

# SALT LAKE CITY CORPORATION

FRANK B. GRAY  
DIRECTOR

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT  
OFFICE OF THE DIRECTOR

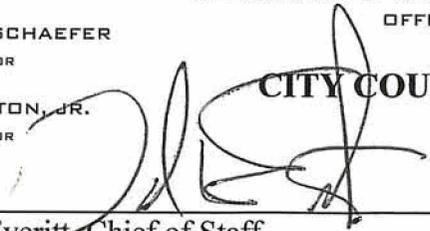
RALPH BECKER  
MAYOR

MARY DE LA MARE-SCHAEFER  
DEPUTY DIRECTOR

ROBERT FARRINGTON, JR.  
DEPUTY DIRECTOR

## CITY COUNCIL TRANSMITTAL



  
\_\_\_\_\_  
David Everitt, Chief of Staff

Date Received:

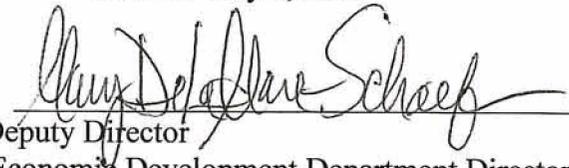
By 

Date Sent to City Council: 07/09/2009

**TO:** Salt Lake City Council  
Carlton Christensen, Chair

**DATE:** July 8, 2009

**FROM:** Mary DeLaMare-Schaefer,  
Community & Economic Development Deputy Director  
on behalf of Frank Gray, Community & Economic Development Department Director



**RE:** Petitions 400-07-37 and 400-07-38: Resolutions extending the time period to satisfy the conditions set forth by Ordinance No. 56 of 2008 relating to the rezone of property at 477 N 300 W from CB to RMU-45 and Ordinance 57 of 2008 relating to amending the Capitol Hill Community Master Plan Future Land Use Map re-designating the property from Commercial use to Medium Mixed use

**STAFF CONTACTS:** Everett Joyce, Senior Planner, at 801-535-7930 or everett.joyce@slcgov.com

**RECOMMENDATION:** That the City Council consider adopting the resolutions for an extension of time for Ordinance 56 of 2008 and Ordinance 57 of 2008

**DOCUMENT TYPE:** Resolution

**BUDGET IMPACT:** None

### DISCUSSION:

**Issue Origin:** This is a request by Devin Overly, representing Capitol Hill Investment Partners, LLC, to extend the timeframe of Ordinance 56 of 2008 and Ordinance 57 of 2008 to satisfy the conditions listed on the ordinances. The proposed resolutions extend the timeframe from July 22, 2009, to July 22, 2010.

On July 22, 2008, the City Council voted in favor of ordinances to amend the Capitol Hill Community Future Land Use Map from Commercial uses to Medium Mixed uses and to rezone the property at 477 N. 300 W. from Community Business (CB) Residential Mixed Use 45

(RMU-45) to accommodate a 22-unit residential condominium. The project has also received condominium approval through the Administrative Hearing process.

The ordinances listed the following conditions:

- a. Execution and recording of a development agreement substantially in the form of the draft development agreement attached hereto as Exhibit A, and that specifically addresses the following points:
  - i. the height of structures on the subject parcel will not exceed 35 Feet, as measured in the Salt Lake City Zoning Ordinance;
  - ii. the required rear yard will be located along the west property line of the subject parcel; and
  - iii. the development agreement shall run with the land.
- b. Filing an application for a building permit consistent with the terms set forth herein.

The project received condominium approval prior to the changes in the financial market. Of the conditions listed above, the developer has signed the development agreement but still needs to provide tax information to process the development agreement through the City's CAMP system and then finalize the building permit.

**Analysis:** Given the present economic conditions, especially within the housing market, the developer has experienced significant difficulties. Construction lenders have been extremely reluctant to lend to any new construction project. Additionally, the applicant has had difficulty in assessing the feasibility of this project's ability to be absorbed once completed. This is crucial to building a structure that doesn't just sit empty with nobody willing or able to purchase.

