CITY OF BUELLTON

PLANNING COMMISSION AGENDA

Regular Meeting of February 21, 2013 – 6:00 p.m.
City Council Chambers
140 West Highway 246, Buellton, California

Materials related to an item on this agenda, as well as materials submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the office of the Planning Department located at 331 Park Street, during normal business hours.

CALL TO ORDER

Chair Mercado

PLEDGE OF ALLEGIANCE

Commissioner Reif

ROLL CALL

Commissioners Lisa Figueroa, Jason Fussel, Foster Reif, Vice Chair Craig Adams and Chair Art Mercado

REORDERING OF AGENDA

APPROVAL OF MINUTES

1. Minutes of the regular Planning Commission meeting of February 7, 2013

PUBLIC COMMENTS

Members of the audience wishing to address the Planning Commission on matters not on the agenda may do so at this time. No action will be taken on these items at this meeting. Please state your name and address for the record. Comments should normally be limited to three minutes.

CONSENT CALENDAR

None

CONTINUED PUBLIC HEARINGS

None

NEW PUBLIC HEARINGS

2. Resolution No. 13-03 – "A Resolution of the Planning Commission of the City of Buellton, California, Considering Recommendations to the City Council on Revisions to Title 19 (Zoning) of the Buellton Municipal Code (13-ZOA-02) Adding Section 19.06-250 Relating to the Prohibition of Cigarette, Tobacco, and Head Shops, and Making Findings in Support Thereof"

OTHER BUSINESS

WRITTEN COMMUNICATIONS

PLANNING COMMISSIONER COMMENTS

PLANNING DIRECTOR REPORT

ADJOURNMENT

To the next regularly scheduled Planning Commission meeting of Thursday, March 7, 2013, at 6:00 p.m. in the Council Chambers located at 140 West Highway 246.

* Please note that the date of any Planning Commission decision starts an appeal period. During the appeal period either the applicant or any aggrieved party may appeal the application of a perceived onerous or unreasonable condition or the decision itself to the City Council as governed by the applicable section of the Buellton Municipal Code.

CITY OF BUELLTON

PLANNING COMMISSION MEETING MINUTES

Regular Meeting of February 7, 2013 – 6:00 p.m.
City Council Chambers, 140 West Highway 246
Buellton, California

CALL TO ORDER

Chair Mercado called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

Commissioner Fussel led the Pledge of Allegiance

ROLL CALL

Present:	Commissioners Lisa Figueroa, Jason Fussel, Foster Reif, Vice Chair Craig Adams and Chair Art Mercado
Staff:	Planning Director Marc Bierdzinski Staff Assistant/Planning Technician Clare Barcelona

REORDERING OF AGENDA

The Agenda was reordered to hear the Planning Directors Report at this time.

PLANNING DIRECTOR REPORT

Mr. Bierdzinski updated the Commission on upcoming events and recent City Council actions including a special City Council workshop featuring Public Works and Planning Basics.

APPROVAL OF MINUTES

1. Minutes of the regular Planning Commission meeting of January 17, 2013

Vice Chair Adams stated there was an error in the Planning Commissioner Comments in regards to a statement that he made.

MOTION:
Vice Chair Adams moved and Commissioner Figueroa seconded the motion to approve the Minutes of January 17, 2013 with the correction to Planning Commissioner Comments.

VOTE:
Motion passed by 3-0 voice vote with abstention by Commissioners Fussel and Reif due to their absence from the meeting.

COMMENTS

None

CONSENT CALENDAR

None

CONTINUED PUBLIC HEARINGS

None

NEW PUBLIC HEARINGS

2. Resolution No. 13-02 - "A Resolution of the Planning Commission of the City of Buellton, California, Recommending to the City Council the Approval of a Specific Plan Amendment (13-SP-01) for the Village Specific Plan Located on Assessor's Parcel Number 137-090-045, and Making Findings in Support Thereof"

Chair Mercado and Commissioner Figueroa recused themselves from the Dais due to the proximity of their residences to the proposed project.

