

DRAFT AGENDA

REGULAR COUNCIL MEETING
TUESDAY
JULY 1, 2014

COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
4:00 P.M. AND 6:00 P.M.

4:00 P.M. MEETING

Individual Items on the 4:00 p.m. meeting agenda may be postponed to the 6:00 p.m. meeting.

1. **CALL TO ORDER**

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

2. **ROLL CALL**

NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.

MAYOR NABOURS
VICE MAYOR EVANS
COUNCILMEMBER BAROTZ
COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS
COUNCILMEMBER OVERTON
COUNCILMEMBER WOODSON

3. **PLEDGE OF ALLEGIANCE AND MISSION STATEMENT**

MISSION STATEMENT

The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens.

4. **APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

5. **PUBLIC PARTICIPATION**

Public Participation enables the public to address the Council about an item that is not on the agenda (or is listed under Possible Future Agenda Items). Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

6. PROCLAMATIONS AND RECOGNITIONS**7. APPOINTMENTS**

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).

None

8. LIQUOR LICENSE PUBLIC HEARINGS

- A. Consideration and Action on Liquor License Application:** John Zanzucchi, "Granny's Closet", 218 S. Milton Ave., Series 06 (bar- all spirituous liquor), Person Transfer.

RECOMMENDED ACTION:

Hold public hearing.

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- B. Consideration and Action on Liquor License Application:** Kelsey Drayton, "Brandy's Restaurant & Bakery", 1500 E. Cedar Ave. 40., Series 07 (beer and wine bar), Person Transfer.

RECOMMENDED ACTION:

Hold public hearing.

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- C. Consideration and Action on Liquor License Application:** Jared Repinski, "Alpha Omega Greek Cuisine", 1580 E. Route 66., Series 12 (restaurant), New License.

RECOMMENDED ACTION:

Hold the Public Hearing

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- D. Consideration and Action on Liquor License Application:** Donald Grosvenor, "Nadli", 7 N. San Francisco St., Series 12 (restaurant), New License.

RECOMMENDED ACTION:

Hold the Public Hearing

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- E. Consideration and Action on Liquor License Application:** Andrea Gibson, "Air Cafe", 6200 S. Pulliam Dr., #109, Series 12 (restaurant), New License.

RECOMMENDED ACTION:

Hold the Public Hearing

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

9. CONSENT ITEMS

All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.

- A. Consideration and Approval of Sole Source Purchase:** Consideration authorizing the purchase of Axon Flex body cameras manufactured by Taser International in the amount of \$117,000 for the Flagstaff Police Department

RECOMMENDED ACTION:

Approve the funding of \$117,000 to Taser International for the Axon Flex camera program to outfit patrol officers. The initial amount of \$48,628.10, will allow for the purchase of 50 Axon Flex body cameras with mounting, charging, and docking accessories and professional services. The costs for evidence storage and retention will be \$12,446.16 annually, or \$62,230.80 for the five year contract. The total amount of this request (\$117,000) will cover the remaining tax and shipping.

- B. Consideration and Approval of Payment:** Annual Computer Hardware and Software Maintenance and Support Services.

RECOMMENDED ACTION:

Authorize the payment in the amount of \$562,101.09, plus applicable sales tax, to:

- 1) ERP - Financial Applications - \$151,000.00
- 2) SHI Software - Microsoft Enterprise Agreement - \$135,000.00
- 3) Intergraph Public Safety, Inc. - Maintain the map and corresponding DB for system - \$196,428.08
- 4) SIRSI - Online Library Catalog 4/1-3/31 - \$79,673.01

10. ROUTINE ITEMS

- A. Consideration and Possible Adoption of Ordinance No. 2014-11:** An ordinance amending Ordinance No. 2000-11 by modifying the Zoning Map Designation of that property generally known as Pine Canyon, through the amendment of a general condition related to the public's overnight access to Pine Canyon.

RECOMMENDED ACTION:

- 1) Read ordinance No. 2014-11 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-11 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2014-11

- B. Consideration and Adoption of Ordinance No 2014-12:** An ordinance levying upon the assessed valuation of the property within the City of Flagstaff, Arizona, subject to taxation a certain sum upon each one hundred dollars (\$100.00) of valuation sufficient to raise the amount estimated to be required in the Annual Budget, less the amount estimated to be received from other sources of revenue; providing funds for various bond redemptions, for the purpose of paying interest upon bonded indebtedness and providing funds for general municipal expenses, all for the Fiscal Year ending the 30th day of June, 2015

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2014-12 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-12 by title only (if approved above)
- 3) Adopt Ordinance No. 2014-12

- C. Consideration and Possible Adoption of Ordinance No. 2014-14:** An ordinance amending the Flagstaff Zoning Map designation of approximately 33.6 acres of real property located at the southwest and southeast corners of Route 66 and Fourth Street and at the northwest corner of Huntington Drive and Fourth Street, from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC). (***Amending Zoning Map for "The Trax" commercial development***).

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2014-14 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-14 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2014-14

- D. Consideration and Adoption of Resolution No. 2014-25:** A resolution authorizing the execution of a Development Agreement between City of Flagstaff and Evergreen - Trax, L.L.C. related to the development of approximately 33.6 acres of real property generally located at the intersection of Route 66 and Fourth Street, Flagstaff, Arizona.

RECOMMENDED ACTION:

- 1) Read Resolution No. 2014-25 by title only.
- 2) City Clerk reads Resolution No. 2014-25 by title only (if approved above).
- 3) Adopt Resolution No. 2014-25.

- E. Consideration and Adoption of Ordinance No. 2014-13:** An ordinance of the Council of the City of Flagstaff, Arizona amending Flagstaff City Code Title 6, Police Regulations, Chapter 6-01, General Offenses, by adding a new Section 6-01-001-0004, Graffiti Prohibited; and amending Title 7, Health and Sanitation, by adding a new Chapter 7-01, Graffiti Abatement.

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2014-13 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-13 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2014-13

- F. Consideration and Adoption of Ordinance No. 2014-18:** An ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, Title 3, Business Regulations, Chapter 10, User Fees, Section 3-10-001-0005, Recreation Fees, by increasing certain Parks and Recreation Fees; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date. ***(Increasing recreation fees)***

RECOMMENDED ACTION:

At the Council Meeting of July 1, 2014:

- 1) Read Ordinance No. 2014-18 by title only for the first time
- 2) City Clerk reads Ordinance No. 2014-18 by title only for the first time (if approved above)

At the Council Meeting of July 15, 2014:

- 3) Read Ordinance No. 2014-18 by title only for the final time
- 4) City Clerk reads Ordinance No. 2014-18 by title only for the final time (if approved above)
- 5) Adopt Ordinance No. 2014-18 (and establish an effective for the recreation fees of September 1, 2014)

- G. Consideration and Adoption of Ordinance No. 2014-19:** An ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, Title 7, Health and Sanitation, Chapter 7-04, Municipal Solid Waste Collection Service, Section 7-04-001-0009, Fees, by reinstating the \$2.50 per ton Environmental Maintenance Facility Fee, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date. ***(Reinstate the \$2.50 per ton landfill tipping fee).***

RECOMMENDED ACTION:

At the meeting of July 1, 2014.

- 1) Read Ordinance No. 2014-19 by title only for the first time.
- 2) City Clerk reads Ordinance No. 2014-19 by title only for the first time (if approved above)

At the meeting of July 15, 2014.

- 3) Read Ordinance No. 2014-19 by title only for the final time
- 4) City Clerk reads Ordinance No. 2014-19 by title only for the final time (if approved above)
- 5) Adopt Ordinance No. 2014-19 (effective September 1, 2014)

- H. Consideration of Ratifying Approval of Agreement Amendment:** Joint Project Agreement 11-085 between the State of Arizona and the City of Flagstaff acting for and on behalf of the Flagstaff Metropolitan Planning Organization, Amendment 3 for Fiscal Year 2015

RECOMMENDED ACTION:

- Ratify JPA 11-085 Amendment 3

- I. **Consideration of amendment to agreement:** Authorizing an increase in funding to the Coconino Humane Association.

RECOMMENDED ACTION:

Approve the increase to the Coconino Humane Association in the amount of \$50,000 for the final year of the current agreement.

RECESS

6:00 P.M. MEETING

RECONVENE

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

11. **ROLL CALL**

NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.

MAYOR NABOURS

VICE MAYOR EVANS

COUNCILMEMBER BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER WOODSON

12. **PUBLIC PARTICIPATION**

13. **CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA**

14. **PUBLIC HEARING ITEMS**

- A. **Public Hearing, Consideration and Adoption of Ordinance No. 2014-17:** An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title 7, Health and Sanitation, Chapter 7-3, City Water System Regulations, Section 7-03-001-0003, Deposit Required, to change water service deposits; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date. ***(Changing the amount of water service deposits)***

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

1) Hold Public Hearing

2) Read Ordinance No. 2014-17 by title only for the first time

3) City Clerk reads Ordinance No. 2014-17 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

4) Read Ordinance No. 2014-17 by title only for the final time

5) City Clerk reads Ordinance No. 2014-17 by title only for the final time

6) Adopt Ordinance No. 2014-17 and establish an effective date for the deposit

adjustments of September 1, 2014

- B. Public Hearing, Consideration and Possible Adoption of Resolution No. 2014-23 and Ordinance No. 2014-15:** A Resolution of the City Council of the City of Flagstaff, Arizona, Declaring that Certain Document Known as "The 2014 BBB Tax Re-Codification Amendments as a Public Record, and Providing for an Effective Date; and an Ordinance of the City Council of the City of Flagstaff, Amending the Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-06, *Privilege and Excise Taxes*, Chapter 3-06, *Lodging, Restaurant and Lounge Tax*, are Hereby Amended by Adopting "The 2014 BBB Tax Re-Codification Amendments" as Set Forth in that Public Record on File with the City Clerk; Providing for Penalties, Repeal of Conflicting Ordinances, Severability, Authority for Clerical Corrections, and Establishing Effective Dates. **(Recodification of BBB Tax)**

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

- 1) Hold the Public Hearing
- 2) Read Resolution No. 2014-23 by title only
- 3) The City Clerk reads Resolution No. 2014-12 by title only (if approved above)
- 4) Read Ordinance No. 2014-15 by title only for the first time
- 5) City Clerk reads Ordinance No. 2014-15 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

- 6) Adopt Resolution No. 2014-12
- 7) Read Ordinance No. 2014-15 by title only for the final time
- 8) City Clerk reads Ordinance No. 2014-15 by title only for the final time (if approved above)
- 9) Adopt Ordinance No. 2014-15

- C. Public Hearing, Consideration and Adoption of Resolution No. 2014-24, and Consideration and Adoption of Ordinance No. 2014-16:** A Resolution of the City Council of the City of Flagstaff, Arizona, Declaring that Certain Document Known as "The 2014 Use Tax Adoption and Related City Tax Code Amendments" as a Public Record, and Providing for an Effective Date; and an Ordinance of the City Council of the City of Flagstaff, Arizona, Amending the Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, is Hereby Amended by Adopting "The 2014 Use Tax Adoption and Related City Tax Code Amendments" by reference as Set Forth in that Public Record on File with the City Clerk; Providing for Penalties, Repeal of Conflicting Ordinances, Severability, Authority for Clerical Corrections, and Establishing an Effective Date. **(Adoption of local 1% use tax)**

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

- 1) Hold the Public Hearing
- 2) Read Resolution No. 2014-24 by title only
- 3) The City Clerk reads Resolution No. 2014-24 by title only (if approved above)
- 4) Read Ordinance No. 2014-16 by title only for the first time
- 5) City Clerk reads Ordinance No. 2014-16 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

- 6) Adopt Resolution No. 2014-24
- 7) Read Ordinance No. 2014-16 by title only for the final time
- 8) City Clerk reads Ordinance No. 2014-16 by title only for the final time (if approved above)
- 9) Adopt Ordinance No. 2014-16

- D. **Public Hearing, Consideration and Adoption of Ordinance No. 2014-21:** An ordinance amending the Flagstaff Zoning Map designation of approximately 3.06 acres of real property located at 703 South Blackbird Roost from "MH," Manufactured Housing, to "HC," Highway Commercial. ***(Zoning Map amendment ordinance review for the development known as "The Standard".)***

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

- 1) Hold the Public Hearing
- 2) Read Ordinance No. 2014-21 by title only for the first time
- 3) City Clerk reads Ordinance No. 2014-21 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

- 4) Read Ordinance No. 2014-21 by title only for the final time
- 5) City Clerk reads Ordinance No. 2014-21 by title only for the final time (if approved above)
- 6) Adopt Ordinance No. 2014-21

- E. **Public Hearing for Zoning Map Amendment Request:** To amend the Flagstaff Zoning Map designation of approximately 3.06 acres of real property located at 703 South Blackbird Roost from "MH," Manufactured Housing, to "HC," Highway Commercial. ***(Zoning Map Amendment request for the development known as "The Standard")***

RECOMMENDED ACTION:

Hold Public Hearing

15. **REGULAR AGENDA**

- A. **Consideration and Adoption of Ordinance/Resolution No. 2014-20:** An Ordinance prohibiting the use of wireless communication devices while operating a motor vehicle or bicycle.

RECOMMENDED ACTION:

At the July 1, 2014, Council Meeting:

- 1) Read Ordinance No. 2014-20 by title only for the first time
- 2) City Clerk reads Ordinance No. 2014-20 by title only (if approved above)

At the July 15, 2014, Council Meeting:

- 3) Read Ordinance No. 2014-20 by title only for the final time
- 4) City Clerk reads Ordinance No. 2014-20 by title only (if approved above)
- 5) Adopt Ordinance No. 2014-20

16. **DISCUSSION ITEMS**

17. **POSSIBLE FUTURE AGENDA ITEMS**

Verbal comments from the public on any item under this section must be given during Public Participation near the beginning of the meeting. Written comments may be submitted to the City Clerk. After discussion and upon agreement of three members of the Council, an item will be moved to a regularly-scheduled Council meeting.

18. **INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS**

19. **ADJOURNMENT**

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____ ,
at _____ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this _____ day of _____, 2014.

Elizabeth A. Burke, MMC, City Clerk

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, Deputy City Clerk
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Action on Liquor License Application: John Zanzucchi, "Granny's Closet", 218 S. Milton Ave., Series 06 (bar- all spirituous liquor), Person Transfer.

RECOMMENDED ACTION:

Hold public hearing.

