communication facility, including whether the project is a new facility, a co-located facility, or a modification to an existing facility. If a new facility, the applicant shall include an explanation of whether the new facility will be designed to accommodate future co-locations. The applicant shall provide a written description of the stealthing measures the applicant proposes to use to aesthetically blend the facility to the immediate surroundings. This should include at minimum a description of proposed stealthing techniques, and the

textures and colors to be used in the stealthing process. The applicant shall also indicate the proposed height of the facility.

D. Noise. A description of the facilities and/or equipment within the applicant's project that are expected to induce or generate noise, as well as anticipated noise levels of said facilities and/or equipment.

E. Wireless Communication Facility Site Plan. Fifteen (15) copies of a wireless communication facility site plan, at a scale of 1"=20' or larger and including the following:

1. The proposed wireless communication facility. If the proposed facility is to be located within or on an existing building, or involves construction of a building for housing accessory equipment, the application shall also include a floor plan showing the location of the proposed facility relative to the existing building and/or of the accessory equipment building to be constructed;
2. Location of lot lines, streets (with street names), easements, and all structures and improvements, including accessory equipment, underground utilities and support structures, existing and proposed;
3. Slopes, contours, trees and other pertinent physical features of the site, existing and proposed;
4. All exterior lighting on the site, existing and proposed;
5. Location, use and approximate distance from property lines of the nearest structures on all properties abutting the site; and
6. The location of parking for maintenance personnel.

F. Landscape Plan. Fifteen (15) copies of a landscape plan for the site, at a scale of 1/8"=1' or larger and including the following:

1. Existing trees with trunk diameter over six inches (6") at four feet (4') above grade or fifteen feet (15') in overall height, within fifty feet (50') of the proposed wireless communication facility;
2. Species, diameter and condition of all such trees;
3. Final disposition of all existing trees; and
4. Species, location and sizes of trees and other vegetation proposed to be installed with the wireless communication facility.

- G. Site Photographs. Current color photographs of the site and its surroundings.
- H. Proximity Map and Information. For applications for a conditional use permit, a map depicting all properties (with street addresses) within five hundred (500) feet of the project site, a list of the names and addresses of all current owners of the depicted properties, according to the last equalized assessor's roll, plus an affidavit indicating that the list of names and addresses described above is accurate, based upon due and diligent inquiry of the applicant. The proximity map and information set forth above shall not be required for an application for site plan review.
- I. Visual Impact Analysis. A visual impact analysis (which shall include photomontage, photo simulation or similar technique) and a building elevation plan which demonstrate, from all four primary directions (north, south, east and west) the potential visual impacts of the proposed wireless communication facility. Consideration shall be given to views from public areas as well as from private property. The analysis shall assess the cumulative impacts of the proposed wireless communication facility and other existing wireless communication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed wireless communication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant. The visual impact analysis shall also include a signed certification by the applicant that the proposed facility, when built, will appear as indicated in the visual impact analysis.
- J. Wireless Communication Facility Mount. A description of whether the proposed facility is a co-located facility, standalone facility, roof/top-mounted, or side-mounted.
- K. Justification for Location/Co-location. The applicant must provide justification as to why the applicant chose the location for the proposed wireless communication facility. Such justification shall include a written assessment of not less than two (2) alternative locations considered by the applicant and the reasons why said alternative locations were rejected as candidates. Further, pursuant to Section 17.65.070(1), the applicant shall provide written evidence that it has made a good faith effort to co-locate the proposed facility with an existing facility and indicate whether co-location is or is not feasible.
- L. FCC/Signal Standards. A report certified by a licensed radio frequency engineer stating that electromagnetic (EM) emissions from the proposed facility will not exceed standards set by the Federal Communications Commission (FCC).
- M. Map of Applicant's Existing Wireless Communication Facilities. A map and narrative description of all existing wireless communication facility sites used by the applicant which are located within the City, and any wireless communication

facility sites located outside of the City but which provide coverage within any part of the City.

- N. Coverage Assessment. A written report setting forth how and why the proposed wireless communication facility will improve the quality of the applicant's coverage. The report shall indicate the areas where coverage will be improved, and shall also include areas where the applicant currently has no coverage, a significant degradation in coverage or "dead zones". The report shall include a capacity analysis, a propagation analysis, ~~percentage of dropped calls~~ and/or a decibel level report to indicate the quality of service provided by the applicant both at present and after installation of the proposed wireless communication facility. Where an applicant is seeking a waiver pursuant to Section 17.65.090, the report shall also include a percentage of dropped calls at present.
- O. Licenses. Documentation certifying the applicant has obtained all applicable licenses or other approvals to provide the services proposed in connection with the application, whether required by the Federal Communications Commission, California Public Utilities Commission, or any other agency with authority over the proposed wireless communication facility.
- P. Application Fee. A fee in the amount established by the current fee schedule adopted by the City Council.
- Q. Waiver. Any application to develop a wireless communication facility that does not meet the general requirements and restrictions of this chapter shall include a request for a waiver, as set forth in Section 17.65.090 of this Code. A request for waiver may be submitted at a later time if it is determined that the proposed facility, as originally submitted, will not meet the requirements and restrictions of this chapter.

**17.65.060 Notices of Hearing/Determination.**

- A. Whenever this chapter requires a public hearing to be held before the Planning Commission, notices of hearing and determination shall be given as prescribed in Sections 17.62.100 and 17.62.110 of this Code, except that the notice shall be mailed to all persons whose names and addresses appear on the latest available assessment roll of the county, or are known to the planning director/chief planning official, as owning property within a distance of 500 feet from the exterior boundaries of the site.

**17.65.070 Location and Development Standards.**

A. Subject to the restrictions and requirements of this chapter, the following wireless communication facilities are allowed ("A") or prohibited ("P") in the following zones<sup>1</sup>:

Zone	New Roof-, Top- or Side-Mounted Facilities	Co-locations to Existing Roof-, Top- or Side-Mounted Facilities	Co-locations to Existing Standalone Facilities	New Standalone Facilities
A-1 (Agricultural)	A	A	A	P
A-2 (Agricultural)	A	A	A	P
E-½ (Estate)	A	A	A	P
E-1 (Estate)	A	A	A	P
E-2½ (Estate)	A	A	A	P
E-5 (Estate)	A	A	A	P
R-1-20,000 (Single-Family Residential)	A	A	A	P
R-1-10,000 (Single-Family Residential)	A	A	A	P
R-1-8,500 (Single-Family Residential)	A	A	A	P
R-1-7,500 (Single-Family Residential)	A	A	A	P
RD (Multiple-Family Residential)	A	A	A	P
R-TP (Trailer and Mobile Home Park)	A	A	A	A
R-R (Residential/ Recreation)	A	A	A	P
C-P (Commercial/ Administrative/ Professional)	A	A	A	A
C-1 (Neighborhood Commercial)	A	A	A	A
C-2 (Neighborhood Shopping Center)	A	A	A	A
C-3 (Central Business)	A	A	A	A
C-3A				

<sup>1</sup> Applicants wishing to locate wireless communications facility where it is otherwise prohibited by this Section must request a waiver as set forth in Section 17.65.090 below.

(Regional/Commercial Shopping Center)	A	A	A	A
C-4 (Highway Commercial)	A	A	A	A
C-5 (Specified Highway Commercial)	A	A	A	A
C-R (Commercial/Recreation)	A	A	A	P
TC-P (Town Center Professional)	A	A	A	P
TC-C (Town Center Commercial)	A	A	A	P
M-1 (Light Manufacturing)	A	A	A	A

B. **Setbacks/Lot Coverage/Non-Interference.** Except for wireless communication facilities to be located within public rights-of-way, no facility shall be located within or extend into the required setbacks established in the applicable zone and each facility shall also comply with all applicable lot coverage and building separation standards in the applicable zone. Notwithstanding the above, all new standalone facilities proposed to be located adjacent to a residential zone shall be set back from the nearest residential zone line by a minimum distance of one hundred fifty (150) feet, provided, however, that this minimum distance may be shorter than one hundred fifty (150) feet if the antennae on the new standalone facility are not visible from any adjacent residential zone from the shorter distance. The setback shall be measured from that part of the standalone facility that is closest to the nearest residential zone line (ie: the setback for a monopalm would be measured from the end of the branch closest to the residential zone line).

For facilities proposed to be located within public rights-of-way, no facility shall unreasonably interfere with usual and customary access or use by pedestrians, bicycles or vehicles, or negatively impact vehicular parking, circulation, line-of-sight or safety.

C. **Lights, Signals and Signs.** Wireless communication facility signals, lights or signs shall be designed so as to meet but not exceed minimum requirements for Federal Aviation Administration (FAA) or other applicable Federal or State regulations. Beacon lights shall not be included in the design of a facility unless required by the FAA. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on surrounding areas. Any other lighting of the facility that is not otherwise required is prohibited. No facility or its supporting equipment shall bear any sign, graphic or advertising device other than warning/safety signage or those required by this Code or other applicable law.

- D. Dish Antennae. Dish or parabolic antennae serving a wireless communication facility shall be situated so as to minimize visual impact without compromising their function.
- E. Equipment Structures. Ground level equipment, buildings, structures, and bases shall be concealed from public view.
  - 1. Accessory Equipment. All accessory equipment associated with the operation of a wireless communication facility on public property or in the public right-of-way shall be located inside an existing building, a new addition to an existing building or an underground vault, unless not technically feasible, at which point, accessory equipment may be located within a separate above-ground enclosure. Additional cost to the applicant alone shall not constitute technical infeasibility for purposes of this subsection. All accessory equipment associated with the operation of a wireless communication facility on private property may be located inside an existing building, a new addition to an existing building, an underground vault or a separate above-ground enclosure. No separate above-ground structure may exceed six (6) feet in height measured from the base of the foundation unless a greater height is necessary to maximize stealthing/architectural integration. All accessory equipment and structures, vaults or enclosures containing said equipment shall comply with the development standards of the zone in which the accessory equipment is located.
  - 2. Security. Accessory equipment shall be equipped with tamperproof cabinets and/or locks to mitigate safety siting issues. All wireless communication facilities shall be designed so as to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti and other conditions which would result in hazardous conditions, visual blight or attractive nuisances. Barbed wire or razor wire fencing is prohibited.
- F. Building Codes. Wireless communication facilities shall comply with all applicable building codes.
- G. Height. Notwithstanding any other height limitations contained in this Title 17, wireless communication facilities may not exceed the height limitations set forth below:
  - 1. Roof-mounted facilities (new or co-located) that are placed on an existing building, or top-mounted facilities (new or co-located) that are placed on an existing utility pole, water tank, or other similar structure may extend to, but shall not exceed, a height of eight (8) feet above the roof or top of the building or structure;

2. Side-mounted facilities (new or co-located) that are placed on an existing building, or on an existing utility pole, water tank, or other similar structure may not extend beyond the height of the existing building or structure;
3. Facilities co-located on an existing standalone facility may not extend beyond the height of the existing standalone facility; and
4. New standalone facilities may not exceed fifty-five feet (55') in height.

Any applicant that proposes to construct or co-locate a wireless communication facility that would exceed the applicable height limitations set forth above must request a waiver, pursuant to 17.65.090.

H. **Signal/Power Cables.** All wireless communication facility cables, wires or similar electrical transmission devices must be placed underground, be placed within the existing building or structure or in cableways, and must be properly stealthed to the maximum extent possible.

I. **Co-Location Requirements:**

1. **Co-location.** Where feasible, owners or operators shall share sites where wireless communication facilities are already located, thereby reducing the number of new facilities.
2. **Good Faith Effort.** All applicants shall demonstrate a good-faith effort to co-locate with existing facilities. The City may deny an approval to an applicant who has not demonstrated a good-faith effort to co-locate with an existing facility. Such good-faith effort includes written evidence by the applicant of:
  - a. Contact with all other licensed carriers for facilities within the area of proposed coverage.
  - b. Sharing non-proprietary technical information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

In the event the applicant determines that co-location is not feasible, the applicant shall include with its application a written statement of the reasons why co-location is not feasible. In the event the applicant determines that co-location is feasible, the applicant shall include provisions for co-location of its facility in its application.

3. **Numerical Limits on Co-location.** Not greater than three (3) facilities shall be co-located upon any single site.

4. All co-located facilities upon a site shall be architecturally coordinated and stealthed consistently with each other.
- J. **Parking.** Any wireless communication facility and associated accessory equipment shall not reduce the number of available parking spaces below the amount required by this Code, nor shall they obstruct any required drive aisle or corner cutback (ie: line-of-sight) area.
- K. **FCC Requirements.** All existing and future wireless communication facilities shall meet all applicable FCC emissions and exposure standards for electromagnetic (EM) radiation, and all required notices and signs shall be posted on the site as required by the FCC and PUC.
- L. **Noise.** All wireless communication facilities must comply with all existing noise ordinances of the City, but in no case shall any facility generate sound in excess of: (i) 50 dB CNEL at the property line of the nearest residential use, or (ii) 65 dB CNEL at the property line of the nearest non-residential use.

**17.65.080 Design Criteria.**

- A. **Pre-existing Character.** Wireless communication facility location and development shall preserve the pre-existing character of the site as much as feasible.
- B. **Landscaping and Vegetation.** Existing landscaping and vegetation, including trees, foliage and shrubs, whether or not utilized for stealthing, shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless removing, altering or disturbing the vegetation would result in less visual impact of the wireless communication facility on the surrounding area. Additional landscaping shall be planted where such vegetation is necessary to provide stealthing or to block the line of sight between a facility and adjacent residentially-zoned properties. If landscaping is removed to install the facility, landscaping shall be replaced on the site at a 1.5:1 ratio for the landscaping removed.
- C. **Stealthing.** All wireless communication facilities shall be stealthed from view to the greatest extent feasible, considering technological requirements, by means of placement, camouflage, color choice, architectural compatibility and other site characteristics. The applicant shall use the smallest and least visible antennae and supporting equipment possible to accomplish the owner/operator's coverage objectives. The applicant shall also integrate the wireless communication facility so that it is most compatible with the site (including buildings and structures thereon) and with the area surrounding the site.

**Blending/Stealth Methods:**

1. All standalone facilities, plus supporting equipment, shall be composed of non-reflective materials and painted a color generally matching the surroundings or background that minimizes their visibility, unless the FCC, FAA, or other government agency requires a different color. If a new standalone facility cannot be camouflaged in any other way, it shall be camouflaged as a tree (ie: monopalm, monopine), flag pole, light pole or similar structure. Lattice towers and guyed towers shall not be permitted as new standalone facilities, except by waiver granted pursuant to Section 17.65.090 below. Visible ground level equipment, structures and buildings shall be stealthed from view by landscape plantings, fencing or other appropriate stealthing means, and shall be treated with graffiti-resistant paint or coating.
  
2. Roof-mounted, top-mounted or side-mounted wireless communication facilities shall be constructed, painted, finished and fully stealthed to match the color and texture of the building, structure and/or wall on which they are mounted. Façade mounted equipment shall be camouflaged by incorporating the antenna into the design elements of the building or structure and shall be painted and textured to match the existing structure. If possible, antennae should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. In no case shall antennae extend more than twenty-four (24) inches out from the building face.  
  
Equipment buildings or stealthing enclosures mounted on a roof shall be architecturally consistent with the building, such as having a finish similar to the exterior building walls. Equipment for roof-, top- or side-mounted antennae may also be located within the building on which the antenna is mounted.
  
3. The City Council may, by resolution, promulgate additional regulations that further define and clarify the stealthing requirements of this subsection (C), consistent with the intent and purpose of this chapter.

**17.65.090 Waiver Request.**

- A. Waiver. A waiver of any of the location, design or other requirements and restrictions set forth in this chapter, may be granted by the Planning Commission, Chief Planning Official or Director of Public Works, whichever is applicable, upon the request of the applicant, where the applicant demonstrates that such restriction or requirement either:

1. Prohibits or has the effect of prohibiting the provision of wireless communication services pursuant to the United States Telecommunications Act of 1996 (47 U.S.C. §332(c)(7)(B)(i)(II)); or
  2. Unreasonably discriminates against the applicant when compared to other providers within the City who are providing functionally equivalent wireless communication services pursuant to the United States Telecommunications Act of 1996 (47 U.S.C. §332(c)(7)(B)(i)(I)).
- B. Independent Consultant. Any application for a waiver shall include the applicant's authorization for the City to retain the services of an independent, qualified consultant, at the applicant's expense, to evaluate the issues raised by the waiver request. The application shall include a monetary deposit, as set by resolution of the City Council, and an agreement by the applicant to reimburse the City for all reasonable costs associated with the consultation.

**17.65.100 Findings for Denial.**

Any decision to deny, in whole or in part, a conditional use permit, site plan review or encroachment permit to place, construct or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record.

- A. A conditional use permit, site plan review or encroachment permit, whichever is applicable, shall be approved unless it is determined that:
1. The applicant has failed to provide any information required in Section 17.65.050;
  2. The proposed wireless communication facility fails to comply with the criteria of Sections 17.65.070 and 17.65.080;
  3. In the case of a conditional use permit, the Planning Commission cannot make the findings required by Section 17.62.120 of this Code, in the case of a site plan review, the Chief Planning Official cannot make the findings required by Section 17.64.070 of this Code, or in the case of an encroachment permit, the Director of Public Works has grounds for denial pursuant to Section 11.08.120 of this Code.
  4. In the case of a new wireless communication facility, co-location at a site with an existing wireless communication facility is feasible.
- B. Any decision to deny, in whole or in part, a conditional use permit, site plan review or encroachment permit to place, construct or modify a wireless communication facility shall also indicate one of the following:

1. The applicant did not request a waiver from the requirements of this chapter; or
2. The applicant did request a waiver from the requirements of this chapter, but failed to present sufficient evidence that the requirements and restrictions of this chapter either have the effect of prohibiting wireless communication services or unreasonably discriminate against the applicant, pursuant to Section 17.65.090.

**17.65.110 Standard Conditions of Approval.**

In addition to conditions of approval which may be imposed in order to ensure compliance with this Code, the following standard conditions shall be imposed on any conditional use permit, site plan review or encroachment permit issued pursuant to this chapter:

- A. The applicant shall defend, indemnify and hold harmless the City and its officers, agents and employees from any claim, action or proceeding against the City or its officers, agents or employees to attack, set aside, void or annul any approval under this chapter. The applicant shall further defend, indemnify and hold harmless the City, its officers, agents and employees from any damages, liabilities, claims, suits, or causes of action of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the applicant, its agents, employees, licensees, contractors, subcontractors or independent contractors, pursuant to the approval issued by the City.
- B. For all wireless communication facilities located within the public right-of-way, the applicant shall remove or relocate, at applicant's expense and without expense to the City, any or all of its wireless communication facilities, by reason of any change in grade, alignment or width of any public right-of-way, installation of services, water pipes, drains, storm drains, lift stations, power or signal lines, traffic control devices, public right-of-way improvements, or any other construction, repair or improvement to the public right-of-way.
- C. Where a wireless communication facility site is capable of accommodating a co-located facility upon the same site, the owner or operator of the existing facility shall allow another carrier to co-locate its facilities and equipment thereon, provided the parties can mutually agree upon reasonable terms and conditions.
- D. The applicant shall, within ninety (90) days after commencing wireless communication facility operations ~~and annually thereafter~~, submit a written report to the City prepared by a qualified engineer, certifying that the facility continues to comply with all applicable federal, state and local regulations. ~~Thereafter, the applicant shall submit a written report to the City within thirty (30) days after~~

termination of any FCC, PUC or other Federal or State operating license for the wireless communication facility.

- E. Prior to commencing operations of a wireless communication facility, the owner or operator shall file with the city, and shall maintain in good standing throughout the term of its approval, a bond or other sufficient security in an amount equal to the cost of physically removing the wireless communication facility and all related facilities and equipment on the site, as determined by the Chief Planning Official or Director of Public Works, whichever is applicable. However, the city may not require the owner or operator to post a cash deposit or establish a cash escrow account as security under this subsection (E). In setting the amount of the bond or security, the Chief Planning Official or Director of Public Works, whichever is applicable, shall take into consideration the applicant's estimate of removal costs.

**17.65.120 Revocations.**

- A. At any time, the City may initiate proceedings to revoke an approval issued pursuant to this chapter.
- B. In addition to those provisions applicable to conditional use permits, site plan review and encroachment permits, the following shall also constitute grounds for revocation of an approval issued pursuant to this chapter:
  - 1. The owner or operator has abandoned the wireless communication facility; or,
  - 2. The wireless communication facility is no longer in compliance with its respective conditions of approval, with the requirements of this chapter, or with any other applicable law; or
  - 3. The wireless communication facility is no longer in compliance with applicable FCC or FAA regulations.
- C. The City Council may revoke a conditional use permit only after holding a noticed public hearing in accordance with Section 17.62.170 of this Code. The City Council may revoke a site plan review only by following those procedures set forth in Section 17.64.160 of this Code. The Director of Public Works may revoke an encroachment permit only by following those procedures set forth in Section 11.08.120 of this Code.
- D. After a final revocation decision has been rendered, the owner or operator of the wireless communication facility shall terminate operations and remove the wireless communication facility from the site in accordance with Section 17.65.150.

- E. Any decision of the Planning Commission or Chief Planning Official may be appealed pursuant to Section 17.65.040(~~C~~D) of this chapter. Any decision of the Director of Public Works may be appealed pursuant to Section 11.54.010 of this Code.

**17.65.130 Maintenance Requirements.**

All wireless communication facilities shall comply at all times with the following operation and maintenance standards:

- A. **Equipment.** All facilities, including antennae, mounts, wires, conduit, lighting, fences, shields, cabinets, poles and stealthing materials (including artificial foliage), shall be maintained by the owner or operator in good repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as practicable so as to maintain the facility's original appearance and to minimize occurrences of dangerous conditions or visual blight. All trash, debris, litter and graffiti shall be removed by the owner/operator within forty-eight (48) hours following notification from the City.
- B. **Landscaping.** Each facility and site which contains trees, foliage or other landscaping elements, whether or not used as stealthing, shall be maintained in good condition at all times, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as soon as practicable, and in accordance with the approved landscape plan.
- C. **Inspections.** Each owner or operator of a facility shall routinely and regularly inspect each site to ensure compliance with the standards set forth in this chapter. Further, the Chief Planning Official, Director of Public Works, or designee, may, upon providing reasonable advance notice to the owner or operator, conduct an inspection of a facility to verify compliance with the provisions of this chapter.
- D. To ensure compliance with this chapter, the owner or operator of a facility shall affix a label or marker to the facility in a prominent location that identifies the facility and provides a telephone number that may be called to report any damage, destruction, graffiti or vandalism to the facility.
- E. **Backup Generators.** Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 10:00 p.m. and 7:00 a.m.

**17.65.140 "Cells on Wheels" Prohibited/~~Emergency Deployment~~Exceptions.**

"Cells on wheels" or other mobile wireless communication facilities are prohibited in all zones, except for the following:

- A. Telecommunications Emergency: Throughout the duration of a telecommunications emergency declared by the City; or
- B. Special Events: During a special event within the City requiring enhanced telecommunications coverage, provided said event does not exceed three total days of operation within any three-month period and provided further that the applicant first obtains an administrative conditional use permit pursuant to Section 17.62.190 of this Code.

**17.65.150 Abandonment and Removal.**

- A. **Notice of Abandonment.** Where an owner or operator intends to abandon a wireless communication facility or portion thereof, the owner or operator shall notify the City by certified U.S. mail of the proposed date of abandonment or discontinuation of operations and the date the facility shall be removed. The notice shall be given not less than sixty (60) days prior to abandonment. Failure to give notice shall not affect the owner's or operator's obligation to remove an abandoned facility.
- B. **Removal Due to Utility Undergrounding.** All facilities located on a utility pole or structure shall be promptly removed at the owner's or operator's expense at the time a utility is scheduled to be undergrounded.
- C. **Removal.** Upon abandonment, revocation, or other lawful order of any federal, state or local agency to terminate facility operations, the owner or operator shall physically remove the facility or terminated/abandoned elements within thirty (30) days following the date of abandonment or termination of use. "Physically remove" shall include, but not be limited to:
  - 1. Removal of antennae, mounts, equipment cabinets and security barriers from the subject site;
  - 2. Transportation of the antennae, mounts, equipment cabinets and security barriers to an appropriate repository;
  - 3. Restoring the site to its prior condition except for retaining the landscaping improvements and any other improvements at the discretion of the Planning Director.
- D. **Stay.** The Chief Planning Official or Director of Public Works, whichever is applicable, may stay the requirement to remove an abandoned/terminated wireless communication facility upon written request and evidence submitted by the owner or operator that another wireless provider is in reasonable negotiations to acquire and use the wireless communication facility.

- E. If an owner or operator of an abandoned wireless communication facility fails to physically remove the facility and all related equipment within the time frames set forth herein, the City may do so at the owner/operator's expense. The city may pursue forfeiture of all or a part of any bond or other security posted by the owner/operator pursuant to Section 17.65.110(E).

**17.65.160 Violation/Penalty.**

- A. Any owner or operator of a wireless communication facility that violates the terms of this chapter shall be guilty of a misdemeanor, punishable in accordance with chapter 1.16 of this Code.
- B. Civil Action/Nuisance Abatement. In addition to the above, if an owner or operator of a wireless communication facility violates the terms of this chapter, the City may pursue any and all civil remedies available at law or equity, including but not limited to injunctive relief or initiation of a nuisance abatement action pursuant to chapter 8.40 of this Code.
- C. Costs of Action. All costs of taking action to enforce the terms of this chapter shall be the responsibility of the owner or operator of the wireless communication facility."

**SECTION 3.** Subsection (A) of Section 17.14.100 of Chapter 17.14 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.14 E-1 ESTATE RESIDENTIAL ZONE (SINGLE-FAMILY ESTATE)**

**17.14.100 Building height – Exceptions – Permitted projections above limit.**

- A. Penthouse or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, church steeples, flagpoles, chimneys, water tanks ~~or wireless masts~~ or similar structures may be erected above the height limits prescribed in this section and CMC 17.14.090 when approved by the commission; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures or any space above the height limit shall be allowed for the purpose of providing additional living or floor space.