STAFF REPORT:
Planning Director Bierdzinski presented the Staff Report.

DOCUMENTS:
Staff Report with attachments (Original Figure 5 from Specific Plan)
Resolution No. 13-02 with Exhibit A (Proposed Changes to the Specific Plan)

DISCUSSION/SPEAKERS:
Commissioner Reif disclosed that he has had ex-parte communication with the Applicant.

Vice Chair Adams opened the Public Hearing at 6:10 p.m. There being no public comments, Vice Chair Adams closed the Public Hearing at 6:11 p.m.

MOTION
Commissioner Reif moved and Commissioner Fussel seconded the motion to adopt Resolution No. 13-02- "A Resolution of the Planning Commission of the City of

Buellton, California, Recommending to the City Council the Approval of a Specific Plan Amendment (13-SP-01) for the Village Specific Plan Located on Assessor's Parcel Number 137-090-045, and Making Findings in Support Thereof".

VOTE
Motion passed with a 3-0 roll call vote.

OTHER BUSINESS

None

WRITTEN COMMUNICATIONS

None

PLANNING COMMISSIONER COMMENTS

Vice Chair Adams wished Planning Commission Secretary Clare Barcelona a happy birthday. The Commission congratulated Vice Chair Adams on the birth of his son.

ADJOURNMENT

Vice Chair Adams adjourned the meeting at 6:13 p.m. to the next regular scheduled meeting of the Planning Commission to be held February 21, 2013 at the City Council Chambers, 140 West Highway 246, Buellton.

Craig Adams, Planning Commission Vice Chair

ATTEST:

Clare Barcelona, Planning Commission Secretary

An audio CD of this Planning Commission Meeting is available upon request.

CITY OF BUELLTON

Planning Commission Agenda Staff Report

Planning Director Review: MPB
Planning Commission Agenda Item No.: 2

To: The Honorable Chair and Commission Members

From: Marc P. Bierdzinski, AICP, Planning Director

Date: February 21, 2013

Subject: Resolution No. 13-03 – "A Resolution of the Planning Commission of the City of Buellton, California, Considering Recommendations to the City Council on Revisions to Title 19 (Zoning) of the Buellton Municipal Code (13-ZOA-02) Adding Section 19.06.260 Relating to the Prohibition of Cigarette, Tobacco, and Head Shops, and Making Findings in Support Thereof"

BACKGROUND/DISCUSSION

Several years ago, staff was approached by an applicant who wished to open a cigarette store in Buellton. After research, staff determined that a retail use dedicated solely to the sale of cigarette and tobacco products was not listed in the zoning ordinance and therefore not permitted unless the Planning Commission made a determination that it fell into an existing zoning ordinance definition. The applicant at that time did not pursue this option.

Two years ago, another applicant inquired about opening a cigarette shop within the City Limits. They were told the same thing as three years ago about needing a Planning Commission determination and it appeared that the request could be forthcoming.

After researching these types of uses and their impacts to the community, including their appearance, staff felt that interim zoning regulations prohibiting this type of use may be appropriate so that staff can develop appropriate regulations. Therefore, the City Council enacted Urgency Ordinances Nos. 11-02 and 11-04 prohibiting these uses for a two year period. The interim zoning regulations expire in in March 2013.

After continued research by staff with non-profit agencies and the County Public Health Department, staff felt that the prohibition of cigarette, tobacco, and head shops would be the best course of action for the City of Buellton. Exhibit A to Resolution No. 13-03 is a proposed new Section 19.06.260 prohibiting these uses. The proposed text is noted below and in Exhibit A:

19.06.260 Prohibition of Cigarette, Tobacco, and Head Shops

A. No person shall establish, operate, or permit to be operated, a cigarette, tobacco, or head shop in or upon any premises in the City of Buellton. It is a violation of this chapter for any person to knowingly allow property of which he or she is the tenant or owner to be used as a cigarette, tobacco, or head shop.