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Policy Decision or Reason for Action:

Series 06 (bar- all spirituous liquor) licenses are obtained through the person and/or location transfer of an existing license from another business. The transfer is from Linda Castillo for Granny's Closet located at 218 S. Milton Ave., Flagstaff, Arizona to John Zanzucchi.

Financial Impact:

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

Connection to Council Goal:

Effective governance - regulatory action.

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Background/History:

An application for a person transfer Series 06 liquor license was received from John Zanzucchi for Granny's Closet at 218 S. Milton Ave. The transfer is from Linda Castillo for Granny's Closet located at 218 S. Milton Ave., Flagstaff, Arizona to John Zanzucchi.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Tom Boughner, Code Compliance Manager, resulted in no active code violations being reported.

Sales tax and licensing information is currently being reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who is working through a few issues with the applicant and will issue a final recommendation at the time of the final agenda.

Key Considerations:

Because the application is for a person transfer, consideration may only be given to the applicant's personal qualifications.

A Series 06 (bar - all spirituous liquor) allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

The deadline for issuing a recommendation on this application is July 5, 2014.

Community Benefits and Considerations:

This business will contribute to the tax base of the community. We are not aware of any other relevant considerations.

Community Involvement:

The application was properly posted on June 3, 2014. No written protests have been received to date.

Expanded Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Attachments: [Granny's Closet - Letter to Applicant](#)
 [Hearing Procedures](#)
 [Series 06 Description](#)
 [Granny's Closet - PD Memo](#)
 [Granny's Closet - Code Memo](#)

Form Review

OFFICE OF THE CITY CLERK

June 19, 2014

Granny's Closet
Attn: John Zanzucchi
218 S. Milton Ave
Flagstaff, AZ 86001

Dear Mr. Zanzucchi:

Your application for a Series 06 person transfer liquor license for Granny's Closet at 218 S. Milton, was posted on June 3, 2014. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, July 1, 2014 which begins at 4:00 p.m.**

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application is set to expire on June 23, 2014 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure



City of Flagstaff

Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. The presiding officer will then close the public hearing.
8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

R19-1-702. Determining Whether to Grant a License for a Certain Location

- A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
 2. Number and types of licenses within one mile of the proposed premises;
 3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
 4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
 5. Residential and commercial population density within one mile of the proposed premises;
 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
 7. Effect on vehicular traffic within one mile of the proposed premises;
 8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
 9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
 10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
 11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
 12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B. This Section is authorized by A.R.S. § 4-201(I).

License Types: Series 06 Bar (all spirituous liquor)

Transferable (From person to person and/or location to location within the same county only)

On & off-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

PURPOSE:

Allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:

A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales of spirituous liquor can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the ones provided for the bar.

A hotel or motel with a Series 06 license may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of registered guests. The registered guest must be at least twenty-one (21) years of age. Access to the minibar is by a key or magnetic card device and not furnished to a guest between the hours of 2:00 a.m. and 6:00 a.m. Monday through Saturday and 2:00 a.m. and 10:00 a.m. on Sundays.

Bar, beer and wine bar, and restaurant licensees must pay an annual **SURCHARGE** of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

MEMORANDUM

Memo # 14-048-01

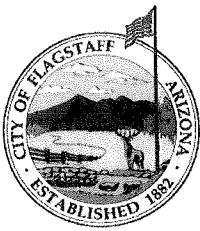
TO: Chief Kevin Treadway
FROM: Sgt. Matt Wright
DATE: June 10, 2014
REF Series 6 Liquor License Person Transfer for “Granny’s Closet”

On June 10, 2014, I initiated an investigation into an application for a series 06 (bar) liquor license person to person transfer. The liquor license application has been filed by John Zanzucchi (Agent) and William Zanzucchi the new owners of Granny’s Closet. Granny’s Closet is located at 218 S. Milton Road in Flagstaff. The license number being applied for is 06030039 a full bar license.

I conducted a query through local systems and public access on John Zanzucchi (Agent) and William Zanzucchi. No derogatory records were found on William. John Zanzucchi was found to have been charged for disorderly conduct (loud party) in 2010 and disorderly conduct (fighting) in 2006. John completed all the mandated court requirements. Granny’s Closet has not had any liquor law violations since 2004 and the license is in good standing with the Arizona Department of Liquor License and Control.

In speaking with John Zanzucchi he and William have purchased Granny’s Closet from his family members and plan to run the day to day operations with co-owner William Zanzucchi. This ownership change of Granny’s Closet requires that the liquor license also reflects the name changes. John Zanzucchi (agent) and William Zanzucchi confirmed they have already taken the required liquor law training courses and provided proof.

As a result of the investigation, I recommend approval of the person to person transfer of this series 6 bar license.

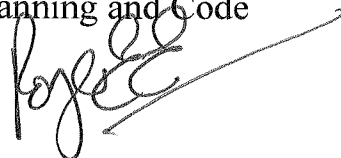


Planning and Development Services Memorandum

June 7, 2014

TO: Stacy Saltzburg, Deputy City Clerk

THROUGH: Roger E. Eastman, AICP, Comprehensive Planning and Code Administrator

FROM: Tom Boughner, Code Compliance Mgr. 

RE: Application for Liquor License #06030039
218 south Milton Road, Flagstaff, Arizona 86001
Assessor's Parcel Number P-100-39-004C
John Zanzucchi on behalf of Granny's Closet

This application is a request for a Series #6 Bar, Person to Person Transfer, from John Thomas Zanzucchi on behalf of Granny's Closet, located in the Highway Commercial (HC) zoning district. This district allows for bars.

There are no active Zoning Code violations associated with John Zanzucchi or Granny's Closet at this time.

This liquor license is for approval.

City of Flagstaff Web Map

Granny's Closet



Sat Jun 7 2014 12:15:10 PM.

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, Deputy City Clerk
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Action on Liquor License Application: Kelsey Drayton, "Brandy's Restaurant & Bakery", 1500 E. Cedar Ave. 40., Series 07 (beer and wine bar), Person Transfer.

RECOMMENDED ACTION:

Hold public hearing.

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Policy Decision or Reason for Action:

Series 07 licenses must be obtained through the person and/or location transfer of an existing license from another business. The license is being transferred from Edward Wojciak with Brandy's Restaurant & Bakery, located in Flagstaff.

Financial Impact:

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

Connection to Council Goal:

Effective governance - regulatory action.

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Background/History:

An application for a person transfer Series 07 liquor license was received from Kelsey Drayton for Brandy's Restaurant & Bakery, 1500 E. Cedar Ave. #40. The person transfer is from Edward Wojciak for Brandy's Restaurant & Bakery located at 1500 E. Cedar Ave., #40., Flagstaff, Arizona.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Tom Boughner, Code Compliance Manager, resulted in no active code violations being reported.

Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in compliance with the tax and licensing requirements of the City.

Key Considerations:

Because the application is for a person transfer only, consideration may be given to just the applicant's personal qualifications.

A Series 07 beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

The deadline for issuing a recommendation on this application is July 28, 2014.

Community Benefits and Considerations:

This business will contribute to the tax base of the community. We are not aware of any other relevant considerations.

Community Involvement:

The application was properly posted on June 3, 2014. No written protests have been received to date.

Expanded Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Attachments: [Brandy's - Letter to Applicant](#)
 [Hearing Procedures](#)
 [Series 07 Description](#)
 [Brandy's - PD Memo](#)
 [Brandy's - Code Memo](#)
 [Brandy's - Tax Memo](#)

Form Started By: Stacy Saltzburg

Started On: 06/19/2014 12:23 PM

Final Approval Date: 06/19/2014

OFFICE OF THE CITY CLERK

June 19, 2014

Brandy's Restaurant and Bakery
Attn: Kelsey Drayton
1500 E. Cedar Ave. #40
Flagstaff, AZ 86004

Dear Mr. Drayton:

Your application for a Series 7 person transfer liquor license for Brandy's Restaurant and Bakery at 1500 E. Cedar Ave., #40, was posted on June 3, 2014. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, July 1, 2014 which begins at 4:00 p.m.**

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application is set to expire on June 23, 2014 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure



City of Flagstaff

Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. The presiding officer will then close the public hearing.
8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

R19-1-702. Determining Whether to Grant a License for a Certain Location

- A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
 2. Number and types of licenses within one mile of the proposed premises;
 3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
 4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
 5. Residential and commercial population density within one mile of the proposed premises;
 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
 7. Effect on vehicular traffic within one mile of the proposed premises;
 8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
 9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
 10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
 11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
 12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B. This Section is authorized by A.R.S. § 4-201(I).

License Types: Series 07 Beer and Wine Bar License

Transferable (From person to person and/or location to location within the same county only)

On & off-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

PURPOSE:

Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:

A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar.

Bar, beer and wine bar and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

MEMORANDUM

Memo # 14-049-01

TO: Chief Kevin Treadway

FROM: Sgt. Matt Wright

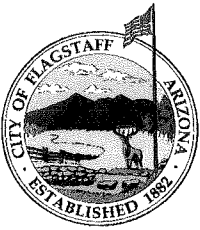
DATE: June 9, 2014

RE: LIQUOR LICENSE APPLICATION – SERIES 7 person to person transfer for “Brandy’s”

On June 9, 2014, I initiated an investigation into an application for a series 7 (beer and wine bar) person to person transfer. The liquor license application has been filed by Jamie Drayton and Kelsey Drayton the new owners of Brandy’s Restaurant. Brandy’s is located at 1500 E. Cedar #40 in Flagstaff. Brandy’s Restaurant and its liquor license were recently purchased by Jamie and Kelsey Drayton. The series 7 license being applied for is #07030084.

I conducted a query through local systems and public access on Jamie Drayton and Kelsey Drayton. I found no derogatory records. I spoke with Jamie who stated she and Kelsey purchased the restaurant and the series 7 license in April and plan to run the restaurant as it has in the past. Jamie Drayton and Kelsey Drayton have taken the mandatory liquor law training courses and provided proof. No liquor law violations could be located for Jamie Drayton and Kelsey Drayton.

As a result of this investigation, I can find no reason to oppose this series 12 liquor license application. Recommendation to Council would be for approval.



Planning and Development Services Memorandum

June 7, 2014

TO: Stacy Saltzburg, Deputy City Clerk

THROUGH: Roger E. Eastman, AICP, Comprehensive Planning and Code Administrator

FROM: Tom Boughner, Code Compliance Mgr.

RE: Application for Liquor License #07030084
1500 East Cedar Avenue #40, Flagstaff, Arizona 86004
Assessor's Parcel Number P-019-05-081A
Kelsey Justin Drayton on behalf of Brandy's Restaurant and Bakery

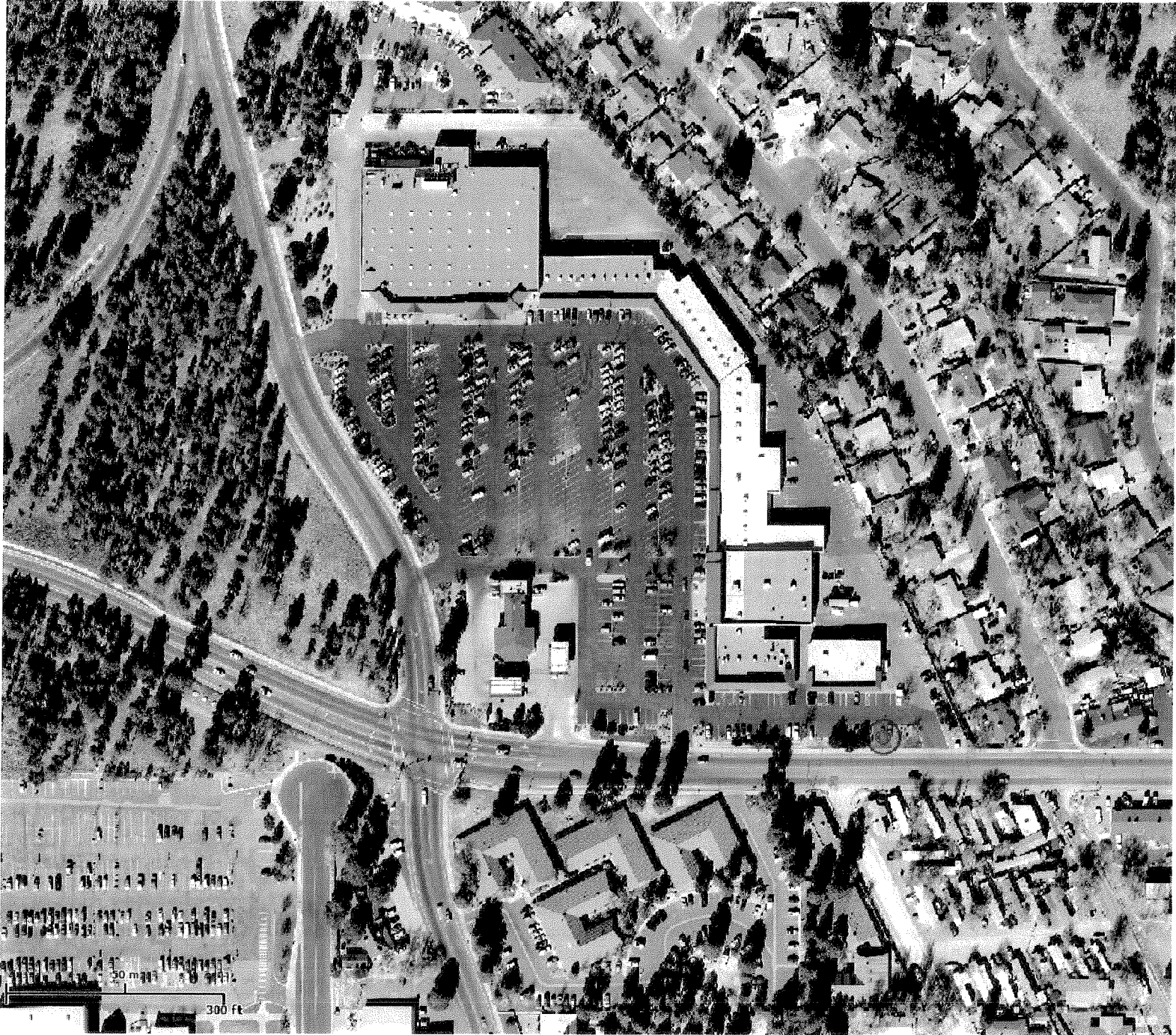
This application is a request for a Series #7 Restaurant, Person to Person Transfer. From Kelsey Justin Drayton on behalf of Brandy's Restaurant, located in the Community Commercial (CC) district. This district allows for restaurant beer and wine sales.

There are no active Zoning Code violations associated with Kelsey Drayton or Brandy's Restaurant and Bakery at this time.