....."

**SECTION 4.** Subsection (A) of Section 17.26.100 of Chapter 17.26 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.26 R-1-7500 RESIDENTIAL ZONE (SINGLE-FAMILY)**

**17.26.100 Building height – Exceptions – Permitted projections above limit.**

- A. Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, church steeples, flagpoles, chimneys, water tanks or ~~wireless masts~~ or similar structures may be erected above the height limits herein prescribed when approved by the commission; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures or any space above the height limit shall be allowed for the purpose of providing additional living or floor space.

....."

**SECTION 5.** Section 17.34.100 of Chapter 17.34 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.34 C-P COMMERCIAL, ADMINISTRATIVE AND PROFESSIONAL OFFICE ZONE**

**17.34.100 Building height – Exceptions – Permitted projections above limit.**

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, church steeples, flagpoles, roof signs when permitted in the zone, chimneys, water tanks or ~~wireless masts~~ or similar structures, when approved by the commission, may be erected above the height limits herein prescribed; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures, or other space above the height limit, shall be allowed for the purpose of providing additional floor space. All roof equipment and machinery shall be entirely screened from view with a screening device utilizing materials which are compatible to the materials used on the building."

**SECTION 6.** Section 17.54.100 of Chapter 17.54 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.54 M-1 LIGHT MANUFACTURING ZONE**

**17.54.100 Building height – Exceptions – Permitted projections above limit.**

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or

parapet walls, skylights, towers, church steeples, flagpoles, roof signs when permitted in the zone, chimneys, water tanks or wireless masts or similar structures, when approved by the commission, may be erected above the height limits herein prescribed; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures, or other space above the height limit, shall be allowed for the purpose of providing additional floor space. All roof equipment and machinery shall be entirely screened from view with a screening device utilizing materials which are compatible to the materials used on the building."

**SECTION 7.** Subsection (F) of Section 17.62.040 of Chapter 17.62 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.62 CONDITIONAL USE PERMITS**

**17.62.040 Uses permitted subject to conditional use permit – Additional uses.**

.....

- F. Radio and/or television antennas and/or transmitters (commercial); wireless communication facilities and similar equipment, CMC ~~17.62.193~~ **Chapter 17.65** shall apply; satellite or disc antennas shall be screened at ground level from adjacent properties in the manner provided for by the planning commission;

....."

**SECTION 8.** Effective Date Termination of Moratorium. This ordinance shall take effect thirty (30) days after its adoption. Upon the effective date, Interim Urgency Ordinance Nos. 10-1983, 10-1985 and 11-1986 shall be deemed superseded by this ordinance and the moratorium on new standalone wireless communication facilities enacted thereby shall no longer be of any force and effect.

**SECTION 9.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance 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 section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

**SECTION 10.** Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

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Field Code Changed

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**SECTION 11.** CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Field Code Changed

**ORDINANCE PASSED AND APPROVED** on this 5th day of July, 2011.

\_\_\_\_\_  
JOHN C. KING, MAYOR

ATTEST:

\_\_\_\_\_  
Kay Manning, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marco Martinez, City Attorney

I, Kay Manning, City Clerk, City of Covina, California, certify that the foregoing Ordinance was adopted by the City Council at a regular meeting of the City Council held on the 5th of July, 2011, and was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Kay Manning, City Clerk

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** June 21, 2011

**STAFF SOURCE:** Robert Nieuber, Community Development Director  
William J. Priest, Assistant City Attorney

**ITEM TITLE:** Introduce and waive further reading of Ordinance No. 11-1996 repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City's regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code.

---

**STAFF RECOMMENDATION:**

That the City Council:

1.) Introduce and waive further reading of Ordinance No. 11-1996 repealing Section 17.62.193 of Chapter 17.62 and adding Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City's regulations for wireless communication facilities and making various conforming changes to Title 17 (Zoning) of the Covina Municipal Code.

**FISCAL IMPACT:**

None.

**BACKGROUND/ANALYSIS:**

Recently, the City has considered a number of applications to locate new wireless communication facilities ("WCF's"). The City Council and members of the community have raised concerns about the compatibility of some of these facilities with residential neighborhoods and the potential significant aesthetic impacts to the community at large.

Of particular concern are standalone WCF's (a.k.a. "monopoles"). Even though many of these facilities have been disguised/stealthed as pine trees, palm trees or flag poles, the designs can still create an aesthetic and compatibility problem with the surrounding area. Furthermore, due to the heights needed (typically between 38' and 55') and the diameter of the support structure (typically between 24" and 36"), many of the facilities appear to be out of proportion to themselves and to surrounding structures, especially in residential neighborhoods.

Further, even though many wireless service providers have established networks, Staff does not foresee a reduction in the requests for new or expanded facilities. This is due to the fact that as wireless service providers add new services and increase their subscriber base, there is a need to add or expand facilities. Additionally, new providers may attempt to enter the Covina market and will need to build their network by installing facilities throughout the City.

The City's current WCF regulations were developed in 1998. In the last 13 years, the technological and legal landscape of telecommunications has changed significantly. The City's

regulations therefore require an update to address the aesthetic and other impacts of modern WCF's while remaining in compliance with evolving Federal and State law.

### **City Moratorium**

On December 7, 2010, the City Council adopted Interim Urgency Ordinance No. 10-1991 which temporarily prohibited the approval or issuance of any permit or land use entitlement to develop new standalone WCF's/monopole's within the City.

The moratorium was established to allow the City the opportunity to evaluate its existing policies regulating new standalone WCF's. The moratorium was premised on concerns that approval and development of new standalone WCF's in the City would have significant health, safety and welfare impacts to Covina residents given the lack of modern aesthetic and compatibility policies in the City's current regulations. The Council was concerned that continued development of new standalone WCF's would be incompatible with the structure and aesthetics of residential and commercial buildings. By adoption of two additional Interim Urgency Moratorium Ordinances (Nos. 11-1992 and 11-1993), the City Council has extended the moratorium until August 17, 2011.

Since the adoption of the moratorium, the Planning Division of the Community Development Department, the Public Works Department and the City Attorney's Office have worked diligently to prepare an ordinance which Staff believes addresses the City's policy concerns while also remaining in compliance with evolving Federal and State law.

### **The Ordinance**

Before you this evening is a draft ordinance which is designed to comply with applicable Federal and State law as well as address various issues that the City has encountered in processing WCF applications. The most significant changes made by the draft ordinance are as follows:

- Section 17.65.020 - Definitions: This Section provides updated definitions that better conform to modern technology (ie: "stealthed").

- Section 17.65.030 - Exemptions: The existing Code does not address WCF's which are subject to a City lease or license nor does it address public safety WCF's (ie: law enforcement dispatch systems). This draft ordinance expressly exempts these types of WCF's because a city's ability to regulate public safety WCF's is questionable and, where a city already "regulates" a WCF as a landlord, land use regulation would be duplicative.

- Section 17.65.040 - Approval Requirements: The existing Code regulates WCF's by CUP, except for certain "minor" WCF's, which are subject to an administrative CUP (a discretionary staff decision). These "minor" WCF's include "concealed antennas" and "multiple-use facilities" in commercial and light manufacturing zones, enclosed support equipment, co-located facilities and certain satellite dish antennas. Some of these terms have proven unclear in their application and are outdated in light of current law and planning practice. And, the existing Code does not address WCF's in the public right-of-way or certain co-located facilities regulated by State law (SB 1627).

In light of these concerns, the draft ordinance regulates all WCF's by one of three means:

- All WCF's sited on private property require a full CUP from the Planning Commission, except for a narrow class of co-located WCF's which, by statute (SB 1627), cannot be subject to a discretionary permit.
- For that narrow class of co-located WCF's under SB 1627, the draft ordinance regulates them by more limited administrative Site Plan Review through the Chief Planning Official.

The draft ordinance regulates more types of WCF's on private property through a full CUP than under the existing Code. For example, even concealed or co-located WCF's on private property would be subject to a full CUP, unless they meet the narrow exemption under SB 1627.

- All WCF's sited on public property or in the public right-of-way require an encroachment permit issued by the Director of Public Works. Staff believes that Public Works is in the better position to regulate these uses from a practical perspective. Further, recent case law suggests that an encroachment permit is more appropriate than a CUP to regulate these uses.
  - Section 17.65.050 – Application Contents: The draft ordinance substantially expands the list of information required for WCF applications in comparison to the existing Code. This includes a visual impact analysis, justification for selection of the proposed site, proof of good faith efforts to co-locate, a map of existing wireless coverage, etc. As a matter of administrative practice, staff already requires most of this information as part of the application process. By making these requirements explicit, legal enforceability is enhanced.
  - Section 17.65.070 – Location and Development Standards: The existing Code references “preferred” locations and “encouraged” types of WCF's. Such standards are vague and can be problematic to enforce. The draft ordinance uses more specific provisions such as:
    - A “matrix” of zoning locations where WCF's may locate. Under the existing Code, any type of WCF may locate anywhere in the City with a CUP, including new standalone WCF's (“monopoles”). In contrast, the draft ordinance prohibits new standalone WCF's in residential and downtown areas, unless the applicant qualifies for a “waiver” under Federal law (*see below*). WCF's on already existing buildings and structures (ie: utility poles, water tanks and co-locations on existing “monopoles”) would be allowed anywhere in the City, subject to a CUP or administrative site plan review, as applicable. Further, as a part of the application process, the applicant must show a good-faith effort to co-locate on an existing WCF. This is intended to encourage co-location and building on existing structures, thereby limiting the number of new “monopoles” constructed in the City, especially in residential areas.
    - The existing Code imposes a minimum distance requirement of 1,000 feet between monopoles. It also prohibits monopoles from locating within 300 feet from any arterial street. Staff has found both of these standards to be

impractical, typically resulting in the applicant seeking a variance. Alternatively, the applicant will attempt to comply with these distance standards resulting in a new monopole being located very close to residential areas. The draft ordinance is more “residentially-focused” as opposed to “street-focused”, requiring new standalone WCF’s to be at least 150 feet away from the nearest residential zone. They can be located closer than 150 feet if their antennae cannot be seen from a shorter distance. Therefore, for example, if a WCF is disguised as a light pole, and all antennae are internal to the structure, it may be located closer than 150 feet. On the other hand, a “monopine” with visible antennae would have to meet the full distance requirement. Staff believes that this strikes an appropriate balance between mitigating a monopole’s visual impacts to residential zones while allowing wireless carriers entry into the City, as required by Federal law. Under Federal law, a monopole’s signal strength and operating frequency cannot justify a greater distance requirement since those matters are regulated exclusively by the FCC.

- The existing Code limits the height of new standalone WCF’s to the building height limit of the underlying zone. However, this can prove problematic with respect to certain WCF’s. For example, in C-2 zones, the building height limitation is 35 feet, which would effectively prohibit monopoles in that area, likely resulting in a “waiver” request under Federal law (see below). On the other hand, in the C-3 and C-3A zones, the height limit is 75 feet, which would permit an inordinately tall monopole. The draft ordinance imposes a uniform height limit of 55 feet for any monopole in any zone where it is permitted. Further, the current Code does not impose an explicit height limit on roof-mounted “wireless masts” which could result in excessively high roof structures to house building-mounted WCF’s. The draft ordinance imposes a height limit of 8 feet above the roofline for building-mounted WCF’s. It also removes “wireless masts” from the current Code’s building height regulations as a conforming change.
- The draft ordinance contains other specific standards relating to co-location, equipment structures, lighting that are not addressed in the existing Code.

■ Section 17.65.080 – Design Criteria: The draft ordinance provides far more detailed regulations with regard to “stealth” of WCF’s in comparison with the current Code. It also does so with respect to landscaping standards. The draft ordinance further authorizes the City Council to promulgate additional “stealth” regulations by resolution as the technology advances in this field.

■ Section 17.65.090 – Waiver Request: Under the Federal Telecommunications Act of 1996, an applicant may site a WCF that otherwise violates local Code if it can demonstrate that it is filling a “significant gap” in its wireless coverage net by the “least intrusive means” available. The draft ordinance incorporates a “waiver” process by which an applicant may seek to invoke this Federal law. Most importantly, this section authorizes the City to hire an independent consultant to evaluate a “waiver” request, at the applicant’s cost. Such evaluations

are very technical and usually require retention of an outside consultant to assist the City in determining whether or not an applicant is truly entitled to a "waiver" under Federal law.

■ Section 17.65.100 – Findings for Denial: This section expressly lists grounds for denial of a WCF application. The current Code contains no such section but, instead, relies on the general provisions for CUP's. Under Federal law, a denial of an application must meet specific standards which are incorporated into the draft ordinance. The ordinance also authorizes denial of an application if co-location at another site is feasible.

■ Section 17.65.110 – Standard Conditions of Approval: This section provides standard conditions of approval, which include the following:

- The permittee must maintain a bond on file with the City to pay for removal of the WCF upon abandonment. While State law (SB 1627) prohibits the City from requiring a cash deposit or escrow, a bond is still permissible. The existing Code requires a bond as well, but the language in the draft ordinance has been updated.
- The permittee must allow another wireless provider to co-locate upon its WCF provided they can agree upon reasonable terms and conditions. There is no such provision in the existing Code. This is intended to encourage co-location without forcing a permittee to agree to unreasonable terms (likely prohibited under Federal law).
- The existing Code requires that the Planning Commission review the conditions of approval of each WCF every 10 years. The draft ordinance removes this requirement because meeting this requirement has been difficult for Planning staff due to other pressing duties and limited resources. If a WCF operator violates any of its CUP conditions, the City Council may add or amend conditions of approval in lieu of revoking a CUP.

This is not intended to be an exhaustive list and the City will continue to have the authority to impose additional conditions of approval as particular cases warrant.

#### **Proceedings at the Planning Commission**

This ordinance amends the City's regulations as to how land within Covina may be used for WCF's. Pursuant to California Government Code, Sections 65854 and 65855, the Planning Commission is required to conduct a noticed public hearing to consider any ordinance that, among other things, regulates by zoning the use, height, size or intensity of land, buildings or structures. After such a hearing, the Commission is required to make a written recommendation to the City Council regarding the ordinance which both (i) explains the reasons for the recommendation and (ii) makes a finding that that the proposed ordinance is consistent with the General Plan.

On June 14, 2011, the Planning Commission held the required noticed public hearing and adopted Resolution No. 2011-001 PC, finding that Ordinance No. 11-1996 is consistent with the

Covina General Plan and recommending that the City Council adopt Ordinance No. 11-1996. A copy of Resolution No 2011-001 PC is attached as Exhibit "A" and includes the text of Ordinance No. 11-1996.

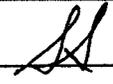
It is noted that the Planning Commission recommended two amendments to the draft ordinance during its hearing which are reflected in Sections 17.65.050(H) and 17.65.060 (pgs. 7 and 8). The amendments both require notice of a wireless CUP hearing to be mailed to property owners within a radius of 500 feet from the Site. Formerly, it was 300 feet.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

A. Resolution No. 2011-001 PC (Includes Ordinance No. 11-1996 as an attachment)

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**RESOLUTION NO. 2011-001 PC**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COVINA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF COVINA APPROVAL OF ORDINANCE NO. 11-1996, UPDATING THE CITY'S REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AND MAKING VARIOUS CONFORMING CHANGES TO THE COVINA ZONING CODE.**

WHEREAS, California Government Code, Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, City staff has prepared Ordinance No. 11-1996, which repeals Section 17.62.193 of Chapter 17.62 and adds Chapter 17.65 to Title 17 (Zoning) of the Covina Municipal Code in order to update the City's regulations for wireless communication facilities and makes various conforming changes to Title 17 (Zoning) of the Covina Municipal Code; and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report presented during a duly noticed public hearing for Ordinance No. 11-1996.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF COVINA DOES HEREBY RESOLVE AS FOLLOWS:

**SECTION 1:** Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made in the staff report and this Resolution, the Planning Commission of the City of Covina hereby recommends that the City Council adopt Ordinance No. 11-1996 entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, REPEALING SECTION 17.62.193 OF CHAPTER 17.62 AND ADDING CHAPTER 17.65 TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE IN ORDER TO UPDATE THE CITY'S REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AND MAKING VARIOUS CONFORMING CHANGES TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE THERETO" which is attached hereto as Attachment "A" and incorporated herein by reference.

**SECTION 2:** The Planning Commission finds that the above referenced ordinance is in the public interest and reasonably related to the public welfare because it updates the City's wireless communication facility regulations to best preserve community safety and aesthetics while maintaining compliance with evolving Federal and State telecommunications law.

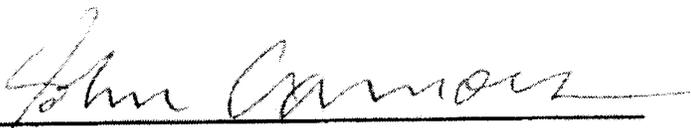
**SECTION 3:** The Planning Commission also finds that adoption of this ordinance is consistent with the City of Covina General Plan because (i) it continues to require that ground-structure-, or roof-mounted communications antennas meet reasonable City height, location, design

and screening standards and be unobtrusive and aesthetically harmonious with building location and/or site design, (ii) it balances the need for accommodating necessary growth of infrastructure to adequately serve existing and future Covina residents and visitors while preserving the predominantly low-rise character of Covina's residential and commercial areas, (iii) it requires that parcels developed with commercial or industrial uses incorporate appropriate separation and/or buffers when abutting residential properties, (iv) it maintains the City's variety of commercial, industrial and institutional uses to bolster economic development efforts while protecting properties (including the public right of way) from excessive encroachments, and (v) it maintains the physical condition, utilization and appearance of Covina's public rights-of-way including but not limited to sidewalks, medians, landscaping, parks and parking areas. Therefore, this ordinance furthers the objectives and policies of each element of the General Plan and does not obstruct their attainment.

SECTION 4: The ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) because the activity, which involves updating the City's wireless communications facility regulations will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. As specific wireless projects regulated by the ordinance are proposed to the City, appropriate CEQA analysis will be conducted on a project-specific basis.

SECTION 5: The Secretary shall certify to the adoption of this resolution.

APPROVED AND ADOPTED by the members of the Planning Commission of Covina this 14th day of June, 2011.

  
\_\_\_\_\_  
CHAIRMAN JOHN CONNORS  
CITY OF COVINA PLANNING COMMISSION

Resolution No. 2011-001  
June 14, 2011  
Page 3 of 3

I hereby certify that the foregoing is a true copy of a resolution adopted by the Planning Commission of the City of Covina at a regular meeting thereof held on the 14th day of June, 2011, by the following vote of the Planning Commission:

AYES: CONNORS, HODAPP, PATTERSON  
NOES: NONE  
ABSENT: CHADWICK, McMEEKIN  
ABSTAIN: NONE

  
COVINA PLANNING COMMISSION SECRETARY

**Attachment "A"**

**"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, REPEALING SECTION 17.62.193 OF CHAPTER 17.62 AND ADDING CHAPTER 17.65 TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE IN ORDER TO UPDATE THE CITY'S REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AND MAKING VARIOUS CONFORMING CHANGES TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE THERETO."**

[Attached behind this page]

**ORDINANCE NO. 11-1996**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, REPEALING SECTION 17.62.193 OF CHAPTER 17.62 AND ADDING CHAPTER 17.65 TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE IN ORDER TO UPDATE THE CITY'S REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AND MAKING VARIOUS CONFORMING CHANGES TO TITLE 17 (ZONING) OF THE COVINA MUNICIPAL CODE THERETO.**

**WHEREAS**, this Ordinance establishes updated regulations for the location, design and development of wireless communication facilities within the City, in order to address the negative secondary effects of said facilities, while remaining consistent with current Federal and State law; and

**WHEREAS**, the Planning Commission conducted a properly noticed public hearing on June 14, 2011 at which members of the public were afforded an opportunity to comment upon this Ordinance, the recommendations of staff and public testimony; and,

**WHEREAS**, after such hearing, the Planning Commission recommended that the City Council approve this Ordinance; and,

**WHEREAS**, the City Council conducted a properly noticed public hearing on \_\_\_\_\_, 20\_\_\_\_ at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff and public testimony.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 17.62.193 of Chapter 17.62 of Title 17 of the Covina Municipal Code is hereby repealed in its entirety.

**SECTION 2.** Chapter 17.65 is hereby added to Title 17 of the Covina Municipal Code and shall read as follows:

**"Chapter 17.65 WIRELESS COMMUNICATION FACILITIES**

**Sections:**

- 17.65.010 Intent and Purpose.**
- 17.65.020 Definitions.**
- 17.65.030 Applicability.**
- 17.65.040 Approval Requirements.**
- 17.65.050 Application Contents.**
- 17.65.060 Notices(s) of Hearing/Determination.**

- 17.65.070      Location and Development Standards.**
- 17.65.080      Design Criteria.**
- 17.65.090      Waiver Request**
- 17.65.100      Findings for Denial.**
- 17.65.110      Standard Conditions of Approval.**
- 17.65.120      Revocations.**
- 17.65.130      Maintenance Requirements.**
- 17.65.140      “Cells on Wheels” Prohibited/Emergency Deployment.**
- 17.65.150      Abandonment and Removal.**
- 17.65.160      Violation/Penalty.**

**17.65.010      Intent and Purpose.**

The purpose of these requirements is to provide placement, design, and screening criteria to regulate the establishment of wireless communication facilities to protect the public health, safety, general welfare, and quality of life in the City, while providing needed flexibility to wireless communication providers. Additionally, these regulations protect the visual aesthetics of the community through the promotion of stealthing techniques that architecturally integrate or camouflage wireless communication facilities with their surroundings. This chapter shall be applied on a competitively neutral and nondiscriminatory basis to all applicants for wireless communication facilities.

**17.65.020      Definitions.**

For the purposes of this chapter, the following terms shall have the following meanings:

“Applicant” means a provider of wireless communication services who applies to the City to install a wireless communication facility within the City.

“Abandonment” means inoperative or unused for a period of one hundred-eighty (180) calendar days or more.

“Antenna” means that part of a wireless communication facility designed to transmit or receive radio frequency or electromagnetic signals, and includes panels, wires, poles, rods, dishes, or similar devices.

“Cell site” or “site” means a parcel of land (or portion thereof) or public right-of-way location that contains a wireless communication facility(ies) including any antenna, support structure, accessory building, or other components associated with, or ancillary to, the use of the wireless communication facility.

“Co-location” means the sharing of one site and infrastructure for the purpose of locating two (2) or more wireless communication facilities.

“Mount” means the structure or surface upon which antennae are mounted.

“Project site” means the site on which an applicant proposes to construct a wireless communication facility, including any antenna, mount or support structure, accessory building, or other components associated with, or ancillary to, the use of the wireless communication facility.

“Roof- or top-mounted” means a wireless communication facility where the antennae are mounted on the roof or top of an existing building or structure that serves a purpose other than primarily as a standalone facility (ie: utility pole or water tank).

“Side-mounted” means a wireless communication facility where the antennae are mounted on the side of an existing building or structure that serves a purpose other than primarily as a standalone facility (ie: utility pole or water tank).

“Site plan review” means the development review process as set forth in chapter 17.64 of this Code.

“Standalone facility” means a wireless communication facility where the antennae are mounted to a dedicated ground-based structure primarily designed to elevate the antennae to a usable altitude (ie: monopole, cell tower, etc.) There shall be a rebuttable presumption that a newly constructed ground-based structure containing a wireless communication facility is a standalone facility, even if the structure should serve other purposes (ie: light pole, flag pole, etc.)

“Stealthed” means: (1) camouflaged, concealed or otherwise not identifiable as a wireless communication facility by a casual observer and (2) is aesthetically compatible and blends with the site and immediate surroundings. Stealthing may be achieved by any state-of-the-art means or combination of means including, but not limited to, the use of camouflage, textures, screening, painting or architectural integration with the surroundings (e.g., steeple or bell tower within a church, unobtrusive penthouse on a roof, false rock, false structure or a tree amongst other trees.) For purposes of this definition, “stealth” or “stealthed” does not refer to and is not intended to be used as a trade name.

“Wireless Communication Facility” or “Facility” means a facility for the provision of wireless communication services.

#### **17.65.030 Applicability.**

- A. Except as set forth below, the procedures and rules set forth in this chapter are applicable to all wireless communication facilities built, installed or modified within all zones of the City of Covina after the date this chapter is effective, including all wireless communication facilities built, installed or modified within all City public rights-of-way.
- B. This chapter shall not apply to the following:

1. Sites where the construction, installation or modification of a wireless communication facility is subject to a lease, license or other agreement with the City; or
2. Public safety communications facilities owned or operated by the City or any other public agency (e.g.: Sheriff, Fire, Federal or State safety authorities).

**17.65.040 Approval Requirements.**

- A. No wireless communication facility shall be built, installed or modified, in the public right-of-way or on any public property in any zone, without first applying for and obtaining an encroachment permit from the Director of Public Works. The Director of Public Works shall review all encroachment permit applications in accordance with Chapter 11.08 of this Code.
- B. Except as set forth in subsection (C) below, no wireless communication facility shall be built, installed or modified, on any private property within the City in any zone (including the City's right-of-way), without first applying for and obtaining a conditional use permit from the Planning Commission. The Planning Commission shall hear all conditional use permit applications at a public hearing in accordance with chapter 17.62 of this Code.
- C. Notwithstanding subsection (B) above, applicants requesting approval for a new co-location to an existing wireless communication facility located on private property ("base facility") shall only be required to obtain site plan review from the Chief Planning Official, pursuant to chapter 17.64 of this Code, if all of the following apply:
  1. the base facility has already received a conditional use permit;
  2. the base facility has already been reviewed and approved by the City pursuant to CEQA, resulting in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report (statutory and categorical exemptions for the base facility are insufficient);
  3. the new co-location does not require a subsequent or supplemental environmental impact report due to substantial changes to the base facility, its site, its circumstances, or new information; and
  4. the new co-location incorporates all mitigation measures that were required by CEQA for the base facility.
- D. Any decision shall be subject to appeal pursuant to the following provisions of this Code:

- |     |  |                   |
|-----|--|-------------------|
| (1) | Decision of the Planning Commission with respect to a conditional use permit (to the City Council):    | Section 17.62.130 |
| (2) | Decision of the Chief Planning Official with respect to site plan review (to the Planning Commission): | Section 17.64.080 |
| (3) | Decision of the Director of Public Works (to the City Manager)   | Section 11.54.010 |

**17.65.050 Application Contents.**

Applications for the approval of wireless communication facilities shall include that information required by this Code for the applicable land use approval (conditional use permit, site plan review or encroachment permit), plus the following information:

- A. **Contact Information.** The applicant shall submit and maintain current at all times basic contact information of a form to be supplied by the City. The applicant shall notify City of any changes to the information submitted within fifteen (15) calendar days following any such change. This information shall include, but is not limited to the following:
  - 1. The identity, including name, address and telephone number of the owner of the wireless communication facility including official identification numbers and FCC certifications and, if different from the owner, the identity of the person or entity responsible for operating the wireless communication facility;
  - 2. Name, address and telephone number of a local contact person for emergencies and type of service provided.
  
