



# COUNCIL MEMORANDUM

Council Meeting Date: June 18, 2015

## LEGISLATIVE ACTION ITEM

**SPONSOR:** Ashton J. Hayward, III, Mayor *SWO G*

**SUBJECT:** Request for License to Use Right of Way- East Maxwell Street

### RECOMMENDATION:

That City Council approve the request for a license to use a 70' x 150' portion of the East Maxwell Street right of way at the east side of the intersection of Maxwell Street and Whaley Avenue.

**AGENDA:**           \_\_\_ Regular           \_\_\_ **X**\_\_\_ Consent

Hearing Required: Public \_\_\_ Quasi-Judicial \_\_\_ No Hearing Required **X**\_\_\_

### SUMMARY:

The City has received a request from Mr. Phillip Williams on behalf of Mr. Melvin Warren for a License to Use right of way adjacent to property located at 2120 Whaley Avenue. The area in question is located at the east side of the intersection of Maxwell Street and Whaley Avenue where the East Maxwell Street right of way terminates at Bayou Texar. The purpose of the request is to utilize the right of way for stormwater and landscape improvements to alleviate erosion that is occurring at this location and protect Bayou Texar. Mr. Williams and Mr. Warren worked with the City Engineering Department prior to the submittal of their request. Appropriate City Departments and utility providers have been notified and have no objections to this project. All property owners within 300 feet of this parcel were notified of the request.

On April 14, 2015 the Planning Board unanimously recommended approval of the request.

### PRIOR ACTION:

None

### FUNDING:

N/A

### FINANCIAL IMPACT:

None.

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**STAFF CONTACT:**

Eric W. Olson, City Administrator

Sherry Morris, AICP, Planning Services Administrator

L. Derrik Owens, P.E., D.WRE, Director of Public Works and Facilities/City Engineer

Brad Hinote, P.E., Engineering Project Manager

**ATTACHMENTS:**

- 1) License to Use City Right of Way application
- 2) Map of Requested Area
- 3) Project Rendering
- 4) Erosion Photos (4)
- 5) Minutes of the Planning Board for April 14, 2015

**PRESENTATION:**

None



## LICENSE TO USE CITY RIGHT OF WAY

Please check application type:



### Residential License to Use

Application Fee: \$500.00

Rehearing/Rescheduling Fee: \$100.00

Annual Fee: NA

Insurance Coverage: \$300,000.00



### Commercial License to Use

Application Fee: (Minor) \$500.00 (Major) \$1000.00

Rehearing/Rescheduling Fee: \$100.00

Annual Fee: (Minor) \$500.00 (Major) \$1000.00

Insurance Coverage: \$1,000,000.00

### Applicant Information:

Name: Melvin W. Warren

Address: 2120 Whaley Ave, Pensacola, FL

Phone: (917) 691-3548 Fax: (904) 434-6776 Email: wwarren@lasallegroup.com

\*If license agreement is for business use, please see reverse side for additional information\*

### Property Information:

Owner Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Location/Address: Parcel east of Maxwell/Whaley intersection

Parcel ID #: \_\_\_\_\_

Purpose of use of city right of way/comments: The applicant will provide this stormwater/landscape infrastructure in combination with other new storm infrastructure provided by the City. The combined project will eliminate the severe erosion that is occurring & protect the Bayou.

Please attach a map indicating the actual dimensions of the requested license.

I, the undersigned applicant, understand that submittal of this application does not entitle me to approval of this license to use. I have reviewed a copy of the applicable regulations and understand that I must be present on the date of the Planning Board and City Council meeting. If applicable, I understand a city right of way permit must be acquired from the Engineering Department prior to any work commencing within the right of way.

Phil W. Warren, Authorized Representative

Signature of Applicant

3/23/15

Date

(Owner of Property or Official Representative of Owner)