This liquor license is recommended for approval.

City of Flagstaff Web Map

Brandy's



Sat Jun 7 2014 12:31:25 PM.

Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

Date: June 04, 2014

Re: Series 7 Liquor License – Person Transfer –Brandy's Restaurant & Bakery

Drayton Inc DBA Brandy's Restaurant and Bakery with Kelsey Drayton as its President is licensed with the City of Flagstaff for the Sales Tax purposes. They are current in their tax returns filing and are in good standing with the Sales Tax Section.

/liquor licenses/Brandys.doc

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, Deputy City Clerk
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Action on Liquor License Application: Jared Repinski, "Alpha Omega Greek Cuisine", 1580 E. Route 66., Series 12 (restaurant), New License.

RECOMMENDED ACTION:

Hold the Public Hearing

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Policy Decision or Reason for Action:

Jared Repinski is the agent for a new Series 12 (restaurant) liquor license for Alpha Omega Greek Cuisine.

Financial Impact:

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

Connection to Council Goal:

Effective governance (Regulatory action)

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Background/History:

An application for a new Series 12 liquor license was received from Jared Repinski for Alpha Omega Greek Cuisine.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Tom Boughner, Code Compliance Manager resulted in no active code violations being reported.

Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in compliance with the tax and licensing requirements of the City.

Key Considerations:

Because the application is for a new license, consideration may be given to both the location and the applicant's personal qualifications.

A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

The deadline for issuing a recommendation on this application is July 4, 2014.

The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government; and the State does not require a geological map or list of licenses in the vicinity for any license series.

Expanded Financial Considerations:

This business will contribute to the tax base of the community.

Community Involvement:

The application was properly posted on June 3, 2014.

No written protests have been received to date.

Expanded Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Attachments: [Alpha Omega - Letter to Applicant](#)
 [Hearing Procedures](#)
 [Series 12 Description](#)
 [Alpha Omega - PD Memo](#)
 [Alpha Omega - Code Memo](#)
 [Alpha Omega - Tax Memo](#)

Form Review

Form Started By: Stacy Saltzburg

Started On: 06/19/2014 12:39 PM

Final Approval Date: 06/19/2014

OFFICE OF THE CITY CLERK

June 19, 2014

Alpha Omega Greek Cuisine
Attn: Jared Repinski
P.O. Box 6252
Chandler, AZ 85246

Dear Mr. Repinski:

Your application for a Series 12 new liquor license for Alpha Omega Greek Cuisine at 1580 E. Route 66, was posted on June 3, 2014. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, July 1, 2014 which begins at 4:00 p.m.**

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application is set to expire on June 23, 2014 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure



City of Flagstaff

Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. The presiding officer will then close the public hearing.
8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

R19-1-702. Determining Whether to Grant a License for a Certain Location

- A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
 2. Number and types of licenses within one mile of the proposed premises;
 3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
 4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
 5. Residential and commercial population density within one mile of the proposed premises;
 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
 7. Effect on vehicular traffic within one mile of the proposed premises;
 8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
 9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
 10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
 11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
 12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B. This Section is authorized by A.R.S. § 4-201(I).

License Types: Series 12 Restaurant License

Non-transferable

On-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

PURPOSE:

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:

An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept **DELIVERY** of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Bar, beer and wine bar, and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

MEMORANDUM

Memo # 14-050-01

TO: Chief Kevin Treadway

FROM: Sgt. Matt Wright

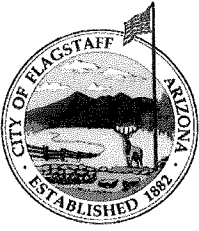
DATE: June 10, 2014

RE: LIQUOR LICENSE APPLICATION – SERIES 12- FOR “Alpha Omega Greek Cuisine”

On June 10, 2014, I initiated an investigation into an application for a series 12 (restaurant) liquor license filed by Jared Repinski (Agent) on behalf of Alpha Omega Greek Cuisine. The restaurant is located at 1580 E. Route 66 in Flagstaff. The new owners Georgios Alexandros Tsakiris and Martha Tsakiris recently purchased the restaurant that was operating with a series 12. Martha was listed on the previous series 12 license as a manager. The ownership change requires the issuance of a new series 12 license in order to reflect the correct names of the owners on the license. This is an application for a new series 12 license #12033363.

I conducted a query through local systems and public access on Jared Repinski, Georgios Alexandros Tsakiris and Martha Tsakiris and no recent derogatory records were found. Georgios Alexandros Tsakiris and Martha Tsakiris have attended the mandatory liquor law training course and provided proof. No liquor law violations could be located for Alpha Omega Greek Cuisine.

As a result of this investigation, I can find no reason to oppose this series 12 liquor license application. Recommendation to Council would be for approval.



Planning and Development Services Memorandum

June 7, 2014

TO: Stacy Saltzburg, Deputy City Clerk

THROUGH: Roger E. Eastman, AICP, Comprehensive Planning and Code Administrator

FROM: Tom Boughner, Code Compliance Mgr.

RE: Application for Liquor License #12033363
1580 East Route 66, Flagstaff, Arizona 86001
Assessor's Parcel Number P-106-01-0003
Jared Repinski on behalf of Alpha Omega Greek Cuisine

This application is a request for a Series #12 New License (Restaurant). This is a new license request from Jared Repinski on behalf of Alpha Omega Greek Cuisine, located in the Highway Commercial (HC) district. This district allows for liquor sales in restaurants.

There are no active Zoning Code violations associated with Mr. Repinski or the restaurant at this time.

This liquor license is recommended for approval.

City of Flagstaff Web Map

Western Hills



Sat Jun 7 2014 12:08:38 PM.

Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

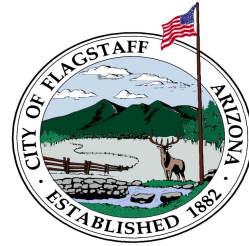
Date: June 04, 2014

Re: Series 12 Liquor License – New License – Alpha Omega Greek Cuisine

Alexandros, LLC DBA Alpha Omega Greek Cuisine with Tsakiris Georgios Alexandros as its Member is licensed with the City of Flagstaff for the Sales Tax purposes. They are current in their tax returns filing and are in good standing with the Sales Tax Section.

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, Deputy City Clerk
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Action on Liquor License Application: Donald Grosvenor, "Nadli", 7 N. San Francisco St., Series 12 (restaurant), New License.

RECOMMENDED ACTION:

Hold the Public Hearing

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Policy Decision or Reason for Action:

Donald Grosvenor is the agent for a new Series 12 (restaurant) liquor license for Nadli.

Financial Impact:

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

Connection to Council Goal:

Effective governance (Regulatory action)

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Background/History:

An application for a new Series 12 liquor license was received from Donald Grosvenor for Nadli.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Tom Boughner, Code Compliance Manager resulted in no active code violations being reported.

Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in compliance with the tax and licensing requirements of the City.

Key Considerations:

Because the application is for a new license, consideration may be given to both the location and the applicant's personal qualifications.

A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

The deadline for issuing a recommendation on this application is July 2, 2014.

The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government; and the State does not require a geological map or list of licenses in the vicinity for any license series.

Expanded Financial Considerations:

This business will contribute to the tax base of the community.

Community Involvement:

The application was properly posted on June 5, 2014.

No written protests have been received to date.

Expanded Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Attachments: [Nadli - Letter to Applicant](#)
 [Hearing Procedures](#)
 [Series 12 Description](#)
 [Nadli - PD Memo](#)
 [Nadli - Code Memo](#)
 [Nadli - Tax Memo](#)

Form Started By: Stacy Saltzburg

Started On: 06/19/2014 12:53 PM

Final Approval Date: 06/19/2014

OFFICE OF THE CITY CLERK

June 19, 2014

Nadli
Attn: Donald Grosvenor
4009 N. Goodwin Cir.
Flagstaff, AZ 86004

Dear Mr. Grosvenor:

Your application for a Series 12 new liquor license for Nadli at 7 N. San Francisco St., was posted on June 5, 2014. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, July 1, 2014 which begins at 4:00 p.m.**

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application is set to expire on June 25, 2014 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure



City of Flagstaff

Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. The presiding officer will then close the public hearing.
8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

R19-1-702. Determining Whether to Grant a License for a Certain Location

- A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
 2. Number and types of licenses within one mile of the proposed premises;
 3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
 4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
 5. Residential and commercial population density within one mile of the proposed premises;
 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
 7. Effect on vehicular traffic within one mile of the proposed premises;
 8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
 9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
 10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
 11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
 12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B. This Section is authorized by A.R.S. § 4-201(I).

License Types: Series 12 Restaurant License

Non-transferable

On-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

PURPOSE:

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:

An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept **DELIVERY** of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Bar, beer and wine bar, and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

MEMORANDUM

Memo # 14-051-01

TO: Chief Kevin Treadway

FROM: Sgt. Matt Wright

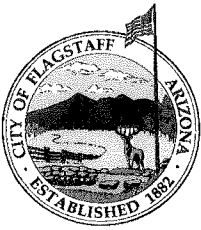
DATE: June 9, 2014

RE: LIQUOR LICENSE APPLICATION – SERIES 12- FOR “Nadli”

On June 9, 2014, I initiated an investigation into an application for a series 12 (restaurant) liquor license filed by Donald Grosvenor (Agent) and owner Seogil Kang of Nadli Korean Cuisine. Nadli Korean Cuisine is located at 7 N. San Francisco in Flagstaff. Nadli Korean Cuisine was recently purchased by Seogil Kang from the previous owners who also operated the previous business with a series 12 license. This is an application for the new series 12 license #12033360. The old license will become inactive upon issuance of the new license.

I conducted a query through local systems and public access on Donald Grosvenor (Agent) and (Controlling Person) Seogil Kang. I found no derogatory records. I spoke with Donald who stated he is only the agent on the license for administrative purposes only and Seogil is the owner who will be operating the day to day operations. Seogil has taken the mandatory liquor law training course and provided proof. No liquor law violations could be located for Seogil.

As a result of this investigation, I can find no reason to oppose this series 12 liquor license application. Recommendation to Council would be for approval.



Planning and Development Services Memorandum

June 7, 2014

TO: Stacy Saltzburg, Deputy City Clerk

THROUGH: Roger E. Eastman, AICP, Comprehensive Planning and Code Administrator

FROM: Tom Boughner, Code Compliance Mgr.

RE: Application for Liquor License #12033360
7 North San Francisco Street, Flagstaff, Arizona 86001
Assessor's Parcel Number P-100-20-001B
Donald Grosvenor on behalf of Nadli Restaurant

This application is a request for a new Series #12, Restaurant license from Donald Grosvenor on behalf of Nadli, located in the Central Business (CB) District. This district allows for restaurant beer and wine sales.

There are no active Zoning Code violations associated with Donald Grosvenor or Nadli at this time.

This liquor license is recommended for approval.

City of Flagstaff Web Map

Nadli



Sat Jun 7 2014 01:06:20 PM.

Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

Date: June 19, 2014

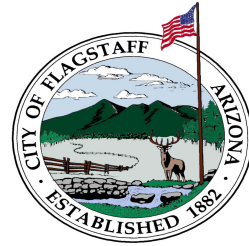
Re: Series 12 Liquor License – New License –Nadli

JK Foods Inc DBA Nadli is licensed with the City of Flagstaff for the Sales Tax purposes. They are current in their tax returns filing and are in good standing with the Sales Tax Section.

/liquor licenses/Nadli.doc

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, Deputy City Clerk
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Action on Liquor License Application: Andrea Gibson, "Air Cafe", 6200 S. Pulliam Dr., #109, Series 12 (restaurant), New License.

RECOMMENDED ACTION:

Hold the Public Hearing

The City Council has the option to:

- 1) Forward the application to the State with a recommendation for approval;
- 2) Forward the application to the State with no recommendation; or
- 3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Policy Decision or Reason for Action:

Andrea Gibson is the agent for a new Series 12 (restaurant) liquor license for Air Cafe.

Financial Impact:

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

Connection to Council Goal:

Effective governance (Regulatory action)

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Background/History:

An application for a new Series 12 liquor license was received from Andrea Gibson for Air Cafe.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Tom Boughner, Code Compliance Manager resulted in no active code violations being reported.

Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in compliance with the tax and licensing requirements of the City.

Key Considerations:

Because the application is for a new license, consideration may be given to both the location and the applicant's personal qualifications.

A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

The deadline for issuing a recommendation on this application is July 2, 2014.

The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government; and the State does not require a geological map or list of licenses in the vicinity for any license series.

Expanded Financial Considerations:

This business will contribute to the tax base of the community.

Community Involvement:

The application was properly posted on June 3, 2014.

No written protests have been received to date.

Expanded Options and Alternatives:

- 1) Table the item if additional information or time is needed.
- 2) Make no recommendation.
- 3) Forward the application to the State with a recommendation for approval.
- 4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Attachments: [Air Cafe - Letter to Applicant](#)
 [Hearing Procedures](#)
 [Series 12 Description](#)
 [Air Cafe - PD Memo](#)
 [Air Cafe - Code Memo](#)
 [Air Cafe - Tax Memo](#)

Form Started By: Stacy Saltzburg

Started On: 06/19/2014 12:47 PM

Final Approval Date: 06/19/2014

OFFICE OF THE CITY CLERK

June 19, 2014

Air Cafe
Attn: Andrea Gibson
6200 S. Pulliam Dr., Suite 109
Flagstaff, AZ 86001

Dear Ms. Gibson:

Your application for a Series 12 new liquor license for Air Café at 6200 S. Pulliam Dr., Suite 109, was posted on June 3, 2014. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, July 1, 2014 which begins at 4:00 p.m.**

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application is set to expire on June 23, 2014 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure



City of Flagstaff

Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. The presiding officer will then close the public hearing.
8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

R19-1-702. Determining Whether to Grant a License for a Certain Location

- A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
 2. Number and types of licenses within one mile of the proposed premises;
 3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
 4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
 5. Residential and commercial population density within one mile of the proposed premises;
 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
 7. Effect on vehicular traffic within one mile of the proposed premises;
 8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
 9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
 10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
 11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
 12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B. This Section is authorized by A.R.S. § 4-201(I).