- B. **Location and Zoning Information.** Location of the project site, including the address and the names of two nearest cross streets, as well as the present zone designation of the project site.
  
- C. **Description of the Proposed Project.** A description of the proposed wireless communication facility, including whether the project is a new facility, a co-located facility, or a modification to an existing facility. If a new facility, the applicant shall include an explanation of whether the new facility will be designed to accommodate future co-locations. The applicant shall provide a written description of the stealthing measures the applicant proposes to use to aesthetically blend the facility to the immediate surroundings. This should include at minimum a description of proposed stealthing techniques, and the

textures and colors to be used in the stealthing process. The applicant shall also indicate the proposed height of the facility.

- D. Noise. A description of the facilities and/or equipment within the applicant's project that are expected to induce or generate noise, as well as anticipated noise levels of said facilities and/or equipment.
- E. Wireless Communication Facility Site Plan. Fifteen (15) copies of a wireless communication facility site plan, at a scale of 1"=20' or larger and including the following:
  - 1. The proposed wireless communication facility. If the proposed facility is to be located within or on an existing building, or involves construction of a building for housing accessory equipment, the application shall also include a floor plan showing the location of the proposed facility relative to the existing building and/or of the accessory equipment building to be constructed;
  - 2. Location of lot lines, streets (with street names), easements, and all structures and improvements, including accessory equipment, underground utilities and support structures, existing and proposed;
  - 3. Slopes, contours, trees and other pertinent physical features of the site, existing and proposed;
  - 4. All exterior lighting on the site, existing and proposed;
  - 5. Location, use and approximate distance from property lines of the nearest structures on all properties abutting the site; and
  - 6. The location of parking for maintenance personnel.
- F. Landscape Plan. Fifteen (15) copies of a landscape plan for the site, at a scale of 1/8"=1' or larger and including the following:
  - 1. Existing trees with trunk diameter over six inches (6") at four feet (4') above grade or fifteen feet (15') in overall height, within fifty feet (50') of the proposed wireless communication facility;
  - 2. Species, diameter and condition of all such trees;
  - 3. Final disposition of all existing trees; and
  - 4. Species, location and sizes of trees and other vegetation proposed to be installed with the wireless communication facility.

- G. Site Photographs. Current color photographs of the site and its surroundings.
- H. Proximity Map and Information. For applications for a conditional use permit, a map depicting all properties (with street addresses) within five hundred (500) feet of the project site, a list of the names and addresses of all current owners of the depicted properties, according to the last equalized assessor's roll, plus an affidavit indicating that the list of names and addresses described above is accurate, based upon due and diligent inquiry of the applicant. The proximity map and information set forth above shall not be required for an application for site plan review.
- I. Visual Impact Analysis. A visual impact analysis (which shall include photomontage, photo simulation or similar technique) and a building elevation plan which demonstrate, from all four primary directions (north, south, east and west) the potential visual impacts of the proposed wireless communication facility. Consideration shall be given to views from public areas as well as from private property. The analysis shall assess the cumulative impacts of the proposed wireless communication facility and other existing wireless communication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed wireless communication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant. The visual impact analysis shall also include a signed certification by the applicant that the proposed facility, when built, will appear as indicated in the visual impact analysis.
- J. Wireless Communication Facility Mount. A description of whether the proposed facility is a co-located facility, standalone facility, roof/top-mounted, or side-mounted.
- K. Justification for Location/Co-location. The applicant must provide justification as to why the applicant chose the location for the proposed wireless communication facility. Such justification shall include a written assessment of not less than two (2) alternative locations considered by the applicant and the reasons why said alternative locations were rejected as candidates. Further, pursuant to Section 17.65.070(I), the applicant shall provide written evidence that it has made a good faith effort to co-locate the proposed facility with an existing facility and indicate whether co-location is or is not feasible.
- L. FCC/Signal Standards. A report certified by a licensed radio frequency engineer stating that electromagnetic (EM) emissions from the proposed facility will not exceed standards set by the Federal Communications Commission (FCC).
- M. Map of Applicant's Existing Wireless Communication Facilities. A map and narrative description of all existing wireless communication facility sites used by the applicant which are located within the City, and any wireless communication

facility sites located outside of the City but which provide coverage within any part of the City.

- N. Coverage Assessment. A written report setting forth how and why the proposed wireless communication facility will improve the quality of the applicant's coverage. The report shall indicate the areas where coverage will be improved, and shall also include areas where the applicant currently has no coverage, a significant degradation in coverage or "dead zones". The report shall include a capacity analysis, a propagation analysis, percentage of dropped calls and/or a decibel level report to indicate the quality of service provided by the applicant both at present and after installation of the proposed wireless communication facility.
- O. Licenses. Documentation certifying the applicant has obtained all applicable licenses or other approvals to provide the services proposed in connection with the application, whether required by the Federal Communications Commission, California Public Utilities Commission, or any other agency with authority over the proposed wireless communication facility.
- P. Application Fee. A fee in the amount established by the current fee schedule adopted by the City Council.
- Q. Waiver. Any application to develop a wireless communication facility that does not meet the general requirements and restrictions of this chapter shall include a request for a waiver, as set forth in Section 17.65.090 of this Code. A request for waiver may be submitted at a later time if it is determined that the proposed facility, as originally submitted, will not meet the requirements and restrictions of this chapter.

#### **17.65.060 Notices of Hearing/Determination.**

- A. Whenever this chapter requires a public hearing to be held before the Planning Commission, notices of hearing and determination shall be given as prescribed in Sections 17.62.100 and 17.62.110 of this Code, except that the notice shall be mailed to all persons whose names and addresses appear on the latest available assessment roll of the county, or are known to the planning director/chief planning official, as owning property within a distance of 500 feet from the exterior boundaries of the site.

#### **17.65.070 Location and Development Standards.**

- A. Subject to the restrictions and requirements of this chapter, the following wireless communication facilities are allowed ("A") or prohibited ("P") in the following zones<sup>1</sup>:

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<sup>1</sup> Applicants wishing to locate wireless communications facility where it is otherwise prohibited by this Section must request a waiver as set forth in Section 17.65.090 below.

Zone	New Top- Mounted Facilities	Roof-, or Side- Mounted Facilities	Co-locations to Existing Top- Mounted Facilities	Roof-, or Side- Mounted Facilities	Co-locations to Existing Standalone Facilities	New Standalone Facilities
A-1 (Agricultural)	A		A		A	P
A-2 (Agricultural)	A		A		A	P
E-½ (Estate)	A		A		A	P
E-1 (Estate)	A		A		A	P
E-2½ (Estate)	A		A		A	P
E-5 (Estate)	A		A		A	P
R-1-20,000 (Single-Family Residential)	A		A		A	P
R-1-10,000 (Single-Family Residential)	A		A		A	P
R-1-8,500 (Single-Family Residential)	A		A		A	P
R-1-7,500 (Single-Family Residential)	A		A		A	P
RD (Multiple-Family Residential)	A		A		A	P
R-TP (Trailer and Mobile Home Park)	A		A		A	A
R-R (Residential/Recreation)	A		A		A	P
C-P (Commercial/Administrative/Professional)	A		A		A	A
C-1 (Neighborhood Commercial)	A		A		A	A
C-2 (Neighborhood Shopping Center)	A		A		A	A
C-3 (Central Business)	A		A		A	A
C-3A (Regional/Commercial Shopping Center)	A		A		A	A
C-4 (Highway Commercial)	A		A		A	A
C-5 (Specified Highway Commercial)	A		A		A	A
C-R						

(Commercial/ Recreation)	A	A	A	P
TC-P (Town Center Professional)	A	A	A	P
TC-C (Town Center Commercial)	A	A	A	P
M-1 (Light Manufacturing)	A	A	A	A

B. **Setbacks/Lot Coverage/Non-Interference.** Except for wireless communication facilities to be located within public rights-of-way, no facility shall be located within or extend into the required setbacks established in the applicable zone and each facility shall also comply with all applicable lot coverage and building separation standards in the applicable zone. Notwithstanding the above, all new standalone facilities proposed to be located adjacent to a residential zone shall be set back from the nearest residential zone line by a minimum distance of one hundred fifty (150) feet, provided, however, that this minimum distance may be shorter than one hundred fifty (150) feet if the antennae on the new standalone facility are not visible from any adjacent residential zone from the shorter distance. The setback shall be measured from that part of the standalone facility that is closest to the nearest residential zone line (ie: the setback for a monopalm would be measured from the end of the branch closest to the residential zone line).

For facilities proposed to be located within public rights-of-way, no facility shall unreasonably interfere with usual and customary access or use by pedestrians, bicycles or vehicles, or negatively impact vehicular parking, circulation, line-of-sight or safety.

C. **Lights, Signals and Signs.** Wireless communication facility signals, lights or signs shall be designed so as to meet but not exceed minimum requirements for Federal Aviation Administration (FAA) or other applicable Federal or State regulations. Beacon lights shall not be included in the design of a facility unless required by the FAA. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on surrounding areas. Any other lighting of the facility that is not otherwise required is prohibited. No facility or its supporting equipment shall bear any sign, graphic or advertising device other than warning/safety signage or those required by this Code or other applicable law.

D. **Dish Antennae.** Dish or parabolic antennae serving a wireless communication facility shall be situated so as to minimize visual impact without compromising their function.

E. **Equipment Structures.** Ground level equipment, buildings, structures, and bases shall be concealed from public view.

1. **Accessory Equipment.** All accessory equipment associated with the operation of a wireless communication facility on public property or in the public right-of-way shall be located inside an existing building, a new addition to an existing building or an underground vault, unless not technically feasible, at which point, accessory equipment may be located within a separate above-ground enclosure. Additional cost to the applicant alone shall not constitute technical infeasibility for purposes of this subsection. All accessory equipment associated with the operation of a wireless communication facility on private property may be located inside an existing building, a new addition to an existing building, an underground vault or a separate above-ground enclosure. No separate above-ground structure may exceed six (6) feet in height measured from the base of the foundation unless a greater height is necessary to maximize stealthing/architectural integration. All accessory equipment and structures, vaults or enclosures containing said equipment shall comply with the development standards of the zone in which the accessory equipment is located.
  2. **Security.** Accessory equipment shall be equipped with tamperproof cabinets and/or locks to mitigate safety siting issues. All wireless communication facilities shall be designed so as to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti and other conditions which would result in hazardous conditions, visual blight or attractive nuisances. Barbed wire or razor wire fencing is prohibited.
- F. **Building Codes.** Wireless communication facilities shall comply with all applicable building codes.
- G. **Height.** Notwithstanding any other height limitations contained in this Title 17, wireless communication facilities may not exceed the height limitations set forth below:
1. Roof-mounted facilities (new or co-located) that are placed on an existing building, or top-mounted facilities (new or co-located) that are placed on an existing utility pole, water tank, or other similar structure may extend to, but shall not exceed, a height of eight (8) feet above the roof or top of the building or structure;
  2. Side-mounted facilities (new or co-located) that are placed on an existing building, or on an existing utility pole, water tank, or other similar structure may not extend beyond the height of the existing building or structure;
  3. Facilities co-located on an existing standalone facility may not extend beyond the height of the existing standalone facility; and

4. New standalone facilities may not exceed fifty-five feet (55') in height.

Any applicant that proposes to construct or co-locate a wireless communication facility that would exceed the applicable height limitations set forth above must request a waiver, pursuant to 17.65.090.

- H. **Signal/Power Cables.** All wireless communication facility cables, wires or similar electrical transmission devices must be placed underground, be placed within the existing building or structure or in cableways, and must be properly stealthed to the maximum extent possible.

- I. **Co-Location Requirements:**

1. **Co-location.** Where feasible, owners or operators shall share sites where wireless communication facilities are already located, thereby reducing the number of new facilities.
2. **Good Faith Effort.** All applicants shall demonstrate a good-faith effort to co-locate with existing facilities. The City may deny an approval to an applicant who has not demonstrated a good-faith effort to co-locate with an existing facility. Such good-faith effort includes written evidence by the applicant of:
  - a. Contact with all other licensed carriers for facilities within the area of proposed coverage.
  - b. Sharing non-proprietary technical information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

In the event the applicant determines that co-location is not feasible, the applicant shall include with its application a written statement of the reasons why co-location is not feasible. In the event the applicant determines that co-location is feasible, the applicant shall include provisions for co-location of its facility in its application.

3. **Numerical Limits on Co-location.** Not greater than three (3) facilities shall be co-located upon any single site.
  4. All co-located facilities upon a site shall be architecturally coordinated and stealthed consistently with each other.
- J. **Parking.** Any wireless communication facility and associated accessory equipment shall not reduce the number of available parking spaces below the

amount required by this Code, nor shall they obstruct any required drive aisle or corner cutback (ie: line-of-sight) area.

- K. **FCC Requirements.** All existing and future wireless communication facilities shall meet all applicable FCC emissions and exposure standards for electromagnetic (EM) radiation, and all required notices and signs shall be posted on the site as required by the FCC and PUC.
- L. **Noise.** All wireless communication facilities must comply with all existing noise ordinances of the City, but in no case shall any facility generate sound in excess of: (i) 50 dB CNEL at the property line of the nearest residential use, or (ii) 65 dB CNEL at the property line of the nearest non-residential use.

**17.65.080 Design Criteria.**

- A. **Pre-existing Character.** Wireless communication facility location and development shall preserve the pre-existing character of the site as much as feasible.
- B. **Landscaping and Vegetation.** Existing landscaping and vegetation, including trees, foliage and shrubs, whether or not utilized for stealthing, shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless removing, altering or disturbing the vegetation would result in less visual impact of the wireless communication facility on the surrounding area. Additional landscaping shall be planted where such vegetation is necessary to provide stealthing or to block the line of sight between a facility and adjacent residentially-zoned properties. If landscaping is removed to install the facility, landscaping shall be replaced on the site at a 1.5:1 ratio for the landscaping removed.
- C. **Stealthing.** All wireless communication facilities shall be stealthed from view to the greatest extent feasible, considering technological requirements, by means of placement, camouflage, color choice, architectural compatibility and other site characteristics. The applicant shall use the smallest and least visible antennae and supporting equipment possible to accomplish the owner/operator's coverage objectives. The applicant shall also shall integrate the wireless communication facility so that it is most compatible with the site (including buildings and structures thereon) and with the area surrounding the site.

**Blending/Stealthing Methods:**

- 1. All standalone facilities, plus supporting equipment, shall be composed of non-reflective materials and painted a color generally matching the surroundings or background that minimizes their visibility, unless the FCC, FAA, or other government agency requires a different color. If a new standalone facility cannot be camouflaged in any other way, it shall

be camouflaged as a tree (ie: monopalm, monopine), flag pole, light pole or similar structure. Lattice towers and guyed towers shall not be permitted as new standalone facilities, except by waiver granted pursuant to Section 17.65.090 below. Visible ground level equipment, structures and buildings shall be stealthed from view by landscape plantings, fencing or other appropriate stealthing means, and shall be treated with graffiti-resistant paint or coating.

2. Roof-mounted, top-mounted or side-mounted wireless communication facilities shall be constructed, painted, finished and fully stealthed to match the color and texture of the building, structure and/or wall on which they are mounted. Façade mounted equipment shall be camouflaged by incorporating the antenna into the design elements of the building or structure and shall be painted and textured to match the existing structure. If possible, antennae should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. In no case shall antennae extend more than twenty-four (24) inches out from the building face.

Equipment buildings or stealthing enclosures mounted on a roof shall be architecturally consistent with the building, such as having a finish similar to the exterior building walls. Equipment for roof-, top- or side-mounted antennae may also be located within the building on which the antenna is mounted.

3. The City Council may, by resolution, promulgate additional regulations that further define and clarify the stealthing requirements of this subsection (C), consistent with the intent and purpose of this chapter.

**17.65.090 Waiver Request.**

A. Waiver. A waiver of any of the location, design or other requirements and restrictions set forth in this chapter, may be granted by the Planning Commission, Chief Planning Official or Director of Public Works, whichever is applicable, upon the request of the applicant, where the applicant demonstrates that such restriction or requirement either:

1. Prohibits or has the effect of prohibiting the provision of wireless communication services pursuant to the United States Telecommunications Act of 1996 (47 U.S.C. §332(c)(7)(B)(i)(II)); or
2. Unreasonably discriminates against the applicant when compared to other providers within the City who are providing functionally equivalent wireless communication services pursuant to the United States Telecommunications Act of 1996 (47 U.S.C. §332(c)(7)(B)(i)(I)).

- B. Independent Consultant. Any application for a waiver shall include the applicant's authorization for the City to retain the services of an independent, qualified consultant, at the applicant's expense, to evaluate the issues raised by the waiver request. The application shall include a monetary deposit, as set by resolution of the City Council, and an agreement by the applicant to reimburse the City for all reasonable costs associated with the consultation.

**17.65.100 Findings for Denial.**

Any decision to deny, in whole or in part, a conditional use permit, site plan review or encroachment permit to place, construct or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record.

- A. A conditional use permit, site plan review or encroachment permit, whichever is applicable, shall be approved unless it is determined that:
1. The applicant has failed to provide any information required in Section 17.65.050;
  2. The proposed wireless communication facility fails to comply with the criteria of Sections 17.65.070 and 17.65.080;
  3. In the case of a conditional use permit, the Planning Commission cannot make the findings required by Section 17.62.120 of this Code, in the case of a site plan review, the Chief Planning Official cannot make the findings required by Section 17.64.070 of this Code, or in the case of an encroachment permit, the Director of Public Works has grounds for denial pursuant to Section 11.08.120 of this Code.
  4. In the case of a new wireless communication facility, co-location at a site with an existing wireless communication facility is feasible.
- B. Any decision to deny, in whole or in part, a conditional use permit, site plan review or encroachment permit to place, construct or modify a wireless communication facility shall also indicate one of the following:
1. The applicant did not request a waiver from the requirements of this chapter; or
  2. The applicant did request a waiver from the requirements of this chapter, but failed to present sufficient evidence that the requirements and restrictions of this chapter either have the effect of prohibiting wireless

communication services or unreasonably discriminate against the applicant, pursuant to Section 17.65.090.

**17.65.110 Standard Conditions of Approval.**

In addition to conditions of approval which may be imposed in order to ensure compliance with this Code, the following standard conditions shall be imposed on any conditional use permit, site plan review or encroachment permit issued pursuant to this chapter:

- A. The applicant shall defend, indemnify and hold harmless the City and its officers, agents and employees from any claim, action or proceeding against the City or its officers, agents or employees to attack, set aside, void or annul any approval under this chapter. The applicant shall further defend, indemnify and hold harmless the City, its officers, agents and employees from any damages, liabilities, claims, suits, or causes of action of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the applicant, its agents, employees, licensees, contractors, subcontractors or independent contractors, pursuant to the approval issued by the City.
- B. For all wireless communication facilities located within the public right-of-way, the applicant shall remove or relocate, at applicant's expense and without expense to the City, any or all of its wireless communication facilities, by reason of any change in grade, alignment or width of any public right-of-way, installation of services, water pipes, drains, storm drains, lift stations, power or signal lines, traffic control devices, public right-of-way improvements, or any other construction, repair or improvement to the public right-of-way.
- C. Where a wireless communication facility site is capable of accommodating a co-located facility upon the same site, the owner or operator of the existing facility shall allow another carrier to co-locate its facilities and equipment thereon, provided the parties can mutually agree upon reasonable terms and conditions.
- D. The applicant shall, within ninety (90) days after commencing wireless communication facility operations and annually thereafter, submit a written report to the City prepared by a qualified engineer, certifying that the facility continues to comply with all applicable federal, state and local regulations.
- E. Prior to commencing operations of a wireless communication facility, the owner or operator shall file with the city, and shall maintain in good standing throughout the term of its approval, a bond or other sufficient security in an amount equal to the cost of physically removing the wireless communication facility and all related facilities and equipment on the site, as determined by the Chief Planning Official or Director of Public Works, whichever is applicable. However, the city may not require the owner or operator to post a cash deposit or establish a cash

escrow account as security under this subsection (E). In setting the amount of the bond or security, the Chief Planning Official or Director of Public Works, whichever is applicable, shall take into consideration the applicant's estimate of removal costs.

**17.65.120 Revocations.**

- A. At any time, the City may initiate proceedings to revoke an approval issued pursuant to this chapter.
- B. In addition to those provisions applicable to conditional use permits, site plan review and encroachment permits, the following shall also constitute grounds for revocation of an approval issued pursuant to this chapter:
  - 1. The owner or operator has abandoned the wireless communication facility; or,
  - 2. The wireless communication facility is no longer in compliance with its respective conditions of approval, with the requirements of this chapter, or with any other applicable law; or
  - 3. The wireless communication facility is no longer in compliance with applicable FCC or FAA regulations.
- C. The City Council may revoke a conditional use permit only after holding a noticed public hearing in accordance with Section 17.62.170 of this Code. The City Council may revoke a site plan review only by following those procedures set forth in Section 17.64.160 of this Code. The Director of Public Works may revoke an encroachment permit only by following those procedures set forth in Section 11.08.120 of this Code.
- D. After a final revocation decision has been rendered, the owner or operator of the wireless communication facility shall terminate operations and remove the wireless communication facility from the site in accordance with Section 17.65.150.
- E. Any decision of the Planning Commission or Chief Planning Official may be appealed pursuant to Section 17.65.040(C) of this chapter. Any decision of the Director of Public Works may be appealed pursuant to Section 11.54.010 of this Code.

**17.65.130 Maintenance Requirements.**

All wireless communication facilities shall comply at all times with the following operation and maintenance standards:

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- A. **Equipment.** All facilities, including antennae, mounts, wires, conduit, lighting, fences, shields, cabinets, poles and stealthing materials (including artificial foliage), shall be maintained by the owner or operator in good repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as practicable so as to maintain the facility's original appearance and to minimize occurrences of dangerous conditions or visual blight. All trash, debris, litter and graffiti shall be removed by the owner/operator within forty-eight (48) hours following notification from the City.
- B. **Landscaping.** Each facility and site which contains trees, foliage or other landscaping elements, whether or not used as stealthing, shall be maintained in good condition at all times, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as soon as practicable, and in accordance with the approved landscape plan.
- C. **Inspections.** Each owner or operator of a facility shall routinely and regularly inspect each site to ensure compliance with the standards set forth in this chapter. Further, the Chief Planning Official, Director of Public Works, or designee, may, upon providing reasonable advance notice to the owner or operator, conduct an inspection of a facility to verify compliance with the provisions of this chapter.
- D. To ensure compliance with this chapter, the owner or operator of a facility shall affix a label or marker to the facility in a prominent location that identifies the facility and provides a telephone number that may be called to report any damage, destruction, graffiti or vandalism to the facility.
- E. **Backup Generators.** Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 10:00 p.m. and 7:00 a.m.

**17.65.140 "Cells on Wheels" Prohibited/Emergency Deployment.**

"Cells on wheels" or other mobile wireless communication facilities are prohibited in all zones, except for the duration of a telecommunications emergency declared by the City.

**17.65.150 Abandonment and Removal.**

- A. **Notice of Abandonment.** Where an owner or operator intends to abandon a wireless communication facility or portion thereof, the owner or operator shall notify the City by certified U.S. mail of the proposed date of abandonment or discontinuation of operations and the date the facility shall be removed. The notice shall be given not less than sixty (60) days prior to abandonment. Failure to give notice shall not affect the owner's or operator's obligation to remove an abandoned facility.

- B. **Removal Due to Utility Undergrounding.** All facilities located on a utility pole or structure shall be promptly removed at the owner's or operator's expense at the time a utility is scheduled to be undergrounded.
- C. **Removal.** Upon abandonment, revocation, or other lawful order of any federal, state or local agency to terminate facility operations, the owner or operator shall physically remove the facility or terminated/abandoned elements within thirty (30) days following the date of abandonment or termination of use. "Physically remove" shall include, but not be limited to:
  - 1. Removal of antennae, mounts, equipment cabinets and security barriers from the subject site;
  - 2. Transportation of the antennae, mounts, equipment cabinets and security barriers to an appropriate repository;
  - 3. Restoring the site to its prior condition except for retaining the landscaping improvements and any other improvements at the discretion of the Planning Director.
- D. **Stay.** The Chief Planning Official or Director of Public Works, whichever is applicable, may stay the requirement to remove an abandoned/terminated wireless communication facility upon written request and evidence submitted by the owner or operator that another wireless provider is in reasonable negotiations to acquire and use the wireless communication facility.
- E. If an owner or operator of an abandoned wireless communication facility fails to physically remove the facility and all related equipment within the time frames set forth herein, the City may do so at the owner/operator's expense. The city may pursue forfeiture of all or a part of any bond or other security posted by the owner/operator pursuant to Section 17.65.110(E).