### FOR OFFICE USE ONLY

District: \_\_\_\_\_

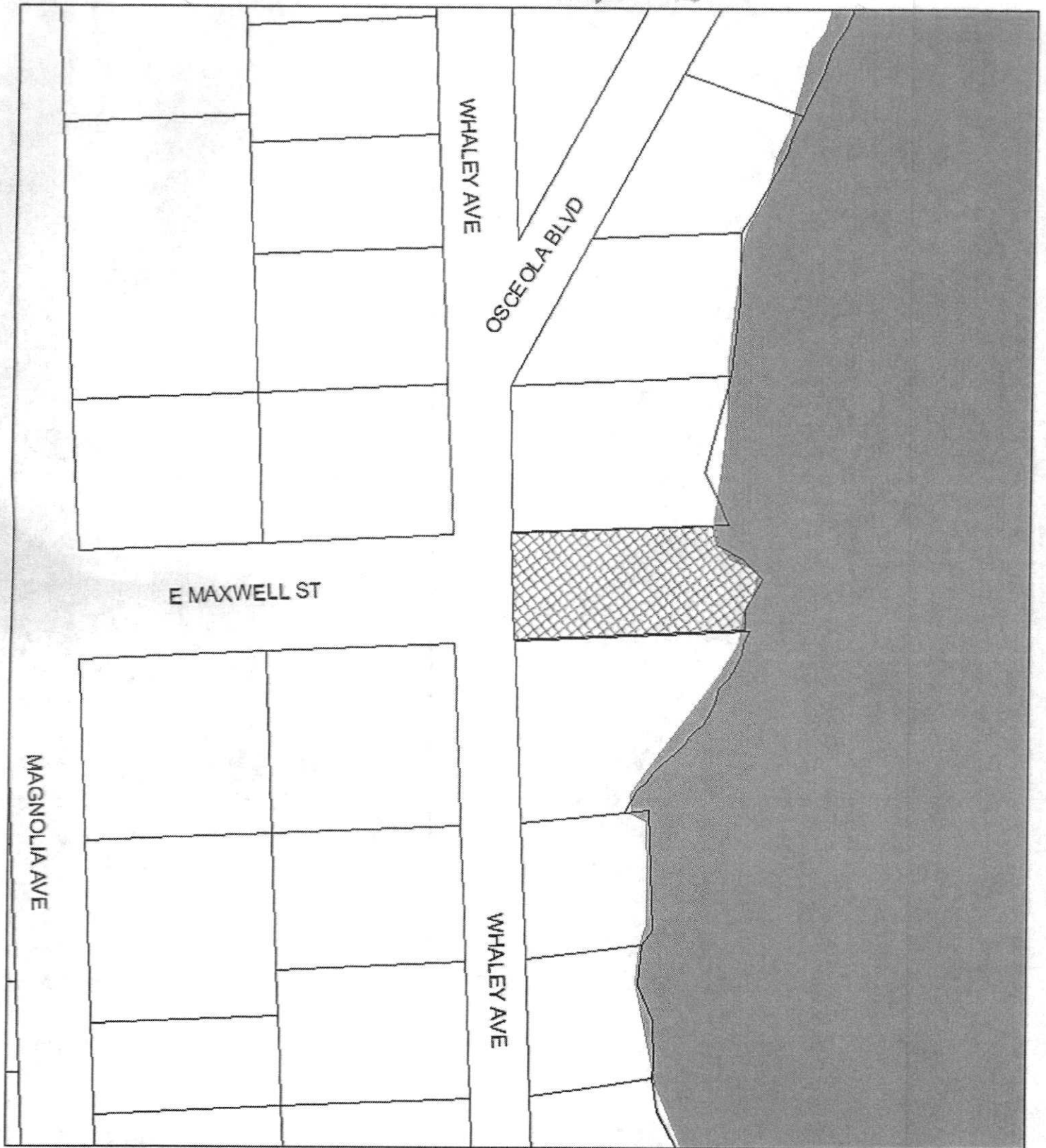
Zoning: \_\_\_\_\_

Date Received: \_\_\_\_\_ Case Number: \_\_\_\_\_

Annual fee required: \_\_\_\_\_ Amount of insurance coverage: \_\_\_\_\_

Planning Board Date: \_\_\_\_\_ Recommendation: \_\_\_\_\_

