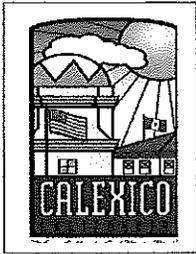


**AGENDA
ITEM**

21



AGENDA STAFF REPORT

DATE: September 1, 2015

TO: Mayor and City Council

APPROVED BY: Richard Warne, City Manager
| Nick Servin, Public Works Director/City Engineer

PREPARED BY: Mark J. Austin, Interim City Attorney

SUBJECT: Introduce and Waive First Reading of Ordinance of the City Council of the City of Calexico Adding Chapter 8.59 to Title 8 ("Health and Safety") of the Calexico Municipal Code, Prohibiting Smoking in and Around Multi-Unit Public Housing

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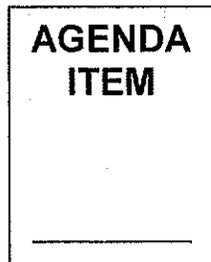
Recommendation:

Approve the introduction and first reading of the proposed ordinance, reading the ordinance by title only, waiving the full reading. The proposed ordinance would add Chapter 8.59 to Title 8 – "Health and Safety" – of the Calexico Municipal Code, prohibiting smoking in and around multi-unit public housing in the City.

Background:

At the City Council meeting of July 21, 2015, the American Cancer Society's Cancer Action Network gave a detailed presentation on the adverse health impacts of secondhand cigarette smoke in multi-unit housing, and appealed to the City Council to adopt an ordinance that would completely prohibit smoking in such housing. As part of their presentation, the Cancer Action Network provided handouts that included a draft ordinance, as well as a list of notable communities that have adopted similar bans. A copy of the group's handout materials are included with agenda report. (**Attachments 1 and 2.**)

Based on the Cancer Action Network's presentation, City staff was directed to return to the Council with an ordinance that was based on the model ordinance provided. To that end, City staff, in conjunction with the City Attorney's office, prepared a draft ordinance that would add Chapter 8.59 to the City Municipal Code, prohibiting smoking in and around multi-unit housing in the City.



An existing chapter of the Calexico Municipal Code, Chapter 8.58, contains limited prohibitions on smoking in and around multi-unit housing. Specifically, under Chapter 8.58, smoking is prohibited in the common areas, and only the common areas, of apartment buildings, retirement facilities, and nursing homes.

The original version of the ordinance adding Chapter 8.59—which ordinance was presented to the City Council at its meeting of August 18, 2015—would have broadened this smoking prohibition to all indoor and outdoor areas in various types of multi-unit residences, both public and private. This smoking prohibition would also have extended into a 25-foot “buffer zone” surrounding all multi-unit residences, both public and private. Penalties for violations were also provided.

Upon consideration of the draft ordinance at its meeting of August 18, 2015, the City Council directed staff to revise the ordinance so that it applied only to “public housing”—i.e., housing that is owned and/or operated by the Calexico Housing Authority or an entity to which the Housing Authority belongs. In response to that direction, the City Attorney’s office prepared the draft ordinance attached hereto as **Attachment 3**, which would impose all of the above-referenced smoking prohibitions, but only in multi-unit public housing.

The health and welfare basis for the adoption of the Ordinance is reflected in the attached materials (**Attachments 1 and 2**), and can be summarized as follows:

Tobacco use causes death and disease and continues to be an urgent public health threat. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors’ secondhand smoke. Harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this “thirdhand smoke” a potential health hazard. Smoking is the number one cause of fire deaths, is a leading cause of fire-related injury, and contributes to fire-related health inequities. The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure. Smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing. Secondhand smoke in multi-unit housing is a significant threat to the health and safety of Calexico children.

Environmental Analysis:

The proposed ordinance is not subject to environmental review because it is not a “project” under Section 15378 of the CEQA Guidelines, and/or because it is exempt from formal environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Fiscal Impact:

None.

Coordinated With:

None.

Attachments:

1. Cancer Action Network, Presentation Materials.
2. ChangeLab Solutions, Smokefree Housing Model Ordinance packet.
3. Proposed Ordinance.

ORDINANCE _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, ADDING CHAPTER 8.59 TO TITLE 8 OF THE CALEXICO MUNICIPAL CODE TO PROHIBIT SMOKING IN AND AROUND MULTI-UNIT PUBLIC HOUSING

WHEREAS, tobacco use may cause death and disease and continues to be an urgent public health threat, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death;¹
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;² and

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;³
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;^{4,5}
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;⁶
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) recommends that multi-unit housing be free from environmental tobacco smoke, marijuana smoke, and electronic smoking devices' aerosol;⁷ and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;⁸
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States;⁸
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent⁹ and increases the risk of stroke by 20 percent to 30 percent;¹⁰
- Secondhand smoke kills more than 400 infants every year;¹¹ and

WHEREAS, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard, as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,^{6, 12, 13, 14} such as formaldehyde, acetaldehyde, lead, nickel, and toluene;^{15,16, 17}
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;^{15,17,18}
- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned,"¹⁹ and

WHEREAS, secondhand marijuana smoke has been identified as a health hazard, as evidenced by the following:

- The California EPA included marijuana smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;^{6,20}
- Marijuana smoke contains at least 33 known carcinogens;²⁰
- Research on the health effects of marijuana smoke has found statistically significant associations with cancers of the lung, head and neck, bladder, brain, and testes;²⁰ and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Several peer-reviewed studies on drifting secondhand smoke in multi-unit housing have confirmed that secondhand smoke can and does transfer between units,^{21,22} creeping under doorways and through wall cracks;¹¹
- More than one study has found that residents of multi-unit housing have high levels of cotinine (a biomarker for nicotine) in their blood and saliva;^{21,22}
- 13 peer-reviewed journal articles have found that between 26 percent and 64 percent of residents of multi-unit housing report secondhand smoke drifting into their home;²¹ and

WHEREAS, harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "thirdhand smoke" a potential health hazard, as evidenced by the following:

- Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone;²³
- A study found that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived;²⁴
- Human exposure to these thirdhand smoke carcinogens can be through inhalation,

- ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;²⁵
- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and suck on items in the home;²⁵
 - Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke;²⁴
 - Research has shown that thirdhand smoke damages human cellular DNA;²⁶ and

WHEREAS, smoking is the number one cause of fire deaths, is a leading cause of fire-related injury,²⁷ and contributes to fire-related health inequities, as evidenced by the following:

- In 2011, U.S. fire departments responded to an estimated 90,000 smoking-related fires, which resulted in an estimated 1,640 injuries, 540 deaths, and \$621 million in direct property damage;²⁸
- One in four fatalities is NOT the smoker whose cigarette started the fire, and 25 percent of those who die are neighbors or friends of the smoker;²⁸
- African-American males and American-Indian males have the highest fire death rates;²⁷
- The elderly (people 85 and older) have the highest fire death rate (49.2%),²⁹ and the risk of dying from smoking-related fires increases with age;²⁸
- The U.S. Fire Administration recommends that people smoke outdoors;³⁰ and

WHEREAS, the Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure;³ and

WHEREAS, several studies have confirmed that smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing;²¹ and

WHEREAS, 32 percent of Californians (or 11.8 million people) live in multi-unit housing,³¹ which accounts for one-seventh of the total multi-unit housing population in the country;³² and

WHEREAS, between 44 percent to 46.2 percent of Californians living in multi-unit housing with personal smokefree home policies are exposed to secondhand smoke in their home,³¹ and

WHEREAS, surveys have found that between 65 percent and 90 percent of multi-unit housing residents who experience secondhand smoke in their home are bothered by the secondhand smoke incursion;²¹ and

WHEREAS, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities. For example, when compared with adults who live in single family homes,

adults who live in multi-unit housing are more likely to

- Be from communities of color (62.9% of residents of multi-unit homes versus 49.6% of residents of single family homes);³²
- Be low-income or below the poverty line (46.8% versus 27%);³²
- Have less than a high school diploma (21.4% versus 14.8%);³²
- Be current smokers (17.5% versus 13.2%);³² as well as
- Be uninsured (23.4% versus 14.2%);³² and

WHEREAS, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children, as evidenced by the following:

- About a quarter of those who live in multi-unit housing (25.2%) are under the age of 18;³¹
- The home is the primary source of secondhand smoke for children;¹¹
- 56.4 percent of youth living in apartment units in which no one smokes have elevated blood cotinine levels above .05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;^{21,33}
- Children who live in apartments have mean cotinine levels that are 45 percent higher than cotinine levels in children who live in detached homes;^{21,33} and

WHEREAS, there are significant savings from adopting a smokefree multi-unit housing policy, as evidenced by the following research:

- Multi-unit housing property owners in California would save \$18.1 million in renovation expenses each year;^{21,34}
- If all subsidized housing were to go smokefree in California, there would be approximately \$72.4 million saved per year, including \$61.1 million in secondhand smoke-related healthcare expenditures, \$5.9 million in renovation expenses, and \$5.4 million in smoking-attributable fire losses;³⁵ and

WHEREAS, a majority of multi-unit housing residents, including a large portion of smokers, support smokefree policies in multi-unit residences,²¹ as evidenced by the following:

- 74 percent of Californians surveyed approve of apartment complexes requiring that at least half of rental units be nonsmoking;³⁶
- 69 percent of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings;³⁶
- 78 percent support laws that create nonsmoking units;³⁶ and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California

law,³⁷ and

WHEREAS, there is no Constitutional right to smoke;³⁸ and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance,³⁹ and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance,⁴⁰⁻⁴² and

WHEREAS, at least 55 California cities and counties have adopted smokefree multi-unit housing ordinances,⁴³ and at least 25 of these jurisdictions have restricted smoking in 100 percent of units;⁴⁴ and

WHEREAS, Chapter 8.58 of Title 8 of the Calexico Municipal Code contains only limited prohibitions on smoking in and around multi-unit housing;

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

SECTION I. The above recitals are true and correct.

SECTION II. Title 8 of the City of Calexico Municipal Code is hereby amended by adding Chapter 8.59 to read as follows:

CHAPTER 8.59 - SMOKING IN AND AROUND MULTI-UNIT PUBLIC RESIDENCES PROHIBITED

Sections:

8.59.010 – Purpose.

The purpose of this chapter is to protect the health and welfare by regulating smoking in and around public housing within the City of Calexico, which are exclusively multi-unit residences, and to recognize the need to breathe clean air. Tobacco use causes death and disease and continues to be an urgent public health threat. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke. Harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "thirdhand smoke" a potential health hazard. Smoking is the number one cause of fire deaths, is a leading cause of fire-related injury, and contributes to fire-related health inequities. The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke

exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure. Smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing. Secondhand smoke in multi-unit housing is a significant threat to the health and safety of children.

8.59.020 - Definitions.

For the purposes of this chapter the following definitions shall govern unless the context clearly requires otherwise:

A. "Adjacent Unenclosed Property" means any Unenclosed Area of property, publicly or privately owned, that abuts a Public Multi-Unit Residence, but does not include property containing detached single-family homes.

B. "City" means the City of Calexico.

C. "Common Area" means every Enclosed Area and every Unenclosed Area of a Public Multi-Unit Residence that residents of more than one Unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

D. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

E. "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

(1) any type of overhead cover, whether or not that cover includes vents or other openings and at least three (3) walls or other physical boundaries of any height, whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical boundaries that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

F. "Landlord" means any Person or agent of a Person who owns, manages, or is otherwise legally responsible for a Unit in a Public Multi-Unit Residence that is leased

to a residential tenant, except that "Landlord" does not include a tenant who sublets a Unit (e.g., a sublessor).

G. "Public Multi-Unit Residence" means property commonly known as public housing that contains two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities that are owned and/or operated by the Housing Authority of the City of Calexico or an entity of which the Housing Authority is a part. Public Multi-Unit Residences do not include the following:

(1) a single-family home, except if used as a child care or health care facility subject to licensing requirements; and

(2) a single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections, except if the single-family home or in-law/second unit is used as a child care or health care facility subject to licensing requirements.

H. "New Unit" means a Unit that is issued a certificate of occupancy after October 16, 2015 and also means a Unit that is let for residential use for the first time after October 16, 2015.

I. "Nonsmoking Area" means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by

(1) this chapter or other law;

(2) binding agreement relating to the ownership, occupancy, or use of real property;
or

(3) designation of a Person with legal control over the area.

J. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

K. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *and* the purpose of inhalation is solely olfactory, such as, for example, smoke

from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.

L. “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

M. “Unenclosed Area” means any area that is not an Enclosed Area.

N. “Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. “Unit” includes, without limitation, an apartment; a condominium; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single room occupancy (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit. Unit includes, without limitation, a New Unit.

8.59.030 - Smoking restrictions in new and existing units of public multi-unit residences.

A. Smoking is prohibited in all New Units of a Public Multi-Unit Residence, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a New Unit of a Public Multi-Unit Residence, on or after October 16, 2015, is a violation of this chapter.

B. Smoking is prohibited in all Units of a Public Multi-Unit Residence that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a Unit of a Public Multi-Unit Residence that is not a New Unit, on or after October 16, 2016, is a violation of this chapter.

8.59.040 - No smoking permitted in common areas except in designated smoking areas.

A. Smoking in a Common Area, on or after, October 16, 2015, other than in a designated Smoking area established pursuant to paragraph B, is a violation of this chapter.

B. Person with legal control over a Common Area, such as, for example, a Landlord or homeowners’ association, may designate a portion of the Common Area as a designated Smoking area provided the designated Smoking area complies with paragraph C below at all times.

C. A designated Smoking area:

(1) Must be an Unenclosed Area;

(2) Must be at least twenty-five (25) feet from Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;

(3) Must be located at least twenty-five (25) feet from any Nonsmoking Area. The location of Nonsmoking Areas may change due to the new enactment of a law, execution of an agreement, or other event that affects the area's Smoking designation. If an event occurs that changes a Nonsmoking Area, a Person with legal control over a designated Smoking area within less than twenty-five (25) feet of that Nonsmoking Area must modify, relocate, or eliminate that designated Smoking area so as to maintain compliance with the requirements of this paragraph. In the case of a Nonsmoking Area on a neighboring property established only by private agreement or designation and not by this chapter or other law, it shall not be a violation of this chapter for a Person with legal control to designate a Smoking area within twenty-five (25) feet of the Nonsmoking Area unless that Person has actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this chapter for a Person to Smoke within a Nonsmoking Area if the area is erroneously designated as a Smoking area unless a reasonable person would know of the error;

(4) Must be no more than ten percent (10%) of the total Unenclosed Area of the Public Multi-Unit Residence for which it is designated;

(5) Must have a clearly marked perimeter;

(6) Must be identified by conspicuous signs; and

(7) Must not overlap any Enclosed or Unenclosed Area where Smoking is prohibited by this chapter or other law.

D. No Person with legal control over a Common Area in which Smoking is prohibited by this chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the area.

8.59.050 - Nonsmoking buffer zones.

Smoking is prohibited in Adjacent Unenclosed Property within twenty-five (25) feet in any direction of any doorway, window, opening, or other vent into an Enclosed Area of a Public Multi-Unit Residence.

8.59.060 - Required and implied lease terms for all new and existing units in public multi-unit residences.

A. Every lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence, entered into, renewed, or continued month-to-month after October 16, 2015, shall include the provisions set forth in paragraph B below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.

B. Every lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence, entered into, renewed, or continued month-to-month after October 16, 2015, shall be amended to include the following provisions:

(1) A clause providing that as of October 16, 2015, it is a material breach of the agreement to allow or engage in Smoking in the Unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios as of October 16, 2015."