**17.65.160 Violation/Penalty.**

- A. Any owner or operator of a wireless communication facility that violates the terms of this chapter shall be guilty of a misdemeanor, punishable in accordance with chapter 1.16 of this Code.
- B. **Civil Action/Nuisance Abatement.** In addition to the above, if an owner or operator of a wireless communication facility violates the terms of this chapter, the City may pursue any and all civil remedies available at law or equity, including but not limited to injunctive relief or initiation of a nuisance abatement action pursuant to chapter 8.40 of this Code.

- C. Costs of Action. All costs of taking action to enforce the terms of this chapter shall be the responsibility of the owner or operator of the wireless communication facility."

**SECTION 3.** Subsection (A) of Section 17.14.100 of Chapter 17.14 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.14 E-1 ESTATE RESIDENTIAL ZONE (SINGLE-FAMILY ESTATE)**

**17.14.100 Building height – Exceptions – Permitted projections above limit.**

- A. Penthouse or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, church steeples, flagpoles, chimneys, water tanks or ~~wireless masts~~ or similar structures may be erected above the height limits prescribed in this section and CMC 17.14.090 when approved by the commission; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures or any space above the height limit shall be allowed for the purpose of providing additional living or floor space.

....."

**SECTION 4.** Subsection (A) of Section 17.26.100 of Chapter 17.26 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.26 R-1-7500 RESIDENTIAL ZONE (SINGLE-FAMILY)**

**17.26.100 Building height – Exceptions – Permitted projections above limit.**

- A. Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, church steeples, flagpoles, chimneys, water tanks or ~~wireless masts~~ or similar structures may be erected above the height limits herein prescribed when approved by the commission; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures or any space above the height limit shall be allowed for the purpose of providing additional living or floor space.

....."

**SECTION 5.** Section 17.34.100 of Chapter 17.34 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.34 C-P COMMERCIAL, ADMINISTRATIVE AND PROFESSIONAL OFFICE ZONE**

**17.34.100 Building height – Exceptions – Permitted projections above limit.** Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, church steeples, flagpoles, roof signs when permitted in the zone, chimneys, water tanks ~~or wireless masts~~ or similar structures, when approved by the commission, may be erected above the height limits herein prescribed; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures, or other space above the height limit, shall be allowed for the purpose of providing additional floor space. All roof equipment and machinery shall be entirely screened from view with a screening device utilizing materials which are compatible to the materials used on the building."

**SECTION 6.** Section 17.54.100 of Chapter 17.54 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.54 M-1 LIGHT MANUFACTURING ZONE**

**17.54.100 Building height – Exceptions – Permitted projections above limit.** Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, church steeples, flagpoles, roof signs when permitted in the zone, chimneys, water tanks ~~or wireless masts~~ or similar structures, when approved by the commission, may be erected above the height limits herein prescribed; provided, that the same shall be safely erected and maintained at such height in view of the surrounding conditions and circumstances. No penthouse or roof structures, or other space above the height limit, shall be allowed for the purpose of providing additional floor space. All roof equipment and machinery shall be entirely screened from view with a screening device utilizing materials which are compatible to the materials used on the building."

**SECTION 7.** Subsection (F) of Section 17.62.040 of Chapter 17.62 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

**"Chapter 17.62 CONDITIONAL USE PERMITS**

**17.62.040 Uses permitted subject to conditional use permit – Additional uses.**

.....

- F. Radio and/or television antennas and/or transmitters (commercial); wireless communication facilities and similar equipment, CMC ~~17.62.193~~ **Chapter 17.65**

shall apply; satellite or disc antennas shall be screened at ground level from adjacent properties in the manner provided for by the planning commission;

....."

**SECTION 8.** Effective Date. This ordinance shall take effect thirty (30) days after its adoption.

**SECTION 9.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance 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 section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

**SECTION 10.** Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

**SECTION 11.** CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**ORDINANCE PASSED AND APPROVED** on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
JOHN C. KING, MAYOR

ATTEST:

\_\_\_\_\_  
Kay Manning, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marco Martinez, City Attorney

I, Kay Manning, City Clerk, City of Covina, California, certify that the foregoing Ordinance was adopted by the City Council at a regular meeting of the City Council held on the \_\_\_\_\_, of \_\_\_\_\_, 20\_\_\_\_, and was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Kay Manning, City Clerk

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** PH 3

**STAFF SOURCE:** Robert Nieuber, Community Development Director *RN*  
William J. Priest, Assistant City Attorney

**ITEM TITLE:** Public Hearing of the City Council and second reading to consider adoption of **Ordinance No. 11-1997** amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to the regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying "Barber and Beauty Shops" as conditional uses.

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**STAFF RECOMMENDATION**

1. Open the public hearing and take public testimony; and
2. Pass and adopt **Ordinance No. 11-1997** (attached as Exhibit "A") amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to the regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying "Barber and Beauty Shops" as conditional uses.

**FISCAL IMPACT**

None.

**BACKGROUND**

At its meeting on June 21, 2011, the City Council introduced Ordinance No. 11-1997, which updates the City's regulations for massage practitioners and establishments to address the procedures and limitations set forth in California Senate Bill 731 (SB 731).

For added background leading up to this Ordinance, a copy of the June 21 Agenda Item Commentary is attached hereto as Exhibit "B" and provides the following: (i) a discussion of SB 731 and the limitations it imposes upon local massage regulation, (ii) a discussion of the moratorium on new or transferred permits for massage technicians and establishments that has been in place since May 4, 2010, (iii) a summary of the changes Ordinance No. 11-1997 makes to the Covina Municipal Code, and (iv) an analysis of prior proceedings at the Planning Commission.

At its June 21 meeting, the City Council considered Ordinance No. 11-1996 and introduced it without further amendments. Staff is now requesting that the City Council pass and adopt the Ordinance as proposed.

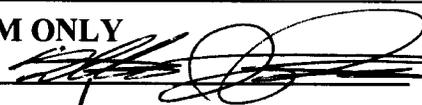
**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

- A. Ordinance No. 11-1997
- B. Agenda Item Commentary for Ordinance No. 11-1997 from June 21, 2011 Council meeting

**REVIEW TEAM ONLY**

City Attorney:  Finance Director: 

City Manager:  Other: 

**ORDINANCE NO. 11-1997**

**AN ORDINANCE OF THE CITY OF COVINA CALIFORNIA AMENDING CHAPTER 5.36 OF TITLE 5 OF THE COVINA MUNICIPAL CODE PERTAINING TO THE REGULATION OF MASSAGE PRACTITIONERS AND MASSAGE ESTABLISHMENTS AND AMENDING PORTIONS OF TITLE 17 OF THE COVINA MUNICIPAL CODE RECLASSIFYING "BARBER AND/OR BEAUTY SHOPS" AS CONDITIONAL USES**

**WHEREAS**, the City of Covina ("City") is authorized by the California Constitution and Government Code Section 51030 *et. seq.* to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage practitioners and reasonable conditions on the operation of massage establishments; and

**WHEREAS**, there is a significant risk of injury to massage clients by improperly trained and/or educated massage practitioners and this chapter provides reasonable safeguards against injury and economic loss; and

**WHEREAS**, massage establishments and other specified personal or professional services businesses are businesses which involve significant intimate contact between persons which create opportunities for acts of prostitution and other unlawful sexual activity to occur; and

**WHEREAS**, Chapter 5.36 of Title 5 of the Covina Municipal Code currently regulates massage establishments and massage practitioners to reduce the risk of injury and illicit activity; and

**WHEREAS**, the California Legislature has adopted Senate Bill 731 ("SB 731") that creates a state-organized non-profit organization, the California Massage Therapy Council ("CMTC"), that began issuing massage certifications to massage practitioners on September 1, 2009; and

**WHEREAS**, SB 731 prohibits cities from requiring CMTC-certified massage practitioners to obtain additional professional licenses to practice massage, and limits the ability of cities to regulate the operations of massage establishments employing only CMTC-certified massage practitioners, including preempting most local licensure requirements and some land use regulations; and

**WHEREAS**, on May 4, 2010, pursuant to Section 65858 of the California Government Code, the City Council of the City of Covina adopted Urgency Ordinance No. 10-1983, establishing a 45-day moratorium prohibiting the issuance of any new license, permit or approval for massage technicians or massage establishments to operate within the City, in order to provide City staff the time needed to fully study the legal impacts of SB 731 and to propose revisions to the City's massage regulations in compliance with SB 731; and

**WHEREAS**, on June 15, 2010, pursuant to Section 65858 of the California Government Code, the City Council of the City of Covina adopted Urgency Ordinance No. 10-1985, extending

said moratorium for a period of 10 months and 15 days to provide City staff additional time to complete its work; and

**WHEREAS**, on May 3, 2011, pursuant to Section 65858 of the California Government Code, the City Council of the City of Covina adopted Urgency Ordinance No. 11-1986, extending said moratorium for an additional period of 3 months to provide City staff additional time to complete its work; and

**WHEREAS**, the restrictions and requirements contained in this chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Chapter 5.04 of the Covina Municipal Code; and

**WHEREAS**, the City wishes to amend the Covina Municipal Code to ensure the City regulates massage practitioners and massage establishments in such a way that protects the health, safety and welfare of the city while being in compliance with the provisions of SB 731.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA HEREBY ORDAINS AS FOLLOWS:

**Section 1.** Chapter 5.36 of Title 5 of the Covina Municipal Code and shall be amended to read as follows:

"Chapter 5.36

MESSAGE PRACTITIONERS AND MESSAGE ESTABLISHMENTS

- 5.36.010 Definitions.
- 5.36.020 California Massage Therapy Council Certificate Required – Effective Date.
- 5.36.030 Display, Possession and Notification of Certification.
- 5.36.040 Certificate Required; Exemptions.
- 5.36.050 Business License Required.
- 5.36.060 Changes of Business.
- 5.36.070 Zoning.
- 5.36.080 Health and Safety Regulations for Massage Establishments.
- 5.36.090 Inspections.
- 5.36.100 Grounds for Suspension or Revocation of Business License.
- 5.36.110 Suspension or Revocation of Business License and Appeal.
- 5.36.120 Enforcement.

5.36.010 Definitions. For the purposes of this part, the words and phrases shall have the definitions listed below:

A. "California Massage Therapy Council" means the state-organized non-profit organization created to regulate the massage industry as set forth in Chapter 10.5 of Division 2 of the Business and Professions Code of the state (commencing with Section 4600).

B. "Massage" means any method of treating the external parts of the body for remedial, hygienic, relaxation or any other reason or propose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or other manner of touching external parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powders, creams, ointment or other similar preparations commonly used in this practice. This definition exempts massage of the hands and feet of a seated customer or client when conducted solely for the purposes of administering manicures or pedicures and conducted by California licensed manicurists, pedicurists, beauticians, cosmetologists, or aestheticians. Also exempted is massage above the neck of a seated customer or client when conducted solely for the purposes of administering hair cutting, hair styling, facial hair removal, or non-permanent make-up application to the face when conducted by California licensed barbers, hairdressers, beauticians, or cosmetologists.

C. "Massage Establishment" means any business conducted within the City of Covina where any person, firm, association, partnership, corporation or combination of individuals engages in, conducts, carries on or permits to be conducted or carried on, for money or any other consideration, administration to another person of a massage, bath or health treatment involving massages or baths.

D. "Massage Practitioner" means any person who administers to another person a massage either as an individual or within a massage establishment in exchange for anything of value whatsoever. The terms "massage therapist" and "massage technician" are included within this definition for purposes of this chapter.

E. "Operator" means all persons who have an ownership interest in a massage establishment and are responsible for the day-to-day operations of the massage establishment.

F. "Person" means any individual, corporation, partnership, association or other group or combination of the same acting as an entity.

5.36.020 California Massage Therapy Council Certificate Required – Effective Date.

A. On or after January 1, 2012, any person engaged in the practice of massage must possess a current and valid certificate issued by the California Massage Therapy Council. Prior to engaging in, conducting or administering massage within the city for money or other consideration, a massage practitioner shall file a copy of his or her California Massage Therapy Council certificate with the Covina Finance Director or designee. Compliance with this section shall not excuse a massage practitioner for failing to obtain a Covina business license as required by this Code.

B. On or after January 1, 2012, no massage establishment may allow any person to engage in the practice of massage unless that person possesses a current and valid certificate issued by the California Massage Therapy Council. Compliance with this section shall not excuse a massage establishment for failing to obtain a Covina business license and a Conditional Use Permit as required by the Covina Zoning Code.

C. Prior to January 1, 2012, any person engaged in the practice of massage may do so pursuant to either a current and valid California Massage Therapy Council certificate or a City

massage permit. Prior to January 1, 2012, a City massage permit shall be deemed equivalent to a California Massage Therapy Council certificate for purposes of compliance with this chapter. All City massage permits shall expire on January 1, 2012. Commencing on the effective date of this chapter, no further City massage permits will be issued or renewed.

D. Any City massage permit remaining in effect may be suspended or revoked for violations of this chapter, this Code or State law pursuant to the procedures contained in Chapter 5.04 for the suspension or revocation of a City business license. Any Conditional Use Permit remaining in effect may be revoked for violations of this chapter, this Code or State law pursuant to the procedures contained in Chapter 17.62 for the revocation of a Conditional Use Permit.

5.36.030 Display, Possession and Notification of Certification.

A. Every person engaging in, or carrying on the business of massage practitioner shall display a copy of his or her valid California Massage Therapy Council certificate in a conspicuous place. All massage practitioners shall notify the Covina Finance Director or designee of a change in the practitioner's home address, and the address of the massage establishment where the practitioner is regularly employed or retained to provide massage, within thirty (30) calendar days after such change.

B. Every person who owns or operates a massage establishment pursuant to this chapter shall maintain copies of California Massage Therapy Council certificates of each person engaging in, or carrying on the business of a massage practitioner within that establishment or premises. All persons owning or operating a massage establishment pursuant to this chapter shall provide the Covina Finance Director or designee with a copy or other evidence of the California Massage Therapy Council certification of every massage practitioner who is employed by or operating out of the massage establishment, within thirty (30) calendar days after the commencement of such massage practitioner's period of employment.

5.36.040 Exemptions. The provisions of this chapter shall not apply to physicians, surgeons, chiropractors, acupuncturists, physical therapists, osteopaths, or other persons licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code, when engaging in such practice within the scope of his or her license. Practical nurses or other persons without qualifications as massage practitioners, whether or not employed by physicians, surgeons, chiropractors, acupuncturists, physical therapists, osteopaths or other persons licensed to practice any healing art, may not give massage or massage procedures.

5.36.050 Business License Required.

A. Every massage practitioner performing massage within the city as an individual and every person who owns or operates a massage establishment shall possess and maintain a city business license and shall ensure that the applicable business license taxes and fees are paid. A massage practitioner employed by or operating out of a massage establishment shall not be required to possess and maintain a city business license for himself or herself, unless that practitioner also performs massage within the city as an individual outside of the massage establishment. The annual business license tax for massage practitioners and massage establishment owners or operators shall be the amounts set forth in Section 5.04.510 of this Code (plus Section 5.04.620 for establishments

located within the Shoppers Lane Parking Improvement Area). The annual business license application fee for massage practitioners and massage establishment owners or operators shall be the amounts set forth in Section 5.04.235 of this Code

B. Any business license issued pursuant to this chapter shall be expressly contingent upon continuing compliance with this chapter and this Code, Chapter 10.5 of Division 2 of the state Business and Professions Code, any applicable term or condition of a California Massage Therapy Council certificate and any applicable rule or regulation issued by the California Massage Therapy Council.

C. All business licenses issued by the city pursuant to this section shall expire on the first day of January of each year. A renewal business license may be issued upon payment of prescribed taxes and fees in accordance with chapter 5.04 of this Code. In the event that a license holder fails to apply to renew his or her business license within those times prescribed by chapter 5.04 of this Code, the license holder shall have to requalify as a new applicant, subject to all provisions and fees herein.

D. An application for a business license to perform massage as an individual or to own or operate a massage establishment shall include the following:

1. All information required by Section 5.04.160 of this Code;
2. A copy of the California Massage Therapy Council certificate for the individual practitioner, if the applicant is an individual, or for all massage practitioners employed at or operating out of the massage establishment, if the applicant is a massage establishment; and
3. All business license application taxes and fees as required by Sections 5.04.235, 5.04.510, 5.04.620, or other applicable provision of this Code.

E. Prior to issuing a business license pursuant to this chapter, the city may make reasonable investigations into the information provided in the business license application. The city may deny the application if the applicant provides materially false information or for those other grounds set forth in this Code.

5.36.060 **Changes of Business.** Every massage establishment operator or manager shall report immediately to the Covina Finance Department any and all changes of ownership or management of the massage establishment or business, including, but not limited to, changes of manager or other person principally in charge, stockholders holding more than 5% of the stock of the corporation, officers, directors and partners in any and all changes of name, style or designation under which the business is to be conducted and all changes of address or telephone numbers of the massage business.

5.36.070 **Zoning.** Massage practitioners and massage establishments that comply with the requirements of this chapter may operate in the same zones, with the same zoning restrictions and requirements, including obtaining a conditional use permit if applicable, as provided for in Title 17 of this Code for the following personal or professional businesses:

- A. massage establishments;

B. barber and/or beauty shops;

C. educational or health activities including private schools, trade schools and health spas.

5.36.080 Health and Safety Regulations for Massage Establishments.

A. Zoning. Massage establishments shall be located in a zoning district which permits such use, and shall obtain a conditional use permit to the extent required by title 17 of this Code (see, Section 5.36.070 above).

B. Massage tables. A massage table shall be provided in each massage room and the massage shall be performed on this massage table. The tables should have a minimum height of 18 inches. Two inch thick foam pads with a maximum width of four feet may be used on a massage table and shall be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses, futons, sofa beds, and waterbeds are not permitted on the premises.

C. Sheets and towels. All massage establishments shall be provided with clean laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in a sanitary manner. Receptacles shall be provided for the storage of soiled linens and paper towels. Common use of towels or linen shall not be permitted.

D. Practitioner garments. All massage practitioners shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet, while giving a massage. The massage practitioner must be fully covered from a point not more than four inches above the center of the kneecap to the base of the neck, excluding the arms. Such garments shall not be transparent.

E. Cleanliness. All facilities for the massage establishment, including wet and dry heat rooms, shower areas, and restrooms, shall be in good repair and shall be thoroughly cleaned and sanitized each day the establishment is in operation. All walls, floors and ceilings of each heat room, shower area and restroom shall be made smooth and easily cleanable. No carpeting shall be installed in any of these areas.

F. Alcoholic beverages/drugs. No person shall enter, be in or remain in any part of a massage establishment while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance. The owner, operator and manager shall be responsible to ensure that no such person shall enter or remain upon the massage establishment. Service of alcoholic beverages shall not be permitted.

G. Signs and display of certificates. Each operator shall post and maintain, in compliance with existing state and city laws, a readable sign identifying the premises as a massage establishment. The sign and the front of the business shall not be illuminated by strobe or flashing lights and shall otherwise comply with the city's business signage regulations. Each operator and/or manager shall display, in a conspicuous public place in the lobby of the massage establishment both (i) the California Massage Therapy Council certificate for the establishment and (ii) the California Massage Therapy Council certificate for each and every massage practitioner employed at the establishment (whether or not on-duty).

H. Roster. The operator or manager of the massage establishment shall keep a complete and current list of the names and residence addresses of all massage practitioners and employees of the massage establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage establishment. This roster shall be kept at and/or on the premises and be available for inspection by officials charged with enforcement of this chapter.

I. Lighting. Each operator shall provide in each room or enclosure where massage is given sufficient lighting and ventilation that complies with the city's Building and Construction Code (Title 14 of this Code). The lighting in each massage room shall be activated at all times while a patron is in such room or enclosure.

J. Restroom facilities. A minimum of one toilet and one separate wash basin shall be provided for patrons in each massage establishment, which basin shall provide soap or detergent and hot and cold running water at all times. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom handwash sink. No bar soap may be used. A trash receptacle shall be provided in each restroom. Showers may be provided at the operator's option.

K. Coverings. Each massage establishment shall provide to all patrons clean, sanitary and opaque coverings capable of covering the patrons specified anatomical areas, including the genital area, anus and female breast(s). No common use of such coverings shall be permitted, and re-use is prohibited unless adequately cleaned.

L. Separate Rooms. If male and female patrons are to be treated simultaneously at the massage establishment, separate massage rooms shall be provided for male and female patrons, except in the case of consensual "couples massage" whereby not more than two individuals may be treated simultaneously in the same room by two massage practitioners.

M. Living and food prohibited. No person or persons shall be allowed to live inside the massage establishment at any time. All living quarters shall be separate from the massage establishment. No food of any kind shall be prepared for sale or sold in the establishment.

N. Records of treatment, Confidentiality. Every operator of a massage establishment shall keep a record of the dates and hours of each treatment or service, the name and address of the patron, the name of practitioner administering such service and a description of the treatment or service rendered. These records shall be prepared prior to administering any massage or treatment and shall be retained on the premises for a period of 24 months after such treatment or service. These records shall be open to inspection upon demand only by officials charged with enforcement of this chapter and for no other purpose. The Covina Finance Department shall periodically inspect the records to ensure compliance with this chapter. The information furnished or secured as a result of any such records should be used only to ensure and enforce compliance with this chapter or any other applicable state or federal laws and shall remain confidential. Any unauthorized disclosure or use of such information by any officer or employee of the City of Covina shall constitute a misdemeanor.

O. Hours of operation. The operator must notify the city, in writing, at the time of application for a business license of the business hours for the massage establishment. The operator

must notify the city of any changes in hours not later than seven (7) calendar days prior to said change. No person shall operate a massage establishment or administer a massage in any massage establishment between the hours of 10:00 p.m. and 7:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons and visitors shall be excluded from the massage establishment during these hours and be advised of these hours. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside. No massage establishment may be open for business, unless there is at least (i) one massage practitioner with a valid license or certificate on the premises and (ii) at least one staff member on the premises who is not a licensed/certificated massage practitioner to assure security for clients and massage staff who are behind closed doors. During its business hours, no massage establishment may lock any of its doors through which the public enters into the establishment from an outside location nor may it lock any of its doors leading to a room in which massage is performed.

P. No sexually oriented merchandise. No person shall use or possess any sexually oriented merchandise in or on any part of a massage establishment. For purposes of this subsection, "sexually oriented merchandise" shall mean sexually oriented implements and paraphernalia, such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery-operated vaginas, and similarly sexually oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

Q. No public access. No person(s) other than valid permit holders under this chapter, patrons, and persons empowered by this chapter to conduct a lawful inspection, will be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation.

R. No discrimination. No massage establishment may discriminate or exclude patrons on the basis of their race, sex, religion, age, handicap or any other classification protected under federal or state laws, rules or regulations. Every massage establishment shall comply with all federal and state laws, rules and regulations relating to access by disabled patrons.

S. No communication devices. No communication devices shall be installed or used in any manner on the premises so as to interfere with or hinder inspections by law enforcement officers or city officials.

T. Preemption. In the event the terms and conditions of any current, valid California Massage Therapy Council certificate, or any applicable regulation adopted by a state agency, conflict with or supersede the requirements of this section, any massage establishment shall not be subject to the requirements of this section to the extent of any such conflict or inconsistency.

#### 5.36.090 Inspections.

A. The city's Building and Safety Department, Police Department and/or the County Fire Department and Health Department may, at any time, make an inspection of each massage establishment, during regular business hours, for the purpose of determining that the provisions of this chapter, state law or other applicable laws or regulations are met. Criminal investigations may

be conducted as directed by the Covina Chief of Police or Finance Director. During an inspection, the city or county may verify the identity of all on-duty practitioners and employees. The operator and/or on duty manager consents to the inspection of the massage establishment by the representatives of said agencies for the purpose of determining that the provisions of this chapter or other applicable laws or regulations are met.

B. Any operator or his or her agent, servant or employee commits an offense if he or she refuses to permit a lawful inspection of the massage establishment by a representative of the Building and Safety Department, Police Department, Fire Department or Health Department at any time it is occupied or open for business.

5.36.100 Grounds for Suspension or Revocation of Business License. The business license of a massage establishment may be suspended or revoked on one or more of the following grounds:

A. That the license holder provided materially false information in his or her application to obtain a business license pursuant to Section 5.36.050(D) and (E);

B. That the license holder has employed, allowed or permitted a massage practitioner without a current, valid California Massage Therapy Council certification to perform massage in his or her massage establishment;

C. That the license holder does not adhere to the requirements set forth in this chapter or this Code, including but not limited to unannounced inspections for compliance;

D. That the holder has not complied with the requirements of Chapter 10.5 of Division 2 of the Business and Professions Code and any applicable rule or regulation issued by the California Massage Therapy Council.

License holders may be held responsible for violations of individual employees who practice or engage in or carry on the business of a massage practitioner to the extent permitted by state law.

5.36.110 Suspension or Revocation of Business License or Conditional Use Permit and Appeal.

A. If any person holding a business license to own or operate a massage establishment conducts or carries on such business contrary to the provisions of this chapter or any other ordinance or law relating to or regulating such business, the city may suspend or revoke the business license pursuant to the procedures set forth in Chapter 5.04 of this Code. Appeals of any decision shall be as provided in Chapter 5.04 of this Code.

B. If any person holding a conditional use permit to own or operate a massage establishment conducts or carries on such business contrary to the provisions of this chapter or any other ordinance or law relating to or regulating such business, the city may revoke the conditional use permit pursuant to the procedures set forth in Chapter 17.62 of this Code.

5.36.120 Enforcement.

A. Any violation of any of the provisions of this part shall be punishable as a misdemeanor pursuant to chapter 1.16 of this Code.

B. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter or applicable state law shall be and the same is declared to be unlawful and a public nuisance. The city attorney or the district attorney may, in addition to or in lieu of any other enforcement or abatement measures, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law. They shall also take such other steps, and shall apply to such courts or court as may have jurisdiction to grant such relief, as will abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter or applicable state law."

**Section 2.** Section 17.04.414 of Chapter 17.04 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

"17.04.414 Massage Establishment. "Massage Establishment" shall have the meaning set forth in Section 5.36.010(C)."