Council Date: \_\_\_\_\_ Council Action: \_\_\_\_\_



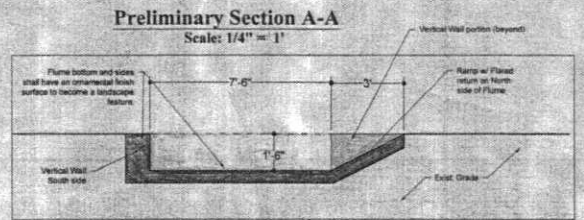
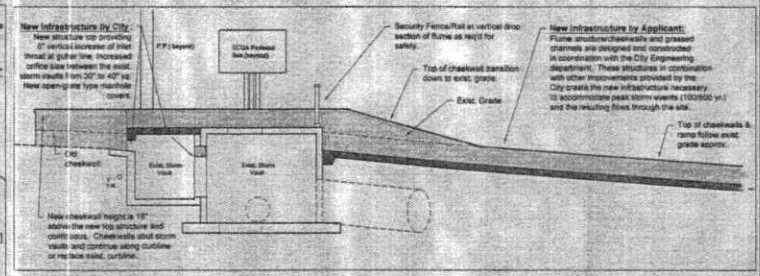
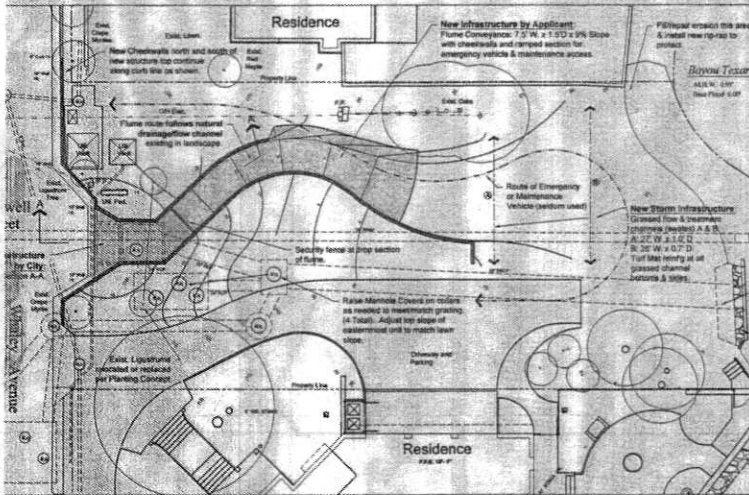
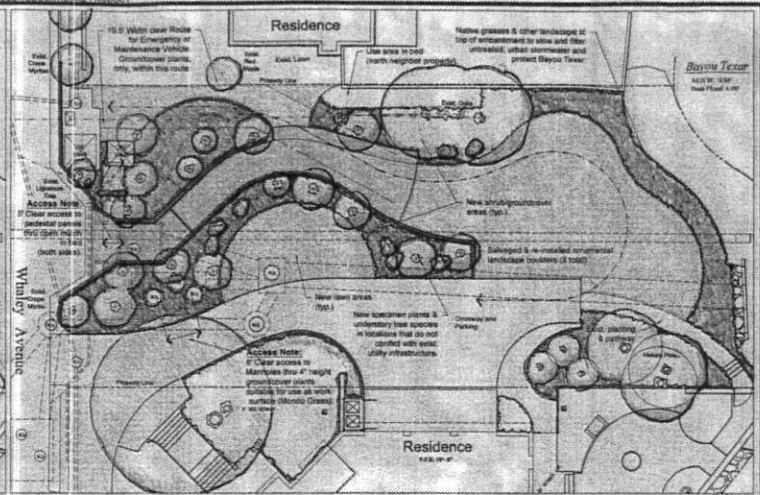
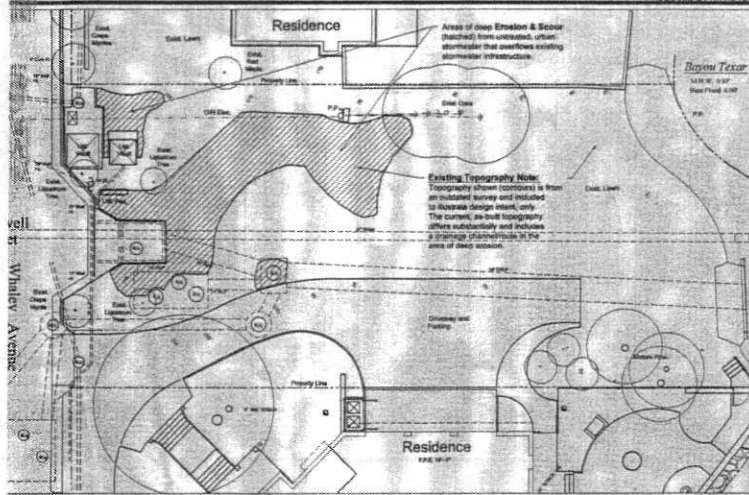
1 inch = 84 feet