License Types: Series 12 Restaurant License

Non-transferable

On-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

PURPOSE:

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:

An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept **DELIVERY** of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Bar, beer and wine bar, and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

MEMORANDUM

Memo # 14-052-01

TO: Chief Kevin Treadway

FROM: Sgt. Matt Wright

DATE: June 10, 2014

RE: LIQUOR LICENSE APPLICATION – SERIES 12- FOR “Air Cafe” located at 6200 Pulliam Dr #109

On June 10, 2014, I initiated an investigation into an application for a series 12 (restaurant) liquor license filed by Andrea Gibson (Agent) on behalf of Air Cafe. The restaurant is located at 6200 Pulliam Dr., Suite 109, in Flagstaff at Pulliam Airport. Franco LoFranco and Susan Lumsden are the controlling persons listed on the application. Franco is the owner of the restaurant. Franco LoFranco has owned the restaurant and is applying for the new series 12 liquor license, as Andrea Gibson is now the listed agent. The old series 12 license will become inactive once this application is accepted. This is an application for a new series 12 license #12033361.

I conducted a query through local systems and public access on Andrea Gibson, Franco LoFranco and Susan Lumsden and no derogatory records were found. I spoke with Andrea who stated she was the agent on the license for administrative purposes only. I noticed the owners Franco and Susan both live in Canada. I spoke with a representative from the Arizona Department of Liquor License and Control and he confirmed just one of the listed owners or agent has to be a US Citizen for a liquor license to be issued. No liquor law violations could be located for the business.

As a result of this investigation, I can find no reason to oppose this series 12 liquor license application. Recommendation to Council would be for approval.



Planning and Development Services Memorandum

June 7, 2014

TO: Stacy Saltzburg, Deputy City Clerk

THROUGH: Roger E. Eastman, AICP, Comprehensive Planning and Code Administrator

FROM: Tom Boughner, Code Compliance Mgr.

RE: Application for Liquor License #12033361
6200 South Pulliam Dr. #109, Flagstaff, Arizona 86001
Assessor's Parcel Number P-116-61-004
Andrea Dale Gibson on behalf of Air Café Incorporated

This application is a request for a Series #12 Restaurant, new license from Andrea Dale Gibson on behalf of Air Café, located in the Airport, Public Facility (PF) district. This district allows for restaurant beer and wine sales.

There are no active Zoning Code violations associated with Andrea Gibson or Air Café at this time.

This liquor license is recommended for approval.

City of Flagstaff Web Map

Air Cafe



Sat Jun 7 2014 12:47:08 PM.

Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

Date: June 04, 2014

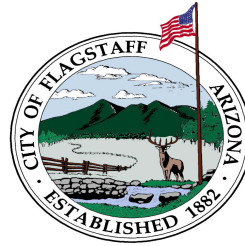
Re: Series 12 Liquor License – New License –Air Cafe

Air Cafe Inc with Franco Lofranco as its President/CEO is licensed with the City of Flagstaff for the Sales Tax purposes. They are current in their tax returns filing and are in good standing with the Sales Tax Section.

/liquor licenses/Air Café 2.doc

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Dan Musselman, Deputy Police Chief (Support Services)
Co-Submitter: Candice Schroeder CPPB
Date: 06/17/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Approval of Sole Source Purchase: Consideration authorizing the purchase of Axon Flex body cameras manufactured by Taser International in the amount of \$117,000 for the Flagstaff Police Department

RECOMMENDED ACTION:

Approve the funding of \$117,000 to Taser International for the Axon Flex camera program to outfit patrol officers. The initial amount of \$48, 628.10, will allow for the purchase of 50 Axon Flex body cameras with mounting, charging, and docking accessories and professional services. The costs for evidence storage and retention will be \$12,446.16 annually, or \$62,230.80 for the five year contract. The total amount of this request (\$117,000) will cover the remaining tax and shipping.

Policy Decision or Reason for Action:

Increases in technology have made it possible to outfit officers with body cameras. Some of the benefits of using body cameras include:

- reducing use of force incidents and citizen complaints, as well as reducing the time spent investigating them.
- providing an accurate point of view recording of incidents and crime scenes.
- capturing valuable statements by victims, witnesses and suspects to aid in prosecution.
- giving officers an opportunity to review incidents to enhance their reports and their testimony in court.
- allowing supervisors to review officer interactions to provide training in better communication techniques.

Financial Impact:

Upfront costs for the capital purchase of the camera and mounting equipment: \$46,693.10.
Cost for Taser to set up equipment and train the trainer on use, review and docking: \$1,935.00
Year one evidence.com storage: \$12,446.16
Year two evidence.com storage: \$12,446.16
Year three evidence.com storage: \$12,446.16
Year four evidence.com storage: \$12,446.16
Year five evidence.com storage: \$12,446.16
Estimated shipping costs: \$46.74
Estimated tax: \$6,094.36
Total allocation request: \$117,000.00

Connection to Council Goal:

Effective Governance (Public Safety)

The Axon Flex camera system has many benefits to the individual officer and the police department. The use of this technology will help protect officers and the department from false accusations of wrong doing. It will benefit the community in the long run through better prosecution of crimes.

Has There Been Previous Council Decision on This:

This will be the first opportunity for the Police Department to utilize body cameras.

Options and Alternatives:

1. The Council may approve the contract with Taser International to purchase Axon Flex body cameras.
2. The Council may choose to reject the contract.

Background/History:

The Flagstaff Police Department is committed to the belief that body camera video is an important and valuable tool for law enforcement. The cameras provide audio-video documentation of a police officer's investigative and enforcement activities from the perspective of the officer. The use of on-officer video is expected to result in greater transparency, more effective prosecution, and more effective investigations of allegations of excessive use of force, misconduct or racial profiling.

Some officers who have recognized the protective function of audio or video recording have voluntarily purchased devices of varying types and made use of them in the field. Audio or video recordings of investigative or enforcement actions are evidence, and subject to rules of disclosure. It is in the best interest of justice that the Department standardizes the body cameras in use as well as evidence collection and storage policy and procedure.

Having officers wear body cameras allows complete incidents to be viewed from the prospective of the individual officer. This complete video may help protect the Department if a person using a smartphone posts video clips which are scrutinizing officer conduct. The Police Department conducted a pilot program which was well received by the volunteer officers who utilized the cameras. A couple falsely made citizen complaints were easily unfounded upon video review by supervisors.

Key Considerations:

After speaking with other agencies, and reviewing the research, and conducting an internal pilot program, we believe the Axon Flex body camera is the best system on the market with the features and capabilities no other vendor can provide. Therefore, Taser International is a sole source vendor.

Benefits of the Axon Flex System as compared to other systems include:

- a higher capacity recording life (12 hours).
- the multiple point of view mounting options.
- pre-event recording (30 seconds).
- low light and night mode capability.

The evidence management system (Evidence.com), allows for easy download and categorization of incidents, easy retrieval for disclosure or supervisory oversight, and allows departments to set up automatic retention periods in line with state law.

Expanded Financial Considerations:

During the three day budget retreat the Police Department requested funding for the body camera program. Our original plan was to purchase 60 body cameras for an amount of \$33,000 and three years of evidence storage for \$84,000, for the total request of \$117,000. City Council was supportive of this funding and budgeted it in that way for us to move forward (\$33,000 for cameras and \$84,000 for evidence storage/maintenance) at the budget retreat.

During the budget retreat the Police Department had just started a pilot program, after receiving three body cameras and three Axon Flex cameras to test. The body cameras have a basic clip attached to them and can be positioned on the officers clothing or belts only, limiting the viewpoint of the camera when recording. The Axon Flex is more versatile and has multiple mounting options. Most importantly the Axon Flex has mounting options on eyewear and over the ears, which allows the viewer to see exactly what the officer was viewing when the camera was on. This viewpoint is much more beneficial to the officers. Police Department leadership spoke at length with the pilot program officers at the end of the pilot program. They were overwhelming in support of the Axon Flex cameras system over the basic body cameras, due to the officer's point of view benefit. The Axon Flex cameras are more expensive at \$499 apiece versus the body cameras at \$299. We felt it was in the best interest of the department and the city to explore this Axon Flex option.

Purchasing has been able to secure a quote for this program to include 50 Axon Flex cameras (\$47,000) and five years of evidence storage instead of three (\$62,230.80). The 50 cameras will outfit the majority of our patrol officers. Those working special details (Airport, school resource officers, will not be assigned cameras). The department may be able to secure a grant at a later time to purchase more cameras. We were able to successfully reduce our evidence storage cost by sharing accounts among those who will have a need to review the video recordings. The costs for evidence storage and retention will be \$12,446.16 annually, or \$62,230.80 for the five year contract. The cost for the Axon Flex cameras (\$47,000), five years storage (\$62,230.80), along with professional services, shipping and tax makes the total amount of this request (\$117,000).

Community Benefits and Considerations:

The Flagstaff Police Department values customer service and citizen trust. Body camera video will aid in prosecution, accurately documenting victim and witness statements as well as an objective recording of the crime scene. The use of body cameras allows us to be more transparent in our interactions with the public. The demeanor of both officers and suspects is less contentious when both parties are aware they are being recorded. As a risk management tool, the video may alleviate false accusations of wrong doing.

Community Involvement:

The law abiding citizens of our community deserve and expect our streets and neighborhoods to be places where they feel safe. The body cameras are another tool to ensure we are policing correctly, constitutionally, and consistently. The audio and video recording from the body cameras will increase our ability to review probable cause for arrests, view officer and suspect interactions, provide feedback for officers in training, and better collect evidence for investigation and prosecution.

Attachments: [Axon Flex Quote](#)
 [Axon Flex Sole Source Documentation](#)

Form Review

Inbox	Reviewed By	Date
Deputy Police Chief - Musselman (Originator)	Dan Musselman	06/18/2014 07:47 AM
Purchasing Director	Rick Compau	06/18/2014 09:36 AM
Finance Director	Rick Tadder	06/19/2014 03:43 PM
Management Services Director	Barbara Goodrich	06/19/2014 04:00 PM
Legal Assistant	Vicki Baker	06/19/2014 04:56 PM

Assistant City Attorney-Prosecution
Deputy Police Chief - Musselman (Originator)
Purchasing Director
Management Services Director
Legal Assistant

Stacy Saltzburg
Dan Musselman
Rick Compau
Barbara Goodrich
Vicki Baker

06/20/2014 09:36 AM
06/20/2014 10:17 AM
06/20/2014 10:43 AM
06/20/2014 12:13 PM
06/20/2014 12:39 PM
Started On: 06/17/2014 03:21 PM

Form Started By: Dan Musselman

Final Approval Date: 06/20/2014

TASER International

Protect Truth

17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737
Fax: 480-991-0791



Dan Musselman
(928) 679-4068
dmusselman@coconino.az.gov

Quotation

Quote: Q-13523-2
Date: 6/16/2014 12:25 PM
Quote Expiration: 7/11/2014
Contract Start Date*: 8/1/2014
Contract Term: 5 years

Bill To:

Flagstaff Police Dept. - AZ
911 E. Sawmill Road
Flagstaff, AZ 86001
US

Ship To:

Dan Musselman
Flagstaff Police Dept. - AZ
911 E. Sawmill Road
Flagstaff, AZ 86001
US

SALESPERSON	PHONE	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Andrew Mellen	800-978-2737	amellen@taser.com	Fedex - Ground	Net 30

*Note this will vary based on the shipment date of the product.

Year 1: Hardware -- Due Net 30

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
50	73030	CAMERA SYSTEM, AXON FLEX	499.95	USD 24,997.50	USD 2,522.25	USD 22,475.25
50	73033	AXON FLEX KIT 2 YEAR EXTENDED WARRANTY	299.95	USD 14,997.50	USD 487.50	USD 14,510.00
25	73009	COLLAR/VERSATILE/CAP MOUNT, FLEX		USD 0.00	USD 0.00	USD 0.00
25	73010	LOWRIDER, HEADBAND, FLEX		USD 0.00	USD 0.00	USD 0.00
50	73008	OAKLEY, CLIP, FLEX		USD 0.00	USD 0.00	USD 0.00
50	73036	CONTROLLER, HOLSTER, BELT CLIPS, FLEX		USD 0.00	USD 0.00	USD 0.00
9	70026	EVIDENCE.COM, DOCK, SIX CAMERA BAYS +HUB	1495.00	USD 13,455.00	USD 8,100.00	USD 5,355.00
9	70030	EXTENDED WARRANTY, 2 YEAR,EVIDENCE.COM DOCK, HUB	79.95	USD 719.55	USD 23.40	USD 696.15
9	70032	EXTENDED WARRANTY, 2 YEAR, EVIDENCE.COM DOCK, 6 BAY	419.95	USD 3,779.55	USD 122.85	USD 3,656.70
Year 1: Hardware -- Due Net 30 Total:						USD 57,949.10
Year 1: Hardware -- Due Net 30 Net Price:						USD 46,693.10

Year 1: Professional Services -- Due Net 30

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
1	85014	AXON 1-DAY SERVICE	2000.00	USD 2,000.00	USD 65.00	USD 1,935.00
Year 1: Professional Services -- Due Net 30 Total:						USD 2,000.00
Year 1: Professional Services -- Due Net 30 Net Price:						USD 1,935.00

Year 1: Evidence.com -- Due Net 30

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
50	87101	BASIC EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	119.40	USD 5,970.00	USD 194.00	USD 5,776.00
250	85101	INCLUDED STORAGE, 5 GBS PER BASIC LICENSE		USD 0.00	USD 0.00	USD 0.00
6	88101	STANDARD EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	300.00	USD 1,800.00	USD 58.50	USD 1,741.50
60	85201	INCLUDED STORAGE, 10 GBS PER STANDARD LICENSE		USD 0.00	USD 0.00	USD 0.00
4	89101	PROFESSIONAL EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	468.00	USD 1,872.00	USD 60.84	USD 1,811.16
60	85301	INCLUDED STORAGE, 15 GBS PER PRO LICENSE		USD 0.00	USD 0.00	USD 0.00
2,150	85035	EVIDENCE.COM STORAGE	\$1.50 / GB per year	USD 3,225.00	USD 107.50	USD 3,117.50
Year 1: Evidence.com -- Due Net 30 Total:						USD 12,867.00
Year 1: Evidence.com -- Due Net 30 Net Price:						USD 12,446.16

Year 2: Evidence.com -- Due 2015

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
50	87201	BASIC EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	119.40	USD 5,970.00	USD 194.00	USD 5,776.00
250	85101	INCLUDED STORAGE, 5 GBS PER BASIC LICENSE		USD 0.00	USD 0.00	USD 0.00
6	88201	STANDARD EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	300.00	USD 1,800.00	USD 58.50	USD 1,741.50
60	85201	INCLUDED STORAGE, 10 GBS PER STANDARD LICENSE		USD 0.00	USD 0.00	USD 0.00
4	89201	PROFESSIONAL EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	468.00	USD 1,872.00	USD 60.84	USD 1,811.16
60	85301	INCLUDED STORAGE, 15 GBS PER PRO LICENSE		USD 0.00	USD 0.00	USD 0.00
2,150	85035	EVIDENCE.COM STORAGE	\$1.50 / GB per year	USD 3,225.00	USD 107.50	USD 3,117.50
Year 2: Evidence.com -- Due 2015 Total:						USD 12,867.00
Year 2: Evidence.com -- Due 2015 Net Price:						USD 12,446.16