The developer believes that within one year conditions will have improved sufficiently that they will be able to finish the project. Planning staff recommends an extension time frame of 12 months in light of the current economic conditions.

**Master Plan Considerations:** None

**PUBLIC PROCESS:**

None

**RELEVANT ORDINANCES:**

Ordinance 56 of 2008, Section 5 Time and Ordinance 57 of 2008, Section 4 Time, states: "If the conditions identified above have not been met with one year after adoption, this ordinance shall become null and void. The City Council may, for good cause shown, by resolution, extend the time period for satisfying the conditions identified above."

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- 2. Letter from Devin Overly**
- 3. Copy of Ordinances 56 and 57 of 2008**
- 4. Copy of Development Agreement**

RESOLUTION NO. \_\_\_\_\_ OF 2009

A resolution extending the time period for satisfying  
the conditions set forth in Ordinance No. 56 of 2008.  
(Property located at 477 North 300 West)

WHEREAS, the City Council enacted Ordinance No. 56 of 2008 on July 22, 2008; and

WHEREAS, that ordinance imposed certain conditions and required that those conditions  
be met within one (1) year from the date that the ordinance was approved; and

WHEREAS, the ordinance also provided that the City Council may extend the time  
period for satisfying the conditions set forth in the ordinance; and

WHEREAS, the City Council finds that there is good cause to extend the deadline in the  
ordinance;

NOW, THEREFORE, be it resolved by the City Council of Salt Lake City, Utah:

SECTION 1. The deadline set forth in Section 5 of Ordinance No. 56 of 2008 shall be  
and hereby is extended from July 22, 2009, to July 22, 2010 for the applicant to satisfy the  
conditions set forth in Section 3 of that ordinance.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Passed by the City Council of Salt Lake City, Utah, this \_\_\_\_\_ day of

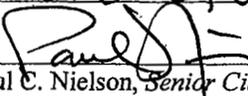
\_\_\_\_\_, 2009.

SALT LAKE CITY COUNCIL

By: \_\_\_\_\_  
CHAIRPERSON

ATTEST AND COUNTERSIGN:

\_\_\_\_\_  
CITY RECORDER

**APPROVED AS TO FORM**  
Salt Lake City Attorney's Office  
Date: JUNE 18, 2009  
By:   
Paul C. Nielson, *Senior City Attorney*

RESOLUTION NO. \_\_\_\_\_ OF 2009

A resolution extending the time period for satisfying  
the conditions set forth in Ordinance No. 57 of 2008.  
(Property located at 477 North 300 West)

WHEREAS, the City Council enacted Ordinance No. 57 of 2008 on July 22, 2008; and

WHEREAS, that ordinance imposed certain conditions and required that those conditions  
be met within one (1) year from the date that the ordinance was approved; and

WHEREAS, the ordinance also provided that the City Council may extend the time  
period for satisfying the conditions set forth in the ordinance; and

WHEREAS, the City Council finds that there is good cause to extend the deadline in the  
ordinance;

NOW, THEREFORE, be it resolved by the City Council of Salt Lake City, Utah:

SECTION 1. The deadline set forth in Section 4 of Ordinance No. 57 of 2008 shall be  
and hereby is extended from July 22, 2009, to July 22, 2010 for the applicant to satisfy the  
conditions set forth in Section 2 of that ordinance.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Passed by the City Council of Salt Lake City, Utah, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2009.

SALT LAKE CITY COUNCIL

By: \_\_\_\_\_  
CHAIRPERSON

ATTEST AND COUNTERSIGN:

\_\_\_\_\_  
CITY RECORDER

**APPROVED AS TO FORM**  
Salt Lake City Attorney's Office  
Date: JUNE 18, 2009  
By: Paul C. Nielson  
Paul C. Nielson, *Senior City Attorney*

**RESOLUTIONS EXTENDING TIMEFRAME FOR  
ORDINANCES 56 AND 57 OF 2008**

**LETTER FROM DEVIN OVERLY**

May 28, 2009

Capitol Hill Investment Partners, LLC  
4001 S. 700 E. Ste 540  
Salt Lake City, UT 84107

Salt Lake City Planning & Zoning  
Attn: Ana Valdemoros  
451 S. State, Room 406  
P.O. Box 145480  
Salt Lake City, UT 84114-5480

To Whom It May Concern,

This letter is a request for an extension of Ordinance 56 of 2008, which was to rezone a parcel at 477 N. 300 W. from CB to RMU-45. It is under our impression that this ordinance expires on July 22, 2009. We would request that this ordinance be extended for one year.