B. No cigarette, tobacco, or head shop shall be established or located or operated within the City of Buellton, nor shall any building permit, conditional use permit, development plan, zoning clearance, or other entitlement for use be issued for any cigarette, tobacco, or head shop, nor shall any existing uses be modified to add a cigarette, tobacco, or head shop.

C. Definitions: For the purposes of this section, unless otherwise apparent from the context, the following definitions apply:

1. "Cigarette, tobacco, and head shop" shall mean a retail use where more than 35% of the square footage of occupied floor area is dedicated to the sale, distribution, delivery, furnishing or marketing of tobacco, tobacco products, and/or tobacco paraphernalia.

2. "Tobacco Paraphernalia" shall mean paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, tobacco products, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq.

3. "Tobacco product" shall mean any product containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, including any product or formulation of matter containing biologically active amounts of nicotine. Tobacco product does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

The main reasons to enact this prohibition include the following:

- The aesthetics of the storefront. A survey of these storefronts in nearby cities show tobacco advertising covering almost all of the window space, and extensive outdoor signage and cigarette displays.
- Data from the County of Santa Barbara Public Health Department shows a high percentage of retailers sold to minors during undercover buys in Buellton and the Valley.

- Many cigarette and tobacco stores are also able to sell drug paraphernalia (pipes, water bongs, hookah, class pipes) under the idea that these items are being used to smoke tobacco when in reality people smoke marijuana and methamphetamine from these device.

Staff from Santa Ynez People Helping People and the County of Santa Barbara Public Health Department will be in attendance at this meeting to support these zoning regulations.

ENVIRONMENTAL REVIEW

This project is exempt from the California Environmental Quality Act because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

RECOMMENDATION

Staff recommends that the Planning Commission consider adoption of Resolution No. 13-03 – "A Resolution of the Planning Commission of the City of Buellton, California, Considering Recommendations to the City Council on Revisions to Title 19 (Zoning) of the Buellton Municipal Code (13-ZOA-02) Adding Section 19.06.260 Relating to the Prohibition of Cigarette, Tobacco, and Head Shops, and Making Findings in Support Thereof"

ATTACHMENTS

Resolution No. 13-03 with Exhibit A

Planning Commission Resolution No. 13-03

"A Resolution of the Planning Commission of the City of Buellton, California, Recommending to the City Council Revisions to Title 19 (Zoning) of the Buellton Municipal Code (13-ZOA-02) Adding Section 19.06.260 Relating to the Prohibition of Cigarette, Tobacco, and Head Shops, and Making Findings in Support Thereof"

SECTION 1:

A. Over the last two years, data from the County of Santa Barbara Public Health Department shows a high percentage of retailers sold to minors during undercover buys in Buellton and the Valley.

B. Many cigarette and tobacco stores are also able to sell drug paraphernalia (pipes, water bongs, hookah, class pipes) under the idea that these items are being used to smoke tobacco when in reality people smoke marijuana and methamphetamine from these device.

C. A survey of these storefronts in nearby cities show tobacco advertising covering almost all of the window space along with outdoor signage and displays. The storefront appearances are not attractive and would not comply with current City of Buellton rules and regulations.

D. The promotion of tobacco and tobacco products towards persons under the age of 18 is a problem that many public service agencies have identified in the Santa Ynez Valley, including within the City of Buellton.

E. After receiving inquiries from persons interested in establishing cigarette shops, it was determined that the Buellton General Plan and Zoning Ordinance has no regulations that cover this type of use. Numerous other cities in the State of California have adopted ordinances prohibiting or heavily regulating such uses. Based on the inquiries there is a substantially increased likelihood that such establishments will seek to locate in the City of Buellton.

F. On March 26, 2011, the City Council adopted interim zoning regulations that prohibited any land use entitlements for cigarette, tobacco, and head shops. The interim zoning regulation expire on March 26, 2013.

