



**CITY OF SAN FERNANDO
COUNCIL CHAMBERS
PLANNING AND PRESERVATION COMMISSION AGENDA
SEPTEMBER 9, 2014**

1. CALL TO ORDER

7:00 P.M.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Chairperson Theale Haupt, Vice-chair Alvin Durham, Commissioners, Kevin Beaulieu, Yvonne G. Mejia, and Rodolfo Salinas, Jr.

4. APPROVAL OF AGENDA

September 9, 2014

5. PUBLIC STATEMENTS

There will be a three (3) minute limitation per each member of the audience who wishes to make comments in order to provide a full opportunity to every person who wishes to address the Commission on community planning matters not pertaining to items on this agenda.

6. CONSENT CALENDAR

Items on the consent calendar are considered routine and may be acted on by a single motion to adopt the staff recommendation or report. If the Commission wishes to discuss any item, it should first be removed from the consent calendar.

- Planning and Preservation Commission Minutes of the April 1, 2014 meeting; and
- Planning and Preservation Commission Minutes of the June 23, 2014 meeting.

7. NEW BUSINESS

A: Subject: Zone Text Amendment 2014-01: Development Agreement Ordinance

Location: City of San Fernando - Citywide

**Applicant: City of San Fernando, Community Development Department,
117 Macneil Street, San Fernando, CA 91340**

Proposal: The proposed zone text amendment would establish rules and regulations for development agreements consistent with California Government Code Sections 65864 et seq. in order to provide an additional land use and zoning review tool to the City to facilitate redevelopment throughout the community in a manner consistent with the City's General Plan and associated zoning regulations.

Recommendation: It is recommended that subsequent to staff's presentation and consideration of any public comments, the Planning and Preservation Commission adopt the attached Resolution (Attachment No. 1) recommending to the City Council:

1. Adoption of the proposed Ordinance (Attachment No. 2) establishing rules and regulations for development agreements consistent with California Government code Sections 65864 et seq. in order to provide an additional land use and zoning review tool to the City to facilitate redevelopment throughout the community in a manner consistent with the City's General Plan and associated zoning regulations; and,
2. Affirm the City's determination that the proposed Ordinance establishing rules and regulations for development agreements is exempt under the California Environmental Quality Act (CEQA) Guidelines using the General Rule Exemption, Section 15061 (b)(3) and therefore no further environmental review is required.

If, in the future, you wish to challenge the items listed above in Court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Planning Commission at, or prior to, the public hearing. Decisions of Planning and Preservation Commission may be appealed to the City Council within 10 days following the final action.

8. **STAFF COMMUNICATIONS**

9. **COMMISSION COMMENTS**

10. **ADJOURNMENT**

October 7, 2014

Any public writings distributed to the Planning and Preservation Commission regarding any item on this regular meeting agenda will also be made available at the Community Development Department public counter at City Hall located at 117 Macneil Street, San Fernando, CA, 91340 during normal business hours. In addition, the City may also post such documents on the City's Web Site at www.sfcity.org.

In accordance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services please call the Community Development Department office at (818) 898-1227 at least 48 hours prior to the meeting.



**CITY OF SAN FERNANDO
PLANNING AND PRESERVATION COMMISSION**

**DRAFT MINUTES OF THE MEETING OF
APRIL 1, 2014
CITY HALL COUNCIL CHAMBER**

THE FOLLOWING MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE PLANNING COMMISSION. AUDIO OF THE ACTUAL MEETING ARE AVAILABLE FOR LISTENING IN THE COMMUNITY DEVELOPMENT DEPARTMENT.

CALL TO ORDER

The meeting was called to order by at 7:00 P.M.

PLEDGE OF ALLEGIANCE

Led by Theale Haupt

ROLL CALL

The following persons were recorded as present:

PRESENT:

Chairperson Theale Haupt, Vice-chair Alvin Durham, Commissioners Kevin Beaulieu, Y. Mejia, and Rudy Salinas

ABSENT

None

ALSO PRESENT

Community Development Director Fred Ramirez and Community Development Secretary Michelle De Santiago

APPROVAL OF AGENDA

Commissioner Y. Mejia moved to approve the agenda for the April 1, 2014 Planning and Preservation Commission. Seconded by vice-chair A. Durham, the motion carried with the following vote:

AYES:	Y. Mejia, A. Durham, K. Beaulieu, T. Haupt and R. Salinas
NOES:	None
ABSENT:	None
ABSTAIN:	None

CONSENT CALENDAR

Vice-chair A. Durham approved the consent calendar which included minutes of the November 5, 2013 and March 18, 2014 Planning and Preservation Commission meetings. Seconded by Commissioner Y. Mejia, the motion carried with the following vote:

AYES:	A. Durham, Y. Mejia, K. Beaulieu, T. Haupt and R. Salinas
NOES:	None
ABSENT:	None
ABSTAIN:	None

UNFINISHED BUSINESS

None

PUBLIC HEARING 7A: Modification of Variance 2013-04 and Development Standards Modification 2014-01 (RE: Conditional Use Permit 2013-07 and Site Plan Review 2013-07) – 460 San Fernando Mission Boulevard and 1136 Hollister Street, San Fernando, CA 91340 – Robert Grosse, WSS, 13425 South Figueroa Street, Los Angeles, CA 90061 – The proposed project is a request to modify previously approved Variance 2013-04 in order to allow the construction of a 4,696 square-foot addition to an existing 6,171 square foot commercial building located within the C-1 (Limited Commercial) zone at 460 San Fernando Mission Boulevard with reduced front and side setbacks of five feet-four inches and four feet-two inches, respectively while also constructing an off-site parking facility for a portion of the required parking at 1136 Hollister Street located in the R-2 (Multiple Family Dwelling) zone. The primary project site at 460 San Fernando Mission Boulevard is an approximate 17,500-square-foot lot located on the easterly corner of San Fernando Mission Boulevard and Hollister Street. The planned off-site parking facility at 1136 Hollister Street is an approximate 10,000-square-foot lot located on the southwesterly portion of the 1100 block of Hollister Street, between San Fernando Mission Boulevard and South Maclay Avenue. The total parking provided for the project includes 34 proposed parking spaces (i.e., 10 on-site and 24 at the off-site parking facility at 1136 Hollister Street).

The project applicant has also requested that the City consider approval of a modification of the C-1 zone property development standards pursuant to City Code Section 106-212, Subsections 5(a) and 5(c) to allow for the 62 percent lot coverage and a modification of on-site parking requirements reducing total required parking by five (5) percent in order to provide a total of 34 parking spaces for the project.

STAFF PRESENTATION

Community Development Director Fred Ramirez gave the staff presentation recommending that the Planning and Preservation Commission approve the proposed Modification of Variance 2013-04 and Development Standards Modification 2014-01, pursuant to Planning and Preservation Commission Resolution 2014-04 and the Conditions of Approval attached as Exhibit “A” to the resolution (Attachment1).

PUBLIC TESTIMONY

None

COMMISSION DISCUSSION

F. Ramirez stated he received a call regarding the size of the banner on the building announcing the modification of the proposal. He stated that the code dictates the size and the visibility of the notice.

K. Beaulieu asked if the exit off of Hollister Street would be at an angle or is the applicant proposing delineators so that a car can only exit making a right hand turn.

F. Ramirez indicated that the conditions of approval include language for “Right Turn Only” when exiting from the parking lot.

K. Beaulieu asked if the building height changed and if the number of trees required changed.

F. Ramirez stated that the building height has been reduced from 45' to 42' and the number of trees required on site would remain at five.

A. Durham stated that he likes the changes and the modifications make for a cleaner looking design.

Y. Mejia asked about the construction timeline.

F. Ramirez stated that if the project is approved at tonight's meeting that there is a 10 day appeal period and if no appeals are received then the applicant can move forward with submitting the plan check documents.

T. Haupt asked about the lighting on the signage and hoped that there is no spill over to neighboring properties.

F. Ramirez indicated that the conditions of approval details which logos are illuminated or not.

K. Beaulieu asked what types of tree would be planted at the location.

F. Ramirez repeated the friendly amendments to the conditions as follows; the Commission defers the landscaping plan approval to the Community Development Director, parking lot and directional sign noting arrows at Hollister for "Right Turn Only" with a condition that future changes needed to address traffic issue to be paid for by the developer.

Subsequent to discussion, Vice-chair A. Durham moved to approve Modification of Variance 2013-04 and Development Standards Modification 2014-01. Seconded by Commissioner K. Beaulieu, the motion carried with the following vote:

AYES:	A. Durham, K. Beaulieu, A. Haupt, Y. Mejia, and R. Salinas
NOES:	None
ABSENT:	None
ABSTAIN:	None

COMMISSION REORGANIZATION

A. Durham moved to maintain T. Haupt as the Chairperson. Seconded by Y. Mejia, no objections and T. Haupt accepted.

K. Beaulieu moved to maintain A. Durham as Vice-chair. Seconded by Y. Mejia, no objections and A. Durham accepted.

STAFF COMMUNICATIONS

F. Ramirez gave the commission an update on the construction progress made at:

- Lopez Adobe
- Chipotle
- Tri-Color
- Walgreens
- Smart and Final Express; and
- Northeast Valley Health Corporation.

COMMISSION COMMENTS

T. Haupt asked about the street markings along First Street and the carports at 650 Glenoaks Blvd.

Y. Mejia asked about the window signage at Fiesta Insurance.

PUBLIC STATEMENTS

None

ADJOURNMENT

Chairperson T. Haupt moved to adjourn to May 6, 2014. Second by Commissioner K. Beaulieu, the motion carried with the following vote:

AYES:	T. Haupt, K. Beaulieu, A. Durham, Y. Mejia, and R. Salinas
NOES:	None
ABSENT:	None
ABSTAIN:	None

8:24 P.M.
Fred Ramirez
Planning Commission Secretary



**CITY OF SAN FERNANDO
PLANNING AND PRESERVATION COMMISSION**

**DRAFT MINUTES OF THE
JUNE 23, 2014
SPECIAL MEETING
CITY HALL COUNCIL CHAMBER**

THE FOLLOWING MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE PLANNING COMMISSION. AUDIO OF THE ACTUAL MEETING ARE AVAILABLE FOR LISTENING IN THE COMMUNITY DEVELOPMENT DEPARTMENT.