LICENSE TO USE RIGHT OF WAY  
REQUESTED BY MR WILLIAMS

APRIL 2015

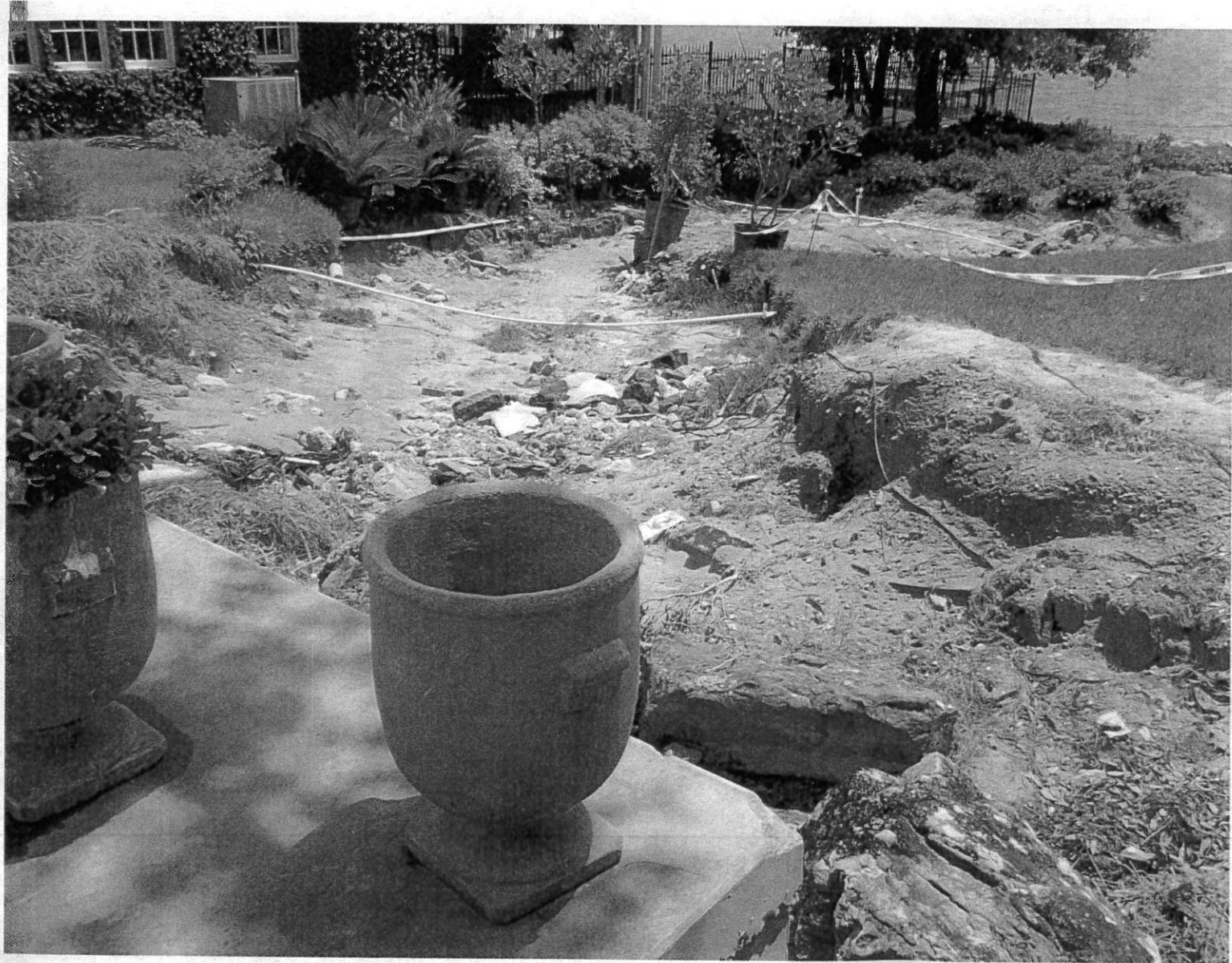


REQUEST LICENSE TO USE 70' X 150' OF MAXWELL ST RIGHT OF WAY FOR  
LANDSCAPE STORMWATER IMPROVEMENTS















## **MINUTES OF THE PLANNING BOARD**

**April 14, 2015**

**MEMBERS PRESENT:** Paul Ritz-Chairman, Nina Campbell, Chips Kirschenfeld, Kurt Larson, Kyle Owens, Scott Sallis

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Sherry Morris, Brandi Deese, Karen Lefebvre, Derrik Owens

**OTHERS PRESENT:** Nathan Holler, Jim Holler, Nick Zangari, Aimee Wilson, Philip Lowendick, Jarod Kelly, John Peacock, Ryan Thomas, Adonna Zehr, Sharon Holler, Delores Frenkel, Don Frenkel, Phil Williams, David Oberhausen, George Makris, Mark Spitznugel, Larry Scapecchi, Keith Harrod, Dottie Dubuisson, Scott Pogue, Jeff Bell, Tracy Goodson, Terri Levin, Wilhemina Ladd-Gadson, Ron Butlin