(2) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to engage in Smoking in any Common Area of the Public Multi-Unit Residence other than a designated Smoking area. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists."

(3) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."

(4) A clause expressly conveying third-party beneficiary status to all occupants of the Public Multi-Unit Residence as to the Smoking provisions of the lease or other

rental agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

C. Whether or not a Landlord complies with paragraphs A and B above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which paragraphs A and B apply and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to paragraphs A and B.

D. A tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence, or who knowingly permits any other Person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to (i) the Landlord; and (ii) any occupant of the Public Multi-Unit Residence who is exposed to Smoke or who suffers damages as a result of the breach.

E. This chapter shall not create additional liability for a Landlord to any Person for a tenant's breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence if the Landlord has fully complied with this Section.

F. Failure to enforce any Smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

8.59.070 - Other requirements and prohibitions.

A. Every Landlord shall deliver the following, on or before April 16, 2016, to each Unit of a Public Multi-Unit Residence:

(1) A written notice clearly stating:

(i) All Units are designated nonsmoking Units, and Smoking will be illegal in a Unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of October 16, 2016; and

(ii) Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this chapter as of October 16, 2015.

(2) A copy of this chapter.

B. As of October 16, 2015, every Landlord shall provide prospective tenants with written notice clearly stating that:

(1) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of October 16, 2015; and

(2) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of October 16, 2015.

C. As of October 16, 2015, every seller of a Unit in a Public Multi-Unit Residence shall provide prospective buyers with written notice clearly stating that:

(1) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of October 16, 2015; and

(2) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of October 16, 2015.

D. Clear and unambiguous “No Smoking” signs shall be posted in sufficient numbers and locations in Common Areas where Smoking is prohibited by this chapter or other law. In addition, signs shall be posted in sufficient numbers and locations in the Public Multi-Unit Residence to indicate that Smoking is prohibited in all Units. Such signs shall be maintained by the Person or Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this chapter. “No Smoking” signs are not required inside or on doorways of Units, except for hotels or motels as defined in California Civil Code section 1940, subdivision (b)(2).

E. No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as otherwise provided in Section 8.59.040.

8.59.080 - Smoking and smoke generally.

A. The provisions of this chapter are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this chapter or of this Municipal Code, (ii) any failure by any Person to restrict Smoking under this chapter, or (iii) any explicit or implicit provision of this Municipal Code that allows Smoking in any place, nothing in this Municipal Code shall be interpreted to limit any Person’s legal rights under other laws with regard to Smoking, including, for example,

rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

B. For all purposes within the jurisdiction of the City, nonconsensual exposure to Smoke occurring on or drifting into property is a nuisance, and the uninvited presence of Smoke on property is a nuisance and a trespass.

8.59.090 - Penalties and enforcement.

A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Every instance of Smoking in violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this chapter may, in the discretion of the City Prosecutor be prosecuted as infractions or misdemeanors when the interests of justice so require. Any peace officer or code enforcement official may enforce this chapter.

C. Violations of this chapter are subject to a civil action brought by the City, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

D. No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks compliance with this chapter. Moreover, no Person shall intentionally or recklessly expose another Person to Smoke in response to that Person's effort to achieve compliance with this chapter. Violation of this paragraph shall constitute a misdemeanor.

E. Causing, permitting, aiding, or abetting a violation of any provision of this chapter shall also constitute a violation of this chapter.

F. Any violation of this chapter is hereby declared to be a public nuisance.

G. In addition to other remedies provided by this chapter or otherwise available at law or in equity, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, without limitation, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

H. Any Person, including a legal entity or organization acting for the interests of itself, its members, or the general public, may bring a civil action to enforce this chapter by way of a conditional judgment or an injunction to prevent future such violations and may sue to recover such actual or statutory damages as he or she may prove.

I. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this chapter against private parties.

8.59.100 – Coordination with Chapter 8.58.

If any sections of this chapter conflict with Chapter 8.58, this chapter shall govern.

SECTION III. It is the intent of the City Council of the City of Calexico to supplement applicable state and federal law and not to duplicate or contradict such law, and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calexico hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

SECTION IV. This ordinance shall take effect thirty (30) days after its adoption. The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance or a summary thereof to be published in the manner required by law.

First introduced and read at a regular meeting of the City Council held on the September 1, 2015, and adopted and at a regular meeting of said Council on the September 15, 2015.

PASSED, APPROVED, AND ADOPTED this September 15, 2015.

CITY OF CALEXICO

Joong S. Kim, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER LLP

Mark J. Austin, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF CALEXICO)

I, Gabriela T. Garcia, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Ordinance No. ___ had its first reading on September 1, 2015, and had its second reading on September 15, 2015, and was passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Gabriela T. Garcia, City Clerk

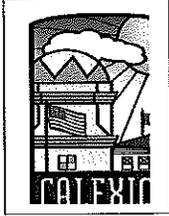
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**AGENDA
ITEM**

22



AGENDA STAFF REPORT

DATE: September 1, 2015

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, City Manager *rw*

PREPARED BY: Nick Servin, Public Works Director/ City Engineer
Mark Vasquez, Assistant City Planner *MV*

SUBJECT: A Resolution of the City of Calexico to Consider Approving
Recordation of Final Map for Riverview Condominiums

Recommendation

Staff Recommends approval of the attached resolution to allow the developer of the Riverview Condominium project to Record the Final Map. The developer would still be obligated to construct all improvements as required by the Public Works Director/City Engineer per a lien contract and covenant not to convey (in lieu of obtaining surety bonds).

Background:

On June 11, 2007, the Calexico Planning Commission adopted the following Resolutions based on Findings, Exhibits, and proposed Conditions of Approval:

- Resolution No. 2007-19, which recommended that the City Council approve Mitigated Negative Declaration No. 2007-02.
- Resolution No. 2007-20, which recommended that the City Council approve Annexation into City of Calexico No. 2007-01
- Resolution No. 2007-21, which recommended that the City Council approve Zone Change No. 2007-04
- Resolution No. 2007-22, which recommended that the City Council approve Tentative Tract Map No. 2007-03.

**AGENDA
ITEM**

Council approve Tentative Tract Map No. 2007-03.

- Resolution No. 2007-23, approving Residential Design Review No. 2007-01

On July, 10, 2007, the Calexico City Council adopted the following Resolutions and Ordinance as recommended by the Planning Commission. They are as follows:

- Resolution No. 2007-28, recommending approval of Mitigated Negative Declaration No. 2007-02.
- Resolution No. 2007-29, recommending approval of Annexation No. 2007-01 of approximately 34 acres into the City of Calexico.
- Ordinance No. 1054, recommending approval of Zone Change No. 2007-04
- Resolution No. 2007-30, recommending approval of Tentative Tract Map No. 2007-03.
- Resolution No. 2007-23, approving Residential Design Review No. 2007-01

Discussion and Analysis

Over the last several years, the Riverview Condominium project has received approval from both Planning Commission and City Council. The developer proposes to construct 340 condominium units with four (4) Commercial Lots, a designated park area and one single family lot.

Fiscal Impact:

None

Coordinated With:

City attorney's Office

Attachments:

1. City Council Resolution 2015 - __ with attached maps
2. City Council Resolution 2007 - 28
3. City Council Resolution 2007-29
4. Ordinance No. 1054
5. City Council Resolution 2007 - 30

**AGENDA
ITEM**

RESOLUTION NO. 2007-28

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF CALEXICO, CALIFORNIA, APPROVING MITIGATED
NEGATIVE DECLARATION NO. 2007-02**

WHEREAS, Marvin Mayne, Dat-U-Joe Realty, has submitted an application for the Riverview project. The approximate 34 acre site is located south of Stat Route 98 (SR-98), east of the All-American Canal, and the closest north/south road is David Navarro (D. Navarro) Avenue; and

WHEREAS, the Riverview project Annexation No. 2007-01, Change of Zone (Pre-Zone) No. 2007-04, Tentative Tract Map No. 2007-03, and Residential Design Review No. 2007-01 together comprise the "project" as defined by Section 21065 of the California Environmental Quality Act (CEQA), Cal. Public Resources Code Section 21000 et seq., which is defined as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and which includes the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies; and

WHEREAS, Mitigated Negative Declaration No. 2007-02 has been prepared to evaluate environmental impacts resulting with the project; and

WHEREAS, the Planning Commission, at its regular meeting on June 11, 2007, held a duly noticed public hearing, and recommended to the City Council approval of Mitigated Negative Declaration No. 2007-02 (Resolution No. 2007-19); and

WHEREAS, the City Council of the City of Calexico has been delegated with the responsibility of approving Mitigated Negative Declarations; and

WHEREAS, public notice of said applications has been given, and the City Council has considered evidence presented by the Development Services Department and other interested parties at a public hearing held with respect to this item on July 10, 2007.

NOW THEREFORE, the City Council of the City of Calexico DOES HEREBY RESOLVE as follows:

SECTION 1. The City Council has considered the proposed Mitigated Negative Declaration No. 2007-02, prior to making a decision. The City Council finds and determines that Mitigated Negative Declaration No. 2007-02 is adequate and prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) which analyzes environmental effects of the project, based upon the following findings and determinations:

SECTION 2. That in accordance with State Planning and Zoning law and the City of Calexico the following findings for the approval of the Mitigated Negative Declaration have been made as follows:

**CITY COUNCIL RESOLUTION FOR
MITIGATED NEGATIVE DECLARATION No. 2007-02**

Page 2 of 3

1. Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; and

The applicant has made revisions to the project or has agreed to specific conditions which would avoid the effects or mitigate the effects of the project to a point where no significant effects would occur.

2. There is no substantial evidence, in the light of the whole record before the agency, that the project as revised may have significant effect on the environment.

Pursuant to the evidence received in the light of the whole record presented to staff the project will not have a significant effect on the environment considering the applicable Conditions of Approval and Mitigation Monitoring Program.

3. Mitigation measures have been required to ensure all potentially significant impacts are reduced to levels of insignificance.

Mitigation measures have been required which will reduce significant environmental impacts to the level of insignificance.

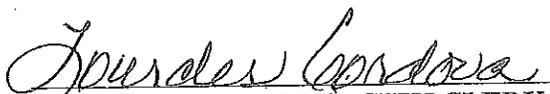
NOW, THEREFORE, based on the above findings, the City Council of the City of Calexico DOES HEREBY APPROVE MITIGATED NEGATIVE DECLARATION No. 2007-02.

PASSED AND ADOPTED by the City Council of the City of Calexico, California, this 10th day of July, 2007.



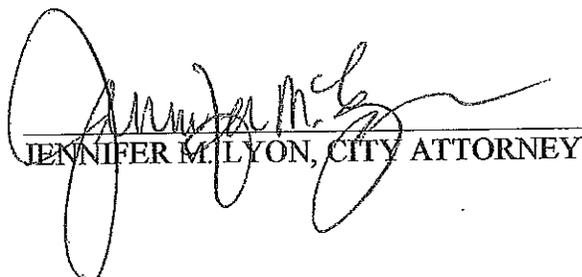
JOHN RENISON, MAYOR

ATTEST:



LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:



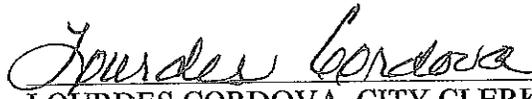
JENNIFER M. LYON, CITY ATTORNEY

CITY COUNCIL RESOLUTION FOR
MITIGATED NEGATIVE DECLARATION No. 2007-02
Page 3 of 3

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS.
CITY OF CALEXICO)

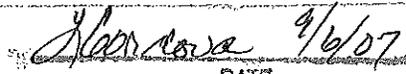
I, LOURDES CORDOVA, AGENCY THE CITY OF CALEXICO, DO HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2007-28, WAS DULY PASSED AND ADOPTED BY THE CITY OF CALEXICO ON THIS 10th DAY OF JULY 2007 BY THE FOLLOWING VOTE TO WIT:

AYES: Ouzan, Renison, Durazo, Fuentes
NOES: None
ABSENT: Pacheco



LOURDES CORDOVA, CITY CLERK

SEAL


DATE
HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL RECORD ON FILE IN THIS OFFICE. !

RESOLUTION NO. 2007-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, COMMENCING PROCEEDINGS TO ANNEX APPROXIMATELY 34 ACRES OF THE RIVERVIEW PROJECT INTO THE CORPORATE BOUNDARIES OF THE CITY OF CALEXICO (ANNEXATION NO. 2007-01)

WHEREAS, Marvin Mayne, Dat-U-Joe Realty, has filed an application for the annexing (Annexation No. 2007-01) of approximately 34 acres of the Riverview Project into the Corporate Boundaries of the City of Calexico. The Riverview area is located south of Stat Route 98 (SR-98), east of the All-American Canal, and the closest north/south road is David Navarro (D. Navarro) Avenue; and

WHEREAS, this proposal is made pursuant to the *Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000* (Government Code Section 56000-56001); and

WHEREAS, The City of Calexico is processing a Pre-Zone (Zone Change) for the same approximate 34 acres for the Riverview project; and

WHEREAS, the City Council of the City of Calexico has been delegated with the responsibility of making decisions regarding annexations; and

WHEREAS, the Planning Commission, at a regular meeting held on June 11, 2007 held a duly noticed public hearing, and recommended to the City Council approval of the requested Annexation (Resolution No. 2007-20), and

WHEREAS, public notice of said application has been given and the City Council has considered evidence presented by the Development Services Department and other interested parties at a public hearing with respect to this item on July 10, 2007; and

WHEREAS, it is the desire of the City Council to give its consent to the commencement of annexation proceedings.

NOW THEREFORE, the City Council of the City of Calexico DOES HEREBY RESOLVE as follows:

SECTION 1. The City Council has considered the request for Annexation No. 2007-01, prior to making a decision to commence proceedings to annex the subject territory. The City Council finds and determines that this project is consistent with the Calexico Municipal Code (CMC) and determines that a Mitigated Negative Declaration is adequate and prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) which analyzes environmental effects, based upon the following findings and determinations.

**CITY COUNCIL RESOLUTION FOR
ANNEXATION NO. 2007-01
Page 2 of 3**

SECTION 2. That in accordance with the Cortese-Knox Local Government Reorganization Act of 1985, Government Code Section 57082 and the City of Calexico the following findings for the approval of the Annexation have been made as follows:

1. The proposed annexation area is contiguous to the City of Calexico and will not create pockets or islands.

The proposed annexation area borders the City of Calexico and is adjacent to Highway 98 and the All-American Canal. The project proposes reasonable extension of the city boundary area in that the annexation of the proposed area will not create any pockets or islands.

2. The proposed annexation will not result in any adverse significant impacts on the environment.

The project will not have a significant effect on the environment and is consistent with the City's General Plan.

3. The proposed annexation will allow development of a well-designed project in the City.

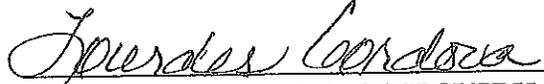
Staff believes the Riverview project is well-designed and appropriate for the annexation area and City. In addition, the project, especially the commercial uses, will provide tax revenue benefits to the City.

NOW, THEREFORE, based on the above findings, the City Council of the City of Calexico DOES HEREBY APPROVE Annexation No. 2007-01.