**Section 3.** Section 17.34.020 of Chapter 17.34 of Title 17 of the Covina Municipal Code (C-P Zoning) is hereby amended to read as follows:

"17.34.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following purposes, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. Uses shall be subject to the property development standards of CMC 17.34.050 through 17.34.220:

....

D. Commercial Uses. The following uses shall be permitted only when operated within a totally enclosed building having more than 15,000 square feet of gross floor area, when 95 percent of the gross floor area in the building is utilized for those uses permitted in subsections (A), (B) and (C) of this section; or when 85 percent of the building having a gross floor area in excess of 25,001 square feet is utilized for those uses permitted in subsections (A), (B) and (C) of this section:

1. ~~Barber and beauty shop, (deleted),~~

2. Book and/or stationery shop,

3. Coffee shop,

....."

**Section 4.** Section 17.34.030 of Chapter 17.34 of Title 17 of the Covina Municipal Code (C-P Zoning) is hereby amended to read as follows:

"17.34.030 Uses permitted to a conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

A. Call office for delivery of laundry and/or dry cleaning;

....

J. Public parking lot.;

***K. Barber and beauty shop."***

**Section 5.** Section 17.36.020 of Chapter 17.36 of Title 17 of the Covina Municipal Code (C-1 Zoning) is hereby amended to read as follows:

"17.36.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.36.050 through 17.36.210. All uses and storage shall be conducted within a totally enclosed building:

A. Bakery sales;

~~B. Barber and/or beauty shop; (deleted);~~

C. Call office for delivery of laundry or dry cleaning;

....."

**Section 6.** Section 17.36.030 of Chapter 17.36 of Title 17 of the Covina Municipal Code (C-1 Zoning) is hereby amended to read as follows:

"17.36.030 Uses permitted subject to conditional use permit. The following uses shall be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

***A. Barber and/or beauty shop;***

~~***AB.***~~ Conversion of residential buildings to nonresidential uses subject to CMC 17.76.010 through 17.76.040;

~~***BC.***~~ Electrical or mechanical games as an ancillary use; more than three such games;

~~***CD.***~~ Recycling collection facilities subject to the provisions of CMC 17.62.195."

**Section 7.** Section 17.38.020 of Chapter 17.38 of Title 17 of the Covina Municipal Code (C-2 Zoning) is hereby amended to read as follows:

"17.38.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.38.050 through 17.38.210:

A. Those uses permitted in the C-1 zone;

B. Retail stores, sales and services:

1. Antique home furnishings,

....

6. Bakery sales,

~~7. Barber and/or beauty shop, (deleted),~~

8. Bicycle shop,

...."

**Section 8.** Section 17.38.030 of Chapter 17.38 of Title 17 of the Covina Municipal Code (C-2 Zoning) is hereby amended to read as follows:

"17.38.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Automobile service stations, except as otherwise provided for in CMC 17.38.020(B), subject to the provisions of CMC 17.62.025. CMC 17.38.100(A) shall not apply to automobile service stations;

Automobile towing in conjunction with a permitted service station;

***Barber and/or beauty shop;***

Conversion of residential buildings to nonresidential uses subject to CMC 17.76.010 through 17.76.040;

...."

**Section 9.** Section 17.40.030 of Chapter 17.40 of Title 17 of the Covina Municipal Code (C-3 Zoning) is hereby amended to read as follows:

"17.40.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Auditorium;

***Barber and/or beauty shop;***

Billiard parlor;

...."

**Section 10.** Section 17.42.030 of Chapter 17.42 of Title 17 of the Covina Municipal Code (C-3A Zoning) is hereby amended to read as follows:

"17.42.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Automobile sales and services;

Automobile service station, except as otherwise provided for in CMC 17.42.020, subject to the provisions of CMC 17.62.025. CMC 17.38.100(A) shall not apply to automobile service stations;

Automobile towing in conjunction with a permitted service station;

***Barber and/or beauty shop;***

Billiard parlor;

...."

**Section 11.** Section 17.44.020 of Chapter 17.44 of Title 17 of the Covina Municipal Code (C-4 Zoning) is hereby amended to read as follows:

"17.44.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.44.050 through 17.44.220:

Administrative or professional offices (any office in which chattels or goods, wares or merchandise are not manufactured or sold);

....

Bank and financial institutions;

~~Barber and/or beauty shop; (deleted);~~

Bicycle shop;

...."

**Section 12.** Section 17.44.030 of Chapter 17.44 of Title 17 of the Covina Municipal Code (C-4 Zoning) is hereby amended to read as follows:

"17.44.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Auditoriums;

Automobile service station, subject to the provisions of CMC 17.62.025. CMC 17.44.110(A) shall not apply to automobile service stations;

***Barber and/or beauty shop;***

Batting cage;

...."

**Section 13.** Section 17.46.020 of Chapter 17.46 of Title 17 of the Covina Municipal Code (C-5 Zoning) is hereby amended to read as follows:

"17.46.020 Permitted Uses. Buildings, structures and land shall be used, and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.46.050 through 17.46.210:

Administrative or professional offices (any offices in which chattels or goods, wares or merchandise are not manufactured or sold);

....

Bakery sales;

~~Barber and beauty shop; (deleted);~~

Blueprinting and photocopying;

...."

**Section 14.** Section 17.46.030 of Chapter 17.46 of Title 17 of the Covina Municipal Code (C-5 Zoning) is hereby amended to read as follows:

"17.46.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Auditoriums;

Automobile service stations, subject to the provisions of CMC 17.62.025;

Automobile towing and impound;

***Barber and/or beauty shop;***

Body and fender shop;

...."

**Section 15.** Section 17.48.020 of Chapter 17.48 of Title 17 of the Covina Municipal Code (C-R Zoning) is hereby amended to read as follows:

"17.48.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in the C-2 zone, CMC 17.38.050 through 17.38.210:

A. Recreational Uses.

....

B. Related commercial uses including, but not limited to, the following, when operated in connection with those uses listed in subsection (A) of this section:

1. ~~Barber and beauty shops;~~ *(deleted)*;

2. Electric distribution and public utility substations;

...."

**Section 16.** Section 17.48.030 of Chapter 17.48 of Title 17 of the Covina Municipal Code (C-R Zoning) is hereby amended to read as follows:

"17.48.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

**A. Barber and/or beauty shops;**

**B. Clubs and lodges;**

**BC.** Conversion of residential buildings to nonresidential uses subject to CMC 17.76.010 through 17.76.040;

**CD.** General commercial amusements;

**DE.** Education or health activities including private schools, trade schools and health spas;

**EF.** Liquor, on-sale;

**FG.** Private dance, only when conducted in conjunction with clubs and lodges;

**GH.** Public riding stable and academy;

**HI.** Recycling collection facilities subject to the provisions of CMC 17.62.195."

**Section 17.** Section 17.52.020 of Chapter 17.52 of Title 17 of the Covina Municipal Code (TC-C Zoning) is hereby amended to read as follows:

"17.52.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be constructed, erected, altered, converted, established or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar, not more obnoxious or detrimental to the public health, safety and welfare, and related to the functioning of the town center. All such uses shall be within an enclosed building and shall not be developed as drive-up facilities unless specifically stated otherwise:

Audio and video equipment and supplies;

....

Banks and financial institutions including drive-up facilities in conjunction with the main building;

~~Barber and beauty shops (deleted);~~

Book and stationery shops;

...."

**Section 18.** Section 17.52.030 of Chapter 17.52 of Title 17 of the Covina Municipal Code (TC-C Zoning) is hereby amended to read as follows:

"17.52.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

A. Auto sales, and repair incidental to auto sales;

....

L. Residential uses excluding first two floors in conjunction with a commercial development.

***M. Barber and/or beauty shops.***"

**Section 19.** Notwithstanding Sections 3 through 18 of this ordinance, any person who, prior to the effective date of this ordinance, submits an application to the City in order to operate a barber and/or beauty shop shall not be required to obtain a Conditional Use Permit.

**Section 20.** The City Clerk shall certify to the passage of the ordinance, and cause same to be published in the manner prescribed by law.

**Section 21.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance 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 section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
EXCUSED:

BY:

---

JOHN C. KING, MAYOR

ATTEST:

---

Kay Manning, City Clerk

APPROVED AS TO FORM:

---

Marco Martinez, City Attorney

**I, Kay Manning, City Clerk, City of Covina, California, certify that the foregoing Ordinance was adopted by the City Council at a regular meeting of the City Council held on the \_\_\_\_\_, of \_\_\_\_\_, 2011, and was adopted by the following vote:**

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

**City Clerk**

**CITY OF COVINA**  
**AGENDA ITEM COMMENTARY**

**MEETING DATE:** June 21, 2011

**STAFF SOURCE:** Kim Raney, Chief of Police  
Robert Nieuber, Community Development Director *EN*  
William J. Priest, Assistant City Attorney

**ITEM TITLE:** Introduce and waive further reading of Ordinance No. 11-1997 amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to the regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying "Barber and Beauty Shops" as conditional uses.

---

**STAFF RECOMMENDATION:**

That the City Council:

1.) Introduce and waive further reading of Ordinance No. 11-1997 amending Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to the regulation of massage practitioners and massage establishments and amending portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying "Barber and Beauty Shops" as conditional uses.

**FISCAL IMPACT:**

None.

**BACKGROUND/ANALYSIS:**

**Senate Bill 731**

On September 1, 2009, California Senate Bill 731 (Bus. & Prof. Code § 4600 et seq.) became effective. This represents California's first comprehensive, statewide regulatory system for massage therapy. The new law establishes a non-profit California Massage Therapy Council ("CMTC"). Subject to specific standards, the CMTC conducts criminal background checks, medical examinations, reviews proof of education, conducts skills testing, and issues certificates to qualified massage practitioners. Once massage practitioners obtain CMTC certifications, they will be exempted from most local regulations. For example:

- 1.) CMTC-certified practitioners and massage establishments that employ only CMTC practitioners need not obtain a local massage permit before practicing massage. Therefore, they cannot be subject to additional local criminal background checks, medical examinations, skills testing, or educational requirements;
- 2.) For zoning purposes, massage establishments that employ only CMTC-certified practitioners must be allowed in the same locations and be subject to the same

zoning regulations as similar “personal and professional uses”, such as hair and nail salons, barber shops and health spas.

3.) SB 731 prohibits cities from enforcing certain health and safety regulations on CMTC-certified practitioners and massage establishments that employ only CMTC practitioners, such as (i) requiring additional restrooms, showers or other facilities not required of other similar “personal or professional” uses, (ii) requiring unlocked massage room doors when no staff is available to assure security for clients and staff behind closed doors, and (iii) requiring windows providing a view into a massage room.

However, SB 731 still allows the City to require a CMTC-certified establishment or practitioner to obtain a local business license and to impose other reasonable health and safety requirements on such establishments, as long as these are consistent with standards imposed on similar “personal or professional service” businesses. These would include hygiene and cleanliness requirements, among other things.

Further, SB 731 preempts local regulations only for those establishments that hire exclusively CMTC-licensed practitioners. If a massage establishment employs any practitioner without a CMTC certification, local massage regulations can still apply.

### **City Moratorium**

On May 4, 2010, the City Council adopted Interim Urgency Ordinance No. 10-1983 that temporarily prohibited the approval or issuance of any (i) new permit to massage technicians, (ii) approval or issuance of any new use permit, home occupation permit, variance, building permit, business license, operator’s permit or other applicable entitlement for the establishment or operation of a massage establishment in the City, and (iii) transfer of an existing massage permit to another location.

The moratorium was established to allow the City the opportunity to evaluate its existing Code regulating massage establishments in light of SB 731. Because SB 731 dramatically limits the City's power to address local massage issues, and because of the unique health, safety and welfare implications of massage establishments, it was important for Staff to carefully study different options to preserve as much local regulatory power as available under State law. By adoption of two additional Interim Urgency Moratorium Ordinances (Nos. 10-1985 and 11-1986), the City Council has extended the moratorium until August 4, 2011.

Since the adoption of the moratorium, the Police Department, the Planning Division of the Community Development Department, and the City Attorney’s Office have worked diligently to prepare an ordinance which Staff believes addresses the City’s policy concerns while also remaining in compliance with SB 731.

### **The Ordinance**

Under SB 731, the City may regulate massage by one of two means:

- Eliminate the City’s local massage permitting system, require all practitioners operating within the City to obtain a CMTC certification, and require all massage

establishments within the City to employ only CMTC-certified practitioners. In other words, practitioners and establishments not covered by SB 731 are prohibited. This is the so-called "one-tier" system.

- Continue with the City's local massage permitting system. However, those massage practitioners and establishments covered by SB 731 are exempt from this system. Any practitioner or establishment not covered by SB 731 would be required to obtain a local massage permit subject to City Code. This is the so-called "two tier" system.

The attached draft ordinance provides a "one-tier" system. Staff believes that this is the better option for several reasons: First, there are a limited number of massage practitioners and establishments within the City currently. Secondly, most massage practitioners and establishments in California are seeking CMTC certification so the legal effect of having a parallel local permitting system in place will, at best, be limited. Thirdly, a "one-tier" system will be less cumbersome to implement. Under the draft ordinance, all existing massage practitioners must be CMTC certified by January 1, 2012 to continue operating in the City.

SB 731 allows the City to require that massage practitioners working individually and massage establishments maintain a City business license and pay applicable business licenses taxes. SB 731 also allows the City to adopt and enforce reasonable health and safety regulations on the practice of massage, subject to the limits outlined above. The ordinance is drafted to provide the maximum amount of business licensing and health and safety regulation permitted under SB 731 to address negative secondary effects such as risk of injury to patrons and illicit activity.

The attached ordinance also makes certain amendments to the Covina Zoning Code. Massage establishments are currently regulated by CUP and Staff recommends keeping this in place. However, as indicated above, SB 731 allows massage establishments employing only CMTC-certified practitioners to be in the same locations as similar "personal and professional uses", such as hair and nail salons, barber shops and health spas. While "health spas" are already a conditional use, "barber and/or beauty shops" are permitted uses as of right in nearly all of the City's commercial zones. SB 731 would therefore require the City to allow massage establishments as of right in these zones because to do otherwise would subject massage establishments to different zoning treatment from the similar "barber and/or beauty shop" use. The ordinance reclassifies "barber and/or beauty shops" from a permitted use to a conditionally permitted use. In that way, massage establishments and all similar "personal and professional uses" are treated equally and in compliance with SB 731.

Certain types of "massage" are exempted from this ordinance, including the following: (i) hand or foot massage performed by State-licensed manicurists, pedicurists, beauticians, cosmetologists or aestheticians, (ii) massage above the neck during hair cutting, hair styling, facial hair removal or non-permanent make-up application by State-licensed barbers, hairdressers, beauticians or cosmetologists, and (iii) actions of physicians, surgeons, chiropractors, acupuncturists, physical therapists, osteopaths, and other State-licensed healing art practitioners.

**Proceedings at the Planning Commission**

Although the majority of Ordinance No. 11-1997 consists of business regulations, portions of it amend the use regulations for "barber and/or beauty shops" under the Covina Zoning Code. Pursuant to California Government Code, Sections 65854 and 65855, the Planning Commission is required to conduct a noticed public hearing to consider any ordinance that, among other things, regulates by zoning the use, height, size or intensity of land, buildings or structures. After such a hearing, the Commission is required to make a written recommendation to the City Council regarding the ordinance which both (i) explains the reasons for the recommendation and (ii) makes a finding that that the proposed ordinance is consistent with the General Plan.

On June 14, 2011, the Planning Commission held the required noticed public hearing and adopted Resolution No. 2011-002 PC, finding that Ordinance No. 11-1997 is consistent with the Covina General Plan and recommending that the City Council adopt Ordinance No. 11-1997. A copy of Resolution No 2011-002 PC is attached as Exhibit "A".

It is noted that the Planning Commission recommended two amendments to the draft ordinance during its hearing which are reflected below:

The Commission struck one sentence from Section 5.36.080(N) (pg. 7) which would have required a massage establishment to complete a short medical history form for each patron to determine if that patron has any communicable diseases, areas of pain, high blood pressure, or any physical conditions which may be adversely affected by massage. Section 5.36.080(N) would have made such forms subject to inspection by City officials enforcing this ordinance. Concerns were raised that inspection of such forms may violate medical privacy. Section 5.36.080(N), as amended, would still require an establishment to keep a record of dates and hours of each treatment, the name and address of patrons and practitioners providing treatment, and a description of the treatment rendered. No such medical privacy concerns are raised by inspecting this information and this will remain a useful enforcement tool to screen for illicit activity.

At the request of Staff, the Commission added a new Section 19 to the draft Ordinance (pg. 17) which provides that persons submitting an application to operate a "barber and/or beauty shop" prior to the effective date of the Ordinance will not be required to obtain a Conditional Use Permit. This is intended to ensure a smoother transition for those "barber and/or beauty shop" operators with pending applications. This amendment would not affect massage, which remains subject to the moratorium until August 4.

**RELEVANCE TO THE STRATEGIC PLAN**

None.

**EXHIBITS**

A. Resolution No. 2011-002 PC (Includes Ordinance No. 11-1997 as an attachment)

<b>REVIEW TEAM ONLY</b>	
City Attorney: _____	Finance Director: _____
City Manager: _____	Other: _____

**RESOLUTION NO. 2011-002 PC**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COVINA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF COVINA APPROVAL OF ORDINANCE NO. 11-1997, REGULATING MASSAGE ESTABLISHMENTS AND PRACTITIONERS IN LIGHT OF CALIFORNIA SENATE BILL 731 AND RECLASSIFYING "BARBER AND/OR BEAUTY SHOPS" AS A CONDITIONAL USE.**

WHEREAS, California Government Code, Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, City staff has prepared Ordinance No. 11-1997, which amends Chapter 5.36 of Title 5 (Business Licenses and Regulations) of the Covina Municipal Code pertaining to the regulation of massage practitioners and massage establishments and which amends portions of Title 17 (Zoning) of the Covina Municipal Code reclassifying "barber and/or beauty shops" as conditional uses; and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report presented during a duly noticed public hearing for Ordinance No. 11-1997.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF COVINA DOES HEREBY RESOLVE AS FOLLOWS:

**SECTION 1:** Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made in the staff report and this Resolution, the Planning Commission of the City of Covina hereby recommends that the City Council adopt Ordinance No. 11-1997 entitled: "AN ORDINANCE OF THE CITY OF COVINA CALIFORNIA AMENDING CHAPTER 5.36 OF TITLE 5 OF THE COVINA MUNICIPAL CODE PERTAINING TO THE REGULATION OF MASSAGE PRACTITIONERS AND MASSAGE ESTABLISHMENTS AND AMENDING PORTIONS OF TITLE 17 OF THE COVINA MUNICIPAL CODE RECLASSIFYING "BARBER AND/OR BEAUTY SHOPS" AS CONDITIONAL USES." which is attached hereto as Attachment "A" and incorporated herein by reference.

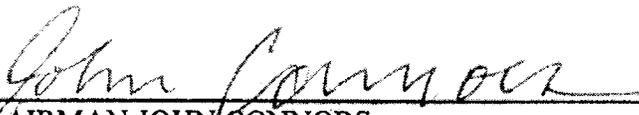
**SECTION 2:** The Planning Commission finds that the revisions to the Covina Municipal Code proposed by the above referenced ordinance are in the public interest and reasonably related to the public welfare because they update the City's massage regulations in order to protect the public health from unskilled massage practitioners and to protect the public morals from illegal prostitution, while maintaining compliance with California Senate Bill 731.

SECTION 3: The Planning Commission also finds that the portion of Ordinance No. 11-1997 which revises the Covina Zoning Code is consistent with the City of Covina General Plan because it merely reclassifies "barber and/or beauty shops" from a permitted use as of right to a conditional use. With the exception of requiring a Conditional Use Permit to operate, "barber and/or beauty shops" are still allowed to operate in the same land use zones as in the prior Code and remain subject to the same setback, height, floor area and other development standards as in the prior Code. Overall, the minor revisions to the Zoning Code made by Ordinance No. 11-1997 remain consistent with the objectives and policies of each element of the General Plan and do not obstruct their attainment.

SECTION 4: The ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) because the activity, which involves updating the City's massage regulations will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. As specific wireless projects regulated by the ordinance are proposed to the City, appropriate CEQA analysis will be conducted on a project-specific basis.

SECTION 5: The Secretary shall certify to the adoption of this resolution.

APPROVED AND ADOPTED by the members of the Planning Commission of Covina this 14th day of June, 2011.

  
\_\_\_\_\_  
CHAIRMAN JOHN CONNORS  
CITY OF COVINA PLANNING COMMISSION



**Attachment "A"**

**"AN ORDINANCE OF THE CITY OF COVINA CALIFORNIA AMENDING CHAPTER 5.36 OF TITLE 5 OF THE COVINA MUNICIPAL CODE PERTAINING TO THE REGULATION OF MASSAGE PRACTITIONERS AND MASSAGE ESTABLISHMENTS AND AMENDING PORTIONS OF TITLE 17 OF THE COVINA MUNICIPAL CODE RECLASSIFYING "BARBER AND/OR BEAUTY SHOPS" AS CONDITIONAL USES."**

[Attached behind this page]

**ORDINANCE NO. 11-1997**

**AN ORDINANCE OF THE CITY OF COVINA CALIFORNIA AMENDING CHAPTER 5.36 OF TITLE 5 OF THE COVINA MUNICIPAL CODE PERTAINING TO THE REGULATION OF MASSAGE PRACTITIONERS AND MASSAGE ESTABLISHMENTS AND AMENDING PORTIONS OF TITLE 17 OF THE COVINA MUNICIPAL CODE RECLASSIFYING "BARBER AND/OR BEAUTY SHOPS" AS CONDITIONAL USES**

**WHEREAS**, the City of Covina ("City") is authorized by the California Constitution and Government Code Section 51030 *et. seq.* to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage practitioners and reasonable conditions on the operation of massage establishments; and

**WHEREAS**, there is a significant risk of injury to massage clients by improperly trained and/or educated massage practitioners and this chapter provides reasonable safeguards against injury and economic loss; and

**WHEREAS**, massage establishments and other specified personal or professional services businesses are businesses which involve significant intimate contact between persons which create opportunities for acts of prostitution and other unlawful sexual activity to occur; and

**WHEREAS**, Chapter 5.36 of Title 5 of the Covina Municipal Code currently regulates massage establishments and massage practitioners to reduce the risk of injury and illicit activity; and

**WHEREAS**, the California Legislature has adopted Senate Bill 731 ("SB 731") that creates a state-organized non-profit organization, the California Massage Therapy Council ("CMTC"), that began issuing massage certifications to massage practitioners on September 1, 2009; and

**WHEREAS**, SB 731 prohibits cities from requiring CMTC-certified massage practitioners to obtain additional professional licenses to practice massage, and limits the ability of cities to regulate the operations of massage establishments employing only CMTC-certified massage practitioners, including preempting most local licensure requirements and some land use regulations; and

**WHEREAS**, on May 4, 2010, pursuant to Section 65858 of the California Government Code, the City Council of the City of Covina adopted Urgency Ordinance No. 10-1983, establishing a 45-day moratorium prohibiting the issuance of any new license, permit or approval for massage technicians or massage establishments to operate within the City, in order to provide City staff the time needed to fully study the legal impacts of SB 731 and to propose revisions to the City's massage regulations in compliance with SB 731; and

**WHEREAS**, on June 15, 2010, pursuant to Section 65858 of the California Government Code, the City Council of the City of Covina adopted Urgency Ordinance No. 10-1985, extending

said moratorium for a period of 10 months and 15 days to provide City staff additional time to complete its work; and

**WHEREAS**, on May 3, 2011, pursuant to Section 65858 of the California Government Code, the City Council of the City of Covina adopted Urgency Ordinance No. 11-1986, extending said moratorium for an additional period of 3 months to provide City staff additional time to complete its work; and

**WHEREAS**, the restrictions and requirements contained in this chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Chapter 5.04 of the Covina Municipal Code; and

**WHEREAS**, the City wishes to amend the Covina Municipal Code to ensure the City regulates massage practitioners and massage establishments in such a way that protects the health, safety and welfare of the city while being in compliance with the provisions of SB 731.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA HEREBY ORDAINS AS FOLLOWS:

**Section 1.** Chapter 5.36 of Title 5 of the Covina Municipal Code and shall be amended to read as follows:

"Chapter 5.36

MESSAGE PRACTITIONERS AND MESSAGE ESTABLISHMENTS

- 5.36.010 Definitions.
- 5.36.020 California Massage Therapy Council Certificate Required – Effective Date.
- 5.36.030 Display, Possession and Notification of Certification.
- 5.36.040 Certificate Required; Exemptions.
- 5.36.050 Business License Required.
- 5.36.060 Changes of Business.
- 5.36.070 Zoning.
- 5.36.080 Health and Safety Regulations for Massage Establishments.
- 5.36.090 Inspections.
- 5.36.100 Grounds for Suspension or Revocation of Business License.
- 5.36.110 Suspension or Revocation of Business License and Appeal.
- 5.36.120 Enforcement.

5.36.010 **Definitions.** For the purposes of this part, the words and phrases shall have the definitions listed below:

A. "California Massage Therapy Council" means the state-organized non-profit organization created to regulate the massage industry as set forth in Chapter 10.5 of Division 2 of the Business and Professions Code of the state (commencing with Section 4600).

B. "Massage" means any method of treating the external parts of the body for remedial, hygienic, relaxation or any other reason or propose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or other manner of touching external parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powders, creams, ointment or other similar preparations commonly used in this practice. This definition exempts massage of the hands and feet of a seated customer or client when conducted solely for the purposes of administering manicures or pedicures and conducted by California licensed manicurists, pedicurists, beauticians, cosmetologists, or aestheticians. Also exempted is massage above the neck of a seated customer or client when conducted solely for the purposes of administering hair cutting, hair styling, facial hair removal, or non-permanent make-up application to the face when conducted by California licensed barbers, hairdressers, beauticians, or cosmetologists.