### **AGENDA:**

- 1) Quorum/Call to Order
- 2) Meeting Minutes from February 10, 2015
- 3) Request for approval of the proposed Quiet Oaks Subdivision at the 2100 Block of Fairchild Street
- 4) Request for approval of a License to Use at Maxwell & Whaley Streets
- 5) Request for recommendation to City Council on Mobile Food Vending Ordinance
- 6) Request to Amend LDC Section 12-9-6 Design Standard for Stormwater Management System & Amend the Comprehensive Plan Chapter 4 Public Facilities Goal PF-1
- 7) Open Forum
- 8) Adjournment

### **ITEM 1: CALL TO ORDER / QUORUM PRESENT**

Chairman Ritz called the meeting to order at 3:03pm with a quorum present.

### **ITEM 2: MEETING MINUTES**

Ms. Campbell made a motion to approve the February 10, 2015 minutes. Mr. Larson seconded the motion, and it was approved unanimously.

With no objections from the Board, Chairman Ritz moved Item 6 to the first order of business.

**ITEM 6: Request to Amend LDC Section 12-9-6 Design Standard for Stormwater Management System & Amend the Comprehensive Plan Chapter 4 Public Facilities Goal PF-1** – Ms. Deese stated that for several reasons, including the April 2014 Flood, the City is pursuing an amendment to the Land Development Code and the Comprehensive Plan for 100 Year Flood Event Design Standard instead of the current 25 Year Flood Event Design Standard. This amendment would provide a variety of benefits to the City including improving our standing both statewide and nationwide when applying for grant

funds. The proposed amendment would also improve our CRS rating which would then drive down the cost of flood insurance to the City property owners. Attached are markups of the relevant sections both in the Land Development Code and the Comprehensive Plan as well as a summary from the City's Engineering Department on the benefits of this amendment.

Chairman Ritz stated he had contacted a civil engineer and several others regarding this matter and in general, the discussions were positive. However, the 100 year storm water pond versus the 25 year storm water pond would be 25% larger. He perceived this as good for insurance rates and citizen protection. Mr. Sallis wanted to know if there had been talks about reductions in surface calculations for parking – the ten spot demanded asphalt rule in the City of Pensacola. Mr. Owens, Director of Public Works and Facilities/City Engineer, emphasized they specifically focused on this one item, increasing the event from 25 year to 100 year strictly for flooding abatement. He indicated the FEMA standard is 100 year, and they favor this plan. Mr. Kirschenfeld emphasized the map that was provided displayed all the counties with the 100 year flood design standard, and that this request is not out of line with the rest of the state of Florida. He pointed out that Pensacola has the highest rainfall of any area in Florida, and it could have the highest potential for storm water runoff and flooding.

Mr. Kirschenfeld then made a motion to approve the changes in the Land Development Code and the Comprehensive Plan for the 100 Year Design Standard. It was seconded by Mr. Larson and passed unanimously.

**ITEM 3: Request for approval of the proposed Quiet Oaks Subdivision at the 2100 Block of Fairchild Street** – Ms. Deese explained that the City has received a request from LandMark Engineering & Land Planning to plat the subject property. The proposed Quiet Oaks subdivision is located west of Tippin Avenue and adjacent to Interstate 10 to the north of the property. The final plat was routed through the various City departments and utility providers. All comments have been addressed from the various departments and utility providers that responded.

Mr. Ritz had no issues with going forward with the subdivision as drawn. Ms. Campbell commented that the plans look good. No members of the audience were present to speak to this item.

With no further discussion, Mr. Sallis made a motion to approve as submitted, seconded by Mr. Larson, and it passed unanimously.

**ITEM 4: Request for approval of a License to Use at Maxwell & Whaley Streets –**

Ms. Deese explained the City has received a request from Mr. Phillip Williams, on behalf of Mr. Melvin Warren, for a License to Use the Right-of-Way on the East side of Maxwell/Whaley Intersection for storm water/landscape infrastructure. This project will help eliminate the severe erosion that is occurring at this location and protect the Bayou. Mr. Williams and Mr. Warren have been working with the City Engineering Department to meet their regulations even prior to submittal of their License to Use application. Appropriate City departments and utility providers have been notified and have no objections to this project. All property owners within 300 feet of this parcel were notified of the request. A site plan of the improvements as well as all relevant information was attached for review.