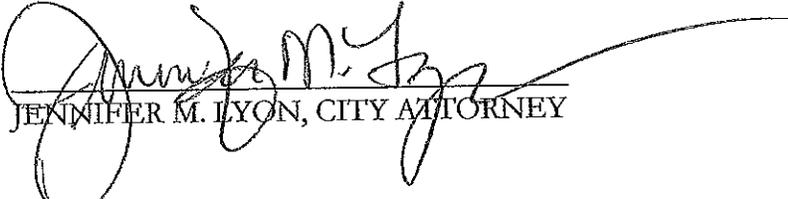
PASSED AND ADOPTED by the City Council of the City of Calexico, California, this 10th day of July, 2007.


JOHN RENISON, MAYOR

ATTEST:


LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:


JENNIFER M. LYON, CITY ATTORNEY

CITY COUNCIL RESOLUTION FOR
ANNEXATION NO. 2007-01

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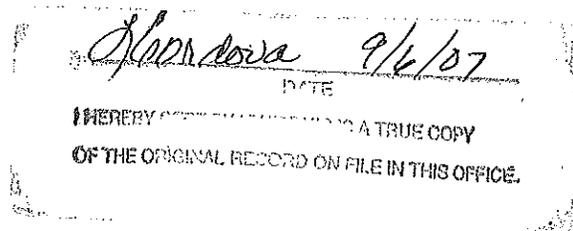
STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS.
CITY OF CALEXICO)

I, LOURDES CORDOVA, AGENCY THE CITY OF CALEXICO, DO HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2007-29 WAS DULY PASSED AND ADOPTED BY THE CITY OF CALEXICO ON THIS 10th DAY OF JULY 2007 BY THE FOLLOWING VOTE TO WIT:

AYES: Ouzan, Renison, Durazo, Fuentes
NOES: None
ABSENT: Pacheco


LOURDES CORDOVA, CITY CLERK

SEAL



ORDINANCE NO. 1054

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, APPROVING ZONE CHANGE NO. 2007-05 (PRE-ZONE) TO CHANGE THE ZONING CLASSIFICATION FOR THE RIVERVIEW PROJECT AREA FROM "A-2-U" (GENERAL AGRICULTURE WITH URBAN OVERLAY)" TO "C-H" (COMMERCIAL HIGHWAY), "R-C" (RESIDENTIAL CONDOMINIUM) AND "R-1" (SINGLE-FAMILY RESIDENTIAL) (ZONE CHANGE NO. 2007-04)

WHEREAS, Marvin Mayne, Dat-U-Joe Realty has filed an application to change the Zoning classification for the Riverview project area from "A-2-U (General Agriculture with Urban Overlay)" to "C-H" (Commercial Highway), "R-C" (Residential Condominium) and "R-1" (Single-Family Residential) (Zone Change No. 2007-04). The Riverview project area is located south of Stat Route 98 (SR-98), east of the All-American Canal, and the closest north/south road is David Navarro (D. Navarro) Avenue; and

WHEREAS, the City Council of the City of Calexico has been delegated with the responsibility of making decisions for changes to the approved Zoning Map; and

WHEREAS, the Planning Commission, at its regular meeting on June 11, 2007, held a duly noticed public hearing, and recommended to the City Council approval of Zone Change No. 2007-04 (Resolution No. 2007-21); and

WHEREAS, the City Council held a duly noticed public hearing on July 10, 2007 at which time all interested parties were given an opportunity to address the City Council on these matters; and

WHEREAS, the City Council of the City of Calexico finds that the Zone Change is consistent with the policies and goals of the adopted General Plan, and that in accordance with State Planning and Zoning law and the City of Calexico, the following findings for the approval of a Zone Change have been made.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has considered the proposed Zone Change No. 2007-04, prior to making a decision to approve the proposed amendment to the Zoning Map. The City Council finds and determines that this project is consistent with the Calexico Municipal Code (CMC) and determines that a Mitigated Negative Declaration is adequate and prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) which analyzes environmental effects, based upon the following findings and determinations.

SECTION 2. That in accordance with State Planning and Zoning law and the City of Calexico the following findings for the approval of Zone Change No. 2007-04 have been made as follows:

CITY COUNCIL ORDINANCE NO. ____
ZONE CHANGE NO. 2007-04
PAGE 2 OF 3

1. The proposed zone change will not be; a) detrimental to the health, safety, comfort or general welfare of the persons residing or working within the neighborhood of the proposed amendment or within the City, or b) injurious to the property or improvements in the neighborhood or within the City.

The proposed Zone Change has been analyzed relative to its potential to be detrimental to the health, safety, comfort and welfare of the persons residing or working within the neighborhood of the proposed Zone Change. Staff concluded that the project does not propose land uses, densities, or development patterns that will jeopardize the health and safety of the persons residing or working within the neighborhood of the property. Health, safety, and welfare will not be degraded as a result of this project.

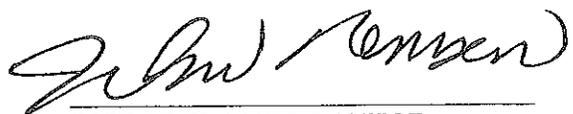
2. The proposed action will be consistent with the Goals, Objectives, and Policies of the General Plan and the development standards established with the Calexico Municipal Code (CMC).

Staff has concluded that the requested Zone Change is consistent with the General Plan's "Commercial Highway" and "High Density Residential" land use designations for the project site. The Zone Change will allow development of a well-balanced and functional mixed-use project comprised of residential, commercial, and recreational uses. This mix of uses is consistent with the goals, objectives, and policies of the General Plan and Zoning designations for the project area.

SECTION 3. The Official Zoning Map of the City shall be amended to reflect Zone Change No. 2007-04. More specifically described as APN Nos. 058-180-008, 058-180-009, 058-180-010, and 058-180-011 and illustrated as shown on Exhibit "C".

SECTION 4. Severability. If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications therefore which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.

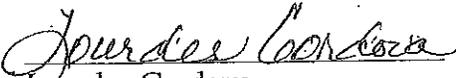
PASSED, APPROVED AND ADOPTED THIS 17th DAY OF JULY, 2007



JOHN RENISON, MAYOR

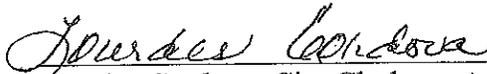
CITY COUNCIL ORDINANCE NO. ____
ZONE CHANGE NO. 2007-04
PAGE 3 OF 3

ATTEST:


Lourdes Cordova
City Clerk

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify under penalty of perjury that the foregoing is a true and correct copy of Ordinance No.1054 that was duly and regularly introduced at a special meeting of said City Council held on July 10, 2007 and was adopted by said City Council at a regular meeting held on July 17, 2007, by the following vote:

AYES:	Pacheco, Renison, Durazo, Fuentes
NOES:	None
ABSENT:	Ouzan
ABSTAIN:	None

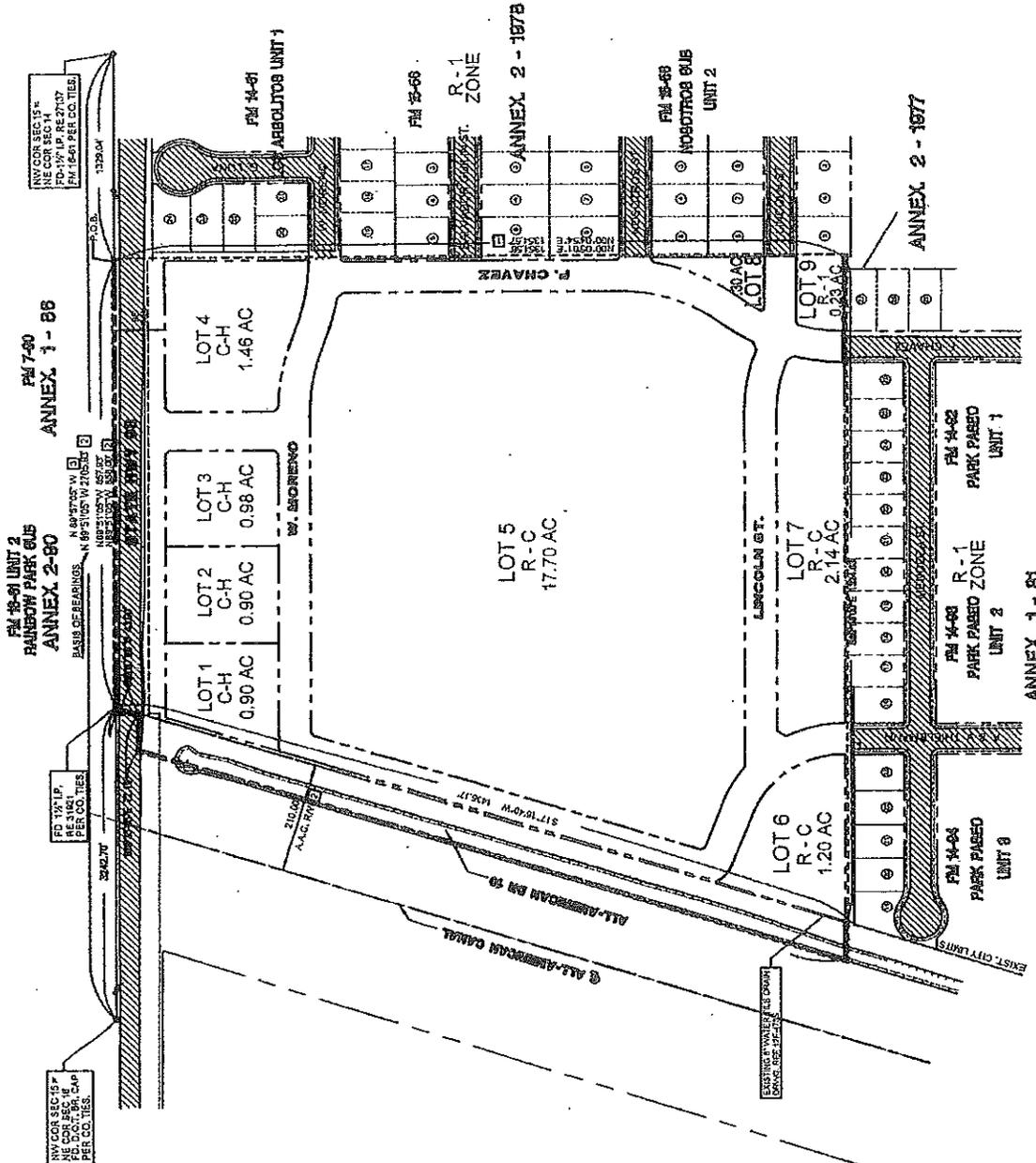

Lourdes Cordova, City Clerk

 7/6/07
DATE
HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL RECORD ON FILE IN THIS OFFICE.

ZONE CHANGE

IN THE CITY OF CALEXICO, STATE OF CALIFORNIA

SCALE: 1" = 150'



ANY COR SEC 15 IN NE COR SEC 14 PD 117-14, REC 7137 PM 15-61 PER CO. TIES

PM 7-80 ANNEX 1-86 RAINBOW PARK BLVD

PM 14-81 UNIT 2 ANNEX 2-80 RAINBOW PARK BLVD

PM 14-81 UNIT 2 ANNEX 2-80 RAINBOW PARK BLVD

PM 14-81 UNIT 2 ANNEX 2-80 RAINBOW PARK BLVD

LOT 4 C-H 1.46 AC

LOT 3 C-H 0.98 AC

LOT 2 C-H 0.90 AC

LOT 1 C-H 0.90 AC

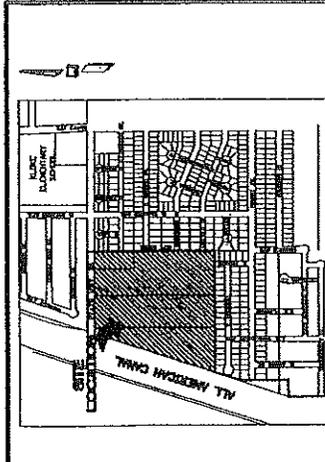
LOT 5 R-C 17.70 AC

LOT 6 R-C 1.20 AC

LOT 7 R-C 2.14 AC

LOT 8 R-C 0.23 AC

LOT 9 R-C 0.23 AC



VICINITY MAP
NOT SCALE

- LEGEND:**
- EXISTING AC PAVEMENT
 - FOUND MONUMENT AS NOTED
 - RECORD DATA PER ANNEXATION 1-81 TO THE CITY OF CALEXICO
 - RECORD DATA PER ANNEXATION 2-80 TO THE CITY OF CALEXICO
 - RECORD DATA PER ANNEXATION 2-80 TO THE CITY OF CALEXICO
 - PROJECT BOUNDARIES
 - RIGHT OF WAY LINE

EXISTING LAND USE:

EXISTING LAND USE:	A-2 LIMITED AGRICULTURAL	34.20 AC
PROPOSED LAND USE:	AREA:	
	RESIDENTIAL SINGLE FAMILY (R-1)	40.23 AC
	RESIDENTIAL CONDOMINIUM (R-C)	421.34 AC
	COMMERCIAL (C-4)	51.02 AC
	DEDICATION TO THE CITY FOR STREET RIGHT OF WAY	44.84 AC
	AMERICAN CANAL RIGHT OF WAY	32.17 AC
TOTAL:		534.20 AC

PROPOSED LAND USE:

LOT NUMBER:	AREA:
LOT 1	0.80 AC
LOT 2	0.90 AC
LOT 3	0.90 AC
LOT 4	1.48 AC
LOT 5	17.70 AC
LOT 6	1.20 AC
LOT 7	2.14 AC
LOT 8	0.23 AC
LOT 9	0.23 AC

PROPOSED LAND USE:

- (C-4) COMMERCIAL
- (C-4) COMMERCIAL
- (C-4) COMMERCIAL
- (C-4) COMMERCIAL
- (R-1) RESIDENTIAL SINGLE FAMILY
- (R-C) RESIDENTIAL CONDOMINIUM
- (R-1) SINGLE FAMILY

DATE: _____

TERRELL ANASTY, INC. - CIVIL ENGINEER
EXP. DATE: 03/31/2008

BJ

ENGINEERING & SURVEYING, INC.
P.O. BOX 252-852
CALEXICO, CA 92524
TEL: (760) 353-0770

ZONE CHANGE TO THE CITY OF CALEXICO

IN THE CITY OF CALEXICO FILE NO. 19/18/05 10/7/05
DATE: 03/31/2008

BY: MARYL MAYNE

RESOLUTION NO. 2007-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, APPROVING TENTATIVE TRACT MAP NO. 2007-03 WHICH SUBDIVIDES 34.20 ACRES OF THE RIVERVIEW PROJECT AREA INTO 340 INDIVIDUALLY OWNED ATTACHED CONDOMINIUM UNITS, ONE (1) SINGLE-FAMILY RESIDENTIAL LOT, FOUR (4) COMMERCIAL LOTS AND A DESIGNATED PARK/LANDSCAPED AREA CONSISTENT WITH THE APPLICABLE CHAPTERS OF THE CALEXICO MUNICIPAL CODE (CMC)

WHEREAS, Marvin Mayne, Dat-U-Joe Realty, has submitted an application for Tentative Tract Map No. 2007-03, which subdivides 34.20 acres of the Riverview Project area into 340 individually owned attached condominium units which will participate in an underlying common area pursuant to Chapter 17.03.130 (Residential Condominiums) as well as one Single-Family Residential lot pursuant to Chapter 17.03.120 (Residential Development Standards) and applicable chapters of the Calexico Municipal Code (CMC). The Tentative Tract Map will also allow for the creation of four (4) Commercial lots pursuant to Chapter 17.05.130 (Commercial Development Standards), and one designated park/landscaped area lot. The Riverview project area is located south of Stat Route 98 (SR-98), east of the All-American Canal, and the closest north/south road is David Navarro (D. Navarro) Avenue; and

WHEREAS, the City Council of the City of Calexico has been delegated with the responsibility of approving tract maps that subdivide land; and

WHEREAS, the Planning Commission, at its regular meeting on June 11, 2007, held a duly noticed public hearing, and recommended to the City Council approval of Tentative Tract Map No. 2007-03 (Resolution No. 2007-22); and

WHEREAS, public notice of said application has been given, and the City Council has considered evidence presented by the Development Services Department and other interested parties at a public hearing held with respect to this item on July 10, 2007.