CALL TO ORDER

The meeting was called to order by Chairperson Theale Haupt at 7:10 P.M.

PLEDGE OF ALLEGIANCE

Led by Chairperson Theale Haupt

ROLL CALL

The following persons were recorded as present:

PRESENT:

Chairperson Theale Haupt, Vice-chair Alvin Durham, Commissioners Kevin Beaulieu, Y. Mejia, and Rudy Salinas

ABSENT:

None

ALSO PRESENT:

Community Development Director Fred Ramirez, City Attorney Isabel Birrueta, City Consultant Marc Blodgett, and Community Development Secretary Michelle De Santiago

APPROVAL OF AGENDA:

Vice-chair A. Durham moved to approve the agenda for June 23, 2014. Seconded by Commissioner Y. Mejia, the motion carried with the following vote:

AYES:	A. Durham, Y. Mejia, K. Beaulieu, T. Haupt and R. Salinas
NOES:	None
ABSENT:	None
ABSTAIN:	None

CONSENT CALENDAR

No Items

UNFINISHED BUSINESS

None

Commissioner K. Beaulieu stated that he needed to recuse himself from the meeting since he holds interest in a property that is within 500 feet from the proposed project. He indicated that in order to avoid a potential conflict of interest he would recuse himself from participating in the review of the project and leave the council chambers.

K.Beaulieu left at 7:13 p.m.

PUBLIC HEARING 7A:

Zone Map Amendment 2014-001, Site Plan Review 2014-008, Variance 2014-0010, Historic Designation, and Initial Study and Mitigated Negative Declaration – 1140 and 1148 San Fernando Road, San Fernando, CA 91340 – Aszkenazy Development, Inc., 601 S. Brand Boulevard, 3rd Floor., San Fernando, CA 91340 – The proposed project involves the construction of a new four-story mixed-use development with three floors of residential totaling approximately 77,523 with 101 one-bedroom residential units and a first floor with approximately 17,455 square feet dedicated for street level retail/service uses at the subject property located at 1140-1148 San Fernando Road (“the “Project”).

The proposed 101 residential units would be designed as affordable to eligible low-income households. Parking for the Project will be provided by 108 on-sight parking spaces including the construction of a subterranean parking facility and ground floor parking area. The Project site is currently improved with the former J.C. Penney’s Department store (60, 000 sq. ft.) and the former Bank of America (“Casanova”) Building (9,179 sq. ft.). The Project site is approximately 35,000 square feet (175 feet by 200 feet) and is made up of two parcels that are 15,000 sq. ft. respectively. The subject property is located along the south side of the 1100 block of San Fernando Road between San Fernando Mission Boulevard and South Maclay Avenue, within the San Fernando Corridor Specific Plan SP-4 Zone (Downtown District/San Fernando Mall Sub-district) & (Truman San Fernando District/Mixed Use Transition Sub-District).

The Project will require City approval of a zone map amendment inclusive of an ordinance adoption to allow the entire Project site to be under one zoning district (Downtown District) and one sub-district classification (San Fernando Mall Sub-District) as well as approval of a variance to deviate from the city’s development standards to exceed the 50-foot maximum building height and encroach into the 15-foot required front and side setback for the upper residential floors. As part of the Project’s approval the City will be considering designation of the J.C. Penney’s building front façade as City historic resource. In accordance with the provisions of the California Environmental Quality Act, the City as the “Lead Agency” has determined that the proposed Project will not have a significant adverse impact on the environment therefore intends to adopt a Mitigated Negative Declaration for the Project.

STAFF PRESENTATION

Community Development Director Fred Ramirez gave the staff presentation recommending that the Planning and Preservation Commission:

1. Approve Variance 2014-001 and Site Plan Review 2014-008, pursuant to Planning and Preservation Commission Resolution 2014-06 and conditions of approval attached as Exhibit “A” to the resolution;
2. Adopt Planning and Preservation Commission Resolution 2014-07 (“Attachment 2”) recommending to the City Council designation of the J.C. Penney’s building front façade elevation facing San Fernando Road which includes character defining architectural features and appurtenances located at 1140 San Fernando Road as a city historic resource; and,
3. Adopt a “Resolution of Intention” recommending to the City Council approval of Zone Map Amendment 2014-001 adoption of the Initial Study and Mitigated Negative Declaration for the

Project to the City Council, pursuant to Planning and Preservation Commission Resolution 2014-08 (“Attachment3”).

PUBLIC TESTIMONY

Linda Campanella – 319 N. Workman Street – She stated that it is a beautiful project and that the developer is known for his effort of historic preservation. She indicated that she loves the small town feel of San Fernando and she stated that she is in favor of the project.

Jose Juarez – Hubbard Avenue – He stated that he is part of the small group of struggling college students wanting to return to San Fernando. He stated that this project will generate more activity to the city’s downtown and despite the units only being available to low-income individuals it is much needed in the city.

Margarita Montañez – 608 Hollister Street – She stated that she was recently in a beauty salon at Laurel Canyon and Chatsworth Street and there was a young man who walked into the salon with a gun and robbed the clients at gunpoint. She stated that if anyone is ever in the same situation to please comply with the demands. She stated that she would not like to see our police services be affected with the development of the proposed apartments that are part of the project.

COMMISSION DISCUSSION

R. Salinas asked why all the units being proposed were only one-bedroom apartments.

F. Ramirez stated that multiple factors affect the type of residential development being proposed including constraints associated with physical limits of the site associated with the building envelope as well as the added cost to provide additional parking levels required for additional bedrooms per unit. Collectively, all these factors would drive up the cost to build as well as the rents and make the project difficult to finance.

Adriana Gomez – Project Manager stated that the unit size and number of bedrooms was directly affected by the financial impacts associated with building additional levels of parking required for additional bedrooms as well as the negative affect to affordability attributed to increased costs to build the apartment units.

Y. Mejia asked if all of the units would be affordable housing.

A.Gomez stated that the tax credit will only finance 100% affordable units. She stated that the applicant must meet the income guidelines and gets certified and if the tenant eventually earns more money they cannot be evicted.

Y. Mejia asked about the business improvement and parking assessment districts and who monitors the parking areas.

F. Ramirez discussed the business assessment and parking district that encompass the project and discussed how business pay into the assessment districts on an annual basis as part of the business license renewal process and that the money is intended to maintain and operate the public parking facilities in the immediate vicinity of the project site. .

Y. Mejia asked what if any restriction would there be on the number of occupants for the one-bedroom units in order to prevent overcrowding.

A.Gomez stated that the Federal guidelines state that there can be 2 persons per 1 bedroom plus one person per living space.

A.Durham expressed his concern that we will not attract businesses in coming to our city because of the high concentration of low-income residents. He stated that he doesn't see enough positives in the proposed project.

A.Gomez stated that a lot of the retailers do not consider San Fernando because of the lack of residents in the downtown area. She stated that the developer feels the opposite and that this project will actually help attract new businesses.

T. Haupt asked if the entire building would be torn down and the front façade rebuilt.

I.Fitzsimmons stated that it is too costly to tear the entire building down. He stated that every effort will be made to stabilize the San Fernando Road façade during the demolition. He stated that they will need to demo the basement floor but that he does not anticipate that this will undermine the original foundation along the building's front facade.

T. Haupt stated that in the renderings there seems to be a blade sign at the rear of the building facing Celis Street; he is if there was going to be a new blade sign on the new Celis Street frontage.

I.Fitzsimmons stated that yes there would be a new blade sign on Celis Street.

T. Haupt asked about for some clarification of items listed on the Public Works Department Building Checklist.

F. Ramirez provided clarification regarding the Public Works Checklist.

R. Salinas stated that it is a good project and expressed concern that the units will get rundown.

A.Gomez indicated that they are subject to annual inspections and that there is a level of maintenance that is required for all units and the property required by the project investors. She also noted that the site like all there other residential developments will have an on-site resident manager.

Marc Blodgett gave a brief presentation on the environmental assessment conducted as part of the project and responded to public and commissioner comments by noting the various mitigation measures incorporated into the project that are intended to ensure the long term viability of the project and reduction of potential cultural, noise, air quality, public service and hazards impacts associated with the project.

Y. Mejia stated that she is a big proponent of mixed-use and she expressed concern primarily about the possibility of overcrowding. She stated that the project has the potential to attract additional foot traffic to the downtown.

T. Haupt state his support for the project, noted the smaller size of the units and also acknowledged the need for people to find similar type units to live in. He also noted that he project will create more business opportunities and it will eliminate a vacant and obsolete building.