Year 3: Evidence.com -- Due 2016

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
50	87301	BASIC EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	119.40	USD 5,970.00	USD 194.00	USD 5,776.00
250	85101	INCLUDED STORAGE, 5 GBS PER BASIC LICENSE		USD 0.00	USD 0.00	USD 0.00
6	88301	STANDARD EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	300.00	USD 1,800.00	USD 58.50	USD 1,741.50
60	85201	INCLUDED STORAGE, 10 GBS PER STANDARD LICENSE		USD 0.00	USD 0.00	USD 0.00
4	89301	PROFESSIONAL EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	468.00	USD 1,872.00	USD 60.84	USD 1,811.16
60	85301	INCLUDED STORAGE, 15 GBS PER PRO LICENSE		USD 0.00	USD 0.00	USD 0.00
2,150	85035	EVIDENCE.COM STORAGE	\$1.50 / GB per year	USD 3,225.00	USD 107.50	USD 3,117.50
Year 3: Evidence.com -- Due 2016 Total:						USD 12,867.00
Year 3: Evidence.com -- Due 2016 Net Price:						USD 12,446.16

Year 4: Evidence.com -- Due 2017

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
50	87401	BASIC EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	119.40	USD 5,970.00	USD 194.00	USD 5,776.00
250	85101	INCLUDED STORAGE, 5 GBS PER BASIC LICENSE		USD 0.00	USD 0.00	USD 0.00
6	88401	STANDARD EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	300.00	USD 1,800.00	USD 58.50	USD 1,741.50
60	85201	INCLUDED STORAGE, 10 GBS PER STANDARD LICENSE		USD 0.00	USD 0.00	USD 0.00
4	89401	PROFESSIONAL EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	468.00	USD 1,872.00	USD 60.84	USD 1,811.16
60	85301	INCLUDED STORAGE, 15 GBS PER PRO LICENSE		USD 0.00	USD 0.00	USD 0.00
2,150	85035	EVIDENCE.COM STORAGE	\$1.50 / GB per year	USD 3,225.00	USD 107.50	USD 3,117.50
Year 4: Evidence.com -- Due 2017 Total:						USD 12,867.00
Year 4: Evidence.com -- Due 2017 Net Price:						USD 12,446.16

Year 5: Evidence.com -- Due 2018

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
50	87501	BASIC EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	119.40	USD 5,970.00	USD 194.00	USD 5,776.00
250	85101	INCLUDED STORAGE, 5 GBS PER BASIC LICENSE		USD 0.00	USD 0.00	USD 0.00
6	88501	STANDARD EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	300.00	USD 1,800.00	USD 58.50	USD 1,741.50
60	85201	INCLUDED STORAGE, 10 GBS PER STANDARD LICENSE		USD 0.00	USD 0.00	USD 0.00
4	89501	PROFESSIONAL EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	468.00	USD 1,872.00	USD 60.84	USD 1,811.16

QTY	ITEM #	DESCRIPTION	UNIT PRICE	Total Before Discount	DISC (\$)	NET TOTAL
60	85301	INCLUDED STORAGE, 15 GBS PER PRO LICENSE		USD 0.00	USD 0.00	USD 0.00
2,150	85035	EVIDENCE.COM STORAGE	\$1.50 / GB per year	USD 3,225.00	USD 107.50	USD 3,117.50

Year 5: Evidence.com -- Due 2018 Total:	USD 12,867.00
Year 5: Evidence.com -- Due 2018 Net Price:	USD 12,446.16

Subtotal	USD 110,858.90
Estimated Shipping Cost	USD 46.74
Estimated Tax	USD 6,094.36
Grand Total	USD 117,000.00

Complimentary Evidence.com Tier Upgrade Through 12/31/2014

This quote contains a purchase of either the Basic or Standard Evidence.com license. You will temporarily receive the features available with the Professional license for the Basic and Standard licenses purchased until December 31, 2014. This is a free upgrade to your account so you can enjoy all the benefits of our most feature rich license tier. In January 2015 you will be prompted to select which users you would like to go in which tiers. This will have no impact on uploaded data.

**TASER International, Inc.'s Sales Terms and Conditions
for Direct Sales to End User Purchasers**

By signing this Quote, you are entering into a contract and you certify that you have read and agree to the provisions set forth in this Quote and TASER's current Sales Terms and Conditions for Direct Sales to End User Purchasers or, in the alternative, TASER's current Sales Terms and Conditions for Direct Sales to End User Purchasers for Sales with Financing if your purchase involves financing with TASER. If your purchase includes the TASER Assurance Plan (TAP), then you are also agreeing to TASER's current Sales Terms and Conditions for the AXON Flex™ and AXON Body™ Cameras TASER Assurance Plan (U.S. Only) and/or Sales Terms and Conditions for the X2/X26P and TASER CAM HD Recorder TASER Assurance Plan (U.S. Only), as applicable to your product purchase. All of the sales terms and conditions, as well as, the TAP terms and conditions are posted at <http://www.taser.com/sales-terms-and-conditions>. If your purchase includes AXON hardware and/or EVIDENCE.com services you are also agreeing to the terms in the EVIDENCE.com Master Service Agreement posted at <http://www.taser.com/serviceagreement14>. If your purchase includes Professional Services, you are also agreeing to the terms in the Professional Service Agreement posted at http://www.taser.com/images/support/downloads/downloads/evidence_materials/Professional_Services_Agreement.pdf. You represent that you are lawfully able to enter into contracts and if you are entering into this agreement for an entity, such as the company, municipality, or government agency you work for, you represent to TASER that you have legal authority to bind that entity. If you do not have this authority, do not sign this Quote.

Signature: _____ **Date:** _____
Name (Print): _____ **Title:** _____
PO# (if needed): _____

Please sign and email to Andrew Mellen at amellen@taser.com or fax to 480-991-0791

THANK YOU FOR YOUR BUSINESS!

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17800 N. 85th St., Scottsdale, Arizona 85255 * 480-991-0797 * Fax 480-991-0791 * www.TASER.com

April 17, 2014

To: United States state, local and municipal law enforcement agencies

Re: Sole Source Letter for TASER International, Inc.'s AXON® brand products and EVIDENCE.com services

A sole source justification exists because the following goods and services required to satisfy the agency's needs are only manufactured and available for purchase from TASER International.

TASER Digital Evidence Solution Description

AXON flex™ Camera (DVR)

- Video playback on mobile devices in the field via Bluetooth pairing
- Retina Low Light capability sensitive to less than 1 lux
- Audio tones to alert user of usage
- High, medium, and low quality recording available (customizable by the agency)
- 30-second buffering period to record footage before pressing record button
- Multiple mounting options using magnetic attachment: head, collar, shoulder, helmet, ball cap, car dash, and Oakley sunglass mounts available

AXON flex Controller

- 12+ hours of battery operation per shift (even in recording mode)
- LED lights to show current battery level and operating mode
- Tactical beveled button design for use in pocket

AXON body Video Camera

- Video playback on mobile devices in the field via Bluetooth pairing
- Retina Low Light capability sensitive to less than 1 lux
- Audio tones to alert user of usage
- High, medium, and low quality recording available (customizable by the agency)
- 30-second buffering period to record footage before pressing record button
- Multiple mounting options using holster attachment: shirt, vest, belt, and dash mounts available
- 12+ hours of battery operation per shift (even in recording mode)
- LED lights to show current battery level and operating mode
- Tactical beveled button design for use in pocket
- 130-degree lens

EVIDENCE.com Dock

- Automated docking station uploads to EVIDENCE.com services through Internet connection
- No computer necessary for secure upload to EVIDENCE.com
- Charges and uploads simultaneously

EVIDENCE.com Data Management System

- Hosted data management system that allows agencies to seamlessly manage and share digital evidence
- No local storage infrastructure or software needed
- Controlled access to evidence: pre-defined roles and permissions, pre-defined individuals, and passwords (these options are all completely customizable by the agency)
- Automated category-based evidence retention policies assists with efficient database management
- Ability to recover deleted evidence within 7 days of deletion
- Stores and supports all major digital file types: .mpeg, .doc, .pdf, .jpeg, etc.
- Requires NO proprietary file formats

- Ability to upload files directly from the computer to EVIDENCE.com via an Internet browser
- 256-bit AES encryption in storage and transport
- Storage includes geo-dispersed redundant back-up
- Automatically tracks all system and user activity
- Generates real-time Audit Reports in PDF format to show chain-of-custody for evidence
- Case creation for multiple evidence files
- Easily create tags, markers and clips
- 11 indexing fields
- 7 searchable fields in addition to 5 category-based fields

EVIDENCE Mobile Application

- Free app for iOS and Android mobile devices
- Allows users to capture videos, audio recordings, and photos and upload these files to their EVIDENCE.com account from the field
- Allows adding metadata to these files, such as: Category, Title, Case ID, and GPS data

AXON Mobile Application

- Free app for iOS and Android mobile devices
- Allows user to view the camera feed from a paired AXON body or AXON flex camera in real-time
- Allows for playback of videos stored on a paired AXON body or AXON flex system
- Allows adding meta-data to videos, such as: Category, Title, Case ID, and GPS data

TASER Professional Services

- Dedicated implementation team
- Project management and deployment best practices aid
- Training and train-the-trainer sessions
- Integration services with other systems

TASER Customer Support

- Online and email-based support available 24/7
- Human phone-based support available Monday–Friday 7:00 AM–5:00 PM MST; support is located in Scottsdale, AZ, USA
- Library of webinars available 24/7
- Remote-location troubleshooting

TASER AXON Brand Model Numbers

1. AXON body Camera Model: 73002 (Includes 73078, 73077, 73004)
2. AXON body Camera Mounts:
 - Standard Alligator Clip Holster Model: 73075
 - Mini Alligator Clip Holster Model: 73076
 - Belt Clips Model: 73077
 - Bolted Z-Bracket Holster Model: 73078
 - VELCRO Z-Bracket Holster Model: 73079
 - Pocket Mount Holster Model: 73089
3. AXON body camera full solution kit Model: 73066 (includes several AXON mounts and an iPod touch mobile digital device)
4. AXON flex Kit Model: 73030 (Includes 73000, 73001, 73005, and 73004)
5. AXON flex Controller Model: 73001
6. AXON flex USB Sync Cable/Wall Charger Model: 73004

7. AXON flex Controller Holsters:
 - Standard Uniform Clip Model: 7300
 - Mini Alligator Clip Model: 73035
 - Belt Clips Model: 73036

8. AXON flex Camera Mounts:
 - Clip for Oakley Flak Jacket Glasses Model: 73008
 - Collar/Cap/Versatile Mount Model: 73009
 - Epaulette Mount Model: 73011
 - Helmet Mount Model: 73013
 - Low-rider Headband Medium Model: 73010
 - Low-rider Headband Large Model: 73058
 - Ballistics Vest Mount Model: 73059
 - Ratchet Collar Mount Model: 73088
 - Shoei Ratchet Helmet Mount Model: 73090
 - HJC Ratchet Helmet Mount Model: 73091

9. AXON flex cables:
 - Straight To Right Angle 18" (45.7 cm) Model: 73022
 - Straight To Right Angle 36" (91.4 cm) Model: 73005
 - Straight To Right Angle 48" (122 cm) Model: 73023
 - Straight Angle to Right Angle 36" (91.4 cm) Coiled Model: 73067
 - Straight Angle to Right Angle 48" (122 cm) Coiled Model: 73060

10. EVIDENCE.com Dock Models:
 - EVIDENCE.com Dock – Individual Bay and Core Model: 70023
 - EVIDENCE.com Dock – 6-Bay and Core Model: 70026
 - Core Model: 70027
 - Individual Bay Model: 70028
 - Wall Mount Bracket Assembly Model: 70033

SOLE AUTHORIZED DISTRIBUTOR FOR AXON BRAND PRODUCTS	SOLE AUTHORIZED REPAIR FACILITY FOR AXON BRAND PRODUCTS
TASER International, Inc. 17800 N. 85th Street, Scottsdale, AZ 85255 Phone: 480-905-2000 or 800-978-2737 Fax: 480-991-0791	TASER International, Inc. 17800 N. 85th Street, Scottsdale, AZ 85255 Phone: 480-905-2000 or 800-978-2737 Fax: 480-991-0791


Please contact your local TASER sales representative or call us at 1-800-978-2737 with any questions.

Sincerely,



Jeff Kukowski
 Chief Operating Officer
 TASER International, Inc.

Android is a trademark of Google, Inc. Bluetooth is a trademark of the Bluetooth SIG. Flak Jacket is a trademark of Oakley, Inc. iPod Touch is a trademark of Apple Inc. iOS is a trademark of Cisco. VELCRO is a trademark of Velcro Industries, B.V.

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CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Candace Schroeder, Senior Procurement Specialist
Co-Submitter: Ladd Vagen, Director Info. Tech.
Date: 06/17/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Approval of Payment: Annual Computer Hardware and Software Maintenance and Support Services.

RECOMMENDED ACTION:

- Authorize the payment in the amount of \$562,101.09, plus applicable sales tax, to:
- 1) ERP - Financial Applications - \$151,000.00
 - 2) SHI Software - Microsoft Enterprise Agreement - \$135,000.00
 - 3) Intergraph Public Safety, Inc. - Maintain the map and corresponding DB for system - \$196,428.08
 - 4) SIRSI - Online Library Catalog 4/1-3/31 - \$79,673.01

Policy Decision or Reason for Action:

- Policy Decision or Reason for Action:
 - Annual payments are issued to provide ongoing software licensing support and maintenance as necessary.
 - The attached schedule outlines the anticipated expenditures for fiscal year 2015.
- Decision Points:
 - Annual purchase orders provide for the means to conduct day-to-day activities of the City without delay.

Financial Impact:

- Purchases are budgeted in the department/divisions general administration

Connection to Council Goal:

- Repair, replace and maintain infrastructure - The action is required to assure continual service

Has There Been Previous Council Decision on This:

Yes

Options and Alternatives:

- 1) Approve the recommended action as submitted; 2) Present to Council the hardware and software maintenance support services exceeding the bid threshold on an individual basis.