NOW THEREFORE, the City Council of the City of Calexico DOES HEREBY RESOLVE as follows:

SECTION 1. The City Council has considered the proposed subdivision of the Tentative Tract Map No. 2007-03 prior to making a decision. The City Council finds and determines that Mitigated Negative Declaration No. 2007-02 is adequate and prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) which analyzes environmental effects of the Riverview Project and Tentative Tract Map No. 2007-03, based upon the following conditions of approval, findings and determinations:

PLANNING DIVISION

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03
Page 2 of 18**

GENERAL CONDITION

1. The applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, its Official, Officers, Employees, Consultants and Agents from any claim, action, or proceeding against the City, its Official, Officers, Employees, Consultants or Agents to attach, set aside, void, or annul an approval of the City, its advisory agencies, appeal boards, or legislative body concerning the Tentative Condominium Map, which action is brought within the time period provided for in California Government Code Sections 65009 and/or 66499.37, and Public Resources Code Section 21167. The City will promptly notify the Applicant of any such claim, action, or proceeding against the City and will cooperate fully with the defense. If the City fails to promptly notify the Applicant of any such claim, or proceeding, the Applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City.

TENTATIVE CONDOMINIUM MAP No. 2007-03

2. The Tentative Tract Map will expire two (2) years from date of approval unless within that period of time the CC&R's and an appropriate instrument has been filed and recorded with the County Recorder, or an extension of time is granted by the City of Calexico City Council in accordance with the Subdivision Map Act.
3. The Tentative Tract Map shall comply with the State of California Subdivision Map Act and shall comply with all applicable requirements of the Calexico Municipal Code, Title 16 unless modified by approved Conditions of Approval.
4. Prior to final certificate of occupancy of Tentative Tract Map, the improvements specified herein and approved by the Planning Commission and the City Council shall be installed, or agreements for said improvements, shall be submitted to the City for approval by the City Engineer, and all other stated conditions shall be complied with. All uncompleted improvements must be bonded for as part of the agreements.
5. Prior to the first certificate of occupancy the applicant shall prepare and record CC&R's against the condominium complex. The CC&R's shall be reviewed and approved by the Development Services Director or Designee and the City Attorney. The CC&R's shall include methods of maintaining common areas, parking and drive aisle areas, landscaped areas including parkways, and methods for common maintenance of all underground, and above ground utility infrastructure improvements necessary to support the complex. In addition, CC&R's shall established methods to address design improvements.
6. No unit in the development shall be sold unless a corporation, association, property owner's group or similar entity has been formed with the right to financially assess all properties individually owned or jointly owned which have any rights or interest in the use of the common areas and common facilities in the development, such assessment power to be sufficient to meet the expenses of such entity, and with authority to control, and duty to maintain, all said mutually available features of the development. Such entity shall operate

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03**

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under recorded CC&R's which shall include compulsory membership of all owners of lots and/or dwelling units and flexibility of assessments to meet changing costs of maintenance, repairs, and services. Recorded CC&R's shall permit enforcement by the City for provisions required as Conditions of Approval. The developer shall submit evidence of compliance with this requirement to, and receive approval of, the City prior to making any such sale. This condition shall not apply to land dedicated to the City for public purposes.

7. Provisions to restrict parking upon other than approved and developed parking spaces shall be written into the covenants, conditions and restrictions for each project.
8. Membership in the Home Owner's Association shall be mandatory for each buyer and any successive buyer.
9. Reciprocal covenants, conditions, and restrictions and reciprocal maintenance agreements shall be established which will cause a merging of all development phases as they are completed, and embody one (1) homeowner's association with common area for the total development of the subject project.
10. All open space, landscaping, and parkway areas shall be maintained by the Home Owner's Association.
11. In the event the association or other legally responsible person(s) fail to maintain said common area in such a manner as to cause same to constitute a public nuisance, said City may, upon proper notice and hearing, institute summary abatement procedures and impose a lien for the costs of such abatement upon said common area, individual units or whole thereof as provided by law.
12. Each unit owner shall have full access to commonly owned areas, facilities and utilities.
13. The applicant shall continue to comply with those mitigation measures identified in the Mitigation Monitoring Program adopted with Mitigated Negative Declaration No. 2007-02.
14. The project shall comply with the all applicable requirements of the Calexico Municipal Code; Title 17 unless modified by approved Conditions of Approval.
15. The applicant shall at all times comply with Noise Control Ordinance of the Calexico Municipal Code.

RESIDENTIAL DESIGN REVIEW No. 2007-01

16. The Residential Design Review will lapse and be void unless building permits are issued within one (1) year of City Council approval. The Development Services Director may grant an extension of time of up to one (1) year per extension, prior to the expiration of the initial Design Review approval. Application for a time extension must be submitted to the City of Calexico one (1) month prior to the expiration date.

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03
Page 4 of 18**

17. Conditions of Approval shall be reproduced on page one of building plans submitted to the Building Division Plan Check. All Conditions of Approval shall be met prior to the issuance of a Certificate of Occupancy and release of utilities.
18. All site improvements approved with this request shall be constructed as indicated on the approved site plan and elevations. Revisions to approved site plans or building elevations shall be subject to the review of the Development Services Director. All plans submitted for Building Division Plan Check shall conform to the submitted plans as modified by Conditions of Approval, or the Planning Commission/City Council through subsequent action.
19. All roof mounted or ground support air conditioning units or other mechanical equipment incidental to development shall be architecturally screened or shielded by landscaping so that they are not visible from neighboring property or public streets. Any material covering the roof equipment shall match the primary wall color.
20. All exterior on-site lighting shall be shielded and directed on-site so as not to create glare onto neighboring property and streets or allow illumination above the horizontal plane of the fixture. All light fixtures shall match the architectural style of the building.
21. Trash enclosures shall be constructed per City standards as approved by the Development Services Director or Designee.
22. No exterior roof ladders shall be permitted, unless approved by the Calexico Fire Department.
23. Applicant shall use roofing materials with Class "A" fire rating.
24. The Planning Division shall approve the location of any construction trailers utilized during construction. All construction trailers shall require a permit processed through the Planning Division.
25. Materials and colors depicted on the plans and materials board shall be used unless modified by the Development Services Director or designee.
26. On-site surface drainage shall not cross sidewalks.
27. All exposed slopes in excess of three feet (3') in height shall have a permanent irrigation system and erosion control vegetation installed, approved by the Planning Division.

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03
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PRIOR TO BUILDING/GRADING PERMITS

28. Prior to issuance of any grading permit or building permits, the applicant shall sign and complete an "Acknowledgement of Conditions" form and shall return the executed original to the Planning Division for inclusion in the case records.
29. Prior to the commencement of grading operations, the applicant shall provide a map of all proposed haul routes to be used for movement of dirt material. Such routes shall be subject to the review and approval of the City Engineer. A bond may be required to pay for damages to the public right-of-way, subject to the approval of the City Engineer.
30. A Final Landscaping/Irrigation Detail Plan shall be submitted, reviewed and approved by the Development Services Director or designee, prior to issuance of building permit.
 - a. All planting areas shall have permanent and automatic sprinkler system with 100% plant and grass coverage using a combination of drip and conventional irrigation methods.
 - b. Applicant shall plant street trees, selected from the City's Street Tree List, a maximum of forty feet (40) apart and at least twenty-four-inch (24") box in size.
 - c. All planting areas shall be separated from paved areas with a six inch (6") high and six inch (6") wide concrete curb.
 - d. Planting within fifteen feet (15') of ingress/egress points shall be no higher than thirty-six inches (36").
 - e. Landscape planters shall be planted with an appropriate parking lot shade tree to provide for 50% parking lot shading in fifteen (15) years.
 - f. Any transformers and mechanical or electrical equipment shall be indicated on landscape plan and screened as part of the landscaping plan.
 - g. All landscape improvements shall be HOA maintained from installation sign-off by the City.
 - h. All landscaping and irrigation shall be installed within affected portion of any phase at the time a Certificate of Occupancy is requested for any building. All planting areas shall include plantings in the Xeriscape concept, drought tolerant grasses and plants.
 - i. Final landscape plan must be consistent with approved site plan/landscape plan.

CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03
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- j. The project shall include a minimum of thirty-five trees per gross acre. Twenty percent shall be twenty-four inch box size or larger, seventy percent shall be fifteen gallon size and ten percent shall be five gallon size.
 - k. Final landscape plans to include planting and irrigation details.
31. Applicant shall comply with the requirements of the Imperial Irrigation District (IID). Proof shall be presented to the Chief Building Official prior to issuance of building permits and final approval.
 32. Prior to issuance of building permits, applicant shall provide assurance that all required fees to the Calexico Unified School District have been paid.
 33. Prior to issuance of building permits, applicant shall provide assurance that all requirements of the City of Calexico Fire Department have been met.
 34. Prior to issuance of building permits, applicant shall provide assurance that all requirements of the City of Calexico Police Department have been met. Refer to attached memorandum from the Calexico Police Department.
 35. Prior to the issuance of building permits, applicant shall provide assurance that all requirements of the City of Calexico Administrative Services Department have been met (i.e. Community Facilities District, Lighting and Landscape Maintenance District, etc.).

PRIOR TO ISSUANCE OF A BUILDING PERMIT

36. The Home Owner's Association shall be established prior to the occupancy release of the first dwelling unit.

ENGINEERING

GENERAL CONDITIONS

37. Improve or guarantee the necessary street improvements in conformance with the project and/or corridor traffic study that will mitigate potential traffic impacts to include: all the specific conditions and the mitigation measures as specified herein and the mitigation monitoring program.
38. Improve or guarantee the improvement of the necessary water and sewer line upgrade and/or extensions from the city of Calexico to service the proposed project at the expense of the developer based on the updated Service Area Plan to the satisfaction of the City Engineer.

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03**

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39. Dedicate the necessary right-of-way and land to the appropriate jurisdictions (i.e., street, park dedication, etc.) as shown in the subdivision tentative map and/or as required to the satisfaction of the City Engineer.
40. Create a financing mechanism (assessment district and/or maintenance district) to support the ongoing maintenance of the parks, schools, landscaping, lighting and regional drainage services, storm water retention system facilities, fire/police services.
41. Prior to submittal of any improvement plan for plan check, geotechnical study and soils report of the project site shall be conducted to the satisfaction of the City Engineer. An approved copy of the geotechnical study and soils report, in accordance with the subdivision map act, applicable coeds, and city standards, shall be submitted with the improvement plans.
42. The developer shall submit and receive an NPDES permit from the regional water quality control board in accordance with a storm water pollution prevention plan approved by the City Engineer. The storm water pollution prevention plan shall include best management practices (BMP's).
43. A site specific drainage study in conformance with the sub-regional stormwater retention system shall be conducted by a registered hydraulic engineer and submitted for review and approval by the city and IID. The drainage study may incorporate temporary retention basins; however, the design of the drainage system shall be in conformance with the City's sub-regional stormwater retention system.
44. Any temporary relocation of private or IID canals and drainage ditches shall be approved by IID.
45. All retention facilities and drainage improvements shall be installed to the satisfaction of the City Engineer.
46. Temporary retention basin(s) shall be required to retain all the appropriate runoff of the entire area (streets and lots) until a regional storm drain facility becomes available. The cost of the temporary retention basin shall be the responsibility of the developer. The temporary retention basin(s) shall be sized for a 100-year/24-hour storm and bonded for removal to the satisfaction of the City Engineer.
47. Prior to submittal of improvement plans, the applicant shall provide the following master plans, to the satisfaction of the City Engineer:
 - a. Water master plan (including domestic and fire flow analysis)
 - b. Sewer master plan (including sewer capacity flow and calculations)
 - c. Drainage master plan (including both hydrology and hydraulic calculations)
 - d. Street classification and traffic circulation master plan
 - e. Master Utilities plan as required by other jurisdictions.

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03
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48. All Master plans and improvements plans shall be in conformance with chapter III of the city standards entitled "City of Calexico Design Procedures and Improvement Standards" updated December 1, 2005 herein called City Standards and any subsequent revisions and modifications and as specified in these conditions.
49. Fire hydrants shall be placed not more than 300 ft apart and nor more than 300 ft from buildings.
50. The developer shall participate in the project's pro-rated share of the costs for the improvement of the Mitigated Measures as identified in the EIR/MND, or at the discretion of the City of Calexico, be responsible for the improvement of the portion of the improvement identified in the Technical Study, and/or Benefit Area Assessment.

STREET IMPROVEMENTS AND TRAFFIC CIRCULATION

51. Primary arterials, collectors, and local site access streets of applicable street right-of-way widths shall be dedicated.
52. Improve or guarantee the improvement of road improvements and participate in a fair share contribution, as per requirements of the tentative map and the specific conditions. The road improvements and fees for primary arterials and collector streets shall be in accordance with the City of Calexico service area plan, benefit assessment areas, special infrastructure fee, and impact fee program to the satisfaction of the City Engineer.
53. Developer shall retain qualified California registered civil engineer for design services in accordance with the City Standards.
54. Improvement plans, record maps, traffic control plans, and intersection "stop" sign control plans for all interior streets shall be prepared to the satisfaction of the City Engineer.

BONDS AND SURETY

55. Prior to the submittal of bonds, the applicant/developer/design engineer shall submit construction cost estimate for all required improvements using City's provided unit cost items and standards for review and approval.
56. The developer shall submit and provide all required improvement bonds and surety to the satisfaction of the City Engineer.

IMPACT FEES AND FAIR SHARE ASSESSMENT FEES

57. The developer shall document and make payment of development impact fees for police services in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time.

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03
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58. The developer shall document and make payment of development impact fees for fire protect services in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time, to the satisfaction of the City Manager.
59. The developer shall document and make payment of school impact fees for Calexico Unified School District, as determined by state law, to the satisfaction of the Calexico Unified School District.
60. The developer shall document and make payment of development impact fees for park facilities and services in accordance with the CITY COUNCIL adopted standards (2006-2007 City Ordinance 1036).
61. The developer shall document and make payment of development impact fees for library facilities and services in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time, to the satisfaction of the City Manager.
62. The developer shall document and make payment of development impact fees for street, sewer and water facilities and other administrative services, in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time, to the satisfaction of the City Manager.

FAIR SHARE FEES

63. The developer shall pay for all applicable fees. These fees shall included but not be limited to impact fees, special infrastructure fees, benefit area assessment fees, and engineering plan check and inspection fees as determined and conditioned therein.
64. In addition to the required development impact fees for streets, water, sewer, police, fire, library, school and utility improvements, the developer shall participate in project's prorated share of the costs identified in the SPECIFIC CONDITIONS.

NOISE

65. A detailed acoustical analysis shall be conducted for residential uses within the vicinity of CNEL 60 DB or higher noise conditions; for office and professional buildings and recreational INDUSTRIAL facilities within 65 DB or higher conditions; and all other land uses, except agriculture, within 70 DB or high noise conditions. The developer shall construct sound walls or berms along major thoroughfares or provide other noise attenuation in order to achieve the general plan interior and exterior noise standards.