Subsequent to discussion, Commissioner Y, Mejia moved to approve Variance 2014-001 and Site Plan Review 2014-08, pursuant to Planning and Preservation Commission Resolution 2014-06 and conditions of approval

attached as Exhibit “A” to the resolution. Seconded by Commissioner R. Salinas, the motion carried with the following vote:

AYES:	Y. Mejia, R. Salinas, A. Durham, and T. Haupt
NOES:	None
ABSENT:	K. Beaulieu
ABSTAIN:	None

Vice-chair A. Durham moved to recommend to the City Council designation of the J.C. Penney’s building front façade elevation facing San Fernando Road, pursuant to Planning and Preservation Commission Resolution 2014-07 (“Attachment2”). Seconded by Commissioner Y. Mejia, the motion carried with the following vote:

AYES:	A. Durham, Y. Mejia, T. Haupt, and R. Salinas
NOES:	None
ABSENT:	K. Beaulieu
ABSTAIN:	None

Commissioner Y. Mejia moved to recommend to the City Council approval of a “Resolution of Intention” to approve Zone map Amendment 2014-001 and adoption of the Initial Study and Mitigated Negative Declaration, pursuant to Planning and Preservation Commission Resolution 2014-08 (“Attachment 3”). Seconded by Commissioner R. Salinas, the motion carried with the following vote:

AYES:	Y. Mejia, R. Salinas, A. Durham, and T. Haupt
NOES:	None
ABSENT:	K. Beaulieu
ABSTAIN:	None

STAFF COMMUNICATIONS

The July 1, 2014 will be cancelled and we will have a special meeting mid-July 2014 to discuss pending cases.

COMMISSION COMMENTS

None

PUBLIC STATEMENTS

None

ADJOURNMENT:

Vice-chair A. Durham adjourned the meeting, the motion carried with the following vote:

AYES:	A. Durham, T. Haupt, Y. Mejia, and R. Salinas
NOES:	None
ABSENT:	K. Beaulieu
ABSTAIN:	None

9:13 P.M.
Fred Ramirez
Planning Commission Secretary

MEETING DATE: September 9, 2014

PUBLIC HEARING:

1. CHAIRPERSON TO OPEN THE ITEM AND REQUEST STAFF REPORT
2. STAFF PRESENTS REPORT
3. COMMISSION QUESTIONS ON STAFF REPORT
4. OPEN FOR PUBLIC HEARING
5. CLOSE PUBLIC HEARING
6. PLANNING AND PRESERVATION COMMISSION DISCUSSION
7. RECOMMENDED ACTION:

(a) **To Approve:**

“I move to recommend to the City Council adoption of the proposed Ordinance (Attachment No. 2) establishing rules and regulations for development agreements consistent with California Government Code Sections 65864 et seq. in order to provide an additional land use and zoning review tool to the City to facilitate redevelopment throughout the community in a manner consistent with the City’s General Plan and associated zoning regulations. Additionally I move to recommend affirmation that the City’s determination of the proposed Ordinance for the development agreement is exempt under the California Environmental Quality Act (CEQA) Guidelines using the General Rule Exemption, Section 15061(b)(3) and therefore no further environmental review is required, pursuant to Planning and Preservation Commission Resolution 2014-10 (“Attachment 1”).

(b) **To Deny:**

“I move to recommend denial to the City Council of Zone Text Amendment 2014-01: Development Agreement Ordinance, based on the following ...” (Roll Call Vote)

(c) **To Continue:**

“I move to continue consideration of Zone Text Amendment 2014-01: Development Agreement Ordinance to a specific date...” (Roll Call Vote)

PUBLIC HEARING:

Moved by: _____

Seconded by: _____

Roll Call: _____

Item 7A:

Zone Text Amendment 2014-01: Development Agreement Ordinance



PLANNING AND PRESERVATION COMMISSION STAFF REPORT

DATE: September 9, 2014

TO: SAN FERNANDO PLANNING AND PRESERVATION COMMISSION

FROM: Fred Ramirez, Community Development Director

SUBJECT: **Zone Text Amendment 2014-01: Development Agreement Ordinance**

LOCATION: City-wide

PROPOSAL: The proposed zone text amendment would establish rules and regulations for development agreements consistent with California Government Code Sections 65864 et seq. in order to provide an additional land use and zoning review tool to the City to facilitate redevelopment throughout the community in a manner consistent with the City's General Plan and associated zoning regulations.

APPLICANT: City of San Fernando, Community Development Department, 117 Macneil Street, San Fernando, CA 91340

RECOMMENDATION:

It is recommended that subsequent to staff's presentation and consideration of any public comments, the Planning and Preservation Commission adopt the attached Resolution (Attachment No. 1) recommending to the City Council:

- 1) Adoption of the proposed Ordinance (Attachment No. 2) establishing rules and regulations for development agreements consistent with California Government Code Sections 65864 et seq. in order to provide an additional land use and zoning review tool to the City to facilitate redevelopment throughout the community in a manner consistent with the City's General Plan and associated zoning regulations; and,
- 2) Affirm the City's determination that the proposed Ordinance establishing rules and regulations for development agreements is exempt under the California Environmental Quality Act (CEQA) Guidelines using the General Rule Exemption, Section 15061(b)(3) and therefore no further environmental review is required.

BACKGROUND

The City of San Fernando currently does not have an ordinance that regulates the use of development agreements. In the past the City has considered applicant's request on a case-by-

case basis and has used memorandum of understandings, disposition and development agreements, and/or owner participation agreements as the processes to facilitate economic development and negotiate the terms of any agreements between the City and/or former Redevelopment Agency and developers.

The development agreement is another form of contract that can be used by the City when considering redevelopment projects with developers that specify the terms of the agreement in great detail. The development agreement can be used to negotiate conditions of approval with a prospective developer that go beyond what the City would require through the normal development process. The benefit to the developer is that it provides greater assurances that a proposed development project secured as part of the negotiated development agreement with the City can be built as approved. Under the agreement the developer/applicant would be able to proceed with the project subject to the terms of the agreement and associated zoning regulations that are in place at the time of the City's approval.

ANALYSIS:

California's planning and zoning laws authorize cities to enter into development agreements and establishes general rules governing development agreements. (California Government Code Sections 65864 et seq.) Per State law, the City must establish procedures and requirements in order to consider development agreement applications based on a request by an applicant. The City has not yet received a request for a development agreement. However, it is City staff's assessment that it would be prudent at this time for the City to adopt procedures and requirements consideration of development agreements contained in the proposed Ordinance Attachment No. 2). Establishing procedures and associated regulations for development agreements at this time will provide City staff, prospective applicants, the Planning and Preservation Commission and the City Council with a clearly defined process to follow and will provide greater transparency and understanding for the public of the development agreement application review process.

The development agreement is a contract between the City and a developer that specifies in great detail the rules for a project with very specific terms. The benefit for the developer is that they can be assured of what their entitlements are and know the local rules and regulations that will govern the project as part of the City's approval of said development agreement. The benefit for the City is that the development agreement creates greater opportunities to negotiate conditions/concessions including, but not limited to, development conditions, exactions and fees beyond what is allowed through the normal development review and approval process. (California Government Code Section 66000(b).) Projects approved as part of the development agreement review process are still subject to compliance with the California Environmental Quality Act (CEQA), which may result in additional development conditions and mitigation measures in order to mitigate potential significant adverse impacts associated with said project. In addition, the development agreement approval process must still ensure a project's compliance with applicable State and Federal regulations.

Cities throughout California have used the development agreement process to facilitate the following: school, park, and other facility funding; housing and mixed-use development projects; and, multi-phase commercial projects to name a few.

The proposed Ordinance (Attachment No. 2) also includes a public hearing process before the Planning and Preservation Commission and the City Council during which the community and the decision makers can seek to address a project's impacts to neighboring land uses and the community. Development agreements must also be approved by resolution or ordinance, which requires the aforementioned hearings before the Planning and Preservation Commission and the City Council. (California Government Code Section 36934.) Furthermore, post the development agreement approval by the City, the agreement must be reviewed on an annual basis to ensure compliance with development conditions and project milestones. The proposed Ordinance's development agreement review and approval process is intended to further the City's goal of promoting the community's needs and receive greater community benefit than would otherwise be achieved through the existing land use regulatory process.

Briefly, development agreements include the following major components:

- Permitted uses of the property being considered in the agreement;
- Density and/or intensity of use;
- Maximum height and size of proposed buildings;
- Provisions for reservation or dedication of land for public purposes;
- Terms and conditions relating to the financing of necessary public improvements, as well as provisions for subsequent reimbursement for that financing, as appropriate;
- Timeframes for the commencement and completion of construction, or any phases of construction;
- Subsequent discretionary approval provisions, as long as those approvals do not prevent development of the project as described in the agreement; and,
- The duration of the agreement.

City planning staff has reviewed the proposed Ordinance, and has determined that the proposed zone text amendment establishing rules and regulations for development agreements is exempt under the California Environmental Quality Act (CEQA) Guidelines using the General Rule Exemption, Section 15061(b)(3). Therefore, if the Planning and Preservation Commission agrees with City planning staff's determination then no further environmental review is required.

Zone Change. As referenced above, the proposed zone text amendment would establish rules and regulations for development agreements. The proposed zone text amendment and associated Ordinance (Attachment No. 2) is consistent with the City's General Plan and Zoning Ordinance and would not be detrimental to public interest, health, safety, convenience or welfare.

Pursuant to City Code Section 106-19, a zone text amendment is subject to discretionary review by the Planning and Preservation Commission and the City Council. The zone text amendment review process allows the opportunity for the Planning and Preservation Commission and City Council to assess the proposal's consistency with the City's general plan goals, objectives, policies, and programs as well as the applicable zoning regulations. In addition, the commission

and council review ensures that proposed zone text amendment and development agreement ordinance would not be detrimental to the public interest, health, safety, convenience or welfare. The Planning and Preservation Commission shall review a proposed zone text amendment and determine whether to approve a resolution of intention and provide a recommendation for approval to the City Council for said zone text amendment. Subsequent to a recommendation for approval by the Commission, the City Council shall review and consider approval of the requested amendments only if the required findings of fact can be made. A negative determination on any single finding will uphold a denial.

If the Planning and Preservation Commission concurs with staff's assessment, it would be the commission's recommendation to the City Council that the findings for approval of the requested zone text amendment could be made in this instance based on the aforementioned discussion, and as explained below.

