

**CITY OF MODESTO
PLANNING COMMISSION AGENDA
MONDAY, NOVEMBER 16, 2009 – 7:00 PM
BASEMENT CHAMBERS
1010 TENTH STREET – MODESTO, CA**

I. ROLL CALL

II. APPROVAL OF MINUTES

Minutes of the regular meeting of October 19, 2009

III. CONFLICT OF INTEREST DECLARATION

Commissioners and staff may now declare conflicts of interest for the purpose of determining if a quorum will be present to act on each item in the order shown on the agenda.

IV. CONSENT AND JOINT PUBLIC HEARING ITEMS

None.

V. PUBLIC HEARINGS

None.

VI. OTHER BUSINESS

Item A Recycled Water Presentation by Nick Pinhey, Director of Utility Planning and Projects

Item B Williamson Act Contract Policy; submitted by the Community and Economic Development Department, Planning Division

Item C Annexation Application Submittal Requirements and Information

Item D Feedback - BZA (Ted Brandvold)

Item E Feedback – CH&CDC (Carolina Bernal)

VII. ORAL COMMUNICATIONS

These matters may be presented by interested persons in the audience, staff or Commissioners (see Notice at end of agenda cover). Under State law, Commissioners may respond to matters being presented under this item only as follows:

- (a) Briefly respond to statements made or questions raised;
- (b) Ask a question for clarification;
- (c) Provide a reference to staff or other resources for factual information;
- (d) Request staff to report back at a subsequent meeting;
- (e) Finally, a Commissioner, or the Commission itself, may take action to direct staff to place a matter of business on a future agenda.

VIII. MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Planning Commission and staff, upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that: 1) there is a need to take immediate action, and 2) that the need for action came to the City's attention after the agenda was posted.

IX. ADJOURNMENT

Copies of the agenda are on file at the Stanislaus Library Reference Room, 1500 I Street, Modesto, and in the office of the Planning Division, Third Floor, 1010 Tenth Street, Modesto, CA. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Commission Secretary at 209.577.5267. Assistive listening devices are available upon request to the Planning Commission Secretary. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Notice: Persons who wish to speak to the Planning Commission regarding any item on the printed agenda, including oral communications, are encouraged to sign in on a form provided at the meeting. The purpose of this list is to have your name and address should we need to contact you or provide additional information to you. Signing this form is optional to speakers.

Posted pursuant to Government Code Section 54954.2 on _____

by _____ on the bulletin board at Tenth Street Place.

**CITY OF MODESTO
PLANNING COMMISSION
STAFF REPORT**

TO: Chairperson Berglund and Members of the Planning Commission

PREPARED BY: Cindy van Empel, AICP, Senior Planner
Contact Info: 577-5267 cvanempel@modestogov.com

REVIEWED BY: Brad Wall, AICP, Principal Planner

APPROVED BY: Patrick Kelly, AICP, Planning Manager

DATE: November 16, 2009

SUBJECT: **Williamson Act contract policy**; submitted by the Community and Economic Development Department, Planning Division

RECOMMENDATION

That the Planning Commission adopt the attached resolution recommending to the City Council adoption of rules and procedures for administering land subject to a Williamson Act contract and an interim application processing time-and-materials fee.

BACKGROUND

The California Land Conservation Act of 1965, commonly referred to as the Williamson Act (Government Code §51200 et seq.), enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments which are reduced because they are based upon farming and open space uses, rather than full market value. The land under contract must be devoted to agricultural use and lie within an agricultural preserve. Stanislaus County's agricultural preserve is comprised of all properties zoned A-2. Williamson Act contracts are binding. The governmental agency with which the contract is made is responsible for administering and enforcing the contract. Local governments receive an annual subvention of forgone property tax revenues from the State via the Open Space Subvention Act of 1971.

The City of Modesto has not established a policy for addressing properties on which there is a Williamson Act contract. The lack of a policy creates a problem for the City, because upon annexation, the City of Modesto succeeds to existing Williamson Act contracts and is thereafter responsible for administering and enforcing the contracts. There are currently active Williamson Act contracts on three parcels within City limits, but there are dozens of contracts within the Sphere of Influence.

PROJECT DESCRIPTION

The project consists of establishing a set of policies, procedures, and forms/documentation for administering Williamson Act contracts, shown on [Attachment 2](#), consistent with State law. The purpose of having policies and procedures is to facilitate requests for contract cancellation or nonrenewal. Contract administration comprises several activities, including enforcement, initiation, cancellation, and nonrenewal. These rules provide standards and procedures for:

1. Application by landowners for the inclusion of land within agricultural or open space preserves;
2. The review of preserve applications by the City, including determination of the eligibility of property for preserve status, and preserve contract preparation and content;
3. Limitations on the land uses allowed on properties subject to preserve contracts, and requirements for landowners to maintain preserve status;
4. The termination of preserve contracts by either the landowner or the City; and
5. The monitoring of the Agricultural and Open Space Preserve program and enforcement of these Rules.

REASONS FOR RECOMMENDATION

The City of Modesto has within its existing boundaries certain properties under active Williamson Act contracts on which agricultural operations continue. Currently, there are three properties under Williamson Act contracts in the City and several in Modesto's Sphere of Influence (see [Attachment 1](#)).