UTILITIES

66. The developer shall coordinate with the IID regarding the location, financing, designing, and phasing of required on-site electrical facilities.
67. The developer shall pay for the necessary upsizing of the water and/or sewer pipeline in order to connect into the existing water and/or sewer collection system.

SCHOOL

68. The project shall dedicate or pay a fee in-lieu of school site dedication in accordance with guidelines set by California Department of Education. Mitigation of school impact shall be documented by "Developer Agreement" executed by School District and Developer.
 - i. Note: Executed agreement shall be available prior to certification of resolutions for project approval.
 - ii. Industrial and/or commercial developments may be exempted from this provision of the requirement. The developer or his representative is required to obtain written conformation from the School District.

SPECIFIC CONDITIONS

b. Street Circulation Element Conditions

69. To mitigate traffic impacts from the proposed project, cumulative projects and future Year 2035 traffic, the following traffic improvements are recommended:

Direct Project Traffic Impacts

70. Widen and fully improve south of the centerline of State Highway 98 along the entire project frontage of Riverview Condominium Project site as a Principal Arterial Highway within a 148-foot right-of-way per Caltrans' requirements.
71. Construct the project site access entrance on State Highway 98 per Caltrans' requirements.
72. Limit the number of condominium dwelling units to 180 units and fully build the commercial development for the initial phase of the project development before the completion of the widening of State Route 98 from 2 lanes to 4 lanes. Develop, on a "fair-share, reimbursement agreement basis", a Traffic Mitigation Monitoring Program (TMMP) to continuously monitor the operating levels of service for State Route 98 and each of the cumulative traffic impacted intersections along State Route 98. The TMMP is an effective tool for the City to track unused traffic capacity on the existing 2-lane segment of State Route 98. The City may continue issuing additional building permits for the remaining 160 dwelling units until State Route 98 reaches a critical level of service or when State Route 98 has completed its widening program.

Cumulative Projects Plus Year 2030 Traffic Impacts

- a. Participate on a "fair-share" cost basis to fund the future widening and traffic signalization of the intersection of State Highway 98 and D. Navaro Avenue within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:

Two eastbound through traffic lanes on State Highway 98
One eastbound left-turn traffic lane on State Highway 98
One eastbound right-turn lane on State Highway 98
Two westbound through traffic lanes on State Highway 98
One westbound left-turn traffic lane on State Highway 98
One westbound right-turn traffic lane on State Highway 98
One southbound left-turn lane on D. Navaro Avenue
One southbound combined through and right-turn traffic lane on D. Navaro Avenue
One northbound combined through and right-turn traffic lane on D. Navaro Avenue
One northbound left-turn lane on D. Navaro Avenue

- b. Participate on a "fair-share" cost basis to fund the future widening and modifying existing traffic signal at the intersection of State Highway 98 and Kloke Road within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:

Two eastbound through traffic lanes on State Highway 98
One eastbound left-turn traffic lane on State Highway 98
One eastbound right-turn lane on State Highway 98
Two westbound through traffic lanes on State Highway 98
One westbound left-turn traffic lane on State Highway 98
One westbound right-turn traffic lane on State Highway 98
One southbound through traffic lanes on Kloke Road
Two southbound left-turn traffic lanes on Kloke Road
One southbound combined through and right-turn traffic lane on Kloke Road
One northbound left-turn traffic lane on Kloke Road
One northbound through traffic lane on Kloke Road
One northbound combined through and right turn traffic lane on Kloke Road

- c. Participate on a fair-share basis to fund the future widening and traffic signalization of the intersection of State Highway 98 and V.V. Williams within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:
- d. Two eastbound through traffic lanes on State Highway 98
e. One eastbound left-turn lane on State Highway 98
f. Two westbound through traffic lanes on State Highway 98
g. One westbound right-turn traffic lane on State Highway 98
h. One southbound combined through, left-turn and right-turn traffic lane on V.V. Williams

**CITY COUNCIL RESOLUTION FOR
TENTATIVE TRACT MAP NO. 2007-03
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- i. Participate on a "fair-share" cost basis to fund the future widening of State Highway 98 between Dogwood Road and west of Ollie Avenue within a 148-foot right-of-way per Caltrans' requirements.
- j. Participate on a "fair-share" cost basis to fund the future widening and modifying of the existing traffic signal at the intersection of State Highway 98 and Eady Avenue within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:
 - k. Two eastbound through traffic lanes on State Highway 98
 - l. One eastbound left-turn traffic lane on State Highway 98
 - m. One eastbound right-turn lane on State Highway 98
 - n. Two westbound through traffic lanes on State Highway 98
 - o. One westbound left-turn traffic lane on State Highway 98
 - p. One westbound right-turn traffic lane on State Highway 98
 - q. One northbound left-turn traffic lane on Eady Avenue
 - r. One northbound combined through and right-turn traffic lane on Eady Avenue
 - s. One southbound left-turn lane on Eady Avenue
 - t. One southbound combined through and right-turn traffic lane on Eady Avenue
- u. Participate in a "fair-share" cost basis to fund the development and implementation of a Traffic Mitigation Monitoring Program (TMMP) to continuously monitor the operating levels of service for S.R. 98 and each of the cumulative traffic impacted intersections. The TMMP would provide the City with an effective tool for tracking cumulative traffic impacts and to ensure that roadways and intersections remain at acceptable levels of service. Should the level of service reach unacceptable levels, the City shall delay the issuance of building permits for any project until the cumulative traffic impact mitigation is completed.
- v. Participate in a "fair-share" cost basis to fund the development and implementation of a Master Computer System at City Hall for synchronizing and monitoring traffic signal and traffic flow on S.R. 98.

73. Fair share cost for roadway improvements will be determined as part of the Riverview Condominium Subdivision Traffic Mitigation Monitoring Plan (TMMP) incorporated herewith that may include but not be limited to the following:

Location	Project + Cumulative Traffic from Other Projects (A.M.+P.M. Peak Hour Trips)	Project Traffic (A.M.+P.M. Peak Hour Trips)	Fair-Share Improvement Contribution	Cost
Modification of existing signal at S.R. 98 and Kloke Road	2,146	281	13.10%	

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Modification of existing signal at S.R. 98 and Eady Avenue	1,667	161	9.66%
New traffic signal at S.R. 98 and V.V. Williams	1,650	153	9.28%
Widening of S.R. 98 between Dogwood and Ollie	2,608	425	16.30%
New traffic signal at S.R. 98 and D. Navaro Avenue	1,663	287	17.26%
Implement a Traffic Mitigation Monitoring Program	6,309	642	10.18%
Develop a Master Signal Timing and Synchronization System	6,309	642	10.18%

Public Streets

74. Project Entrance Street shall be subjected to Caltrans approval and encroachment permit requirement. F. Chavez, W. Moreno, Lincoln Street, and A. V. Thielemann shall be dedicated as public street with 60 feet R/W requirement and no private playground area will be allowed into the public R/W area. City standard street landscaping will be required. Additionally a 20' landscaping buffer area along Hwy 98 will be required.

Easement

75. Provide private cross lot access and utilities easement for the commercial lots 1, 2, &3. Driveway access for Lots 3 and 4 will be granted from the Project Entrance Street. No access driveway will be allowed from the private residential street.

a. Drainage Element Conditions

76. The drainage element for all development shall comply with the City's Existing Drainage Facilities as defined in Section 5 of the Adopted Service Area Plan (ASAP August 10, 2006) Report requirement and any modification herein or the current General Plan and its latest amendment.

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77. Integrate retention basin design with the City's master plan of retention basins to accompany the Regional Retention Basin Concept. This will be maintained and setup of a Community Facility District (CFD) for maintenance or in the CC&R of the Home Owners' Association (HOA) for maintenance.
78. Submit a master plan of hydrology/hydraulic calculation and drainage map for review and approval prior to the submittal of the any phase unit map and improvement plans.
79. The developer will be responsible to construct the retention to serve the subdivision according to the current City design standards and criteria (including landscaping, irrigation, and fencing) prior to the issuance of the certificate of occupancy and/or City acceptance. The developer will be responsible to construct connection into the existing Imperial Irrigation Drain or to the All American Canal Drainage System.

a. Sewer Element Conditions

80. Prepare a sewer study and identify the off-site trunk sewer line and size that the subdivision sewer connects to the treatment plant and determine its adequacy.
81. Prepare a sewer master plan that is in accordance with the City's master sewer plan and to ascertain that the in- gravity lines will be able to accommodate the sewer flows generated by the development. The Developer is required to construct all the necessary improvements to provide sewer services to the subdivision. The sewer facilities must be in operation prior to the issuance of any certificate of occupancy.

a. Water Element Conditions

82. Prepare a water master plan (in- tract water line layout and hydraulic calculations) that integrates with the City's development water master plan to insure compliance of the City's current water master plan. The detailed water study shall identify all the improvements required to provide adequate water pressure and redundancy to the subject subdivision. The Developer will be responsible to build all the required improvements.
83. Provide a second connection of proper size at the westside to form a loop connection for the water master plan at A.V. Thielemann to Lincoln Street and T. Mendoza Street.

a. Community Facility District (CFD)-Prior Recordation of any Final Map.

84. A maintenance and operation CFD of the Sub-Regional Retention Basin for drainage will also be required and/or submit a CC& R of a Homeowners' Association to the City for City Attorney's approval.

FEES

85. Pay all applicable fees (i.e. City's Standard Impact Fees, Special Infrastructure Fees, Benefit Assessment Fees, Plan Check and Inspection Fees, etc.) prior to recordation of any final

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maps, pulling of permits, and/or certificate of occupancy as per the City's standard and conditions. In the case of Special Infrastructure fees and Benefit Assessment fees, an initial deposit (20% of the construction cost estimate, or an appropriate estimate as specified in the Agreement) shall be paid and deposited to the City for initial administration and engineering work prior to final confirmation approval of the Tentative Map Resolution by the PLANNING COMMISSION.

Other Pertinent Conditions

86. Any work performed within the UPRR, Imperial County, IID R/W, Caltrans will require an encroachment permit from the applicable agency.
87. The developer shall be responsible for procuring any necessary permits or approvals from regulatory and/or resource agencies.
88. Provide utilities, conduits, and other telecommunications facilities (i.e. cable, fiber optic, etc.) from point "A" to any such facility as determined and approved by the Imperial Valley Telecommunications Authority Manager and to the satisfaction of the Utilities Services Director/City Engineer.
89. Comply with City's Design Procedures and Improvement Standards as updated on December 1, 2005 Design Manual.

SECTION 4: CONDITIONS FOR RECORDATION OF FINAL MAP

90. Final map shall not be approved until developer and city have entered into an agreement, which provides for traffic facilities, emergency services, water and sewer services, and area drainage, and other services specified as needed.
91. Approval is given subject to compliance of final map and improvement drawings with all applicable zoning and subdivision ordinance of the City of Calexico.
92. The necessary improvements as set forth in the approval of the tentative map have been installed and accepted by the city, or provided the subdivider submits satisfactory improvement plans together with the necessary guarantee that the improvements shall be installed.
93. Guarantee for installation of improvements shown on recorded final map shall be by surety bond or letter of credit. Use of real property lien, as guarantee for installation of improvements shown on recorded final map is not permitted, per city policy and/or applicable map act provisions.
94. The required plan and map checking and inspection fees must be paid to all affected divisions/departments/agencies.

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95. Checking has been completed by the various departments and agencies.
96. Taxes, liens and special assessments have been paid or such payment is guaranteed.
97. All applicable conditions and compliance are in met with the city standards updated December 1, 2005 and all modifications and revisions thereon.

PARKS AND RECREATION SERVICES DEPARTMENT

98. Applicant shall pay applicable park fees.
99. The Home Owner's Association (HOA) shall maintain all landscaped areas including landscaping fronting State Highway 98, open space, water quality basin and all interior plantings.
100. The Home Owner's Association (HOA) shall maintain all block walls and keep them free of graffiti.
101. All interior roads, street signs, street markings, sidewalks, enhanced concrete to be maintained by the Home Owner's Association (HOA).

SECTION 2. That in accordance with State California Subdivision Map Act and requirements of the City of Calexico the following findings for the approval of Tentative Tract Map No. 2007-03 have been made as follows:

1. The proposed subdivision, together with the provisions for the design and improvement, are consistent with the General Plan; Zoning Code; Title 16 of the Municipal Code relating to Subdivisions; and the State Subdivision Map Act.

The design of the subdivision and density of 13 dwelling units per acre are consistent with the General Plan designation. The project is consistent with the designated land use planning area, development and design standards, and all other appropriate requirements contained in the General Plan, Calexico Zoning Code,, and Subdivision Map Act.

2. The proposed subdivision is compatible with the objectives, policies, general land uses and programs specified in the General Plan (Government Code Section 66473.5).

The project is consistent with the land use plan, development and design standards and programs, and all other appropriate requirements contained in the General Plan, and Zoning Code. As discussed, the General Plan designates the project site as "Commercial Highway" and "High Density Residential". The Tentative Tract Map is consistent with the City of Calexico General Plan and Zoning Code designations and applicable development and design standards.

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3. The effects this proposed subdivision is likely to have upon the housing needs of the region, the public service requirements of its residents, and the available fiscal and environmental resources have been considered and balanced.

The project is consistent with the City's General Plan and Zoning Code, will provide necessary public services and facilities, will pay all appropriate fees, and will not result in any adverse environmental impact. In addition, mitigation measures have been required which will reduce significant environmental impacts to the level of insignificance.

4. The design of the subdivision provides to the greatest extent possible, for future passive or natural heating or cooling opportunities in the subdivision (Government Code Section 66412.3).

The project will comply with all appropriate conservation requirements of the City and Uniform Building Code.

NOW, THEREFORE, based on the above findings, the City Council of the City of Calexico DOES HEREBY APPROVE Tentative Tract Map No. 2007-03.

PASSED AND ADOPTED by the City Council of the City of Calexico, California, this 10th day of July, 2007.



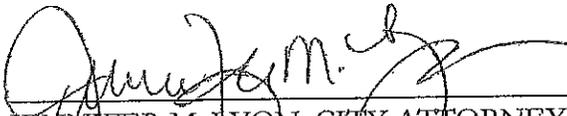
JOHN RENISON, MAYOR

ATTEST:



LOURDES CORDOVA, CITY CLERK

APPROVED AS TO FORM:



JENNIFER M. LYON, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS.
CITY OF CALEXICO)

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I, LOURDES CORDOVA, AGENCY THE CITY OF CALEXICO, DO HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2007-30, WAS DULY PASSED AND ADOPTED BY THE CITY OF CALEXICO ON THIS 10th DAY OF JULY 2007 BY THE FOLLOWING VOTE TO WIT:

AYES: Ouzan, Renison, Durazo, Fuentes
NOES: None
ABSENT: Pacheco



LOURDES CORDOVA, CITY CLERK

SEAL

 9/6/07
DATE
I HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL RECORD ON FILE IN THIS OFFICE.