- **The proposed amendment is consistent with the objectives, policies, general land uses and programs of the city's general plan.**

The proposed zone code/text amendments to the San Fernando City Code would specify procedures and requirements for the city to consider development agreements as provided for in Government Code Section 65864 et seq., which allows the city and a person who has ownership or control of property within the city to enter into said agreement to facilitate the development of said property. The purpose of the development agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval and will encourage private investment.

In addition, the zone code/text amendments will: (1) establish a development agreement process that strengthens the public planning process through the requirement that agreements are approved by the city in a public hearing with clear expectations on city and developer requirements and obligations in the agreement; (2) encourage public and private participation; and (3) commits the city and developer to a comprehensive planning process that seeks to make maximum efficient utilization of resources at the least economic cost to the public. To this end, the zone code/text amendment will allow the city to consider conditions (mitigation measures) on proposed development that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement will also seek to: clarify how the project may be phased, the required timing of public improvements, and the developer's contribution toward funding public infrastructure, including, but not limited to, streets, sewerage, transportation, drinking water, school, and public utilities.

Therefore, the proposed approval of the zone code/text amendment and associated adoption of the ordinance would be in compliance with the city's general plan land use and housing elements by allowing future development proposals under the development agreement to consider new public and private investment that: preserve the small town character of the community; facilitate new public and private investment within the city's commercial corridors and neighborhoods; maintain and enhance the quality of existing

housing, neighborhoods, and health of residents through new investment; preserve the character, scale, and quality of established residential neighborhood; and, maintain the quality of life within the community by providing adequate maintenance of streets, sidewalks, parks, and other public facilities (General Plan Land Use Element Goals I, II; City General Plan 2013-2021 Housing Element Goals 1.0 and 2.0, Policies 1.1, 1.2, 1.3, 1.6, 2.1, 2.2 and 2.7). Thus, it is staff's assessment that this finding can be made.

- **The adoption of the proposed amendment would not be detrimental to the public interest, health, safety, convenience or welfare.**

The proposed zone code/text amendments to establish procedures and requirements for the city to consider development agreements as provided for in Government Code Section 65864 et seq., would allow the city to condition as part of the agreements proposed development mitigation measures that ensure the proposed project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement will also seek to: clarify how the project may be phased; the required timing of public improvements; and, the developer's contribution toward funding public infrastructure, including, but not limited to, streets, sewerage, transportation, drinking water, school, and public utilities. Therefore, the proposed zone code/text amendments would not be detrimental to the public interest, health, safety, convenience or welfare. Thus, it is staff's assessment that this finding can be made.

CONCLUSION:

In light of the forgoing analysis, it is staff's assessment that in order to create new land use and zoning tools that will facilitate additional development within the community that is consistent with the City's General Plan and Zoning Ordinance, it is necessary for the Planning Commission to recommend to the City Council adoption of the zone text amendment pursuant to the attached Ordinance (Attachment No. 2). The proposed Ordinance will also create greater flexibility for the City to negotiate development conditions, exactions and fees beyond what is allowed through the normal development review and approval process. Adoption of the Ordinance will amend the City's zoning code and establish specific rules and regulations governing future request for development agreements pursuant to applicable local, State and Federal laws.

ATTACHMENTS (3):

1. Draft Resolution
 2. Draft Ordinance
 3. Public Notice
-

RESOLUTION NO. 2014-10

RESOLUTION OF THE PLANNING AND PRESERVATION COMMISSION OF THE CITY OF SAN FERNANDO RECOMMENDING ADOPTION TO THE CITY COUNCIL OF A DEVELOPMENT AGREEMENT ORDINANCE TO ESTABLISH REGULATIONS IN THE CITY CODE FOR THE CONSIDERATION OF PUBLIC REQUESTS TO ENTER INTO A DEVELOPMENT AGREEMENT WITH THE CITY

WHEREAS, California Government Code Sections 65864 et seq. authorizes cities to enter into development agreements and establishes general rules governing development agreements (the "Development Agreement Statute");

WHEREAS, the Development Agreement Statute requires that the City, upon request by an applicant, adopt a resolution or ordinance specifying procedures and requirements for consideration of development agreements;

WHEREAS, the City of San Fernando has not yet received a request for development agreement and does not currently have a procedure for processing development agreement applications;

WHEREAS, the City of San Fernando has determined that it is prudent at this time for the City to adopt procedures and requirements for the consideration of development agreements contained in the proposed Ordinance. Establishing procedures and associated regulations for development agreements at this time will provide City staff, prospective applicants, the Planning and Preservation Commission and the City Council with a clearly defined process to follow and will provide greater transparency and understanding for the public of the development agreement application review process;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the City of San Fernando's CEQA Guidelines, the City of San Fernando as the Lead Agency overseeing the environmental review for the proposed Zone Code Amendment 2014-01 has determined that the Ordinance establishing rules and regulations for development agreements is exempt under the California Environmental Quality Act (CEQA) Guidelines using the General Rule Exemption, Section 15061(b)(3) and therefore no further environmental review is required;

WHEREAS, on September 9, 2014, the Planning and Preservation Commission held a properly noticed public hearing at which it received a report from City staff as well as oral and written testimony from the public, and deliberated the proposed zone text amendment and associated environmental assessment; and,

WHEREAS, the Planning and Preservation Commission's findings and recommendations for approval to the City Council of the proposed zone text amendment and associated environmental assessment were memorialized in writing in the form of Planning and Preservation Commission Resolution 2014-10 on September 9, 2014.

NOW, THEREFORE, BE IT RESOLVED that the Planning and Preservation Commission finds as follows:

SECTION 1: The Planning and Preservation Commission finds that all of the facts set forth in this Resolution are true and correct.

SECTION 2: On September 9, 2014, the Planning and Preservation Commission held a duly noticed public hearing to consider the proposed Zone Text Amendment No. 2014-01, environmental assessment, and the findings and recommendations made by the Planning and Preservation Commission. Evidence, both written and oral, was presented at said hearing.

A. The public hearing afforded opportunities for public testimony and comments on proposed density bonus ordinance.

B. Notice of the hearing was given pursuant to San Fernando City Code Section 106-72 and in compliance with Government Code Sections 65090 and 65091, a notice of public hearing for the proposed zone text amendments was advertised in the *San Fernando Valley Sun News* (a local paper of general circulation), at least ten (10) days prior to the scheduled public hearing before the Planning and Preservation Commission.

SECTION 3: Based upon substantial evidence presented to the Planning and Preservation Commission on September 9, 2014, including public testimony, written materials and written and oral staff reports, with regard to the zone text amendment, the Planning and Preservation Commission concurred with the City planning staff's determination that the proposed zone text amendment in the form of the proposed Ordinance is exempt under the California Environmental Quality Act (CEQA) Guidelines using the General Rule Exemption, Section 15061(b)(3) and therefore no further environmental review is required and subsequently, recommended that the City Council adopt findings to that effect on September 9, 2014.

SECTION 4: The Planning and Preservation Commission has determined that the proposed zoning text amendment is consistent with the following findings of fact as discussed below:

a) The proposed zone text amendment is consistent with the objectives, policies, general land uses and programs of the City's General Plan.

The proposed zone code/text amendments to the San Fernando City Code would specify procedures and requirements for the city to consider development agreements as provided for in Government Code Section 65864 et seq., which allows the city and a person who has ownership or control of property within the city to enter into said agreement to facilitate the development of said property. The purpose of the development agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval and will encourage private investment.

In addition, the zone code/text amendments will: (1) establish a development agreement process that strengthens the public planning process through the requirement that agreements are approved by the city in a public hearing with clear expectations on city and developer requirements and obligations in the agreement; (2) encourage public and private participation; and (3) commits the city and

developer to a comprehensive planning process that seeks to make maximum efficient utilization of resources at the least economic cost to the public. To this end, the zone code/text amendment will allow the city to consider conditions (mitigation measures) on proposed development that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement will also seek to: clarify how the project may be phased, the required timing of public improvements, and the developer's contribution toward funding public infrastructure, including, but not limited to, streets, sewerage, transportation, drinking water, school, and public utilities.

Therefore, the proposed approval of the zone code/text amendment and associated adoption of the ordinance would be in compliance with the city's general plan land use and housing elements by allowing future development proposals under the development agreement to consider new public and private investment that: preserve the small town character of the community; facilitate new public and private investment within the city's commercial corridors and neighborhoods; maintain and enhance the quality of existing housing, neighborhoods, and health of residents through new investment; preserve the character, scale, and quality of established residential neighborhood; and, maintain the quality of life within the community by providing adequate maintenance of streets, sidewalks, parks, and other public facilities (General Plan Land Use Element Goals I, II; City General Plan 2013-2021 Housing Element Goals 1.0 and 2.0, Policies 1.1, 1.2, 1.3, 1.6, 2.1, 2.2 and 2.7). Thus, it is Commission's assessment that this finding can be made.

b) The adoption of the proposed zone text amendment would not be detrimental to the public interest, health, safety, convenience or welfare.

The proposed zone code/text amendments to establish procedures and requirements for the city to consider development agreements as provided for in Government Code Section 65864 et seq., would allow the city to condition as part of the agreements proposed development mitigation measures that ensure the proposed project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement will also seek to: clarify how the project may be phased; the required timing of public improvements; and, the developer's contribution toward funding public infrastructure, including, but not limited to, streets, sewerage, transportation, drinking water, school, and public utilities. Therefore, the proposed zone code/text amendments would not be detrimental to the public interest, health, safety, convenience or welfare. Thus, it is Commission's assessment that this finding can be made.

BE IT FURTHER RESOLVED that based upon the foregoing, the Planning and Preservation Commission hereby recommends approval of Zone Text Amendment 2014-01 to the City Council.

PASSED, APPROVED AND ADOPTED this 9th day of September 2014.