The Local Agency Formation Commission approved the annexation of the Tivoli Specific Plan area (see [Attachment 3](#)), subject to several conditions. Condition (g) under item 6 states that, "Pursuant to Government Code Section 56889, the City shall adopt the rules and procedures required by the Williamson Act, including but not limited to the rules and procedures required by Government Code Sections 51231, 51237, and 51237.5."

ISSUES

1. Financial Implications

The current State budget eliminated all but a small portion of the funding program that provides property tax reimbursement to local agencies that is needed to make up revenue shortfalls resulting from reductions in property tax revenue due to the existence of Williamson Act contracts. However, as described above, there are a very small number of affected properties under such contracts within the City limits. The rate of reimbursement from the State to local agencies is \$5 per acre. Therefore, considering that the State will not reimburse local agencies for reduced property tax revenue in the current budget year, the annual "cost" for the City to maintain existing contracts is approximately \$300 to \$400 based on existing acreage under contract in the City limits.

2. Contract cancellation and nonrenewal procedures

Local agencies that are responsible for administering Williamson Act provisions may not cancel contracts – only property owners have that right. However, cancellation is generally cost-prohibitive, due to the fee of 12.5 percent of non-contracted assessed value. Therefore, contract cancellation is a relatively rare occurrence.

Contract "Nonrenewal" is a process whereby an existing contract is phased out over a nine-year period. During non-renewal, the property tax burden gradually increases from the contract (reduced) rate to the full market value rate. Local agencies have the option to initiate the nonrenewal process, as do property owners. One option that some cities exercise is to automatically initiate the nonrenewal process upon annexation.

3. Application Processing Fees

At this time, the Community and Economic Development Department has not established fees for Williamson Act-related applications. Staff believes that it would be appropriate to establish fees for both stand-alone applications and for applications that are part of a larger set of entitlement applications. For example, contract nonrenewal is fairly limited in scope, which suggests a fixed fee. However, contract cancellation requires the preparation of a development plan, which suggests a time-and-materials fee.

The Community and Economic Development Department has placed application fee updates on hold. As part of the Department's effort to ensure its fees accurately reflect incurred costs, staff will consider appropriate fees for Williamson Act contract-related applications. Until a fee is approved, staff recommends processing any Williamson Act-related requests with a time-and-materials fee. The smallest deposit among the Community and Economic Development Department's time-and-materials applications is \$3,000 (staff evaluation of special studies).

GENERAL PLAN CONSISTENCY

There are no general plan policies that conflict with the establishment of policies to administer Williamson Act contract procedures, or any other State laws.

ZONING CONFORMANCE

There are no zoning conformity issues with the proposed Williamson Act procedures.

Stanislaus County is a "right to farm" county. Farmers continuing to raise crops and livestock in the vicinity of new development experience conflicts with that development, whether or not agricultural properties are under a Williamson Act contract. However, the presence of a Williamson Act contract may increase the likelihood that farming will continue, since the contract improves the economic viability of farming.

ENVIRONMENTAL ASSESSMENT

This action is not a project as defined in Public Resources Code Section 15378. No environmental review is required because no environmental impact will result from the adoption of administrative procedures.

ATTACHMENTS (included with Commissioners' packets only)

1. Williamson Act Properties
2. Complete set of policies, procedures and forms, handouts and documents
3. LAFCo Resolution Number 2008-19
4. Draft Planning Commission Resolution – November 16, 2009

PLANNING COMMISSION
RESOLUTION NO. 2009-XXX

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL ADOPTION OF
RULES AND PROCEDURES FOR ADMINISTERING LAND SUBJECT TO A
WILLIAMSON ACT CONTRACT

WHEREAS, the City of Modesto Planning Division does not have a policy administering land subject to a Williamson Act contract; and

WHEREAS, City staff has prepared draft Williamson Act Contract Rules and Procedures that, when adopted, will provide the specific requirements for administering land under a Williamson Act contract; and

WHEREAS, the draft Williamson Act Contract Rules and Procedures is not a project under CEQA, as the activity will not cause a direct nor reasonably foreseeable indirect physical change in the environment; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The draft Williamson Act Contract Rules and Procedures conforms to the City's adopted 2008 Urban Area General Plan because Chapter VII includes the following policies that support agriculture in the Planned Urbanizing Area:
 - VII.D.4.a. The City will not annex agricultural land unless urban development consistent with the General Plan has been approved by the City.
 - VII.D.4.b. The City shall support the continuation of agricultural uses on lands designated for urban uses until urban development is imminent.
 - VII.D.4.c. The City shall encourage the County to retain agricultural uses on lands surrounding the General Plan area and on lands within the General Plan area pending their annexation to the City or development by mutual agreement with the County.
 - VII.D.4.e. For any subsequent project that is adjacent to an existing agricultural use, the project proponent may incorporate measures to reduce the potential for conflicts with the agricultural use. Potential measures to be implemented may include the following:
 - (1) Include a buffer zone of sufficient width between proposed residences and the agricultural use.
 - (2) Restrict the intensity of residential uses adjacent to agricultural lands.
 - (3) Inform residents about the possible exposure to agricultural chemicals.
2. Until such time as a standardized and periodically updated fee is established for the processing of Williamson Act-related applications, the interim fee for processing such applications shall be assessed on a time-and-materials basis with an initial deposit of \$3,000, due at the time of application.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on November 16, 2009, by _____, who moved its adoption, which motion was seconded by _____, and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Original, signed copy on file in
CEDD