Background/History:

For the past five years, Purchasing has presented a comprehensive master listing outlining most computer hardware and software maintenance and support services. City staff's recommendation is to receive payment authorization as one action item at the onset of the fiscal year. During the current fiscal year we have expended to date \$559,780.52 to the various vendors as outlined in the attached schedule.

Key Considerations:

Hardware and Software maintenance and support services are being acquired from designated vendors we purchased the computer hardware and software from.

Expanded Financial Considerations:

Ongoing maintenance and support services assure the City the latest product enhancements and technical support that is critical in support of the City's computer infrastructure.

Community Benefits and Considerations:

No

Community Involvement:

Inform.

Council Action:

06/18/2013 - EAB - Approved

Attachments: [FY15 Software Maintenance](#)

Form Review

Inbox	Reviewed By	Date
Information Technology Director	Ladd Vagen	06/17/2014 03:22 PM
Purchasing Director	Rick Compau	06/18/2014 09:01 AM
Finance Director	Rick Tadder	06/19/2014 02:16 PM
Purchasing Director	Rick Compau	06/19/2014 04:12 PM
Legal Assistant	Vicki Baker	06/19/2014 05:23 PM
Deputy City Attorney	Sterling Solomon	06/19/2014 05:54 PM
Management Services Director	Candace Schroeder	06/20/2014 07:28 AM
Senior Procurement Specialist -CS (Originator)	Candace Schroeder	06/20/2014 07:33 AM
Information Technology Director	Stacy Saltzburg	06/20/2014 08:12 AM
Management Services Director	Barbara Goodrich	06/20/2014 08:19 AM
Form Started By: Candace Schroeder		Started On: 06/17/2014 12:26 PM
Final Approval Date: 06/20/2014		

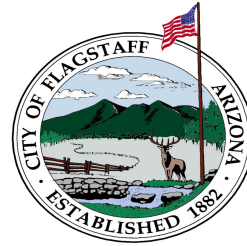
EXHIBIT A

CITY OF FLAGSTAFF

DEPT / DIV	FY13 BUDGET	FY13 ACTUAL	FY14 BUDGET	FY14 ACTUAL	FY15 ACTUAL
IT MAINTENANCE FY15					
ERP - Financial Applications	\$121,000.00	\$132,142.00	\$151,000.00	\$151,000.00	\$151,000.00
SHI SOFTWARE-Microsoft enterprise	\$125,000.00	\$128,721.47	\$135,000.00	\$135,000.00	\$135,000.00
DoIT Maintenance Total	\$246,000.00	\$257,142.00	\$286,000.00	\$286,000.00	\$286,000.00
PD - IT MAINTENANCE FY15					
INTERGRAPH PUBLIC SAFETY INC - Maintain the map and corresponding DB	\$192,832.16	\$196,428.08	\$196,428.08	\$196,428.08	\$196,428.08
LIBRARY - IT MAINTENANCE FY15					
SIRSI - Online Library Catalog 4/1-3/31	\$66,950.00	\$67,968.00	\$70,007.07	\$77,352.44	\$79,673.01
Library Maintenance Total:	\$66,950.00	\$67,968.00	\$70,007.07	\$77,352.44	\$79,673.01
Total all	\$ 505,782.16	\$ 521,538.08	\$ 552,435.15	\$552,435.15	\$562,101.09

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Tiffany Antol, Planning Development Manager
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Possible Adoption of Ordinance No. 2014-11: An ordinance amending Ordinance No. 2000-11 by modifying the Zoning Map Designation of that property generally known as Pine Canyon, through the amendment of a general condition related to the public's overnight access to Pine Canyon.

RECOMMENDED ACTION:

- 1) Read ordinance No. 2014-11 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-11 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2014-11

Policy Decision or Reason for Action:

The Flagstaff Planning and Zoning Commission conducted a Public Hearing to consider this modification of the Zoning Designation through the amendment of an underlying general condition at its regular meeting on April 23, 2014. The Planning and Zoning Commission voted (4-1) to forward the request to the City Council with a recommendation of approval. Zoning map amendments are required to be adopted by ordinance.

Financial Impact:

None

Connection to Council Goal:

Effective governance

Has There Been Previous Council Decision on This:

In October of 2013, the City Council approved an agreement with the applicant that commits the City to erect and maintain a directional sign at the intersection of Lake Mary Road and John Wesley Powell, staff support to amend the rezoning ordinance to modify the gated provision during night time and extends the developer's transportation improvement contribution.

The Public Hearing on this application was held on May 20, 2014, with not public input received. First read of the Ordinance was held on June 17, 2014.

Options and Alternatives:

The City Council may approve the ordinance as proposed, approve the ordinance with conditions, or deny the ordinance.

Background/History:

In June of 2000, the City Council approved a rezoning request (Ordinance 2000-11) and development agreement allowing the development of Pine Canyon, which includes a mixture of condominium, estate twin houses (duplex units), estate homes, clubhouse and recreational facilities, maintenance and storage facilities, and an 18-hole private golf course with accessory facilities, located on approximately 660 acres. The primary entrance to Pine Canyon is located at the intersection of Lone Tree Road and John Wesley Powell Blvd.

General condition No. 8 of Ordinance 2000-11 states "all private roads within the development remain open to the public and never gated." The applicant, True Life Companies (TLC), is requesting a modification of this condition in order to allow the installation of gates at the primary entrance that would prohibit public access to Pine Canyon at nighttime. Pine Canyon has constructed a gate house at both the main and secondary entries; however, the secondary entry has been closed off for general entry or exit from the community. The main gate monitors all persons entering and exiting the community since installation. The guards at the main entry do not prohibit the public from entering the property, upon showing proof of insurance and having a valid driver's license.

Key Considerations:

Zoning Map amendments are adopted by the City Council via ordinance. Ordinance No. 2014-11 modifies general condition No. 8 of Ordinance 2000-11 from "All private roads within the development remain open to the public and never gated" to "All streets within Pine Canyon shall remain open to the public, without the use of a gate, from sunrise to sunset. Any means to restrict access to the streets of Pine Canyon may only be utilized from sunset to sunrise and never restrict emergency access."

Expanded Financial Considerations:

There are financial considerations included within the agreement approved by the City Council in October 2013.

Community Benefits and Considerations:

Community benefits and considerations related to this request are addressed in the attached Planning and Zoning Commission Staff Report, dated April 8, 2014.

Community Involvement:

Inform/Consult

The applicants held a neighborhood meeting on March 20, 2014 that was advertised to all residents/property owners within Pine Canyon, all property owners within 300 feet of Pine Canyon and interested community members. Seventeen people attended the meeting apart from the applicant's representatives. There were a number of questions about the proposal. None of those in attendance were in favor of the gate in lieu of a guard 24/7. The applicants received emails from 13 individuals mostly asking for more information. Pine Canyon representatives prepared a letter describing the request in full which was sent to many who had inquired about the request.

Staff has received 6 phone calls and 4 emails, most of which were requesting more specific information about the request. One caller and two emails were in opposition to the installation of gates. The other two emails are in opposition to the gates with the removal of the guards; they do not address the two in combination. One caller was opposed to the installation of the gates regardless of the guards on duty.

The Planning and Zoning Commission conducted a Public Hearing on April 23, 2014. Notice of that Public hearing was provided in accordance with State Statute and the Zoning Code. At the Planning and Zoning Commission meeting, one member of the public had questions in regards to the case.

Expanded Options and Alternatives:

- (Recommended Action): The City Council may approve the Zoning Map Amendment as recommended by the Planning and Zoning Commission and staff by reading and adopting Ordinance No. 2014-11.
- The City Council may approve the Zoning Map Amendment with conditions of approval.
- The City Council may deny the Zoning map Amendment.

Attachments:

Form Review

Inbox	Reviewed By	Date
Current Planning Manager	Mark Sawyers	05/02/2014 03:39 PM
Planning Director	Dan Folke	05/05/2014 05:04 PM
Legal Assistant	Vicki Baker	05/06/2014 08:33 AM
Senior Assistant City Attorney JS	James Speed	05/06/2014 08:40 AM
Community Development Director	Mark Landsiedel	05/07/2014 04:14 PM
DCM - Jerene Watson	Jerene Watson	05/07/2014 10:54 PM
Form Started By: Tiffany Antol		Started On: 05/01/2014 07:25 AM
	Final Approval Date: 06/19/2014	

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Brandi Suda, Finance Manager
Co-Submitter: Rick Tadder, Finance Director
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Adoption of Ordinance No 2014-12: An ordinance levying upon the assessed valuation of the property within the City of Flagstaff, Arizona, subject to taxation a certain sum upon each one hundred dollars (\$100.00) of valuation sufficient to raise the amount estimated to be required in the Annual Budget, less the amount estimated to be received from other sources of revenue; providing funds for various bond redemptions, for the purpose of paying interest upon bonded indebtedness and providing funds for general municipal expenses, all for the Fiscal Year ending the 30th day of June, 2015

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2014-12 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-12 by title only (if approved above)
- 3) Adopt Ordinance No. 2014-12

Policy Decision or Reason for Action:

Arizona Revised Statute 42-17104 requires that an Ordinance to adopt property tax levies be passed after the adoption of the final budget. The final budget is anticipated to be adopted on June 17, 2014.

Financial Impact:

The City of Flagstaff is proposing a flat primary property levy on existing properties for the FY2014-2015 base levy of \$5,520,173 plus the new construction levy of \$41,567 for a total levy of \$5,561,740. The primary property tax rate to support this levy is \$0.8418 per \$100 of assessed valuation.

The City of Flagstaff proposing a flat tax rate for secondary property taxes for FY2014-2015 for a total levy of \$5,611,045. The proposed secondary property tax rate is \$0.8366 per \$100 of assessed valuation.

Connection to Council Goal:

Effective governance

Has There Been Previous Council Decision on This:

- December Budget Retreat on December 4, 2013
- Mini Budget Retreat on January 23, 2014
- February Budget Retreat on February 10, 2014
- Council Budget Meetings on April 23, 24 and 25, 2014.
- Tentative Budget Adoption on June 3, 2014
- Final Budget Adoption on June 17, 2014

Options and Alternatives:

- Adopt the primary and secondary property tax rates at the proposed amounts,
- Adopt the primary property levy up to the maximum statutory levy; adopt the secondary property tax rate at something greater than proposed above
- Adopt the primary and secondary property tax rates at something less than that shown above

Background/History:

Both the State Constitution and State law specify a property tax levy limitation system. This system consists of two levies, a limited levy known as the primary property tax levy and an unlimited levy referred to as the secondary property tax levy. The primary levy may be imposed for all purposes, while the secondary levy in cities and towns may only be used to retire the principal and interest or redemption charges on general obligation bonded indebtedness.

The adoption of the property tax levy is the final step in the entire budget approval process.

Key Considerations:

The key dates for budget and property tax levy adoption have been determined and have been followed throughout this process. The County adopts the property tax levy as proposed by the City on or about August 1, 2014.

Expanded Financial Considerations:

The City has budgeted a total of \$5,435,325 in FY2014-2015 primary property tax, an approximate 1.5% increase over the FY2013-2014 budget. This increase is due to new construction and reduced delinquencies. Primary property tax funds any general purpose use of the city government. The budgeted amount is less than the levy as the City is allowing for approximately 2% in bad debt.

Statutorily, the maximum allowable primary property levy for FY2014-2015 is \$5,901,999. The City can capture this additional levy in future budget years if Council so directs.

The City has budgeted a total of \$5,611,045 in FY2014-2015 secondary property tax, an approximate 1.46% increase over the FY2013-2014 budget. The increase is directly related to the increased assessed valuation and new construction. Secondary property tax funds general obligation debt and debt is issued to manage within the levy.

Five years historical data is shown below:

Property Tax Rates	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015 Proposed
Primary	\$0.6479	0.6917	0.7131	0.8429	0.8418
Secondary	0.8366	0.8366	0.8366	0.8366	0.8366
Total	\$ 1.4845	1.5283	1.5497	1.6795	1.6784

Primary property taxes account for 10.4% of the General Fund revenues budgeted for FY2014-2015.

Community Benefits and Considerations:

Primary property taxes support a number of City services including public safety, parks and recreation, other public works services, and general administrative and management functions within the city.

Secondary property taxes support the debt service payment on numerous city capital projects including: Aquaplex, Fire Stations, Open Space, numerous street/utility projects, Forest Restoration and the future Core Facility as well as many others.

Community Involvement:

Inform & Involve: Budget legal schedules were published in the June 5, 2014 and June 12, 2014 Arizona Daily Sun to allow for additional community review. In addition, the legal and other budget schedules were made available at City Hall, at both Flagstaff Public Libraries, and on the official city website. A public hearing on June 17, 2014 for both the final budget adoption and the property tax levy is open for public comment and allows citizens to provide input.

Attachments: ORD 2014-12

Form Review

Inbox	Reviewed By	Date
Finance Director	Rick Tadder	05/19/2014 10:39 AM
Legal Assistant	Vicki Baker	05/19/2014 01:09 PM
Senior Assistant City Attorney AW	Anja Wendel	05/27/2014 10:05 AM
Management Services Director	Barbara Goodrich	05/27/2014 12:01 PM
DCM - Josh Copley	Josh Copley	05/29/2014 08:11 AM
Form Started By: Brandi Suda		Started On: 05/08/2014 06:02 PM

Final Approval Date: 06/19/2014

ORDINANCE NO. 2014-12

AN ORDINANCE LEVYING UPON THE ASSESSED VALUATION OF THE PROPERTY WITHIN THE CITY OF FLAGSTAFF, ARIZONA, SUBJECT TO TAXATION A CERTAIN SUM UPON EACH ONE HUNDRED DOLLARS (\$100.00) OF VALUATION SUFFICIENT TO RAISE THE AMOUNT ESTIMATED TO BE REQUIRED IN THE ANNUAL BUDGET, LESS THE AMOUNT ESTIMATED TO BE RECEIVED FROM OTHER SOURCES OF REVENUE; PROVIDING FUNDS FOR VARIOUS BOND REDEMPTIONS, FOR THE PURPOSE OF PAYING INTEREST UPON BONDED INDEBTEDNESS AND PROVIDING FUNDS FOR GENERAL MUNICIPAL EXPENSES, ALL FOR THE FISCAL YEAR ENDING THE 30TH DAY OF JUNE, 2015

RECITALS:

WHEREAS, by the provisions of State law, the ordinance levying taxes for fiscal year 2014-2015 is required to be finally adopted not later than the third Monday in August; and

WHEREAS, the County of Coconino is the assessing and collecting authority for the City of Flagstaff.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. There is hereby levied on each one hundred dollars (\$100.00) of the assessed value of all property, both real and personal within the corporate limits of the City of Flagstaff, except such property as may be by law exempt from taxation, a primary property tax rate of 0.8418 for the fiscal year ending on the 30th day of June, 2015. If this tax rate exceeds the maximum levy allowed by law, the Board of Supervisors of the County of Coconino is hereby authorized to reduce the levy to the maximum allowable by law after providing notice to the City.