THEALE E. HAUPT, CHAIRPERSON

ATTEST:

FRED RAMIREZ, SECRETARY TO THE PLANNING
AND PRESERVATION COMMISSION

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF SAN FERNANDO)

I, FRED RAMIREZ, Secretary to the Planning and Preservation Commission of the City of San Fernando, do hereby certify that the foregoing Resolution was duly adopted by the Planning and Preservation Commission and signed by the Chairperson of said City at a meeting held on the 9th day of September 2014; and that the same was passed by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

FRED RAMIREZ, SECRETARY TO THE PLANNING AND
PRESERVATION COMMISSION

DRAFT

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF SAN FERNANDO,
CALIFORNIA AMENDING CHAPTER 106 (ZONING),
ARTICLE VI (GENERAL REGULATIONS) OF THE SAN
FERNANDO CITY CODE TO ESTABLISH DIVISION 17
REGARDING DEVELOPMENT AGREEMENTS**

WHEREAS, California Government Code Sections 65864 et seq. authorizes cities to enter into development agreements (the "Development Agreement Statute"); and

WHEREAS, the Development Agreement Statute requires that the City, upon request by an applicant, adopt an ordinance specifying procedures and requirements for consideration of development agreements; and

WHEREAS, the City of San Fernando does not currently have a procedure for processing development agreement applications; and

WHEREAS, the San Fernando City Council ("City Council") desires to promote and protect the public health, safety, and welfare by providing a greater degree of certainty in the development process through the usage of development agreements; and

WHEREAS, on September 9, 2014, the San Fernando Planning and Preservation Commission held a properly noticed public hearing at which it received a report from city staff as well as oral and written testimony from the public, and deliberated on the item. At that meeting, the Planning and Preservation Commission recommended through the adoption of Planning and Preservation Commission Resolution 2014-11 that the City Council adopt the proposed zone code amendments in this Ordinance; and

WHEREAS, on _____, 2014, the City Council held a public hearing on the proposed Ordinance that was noticed in accordance with the requirements set forth in Government Code sections 65090 and 65091.

NOW, THEREFORE, THE CITYCOUNCIL OF THE CITYOF SAN FERNANDO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and made a part of this Ordinance.

SECTION 2. The City Council hereby finds as follows:

- a) **The proposed zone text amendment is consistent with the objectives, policies, general land uses and programs of the City's General Plan.**

The proposed zone code/text amendments to the San Fernando City Code would specify procedures and requirements for the city to consider development agreements as provided for in Government Code Section 65864 et seq., which allows the city and a person who has ownership or control of property within the city to enter into said agreement to facilitate the development of said property. The purpose of the development agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval and will encourage private investment.

In addition, the zone code/text amendments will: (1) establish a development agreement process that strengthens the public planning process through the requirement that agreements are approved by the city in a public hearing with clear expectations on city and developer requirements and obligations in the agreement; (2) encourage public and private participation; and (3) commits the city and developer to a comprehensive planning process that seeks to make maximum efficient utilization of resources at the least economic cost to the public. To this end, the zone code/text amendment will allow the city to consider conditions (mitigation measures) on proposed development that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement will also seek to: clarify how the project may be phased, the required timing of public improvements, and the developer's contribution toward funding public infrastructure, including, but not limited to, streets, sewerage, transportation, drinking water, school, and public utilities.

Therefore, the proposed approval of the zone code/text amendment and associated adoption of the ordinance would be in compliance with the city's general plan land use and housing elements by allowing future development proposals under the development agreement to consider new public and private investment that: preserve the small town character of the community; facilitate new public and private investment within the city's commercial corridors and neighborhoods; maintain and enhance the quality of existing housing, neighborhoods, and health of residents

through new investment; preserve the character, scale, and quality of established residential neighborhood; and, maintain the quality of life within the community by providing adequate maintenance of streets, sidewalks, parks, and other public facilities (General Plan Land Use Element Goals I, II; City General Plan 2013-2021 Housing Element Goals 1.0 and 2.0, Policies 1.1, 1.2, 1.3, 1.6, 2.1, 2.2 and 2.7).

- b) The adoption of the proposed zone text amendment would not be detrimental to the public interest, health, safety, convenience or welfare.**

The proposed zone code/text amendments to establish procedures and requirements for the city to consider development agreements as provided for in Government Code Section 65864 et seq., would allow the city to condition as part of the agreements proposed development mitigation measures that ensure the proposed project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement will also seek to: clarify how the project may be phased; the required timing of public improvements; and, the developer's contribution toward funding public infrastructure, including, but not limited to, streets, sewerage, transportation, drinking water, school, and public utilities. Therefore, the proposed zone code/text amendments would not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 3. Article VI (General Regulations) of Chapter 106 (Zoning) of the San Fernando City Code is hereby amended with the following language to establish Division 17, specifying procedures and requirements for consideration of development agreements, in compliance with the Development Agreement Statute:

"Division 17. Development Agreements

Sections:

- 106-1450 Findings and declaration of intent.**
- 106-1451 Purpose of development agreement.**
- 106-1452 Authority for adoption.**
- 106-1453 Definitions.**
- 106-1454 Forms and information.**
- 106-1455 Fees.**
- 106-1456 Qualification as an applicant.**
- 106-1457 Procedure for development agreement.**
- 106-1458 Proposed form of development agreement.**
- 106-1459 Review of application.**
- 106-1460 Contents of development agreement.**
- 106-1461 Public hearing (planning and preservation commission).**
- 106-1462 Review- standard (planning and preservation commission).**
- 106-1463 Recommendation by planning and preservation commission.**

- 106-1464** Setting hearing date by city council.
- 106-1465** Ordinance public hearing (city council).
- 106-1466** Conduct public hearing by the city council.
- 106-1467** Consistency with general plan and specific plans (city council).
- 106-1468** Notice.
- 106-1469** Form and time of notice.
- 106-1470** Coordination of development agreement application with other discretionary approvals.
- 106-1471** Time and initiation of review.
- 106-1472** Finding of compliance.
- 106-1473** Failure to find good faith compliance.
- 106-1474** Public hearing.
- 106-1475** Findings upon public hearing.
- 106-1476** Procedure upon findings.
- 106-1477** Certificate of compliance.
- 106-1478** Initiation of amendment or cancellation.
- 106-1479** Procedure.
- 106-1480** Failure to receive notice.
- 106-1481** Rules governing conduct of hearing.
- 106-1482** Irregularity in proceeding.
- 106-1483** Subsequently adopted State and Federal laws.
- 106-1484** Architectural review.
- 106-1485** Governing rules, regulations, development policies and effect of development agreement.
- 106-1486** Rights of the parties after cancellation or termination.
- 106-1487** Construction.
- 106-1488** Recordation of development agreement, ordinances and notices.
- 106-1489** Enforcement of development agreements.
- 106-1490** Severability clause.
- 106-1491** Judicial review- time limitation.
- 106-1492** Condemnation.

Sec. 106-1450. Findings and declaration of intent.

(a) The California Legislature in section 65864 of the government code has found that the lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) The city council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by the adoption of this division in order to provide a mechanism for the enactment of development agreements in order to implement various goals and objectives of the city's general plan and to provide flexibility for the implementation of certain development project approvals for the development of particular projects and to provide a mechanism for allowing expenditures to respond selectively to

development proposals, including assurances of adequate public facilities at the time of development, proper timing and sequencing of development, effective capital improvement programming to accomplish the foregoing purposes and aims and the realization of the benefits to be derived therefrom.

Sec. 106-1451. Purpose of development agreement.

Development agreements enacted pursuant to this division are to assure the qualified applicant for a development project that upon approval of the development project by the city, the qualified applicant may proceed with the development project in accordance with certain existing policies, rules and regulations, and subject to specified conditions of approval.. Development agreements will also ensure that all conditions of approval, including the construction of off-site improvements made necessary by such land developments, will proceed in an orderly and economical fashion to the benefit of the city.

Sec. 106-1452. Authority for adoption.

This division pertaining to development agreements for the implementation of development projects, is adopted under the authority of government code sections 65864 through 65869.5, as amended.

Sec. 106-1453. Definitions.

The following terms when used in this division shall have the following respective meanings:

- (1) "developer" means a person who has a legal or equitable interest in the real property which is the subject of a development agreement.
- (2) "development agreement" means a development agreement enacted by legislation between the city and a qualified applicant pursuant to government code sections 65864 through 65869.5.
- (3) "director" means the community development director or his or her duly authorized designee.
- (4) "qualified applicant" is a person who has a legal or equitable interest in the real property which is the subject of a proposed development agreement.

Sec. 106-1454. Forms and information.

- (a) The director shall prescribe the form of each application, notice, and documents provided for or required under this division for the preparation and implementation of development agreements consistent with the provisions of this division and chapter.
- (b) The director may require an applicant for a development agreement to submit such information and supporting data as the director, city council, and other agencies to which the applicant is referred under this division and chapter, which are considered necessary to properly

process the application.

Sec. 106-1455. Fees.

The city council shall, from time to time by separate resolution or resolutions, fix schedules of fees and charges to be imposed for the filing, processing, and recording of each application and document provided for or required under this division and chapter, which fees and charges as then currently prescribed shall accompany each application made under this division and chapter.

These fees and charges shall be in addition to, and not in substitution of, any other required fees and charges relative to development of the subject property and shall be for the purpose of defraying the costs associated with city review and action on an application.

Sec. 106-1456. Qualification as an applicant.