**CONDITIONS OF APPROVAL FOR
ANNEXATION NO. 2007-01, ZONE CHANGE NO. 2007-04, TENTATIVE TRACT MAP
NO. 2007-03, RESIDENTIAL DESIGN REVIEW NO. 2007-01, AND
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"RIVERVIEW"**

GENERAL CONDITION

1. The applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, its Official, Officers, Employees, Consultants and Agents from any claim, action, or proceeding against the City, its Official, Officers, Employees, Consultants or Agents to attach, set aside, void, or annul an approval of the City, its advisory agencies, appeal boards, or legislative body concerning the Tentative Condominium Map, which action is brought within the time period provided for in California Government Code Sections 65009 and/or 66499.37, and Public Resources Code Section 21167. The City will promptly notify the Applicant of any such claim, action, or proceeding against the City and will cooperate fully with the defense. If the City fails to promptly notify the Applicant of any such claim, or proceeding, the Applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City.

TENTATIVE CONDOMINIUM MAP No. 2007-03

2. The Tentative Tract Map will expire two (2) years from date of approval unless within that period of time the map has been finalized and appropriate instruments such the CC&R's has been filed and recorded with the County Recorder, or an extension of time is granted by the City of Calexico City Council in accordance with the Subdivision Map Act.
3. The Tentative Tract Map shall comply with the State of California Subdivision Map Act and shall comply with all applicable requirements of the Calexico Municipal Code, Title 16 unless modified by approved Conditions of Approval.
4. Prior to final certificate of occupancy of Tentative Tract Map, the improvements specified herein and approved by the Planning Commission and the City Council shall be installed, or agreements for said improvements, shall be submitted to the City for approval by the City Engineer, and all other stated conditions shall be complied with. All uncompleted improvements must be bonded for as part of the agreements.
5. Prior to the first certificate of occupancy the applicant shall prepare and record CC&R's against the condominium complex. The CC&R's shall be reviewed and approved by the Development Services Director or Designee and the City Attorney. The CC&R's shall include methods of maintaining common areas, parking and drive aisle areas, landscaped areas including parkways, and methods for common maintenance of all underground, and above ground utility infrastructure improvements necessary to support the complex. In addition, CC&R's shall established methods to address design improvements.
6. No unit in the development shall be sold unless a corporation, association, property owner's group or similar entity has been formed with the right to financially assess all properties individually owned or jointly owned which have any rights or interest in the use of the common areas and common facilities in the development, such assessment power to be sufficient to meet the expenses of such

APPROVED

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entity, and with authority to control, and duty to maintain, all said mutually available features of the development. Such entity shall operate under recorded CC&R's which shall include compulsory membership of all owners of lots and/or dwelling units and flexibility of assessments to meet changing costs of maintenance, repairs, and services. Recorded CC&R's shall permit enforcement by the City for provisions required as Conditions of Approval. The developer shall submit evidence of compliance with this requirement to, and receive approval of, the City prior to making any such sale. This condition shall not apply to land dedicated to the City for public purposes.

7. Provisions to restrict parking upon other than approved and developed parking spaces shall be written into the covenants, conditions and restrictions for each project.
8. Membership in the Home Owner's Association shall be mandatory for each buyer and any successive buyer.
9. Reciprocal covenants, conditions, and restrictions and reciprocal maintenance agreements shall be established which will cause a merging of all development phases as they are completed, and embody one (1) homeowner's association with common area for the total development of the subject project.
10. All open space, landscaping, and parkway areas shall be maintained by the Home Owner's Association.
11. In the event the association or other legally responsible person(s) fail to maintain said common area in such a manner as to cause same to constitute a public nuisance, said City may, upon proper notice and hearing, institute summary abatement procedures and impose a lien for the costs of such abatement upon said common area, individual units or whole thereof as provided by law.
12. Each unit owner shall have full access to commonly owned areas, facilities and utilities.
13. The applicant shall continue to comply with those mitigation measures identified in the Mitigation Monitoring Program adopted with Mitigated Negative Declaration No. 2007-02.
14. The project shall comply with the all applicable requirements of the Calexico Municipal Code; Title 17 unless modified by approved Conditions of Approval.
15. The applicant shall at all times comply with Noise Control Ordinance of the Calexico Municipal Code.

RESIDENTIAL DESIGN REVIEW No. 2007-01

16. The Residential Design Review will lapse and be void unless building permits are issued within one (1) year of City Council approval. The Development Services Director may grant an extension of time of up to one (1) year per extension, prior to the expiration of the initial Design Review

Planning Commission Approved
June 11, 2007

City Council Approved
APPROVED

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approval. Application for a time extension must be submitted to the City of Calexico one (1) month prior to the expiration date.

17. Conditions of Approval shall be reproduced on page one of building plans submitted to the Building Division Plan Check. All Conditions of Approval shall be met prior to the issuance of a Certificate of Occupancy and release of utilities.
18. All site improvements approved with this request shall be constructed as indicated on the approved site plan and elevations. Revisions to approved site plans or building elevations shall be subject to the review of the Development Services Director. All plans submitted for Building Division Plan Check shall conform to the submitted plans as modified by Conditions of Approval, or the Planning Commission/City Council through subsequent action.
19. All roof mounted or ground support air conditioning units or other mechanical equipment incidental to development shall be architecturally screened or shielded by landscaping so that they are not visible from neighboring property or public streets. Any material covering the roof equipment shall match the primary wall color.
20. All exterior on-site lighting shall be shielded and directed on-site so as not to create glare onto neighboring property and streets or allow illumination above the horizontal plane of the fixture. All light fixtures shall match the architectural style of the building.
21. Trash enclosures shall be constructed per City standards as approved by the Development Services Director or Designee.
22. No exterior roof ladders shall be permitted, unless approved by the Calexico Fire Department.
23. Applicant shall use roofing materials with Class "A" fire rating.
24. The Planning Division shall approve the location of any construction trailers utilized during construction. All construction trailers shall require a permit processed through the Planning Division.
25. Materials and colors depicted on the plans and materials board shall be used unless modified by the Development Services Director or designee.
26. On-site surface drainage shall not cross sidewalks.
27. All exposed slopes in excess of three feet (3') in height shall have a permanent irrigation system and erosion control vegetation installed, approved by the Planning Division.

PRIOR TO BUILDING/GRADING PERMITS

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28. Prior to issuance of any grading permit or building permits, the applicant shall sign and complete an "Acknowledgement of Conditions" form and shall return the executed original to the Planning Division for inclusion in the case records.
29. Prior to the commencement of grading operations, the applicant shall provide a map of all proposed haul routes to be used for movement of dirt material. Such routes shall be subject to the review and approval of the City Engineer. A bond may be required to pay for damages to the public right-of-way, subject to the approval of the City Engineer.
30. A Final Landscaping/Irrigation Detail Plan shall be submitted, reviewed and approved by the Development Services Director or designee, prior to issuance of building permit.
- a. All planting areas shall have permanent and automatic sprinkler system with 100% plant and grass coverage using a combination of drip and conventional irrigation methods.
 - b. Applicant shall plant street trees, selected from the City's Street Tree List, a maximum of forty feet (40) apart and at least twenty-four-inch (24") box in size.
 - c. All planting areas shall be separated from paved areas with a six inch (6") high and six inch (6") wide concrete curb.
 - d. Planting within fifteen feet (15') of ingress/egress points shall be no higher than thirty-six inches (36").
 - e. Landscape planters shall be planted with an appropriate parking lot shade tree to provide for 50% parking lot shading in fifteen (15) years.
 - f. Any transformers and mechanical or electrical equipment shall be indicated on landscape plan and screened as part of the landscaping plan.
 - g. All landscape improvements shall be HOA maintained from installation sign-off by the City.
 - h. All landscaping and irrigation shall be installed within affected portion of any phase at the time a Certificate of Occupancy is requested for any building. All planting areas shall include plantings in the Xeriscape concept, drought tolerant grasses and plants.
 - i. Final landscape plan must be consistent with approved site plan/landscape plan.
 - j. The project shall include a minimum of thirty-five trees per gross acre. Twenty percent shall be twenty-four inch box size or larger, seventy percent shall be fifteen gallon size and ten percent shall be five gallon size.

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- k. Final landscape plans to include planting and irrigation details.
31. Applicant shall comply with the requirements of the Imperial Irrigation District (IID). Proof shall be presented to the Chief Building Official prior to issuance of building permits and final approval.
32. Prior to issuance of building permits, applicant shall provide assurance that all required fees to the Calexico Unified School District have been paid.
33. Prior to issuance of building permits, applicant shall provide assurance that all requirements of the City of Calexico Fire Department have been met.
34. Prior to issuance of building permits, applicant shall provide assurance that all requirements of the City of Calexico Police Department have been met. Refer to attached memorandum from the Calexico Police Department.
35. Prior to the issuance of building permits, applicant shall provide assurance that all requirements of the City of Calexico Administrative Services Department have been met (i.e. Community Facilities District, Lighting and Landscape Maintenance District, etc.).

PRIOR TO ISSUANCE OF A BUILDING PERMIT

36. The Home Owner's Association shall be established prior to the occupancy release of the first dwelling unit.

ENGINEERING

GENERAL CONDITIONS

37. Improve or guarantee the necessary street improvements in conformance with the project and/or corridor traffic study that will mitigate potential traffic impacts to include: all the specific conditions and the mitigation measures as specified herein and the mitigation monitoring program.
38. Improve or guarantee the improvement of the necessary water and sewer line upgrade and/or extensions from the city of Calexico to service the proposed project at the expense of the developer based on the updated Service Area Plan to the satisfaction of the City Engineer.
39. Dedicate the necessary right-of-way and land to the appropriate jurisdictions (i.e., street, park dedication, etc.) as shown in the subdivision tentative map and/or as required to the satisfaction of the City Engineer.
40. Create a financing mechanism (assessment district and/or maintenance district) to support the ongoing maintenance of the parks, schools, landscaping, lighting and regional drainage services, storm water retention system facilities, fire/police services.

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41. Prior to submittal of any improvement plan for plan check, geotechnical study and soils report of the project site shall be conducted to the satisfaction of the City Engineer. An approved copy of the geotechnical study and soils report, in accordance with the subdivision map act, applicable coeds, and city standards, shall be submitted with the improvement plans.
42. The developer shall submit and receive an NPDES permit from the regional water quality control board in accordance with a storm water pollution prevention plan approved by the City Engineer. The storm water pollution prevention plan shall include best management practices (BMP's).
43. A site specific drainage study in conformance with the sub-regional stormwater retention system shall be conducted by a registered hydraulic engineer and submitted for review and approval by the city and IID. The drainage study may incorporate temporary retention basins; however, the design of the drainage system shall be in conformance with the City's sub-regional stormwater retention system.
44. Any temporary relocation of private or IID canals and drainage ditches shall be approved by IID.
45. All retention facilities and drainage improvements shall be installed to the satisfaction of the City Engineer.
46. Temporary retention basin(s) shall be required to retain all the appropriate runoff of the entire area (streets and lots) until a regional storm drain facility becomes available. The cost of the temporary retention basin shall be the responsibility of the developer. The temporary retention basin(s) shall be sized for a 100-year/24-hour storm and bonded for removal to the satisfaction of the City Engineer.
47. Prior to submittal of improvement plans, the applicant shall provide the following master plans, to the satisfaction of the City Engineer:
 - a. Water master plan (including domestic and fire flow analysis)
 - b. Sewer master plan (including sewer capacity flow and calculations)
 - c. Drainage master plan (including both hydrology and hydraulic calculations)
 - d. Street classification and traffic circulation master plan
 - e. Master Utilities plan as required by other jurisdictions.
48. All Master plans and improvements plans shall be in conformance with chapter III of the city standards entitled "City of Calexico Design Procedures and Improvement Standards" updated December 1, 2005 herein called City Standards and any subsequent revisions and modifications and as specified in these conditions.
49. Fire hydrants shall be placed not more than 300 ft apart and nor more than 300 ft from buildings.

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50. The developer shall participate in the project's pro-rated share of the costs for the improvement of the Mitigated Measures as identified in the EIR/MND, or at the discretion of the City of Calexico, be responsible for the improvement of the portion of the improvement identified in the Technical Study, and/or Benefit Area Assessment.

STREET IMPROVEMENTS AND TRAFFIC CIRCULATION

51. Primary arterials, collectors, and local site access streets of applicable street right-of-way widths shall be dedicated.
52. Improve or guarantee the improvement of road improvements and participate in a fair share contribution, as per requirements of the tentative map and the specific conditions. The road improvements and fees for primary arterials and collector streets shall be in accordance with the City of Calexico service area plan, benefit assessment areas, special infrastructure fee, and impact fee program to the satisfaction of the City Engineer.
53. Developer shall retain qualified California registered civil engineer for design services in accordance with the City Standards.
54. Improvement plans, record maps, traffic control plans, and intersection "stop" sign control plans for all interior streets shall be prepared to the satisfaction of the City Engineer.

BONDS AND SURETY

55. Prior to the submittal of bonds, the applicant/developer/design engineer shall submit construction cost estimate for all required improvements using City's provided unit cost items and standards for review and approval.
56. The developer shall submit and provide all required improvement bonds and surety to the satisfaction of the City Engineer.

IMPACT FEES AND FAIR SHARE ASSESSMENT FEES

57. The developer shall document and make payment of development impact fees for police services in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time.
58. The developer shall document and make payment of development impact fees for fire protect services in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time, to the satisfaction of the City Manager.
59. The developer shall document and make payment of school impact fees for Calexico Unified School District, as determined by state law, to the satisfaction of the Calexico Unified School District.

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60. The developer shall document and make payment of development impact fees for park facilities and services in accordance with the CITY COUNCIL adopted standards (2006-2007 City Ordinance 1036).
61. The developer shall document and make payment of development impact fees for library facilities and services in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time, to the satisfaction of the City Manager.
62. The developer shall document and make payment of development impact fees for street, sewer and water facilities and other administrative services, in accordance with the CITY COUNCIL adopted standards (2006-2007) and formulas (City Ordinance 1036) that are in effect at the time, to the satisfaction of the City Manager.

FAIR SHARE FEES

63. The developer shall pay for all applicable fees. These fees shall included but not be limited to impact fees, special infrastructure fees, benefit area assessment fees, and engineering plan check and inspection fees as determined and conditioned therein.
64. In addition to the required development impact fees for streets, water, sewer, police, fire, library, school and utility improvements, the developer shall participate in project's prorated share of the costs identified in the SPECIFIC CONDITIONS.

NOISE

65. A detailed acoustical analysis shall be conducted for residential uses within the vicinity of CNEL 60 DB or higher noise conditions; for office and professional buildings and recreational INDUSTRIAL facilities within 65 DB or higher conditions; and all other land uses, except agriculture, within 70 DB or high noise conditions. The developer shall construct sound walls or berms along major thoroughfares or provide other noise attenuation in order to achieve the general plan interior and exterior noise standards.

UTILITIES

66. The developer shall coordinate with the IID regarding the location, financing, designing, and phasing of required on-site electrical facilities.
67. The developer shall pay for the necessary upsizing of the water and/or sewer pipeline in order to connect into the existing water and/or sewer collection system.

SCHOOL

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APPROVED

City Council Approved

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"RIVERVIEW"**

68. The project shall dedicate or pay a fee in-lieu of school site dedication in accordance with guidelines set by California Department of Education. Mitigation of school impact shall be documented by "Developer Agreement" executed by School District and Developer.
- i. Note: Executed agreement shall be available prior to certification of resolutions for project approval.
 - ii. Industrial and/or commercial developments may be exempted from this provision of the requirement. The developer or his representative is require to obtain written conformation from the School District.

SPECIFIC CONDITIONS

b. Street Circulation Element Conditions

69. Other City Wide Street Circulation Impacts

70. To mitigate traffic impacts from the proposed project, cumulative projects and future Year 2035 traffic, the following traffic improvements are required:

Direct Project Traffic Impacts

71. Widen and fully improve south of the centerline of State Highway 98 along the entire project frontage of Riverview Condominium Project site as a Principal Arterial Highway within a 148-foot right-of-way per Caltrans' requirements.