C. "Massage Establishment" means any business conducted within the City of Covina where any person, firm, association, partnership, corporation or combination of individuals engages in, conducts, carries on or permits to be conducted or carried on, for money or any other consideration, administration to another person of a massage, bath or health treatment involving massages or baths.

D. "Massage Practitioner" means any person who administers to another person a massage either as an individual or within a massage establishment in exchange for anything of value whatsoever. The terms "massage therapist" and "massage technician" are included within this definition for purposes of this chapter.

E. "Operator" means all persons who have an ownership interest in a massage establishment and are responsible for the day-to-day operations of the massage establishment.

F. "Person" means any individual, corporation, partnership, association or other group or combination of the same acting as an entity.

5.36.020 California Massage Therapy Council Certificate Required – Effective Date.

A. On or after January 1, 2012, any person engaged in the practice of massage must possess a current and valid certificate issued by the California Massage Therapy Council. Prior to engaging in, conducting or administering massage within the city for money or other consideration, a massage practitioner shall file a copy of his or her California Massage Therapy Council certificate with the Covina Finance Director or designee. Compliance with this section shall not excuse a massage practitioner for failing to obtain a Covina business license as required by this Code.

B. On or after January 1, 2012, no massage establishment may allow any person to engage in the practice of massage unless that person possesses a current and valid certificate issued by the California Massage Therapy Council. Compliance with this section shall not excuse a massage establishment for failing to obtain a Covina business license and a Conditional Use Permit as required by the Covina Zoning Code.

C. Prior to January 1, 2012, any person engaged in the practice of massage may do so pursuant to either a current and valid California Massage Therapy Council certificate or a City

massage permit. Prior to January 1, 2012, a City massage permit shall be deemed equivalent to a California Massage Therapy Council certificate for purposes of compliance with this chapter. All City massage permits shall expire on January 1, 2012. Commencing on the effective date of this chapter, no further City massage permits will be issued or renewed.

D. Any City massage permit remaining in effect may be suspended or revoked for violations of this chapter, this Code or State law pursuant to the procedures contained in Chapter 5.04 for the suspension or revocation of a City business license. Any Conditional Use Permit remaining in effect may be revoked for violations of this chapter, this Code or State law pursuant to the procedures contained in Chapter 17.62 for the revocation of a Conditional Use Permit.

5.36.030 Display, Possession and Notification of Certification.

A. Every person engaging in, or carrying on the business of massage practitioner shall display a copy of his or her valid California Massage Therapy Council certificate in a conspicuous place. All massage practitioners shall notify the Covina Finance Director or designee of a change in the practitioner's home address, and the address of the massage establishment where the practitioner is regularly employed or retained to provide massage, within thirty (30) calendar days after such change.

B. Every person who owns or operates a massage establishment pursuant to this chapter shall maintain copies of California Massage Therapy Council certificates of each person engaging in, or carrying on the business of a massage practitioner within that establishment or premises. All persons owning or operating a massage establishment pursuant to this chapter shall provide the Covina Finance Director or designee with a copy or other evidence of the California Massage Therapy Council certification of every massage practitioner who is employed by or operating out of the massage establishment, within thirty (30) calendar days after the commencement of such massage practitioner's period of employment.

5.36.040 Exemptions. The provisions of this chapter shall not apply to physicians, surgeons, chiropractors, acupuncturists, physical therapists, osteopaths, or other persons licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code, when engaging in such practice within the scope of his or her license. Practical nurses or other persons without qualifications as massage practitioners, whether or not employed by physicians, surgeons, chiropractors, acupuncturists, physical therapists, osteopaths or other persons licensed to practice any healing art, may not give massage or massage procedures.

5.36.050 Business License Required.

A. Every massage practitioner performing massage within the city as an individual and every person who owns or operates a massage establishment shall possess and maintain a city business license and shall ensure that the applicable business license taxes and fees are paid. A massage practitioner employed by or operating out of a massage establishment shall not be required to possess and maintain a city business license for himself or herself, unless that practitioner also performs massage within the city as an individual outside of the massage establishment. The annual business license tax for massage practitioners and massage establishment owners or operators shall be the amounts set forth in Section 5.04.510 of this Code (plus Section 5.04.620 for establishments

located within the Shoppers Lane Parking Improvement Area). The annual business license application fee for massage practitioners and massage establishment owners or operators shall be the amounts set forth in Section 5.04.235 of this Code

B. Any business license issued pursuant to this chapter shall be expressly contingent upon continuing compliance with this chapter and this Code, Chapter 10.5 of Division 2 of the state Business and Professions Code, any applicable term or condition of a California Massage Therapy Council certificate and any applicable rule or regulation issued by the California Massage Therapy Council.

C. All business licenses issued by the city pursuant to this section shall expire on the first day of January of each year. A renewal business license may be issued upon payment of prescribed taxes and fees in accordance with chapter 5.04 of this Code. In the event that a license holder fails to apply to renew his or her business license within those times prescribed by chapter 5.04 of this Code, the license holder shall have to requalify as a new applicant, subject to all provisions and fees herein.

D. An application for a business license to perform massage as an individual or to own or operate a massage establishment shall include the following:

1. All information required by Section 5.04.160 of this Code;
2. A copy of the California Massage Therapy Council certificate for the individual practitioner, if the applicant is an individual, or for all massage practitioners employed at or operating out of the massage establishment, if the applicant is a massage establishment; and
3. All business license application taxes and fees as required by Sections 5.04.235, 5.04.510, 5.04.620, or other applicable provision of this Code.

E. Prior to issuing a business license pursuant to this chapter, the city may make reasonable investigations into the information provided in the business license application. The city may deny the application if the applicant provides materially false information or for those other grounds set forth in this Code.

5.36.060 **Changes of Business.** Every massage establishment operator or manager shall report immediately to the Covina Finance Department any and all changes of ownership or management of the massage establishment or business, including, but not limited to, changes of manager or other person principally in charge, stockholders holding more than 5% of the stock of the corporation, officers, directors and partners in any and all changes of name, style or designation under which the business is to be conducted and all changes of address or telephone numbers of the massage business.

5.36.070 **Zoning.** Massage practitioners and massage establishments that comply with the requirements of this chapter may operate in the same zones, with the same zoning restrictions and requirements, including obtaining a conditional use permit if applicable, as provided for in Title 17 of this Code for the following personal or professional businesses:

- A. massage establishments;

B. barber and/or beauty shops;

C. educational or health activities including private schools, trade schools and health spas.

5.36.080 Health and Safety Regulations for Massage Establishments.

A. Zoning. Massage establishments shall be located in a zoning district which permits such use, and shall obtain a conditional use permit to the extent required by title 17 of this Code (see, Section 5.36.070 above).

B. Massage tables. A massage table shall be provided in each massage room and the massage shall be performed on this massage table. The tables should have a minimum height of 18 inches. Two inch thick foam pads with a maximum width of four feet may be used on a massage table and shall be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses, futons, sofa beds, and waterbeds are not permitted on the premises.

C. Sheets and towels. All massage establishments shall be provided with clean laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in a sanitary manner. Receptacles shall be provided for the storage of soiled linens and paper towels. Common use of towels or linen shall not be permitted.

D. Practitioner garments. All massage practitioners shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet, while giving a massage. The massage practitioner must be fully covered from a point not more than four inches above the center of the kneecap to the base of the neck, excluding the arms. Such garments shall not be transparent.

E. Cleanliness. All facilities for the massage establishment, including wet and dry heat rooms, shower areas, and restrooms, shall be in good repair and shall be thoroughly cleaned and sanitized each day the establishment is in operation. All walls, floors and ceilings of each heat room, shower area and restroom shall be made smooth and easily cleanable. No carpeting shall be installed in any of these areas.

F. Alcoholic beverages/drugs. No person shall enter, be in or remain in any part of a massage establishment while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance. The owner, operator and manager shall be responsible to ensure that no such person shall enter or remain upon the massage establishment. Service of alcoholic beverages shall not be permitted.

G. Signs and display of certificates. Each operator shall post and maintain, in compliance with existing state and city laws, a readable sign identifying the premises as a massage establishment. The sign and the front of the business shall not be illuminated by strobe or flashing lights and shall otherwise comply with the city's business signage regulations. Each operator and/or manager shall display, in a conspicuous public place in the lobby of the massage establishment both (i) the California Massage Therapy Council certificate for the establishment and (ii) the California Massage Therapy Council certificate for each and every massage practitioner employed at the establishment (whether or not on-duty).

H. Roster. The operator or manager of the massage establishment shall keep a complete and current list of the names and residence addresses of all massage practitioners and employees of the massage establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage establishment. This roster shall be kept at and/or on the premises and be available for inspection by officials charged with enforcement of this chapter.

I. Lighting. Each operator shall provide in each room or enclosure where massage is given sufficient lighting and ventilation that complies with the city's Building and Construction Code (Title 14 of this Code). The lighting in each massage room shall be activated at all times while a patron is in such room or enclosure.

J. Restroom facilities. A minimum of one toilet and one separate wash basin shall be provided for patrons in each massage establishment, which basin shall provide soap or detergent and hot and cold running water at all times. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom handwash sink. No bar soap may be used. A trash receptacle shall be provided in each restroom. Showers may be provided at the operator's option.

K. Coverings. Each massage establishment shall provide to all patrons clean, sanitary and opaque coverings capable of covering the patrons specified anatomical areas, including the genital area, anus and female breast(s). No common use of such coverings shall be permitted, and re-use is prohibited unless adequately cleaned.

L. Separate Rooms. If male and female patrons are to be treated simultaneously at the massage establishment, separate massage rooms shall be provided for male and female patrons, except in the case of consensual "couples massage" whereby not more than two individuals may be treated simultaneously in the same room by two massage practitioners.

M. Living and food prohibited. No person or persons shall be allowed to live inside the massage establishment at any time. All living quarters shall be separate from the massage establishment. No food of any kind shall be prepared for sale or sold in the establishment.

N. Records of treatment, Confidentiality. Every operator of a massage establishment shall keep a record of the dates and hours of each treatment or service, the name and address of the patron, the name of practitioner administering such service and a description of the treatment or service rendered. These records shall be prepared prior to administering any massage or treatment and shall be retained on the premises for a period of 24 months after such treatment or service. These records shall be open to inspection upon demand only by officials charged with enforcement of this chapter and for no other purpose. The Covina Finance Department shall periodically inspect the records to ensure compliance with this chapter. The information furnished or secured as a result of any such records should be used only to ensure and enforce compliance with this chapter or any other applicable state or federal laws and shall remain confidential. Any unauthorized disclosure or use of such information by any officer or employee of the City of Covina shall constitute a misdemeanor.

O. Hours of operation. The operator must notify the city, in writing, at the time of application for a business license of the business hours for the massage establishment. The operator

must notify the city of any changes in hours not later than seven (7) calendar days prior to said change. No person shall operate a massage establishment or administer a massage in any massage establishment between the hours of 10:00 p.m. and 7:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons and visitors shall be excluded from the massage establishment during these hours and be advised of these hours. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside. No massage establishment may be open for business, unless there is at least (i) one massage practitioner with a valid license or certificate on the premises and (ii) at least one staff member on the premises who is not a licensed/certificated massage practitioner to assure security for clients and massage staff who are behind closed doors. During its business hours, no massage establishment may lock any of its doors through which the public enters into the establishment from an outside location nor may it lock any of its doors leading to a room in which massage is performed.

P. No sexually oriented merchandise. No person shall use or possess any sexually oriented merchandise in or on any part of a massage establishment. For purposes of this subsection, "sexually oriented merchandise" shall mean sexually oriented implements and paraphernalia, such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery-operated vaginas, and similarly sexually oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

Q. No public access. No person(s) other than valid permit holders under this chapter, patrons, and persons empowered by this chapter to conduct a lawful inspection, will be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation.

R. No discrimination. No massage establishment may discriminate or exclude patrons on the basis of their race, sex, religion, age, handicap or any other classification protected under federal or state laws, rules or regulations. Every massage establishment shall comply with all federal and state laws, rules and regulations relating to access by disabled patrons.

S. No communication devices. No communication devices shall be installed or used in any manner on the premises so as to interfere with or hinder inspections by law enforcement officers or city officials.

T. Preemption. In the event the terms and conditions of any current, valid California Massage Therapy Council certificate, or any applicable regulation adopted by a state agency, conflict with or supersede the requirements of this section, any massage establishment shall not be subject to the requirements of this section to the extent of any such conflict or inconsistency.

#### 5.36.090      Inspections.

A. The city's Building and Safety Department, Police Department and/or the County Fire Department and Health Department may, at any time, make an inspection of each massage establishment, during regular business hours, for the purpose of determining that the provisions of this chapter, state law or other applicable laws or regulations are met. Criminal investigations may

be conducted as directed by the Covina Chief of Police or Finance Director. During an inspection, the city or county may verify the identity of all on-duty practitioners and employees. The operator and/or on duty manager consents to the inspection of the massage establishment by the representatives of said agencies for the purpose of determining that the provisions of this chapter or other applicable laws or regulations are met.

B. Any operator or his or her agent, servant or employee commits an offense if he or she refuses to permit a lawful inspection of the massage establishment by a representative of the Building and Safety Department, Police Department, Fire Department or Health Department at any time it is occupied or open for business.

5.36.100 Grounds for Suspension or Revocation of Business License. The business license of a massage establishment may be suspended or revoked on one or more of the following grounds:

A. That the license holder provided materially false information in his or her application to obtain a business license pursuant to Section 5.36.050(D) and (E);

B. That the license holder has employed, allowed or permitted a massage practitioner without a current, valid California Massage Therapy Council certification to perform massage in his or her massage establishment;

C. That the license holder does not adhere to the requirements set forth in this chapter or this Code, including but not limited to unannounced inspections for compliance;

D. That the holder has not complied with the requirements of Chapter 10.5 of Division 2 of the Business and Professions Code and any applicable rule or regulation issued by the California Massage Therapy Council.

License holders may be held responsible for violations of individual employees who practice or engage in or carry on the business of a massage practitioner to the extent permitted by state law.

5.36.110 Suspension or Revocation of Business License or Conditional Use Permit and Appeal.

A. If any person holding a business license to own or operate a massage establishment conducts or carries on such business contrary to the provisions of this chapter or any other ordinance or law relating to or regulating such business, the city may suspend or revoke the business license pursuant to the procedures set forth in Chapter 5.04 of this Code. Appeals of any decision shall be as provided in Chapter 5.04 of this Code.

B. If any person holding a conditional use permit to own or operate a massage establishment conducts or carries on such business contrary to the provisions of this chapter or any other ordinance or law relating to or regulating such business, the city may revoke the conditional use permit pursuant to the procedures set forth in Chapter 17.62 of this Code.

5.36.120 Enforcement.

A. Any violation of any of the provisions of this part shall be punishable as a misdemeanor pursuant to chapter 1.16 of this Code.

B. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter or applicable state law shall be and the same is declared to be unlawful and a public nuisance. The city attorney or the district attorney may, in addition to or in lieu of any other enforcement or abatement measures, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law. They shall also take such other steps, and shall apply to such courts or court as may have jurisdiction to grant such relief, as will abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter or applicable state law."

**Section 2.** Section 17.04.414 of Chapter 17.04 of Title 17 of the Covina Municipal Code is hereby amended to read as follows:

"17.04.414 Massage Establishment. "Massage Establishment" shall have the meaning set forth in Section 5.36.010(C)."

**Section 3.** Section 17.34.020 of Chapter 17.34 of Title 17 of the Covina Municipal Code (C-P Zoning) is hereby amended to read as follows:

"17.34.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following purposes, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. Uses shall be subject to the property development standards of CMC 17.34.050 through 17.34.220:

....

D. Commercial Uses. The following uses shall be permitted only when operated within a totally enclosed building having more than 15,000 square feet of gross floor area, when 95 percent of the gross floor area in the building is utilized for those uses permitted in subsections (A), (B) and (C) of this section; or when 85 percent of the building having a gross floor area in excess of 25,001 square feet is utilized for those uses permitted in subsections (A), (B) and (C) of this section:

1. ~~Barber and beauty shop, (deleted),~~
2. Book and/or stationery shop,
3. Coffee shop,

....."

**Section 4.** Section 17.34.030 of Chapter 17.34 of Title 17 of the Covina Municipal Code (C-P Zoning) is hereby amended to read as follows:

"17.34.030 Uses permitted to a conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

A. Call office for delivery of laundry and/or dry cleaning;

....

J. Public parking lot,;

***K. Barber and beauty shop."***

**Section 5.** Section 17.36.020 of Chapter 17.36 of Title 17 of the Covina Municipal Code (C-1 Zoning) is hereby amended to read as follows:

"17.36.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.36.050 through 17.36.210. All uses and storage shall be conducted within a totally enclosed building:

A. Bakery sales;

~~B. Barber and/or beauty shop; (deleted);~~

C. Call office for delivery of laundry or dry cleaning;

....."

**Section 6.** Section 17.36.030 of Chapter 17.36 of Title 17 of the Covina Municipal Code (C-1 Zoning) is hereby amended to read as follows:

"17.36.030 Uses permitted subject to conditional use permit. The following uses shall be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

***A. Barber and/or beauty shop;***

***AB.*** Conversion of residential buildings to nonresidential uses subject to CMC 17.76.010 through 17.76.040;

***BC.*** Electrical or mechanical games as an ancillary use; more than three such games;

***CD.*** Recycling collection facilities subject to the provisions of CMC 17.62.195."

**Section 7.** Section 17.38.020 of Chapter 17.38 of Title 17 of the Covina Municipal Code (C-2 Zoning) is hereby amended to read as follows:

"17.38.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.38.050 through 17.38.210:

A. Those uses permitted in the C-1 zone;

B. Retail stores, sales and services:

1. Antique home furnishings,

....

6. Bakery sales,

~~7. Barber and/or beauty shop, (deleted),~~

8. Bicycle shop,

...."

**Section 8.** Section 17.38.030 of Chapter 17.38 of Title 17 of the Covina Municipal Code (C-2 Zoning) is hereby amended to read as follows:

"17.38.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Automobile service stations, except as otherwise provided for in CMC 17.38.020(B), subject to the provisions of CMC 17.62.025. CMC 17.38.100(A) shall not apply to automobile service stations;

Automobile towing in conjunction with a permitted service station;

***Barber and/or beauty shop;***

Conversion of residential buildings to nonresidential uses subject to CMC 17.76.010 through 17.76.040;

...."

**Section 9.** Section 17.40.030 of Chapter 17.40 of Title 17 of the Covina Municipal Code (C-3 Zoning) is hereby amended to read as follows:

"17.40.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Auditorium;

*Barber and/or beauty shop;*

Billiard parlor;

...."

**Section 10.** Section 17.42.030 of Chapter 17.42 of Title 17 of the Covina Municipal Code (C-3A Zoning) is hereby amended to read as follows:

"17.42.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Automobile sales and services;

Automobile service station, except as otherwise provided for in CMC 17.42.020, subject to the provisions of CMC 17.62.025. CMC 17.38.100(A) shall not apply to automobile service stations;

Automobile towing in conjunction with a permitted service station;

*Barber and/or beauty shop;*

Billiard parlor;

...."

**Section 11.** Section 17.44.020 of Chapter 17.44 of Title 17 of the Covina Municipal Code (C-4 Zoning) is hereby amended to read as follows:

"17.44.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.44.050 through 17.44.220:

Administrative or professional offices (any office in which chattels or goods, wares or merchandise are not manufactured or sold);

....

Bank and financial institutions;

~~Barber and/or beauty shop; (deleted);~~

Bicycle shop;

...."

**Section 12.** Section 17.44.030 of Chapter 17.44 of Title 17 of the Covina Municipal Code (C-4 Zoning) is hereby amended to read as follows:

"17.44.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Auditoriums;

Automobile service station, subject to the provisions of CMC 17.62.025. CMC 17.44.110(A) shall not apply to automobile service stations;

***Barber and/or beauty shop;***

Batting cage;

...."

**Section 13.** Section 17.46.020 of Chapter 17.46 of Title 17 of the Covina Municipal Code (C-5 Zoning) is hereby amended to read as follows:

"17.46.020 Permitted Uses. Buildings, structures and land shall be used, and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in CMC 17.46.050 through 17.46.210:

Administrative or professional offices (any offices in which chattels or goods, wares or merchandise are not manufactured or sold);

....

Bakery sales;

~~Barber and beauty shop; (deleted);~~

Blueprinting and photocopying;

...."

**Section 14.** Section 17.46.030 of Chapter 17.46 of Title 17 of the Covina Municipal Code (C-5 Zoning) is hereby amended to read as follows:

"17.46.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

Auditoriums;

Automobile service stations, subject to the provisions of CMC 17.62.025;

Automobile towing and impound;

***Barber and/or beauty shop;***

Body and fender shop;

...."

**Section 15.** Section 17.48.020 of Chapter 17.48 of Title 17 of the Covina Municipal Code (C-R Zoning) is hereby amended to read as follows:

"17.48.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in the C-2 zone, CMC 17.38.050 through 17.38.210:

A. Recreational Uses.

....

B. Related commercial uses including, but not limited to, the following, when operated in connection with those uses listed in subsection (A) of this section:

1. ~~Barber and beauty shops;~~ ***(deleted)***;

2. Electric distribution and public utility substations;

...."

**Section 16.** Section 17.48.030 of Chapter 17.48 of Title 17 of the Covina Municipal Code (C-R Zoning) is hereby amended to read as follows:

"17.48.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

**A. Barber and/or beauty shops;**

**B. Clubs and lodges;**

**BC. Conversion of residential buildings to nonresidential uses subject to CMC 17.76.010 through 17.76.040;**

**CD. General commercial amusements;**

**DE. Education or health activities including private schools, trade schools and health spas;**

**EF. Liquor, on-sale;**

**FG. Private dance, only when conducted in conjunction with clubs and lodges;**

**GH. Public riding stable and academy;**

**HI. Recycling collection facilities subject to the provisions of CMC 17.62.195."**

**Section 17.** Section 17.52.020 of Chapter 17.52 of Title 17 of the Covina Municipal Code (TC-C Zoning) is hereby amended to read as follows:

"17.52.020 Permitted Uses. Buildings, structures and land shall be used, and buildings and structures shall hereafter be constructed, erected, altered, converted, established or enlarged only for the following uses, plus such other uses as the commission and council may deem (pursuant to Chapter 17.60 CMC) to be similar, not more obnoxious or detrimental to the public health, safety and welfare, and related to the functioning of the town center. All such uses shall be within an enclosed building and shall not be developed as drive-up facilities unless specifically stated otherwise:

Audio and video equipment and supplies;

.....

Banks and financial institutions including drive-up facilities in conjunction with the main building;

~~Barber and beauty shops (deleted);~~

Book and stationery shops;

...."

**Section 18.** Section 17.52.030 of Chapter 17.52 of Title 17 of the Covina Municipal Code (TC-C Zoning) is hereby amended to read as follows:

"17.52.030 Uses permitted subject to conditional use permit. The following uses may be permitted subject to a conditional use permit as provided for in Chapter 17.62 CMC:

A. Auto sales, and repair incidental to auto sales;

....

L. Residential uses excluding first two floors in conjunction with a commercial development.

***M. Barber and/or beauty shops."***

**Section 19.** Notwithstanding Sections 3 through 18 of this ordinance, any person who, prior to the effective date of this ordinance, submits an application to the City in order to operate a barber and/or beauty shop shall not be required to obtain a Conditional Use Permit.

**Section 20.** The City Clerk shall certify to the passage of the ordinance, and cause same to be published in the manner prescribed by law.

**Section 21.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance 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 section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
EXCUSED:

BY:

\_\_\_\_\_  
JOHN C. KING, MAYOR

ATTEST:

\_\_\_\_\_  
Kay Manning, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marco Martinez, City Attorney

**I, Kay Manning, City Clerk, City of Covina, California, certify that the foregoing Ordinance was adopted by the City Council at a regular meeting of the City Council held on the \_\_\_\_\_, of \_\_\_\_\_, 2011, and was adopted by the following vote:**

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

**City Clerk**

**CITY OF COVINA/  
COVINA REDEVELOPMENT AGENCY  
AGENDA ITEM COMMENTARY**

**MEETING DATE:** July 5, 2011

**ITEM NO.:** PH 4

**STAFF SOURCE:** Robert Neuber, Deputy Executive Director/ *RN*  
Director of Community Development  
Elizabeth Hull, Agency Counsel  
Nuala Gasser, Sr. Redevelopment Manager *ng*

**ITEM TITLE:** Joint Public Hearing to consider a Fifth Amendment to Lease with SAI Auto Group, LLC and WaltersBayer Automotive Group for property located at 626 and 602 S. Citrus Avenue, Covina, CA

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**AGENCY/STAFF RECOMMENDATION**

Adopt

- a. **Resolution 11-683** of the Covina Redevelopment Agency making certain findings pursuant to Health and Safety Code Section 33433 and approving the Fifth Amendment to Lease for real property located at 626 and 602 S. Citrus Avenue, Covina, California, and
- b. **Resolution 11-6986** of the City Council of the City of Covina, California, making certain findings pursuant to Health and Safety Code Section 33433 and approving the Fifth Amendment to Lease for real property located at 626 and 602 S. Citrus Avenue, Covina, California.

**FISCAL IMPACT**

Over a one year period, it is estimated that the benefit to the City will be approximately \$60,000. The benefit to the Redevelopment Agency will be approximately \$7,300, realized through estimated Tax Increment. Revenues will be deposited to CRA Revenue Account 5031-4450-00-43600.

**BACKGROUND**

The Covina Redevelopment Agency ("Agency") and SAI Auto Group, LLC ("SAI") are parties to a lease which was entered into on July 11, 2000, by and between the Agency and PRY Properties L.P., a California limited partnership ("Lease") for the property at 626 S. Citrus Avenue. The Lease was amended by an Amendment, Second Amendment, Third Amendment and Fourth Amendment on January 10, 2001, December 18, 2001, June 16, 2009, and May 4, 2010, respectively. The Lease, as amended, was assigned by PRY Properties to SAI pursuant to the January 10, 2001 Amendment.