Except as provided in section 106-1457(a), only a qualified applicant may file an application to enter into a development agreement. A qualified applicant includes an authorized agent of a qualified applicant. The director may require an applicant to submit proof of his/her interest in the real property and of the authority of the agent to act for the qualified applicant. Such proof may include a title report, policy or guarantees issued by a title insurance company licensed to do business in the State of California evidencing the requisite interest of the applicant in the real property. If the application is made by the holder of an equitable interest, the application shall be accompanied by a title guarantee issued by a title insurance company report and by a notarized statement of consent to proceed with the proposed development agreement executed by the holder of the legal interest. Before processing the application, the director shall obtain the opinion of the city attorney as to the sufficiency of the qualified applicant's interest in the real property to enter into the development agreement as a qualified applicant hereunder.

106-1457. Procedure for development agreement.

(a) Initiation by Application. An application for a development agreement may be made to the director in accordance with the procedures set forth herein.

(1) Application may be made by any qualified applicant.

(2) Application may be made by the city council. If an application is made for a development agreement by the city council, the city shall obtain and attach a notarized statement of consent to proceed with the proposed agreement executed by the owner of the subject property.

(b) Contents of the Application. The application shall be on a form prescribed by the director and shall be accompanied by a proposed ordinance and development agreement.

Sec. 106-1458. Proposed form of development agreement.

Each application shall be accompanied by the form of development agreement proposed by the

qualified applicant or as authorized in section 106-1457. Any such development agreement prepared by a qualified applicant shall contain the provisions required under section 106-1460, section 106-1483, and section 106-1485 of this division shall also include the following:

- (1) The parties to the development agreement;
- (2) The nature of the qualified applicant's legal or equitable interest in the real property constituting such person as a qualified applicant hereunder;
- (3) A description of the development project sufficient to permit the development agreement to be reviewed under the applicable criteria of this division and chapter. Such description may include, but is not limited to, references to site and building plans, elevations sufficient to determine heights and areas, relationships to adjacent properties and operational data. Where appropriate, such description may distinguish between elements of the development project which are proposed to be fixed under the development agreement, those which may vary and the standards and criteria pursuant to which the same may be reviewed;
- (4) An identification of the approvals and permits for the development project enacted to the date of or contemplated by the development agreement;
- (5) The proposed duration of the development agreement;
- (6) The proposed site improvement and building improvement design standards which the applicant shall use and apply for guidance of city consideration of the applicant's development project;
- (7) The proposed phasing of the construction, and any public improvements to be required;
- (8) A program and criteria for regular periodic review under this division and chapter;
- (9) Proposed provisions providing security for the performance of the qualified applicant under the development agreement;
- (10) Any other relevant provisions which may be deemed necessary by the director pursuant to this division and chapter.

Sec. 106-1459. Review of application.

(a) Upon submission of an application for a development agreement, the director shall stamp on the application the date it is received. Within thirty (30) days after receipt of application the director shall review the application and accompanying documentation for legal sufficiency, compliance with technical requirements and may reject it if it is incomplete or inaccurate for processing. If the director finds that the application is complete for processing the director shall accept it for filing. The director shall cause a written notice of acceptance or rejection to be mailed or delivered to qualified applicant. If rejected, the notice must also give the reason for the rejection. If such notice is neither mailed nor delivered within thirty (30) days following receipt of application for the development agreement, the application shall be deemed filed on the thirtieth day following its receipt by the director.

(b) After the application is accepted for filing or deemed filed, the director shall then review the application and determine any additional requirements necessary to complete the form of development agreement. After receiving the required information, the director shall prepare a staff report and recommendation and shall state whether or not the development agreement as

proposed, or in an amended form (specifying the nature of the amendments), would implement, be consistent with and in compliance with, the adopted general plan. Any proposed specific plan, relevant city policies and guidelines for development, and the provisions of this division and chapter. The director shall, as part of the review of the application, circulate copies of the proposed development agreement to those city departments and other agencies having jurisdiction over the development project to be undertaken pursuant to the development agreement for review and comment by such city departments and agencies. The city attorney shall also review the proposed development agreement for legal form and sufficiency and shall approve and/or prepare a proposed ordinance authorizing the city to enter into the development agreement for action by the city council upon hearing thereof as specified by this division and chapter. The staff report and recommendation of the director shall include any appropriate recommendations received, and the proposed form of ordinance prepared by the director and approved by the city attorney.

(c) Upon the completion of such review, the director shall set the matter for a public hearing before the planning and preservation commission.

Sec 106-1460. Contents of development agreement.

(a) A development agreement shall specify its duration, the permitted uses of the property thereunder, the density and/or intensity of use, the maximum height and size of proposed buildings and improvements, and provisions for reservation or dedication of land for public purposes. A development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions; provided, that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the property for the uses and to the density or intensity, height, and size of development set forth in the development agreement and phasing if and to the extent the development agreement so provides. Without limitation as to types of conditions, terms, and restrictions, the development agreement may provide for the phasing of construction of development projects and any improvements with respect thereto, and the development agreement may also provide that the construction shall be commenced and completed within specified times and that the development project, public improvements, or any phase thereof be commenced and completed within specified times.

(b) A development agreement shall include all conditions imposed by the city, and may also include conditions imposed by other agencies, and all obligations agreed to by the city and other parties to the development agreement with respect to the development project thereunder including those conditions authorized by law and/or required pursuant to the California Environmental Quality Act, or the National Environmental Protection Act, and the city's regulations with respect thereto in order to eliminate or mitigate environmental and traffic impacts caused by or aggravated as a result of the development project proposed under the development agreement.

(c) A development agreement shall contain an indemnity and insurance clause in form and substance acceptable to the city attorney, requiring the qualified applicant to protect, defend, indemnify and hold harmless the city against claims arising out of the development process;

provided, that such a provision does not violate applicable law or constitute a joint venture, partnership or other participation in the business affairs of qualified applicant by the City.

(d) A development agreement shall include appropriate provisions acceptable to the city attorney providing security for the performance under the development agreement.

Sec. 106-1461. Public hearing (planning and preservation commission).

On the date set for hearing or on the date or dates to which the hearing is scheduled, a development agreement shall be considered at a public hearing before the planning and preservation commission pursuant to the procedures described in this division and chapter.

Sec. 106-1462. Review -Standard (planning and preservation commission).

The planning and preservation commission may recommend adoption of a development agreement as a method of implementing or providing standards and criteria for any approval of the planning and preservation commission or permits or approvals issued or made by any other city agency, including but not limited to:

- (1) Rezoning and/or conditions imposed upon approval of rezoning;
- (2) Issuance of a conditional use permit;
- (3) Conditions imposed upon approval of a permit after discretionary review;
- (4) Conditions imposed in connection with the adoption of any general plan amendment or specific plan;
- (5) Site-specific conditions imposed in any other district;
- (6) Approval of and/or conditions imposed upon approval of a subdivision or parcel map or maps;
- (7) The separate review and approval by the city attorney of conditions, covenants and restrictions (CC&Rs) affecting the subject property where the development project affects, or is proposed to affect, more than one (1) legal parcel, which CC&Rs shall include enforcement provisions acceptable to the city including without limitation the grant of power to the city by the applicant to enforce the property maintenance standards set forth in such CC&Rs as if the city was a property owner party to such CC&Rs. Such CC&Rs shall be recorded against the lands included in the development project prior to issuance by the city of any certificate of occupancy.
- (8) The formation of any assessment district, benefit district, maintenance district or special benefit district or any other procedure, for the installation of required or necessary on-site or off-site improvements or infrastructure; and/or
- (9) Mitigation measures imposed upon a development project pursuant to the California Environmental Quality Act or the National Environmental Protection Act.

Sec. 106-1463. Recommendation by planning and preservation commission.

The planning and preservation commission shall make a report and recommendation in writing to the city council as follows:

- (a) That the development agreement be adopted as proposed;
- (b) That the development agreement be adopted with modifications, as proposed by the planning and preservation commission; or
- (c) That the development agreement be denied.

Any action taken by the planning and preservation commission shall include written findings specifying the facts and information relied upon by the planning and preservation commission in rendering its decision and recommendation.

The planning and preservation commission shall make such report of its findings and recommendations to the city council within thirty-five (35) days after the completion of said hearing. Failure of the planning and preservation commission to so report within said period shall be deemed to be a recommendation of denial by the planning and preservation commission of the development agreement.

Sec. 106-1464. Setting hearing date by city council.

Upon the filing of its report and recommendations on a development agreement by the planning and preservation commission or upon the expiration of said thirty-five (35) days provided for in section 106-1463, the city council shall, at its next regular meeting held at least three days thereafter on which the subject is agendized thereupon set the matter for public hearing before the city council, and the city clerk shall give required notice of the time, place and purpose of such hearing in the same manner and in the same terms as provided in this division and chapter.

Sec. 106-1465. Ordinance public hearing (city council).

A development agreement is a legislative act and it shall be enacted or amended by ordinance only after a public hearing before the city council. The ordinance shall be subject to referendum and refer to and incorporate by reference the text of the development agreement. The development agreement shall not be binding or enforceable prior to the effective date of the ordinance approving the development agreement and execution of the development agreement by all parties thereto.

Because a development agreement is also a contract which requires the consent of each party in order to become binding, the city council reserves the right to disapprove entering into any development agreement, regardless of the provisions hereof, and the ordinance shall be advisory only and shall not require the acceptance of any development agreement.

Sec. 106-1466. Conduct of hearing by the city council.

The city council shall consider the proposed development agreement and the planning and preservation commission's recommendation together with any additional public testimony at the public hearing on the date set for said hearing or on the date or dates to which such hearing may

be continued from time to time by the city council.

The city council may refer the issue back to the planning and preservation commission for further hearing and recommendation whereupon planning and preservation commission shall file its report on reconsideration of the referral from the city council within thirty (30) days thereafter. The city council may also act on all or any such issue without reference back to the planning and preservation commission. The decision of the city council shall be rendered within forty-five (45) days after the hearing before the city council or within forty-five (45) days after the receipt of the final report from the planning and preservation commission, whichever is later, unless extended by mutual agreement of the qualified applicant and city council. Failure of the city council to act within the forty-five (45) days or extension shall be deemed a rejection of the development agreement. The city council may:

- (1) Approve the development agreement as recommended by the planning and preservation commission;
- (2) Approve the development agreement with or without modification;
- (3) Reject the development agreement, in whole or in part.