Mr. Ritz indicated all the street water above this area flows through this site, and he appreciated the fact they asked for a License to Use to handle this amount of storm water in an attractive and aesthetic way. He then asked for input from the audience.

Ms. Dolores Frenkel stated the only problem most of the neighbors have is everything planted in that area grows up tall and prevents their view of the bay, depreciating the value of their homes. She indicated that if the Board approved the landscaping, that they limit the height of the vegetation.

Mr. Phil Williams, the architect representing the owners, stated this is a recurring problem, with the applicant repairing the damage with his own funds. What they want is a sustainable solution. The steady flooding threatens the City right-of-way property, the water quality of the bayou, and the adjacent properties. A drainage study using the actual rainfall measurements from the local weather stations from the last event found that an approximately 120 acre urban area concentrates on that property, and the amount of storm water completely overwhelms the existing storm water infrastructure. He indicated he had been working with City Engineer Brad Hinote to come up with a solution to this problem. He and the City believe the proposed plan meets the acceptable level of storm water mitigation and water quality control in an aesthetically pleasing manner. Unfortunately, there is not enough money for all of it. The City was successful in approaching FEMA for funding. Some of the indicated improvements will begin soon, but there is still a large shortfall in improvements needed and funding for them. Therefore, the applicant is offering to fund and construct as soon as possible those portions of the overall solution that are not funded or scheduled. He indicated the cost would be a six-figure sum. They understand the concerns in modifications or alterations of use of this property. They ask that the Board consider the implications for the City right-of-way property itself, the water quality of the bayou, and the overall communities of East Hill in determining their recommendation. Mr. Sallis wanted to know if this was a public/private partnership with the City. Ms. Deese explained that this is not a formal partnership.

Mr. Keith Harrod spoke for the property owner. He offered examples of other License to Use properties around the Bayou where the neighbors laid sod and provided water through their personal sprinkler system. This type of focal point done correctly enhances the community. He emphasized that this particular incident could be used as a model for other areas, removing the burden from the City and increasing property values.

Don Frenkel emphasized that none of the neighbors objected to this beautification, but they want restrictions on the landscaping to prevent losing the view to the water. Previously, bushes which grow to 20 feet had been planted in this area. Underworld trees would greatly restrict the view; he suggested low lying plants and ground cover.

David Oberhausen emphasized the property in question is a public right-of-way with the view of the water at street level which can be enjoyed by pedestrians. He requested that the Board condition any approval with limiting the mature height for any landscaping materials planted on the right-of-way to 36". He also requested that any structures located on the right-of-way also not exceed 36" in height. He suggested providing a walking path from the street to the water's edge so that the public is aware this is available to them, and they would not walk on the property owner's driveway.

Chairman Ritz distributed signed letters in support of the project to the Board. He emphasized that this particular property belongs to all citizens of Pensacola but appreciated the idea of limitations. Mr. Sallis emphasized that the property owner was willing to spend his funds to do the City's job in this right-of-way and agreed with the limitations on vegetation. Mr. Williams then emphasized the need for plants with root structures which could hold the landscape.

Mr. Sallis made the motion to grant a License to Use, with a maximum planting height at maturity of 48", with a multimodal flume allowing multimodal access from the street to the water. Ms. Campbell seconded the motion, and it passed unanimously.

**ITEM 5: Request for recommendation to City Council on Mobile Food Vending –**



Ms. Deese explained that in May of 2014, the City adopted a Mobile Food Vending Pilot Program with a trial period of 6 months. Although the Planning Services Division received several inquiries, ultimately the Pilot Program garnered zero participation. Much of the feedback received indicated that the boundary area in which Mobile Food Vending is prohibited was considered too restrictive. The City Council at their March 26, 2015 meeting discussed this issue and was presented with a sample ordinance from St. Petersburg by Council Member Charles Bare. This ordinance was attached for review as well as an outline of the draft ordinance. The City Council asked for the matter to be referred to this Board for a recommendation to City Council. Planning Board has a few options which include: recommendation of an ordinance similar to that of St. Petersburg, recommendation of the ordinance proposed in the Pilot Program, or a recommendation to not regulate this use at this time. All relevant documents and background information were attached for review.