The original development plan for this property was produced approximately two years ago, a time in which economic conditions were much more allowing for a project such as ours to succeed.

Given the present economic conditions, especially within the housing market, we have experienced significant difficulties. Construction lenders have been extremely reluctant to lend, not only to us, but to any new construction project. Additionally, we have had difficulty in assessing the feasibility of this project's ability to be absorbed once complete—a factor crucial to building a structure that doesn't just sit empty with nobody willing or able to purchase.

It is our belief that within one year, economic conditions will have improved sufficiently that our difficulties and concerns will be resolved, allowing us to not only commence, but also to finish with confidence that the project will succeed.

This, we hope, would also be in the best interests of city officials, and the residents of Salt Lake City. It will ensure that we are able to produce a building that enhances not only the physical landscape of the downtown area, but the economic landscape of the city as well.

Regards,

A handwritten signature in black ink, appearing to read 'Devin Overly', with a large, sweeping flourish at the end.

Devin Overly  
Capitol Hill Investment Partners, LLC

**COPY OF ORDINANCES 56 AND 57 OF 2008**

**SALT LAKE CITY ORDINANCE**

**No. 56 of 2008**

**(Rezoning Property Located at 477 North 300 West, and  
Amending the Zoning Map, with conditions and time limitation)**

**AN ORDINANCE REZONING PROPERTY LOCATED AT 477 NORTH 300 WEST, AND AMENDING THE ZONING MAP, PURSUANT TO PETITION NO. 400-07-38.**

**WHEREAS, after hearings before the Planning Commission and the Salt Lake City Council, the City Council has determined that the following ordinance is in the best interest of the City.**

**NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:**

**SECTION 1. Rezoning of property. The property located at 477 North 300 West, identified as County Tax ID (Sidwell #) 08-36-251-007, shall be and hereby is rezoned from Community Business (CB) to Residential/Mixed Use (RMU-45).**

**SECTION 2. Amending zoning map. The Salt Lake City zoning map, as adopted by the Salt Lake City Code, relating to the fixing of boundaries and zoning districts, shall be and hereby is amended consistent with the rezoning identified above.**

**SECTION 3. Conditions. This rezoning is conditioned upon the following two conditions:**

- a. Execution and recording of a development agreement substantially in the form of the draft development agreement attached hereto as Exhibit A, and that specifically addresses the following points:**
  - i. the height of structures on the subject parcel will not exceed 35 Feet, as measured in the Salt Lake City Zoning Ordinance;**
  - ii. the required rear yard will be located along the west property line of the subject parcel; and**
  - iii. the development agreement shall run with the land.**
- b. Filing an application for a building permit consistent with the terms set forth herein.**

**SECTION 4. Effective Date. This ordinance shall become effective on the date of its first publication. The City Recorder is instructed not to publish or record this ordinance until the conditions identified above have been met, as certified by the Salt Lake City Planning Director or the Planning Director's designee.**

**SECTION 5. Time. If the conditions identified above have not been met within one year after adoption, this ordinance shall become null and void. The City Council may, for good cause shown, by resolution, extend the time period for satisfying the conditions identified above.**

**Passed by the City Council of Salt Lake City, Utah, this 22nd day of July, 2008.**

**Bill No. 56 of 2008. Published: has conditions.**

Ordinance 57 of 2008/amending the Capitol Hill Community Master Plan.

SALT LAKE CITY ORDINANCE

No. 57 of 2008

(Amending the Capitol Hill Community Master Plan)

AN ORDINANCE AMENDING THE CAPITOL HILL COMMUNITY MASTER PLAN WITH RESPECT TO 477 NORTH 300 WEST PURSUANT TO PETITION NO. 400-07-37.