Sec. 106-1467. Consistency with general plan and specific plans (city council).

Before the city council may approve a development agreement with or without modification, it must find that its provisions are consistent with the city general plan and any applicable specific plan and relevant city policies and guidelines for development.

Sec. 106-1468. Notice.

The director shall give notices of all required public hearings held before the planning and preservation commission under this division and chapter. The city clerk shall give notice of all required public hearings held before the city council under this division and chapter.

Sec. 106-1469. Form and time of notice.

- (a) The notice referred to in section 106-1468 shall contain
 - (1) The date, time, and place of the hearing;
 - (2) The identity of the hearing body;
 - (3) A general explanation of the matter to be considered including a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing;
 - (4) The location or locations where a copy of the proposed development agreement may be viewed or had;
 - (5) Other information required by specific provisions of this division and chapter or which the director considers necessary or desirable.
- (b) The time and manner of giving notice is by:
 - (1) Publication at least ten days prior to the hearing at least once in a newspaper of general circulation within the city or if there is none, posting at least ten days prior to

- the hearing in at least three public places in the city.
- (2) Notice of the hearing shall be mailed or delivered at least ten days prior to the hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.
 - (3) Notice of the hearing shall be mailed or delivered at least ten days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
 - (4) Mailing of the notice at least ten days prior to the hearing to all persons shown on the last equalized assessment roll as owning real property within five hundred (500) feet of the real property that is the subject of the hearing. If the number of owners to whom notice would be mailed or delivered pursuant to this subsection (b)(4) or subsection (b)(2) is greater than one thousand (1,000), the director, or city clerk, as applicable, may, in lieu of mailed or written notice, provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the city at least ten (10) days prior to the hearing.
- (c) The planning and preservation commission or city council, as the case may be, may direct that notice of the public hearing to be held before it shall be given in a manner that exceeds the notice requirements prescribed by state law, but failure to comply with any excess notice procedure shall not invalidate a development agreement entered into by the city under this division and chapter.
- (d) The notice requirements referred to in subsections (a) and (b) of this section are declaratory of existing law. If and when state law prescribes a different notice requirement, notice shall be given in that manner.

Sec. 106-1470. Coordination of development agreement application with other discretionary approvals.

It is the intent of this division and chapter that the application for a development agreement will be made and considered simultaneously with the review of other necessary applications, including, but not limited to rezoning, variance, planned commercial, or industrial development and conditional use permits. If combined with an application for rezoning, planned development or conditional use permit, the application for a development agreement shall be submitted with said application and shall be processed, to the maximum extent possible, jointly to avoid duplication of hearings and repetition of information. A development agreement is not a substitute for, nor an alternative to, any other required permit or approval, and the qualified applicant or developer must comply with all other required procedures for development approval.

Sec. 106-1471. Time for and initiation of review.

- (a) Regular Periodic Review. The city shall review the performance of the developer under a development agreement periodically on a regular basis as determined in the development agreement or by this subsection at least once every twelve (12) months for the term of the

development agreement. Ninety (90) days prior to the "established date or dates for regular periodic review" which shall be the anniversary of the effective date of the development agreement, or such other substitute date or dates, mutually agreed to by the qualified applicant or developer and city in writing for such regular periodic reviews, the developer shall submit to the director evidence of the good faith compliance with the development agreement. If the director determines that such evidence is insufficient for the director's regular periodic review, or if the developer fails to submit any evidence, then prior to seventy-five (75) days of the established date or dates for regular periodic review the director shall deliver or mail written notice to the developer of the developer's failure to submit any evidence or specifying the additional information reasonably required by the director in order to review the developer's good faith compliance with the development agreement. The developer shall have thirty (30) days after mailing or delivery of such written notice by the director in which to respond to the director. If the developer fails to provide such information to the director within the thirty (30) day period, the director shall not find that the developer has complied in good faith with the terms of the development agreement.

(b) Special Review.

(1) Initiation of Review. Reviews which are other than the regular periodic reviews provided for in subsection (a) of this section are defined as special reviews and may be had either by agreement between the developer and city or by initiation of the city by the affirmative vote of the city council, but in any event shall not be held more frequently than three times a year.

(2) Notice of Special Review. The director shall begin the special review proceeding by mailing or delivering written notice to the developer that the city intends to undertake a special review for the good faith compliance of developer with the development agreement. He shall mail or deliver to the developer a thirty (30) day notice of intent to undertake such a special review within which thirty (30) days developer shall provide to the director evidence of good faith compliance with the terms of the development agreement. If the director determines that such evidence is insufficient for the city's review, or if the developer fails to submit any evidence within the thirty (30) day period, then within forty-five (45) days of giving the notice of intent to undertake a special review, the director shall deliver or mail written notice to the developer of the developer's failure to submit any evidence or additional information reasonably required by the director in order to review the developer's good faith compliance with the development agreement. As with the regular periodic review, the developer shall have thirty (30) days after mailing or delivering of such written notice by the director in which to respond to the director. If the developer fails to provide such information to the director within the thirty (30) day period, developer shall not be found by the director to have complied in good faith with the terms of the development agreement.

Sec. 106-1472. Finding of compliance.

With respect to either a regular periodic review or a special review, if the director finds good

faith compliance by the developer with the terms of the development agreement for the period reviewed, the director, upon request of developer, shall issue a certificate of compliance for such period reviewed, which shall be in recordable form and may be recorded by the developer in the official records of Los Angeles County. The issuance of a certificate of compliance by the director shall conclude the review for the applicable period for which the finding was made and such determination shall be final in the absence of fraud.

Sec. 106-1473. Failure to find good faith compliance.

If the director does not find, on the basis of substantial evidence, that the developer has complied in good faith with the terms of the development agreement, he shall so notify the city council and the developer. The director shall specify the reasons for the director's determination, the information relied upon in making such decision and any findings made with respect thereto. At the next regularly scheduled meeting of the city council on which the matter is agendized, or to which it is continued, the city council shall take one of the following actions:

- (1) Compliance. Determine on the basis of evidence presented that there has been good faith compliance by the developer with the terms of the development agreement, in which event the director, upon request of the developer, shall issue a certificate of compliance in accordance with section 106-1472.
- (2) Failure to Find Good Faith Compliance. If the city council is unable to determine on the basis of the evidence presented that there has been good faith compliance by the developer with the terms of the development agreement, the city council shall do one or more of the following:
 - (i) Additional Time. Upon receipt of sufficient justification to city council, grant the developer additional time in which to establish good faith compliance with the terms of the development agreement at a subsequent duly called city council meeting; or
 - (ii) Hearing. Set a date for a public hearing on the issue of compliance by the developer with the terms of the development agreement and the possible conditioning and/or termination or modification of the development agreement in accordance with state government code section 65865.1, which public hearing shall be conducted in accordance with section 106-1474.

Sec. 106-1474. Public hearing.

The city council shall, within ninety (90) days of the city council's setting a date for a public hearing in Section 106-1473(2)(ii), conduct a public hearing at which the developer shall have the opportunity to demonstrate good faith compliance with the terms of the development agreement on the basis of substantial evidence presented to the city council. The burden of proof of this issue is upon the developer.

Sec. 106-1475. Findings upon public hearing.

The city council shall determine upon the basis of substantial evidence whether or not the developer has complied in good faith with the terms and conditions of the development agreement.

Sec. 106-1476. Procedure upon findings.

Compliance. If the city council finds and determines on the basis of substantial evidence that the developer has complied in good faith with the terms and conditions of the development agreement during the period under review, the review for that period is concluded and such determination is final in absence of fraud.

Noncompliance. If the city council finds and determines on the basis of substantial evidence that the developer has not complied in good faith with the terms and conditions of the development agreement during the period under review, the city council may allow the development agreement to be continued by imposition of new terms and conditions intended to remedy such noncompliance or to be otherwise modified, by the mutual consent of the developer and the city or the city council may unilaterally terminate the development agreement or take other action authorized by government code section 65865.1. The city council may impose such terms and conditions to the action it takes as it considers necessary to protect the interests of the city. The decision of the city council shall be final. The rights of the parties after termination shall be as set forth in section 106-1486.

Ordinance. Any termination, modification or imposition of new terms and conditions pursuant to this section shall be by ordinance. The ordinance shall recite the facts, findings, information relied on and/or the lack thereof, and the reasons which, in the opinion of the city council, make the termination or modifications or imposition of new terms and conditions of the development agreement necessary. The enactment of such an ordinance by the city council shall be final and conclusive as to its effect on the subject development agreement. Not later than ten (10) days following the adoption of the ordinance, one copy thereof shall be forwarded to the developer. The development agreement shall be terminated, or the amendments to the development agreement shall become effective, on the effective date of the ordinance or as otherwise provided in such ordinance.

Sec. 106-1477. Certificate of compliance.

If the city council finds good faith compliance by the developer with the terms of the development agreement, the director upon request of the developer and subject to the written concerns of the city attorney shall issue a certificate of compliance, which shall be in recordable form and may be recorded by the developer in the official records of the County of Los Angeles.

Sec. 106-1478. Initiation of amendment or cancellation.

A development agreement may be amended or canceled, in whole or in part, by mutual consent of the parties to the development agreement or their successors in interest. Any such person may propose an amendment to or cancellation in whole or in part of the development agreement previously entered into.

Sec. 106-1479. Procedure.