SECTION 2. In addition to the rate set in Section 1 hereof, there is hereby levied on each one hundred dollars (\$100.00) of the assessed value of all property, both real and personal within the corporate limits of the City of Flagstaff, except such property as may be by law exempt from taxation, a secondary property tax rate of 0.8366 for the fiscal year ending June 30, 2015.

SECTION 3. Failure by the county officials of Coconino County, Arizona, to properly return the delinquent list, any irregularity in assessments or omissions in the same, or any irregularity in any proceedings shall not invalidate such proceedings or invalidate any title conveyed by any tax deed; failure or neglect of any officer or officers to timely perform any of the duties assigned to him or to them shall not invalidate any proceedings or any deed or sale pursuant thereto, the validity of the assessment or levy of taxes or of the judgment of sale by which the collection of the same may be enforced shall not affect the lien of the City of Flagstaff upon such property for the delinquent taxes unpaid thereon; overcharge as to part of the taxes or of costs shall not invalidate any proceedings for the collection of taxes or the foreclosure of the lien thereon or a sale of the property under such foreclosure; and all acts of officers de facto shall be valid as if performed by officers de jure.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. That the Clerk is hereby directed to transmit a certified copy of this ordinance to the County Assessor and the Board of Supervisors of the County of Coconino, Arizona.

SECTION 6. Effective Date. The tax levies imposed by this Ordinance shall take effect August 1, 2014.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Elaine Averitt, Planning Development Manager
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Possible Adoption of Ordinance No. 2014-14: An ordinance amending the Flagstaff Zoning Map designation of approximately 33.6 acres of real property located at the southwest and southeast corners of Route 66 and Fourth Street and at the northwest corner of Huntington Drive and Fourth Street, from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC).
(Amending Zoning Map for "The Trax" commercial development).

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2014-14 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-14 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2014-14

Policy Decision or Reason for Action:

The Flagstaff Planning and Zoning Commission conducted Public Hearings to consider this Zoning Map amendment request at its regular meetings on May 14, 2014 and May 28, 2014. The Planning Commission voted (7-0) to forward the request to the City Council with a recommendation of approval subject to two conditions. The attached ordinance lists the two conditions of approval. Zoning Map amendments are required to be adopted by ordinance.

Subsidiary Decisions Points: If the first reading of the ordinance is successful, the attached Development Agreement will be scheduled for consideration by the City Council on July 1, 2014, prior to the second reading of the ordinance.

Financial Impact:

None

Connection to Council Goal:

Retain, expand, and diversify economic base
Effective governance

Has There Been Previous Council Decision on This:

The Council considered, approved, and amended a purchase and sale agreement for the subject property on May 20, 2014.

This Zoning Map amendment request is accompanied by a Regional Plan amendment request. First read of the ordinance was held on June 17, 2014

Options and Alternatives:

The City Council may approve the ordinance with the proposed conditions, approve the ordinance with additional or modified conditions, or deny the ordinance.

Background/History:

The site is currently vacant, undeveloped and un-subdivided land. At the date of this report, the property is owned by the City of Flagstaff. The applicant, Evergreen Devco, Inc., intends to close escrow on the property by September 2014 and following site plan and engineering construction plan approvals, to provide the development with new public and private infrastructure that includes roadway work, FUTS trail construction, water, sewer, and storm water infrastructure.

Land uses north of the property, across Route 66, consist of commercial buildings with uses that include motels, restaurants, auto repair, retail, plant nursery and offices. New commercial construction on the north side of Route 66 includes the completed Walgreens at the northeast corner of Route 66 and 4th Street, a new bank east of the Walgreens (in construction), and a Tractor Supply Co. (in construction) at the northeast corner of Route 66 and Arrowhead Drive. The terrain on the Areas A, B, and C of the subject site is generally flat at an elevation ranging between approximately 6,840 to 6,860 feet. Area D is flattest at the corner of 4th Street and Huntington, and then slopes down towards the west; it has a fairly even distribution of Ponderosa pine tree resources.

A resolution for the development agreement must be approved prior to the second reading of the zoning ordinance (see attached draft development agreement). The development agreement will address responsibilities for constructing a FUTS trail, providing outdoor public space, preserving the trestle bridge, ensuring that construction of public improvements coincide with the phased development of the project, and designing drive-through facilities to ensure the safe movement of pedestrians and vehicles. Additionally, the Developer will be required to contribute an agreed upon monetary sum into the City's escrow account towards future I-40 Bridge improvements and to cover a pedestrian crossing study and any recommended improvements to Route 66 related to the development of the property. The development agreement also covers Route 66 lighting (ADOT requirements) and dedication of public easements and rights-of-way. The applicant received Inter-Division Staff (IDS) approval for the Conceptual Site Plan on April 3, 2014. The conditions of IDS review were addressed when the applicant submitted a revised Conceptual Site Plan for the Planning & Zoning Commission (P&Z). Those conditions relating to requirements for future Site Plan submittals were agreed by the Developer in the "response to conditions." Any outstanding, unresolved provisions addressed in the Conditions of Approval will be included in the development agreement.

Key Considerations:

Zoning Map amendments are adopted by the City Council via ordinance. Ordinance No. 2014-14 changes the Zoning Map designation of approximately 33.6 acres from the Light Industrial (LI) and Light Industrial-Open (LI-O) zones to the Highway Commercial (HC) zone.

Community Benefits and Considerations:

Community benefits and considerations related to this Zoning Map amendment request are addressed in the attached Planning and Zoning Commission Zoning Map Amendment Staff Report, dated May 6, 2014.

Community Involvement:

Inform

The Developer held a neighborhood meeting on February 20, 2014 at the Aquaplex; 37 people signed in for the meeting. Notice of the neighborhood meeting was provided in accordance with the Zoning Code. The results of the meeting are included in the Record of Proceedings, a copy of which is included in the attached Planning & Zoning Commission attachments. The Planning & Zoning Commission conducted a public hearing on May 14, 2014 and May 28, 2014. Notice of those public hearings was provided in

accordance with State statute and the Zoning Code. As of this writing, staff has received general inquiries from three members of the public at the Community Development Counter, and one email which expresses concern over the effect (commercial competition) the amendment might have on the 4th Street corridor north of Route 66; increased traffic flow and safety; and reducing the amount of light industrial land in areas that have easy access to housing.

Expanded Options and Alternatives:

- (Recommended Action): The City Council may approve the Zoning Map amendment as recommended by the Planning and Zoning Commission and staff by reading and adopting Ordinance Co. 2014-14.
- The City Council may approve the Zoning Map amendment with additional or modified conditions of approval.
- The City Council may deny the Zoning Map amendment.

-
- Attachments:** [Ord. 2014-14](#)
 [P&Z CC Public Hearing Legal Notices](#)
 [Exhibit A Legal Descrip](#)
 [Draft PZC Minutes 5-14-14](#)
 [PZC Staff Report](#)
 [Ex & Proposed Zoning Exhibit](#)
 [Application_RP & Zoning](#)
 [Overall Site Plan](#)
 [Concept Plan Area A](#)
 [Concept Plan Area B](#)
 [Concept Plan Area C](#)
 [Concept Plan Area D](#)
 [Evergreen Draft D.A.](#)
-

Form Review

Inbox	Reviewed By	Date
Planning Director	Dan Folke	05/30/2014 09:51 AM
Legal Assistant	Vicki Baker	05/30/2014 09:53 AM
Senior Assistant City Attorney JS	James Speed	06/02/2014 06:41 AM
Community Development Director	Mark Landsiedel	06/02/2014 06:23 PM
DCM - Jerene Watson	Jerene Watson	06/03/2014 06:18 AM
Planning Development Manager - BK	Brian Kulina	06/06/2014 04:41 PM
Form Started By: Elaine Averitt		Started On: 05/19/2014 12:11 PM
	Final Approval Date: 06/19/2014	

ORDINANCE NO. 2014-14

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FLAGSTAF, ARIZONA, AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 33.6 ACRES OF REAL PROPERTY GENERALLY LOCATED AT THE INTERSECTION OF ROUTE 66 AND FOURTH STREET, FROM LIGHT INDUSTRIAL (“LI”) AND LIGHT INDUSTRIAL OPEN (“LI-O”), TO HIGHWAY COMMERCIAL (“HC”)

RECITALS:

WHEREAS, the applicant has applied for a Zoning Map amendment of approximately 33.6 acres of real property located within the City of Flagstaff, a legal description of which is designated as **Exhibit “A”**, attached hereto and incorporated by this reference, from “LI,” Light Industrial, and “LI-O,” Light Industrial Open, to “HC,” Highway Commercial, for purposes of developing a commercial retail center with approximately 250,000 square feet of commercial building space; and

WHEREAS, the Council finds that the applicant has complied with all application requirements set forth in Chapter 10-20 of the Flagstaff Zoning Code; and

WHEREAS, the Planning and Zoning Commission has formally considered the proposed Zoning Map amendment application, following proper notice and hearings, on May 14, 2014 and May 28, 2014, with the result that the Planning and Zoning Commission has recommended approval of the requested Zoning Map amendment application, subject to the following conditions:

1. That the subject property is developed in substantial accordance to the entire conceptual plans approved by the Inter-Division Staff (IDS) on April 3, 2014, with the zoning map amendment request.
2. That all terms, conditions and restrictions detailed within “Development Agreement and Waiver between City of Flagstaff and Evergreen-TRAX, L.L.C.” are fully satisfied.

WHEREAS, the City Council has read and considered the staff reports prepared by Current Planning Division staff and has considered the narrative prepared by the applicant; and

WHEREAS, staff recommends approval of the Zoning Map amendment application, subject to the condition proposed by the Planning and Zoning Commission, and the Council has considered the condition and has found it to be appropriate for the site; and

WHEREAS, the Council finds that the proposed Zoning Map amendment with the condition will not be detrimental to the uses of adjoining parcels or to other uses within the vicinity.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. The zoning map designation for the subject property is amended to "HC," Highway Commercial.

SECTION 3. That City staff is hereby authorized to take such other and further measures and actions as are necessary and appropriate to carry out the terms, provisions and intents of this Ordinance.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 1st day of July, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

"EXHIBIT A"

LEGAL DESCRIPTION

There are three parcels for The Trax project (collectively referred to herein as the "Property"):

1. Parcel 107-13-010 (Shown on the Concept Plan as Areas A & C)
2. Parcel 107-13-009 (Shown on the Concept Plan as Area B)
3. Parcel 107-13-011 (Shown on the Concept Plan as Area D)

PARCELS A, B AND D AS SET FORTH ON COF CONSOLIDATION MAP RECORDED IN 2006-3396857, OFFICIAL RECORDS OF COCONINO COUNTY ARIZONA AND MORE PARTICULARLY DESCRIBED BELOW; AND EXCEPT FROM SAID PARCELS ALL MINERALS CONTAINED THEREIN INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS AS RESERVED BY THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION IN DEED RECORDED IN DOCKET 1442, PAGE 754.

PARCEL A

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY, HUNTINGTON DRIVE AS DESCRIBED IN DOCKET 861, PAGE 914 AND DOCKET 918, PAGE 574; PARCELS A, B, AND C RECORDED IN BOOK 8, PAGE 57; AND THE PARCEL DESCRIBED IN DOCKET 1442, PAGE 754, COCONINO COUNTY RECORDS; LYING IN SECTIONS 13 AND 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FOR REFERENCE AT A POINT ON A TANGENT IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66, MONUMENTED BY A FOUND BRASS CAP; THENCE NORTH 71 DEGREES 20 MINUTES 56 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT- OF-WAY LINE, 78.35 FEET TO A POINT OF CURVATURE THEREIN; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE, CONCAVE NORTHWESTERLY, WITH RADIUS 2000.00 FEET AND CENTRAL ANGLE 34 DEGREES 02 MINUTES 50 SECONDS, AN ARC LENGTH OF 1188.48 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01 DEGREES 56 MINUTES 54 SECONDS AN ARC LENGTH OF 68.01 FEET; THENCE NORTH 35 DEGREES 21 MINUTES 12 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT - OF-WAY LINE, 2555.80 FEET; THENCE NORTH 41 DEGREES 08 MINUTES 46 SECONDS EAST 103.31 FEET; THENCE NORTH 36 DEGREES 26 MINUTES 28 SECONDS EAST, 258.30 FEET; THENCE NORTH 44 DEGREES 14 MINUTES 44 SECONDS EAST, 153.19 FEET TO THE BEGINNING OF A NONTANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 50 DEGREES 35 MINUTES 21 SECONDSWEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3745.72 FEET AND CENTRAL ANGLE 04 DEGREES 42 MINUTES 36 SECONDS, AN ARC LENGTH OF 307.92 FEET; THENCE NORTH 76 DEGREES 35 MINUTES 19 SECONDS EAST 37.30 FEET; THENCE SOUTH 40 DEGREES 09 MINUTES 12 SECONDS EAST, PARALLELWITH AND 74 FEET SOUTHWESTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN THEREON , 136.09 FEET; THENCE SOUTH 45 DEGREES 52 MINUTES 40 SECONDS EAST 77.10 FEET; THENCE SOUTH 47 DEGREES 28 MINUTES 57 SECONDS EAST 81.84 FEET; THENCE NORTH 45 DEGREES 36 MINUTES 00 SECONDS EAST 3.00 FEET; THENCE SOUTH 42 DEGREES 59 MINUTES 24 SECONDS EAST, PARALLELWITH AND 59 FEET SOUTHWESTERLY FROM SAID NEWFOURTH STREET CENTERLINE, 47.26 FEET TO THE NORTHWESTERLY LINE OF THE NEW RAILWAY SHOWN THEREON;

THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 3431.57 FEET TO THE NORTHWESTERLY LINE OF THE EXISTING RAILWAY SHOWN THEREON; THENCE NORTH 52 DEGREES 41 MINUTES 54 SECONDS WEST, RADIAL TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66, 41.69 FEET TO THE TRUE POINT BEGINNING. THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE-SYSTEM DATA DATED NOVEMBER 1997.