SAI wishes to assign the Lease to WaltersBayer Automotive Group ("Tenant") under the Fifth Amendment to Lease (Fifth Amendment), attached as Exhibit D. The Lease provides for Lease assignment under Section 17.2. which states as follows:

*17.2 Assignment. Tenant shall have the right to assign this Lease upon the prior written approval of Landlord; provided, however, no assignment shall be valid or effective for any purpose whatsoever until the assignee shall have delivered to Landlord a written agreement wherein such assignee assumes and agrees to be bound by each and every term, covenant and condition of this Lease, including the obligation to pay rent as herein provided and to use the Premises only for the Permitted Uses. Likewise, no further assignment shall be valid or effective until such successor assignee shall have delivered to Landlord a like assumption agreement. Any assignee shall be an experienced new automobile dealer with a franchise from an automobile manufacturer which has been doing business in the United States for not less than five years. Any assignee shall submit current financial statements and U.S. Tax returns for the two years prior to the proposed assignment and shall be financially capable of performing all obligations of this Lease. Landlord's approval shall not be unreasonably withheld.*

Tenant operates many car dealerships in Georgia and Kentucky as well as in several locations in California—a Ford dealership in Chino and Hyundai dealerships in Temecula and Bakersfield. Section 2.2 of the Fifth Amendment satisfies the requirement for an assignment and assumption of the duties and obligations of the Tenant, pursuant to Section 17.2 of the Lease.

In addition to the property at 626 S. Citrus Avenue, Tenant also agrees to lease from Agency the Jack In the Box Parcel at 602 S. Citrus Avenue in “as is” condition and upon the same terms, covenants, conditions and obligations in the Lease. Agency will use its best efforts to deliver the Jack In The Box Parcel as early as possible but no later than December 31, 2011. It is Tenant’s plan to demolish the structure on the Jack In The Box Parcel and to expand the dealership in that area. The Scope of Development, attached to the Lease as Exhibit D, describes the process of submission and approval of Basic Concept Drawings and Landscape Plan for that property.

The Fifth Amendment provides

- For the continued maintenance and operation of new motor vehicle sales, service, repair and leasing business, including sales of parts, used motor vehicles, automobile insurance and financing incidental thereto (the “Permitted Uses”).
- Commencing November 1, 2017, that the lease may be extended an additional three (3) five (5) year terms, in addition to the two (2) options to extend included in the existing Lease, for a total of five (5) five year terms, subject to gross sale requirements.
- The obligations of the existing two car dealerships (Bozzani Volkswagen and Covina Valley Kia) under the existing Lease will be separated 60/40 (VW/KIA) in respect to Gross Sales Requirement under Section 58.3 of the Lease and the Revenue Guarantee under Section 62 of the Lease.
- Effective August 1, 2011, rent amount for the Kia site will be as stated in the Lease, and the next rent adjustment period in the Lease will be effective May 15, 2013, and then every year thereafter. Rent escalations in the Lease are adjusted as stated in Section 2.4 (b).
- Under Section 2.11, a transfer in the interest of Tenant to an affiliate entity.

We have learned that Tenant has created an entity to effect a "Permitted Transfer" as allowed under Section 2.11 of the Fifth Amendment. That entity which will accept assignment is WB Covina-KI, LLC, a Delaware limited liability company.

In accordance with Health and Safety Code Sections 33430 and 33431, the Agency is authorized to lease property located within redevelopment project survey areas subject to a public hearing, notice of which shall be given by publication for not less than once a week for two weeks in a newspaper of general circulation published in the county in which the property lies. In this case, a public hearing will be held on July 5, 2011, and notice was given by publication in the San Gabriel Valley Tribune on June 20, 2011 and June 27, 2011.

Health and Safety Code Section 33433 requires that in order to lease Agency-owned property, the Agency shall make available to the public a copy of the lease agreement and a summary of the following findings no later than the time of publication of the first notice of the public hearing: (i) the cost of the agreement to the Agency; (ii) the estimated value of the interest to be leased, determined at the highest and best uses permitted under the plan; (iii) the estimated value of the interest to be leased, determined at the use and with the conditions, covenants and development costs required by the lease; and (iv) an explanation of why the lease will assist in the elimination of blight supported by facts and materials. The required findings and a copy of the Fifth Amendment, which are attached hereto as Exhibit C, were provided to the public on June 20, 2011.

In addition, Health and Safety Code Section 33433 requires the City Council, as the Agency's legislative body, to make certain findings and approve the lease agreement, which the City Council can do through the adoption of the Fifth Amendment by the adoption of City Resolution No. 11-6986, attached hereto as Exhibit B. The Agency may also act in to adopt the Fifth Amendment by the adoption of the Agency Resolution, attached hereto as Exhibit A.

**RELEVANCE TO THE STRATEGIC PLAN**

Providing opportunities for economic development contributes to the City strategic plan objective of enhancing financial stability.

**EXHIBIT**

- A. Agency Resolution No. 11-683
- B. City Resolution No. 11-6986
- C. Information Summary 33433 Report
- D. Lease Agreement

<b>REVIEW TEAM ONLY</b>	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

## **EXHIBIT A**

### **RESOLUTION NO. 11-683**

#### **A RESOLUTION OF THE COVINA REDEVELOPMENT AGENCY MAKING CERTAIN FINDINGS PURSUANT TO HEALTH & SAFETY CODE SECTION 33433 AND APPROVING THE FIFTH AMENDMENT TO LEASE FOR REAL PROPERTY LOCATED AT 626 AND 602 S. CITRUS AVENUE, COVINA, CALIFORNIA**

**WHEREAS**, the City of Covina, California (“City”), approved and adopted the redevelopment plan (“Redevelopment Plan”) for the redevelopment area known as the Covina Revitalization Redevelopment Project Area 1 covering a certain geographic area within the City (“Project Area”) pursuant to the provisions of Community Redevelopment Law (Health and Safety Code § 33000 et seq.) (“CRL”); and

**WHEREAS**, the Covina Redevelopment Agency (“Agency”) is undertaking a program in the interest of the health, safety, and general welfare of the people of the City pursuant to its authority under the CRL, for the redevelopment of blighted areas within the Project Area which are characterized by stagnant, improperly utilized and unproductive land which requires redevelopment; and

**WHEREAS**, the Agency owns land commonly referred to as 626 S. Citrus Avenue and 602 S. Citrus Avenue, City of Covina, County of Los Angeles, State of California (Assessor Parcel No. 8451-001-911) (“Property”); and

**WHEREAS**, the Agency entered into a lease for the portion of the Property located at 626 S. Citrus Avenue, Covina, with PRY Properties L.P., a California limited partnership, dated July 11, 2000 (“Lease”). The Lease was amended by an Amendment, Second Amendment, Third Amendment and Fourth Amendment on January 10, 2001, December 18, 2001, June 16, 2009, and May 4, 2010, respectively. The Lease, as amended, was assigned by PRY Properties to SAI Auto Group, LLC, a California limited liability company (“SAI”), pursuant to the January 10, 2001 Amendment; and

**WHEREAS**, SAI wishes to assign the Lease to WaltersBayer Automotive Group (“Tenant”) under the Fifth Amendment to Lease (“Fifth Amendment”) attached as Exhibit “A” hereto, and Tenant desires to assume all of SAI’s rights, title and interests to, in and under the dealership for the portion of the Property located at 626 S. Citrus Avenue; and

**WHEREAS**, Tenant wishes to also lease the portion of the Property located at 602 S. Citrus Avenue, the Jack In the Box Parcel upon the same terms, covenants, conditions and obligations in the Lease. Tenant plans to demolish the existing structures at 602 S. Citrus Avenue to create a parking and display area; and

**WHEREAS**, Tenant possesses the qualifications and financial resources necessary to lease the Property and use the Property as described in the Lease, in accordance with the purposes and objectives of the Redevelopment Plan; and

**WHEREAS**, CRL Section 33430 authorizes the Agency to lease property located within redevelopment project survey areas; and

**WHEREAS**, CRL Section 33431 provides that any lease made pursuant to CRL Section 33430 may be made without public bidding, but only after a public hearing, notice of which shall be given by publication for not less than once a week for two weeks in a newspaper of general circulation published in the county in which the property lies; and

**WHEREAS**, CRL Section 33433(a)(1) provides that before any property of the Agency acquired in whole or in part, directly or indirectly, with tax increment moneys is leased for development pursuant to the redevelopment plan, the legislative body shall approve a lease by resolution after public hearing; and

**WHEREAS**, pursuant to CRL Section 33433(b), the resolution approving the lease or sale shall be adopted by a majority vote and shall contain a finding that the lease of the property will assist in the elimination of blight or provide housing for low or moderate-income persons, and is consistent with the implementation plan adopted pursuant to CRL Section 33490; and

**WHEREAS**, CRL Section 33433(b) also requires the City Council find that the consideration is not less than the fair market value at its highest and best use in accordance with the Redevelopment Plan or the consideration is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale or lease; and

**WHEREAS**, pursuant to CRL Sections 33431 and 33433, on June 20, 2011 and June 27, 2011, the City and Agency caused notice of the joint public hearing of the City Council and the Agency's Governing Board to be published in the San Gabriel Valley Tribune, a newspaper of general circulation within the Agency's territorial jurisdiction; and

**WHEREAS**, the Agency has prepared a report pursuant to CRL Section 33433(a)(2) ("33433 Report") containing a copy of the Fifth Amendment and a summary of the following: (i) the cost of the Fifth Amendment to the Agency; (ii) the estimated value of the interest to be leased, determined at the highest and best use permitted under the Redevelopment Plan; (iii) the estimated value of the interest to be leased, determined at the use and with the conditions, covenants, and development costs required by the lease; and (iv) an explanation of why the lease will assist in the elimination of blight supported by facts and materials; and

**WHEREAS**, the Agency has made the 33433 Report available for public inspection and copying on June 20, 2011, and

**WHEREAS**, the City and Agency held a noticed public hearing pursuant to CRL Sections 33431 and 33433 on July 5, 2011; and

**WHEREAS**, the Agency is the lead agency concerning the Fifth Amendment pursuant to the California Environmental Quality Act (Public Resources Code § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.); and

**WHEREAS**, Agency staff has determined that the approval of the Fifth Amendment for the Property is categorically exempt pursuant to CEQA under the “Class 32” exemption, State CEQA Guidelines Section 15332 (In-fill development projects), in that the project meets the conditions that characterize in-fill development projects.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Board of the Covina Redevelopment Agency as follows:

**Section 1.** CEQA Findings. The Agency finds and determines based on the information made available in the staff report accompanying this Resolution, the oral presentation of staff, and other written and oral evidence presented to the Agency at or prior to the public hearing regarding the Fifth Amendment that, pursuant to State CEQA Guidelines, the lease of the Property pursuant to the Fifth Amendment is categorically exempt pursuant to CEQA under the Class 32 exemption, State CEQA Guidelines Section 15332 (In-fill development projects), in that the project meets the conditions that characterize in-fill development projects.

**Section 2.** 33433 Findings. The Agency finds and determines based on the information made available in the 33433 Report made pursuant to CRL Section 33433, the staff report accompanying this Resolution, the oral presentation of staff, and other written and oral evidence presented to the Agency at or prior to the public hearing regarding the Fifth Amendment, that, pursuant to CRL Section 33433:

(a) The Fifth Amendment for the lease of the Property will assist in the elimination of blight by (i) utilizing the property which would otherwise be vacant and thus underutilized; and (ii) generating tax revenue.

(b) The Fifth Amendment for the lease of the Property will be consistent with the implementation plan adopted by the Agency for the Project Area; and

(c) The consideration to the Agency for the lease of the Property is not less than the fair reuse value of the Property at the use and with the covenants, conditions and development costs authorized by the Fifth Amendment.

**Section 3.** Approval of the Fifth Amendment. The Agency does hereby approve the Fifth Amendment, attached to this Resolution and authorizes the Executive Director of the Agency to execute the Fifth Amendment as presented together with such changes as may be approved by the Executive Director.

**Section 4.** Notice of CEQA Exemption. The Agency hereby authorizes and directs Agency staff to file a Notice of Exemption with the Clerk of the Board of Supervisors of the County of Los Angeles, California, within five (5) working days following the date of adoption of this Resolution.

**Section 5. Certification and Effective Date.** The Agency Secretary shall certify to the passage and adoption of this Resolution and the same shall thereupon take effect and be in force immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of July, 2011

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John C. King, Chairperson  
Covina Redevelopment Agency

**ATTEST:**

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Secretary, Covina Redevelopment Agency

**CERTIFICATION**

I, Catherine LaCroix, Secretary of the Covina Redevelopment Agency do hereby certify that the foregoing Resolution was regularly introduced and adopted by the Covina Redevelopment Agency at a regular meeting thereof held on the 5th day of July, 2011, by the following vote of the Agency:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINED:**

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the Covina Redevelopment Agency this 5th day of July, 2011.

[insert seal]

---

Catherine LaCroix  
Secretary, Covina Redevelopment Agency

**Exhibit "A"**

**Fifth Amendment to Lease Between the Covina Redevelopment Agency  
and SAI Auto Group LLC and WaltersBayer Automotive Group, LLC**

**The Fifth Amendment to Lease is available in the office of the Covina City Clerk**

## **EXHIBIT B**

### **RESOLUTION NO. 11-6986**

#### **A RESOLUTION OF CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, MAKING CERTAIN FINDINGS PURSUANT TO HEALTH & SAFETY CODE SECTION 33433 AND APPROVING THE FIFTH AMENDMENT TO LEASE FOR REAL PROPERTY LOCATED AT 626 AND 602 S. CITRUS AVENUE, COVINA, CALIFORNIA**

**WHEREAS**, the City of Covina, California (“City”), approved and adopted the redevelopment plan (“Redevelopment Plan”) for the redevelopment area known as the Covina Revitalization Redevelopment Project Area 1 covering a certain geographic area within the City (“Project Area”) pursuant to the provisions of Community Redevelopment Law (Health and Safety Code § 33000 et seq.) (“CRL”); and

**WHEREAS**, the Covina Redevelopment Agency (“Agency”) is undertaking a program in the interest of the health, safety, and general welfare of the people of the City pursuant to its authority under the CRL, for the redevelopment of blighted areas within the Project Area which are characterized by stagnant, improperly utilized and unproductive land which requires redevelopment; and

**WHEREAS**, the Agency owns land commonly referred to as 626 S. Citrus Avenue and 602 S. Citrus Avenue, City of Covina, County of Los Angeles, State of California (Assessor Parcel No. 8451-001-911) (“Property”); and

**WHEREAS**, the Agency entered into a lease for the portion of the Property located at 626 S. Citrus Avenue, Covina, with PRY Properties L.P., a California limited partnership, dated July 11, 2000 (“Lease”). The Lease was amended by an Amendment, Second Amendment, Third Amendment and Fourth Amendment on January 10, 2001, December 18, 2001, June 16, 2009, and May 4, 2010, respectively. The Lease, as amended, was assigned by PRY Properties to SAI Auto Group, LLC, a California limited liability company (“SAI”), pursuant to the January 10, 2001 Amendment; and

**WHEREAS**, SAI wishes to assign the Lease to WaltersBayer Automotive Group (“Tenant”) under the Fifth Amendment to Lease (“Fifth Amendment”) attached as Exhibit “A” hereto, and Tenant desires to assume all of SAI’s rights, title and interests to, in and under the dealership for the portion of the Property located at 626 S. Citrus Avenue; and

**WHEREAS**, Tenant wishes to also lease the portion of the Property located at 602 S. Citrus Avenue, the Jack In the Box Parcel upon the same terms, covenants, conditions and obligations in the Lease. Tenant plans to demolish the existing structures at 602 S. Citrus Avenue to create a parking and display area; and

**WHEREAS**, Tenant possesses the qualifications and financial resources necessary to lease the Property and use the Property as described in the Lease, in accordance with the purposes and objectives of the Redevelopment Plan; and

**WHEREAS**, CRL Section 33430 authorizes the Agency to lease property located within redevelopment project survey areas; and

**WHEREAS**, CRL Section 33431 provides that any lease made pursuant to CRL Section 33430 may be made without public bidding, but only after a public hearing, notice of which shall be given by publication for not less than once a week for two weeks in a newspaper of general circulation published in the county in which the property lies; and

**WHEREAS**, CRL Section 33433(a)(1) provides that before any property of the Agency acquired in whole or in part, directly or indirectly, with tax increment moneys is leased for development pursuant to the redevelopment plan, the legislative body shall approve a lease by resolution after public hearing; and

**WHEREAS**, pursuant to CRL Section 33433(b), the resolution approving the lease or sale shall be adopted by a majority vote and shall contain a finding that the lease of the property will assist in the elimination of blight or provide housing for low or moderate-income persons, and is consistent with the implementation plan adopted pursuant to CRL Section 33490; and

**WHEREAS**, CRL Section 33433(b) also requires the City Council find that the consideration is not less than the fair market value at its highest and best use in accordance with the Redevelopment Plan or the consideration is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale or lease; and

**WHEREAS**, pursuant to CRL Sections 33431 and 33433, on June 20, 2011 and June 27, 2011, the City and Agency caused notice of the joint public hearing of the City Council and the Agency's Governing Board to be published in the San Gabriel Valley Tribune, a newspaper of general circulation within the Agency's territorial jurisdiction; and

**WHEREAS**, the Agency has prepared a report pursuant to CRL Section 33433(a)(2) ("33433 Report") containing a copy of the Fifth Amendment and a summary of the following: (i) the cost of the Fifth Amendment to the Agency; (ii) the estimated value of the interest to be leased, determined at the highest and best use permitted under the Redevelopment Plan; (iii) the estimated value of the interest to be leased, determined at the use and with the conditions, covenants, and development costs required by the lease; and (iv) an explanation of why the lease will assist in the elimination of blight supported by facts and materials; and

**WHEREAS**, the Agency has made the 33433 Report available for public inspection and copying on June 20, 2011, and

**WHEREAS**, the City and Agency held a noticed public hearing pursuant to CRL Sections 33431 and 33433 on July 5, 2011; and

**WHEREAS**, the Agency is the lead agency concerning the Fifth Amendment pursuant to the California Environmental Quality Act (Public Resources Code § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.); and

**WHEREAS**, Agency staff has determined that the approval of the Fifth Amendment for the Property is categorically exempt pursuant to CEQA under the “Class 32” exemption, State CEQA Guidelines Section 15332 (In-fill development projects), in that the project meets the conditions that characterize in-fill development projects.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Covina as follows:

**Section 1.** CEQA Findings. The City Council finds and determines based on the information made available in the staff report accompanying this Resolution, the oral presentation of staff, and other written and oral evidence presented to the City Council at or prior to the public hearing regarding the Fifth Amendment that, pursuant to State CEQA Guidelines, the lease of the Property pursuant to the Fifth Amendment is categorically exempt pursuant to CEQA under the Class 32 exemption, State CEQA Guidelines Section 15332 (In-fill development projects), in that the project meets the conditions that characterize in-fill development projects.

**Section 2.** 33433 Findings. The City Council finds and determines based on the information made available in the 33433 Report made pursuant to CRL Section 33433, the staff report accompanying this Resolution, the oral presentation of staff, and other written and oral evidence presented to the Agency at or prior to the public hearing regarding the Fifth Amendment, that, pursuant to CRL Section 33433:

(a) The Fifth Amendment for the lease of the Property will assist in the elimination of blight by (i) utilizing the property which would otherwise be vacant and thus underutilized; and (ii) generating tax revenue.

(b) The Fifth Amendment for the lease of the Property will be consistent with the implementation plan adopted by the Agency for the Project Area; and

(c) The consideration to the Agency for the lease of the Property is not less than the fair reuse value of the Property at the use and with the covenants, conditions and development costs authorized by the Fifth Amendment.

**Section 3.** Approval of the Fifth Amendment. The City Council does hereby approve the Fifth Amendment, attached to this Resolution.

**Section 4.** Notice of CEQA Exemption. The City Council hereby authorizes and directs City staff to file a Notice of Exemption with the Clerk of the Board of Supervisors of the County of Los Angeles, California, within five (5) working days following the date of adoption of this Resolution.

**Section 5.** Certification and Effective Date. The City Clerk shall certify to the passage and adoption of this Resolution and the same shall thereupon take effect and be in force immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of July, 2011

---

John C. King, Mayor  
City of Covina

**ATTEST:**

---

City Clerk, City of Covina

**CERTIFICATION**

I, Catherine LaCroix, City Clerk of the City of Covina, California, do hereby certify that the foregoing Resolution was regularly introduced and adopted by the City Council of the City of Covina at a regular meeting thereof held on the 5th day of July, 2011, by the following vote of the Agency:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINED:**

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the City of Covina this 5th day of July, 2011.

[insert seal]

---

Catherine LaCroix  
City Clerk, City of Covina

**Exhibit "A"**

**Fifth Amendment to Lease Between the Covina Redevelopment Agency  
and SAI Auto Group LLC and WaltersBayer Automotive Group**

**The Fifth Amendment to Lease is available in the office of the Covina City Clerk.**

INFORMATION SUMMARY (33433 REPORT)  
FOR THE LEASE AGREEMENT  
WITH WALTERSBAYER AUTOMOTIVE GROUP, LLC

**Introduction**

This summary is provided pursuant to Section 33433 of the California Community Redevelopment Law (Part 1 of Division 24 of the Health and Safety Code). The report sets forth certain details of the proposed Fifth Amendment to Lease Agreement (“Lease”) between the following parties:

1. The Covina Redevelopment Agency (“Landlord”); and
2. WaltersBayer Automotive Group, LLC, a Delaware Limited Liability Company. (Tenant)

The purpose of the Lease is to effectuate the Project Area 1 Redevelopment Project Area Redevelopment Plan (Redevelopment Plan).

The basic terms embodied in the Lease are summarized as follows:

1. This is a Fifth Amendment to the existing lease which establishes Tenant as successor-in-interest to SAI Auto Group, LLC. Tenant is assuming the terms of the Lease and SAI Auto Group is assigning the terms of the Lease, except for the revenue guarantee and the obligations of the Deferred Rent.
2. All terms in the existing lease remain in place, with amendments as follows:
  - a) Property to be leased shall include  
Parcel 1           602 S. Citrus Avenue (Jack In the Box site),  
Parcel 2           626 S. Citrus Avenue (KIA Site)  
a total of 129,261 square feet and (“Premises”).
  - b) On August 1, 2011, rent shall be \$9,610.70 for the Kia site and \$2,267.91 for the 602 S. Citrus site, a total of \$11,877.98.
  - c) On August 1, 2012, rent shall remain at \$11,877.98 as provided in the lease. On May 15, 2013, the minimum monthly rent shall be subject to an annual increase equal to the lesser of the following figures: (1) two percent of the then current minimum monthly rent or (2) the percent increase in the Consumer Price Index, All Urban Consumers (Revised 1982-1984) (All Items, for the Los Angeles-Anaheim-Riverside Metropolitan Area, published by the United States Department of Labor, Bureau of Statistics (“Index”) for the most recently published 12 month period. The base for computing the adjustment is the Index which is published for the month in which the Lease is executed (“Beginning Index”). If the Index published nearest preceding the adjustment date (“Extension

Index”) has increased over the Beginning Index, the minimum monthly rent for the following year shall be set by multiplying the minimum monthly rent set forth in paragraph 2b above by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.

If the Extension Index has decreased from the Beginning Index, no adjustment shall be made.

- d) Three additional option periods are added to the lease; options to extend will total five (5) five (5) year periods. The current lease expires October 31, 2017.
- e) The site at 602 S. Citrus will be leased in its “as is” condition upon the same terms, covenants, conditions and obligations in the Lease.
- f) Development of the site at 602 S. Citrus shall be in accordance with Section 10 of the lease, “Development of the Premises.” Development shall include demolition of the existing structures, and paving, landscaping and grading as shown in the Basic Concept Drawings and Landscaping Plan, to be approved by Landlord. All costs of development on the premises shall be borne by Tenant. Before demolition, Tenant shall submit to landlord for its approval a copy of its construction contract for the demolition of existing improvements and construction of new improvements. No work demolition shall commence until Landlord approval of such contract.
- g) Previously, the tenant was required to meet a certain gross sale requirement for two dealerships in order to exercise an option to extend. As amended in the Lease, the gross sales requirement reflects that Tenant is responsible for meeting 40% of this gross sales requirement in order to extend the lease, as Tenant will only own one dealership.
- h) Previously, the Tenant was required to meet a certain revenue guarantee for two dealerships. As amended in the Lease, the revenue guarantee reflects that Tenant is credited with 40% of the excess sales and will assume 40% of the revenue guarantee arising from the two dealerships as of the date of the Lease for the dealership located at 626 S. Citrus. If a payment is due to the City at the end of the last Guarantee Year, the payment shall be made by SAI.
- i) The Lease shall become effective on the first date that the following will have occurred:
  - i. Four copies of this Lease are executed
  - ii. Following a noticed public hearing, the Lease is approved by the Agency Board
  - iii. Agency Board members execute the Lease
  - iv. Executed Lease is delivered to SAI Auto Group and Tenant.
  - v. SAI and Tenant have completed the sale, transfer and assignment of the dealership on the Premises and delivered proof of such completion to the

Agency; Tenant assuming the terms of the Lease and SAI Auto Group assigning the terms of the Lease, except for the revenue guarantee and the obligations of the Deferred Rent.

- vi. If these actions do not occur by September 30, 2011, then this Fifth Amendment becomes void and no rights shall transfer to Tenant.

### **Background**

The Covina Redevelopment Agency and PRY Properties were parties to a prior agreement dated July 11, 2000, which lease has been amended by a First, Second, Third and Fourth Amendment dated January 10, 2001, December 18, 2001, June 16, 2009, and May 4, 2010, respectively. The Lease, as amended, has been assigned by PRY Properties to SAI Auto Group.

SAI Auto Group wishes to assign its rights under the lease to WaltersBayer Automotive Group, LLC for the purpose of operating a new car sales facility.