The procedure for amendment or cancellation in whole or in part of a development agreement by mutual consent shall be as follows:

- (a) Upon receipt by the director of a proposal for an amendment to or cancellation in whole or in part of the development agreement, a public hearing thereon shall be set and conducted before the city council within ninety (90) days of receipt of the proposal;
- (b) As to prescribed notice of public hearing, where the city introduces the proposed amendment to or cancellation in whole or in part of the development agreement, it shall first give notice to the property owner of its intention to initiate such proceedings at least ten days in advance of the giving of notice of intention to consider the amendment or cancellation required by Section 106-1469(b)(4);
- (c) Any amendment, cancellation or imposition of new terms and conditions pursuant to this section shall be by ordinance. The ordinance shall recite the facts, findings, information relied on, and reasons which, in the opinion of the city council, make the amendments or cancellation of the development agreement necessary. Not later than ten days following the adoption of the ordinance, one copy thereof shall be forwarded to the developer. The development agreement shall become effective on the effective date of such ordinance unless otherwise indicated therein.
- (d) Although approved by the city council, an amendment to or cancellation of a development agreement shall not be binding or enforceable prior to the effective date of the ordinance approving the amendment or cancellation of the development agreement and the execution of such amendment or a written consent to such cancellation by all parties to the development agreement or by their successors in interest.

Sec. 106-1480. Failure to receive notice.

The failure of any person entitled to notice required by law or this chapter to receive such notice shall not affect the authority of the city to enter into nor invalidate a development agreement entered into by the city or other action taken under this division and chapter.

Sec. 106-1481. Rules governing conduct of meeting.

All the public hearings under this chapter shall be conducted in accordance with the procedures and the time limits specified for the conduct of such hearings in this division and chapter. A copy of any relevant proposed or existing development agreement shall be made available for public review at the city clerk's office prior to the date of each hearing thereon.

Sec. 106-1482. Irregularity in proceeding.

Formal rules of evidence or procedure which must be followed in a court of law shall not be applied in the consideration of a proposed development agreement, its modification, cancellation, or termination under this chapter and the provisions of this chapter shall provide the procedure for such consideration. The qualified applicant or developer has the burden of presenting substantial evidence at each of the public hearings on the proposal and shall be given an opportunity to present evidence in support of the qualified applicant's or developer's position. No

action, inaction, or recommendation regarding the proposed development agreement, its modification, cancellation, or termination shall be held void or invalid or be set aside by a court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission ("error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever unless after an examination of the entire case, including the evidence, the court finds that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error is prejudicial or that injury resulted if error is shown.

Sec. 106-1483. Subsequently adopted state and federal laws.

All development agreements shall be subject to the regulations and requirements of the laws of the State of California, the Constitution of the United States and any codes, statutes or executive mandates and any court decisions, state or federal, thereunder. In the event that any such law, code, statute, or decision made or enacted after a development agreement has been entered into prevents or precludes compliance with one or more provisions of the development agreement then such provisions of the development agreement shall be modified or suspended as may be necessary to comply with such law, code, statute, mandate or decision, and every such development agreement shall so provide.

Sec. 106-1484. Architectural review.

Unless otherwise provided in a development agreement, the implementation and execution of all phases of a development agreement shall be subject to architectural (design) reviews pursuant to the applicable provisions of the San Fernando City Code.

Sec. 106-1485. Governing rules, regulations, development policies and effect of development agreement.

Unless otherwise provided by the development agreement, or imposed for reasons of health or safety during the term of the development agreement, rules, regulations and official policies of the city governing permitted uses of the land, governing density and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent the city, in subsequent actions applicable to the property or to the city in general, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property at the time of execution of the development agreement, nor shall a development agreement prevent the city from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies. Each development agreement shall provide, and it is provided in this section, that this section and the provisions thereof do not apply to taxes, imposts, assessments, fees, charges or other exactions imposed by or payable to city unless specifically and to the

extent otherwise expressly agreed to by city in the development agreement, and that all of such shall be in amounts fixed at the time they are payable.

Sec. 106-1486. Rights of the parties after cancellation or termination.

In the event that a development agreement is canceled, or otherwise terminated, unless otherwise agreed in writing by the city, all rights of the developer, property owner or successors in interest under the development agreement shall terminate and any and all benefits, including money or land, received by the city shall be retained by the city. Notwithstanding the above provision, any termination of the development agreement shall not prevent the developer from completing a building or other improvements authorized to be constructed pursuant to a valid operative building permit previously approved by the city and under construction at the time of termination, but the city may take any action permitted by law to prevent, stop, or correct any violation of law occurring during and after construction, and neither the developer nor any tenant shall occupy any portion of the project or any building not authorized by an occupancy permit. As used herein, "construction" shall mean work on site under a valid building permit and "completing" shall mean completion of construction for beneficial occupancy for developer's use, or if a portion of the project is intended for use by a lessee or tenant, then for such portion "completion" shall mean completion of construction except for interior improvements such as partitions, duct and electrical run outs, floor coverings, wall coverings, lighting, furniture, trade fixtures, finished ceilings, and other improvements typically constructed by or for tenants of similar buildings. All such uses shall, to the extent applicable, be deemed nonconforming uses and shall be subject to the nonconforming use provisions of the San Fernando City Code.

Sec. 106-1487. Construction.

This division and chapter, and any subsequent development agreement shall be read together. With respect to any development agreement enacted under this division and chapter, any provision of such a development agreement which is in conflict with this division and chapter shall be void.

Sec. 106-1488. Recordation of development agreement, ordinances and notices.

(a) Within ten (10) days following complete execution of a development agreement and following effective date of enacting ordinance, the city clerk shall record with the county recorder, a fully executed copy of the development agreement and ordinance approving development agreement, which shall describe the land subject thereto. The development agreement shall be binding upon, and the benefits of the development agreement shall inure to the parties and all successors in interest to the parties to the development agreement.

(b) If the parties to the development agreement or their successors in interest amend or cancel the development agreement as provided in government code section 65868 or this division and chapter, or if the city council terminates or modifies the development agreement as provided in government code section 65865.1 or this division and chapter for failure of the developer to comply in good faith with the terms or conditions of the development agreement, the city clerk shall, after such action takes effect, have notice of such action recorded with the County

Recorder of Los Angeles County.

Sec. 106-1489. Enforcement of development agreements.

Except as provided herein below, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city which alters or amends the rules, regulations, or policies specified in section 106-1485 or in the development agreement itself.

An exception to the certainty intended by execution of a development agreement as expressed in Section 106-1451 shall be when a change to the development agreement is imposed or required not by City initiated action, but rather by City response to (i) federal or state court or administrative agency determination or (ii) federal or state legislative or administrative agency regulation requirement.

Sec. 106-1490. Severability clause.

Should any provision of this division and chapter or of a subsequent development agreement be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this chapter and the development agreement shall remain in full force and effect unimpaired by the holding, except as may otherwise be provided in a development agreement. The city council hereby declares that it would have adopted and enacted this chapter and each provision thereof irrespective of the fact that any one or more of the provisions, or the applications thereof to any person or place, be declared invalid or unconstitutional. For the purpose of this section, a "provision" is a section, subsection, paragraph, sentence, clause, phrase or portion of any thereof.

Sec. 106-1491. Judicial review -Time limitation.

- (a) Any judicial review of the initial approval by the city of a development agreement shall be by writ of mandate pursuant to section 1085 of the code of civil procedure; and judicial review of any city action taken pursuant to this chapter, other than the initial approval of a development agreement, shall be writ of mandate pursuant to section 1094.5 of the code of civil procedure.
- (b) Any action or proceeding to attack, review, set aside, void, or annul any decision of the city taken pursuant to this chapter shall not be maintained by any person unless the action or proceeding is commenced within ninety (90) days after the date of the decision.

Sec. 106-1492. Condemnation.

All and every part of the development agreements is subject to condemnation proceedings and entering into such agreements is not intended to restrict the exercise of eminent domain by the city or any other public agency."

SECTION 4. California Environmental Quality Act Compliance. That in accordance to

the criteria and authority contained in the California Environmental Quality Act (CEQA) of 1970, and the CEQA Guidelines (Title 14 of the California Code of Regulations, Section 15061(b)(3)), city staff has conducted the appropriate environmental analysis in compliance with the requirements of CEQA, and based on that assessment the City Council has determined that the proposed zone code/text amendment and associated ordinance are exempt from the requirements of the California Environmental Quality Act (CEQA) in that they are not a Project, which has the potential for causing a significant effect on the environment. Therefore, the City Council therefore directs that a Notice of Exemption be filed with the Los Angeles County Clerk in accordance with the CEQA guidelines.

SECTION 5. Inconsistent Provisions. Any provision of the San Fernando City Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

SECTION 6. Severability. If any provision, section, paragraph, sentence or word of this Ordinance, or the application thereof to any person or circumstance, is rendered or declared invalid by any court of competent jurisdiction, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance, and their application to other persons or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this Ordinance are severable.

SECTION 7. The City Clerk shall cause this ordinance to be published and posted in accordance with the requirements noted in California Government Code Section 36933.

SECTION 8. That the Mayor shall sign and that the city clerk shall attest to the adoption of this ordinance by the city council of the City of San Fernando at the duly noticed regular meeting held on the ____ day of _____, 2014.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of San Fernando at the regular meeting held on the ____ day of _____, 2014.

Sylvia Ballin, Mayor

ATTEST:

Elena G. Chávez, City Clerk

APPROVED AS TO FORM:

Rick R. Olivarez, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF SAN FERNANDO)

I, Elena G. Chávez, City Clerk of the City Council of the City of San Fernando, do hereby certify that the foregoing resolution was duly adopted by the City Council at its meeting held on the ____ day of _____ 2014.

AYES:

NOES:

ABSENT:

ABSTAIN:

Elena G. Chávez, City Clerk