72. Construct the project site access entrance on State Highway 98 per Caltrans' requirements.

73. Limit the number of condominium dwelling units to 180 units and fully build the commercial development for the initial phase of the project development before the completion of the widening of State Route 98 from 2 lanes to 4 lanes. Develop, on a "fair-share, reimbursement agreement basis", a Traffic Mitigation Monitoring Program (TMMP) to continuously monitor the operating levels of service for State Route 98 and each of the cumulative traffic impacted intersections along State Route 98. The TMMP is an effective tool for the City to track unused traffic capacity on the existing 2-lane segment of State Route 98. The City may continue issuing additional building permits for the remaining 160 dwelling units until State Route 98 reaches a critical level of service or when State Route 98 has completed its widening program.

Cumulative Projects Plus Year 2030 Traffic Impacts

- a. Participate on a "fair-share" cost basis to fund the future widening and traffic signalization of the intersection of State Highway 98 and D. Navaro Avenue within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:

**CONDITIONS OF APPROVAL FOR
ANNEXATION NO. 2007-01, ZONE CHANGE NO. 2007-04, TENTATIVE TRACT MAP
NO. 2007-03, RESIDENTIAL DESIGN REVIEW NO. 2007-01, AND
MITIGATED NEGATIVE DECLARATION NO. 2007-02 FOR
UNIFORM APPLICATION NO. 2004-45
"RIVERVIEW"**

Two eastbound through traffic lanes on State Highway 98
One eastbound left-turn traffic lane on State Highway 98
One eastbound right-turn lane on State Highway 98
Two westbound through traffic lanes on State Highway 98
One westbound left-turn traffic lane on State Highway 98
One westbound right-turn traffic lane on State Highway 98
One southbound left-turn lane on D. Navaro Avenue
One southbound combined through and right-turn traffic lane on D. Navaro Avenue
One northbound combined through and right-turn traffic lane on D. Navaro Avenue
One northbound left-turn lane on D. Navaro Avenue

- b. Participate on a "fair-share" cost basis to fund the future widening and modifying existing traffic signal at the intersection of State Highway 98 and Kloke Road within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:

Two eastbound through traffic lanes on State Highway 98
One eastbound left-turn traffic lane on State Highway 98
One eastbound right-turn lane on State Highway 98
Two westbound through traffic lanes on State Highway 98
One westbound left-turn traffic lane on State Highway 98
One westbound right-turn traffic lane on State Highway 98
One southbound through traffic lanes on Kloke Road
Two southbound left-turn traffic lanes on Kloke Road
One southbound combined through and right-turn traffic lane on Kloke Road
One northbound left-turn traffic lane on Kloke Road
One northbound through traffic lane on Kloke Road
One northbound combined through and right turn traffic lane on Kloke Road

- c. Participate on a fair-share basis to fund the future widening and traffic signalization of the intersection of State Highway 98 and V.V. Williams within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:
- d. Two eastbound through traffic lanes on State Highway 98
- e. One eastbound left-turn lane on State Highway 98
- f. Two westbound through traffic lanes on State Highway 98
- g. One westbound right-turn traffic lane on State Highway 98
- h. One southbound combined through, left-turn and right-turn traffic lane on V.V. Williams
- i. Participate on a "fair-share" cost basis to fund the future widening of State Highway 98 between Dogwood Road and west of Ollie Avenue within a 148-foot right-of-way per Caltrans' requirements.
- j. Participate on a "fair-share" cost basis to fund the future widening and modifying of the existing traffic signal at the intersection of State Highway 98 and Eady Avenue within a 148-foot right-of-way. Stripe the following intersection traffic lane configurations:
- k. Two eastbound through traffic lanes on State Highway 98

**CONDITIONS OF APPROVAL FOR
ANNEXATION NO. 2007-01, ZONE CHANGE NO. 2007-04, TENTATIVE TRACT MAP
NO. 2007-03, RESIDENTIAL DESIGN REVIEW NO. 2007-01, AND
MITIGATED NEGATIVE DECLARATION NO. 2007-02 FOR
UNIFORM APPLICATION NO. 2004-45
"RIVERVIEW"**

- l. One eastbound left-turn traffic lane on State Highway 98
- m. One eastbound right-turn lane on State Highway 98
- n. Two westbound through traffic lanes on State Highway 98
- o. One westbound left-turn traffic lane on State Highway 98
- p. One westbound right-turn traffic lane on State Highway 98
- q. One northbound left-turn traffic lane on Eady Avenue
- r. One northbound combined through and right-turn traffic lane on Eady Avenue
- s. One southbound left-turn lane on Eady Avenue
- t. One southbound combined through and right-turn traffic lane on Eady Avenue
- u. Participate in a "fair-share" cost basis to fund the development and implementation of a Traffic Mitigation Monitoring Program (TMMP) to continuously monitor the operating levels of service for S.R. 98 and each of the cumulative traffic impacted intersections. The TMMP would provide the City with an effective tool for tracking cumulative traffic impacts and to ensure that roadways and intersections remain at acceptable levels of service. Should the level of service reach unacceptable levels, the City shall delay the issuance of building permits for any project until the cumulative traffic impact mitigation is completed.
- v. Participate in a "fair-share" cost basis to fund the development and implementation of a Master Computer System at City Hall for synchronizing and monitoring traffic signal and traffic flow on S.R. 98.

74. Fair share cost for roadway improvements will be determined as part of the Riverview Condominium Subdivision Traffic Mitigation Monitoring Plan (TMMP) incorporated herewith that may include but not be limited to the following:

Location	Project + Cumulative Traffic from Other Projects (A.M.+P.M. Peak Hour Trips)	Project Traffic (A.M.+P.M. Peak Hour Trips)	Fair-Share Improvement Contribution	Cost
Modification of existing signal at S.R. 98 and Kloke Road	2,146	281	13.10%	
Modification of existing signal at S.R. 98 and Eady Avenue	1,667	161	9.66%	
New traffic signal at S.R. 98 and V.V. Williams	1,650	153	9.28%	

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UNIFORM APPLICATION NO. 2004-45
"RIVERVIEW"**

Widening of S.R. 98 between Dogwood and Ollie	2,608	425	16.30%
New traffic signal at S.R. 98 and D. Navaro Avenue	1,663	287	17.26%
Implement a Traffic Mitigation Monitoring Program	6,309	642	10.18%
Develop a Master Signal Timing and Synchronization System	6,309	642	10.18%

Public Streets

75. Project Entrance Street shall be subjected to Caltrans approval and encroachment permit requirement. F. Chavez, W. Moreno, Lincoln Street, and A. V. Thielemann shall be dedicated as public street with 60 feet R/W requirement and no private playground area will be allowed into the public R/W area. City standard street landscaping will be required. Additionally a 20' landscaping buffer area along Hwy 98 will be required.

Easement

76. Provide private cross lot access and utilities easement for the commercial lots 1, 2, &3. Driveway access for Lots 3 and 4 will be granted from the Project Entrance Street. No access driveway will be allowed from the private residential street.

a. Drainage Element Conditions

77. The drainage element for all development shall comply with the City's Existing Drainage Facilities as defined in Section 5 of the Adopted Service Area Plan (ASAP August 10, 2006) Report requirement and any modification herein or the current General Plan and its latest amendment.
78. Integrate retention basin design with the City's master plan of retention basins to accompany the Regional Retention Basin Concept. This will be maintained and setup of a Community Facility District (CFD) for maintenance or in the CC&R of the Home Owners' Association (HOA) for maintenance.
79. Submit a master plan of hydrology/hydraulic calculation and drainage map for review and approval prior to the submittal of the any phase unit map and improvement plans.

Planning Commission Approved
June 11, 2007

APPROVED

City Council Approved

**CONDITIONS OF APPROVAL FOR
ANNEXATION NO. 2007-01, ZONE CHANGE NO. 2007-04, TENTATIVE TRACT MAP
NO. 2007-03, RESIDENTIAL DESIGN REVIEW NO. 2007-01, AND
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"RIVERVIEW"**

80. The developer will be responsible to construct the retention to serve the subdivision according to the current City design standards and criteria (including landscaping, irrigation, and fencing) prior to the issuance of the certificate of occupancy and/or City acceptance. The developer will be responsible to construct connection into the existing Imperial Irrigation Drain or to the All American Canal Drainage System.

a. Sewer Element Conditions

81. Prepare a sewer study and identify the off-site trunk sewer line and size that the subdivision sewer connects to the treatment plant and determine its adequacy.

82. Prepare a sewer master plan that is in accordance with the City's master sewer plan and to ascertain that the in- gravity lines will be able to accommodate the sewer flows generated by the development. The Developer is required to construct all the necessary improvements to provide sewer services to the subdivision. The sewer facilities must be in operation prior to the issuance of any certificate of occupancy.

a. Water Element Conditions

83. Prepare a water master plan (in- tract water line layout and hydraulic calculations) that integrates with the City's development water master plan to insure compliance of the City's current water master plan. The detailed water study shall identify all the improvements required to provide adequate water pressure and redundancy to the subject subdivision. The Developer will be responsible to build all the required improvements.

84. Provide a second connection of proper size at the westside to form a loop connection for the water master plan at A.V. Thielemann to Lincoln Street and T. Mendoza Street.

a. Community Facility District (CFD)-Prior Recordation of any Final Map.

85. A maintenance and operation CFD of the Sub-Regional Retention Basin for drainage will also be required and/or submit a CC& R of a Homeowners' Association to the City for City Attorney's approval.

Fees

86. Pay all applicable fees (i.e. City's Standard Impact Fees, Special Infrastructure Fees, Benefit Assessment Fees, Plan Check and Inspection Fees, etc.) prior to recordation of any final maps, pulling of permits, and/or certificate of occupancy as per the City's standard and conditions. In the case of Special Infrastructure fees and Benefit Assessment fees, an initial deposit (20% of the construction cost estimate, or an appropriate estimate as specified in the Agreement) shall be paid and deposited to the City for initial administration and engineering work prior to final confirmation approval of the Tentative Map Resolution by the PLANNING COMMISSION.

CONDITIONS OF APPROVAL FOR
ANNEXATION NO. 2007-01, ZONE CHANGE NO. 2007-04, TENTATIVE TRACT MAP
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"RIVERVIEW"

Other Pertinent Conditions

87. Any work performed within the UPRR, Imperial County, IID R/W, Caltrans will require an encroachment permit from the applicable agency.
88. The developer shall be responsible for procuring any necessary permits or approvals from regulatory and/or resource agencies.
89. Provide utilities, conduits, and other telecommunications facilities (i.e. cable, fiber optic, etc.) from point "A" to any such facility as determined and approved by the Imperial Valley Telecommunications Authority Manager and to the satisfaction of the Utilities Services Director/City Engineer.
90. Comply with City's Design Procedures and Improvement Standards as updated on December 1, 2005 Design Manual.

SECTION 4: CONDITIONS FOR RECORDATION OF FINAL MAP

91. Final map shall not be approved until developer and city have entered into an agreement, which provides for traffic facilities, emergency services, water and sewer services, and area drainage, and other services specified as needed.
92. Approval is given subject to compliance of final map and improvement drawings with all applicable zoning and subdivision ordinance of the City of Calexico.
93. The necessary improvements as set forth in the approval of the tentative map have been installed and accepted by the city, or provided the subdivider submits satisfactory improvement plans together with the necessary guarantee that the improvements shall be installed.
94. Guarantee for installation of improvements shown on recorded final map shall be by surety bond or letter of credit. Use of real property lien, as guarantee for installation of improvements shown on recorded final map is not permitted, per city policy and/or applicable map act provisions.
95. The required plan and map checking and inspection fees must be paid to all affected divisions/departments/agencies.
96. Checking has been completed by the various departments and agencies.
97. Taxes, liens and special assessments have been paid or such payment is guaranteed.
98. All applicable conditions and compliance are in met with the city standards updated December 1, 2005 and all modifications and revisions thereon.

CONDITIONS OF APPROVAL FOR
ANNEXATION NO. 2007-01, ZONE CHANGE NO. 2007-04, TENTATIVE TRACT MAP
NO. 2007-03, RESIDENTIAL DESIGN REVIEW NO. 2007-01, AND
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UNIFORM APPLICATION NO. 2004-45
"RIVERVIEW"

PARKS AND RECREATION SERVICES DEPARTMENT

100. Applicant shall pay applicable park fees.
101. The Home Owner's Association (HOA) shall maintain all landscaped areas including landscaping fronting State Highway 98, open space, water quality basin and all interior plantings.
102. The Home Owner's Association (HOA) shall maintain all block walls and keep them free of graffiti.
103. All interior roads, street signs, street markings, sidewalks, enhanced concrete to be maintained by the Home Owner's Association (HOA).

Planning Commission Approved
June 11, 2007

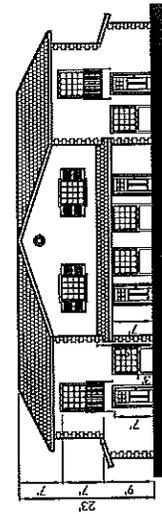
APPROVED

City Council Approved

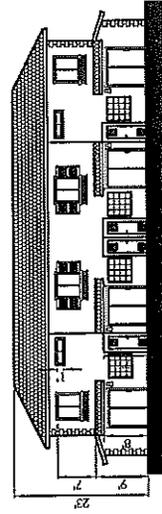
RIVERVIEW CONDOMINIUMS

FLOOR PLANS AND ELEVATIONS

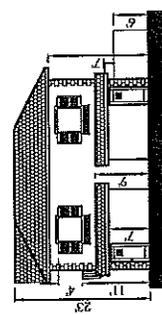
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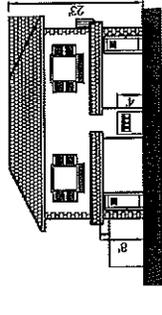
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BUILDING TYPE 1



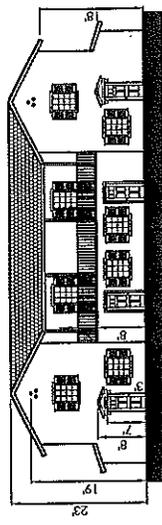
REAR ELEVATION
BUILDING TYPE 1



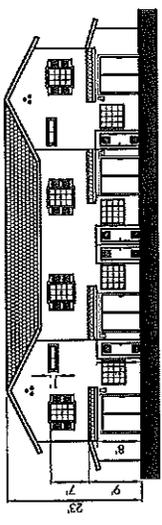
SIDE ELEVATION
BUILDING TYPE 1



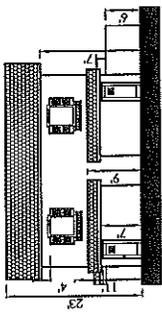
SIDE ELEVATION
BUILDING TYPE 2



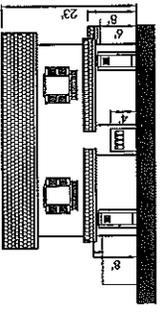
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BUILDING TYPE 2