Pursuant to Section 33433, this report shall contain the following:

1. Lease Agreement (Attached hereto as Exhibit 1)
2. A summary which describes and specifies all of the following:

(i) The cost of the Lease to the agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the Leases.

(ii) The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the plan.

(iii) The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or present value of the lease payments which the Landlord will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the agency shall provide as part of the summary an explanation of the reasons for the difference.

(iv) An explanation of why the sale or lease of the property will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

- (v) Consistency with the AB 1290 Implementation Plan.

**Summary of Required Points**

**1. Cost of the Lease to the Agency including land costs, relocation and improvements:**

There are small additional costs to the Agency under this Lease.

- a. Land Acquisition Costs: Property was acquired in 1998 for \$2,231,502. There is an existing mortgage on the property.
- b. Clearance Costs: There are no clearance costs to the Agency.
- c. Relocation Costs: There are no relocation costs as no one is being displaced.
- d. Improvement Costs: There are no improvement costs to the Agency.
- e. Finance Costs: The Commercial Loan on the property requires a monthly payment of \$12,160.25, which includes interest and principal.
- f. Other Costs: Miscellaneous costs approximately \$10,000

**2. Estimated value of interest to be conveyed at the highest and best use permitted under the Plan**

Tenant shall cause the business on premises to generate local sales and use taxes paid to the City of Covina on an annual basis. The business is in the South Citrus Auto Corridor, where other auto-related uses are clustered. Utilizing the site as an automobile dealership or other commercial uses permitted by zoning is the highest and best use for the site which is consistent with the Plan.

Most recent appraisals establish the fair market value assuming no restrictions, for the parcels as follows:

Parcel 1	\$2,579,500	(May 2011)
Parcel 2	\$863,730	(December 2010)

**3. Estimated value of interest to be conveyed at the use and with the conditions, covenants and development costs required by the sale:**

The Site is being conveyed with a use requirement that causes the initial per square foot rental rate to be less than its fair market value. Under the Lease, the Agency leases the Site to the Tenant for \$.09189 cents per square foot. This rate has been determined to be the fair reuse value, taking into account the use of the property and the nature of the Lease.

The rents in the Fifth Amendment to Lease were established in the original Lease in July 2000, and were based on a restricted land value for auto use only. This amendment is a continuation of that lease.

**4. Explanation as to the reason why the lease of the Site will assist the elimination of blight**

In the last few years the automobile business has seen a downturn, and as a result of the restructuring by automotive manufacturers, the Volvo dealership which had operated at this site ceased car sales at this location. SAI Auto Group was successful in obtaining the KIA Dealership which now operates at this location. The new Tenant at this site operates many car dealerships in the eastern United States as well as in several locations in California—Ford dealerships in Bakersfield and Chino and a Hyundai dealership in Temecula and will have the resources to provide a strong selection of autos at this location.

The economic impact to car dealerships has caused a number of abnormally high business vacancies in California and throughout the nation. The new Fifth Amendment to Lease allows a new car sales business to operate at the site at 626 S. Citrus and 602 S. Citrus Avenue, preventing the site from being vacant. The assignment of lease of this property, located in Redevelopment Project Area 1, will assist in the elimination of blight by providing a use in a building which would otherwise be vacant and underutilized. The continued attraction of business to this site will bring customers to other businesses in the area, and increase development opportunities.

**5. Consistency with the Five-Year Implementation Plan**

Pursuant to the California Redevelopment Law, all agencies must adopt an implementation plan that outlines the projects, programs and expenditures anticipated over a five-year period. The Covina Redevelopment Agency has adopted such a plan, covering fiscal years 2009-2010 through 2013-2014.

The existing business is located in Project Area 1. Programs identified by the Implementation Plan for Project Area 1's South Citrus Auto Corridor includes working with automotive dealers as they continue to serve the community. Execution of the Lease Agreement will assist the Agency in undertaking a program in the interest of health, safety and general welfare of the people of the City pursuant to its authority under Redevelopment Law, for the redevelopment of blighted areas within the Project Area which are characterized by stagnant, improperly utilized and

unproductive land which requires redevelopment. This project encourages stakeholder participation and private sector investment.

**6. Tax Increment to Agency**

The tax increment projections for the first year of the term of the lease shows an estimated valuation of \$20,738. This is based on estimated possessory interest taxes for FY 2010-2011. This number does not include the housing set-aside, or the more recent pass-throughs mandated by the legislature.

Exhibit 1 - Lease Agreement

## FIFTH AMENDMENT TO LEASE

This Fifth Amendment to Lease ("Fifth Amendment") is entered into as of \_\_\_\_\_, 2011, by and between the Covina Redevelopment Agency ("Agency" or "Landlord") and WaltersBayer Automotive Group LLC, a Delaware limited liability company ("Tenant"), successor-in-interest to SAI Auto Group, LLC, a California limited liability company ("SAI"). Agency and Tenant may be referred to herein individually as "Party" and collectively as "Parties."

### 1. RECITALS

This Fifth Amendment is entered into with reference to the following facts and circumstances:

1.1 The Agency is carrying out the Redevelopment Plan for the Covina Revitalization Redevelopment Project No. 1 (the "Project"). In connection with such Project, Agency entered into a lease for property located at 626 S. Citrus Avenue, Covina ("Premises") with PRY Properties, a California limited partnership, dated July 11, 2000 ("Lease"). The Lease was amended by an Amendment, Second Amendment, Third Amendment and Fourth Amendment on January 10, 2001, December 18, 2001, June 16, 2009, and May 4, 2010, respectively. The Lease, as amended, was assigned by PRY Properties to SAI, pursuant to the January 10, 2001 Amendment.

1.2 Pursuant to the Third Amendment and Fourth Amendment, dated June 16, 2009 and May 4, 2010, respectively, SAI requested and received a reduction in the minimum monthly rent. The Parties understand and acknowledge that the rent reduction is effective through July 31, 2011. Effective August 1, 2011, the regularly monthly rent shall return to \$9,610.07, excluding rent for the Jack in the Box Parcel, as set forth further herein.

1.3 Tenant represents and warrants that: (1) Tenant is authorized to do business in California, (2) Tenant, and Tenant's dealership, is not relocating from the territorial jurisdiction of one community to the territorial jurisdiction of another within the same market area, pursuant to Health and Safety Code Section 33426.7, and (3) Tenant is the successor-in-interest to SAI. Tenant desires to assume the Lease obligations, with requested amendments. Specifically, Tenant is interested in adjusting rent escalations, adding additional options to extend the term of the Lease, reflecting separate ownership of the onsite dealership and Second Dealership and leasing the Jack in the Box Parcel, as set forth further herein.

1.3 The Parties now desire to amend the Lease, as more particularly set forth herein.

### 2. AGREEMENT

Pursuant to the authority contained in the Lease, in consideration of the mutual promises and covenants contained in this Fifth Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Agency and Tenant

agree as follows:

2.1 Recitals/Defined Terms. The Recitals set forth above are true and correct and incorporated into this Fifth Amendment by reference. All defined terms used in this Fifth Amendment shall have the same meanings set forth in the Lease.

2.2 Assignment/Assumption. SAI (for purposes of this paragraph, "Assignor") hereby acknowledges, agrees and reaffirms that Assignor and Tenant (for purposes of this paragraph, "Assignee") will execute an Assignment and Assumption Agreement, which date shall be not later than the Effective Date of this Fifth Amendment, ("Assignment and Assumption Date"). The "Effective Date" is defined in Section 2.10 of this document. Assignor will sell, transfer, assign, convey and deliver to Assignee all of Assignor's rights, title and interests, to, in and under the dealership located on the Premises. Assignee hereby acknowledges, agrees and reaffirms that, effective as of the Assignment and Assumption Date, it will assume all of Assignor's rights, title and interests to, in and under the dealership located on the Premises. Subject to Section 2.10, Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee the Lease and all of Assignor's right, title, interest, benefits, burdens and privileges thereunder, except for the provisions governing the Deferred Rent and Revenue Guarantee, as set forth in Section 2.3 below and Section 62 of the Lease, as modified herein, which shall remain as obligations of SAI, and Assignee hereby accepts such assignment. Subject to Section 2.10, Assignee hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations imposed upon or assumed by Assignor under the Lease, except for the provisions governing the Deferred Rent and Revenue Guarantee, as set forth in Section 2.3 below and Section 62 of the Lease, as modified herein, which shall remain as obligations of SAI. From and following the Assignment and Assumption Date and the Effective Date as set forth in Section 2.10, the term Tenant as used in the Lease shall mean WaltersBayer Automotive Group LLC. By its execution of this Fifth Amendment, the Agency hereby agrees that this paragraph satisfies the requirement for an assignment and assumption of the duties and obligations of the Tenant, pursuant to Section 17.2 of the Lease.

2.3 Rent. The Parties understand and acknowledge that commencing on August 1, 2011, the minimum monthly rent, as set forth in Section 7.1 and adjusted pursuant to Section 7.2, shall be Nine Thousand Six Hundred Ten Dollars and Seven Cents (\$9,610.07) plus Two Thousand Two Hundred Sixty Seven Dollars and Ninety One Cents (\$2,267.91), for the Jack in the Box parcel, for a total combined minimum monthly rent of Eleven Thousand Eight Hundred Seventy Seven Dollars and Ninety Eight Cents (\$11,877.98), which amount shall be adjusted during the term of the Lease pursuant to Section 7.2, subject to Section 2.7 below. The Deferred Rent, which totals \$90,955.15, shall be forgiven by the Agency at the expiration of the Initial Term (October 31, 2017), provided that during the remainder of the Initial Term Tenant does not default on any of the Lease provisions and Tenant performs all of its obligations under the Lease. If Tenant defaults during the remainder of the Initial Term or Tenant fails to perform all of its obligations under the Lease, the Deferred Rent shall not be forgiven by the Agency and shall be paid in full by SAI Auto Group, LLC.

2.4 Periodic Cost of Living Adjustment. Section 7.2 of the Lease is hereby amended

to read as follows:

“(a) Prior to May 15, 2013, the minimum monthly rent provided in paragraph 7.1 shall be subject to adjustment at the commencement of the third anniversary year of the Commencement Date and at the end of every three years thereafter (“the adjustment dates”) as follows: The base for computing the adjustment is the Consumer Price Index, All Urban Consumers (Revised 1982-1984) (All Items, for the Los Angeles- Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Statistics (“Index”), which is published for the month in which the Lease is executed (“Beginning Index”). If the Index published nearest preceding the adjustment date (“Extension Index”) has increased over the Beginning Index, the minimum monthly rent for the following three years (until the next rent adjustment) shall be set by multiplying the minimum monthly rent set forth in paragraph 7.1 by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Any percentage increase in the minimum monthly rent shall not exceed nine percent (9%) of the minimum monthly rent in effect for the month immediately preceding the percentage increase.

If the Extension Index has decreased from the Beginning Index, no adjustment shall be made.

If the Index is changed so that the base year differs from that used as of the date immediately preceding the month in which the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, 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 Index had not been discontinued or revised.

Should the Index be discontinued or become unavailable to the general public, or should the method of computation be fundamentally changed, another generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within thirty (30) days after demand by the other party, the substitute index shall, on application of either party, be selected by the chief officer of the San Francisco regional office of the Bureau of Labor Statistics or its successor. If such substitute index is unavailable, then the parties hereto agree to submit to arbitration under the auspices of the American Arbitration Association for the purpose of determining a substitute index which shall thereafter be binding upon the parties.

(b) Notwithstanding the foregoing, commencing upon May 15, 2013, [the minimum monthly rent provided in paragraph 7.1 shall be subject to an annual increase equal to the lesser of the following figures: (i) two percent (2%) of the then current minimum monthly rent or (ii) the percent increase in the Index for the

most recently published twelve (12) month period. The first adjustment pursuant to this increase shall be effective on May 15, 2013.

2.5 Notice. Section 31 of the Lease is hereby amended to state Tenant's address as follows:

"WaltersBayer Automotive Group  
2030 East Flamingo Road, Suite 290  
Las Vegas, NV 89119  
Attn: Michael Luce  
Office: 702-450-8088  
Cell: 702-491-8487  
Fax 702-450-8055  
E-Mail mluce@waltersgolf.com"

2.6 Option to Extend.

a. Section 58.1 of the Lease is hereby amended to state as follows:

"Landlord hereby grants to Tenant the option to extend the term of this Lease for five (5) five (5) year periods, commencing when the prior term expires, on the same terms and conditions set forth in this Lease, including but not limited to annual rent increases as set forth in Section 7.2."

b. Section 58.3 of the Lease is hereby amended to state as follows:

"Tenant has the right to exercise the option under this paragraph 58 provided that the Tenant's gross sales reportable for sales tax purposes from motor vehicle and parts sales from the Premises for the two calendar years preceding the exercise of option to the State of California shall equal or exceed the sum of forty percent (40%) multiplied by the total of \$16,000,000 per year for such calendar years, as such amount is increased by the rate specified, and by the same percentage as minimum rent specified, in provisions 7.1 and 7.2 of the Lease, which percentage rate was amended pursuant to the Fifth Amendment to this Lease, commencing with the Commencement Date of the Initial Term. The Parties understand and acknowledge that the 2011 gross sales requirement totals Nineteen Million Eight Hundred Eleven Thousand Four Hundred Sixty Two Dollars (\$19,811,462)."

c. Sections 58.5 through 58.8 of the Lease are hereby deleted.

2.7 Lease of Jack in the Box Parcel.

a. By its execution of this Fifth Amendment, the Agency agrees to lease to Tenant, and Tenant agrees to lease from Agency, the Jack in the Box Parcel in its "as is"

condition upon the same terms, covenants, conditions and obligations in the Lease. From and following the execution of this Fifth Amendment, the term Premises as used in the Lease shall include the Jack in the Box Parcel. Development of the Jack in the Box Parcel shall be in accordance with Section 10 of the Lease, and the drawings, plans and documents required and previously submitted for the Premises in accordance with Section 10 of the Lease shall be amended to reflect the work on the Jack in the Box Parcel.

i. Commencement of Lease term for Jack in the Box parcel/Delay in Possession. Agency agrees to use its best commercially reasonable efforts to deliver possession of the Jack in the Box parcel to Tenant by **[December 31, 2011]**. If, despite these efforts, Agency is unable to deliver possession as agreed, Agency shall not be subject to any liability therefor, nor shall such failure affect the validity of the Lease. Tenant shall not, however, be obligated to pay rent for the portion of the Jack in the Box parcel, totaling Two Thousand Two Hundred Sixty Seven Dollars and Ninety One Cents (\$2,267.91), until it receives possession of the Jack in the Box parcel. If possession is not delivered by **[December 31, 2011]**, Tenant may, at its option, by notice in writing within fifteen (15) days following such date, refuse to lease the Jack in the Box parcel, in which event the parties shall be discharged from all obligations hereunder regarding the Jack in the Box parcel. All other terms and conditions of the Lease, as amended by this Fifth Amendment, shall remain in full force and effect.]

b. The Scope of Development, attached to the Lease as Exhibit "D," is hereby amended to add the language set forth in Exhibit "1," attached hereto and incorporated herein by reference, regarding the Jack in the Box Parcel.

c. The Schedule of Performance, attached to the Lease as Exhibit "E," is hereby amended to add the language set forth in Exhibit "2," attached hereto and incorporated herein by reference, regarding the Jack in the Box Parcel.

d. Section 10.6 is hereby amended to read as follows:

"The cost of developing the Premises and constructing all improvements thereon, including but not limited to the development of and improvements on the Jack in the Box Parcel, shall be borne by Tenant, except for the work expressly set forth in the Lease to be performed by Landlord or others on Exhibit D

Tenant acknowledges that the Landlord has made no representation, express or implied, to the Tenant or any person associated with the Tenant regarding whether or not laborers employed relative to the construction, installation or operation of the development of or improvements on the Premises must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, et seq. The Tenant agrees with the Landlord that the Tenant shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to the construction, installation or operation of the development of or improvements on the

Premises must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, et seq.

Tenant, on behalf of itself, its successors, and assigns, waives and releases the Landlord from any right of action that may be available to any of them pursuant to Labor Code Section 1781. The Tenant acknowledges the protections of Civil Code Section 1542 relative to the waiver and release contained in this Section 10.6, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, THE TENANT KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 10.6:

\_\_\_\_\_  
Tenant's Initials

Additionally, the Tenant shall indemnify, defend and hold harmless the Landlord, pursuant to Section 16, against any claims pursuant to Labor Code Section 1781 arising from this Lease or the construction, installation or operation of all or any portion of the development of or improvements on the Premises.”

e. Section 10.9 is hereby amended to read as follows:

“Before demolition of any existing improvements Tenant shall submit to Landlord for its approval a copy of its construction contract for the demolition of existing improvements and construction of the new improvements. No work demolition shall commence until Landlord approval of such contract.

Tenant shall be solely responsible for securing appropriate bids and awarding contracts for demolition, construction and installation of improvements in compliance with applicable federal, state, and local laws, rules and regulations, including but not limited to the Public Contract Code and City of Covina's Purchasing and Contracting Guidelines. Tenant shall exercise due diligence in competitively bidding for demolition, construction and installation of the improvements on the Jack in the Box Parcel within a reasonable period of time following execution of this Lease. Tenant shall defend, indemnify and hold Agency, its

officials, officers, employees, consultants and agents, free and harmless from any and all alleged and actual claims, actions or liability whatsoever, including attorneys' fees and other related costs and expenses arising out of or in connection with the bidding and awarding of the contracts for the Jack in the Box Parcel, and the demolition, construction and installation of improvements on the Premises."

f. Sections 59.1 through 59.6 of the Lease are hereby deleted.

2.8 Revenue Guarantee. Section 62 of the Lease is hereby amended to add the following paragraph:

"The "Second Dealership" shall mean and refer to the automobile dealership located at 528 South Citrus Avenue, Covina. The Parties understand and acknowledge that as of the Assignment and Assumption date (as that term is defined in Section 2.2 of the Fifth Amendment to the Lease), Second Dealership is not owned or operated by Tenant. Notwithstanding the foregoing, commencing upon the Assignment and Assumption date Tenant shall be credited with forty percent (40%) of the Excess Sales and forty percent (40%) of the Revenue Guarantee arising from the two dealerships. In the event payment is due to City at the end of the last Guarantee Year, as set forth herein, such payment shall be made to City by SAI."

2.9 Non-Discrimination. Section 44 of the Lease is hereby amended to include religion among the prohibited forms of discrimination.

2.10 Effective Date. This Fifth Amendment shall become effective upon the first date on which all of the following have occurred: (i) the Agency is in receipt of four (4) counterpart originals of this Fifth Amendment executed by the authorized representative(s) of the Tenant and SAI, (ii) this Fifth Amendment has been approved by the Agency governing body, following a duly noticed public hearing, (iii) this Fifth Amendment has been executed by the authorized representative(s) of the Agency and delivered to the Tenant and SAI; and (iv) SAI and Tenant have completed the sale, transfer and assignment of the dealership on the Premises and delivered proof of such completion to the Agency, to the Agency's reasonable satisfaction. In the event that each and every contingency listed in this Section 2.10 as a condition precedent to the affectivity of this Lease fails to occur by September 30, 2011 then this Fifth Amendment shall fail to become effective and shall be void in its entirety, and the sole and exclusive right to the Premises shall remain with the Agency and SAI and no rights in the Premises shall transfer to or vest in Tenant.

2.11 Permitted Transfer. The Tenant shall not cause or allow any Transfer, without the prior written approval of the Agency. The Tenant recognizes that the qualifications and identity of the Tenant are of particular concern to the Agency and that a Transfer is for all practical purposes a transfer or disposition of the responsibilities of the Tenant with respect to this Fifth Amendment, the Lease and the Premises and, therefore, Transfers are only allowed in

accordance with the provisions of this Section. Notwithstanding the foregoing, the Tenant may Transfer this Fifth Amendment to a Permitted Transfer in accordance with the provisions of this Section.

a. For purposes of this Section, "Transfer" shall mean and refer to any of the following:

(1) Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Tenant of more than a 49% interest in the Tenant's interest in this Fifth Amendment, the Lease, or the Premises or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in the Tenant's interest in this Fifth Amendment, the Lease or the Premises; or

(2) Any total or partial sale, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Tenant or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in any interest in the Tenant; or

(3) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Tenant or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Tenant; or

(4) Any Transfer of the building, this Fifth Amendment of the Lease; or

(5) The recordation of any deed of trust, mortgage, lien or similar encumbrance against all or any portion of the Premises.

b. For purposes of this Section, "Permitted Transfer" shall mean and refer to any of the following types of Transfers by the Tenant, where the person or entity to which such Transfer is made, expressly assumes the obligations of the Tenant under this Fifth Amendment in a written instrument satisfactory to the Agency:

(1) Any Transfer of stock or equity of the Tenant that does not change management or operational control of the Premises;

(2) Any Transfer of any interest in the Tenant irrespective of the percentage of ownership (i) to any other owner of any interest in the Tenant; or (ii) to any Affiliate, or (iii) to any other person or entity in which any holder of an interest (including any beneficial interest) in the Tenant is a manager, officer or partner or in which any of the aforementioned is a shareholder, member or partner.

c. For purposes of this Section, "Affiliate" shall mean and refer to any person or entity, directly or indirectly, Controlling or Controlled by or under common Control with the Tenant, whether by direct or indirect ownership of equity interests, by contract or otherwise.

d. For purposes of this Section, "Control," "Controlling" or "Controlled" means and refers to exercising or having possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by ownership of equity interests, by contract or otherwise

2.12 Counterparts. This Fifth Amendment may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart.

2.13 Ratification. This amendment hereby ratifies, certifies, reaffirms and reauthorizes each and every obligation arising under the Lease.

2.14 Except as specifically modified by this Fifth Amendment, the Lease shall remain in full force and effect. To the extent of any inconsistency between the terms and conditions of this Fifth Amendment and the Lease, the terms and conditions of this Fifth Amendment shall control.

Executed by Agency on

\_\_\_\_\_

Approved as to Form:

Covina Redevelopment Agency

Best Best & Krieger

By: \_\_\_\_\_  
Agency Counsel

By: \_\_\_\_\_  
Daryl J. Parrish  
Executive Director

Attest:

By: \_\_\_\_\_  
Agency Secretary

Executed by Tenant on

\_\_\_\_\_

TENANT:

Walters-Bayer Automotive Group LLC  
A Delaware limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

SAI/ASSIGNOR:

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT 1  
FIFTH AMENDMENT TO LEASE

Scope of Development

1. GENERAL

Tenant's improvements shall be designed and developed as a new motor vehicle sales facilities display and parking area. The improvements will replace the existing building and structures on the northwest corner of the Premises, previously occupied by Jack In The Box. The initial dealership shall be for KIA automobiles. Tenant's improvements shall be consistent with the Basic Concept Drawings and Landscaping Plan, showing paving, landscaping and grading, prepared by Tenant and approved by Landlord.

2. DEMOLITION

Tenant shall be responsible at its sole cost and expense for demolition of the existing restaurant and related structures as menu board and trash enclosure on the portion of the Premises known as the Jack in the Box parcel, and removal of debris on all portions of the Premises.

3. PRIVATE DEVELOPMENT STANDARDS

This project must meet all requirements, including landscaping, environmental requirements, under the Covina Municipal Code, and as specified in the existing lease.

4. PUBLIC IMPROVEMENTS

This project must meet all requirements, including landscaping, environmental requirements, under the Covina Municipal Code, and as specified in the existing lease.

EXHIBIT 2  
FIFTH AMENDMENT TO LEASE

Schedule of Performance

- A. Days shall be calendar days, unless otherwise specified.
- B. The Executive Director is authorized by the Agency to make administrative changes to the schedule prior to the Completion of Construction resulting in an aggregate extension of the Completion of Construction of one hundred-twenty (120) calendar days or less.
- C. Where the action/task is to be performed by the City, the Agency shall exercise its reasonable efforts to obtain performance by the City.
- D. All specific dates set forth in parentheses in this schedule are estimates only and not binding on the Parties. Tenant shall submit requests for time extension in writing.
- E. In the event of any conflict between this schedule and the Agreement, the terms and provisions of the Agreement shall control.
- F. All defined terms indicated by initial capitalization used in this schedule shall have the meanings ascribed to the same terms in the Agreement.

<b><u>ITEM OF PERFORMANCE</u></b>		<b><u>TIME FOR PERFORMANCE</u></b>
1.	<u>Effective Date</u> – As described in Section 2.10	On or before September 30, 2011.
2.	<u>Submission – Basic Concept Drawings and Landscape Plan</u> – Tenant shall prepare and submit to Landlord preliminary construction drawings, outline specifications and landscaping plan for	No later than ninety (90) days after Landlord execution of Lease.
3.	<u>Approval – Preliminary Construction Drawings and Landscaping Plan</u>	Within thirty (30) days after receipt by Landlord.
4.	<u>Submission – Final Construction Drawings, Landscaping and Finish Grading Plan</u> – Tenant shall prepare and submit to City final construction drawings and specifications, a final landscaping and finish grading plan.	Within ninety (90) days after approval by Landlord of preliminary construction drawings and landscaping plans.

<b><u>ITEM OF PERFORMANCE</u></b>		<b><u>TIME FOR PERFORMANCE</u></b>
5.	<u>Deliver – Final Construction Drawings, Landscaping and Finish Grading Plan</u> – City shall approve or disapprove the final construction drawings and specifications, a final landscaping and finish grading plan.	At the completion of the entitlement process.
6.	<u>Possession of the Jack In The Box Premises.</u> Tenant shall accept possession of the Jack In The Box Premises.	Not later than December 31, 2011
7.	<u>Demolition of Existing Improvements.</u> Tenant shall demolish the existing Jack In the Box restaurant and related structures such as trash enclosure and menu board.	Within 120 days after the delivery of possession
8.	<u>Commencement of Construction.</u> Developer shall commence construction on the Premises.	Within thirty (30) days after delivery of possession of the premises and City approval of final construction drawings.
9.	<u>Completion of Construction.</u> Developer completes construction of the Project.	Within ninety (90) days after commencement of construction.