WHEREAS, after hearings before the Planning Commission and the Salt Lake City Council, the City Council has determined that the following ordinance is in the best interest of the City.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. Amending master plan. The Capitol Hill Master Plan Future Land Use Map shall be and hereby is amended to reflect that property located at 477 North 300 West, identified as County Tax ID (Sidwell #) 08-36-251-007 is re-designated from Commercial uses to Medium Mixed Use. SECTION 2. Conditions. This amendment is conditioned upon the following two conditions:

- a. Execution and recording of a development agreement substantially in the form of the draft development agreement attached hereto as Exhibit A, and that specifically addresses the following points:
  - i. the height of structures on the subject parcel will not exceed 35 Feet, as measured in the Salt Lake City Zoning Ordinance;
  - ii. the required rear yard will be located along the west property line of the subject parcel; and
  - iii. the development agreement shall run with the land.
- b. Filing an application for a building permit consistent with the terms set forth herein.

SECTION 3. Effective Date. This ordinance shall become effective on the date of its first publication. The City Recorder is instructed not to publish or record this ordinance until the conditions identified above have been met, as certified by the Salt Lake City Planning Director or the Planning Director's designee.

SECTION 4. Time. If the conditions identified above have not been met within one year after adoption, this ordinance shall become null and void. The City Council may, for good cause shown, by resolution, extend the time period for satisfying the conditions identified above.

Passed by the City Council of Salt Lake City, Utah, this 22nd day of July, 2008.

Bill No. 57 of 2008.

**COPY OF DEVELOPMENT AGREEMENT**

When recorded return to:  
Salt Lake City Corporation  
Attn: Planning Director  
451 S. State Street, Suite 406  
Salt Lake City, Utah 84111

**DEVELOPMENT AGREEMENT**  
**(Capitol Hill Investments Partners, 477 North 300 West)**

This development agreement is entered into as of this 4 day of AUGUST, 2008 by and between Capitol Hill Investments Partners, LLC ("CHIP") and Salt Lake City Corporation, a municipality and political subdivision of the State Utah ("the City").

**RECITALS**

- A. CHIP is the owner of certain real property located at 477 North, 300 West in Salt Lake City, Utah, more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), on which it proposes to construct a condominium development, as more fully described on the plans attached hereto as Exhibit B (the "Project").
- B. In order to construct the Project as proposed, CHIP has requested that the Property be rezoned from Community Business (CB) to Residential/Mixed Use (RMU-45).
- C. CHIP has also offered to modify the design of the Project in order to ensure greater compatibility with the surrounding neighborhood, and to further promote the policies, goals and objectives of the City.
- D. The City, acting pursuant to its authority under Utah law, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions and regulations has made certain determinations with respect to the proposed Project, and in the exercise of its legislative discretion, has elected to approve this agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, conditions and considerations as more fully set forth below, CHIP and the City here by agree as follows:

1. Construction of the Project. In consideration of the City rezoning the Property to RMU-45, CHIP agrees to construct a condominium development on the Property consistent with the plans attached hereto as Exhibit B.
2. Design Modifications. CHIP also agrees to the following restrictions on the development of the Property:

- a. The height of structures on the subject parcel will not exceed 35 feet, as measured in the Salt Lake City Zoning Ordinance; and
- b. The required rear yard will be located along the west property line of the subject parcel.

3. Agreement to run with the land. This agreement shall be recorded against the Property as described in Exhibit A attached hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of CHIP in the ownership or development of any portion of the Property.

4. Subdivision plat approval and compliance with City design and construction standards. CHIP expressly acknowledges and agrees that nothing in this agreement shall be deemed to relieve CHIP from the obligation to comply with all applicable requirements of the City necessary for approval of plans for the Project, including the payment of fees and compliance with all other applicable ordinances, resolutions or regulations, policies and procedures of the City.

5. Reserved legislative powers. Nothing in this agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land use plans, policies, ordinances and regulation after the date of this agreement.