Chairman Ritz indicated that the request applies to all locations, not just Palafox. He emphasized that regulations help to guide what the City can accept in location, operating hours, operating technique, etc. In looking at comparisons with other cities, the food truck industry is a benefit to the City. Mr. Sallis thanked Councilman Bare for bringing the subject back to the Board. Ms. Campbell read the proposal by Councilman Bare and thought it was comprehensive and thorough in keeping with similar dialogue they had on the pilot program. Mr. Ritz called for audience participation with a 5-minute limitation on each speaker.

Mr. Scott Pogue is presently looking for a location for his upscale bar-b-que and smoke house restaurant. He has looked at several places on the Palafox corridor. He was concerned about not knowing the rules regarding who the future competition would be. He is supportive of food trucks. He cautioned the Board on approving regulations prepared by those who may be biased toward the food truck industry, and to take their time and be objective and look at what has happened in other major areas before approving an ordinance which may be detrimental to a tax base and a population in the future. He stated he felt there was a place for food trucks in the market, but they need to be careful to coexist with the brick and mortar businesses.

Nick Zangari supports the food truck industry and the regulations and locations pertaining to them. He suggested that more cities are adopting the food truck rodeos, recognizing the potential and the damage they may bring, depending on where and how they operate. He pointed to the already 30+ food establishments in the Palafox area. He suggested that they create the ordinance for mobile food vendor rodeos, operating in one certain location off the beaten path.

Jim Holler stated he was not opposed to food trucks, but would like to open up new areas, possibly in the west. He feels Palafox is covered giving a variety of food selections which offer amenities for the public, namely restrooms, and they want to coexist with the food trucks.

John Peacock, Chairman of the Downtown Improvement Board, said the business owners had talked about an area on Spring Street, between the municipal buildings across from Maritime Place, as a wonderful area to place electrical outlets and tables and chairs. He emphasized an appropriate buffer from existing restaurants which could extend more as the city grows. He stressed the concern with growing infrastructure needs and lack of money. The refuse is not contained as it is in restaurants, and the permitting fee to be charged to food trucks needs to meet the infrastructure needs such as pressure washing the streets, etc.

George Makris, a food truck vendor, operated a hotdog cart on Palafox for three months from 10 p.m. until 3 a.m. He did provide trash receptacles on the city sidewalks and cleaned up every night.

Ms. Dubuisson emphasized there are several existing locations downtown (De Villiers) with electrical outlets specifically designed by the CRA. She supports the after-hours opportunities for 24/7 tourism

supporting community. She suggested that after a restaurant closes, within 50' of that entrance there be an opportunity for the food truck to provide alternative services.

Tracy Goodson, a business owner, was concerned about the jobs taken from the local community. He was also concerned about the food truck patrons using tables and chairs belonging to the restaurant establishment, and was supportive of the Spring Street location for food truck operation.

Ron Butlin, Executive Director for the Downtown Improvement Board, emphasized that food trucks do bring a different service, quick meals, etc. The issue is location, whether finding a specific location or a buffer zone not in competition with an existing brick and mortar restaurant. He noticed in the St. Petersburg version, they specifically allow the event organizers to control food trucks within an event and asked the Board to consider this.

Philip Lowendick stated between the two businesses he owns on Palafox Street, they employ approximately 110 personnel. They are not opposed to food trucks and want the City of Pensacola to grow. He supports a specific area where they could thrive and grow, with seating and restrooms. He does not believe the location should be Palafox and suggested they expand to other areas.

Councilman Brian Spencer of District 6 reminded everyone that in the field of urban planning, food gathering places have sparked the establishment of neighborhoods and districts. He suggested many neighborhoods would enjoy vitality if some of these food trucks operated in their vicinities. He challenged them to think of suburbia, possibly the Cordova neighborhoods, providing food selections not currently available. He stressed that the aim is to establish a context of confidence for the person looking to invest in downtown Pensacola or investing in a food truck. In previous events, he received calls from people who were satisfied or dissatisfied, the constant theme being the noise of generators interfering with the overall experience. He also reminded them of the food truck rodeo which happens frequently in Seville Square. His concern was the removal of the trash generated by these events, and off-street parking is often used for dumpsters. Restaurants are required by design to provide certain facilities, i.e., restrooms for the patrons, and immediate reliable access to these facilities needs to be addressed.