Patrick Kelly, Secretary

Attachment: Exhibit A

**CITY OF MODESTO
PLANNING COMMISSION
STAFF REPORT**

TO: Chairperson Berglund and Members of the Planning Commission

PREPARED BY: Brad Wall, AICP, Principal Planner
Contact Info: 577-5267 bwall@modestogov.com

APPROVED BY: Patrick Kelly, AICP, Planning Manager

DATE: October 23, 2009

SUBJECT: Annexation application submittal requirements and information

RECOMMENDATION

That the Planning Commission adopt the attached resolution recommending to the City Council adoption of annexation application submittal requirements.

BACKGROUND AND PROJECT DESCRIPTION

On February 27, 2007, by Resolution No. 2007-154, the City Council approved formal submittal requirements for various types of planning and development related applications. At that time, preparation of the full set of informational handouts and submittal requirements for annexation applications was not completed, and therefore the annexation application submittal requirements were not formally established. Staff has since completed a draft set of annexation application documents, submittal requirements and informational handouts, and is now seeking input from the Planning Commission prior to consideration and adoption by the City Council.

In addition to application submittal requirements, there are several informational handouts that staff intends to make available. The purpose of these documents is to help everyone involved understand the annexation process better, so that applicants might be more informed from the beginning, and so that staff can provide the best customer service possible. The informational handouts include: Annexation Application Supplement (for both new growth areas and "infill" areas), Benefits of Annexation handout, Possible Annexation Actions, General Annexation procedures/sequence (for inhabited territories and for uninhabited territories), and the Annexation Process flowchart. These items are described below.

- The Annexation Application Supplement provides a general overview of the annexation process, and identifies the pre-requisites and subtleties that help establish the existence of potentially significant issues, and also criteria that determine certain process details.
- The handout titled "Benefits of Annexation" describes the range of City services that annexation facilitates delivery of.
- "Possible Annexation Actions" outlines certain mandatory actions associated with the Local Agency Formation Commission action on the annexation proposal. This handout is combined with "General Annexation Procedures/Sequence, which describes a typical sequence of events in the annexation process – depending on whether the land area to be annexed is considered inhabited or uninhabited.

- The Annexation Process flowchart graphically depicts the general annexation process and possible outcomes.

ISSUES

There are no particular issues associated with formally establishing the submittal requirements for annexation application submittals. Adoption of the proposed submittal requirements by the City Council will provide consistency among the various types of applications that planning staff accepts and processes.

ENVIRONMENTAL ASSESSMENT

Adoption of the recommended Resolution, and the ultimate adoption of submittal requirements by the City Council, qualifies as "general policy and procedure making," and therefore is not a project pursuant to CEQA Guidelines Section 15378. No CEQA documentation is needed.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Annexation Application Submittal Requirements
2. Draft Set of Annexation Application Informational Handouts including:
 - Annexation Application Supplement - New Growth Areas
 - Annexation Application Supplement - Infill Areas
 - Benefits of Annexation
 - Possible Annexation Actions, General Annexation Procedures/Sequence - Uninhabited and Inhabited Territories
 - Annexation Process Flowchart
3. Draft Planning Commission Resolution - November 16, 2009

PLANNING COMMISSION
RESOLUTION NO. 2009-??

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL ADOPTION OF
ANNEXATION APPLICATION SUBMITTAL REQUIREMENTS

WHEREAS, the City of Modesto has established a Process Improvement program for development processes, which program has identified the need for increased clarity and specificity in submittal requirements for development applications; and

WHEREAS, staff has prepared a set of proposed Annexation Application Submittal Requirements that, when adopted, shall provide the specific requirements for such submittals; and

WHEREAS, a public hearing was held by the Planning Commission on November 16, 2009, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed adoption of Annexation Application Submittal Requirements Is not a project under CEQA as the activity will not cause a direct nor reasonably foreseeable indirect physical change in the environment.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The proposed annexation application submittal requirements conform to the City's adopted 2008 Urban Area General Plan for the following reasons:
 - a. Chapter VIII of the General Plan provides for implementation, including submission and approval of implementing projects.
2. In addition, the submittal requirements and amendments will benefit public health, safety & welfare for the following reasons:
 - a. Establishment of submittal requirements ensures that adequate information is available on which to make decisions regarding annexation projects.
 - b. California state law requires that local jurisdictions have a standard by which an application is determined to be complete for processing.

BE IT FURTHER RESOLVED that the Planning Commission hereby recommends to the Council the adoption of Annexation Application Submittal Requirements as shown in Exhibit "A."

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on November 16, 2009, by _____ who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:

Noes:

Absent:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Patrick Kelly, Secretary

Attachment: Exhibit "A"