6. Assignment. Neither this agreement nor any of the provision, terms or conditions here of can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this agreement and without the prior written consent of the City, which shall not be unreasonably withheld.

7. No joint venture, partnership or third party rights. This agreement does not create and joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to third parties.

8. Integration. This agreement contains the entire agreement between the parties with respect to the subject matter here of and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

9. Severability. If any part or provision of this agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not effect any other provision of this agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

10. Voluntary agreement. This agreement is entered in to voluntarily by both parties in an effort to facilitate their mutual interests, and no party is acting under coercion or duress of any kind.

11. Specific performance. The parties acknowledge that in the event of a default of this agreement, other remedies may be insufficient to provide full relief and therefore consent to the imposition of an order of specific performance of the terms of this agreement, in addition to any other relief which may be available by law or ordered by a court of competent jurisdiction.

12. Effective date. This agreement shall be binding and effective on the date executed by all parties hereto.

13. Counterparts. This agreement may be executed in any number of counterparts with each executed counterpart constituting and original, but all of which together shall constitute one and the same instrument.

14. Notice. Any notice required or to be given to any other party under the terms of this agreement shall be directed to the following addresses:

To CHIP:  
Capitol Hill Investment Partners, LLC  
Devin Overly  
4001 South 700 East, Suite 540  
Salt Lake City, Utah 84107

To the City:  
Salt Lake City Corporation  
Attn: Planning Director  
451 South State Street, Suite 406  
Salt Lake City, Utah 84111

The parties agree to give prompt notice of any change in the foregoing addresses.

15. No waiver. Failure to enforce any provision of this agreement does not waive the right to enforce that provision, or any other provision.

Executed as of the date first set forth above.

CAPITOL HILL INVESTMENT PARTNERS, LLC

By:   
Name: DEVIN OVERLY  
Title: MANAGER

STATE OF UTAH            )  
                                  : ss.

COUNTY OF SALT LAKE )

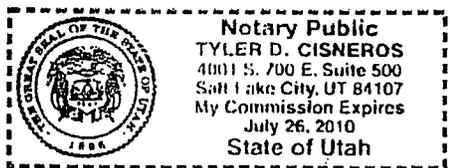
The foregoing instrument was acknowledged before this 4 day of AUGUST, 2008, by DEVIN OVERLY of Capitol Hill Investment Partners, LLC.

*[Handwritten Signature]*

NOTARY PUBLIC, residing in Salt Lake County, Utah

My Commission Expires:

July 26, 2010



SALT LAKE CITY CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Deputy City Recorder

APPROVED AS TO FORM  
Salt Lake City Attorney's Office  
Date 7-30-08  
By *[Signature]*

STATE OF UTAH )  
: ss.  
County of Salt Lake )

The foregoing Development Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Ralph Becker, The Mayor of Salt Lake City and by Christine Meeker, the City Recorder of SALT LAKE CITY CORPORATION.

\_\_\_\_\_  
NOTARY PUBLIC, residing in Salt Lake County, Utah

My Commission Expires:  
\_\_\_\_\_

**“FULL-SERVICE RESTAURANT LIQUOR LICENSE”**

**LOCAL CONSENT**

Date: \_\_\_\_\_

Attn: DABC Licensing & Compliance Section

\_\_\_\_\_, [ ] City [ ] Town [ ] County

hereby grants its consent to the issuance of a full-service restaurant liquor license to:

Business Name: \_\_\_\_\_

Applicant / Business Owner: \_\_\_\_\_

Location Address: \_\_\_\_\_

Pursuant to the provisions of Utah Code 32A-4, Part 1, this license allows for the storage, sale and consumption of liquor on the premises. Furthermore, the applicant has met all ordinances and requirements relating to issuance of local business license(s).

Check if applicable

**LOCAL CONSENT FOR PROXIMITY VARIANCE**

In accordance with Utah Code 32A-4-101(4), the local authority also grants consent to a variance regarding the proximity of this establishment relative to a public or private school, church, public library, public playground, or park.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name / Title

8703603