SECTION 2: All proceedings having been duly taken as required by law, and upon review of the information provided in the staff report, consideration of the testimony given at the public hearing, as well as other pertinent information, the Planning Commission finds the following:

A. **Record.** Prior to rendering a decision on any aspect of the proposed zoning ordinance amendments, the Planning Commission considered the following:

1. All public testimony, both written and oral, received in conjunction with that certain public hearing conducted by the Planning Commission on February 21, 2013 ("Public Hearing").

2. All oral, written and visual materials presented by City staff in conjunction with the Public Hearing.

3. The following informational documents which, by this reference, are incorporated herein.

   a. That certain written report submitted by the Planning Department dated February 21, 2013 (the "Staff Report").

B. **Public Review.** On the basis of evidence hereinafter listed, all administrative procedures and public participation requirements prescribed in the Buellton Zoning Ordinance have been lawfully satisfied:

1. A notice was published in a newspaper on February 7, 2013 (the "Public Notice"), a minimum of ten days in advance of the Public Hearing.

2. The Public Notice and Agenda for the Public Hearing was posted in three conspicuous public places on February 7, 2013, a minimum of 10 days before the Public Hearing.

C. **Environmental Clearance.** This project is exempt from the California Environmental Quality Act because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

D. **Consistency Declarations.** Based on (i) the evidence presented in the Staff Report (incorporated herein by reference), (ii) consultations with affected City Departments, and (iii) testimony and comments received in connection with the public hearing, the Planning Commission does hereby declare as follows:

1. **Zoning Ordinance Amendments.**

a. **Findings:**

i. The Amendment is in the interests of the general community welfare because there is the substantial likelihood of the establishment and operation of cigarette, tobacco, and head shops in the City of

Buellton which would result in impacts to the community, including increased potential for tobacco sales to minors, the sale of drug paraphernalia, and negative aesthetic impacts to the community.

ii. The Amendment is consistent with the General Plan, the requirements of state planning and zoning laws, and Title 19 of the Zoning Ordinance.

iii. The Amendment is consistent with good zoning and planning practices.

SECTION 3. The Planning Commission hereby recommends that the City Council adopt an ordinance to amend Title 19 of the Buellton Municipal Code by the addition of Section 19.06.260 as shown on Exhibit A to this resolution.

SECTION 4. The Planning Commission Secretary shall certify as to the adoption of this Resolution and shall cause the same to be transmitted to the City Clerk for consideration by the City Council.

PASSED, APPROVED, AND ADOPTED this 21st day of February 2013.

_____
Art Mercado, Chairman

ATTEST:

_____
Clare Barcelona, Planning Commission Secretary

Exhibit A – Proposed Wording of Ordinance

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS
CITY OF BUELLTON)

I, Clare Barcelona, Planning Commission Secretary of the City of Buellton, do hereby certify that the above and foregoing Resolution No. 13-03 was duly passed and adopted by the Planning Commission of said City at a regular meeting thereof, held on the 21st day of February 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February 2013.

_____
Clare Barcelona
Planning Commission Secretary

EXHIBIT A
CIGARETTE, TOBACCO, AND HEAD SHOPS PROHIBITED

19.06.260 Prohibition of Cigarette, Tobacco, and Head Shops

A. No person shall establish, operate, or permit to be operated, a cigarette, tobacco, or head shop in or upon any premises in the City of Buellton. It is a violation of this chapter for any person to knowingly allow property of which he or she is the tenant or owner to be used as a cigarette, tobacco, or head shop.

B. No cigarette, tobacco, or head shop shall be established or located or operated within the City of Buellton, nor shall any building permit, conditional use permit, development plan, zoning clearance, or other entitlement for use be issued for any cigarette, tobacco, or head shop, nor shall any existing uses be modified to add a cigarette, tobacco, or head shop.

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3. "Tobacco product" shall mean any product containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, including any product or formulation of matter containing biologically active amounts of nicotine. Tobacco product does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.