Councilman Charles Bare stated the original ordinance brought to Council was from Tallahassee. It was sent to Planning Board who discussed it, and then a pilot program was established by the administration. This time he furnished the Council with an ordinance from St. Petersburg, adapting it to the language supporting Pensacola. Even with this ordinance in the downtown improvement area, a food truck was permissible under certain circumstances such as special events, with the person holding the permit determining if food trucks were allowed. A city-sponsored event or a food truck rally/rodeo permit would also be possible. Infrastructure is still a concern regarding restrooms, power outlets, etc. He was not in favor of a certain buffer around brick and mortar restaurants. He suggested the end of Palafox, the golf course, the tennis court, city parks - providing food where none is available. Food trucks definitely need to be regulated in requirements, location, and hours of operation.

Chairman Ritz indicated that during special events, there were large numbers of people coming into the establishments for restroom facilities. He believes this situation would be worse if food trucks were allowed on Palafox, and that the Palafox corridor is the protected corridor. Because of permanent regulations, restaurant owners know if they place a sign in front of their businesses, they come before a Board for permission. Mobile food trucks are not under the same regulations. On the Palafox corridor, he supports strict regulations or a prohibition of food trucks in this area.

Ms. Campbell indicated that the real object is to establish regulations and location. Mr. Kirschenfeld stated he has not seen evidence of a food truck putting a brick and mortar restaurant out of business. His experience with festivals allowing food trucks have actually enhanced the variety of choices and increased the number of patrons. He suggested they begin with no restrictions to allow food trucks to conduct business in the community, and if later a problem does arise, that would be the time to act on regulations. He suggested they be allowed to park in any legal parking space.

Mr. Sallis agreed and stated the Board had previously been given an extensive report by City staff giving details of food truck programs from New Orleans to Miami. The code allowing Al Fresco to happen was specific and limited to south of Main Street on Palafox. He is very supportive of food trucks with a buffer zone, possibly 200', just to prevent conflict, unless that particular business wants a food truck in that location.

Ms. Morris stated as part of the pilot program in zoning districts permitting restaurants, that food trucks would be allowed on private property. They were allowed to go to commercial areas if invited by the property owner, as long as they were not obstructing required parking. If they were set up for any period of time, they were required to be in an area which allowed outside storage and sales. She stated there was no buffer zone in place, but they were not allowed on Palafox in the historic theme area.

Mr. Larson suggested having food trucks in construction zones to accommodate construction workers.

Ms. Campbell was in favor of the after-hours presence of food trucks.

Mr. Kirschenfeld made a motion that food trucks be allowed within the city in legal parking spaces with a 200' buffer from an established restaurant with a food and beverage license, with additional prohibition of the locations from the area South of Garden to Main Street (Palafox Historic theme area) unless all businesses within a 200' buffer provide written permission. Ms. Morris clarified that the Board is recommending approval of the ordinance which was forwarded to the Board by Councilman Bare, with the amendment described above. The motion was amended to put these ideas in place, and revisit as a Board next month to augment the decision of today prior to sending to City Council. The motion was seconded by Mr. Sallis and passed unanimously.

**ITEM 7: Open Forum** – Chairman Ritz invited input from the audience and explained the restrictions of the Sunshine Law to audience members.

Ms. Dubuisson addressed the Board regarding unintended consequences and asked that the Board look at their process in communicating with the community in advance of events. She noted the action on the Food Trucks Ordinance would eliminate the use of the electrical outlets in Belmont De Villiers area since the electrical outlets installed by the CRA are associated with the buildings. Mr. Sallis stated at the next meeting, he could add "during hours of operation." She wanted to know if when the motion was placed on the floor, audience input could then be requested before the final vote of the Board.

Chairman Ritz stated in general the Board has been affording the public a chance to speak, signing the form and indicating the specific item, with a limit of five minutes. The Board then goes into deliberation, not allowing a second round of discussion. At times, a Board member may request someone to speak, but it is more the exception than the rule.

Mr. Zangari indicated he liked the idea of a workshop between the Board, the food truck vendors, and the brick and mortar restaurant owners.

Mr. Sallis wanted to know if a workshop was possible by the end of May. Ms. Morris said it was possible and would make arrangements.

With regard to public notification, Chairman Ritz stated that the City staff consults various official county records for property ownership within various distances according to the request. An item like the food truck vendors is citywide, and the notification is in the paper, with the Board agenda placed on a public website, but no postcard would be received by property owners. Ms. Morris indicated there is a "notify me" function on the City's website where the public can enter an email address and receive an email update on a specific issue.

**ITEM 8: Adjournment** – With no further comments, Chairman Ritz adjourned the meeting at 5:35 pm.

Respectfully Submitted,

Brandi C. Deese  
City Planner  
Secretary to the Board

APPROVED: \_\_\_\_\_