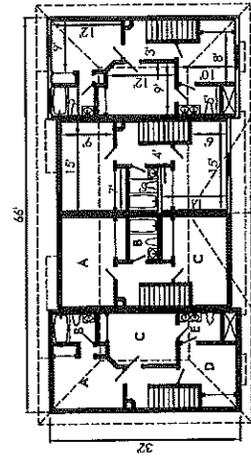
REAR ELEVATION
BUILDING TYPE 2



SIDE ELEVATION
BUILDING TYPE 2

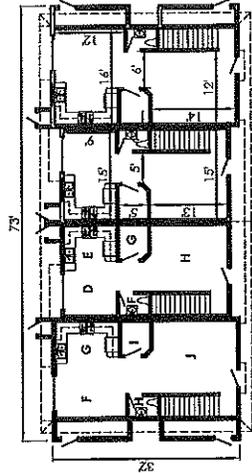


SIDE ELEVATION
BUILDING TYPE 2



SECOND-FLOOR PLAN

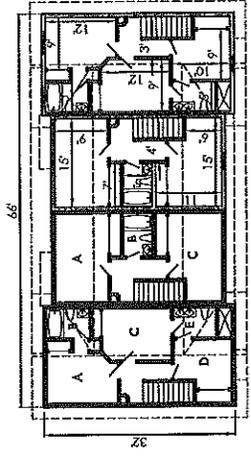
- 544 SQ.F. UNIT
- A MASTER BEDROOM
- B MASTER BATH
- C BEDROOM
- D BEDROOM
- E BATHROOM
- F DINING AREA
- G KITCHEN
- H BATHROOM
- I LAUNDRY
- J LIVING AREA



FIRST-FLOOR PLAN

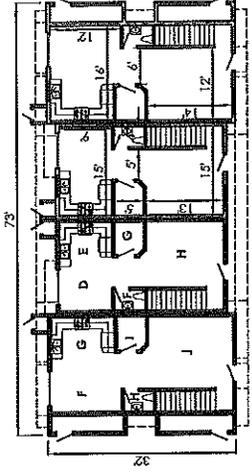
- 464 SQ.F. UNIT
- A BEDROOM
- B BATHROOM
- C BEDROOM
- D DINING AREA
- E KITCHEN
- F BATHROOM
- G LAUNDRY
- H LIVING AREA

"MEDITERRANEAN"



SECOND-FLOOR PLAN

- 544 SQ.F. UNIT
- A MASTER BEDROOM
- B MASTER BATH
- C BEDROOM
- D BEDROOM
- E BATHROOM
- F DINING AREA
- G KITCHEN
- H BATHROOM
- I LAUNDRY
- J LIVING AREA



FIRST-FLOOR PLAN

- 464 SQ.F. UNIT
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- C BEDROOM
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- E KITCHEN
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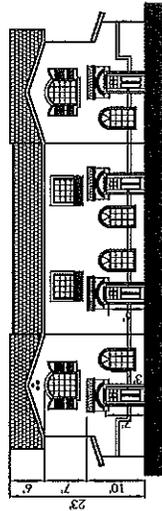
"NEO-COLONIAL"



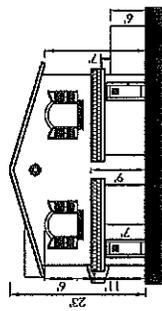
RIVERVIEW CONDOMINIUMS

FLOOR PLANS AND ELEVATIONS

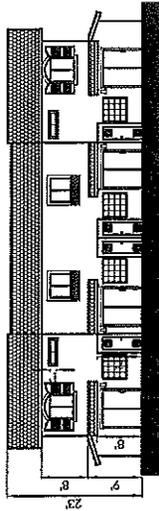
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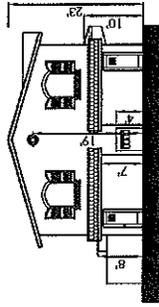
FRONT ELEVATION
BUILDING TYPE 3



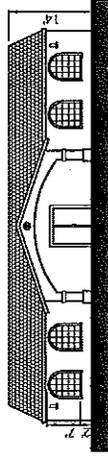
SIDE ELEVATION
BUILDING TYPE 3



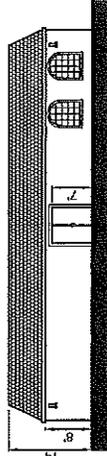
REAR ELEVATION
BUILDING TYPE 3



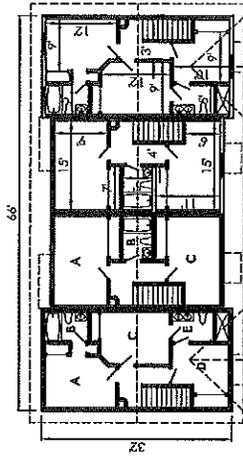
SIDE ELEVATION
BUILDING TYPE 3



NORTH ELEVATION

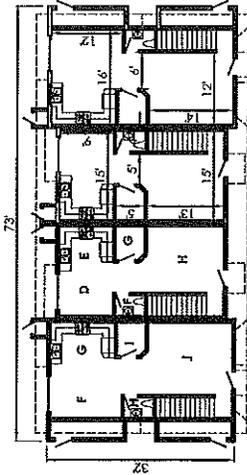


SOUTH ELEVATION



SECOND-FLOOR PLAN

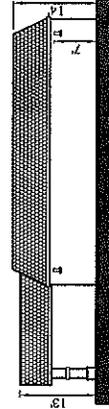
- 544 SQ.F. UNIT
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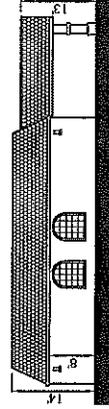
FIRST-FLOOR PLAN

- 464 SQ.F. UNIT
- A BEDROOM
- B BATHROOM
- C BEDROOM
- D DINING AREA
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- G LAUNDRY
- H LIVING AREA

"SPANISH-COLONIAL"



EAST ELEVATION



WEST ELEVATION

CLUB HOUSE "SPANISH-COLONIAL"

RESOLUTION 2015-__

A RESOLUTION OF THE CITY OF CALEXICO APPROVING RECORDATION OF FINAL MAP FOR RIVERVIEW CONDOMINIUMS.

WHEREAS, pursuant to City Council Resolution 2007-30 (the "TTM Resolution"), the City approved a Tentative Tract Map for the subdivision of 34.0 acres of land for the construction of a 340-unit residential condominiums development.

WHEREAS, the Tentative Tract Map resolution sets forth the conditions required for the Final Map of the Project; and

WHEREAS, the Final Map for the Project has been submitted for review and meets the requirements set forth in California Government Code Sections 66433, et. seq., and is now ready for approval by the Calexico City Council; and

WHEREAS, the Public Works Director/City Engineer has found said Final Map to be in general conformance with the Tentative Tract Map for the Project; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and incorporated herein.

SECTION 2. Based on the staff report of the City Public Works Director/City Engineer, and the written and oral testimonies and exhibits thereto, the City Council hereby approves the Final Map for the Project based on the following findings: (1) that the Final Map is in substantial compliance with the Tentative Tract Map, (2) that the Final Map approval is contingent upon the developer paying all outstanding fees to the satisfaction of the City Engineer for all improvement required.

SECTION 3. The City Clerk is hereby instructed to endorse in due form, such approval upon said map and affix a City seal thereto, and certify the passage of this Resolution.

SECTION 4. This Resolution shall become effective immediately upon its adoption PASSED, APPROVED AND ADOPTED this 1st day of September 2015.

Joong S. Kim, Mayor

ATTEST:

Gabriela T. Garcia, Deputy City Clerk

Approved as to Form:

Mark Austin, City Attorney
City of Calexico

I, Gabriela T. Garcia, Deputy City Clerk of the City of Calexico, California do hereby certify that the above and foregoing Resolution No. 2015-__ was duly passed, approved and adopted by the City Council at its regular meeting held on the 1st day of September 2015 by the following vote to-wit:

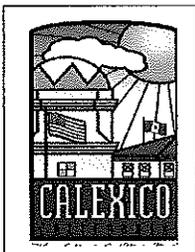
AYES:
NOES:
ABSENT

SEAL

Gabriela T. Garcia Deputy City Clerk

**AGENDA
ITEM**

23



AGENDA STAFF REPORT

DATE: September 1, 2015

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, City Manager *REW*

PREPARED BY: Nick Servin, Public Works Director/ City Engineer
Mark Vasquez, Assistant City Planner

SUBJECT: Resolution of the City Council of the City of Calexico for Approval of a Lien Contract and Covenant Not to Convey (In Lieu of Obtaining Surety Bonds) to Guarantee the Improvements for the Riverview Condominium Project.

=====

Recommendation:

Due to the lien versus property value, Staff recommends that the City Council consider the request to approve a Resolution to approve a lien contract and a covenant not to convey to guarantee the improvements required by the city for the Riverview Condominium Project.

Background:

Marvin Mayne, doing business as Dat-U-Joe Realty (the "Developer"), submitted an application relative to a 34.0 acre site located south of State Route, east of the All American Canal specifically described as, 058-180-08, 09,010 and 011) to change the Zoning Designation from "A-2-U, General Agriculture with Urban Overlay)" to CH, Commercial Highway, RC, Residential Condominium and R-1, Residential Single Family (R-1) to create a 340-unit residential condominium on the site, hereafter referred to as the "Project." Developer is developing the Property into a common interest development by building several consisting of two-story wood framed units, each having four living units. In addition, covered parking will be provided along with a club house, pool, basketball courts, picnic area, and kids' playground.

The Planning Commission, at its regular meeting on June 11, 2007, held a duly noticed public hearing, and approved and certified the Final Mitigated Negative Declaration, approved the Annexation into the City of Calexico, a zone change, Tentative Tract Map, and approved the Residential Design for the project.

<p>AGENDA ITEM</p> <p>_____</p>

On July 10, 2007, the City Council held a duly noticed public hearing and affirmed and approved the Planning Commission's resolutions. Marvin Mayne, doing business as Dat-U-Joe Realty (the "Developer"), submitted an application relative to a 34.0 acre site located south of State Route, east of the All American Canal specifically described as, 058-180-08, 09,010 and 011) to change the Zoning Designation from "A-2-U, General Agriculture with Urban Overlay)" to CH, Commercial Highway, RC, Residential Condominium and R-1, Residential Single Family (R-1) to create a 340-unit residential condominium on the site, hereafter referred to as the "Project." Developer is developing the Property into a common interest development by building several consisting of two-story wood framed units, each having four living units. In addition, covered parking will be provided along with a club house, pool, basketball courts, picnic area, and kids' playground.

The Planning Commission, at its regular meeting on June 11, 2007, held a duly noticed public hearing, and approved and certified the Final Mitigated Negative Declaration, approved the Annexation into the City of Calexico, a zone change, Tentative Tract Map, and approved the Residential Design for the project.

On July 10, 2007, the City Council held a duly noticed public hearing and affirmed and approved the Planning Commission's resolutions.

Discussion & Analysis:

Construction in the Imperial Valley slowed significantly following the approval of the Tract Map. The Developer chose not to begin construction due to the slow economy and lack of demand for housing, and the Project has not progressed. On September 18, 2012, Developer transferred the property to Orbis Financial, and Developer has told the City that Orbis Financial has retained Developer as its agent in its interactions with the City. The Developer recently contacted City staff and informed them that he is now in a position to begin construction on the Project.

In order to complete the Project, the Developer has to complete certain on-site, off-site and off-site improvements related to Highway 98. These improvements must be completed before the final map can be approved and the units may be sold. The City requires that these public improvements be backed by a financial guarantee before issuing the permits. The conditions of approval for this Project included a provision that:

Prior to final certificate of occupancy of Tentative Tract Map, the improvements specified herein and approved by the Planning Commission and the City Council shall be installed, or agreements for said improvements, shall be submitted to the City for approval by the City Engineer, and all other stated conditions shall be complied with. All uncompleted improvements must be bonded for as part of the agreements.

The Developer has been unable to secure a bond to guarantee the improvements. Therefore, the Developer has requested that the City Council allow him to guarantee the improvements with a lien contract. Pursuant to the Condition 4 above, only a bond to

guarantee the remaining improvements was allowed. Nonetheless, a lien is an allowable form of security pursuant to the Subdivision Map Act under Government Code Section 66499(a) (4). The lien contract must be recorded and then "a lien shall attach to the real property particularly described therein and shall have the priority of a judgment lien in an amount necessary to complete the agreed to improvements." Gov't Code § 66499(b).

Nevertheless, as a matter of policy, the City may require certain forms of sureties and not others. Pursuant to Calexico Municipal Code Section 16.32.120, a lien is not one of the forms of surety that has been pre-approved by the City. The Developer has requested the City approve a lien contract in lieu of other forms of security because of Developer's difficulty in securing a bond. In order for the Developer to proceed with a lien agreement as the approved form of surety for the project, the City Council must approve the lien agreement as an alternative to the City's pre-approved forms of surety. The Developer has not provided any information as to whether the other

City-approved forms of security are available options for a financial security for the improvements.

The title report shows that the property is free and clear of any liens, deeds of trust, or any other financial encumbrance. The project site is approximately

Should the Council approve the Developer's request for a lien, the City requires that the Developer agree to and accept the recording of a covenant not to convey to guarantee that the improvements will be completed prior to any units being sold. Together with the lien contract, the covenant not to convey will prevent the Developer from obtaining any financial benefit from the Project until the required improvements are complete. If Council does wish to approve a lien contract via adoption of the draft Resolution attached to this staff report, Staff recommends that Developer be required to enter into a lien contract and covenant not to convey with at least the following terms:

- The Parties agree to eliminate need for developer to obtain a bond;
- The City will place a lien on the property in the amount of _____, which is the estimate value of all the public improvements;
- The Developer will be required to execute a separate covenant not to convey in addition to the lien agreement;
- Escrow cannot close on the sale of any of the units on the property until all of the on-site, off-site, and Highway 98 off-site improvements are completed to the City's satisfaction; and
- The City will release the lien and covenant not to convey upon approval of all the required improvements; however, the City may execute a partial release as to a particular unit or units if all the improvements affecting that property have been completed.

If Council does approve the Resolution, staff will draft the agreement for the property owner to sign.

Fiscal Impact:

None

Coordinated With:

City Attorney's Office.

Attachments:

1. Resolution of the City Council of the City of Calexico for Approval of a Lien Contract and Covenant Not to Convey (In Lieu of Obtaining Surety Bonds) to Guarantee the Improvements for the Riverview Condominium Project.

RESOLUTION NO. 2015-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, TO ACKNOWLEDGE AND AFFIRM ACTION TAKEN BY THE PLANNING COMMISSION REGARDING RIVERVIEW

WHEREAS, Marvin Mayne, has filed an application relative to a 34.0 acre site located South of State Route 98, East of the All American Canal, specifically described as APN(s) 058-180-08, 09, 010 and 11, to change the Zoning Designation from A-2-U, General Agriculture with Urban Overlay, to CH, Commercial Highway, RC, Residential Condominium and Residential Single Family R-1 to create a 340-unit residential condominium complex on the site; and

WHEREAS, Planning Commission, at its regular meeting on June 11, 2007 held a duly noticed public hearing and approved and certified the Final Mitigated Negative Declaration, approved the Annexation into the City of Calexico, a Zone Change, Tentative Tract Map, and approved the Residential Design Review regarding the project, collectively referred to as the "Resolutions".

NOW, THEREFORE, BE IT RESOLVED that the City of Calexico does hereby affirm and acknowledge the Resolutions adopted by the Planning Commission in 2007 regarding adoption and certification of the Final Mitigated Negative Declaration, approval of the Annexation, Zone Change, Tentative Tract Map, and approval of the Residential Design Review.

PASSED, APPROVED AND ADOPTED this 1st day of September 2015.

Joong S. Kim, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

Approved as to Form:

Mark J. Austin, Interim City Attorney

**AGENDA
ITEM**

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