PARCEL B

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY; INDUSTRIAL DRIVE DESCRIBED IN DOCKET 918, PAGE 574; AND PARCEL 1 DESCRIBED IN DOCKET 1967, PAGE 587, RECORDS OF COCONINO COUNTY, LYING IN THE LOT 2 OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING FOR REFERENCE AT A POINT OF TANGENCY IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66 NORTHEAST OF FOURTH STREET; THENCE NORTH 56 DEGREES 57 MINUTES 16 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, 35.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTH 58 DEGREES 57 MINUTES 16 SECONDS EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE 1154.90 FEET; THENCE SOUTH 33 DEGREES 02 MINUTES 44 SECONDS EAST, PERPENDICULAR TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, 39.49 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY AND THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 37 DEGREES 26 MINUTES 34 SECONDS WEST; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF THE NEW RAILWAY SHOWN THEREON AND ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 7718.99 FEET AND CENTRAL ANGLE 10 DEGREES 37 MINUTES 12 SECONDS, AN ARC LENGTH OF 1430.75 FEET; THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 205.84 FEET; THENCE SOUTH 48 DEGREES 03 MINUTES 46 SECONDS EAST, ALONG SAID NORTHWESTERLY LINE, 12.00 FEET; THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 373.32 FEET; THENCE NORTH 42 DEGREES 59 MINUTES 24 SECONDS WEST, PARALLEL WITH AND 52 FEET EASTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN THEREON 53.01 FEET; THENCE NORTH 28 DEGREES 59 MINUTES 56 SECONDS WEST, 60.86 FEET; THENCE NORTH 40 DEGREES 09 MINUTES 12 SECONDS WEST, 223.43 FEET; THENCE NORTH 05 DEGREES 56 MINUTES 36 SECONDS EAST, 37.99 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 42 DEGREES 46 MINUTES 55 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, RADIUS 3750.72 FEET AND CENTRAL ANGLE 02 DEGREES 37 MINUTES 04 SECONDS, AN ARC LENGTH OF 171.37 FEET; THENCE NORTH 31 DEGREES 15 MINUTES 33 SECONDS EAST, 21.79 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 39 DEGREES 50 MINUTES 57 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3757.72 FEET AND CENTRAL ANGLE 01 DEGREES 47 MINUTES 06 SECONDS, AN ARC LENGTH OF 117.07 FEET; THENCE NORTH 51 DEGREES 55 MINUTES 35 SECONDS EAST, 141.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 38 DEGREES 03 MINUTES 52 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3860.32 FEET AND CENTRAL ANGLE 05 DEGREES 05 MINUTES 23 SECONDS, AN ARC LENGTH OF 342.92 FEET; THENCE NORTH 49 DEGREES 02 MINUTES 29 SECONDS EAST, 29.52 FEET TO THE TRUE POINT OF BEGINNING. THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH,

RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE—SYSTEM DATA DATED NOVEMBER 1997.

PARCEL D

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF PARCEL 2 DESCRIBED IN DOCKET 1967, PAGE 587 AND OF THE PARCEL DESCRIBED IN INSTRUMENT 2001-3104611, RECORDS OF COCONINO COUNTY, LYING IN THE WEST HALF OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL 2 DESCRIBED IN DOCKET 1904, PAGE 288, RECORDS OF COCONINO COUNTY, MONUMENTED BY A FOUND ALUMINUM CAP MARKED "ARENCO LS 13010 LS 18297; THENCE NORTH 00 DEGREES 32 MINUTES 48 SECONDS WEST ALONG THE WESTERLY LINE OF PARCEL 2 DESCRIBED IN SAID DOCKET 1967, PAGE 587, PARALLEL WITH AND 40 FEET EASTERLY FROM THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 13, 0.29 FEET TO AN ANGLE POINT THEREIN; THENCE NORTH 00 DEGREES 33 MINUTES 37 SECONDS WEST, CONTINUING ALONG SAID WESTERLY LINE, PARALLEL WITH AND 40 FEET EASTERLY FROM THE WEST LINE OF THE LOT 2 OF SAID SECTION 13, 66.44 FEET TO THE SOUTHEASTERLY LINE OF THE NEW RAILWAY SHOWN THEREON; THENCE NORTH 41 DEGREES 56 MINUTES 14 SECONDS EAST, ALONG SAID SOUTHEASTERLY LINE, 639.20 FEET; THENCE SOUTH 42 DEGREES 59 MINUTES 24 SECONDS EAST, PARALLEL WITH AND 57 FEET SOUTHWESTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN HEREON, 59.42 FEET; THENCE SOUTH 39 DEGREES 10 MINUTES 34 SECONDS EAST 180.40 FEET; THENCE SOUTH 42 DEGREES 59 MINUTES 24 SECONDS EAST, PARALLEL WITH AND 69 FEET SOUTHWESTERLY FROM SAID NEW FOURTH STREET CENTERLINE, 255.07 FEET TO THE BEGINNING OF A 25-FOOT CORNER CUTOFF; THENCE SOUTH 00 DEGREES 30 MINUTES 36 SECONDS WEST, ALONG SAID CORNER CUTOFF, 36.27 FEET TO THE END THEREOF; THENCE SOUTH 44 DEGREES 00 MINUTES 36 SECONDS WEST, PARALLEL WITH AND 40 FEET NORTHWESTERLY FROM THE NEW HUNTINGTON DRIVE CENTERLINE SHOWN THEREON, 586.47 FEET TO THE EAST LINE OF PARCEL 1 DESCRIBED IN SAID DOCKET 1904, PAGE 288; THENCE NORTH 00 DEGREES 32 MINUTES 55 SECONDS WEST ALONG SAID EAST LINE, 136.52 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 1, MONUMENTED BY A FOUND ALUMINUM CAP MARKED "AEC LS 13010 LS 18297; THENCE NORTH 36 DEGREES 08 MINUTES 55 SECONDS WEST, ALONG THE EASTERLY LINE OF PARCEL 2 DESCRIBED IN SAID DOCKET 1904, PAGE 288, 185.56 FEET TO THE NORTHEASTERLY CORNER THEREOF, MONUMENTED BY A FOUND ALUMINUM CAP MARKED "NES LS 14671; THENCE SOUTH 89 DEGREES 51 MINUTES 25 SECONDS WEST, ALONG THE LINE BETWEEN THE SOUTHWEST QUARTER OF SECTION 13 AND LOT 2 THEREOF, AND ALONG THE NORTH LINE OF SAID PARCEL 2, 236.39 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE-SYSTEM DATA DATED NOVEMBER 1997.

NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that the Flagstaff Planning and Zoning Commission will hold a Public Hearing on May 14, 2014, at 4:00 p.m. and on May 28, 2014 at 4:00 p.m.; and the Flagstaff City Council will hold a Public Hearing on June 17, 2014, at 6:00 p.m. to consider items 1 and 2 listed in Part A.

A. Explanation of Matters to be Considered:

(1) A proposed amendment to the Flagstaff Area Regional Land Use and Transportation Plan to change the land use designation from Office/Business Park/Light Industrial and Light/Medium Industrial to Community/Regional Commercial for the area described in Part B below and depicted in map insert to the right.

(2) A proposed Zoning Map Amendment to the official Zoning Map to rezone property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC) for the area described in Part B below and depicted in map insert to the right.

The proposed Regional Plan Amendment and Zoning Map Amendment will allow for approximately 250,000 square feet of commercial development including retail, service and office uses to be constructed on these three sites.

B. General Description of the Affected Area:

Approximately 33.6 acres located at the southwest and southeast corners of Route 66 and 4th St., and the northwest corner of Huntington Dr. and 4th St., Coconino County Assessor's Parcel Numbers 107-13-009, 107-13-010, and 107-13-011, located in portions of Section 13 and 14, Township 21 North, Range 7 East, of the Gila and Salt River Base and Meridian, City of Flagstaff, Coconino County, Arizona, as shown on the adjacent map.

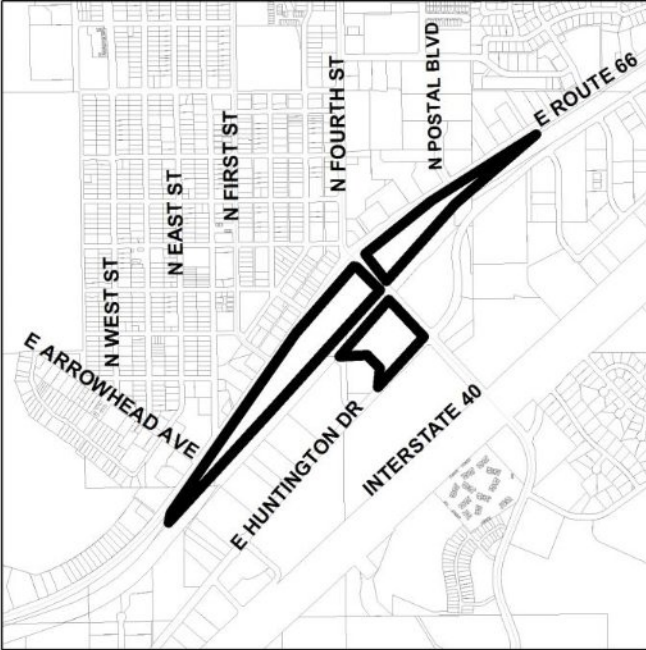
The Council hearing for these items may be continued if the Planning and Zoning Commission has not given a recommendation.

Interested parties may file comments in writing regarding the proposed Regional Plan Amendment and Zoning Map Amendment or may appear and be heard at the hearing dates set forth above. Maps and information regarding the proposed amendment to the Flagstaff Regional Land Use and Transportation Plan and Zoning Map Amendment are available at the City of Flagstaff, Planning and Development Services Section, 211 West Aspen Avenue.


Unless otherwise posted, all Planning and Zoning Commission and City Council meetings are held in the Council Chambers of City Hall, 211 West Aspen Avenue, Flagstaff, Arizona.

PROPOSED REGIONAL PLAN AMENDMENT AND ZONING MAP AMENDMENT

Regional Land Use and Transportation Plan amendment from Office/Business Park/Light Industrial and Light/Medium Industrial to Community/Regional Commercial; and rezoning from Light Industrial and Light Industrial-Open to Highway Commercial.



LOCATION Trax at Route 66 and Fourth Street
APN's: 107-13-009, 107-13-010, and 107-13-011
ACRES: ~33.6



FOR FURTHER INFORMATION CONTACT

Elaine Averitt
Planning Development Manager
Planning & Development Services
211 West Aspen Avenue
Flagstaff, Arizona 86001
928-213-2616
Email: eaveritt@flagstaffaz.gov



Publish: April 27, 2014

"EXHIBIT A"

LEGAL DESCRIPTION

There are three parcels for The Trax project (collectively referred to herein as the "Property"):

1. Parcel 107-13-010 (Shown on the Concept Plan as Areas A & C)
2. Parcel 107-13-009 (Shown on the Concept Plan as Area B)
3. Parcel 107-13-011 (Shown on the Concept Plan as Area D)

PARCELS A, B AND D AS SET FORTH ON COF CONSOLIDATION MAP RECORDED IN 2006-3396857, OFFICIAL RECORDS OF COCONINO COUNTY ARIZONA AND MORE PARTICULARLY DESCRIBED BELOW; AND EXCEPT FROM SAID PARCELS ALL MINERALS CONTAINED THEREIN INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS AS RESERVED BY THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION IN DEED RECORDED IN DOCKET 1442, PAGE 754.

PARCEL A

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY, HUNTINGTON DRIVE AS DESCRIBED IN DOCKET 861, PAGE 914 AND DOCKET 918, PAGE 574; PARCELS A, B, AND C RECORDED IN BOOK 8, PAGE 57; AND THE PARCEL DESCRIBED IN DOCKET 1442, PAGE 754, COCONINO COUNTY RECORDS; LYING IN SECTIONS 13 AND 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FOR REFERENCE AT A POINT ON A TANGENT IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66, MONUMENTED BY A FOUND BRASS CAP; THENCE NORTH 71 DEGREES 20 MINUTES 56 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT- OF-WAY LINE, 78.35 FEET TO A POINT OF CURVATURE THEREIN; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE, CONCAVE NORTHWESTERLY, WITH RADIUS 2000.00 FEET AND CENTRAL ANGLE 34 DEGREES 02 MINUTES 50 SECONDS, AN ARC LENGTH OF 1188.48 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01 DEGREES 56 MINUTES 54 SECONDS AN ARC LENGTH OF 68.01 FEET; THENCE NORTH 35 DEGREES 21 MINUTES 12 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT - OF-WAY LINE, 2555.80 FEET; THENCE NORTH 41 DEGREES 08 MINUTES 46 SECONDS EAST 103.31 FEET; THENCE NORTH 36 DEGREES 26 MINUTES 28 SECONDS EAST, 258.30 FEET; THENCE NORTH 44 DEGREES 14 MINUTES 44 SECONDS EAST, 153.19 FEET TO THE BEGINNING OF A NONTANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 50 DEGREES 35 MINUTES 21 SECONDSWEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3745.72 FEET AND CENTRAL ANGLE 04 DEGREES 42 MINUTES 36 SECONDS, AN ARC LENGTH OF 307.92 FEET; THENCE NORTH 76 DEGREES 35 MINUTES 19 SECONDS EAST 37.30 FEET; THENCE SOUTH 40 DEGREES 09 MINUTES 12 SECONDS EAST, PARALLELWITH AND 74 FEET SOUTHWESTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN THEREON , 136.09 FEET; THENCE SOUTH 45 DEGREES 52 MINUTES 40 SECONDS EAST 77.10 FEET; THENCE SOUTH 47 DEGREES 28 MINUTES 57 SECONDS EAST 81.84 FEET; THENCE NORTH 45 DEGREES 36 MINUTES 00 SECONDS EAST 3.00 FEET; THENCE SOUTH 42 DEGREES 59 MINUTES 24 SECONDS EAST, PARALLELWITH AND 59 FEET SOUTHWESTERLY FROM SAID NEWFOURTH STREET CENTERLINE, 47.26 FEET TO THE NORTHWESTERLY LINE OF THE NEW RAILWAY SHOWN THEREON;

THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 3431.57 FEET TO THE NORTHWESTERLY LINE OF THE EXISTING RAILWAY SHOWN THEREON; THENCE NORTH 52 DEGREES 41 MINUTES 54 SECONDS WEST, RADIAL TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66, 41.69 FEET TO THE TRUE POINT BEGINNING. THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE-SYSTEM DATA DATED NOVEMBER 1997.

PARCEL B

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY; INDUSTRIAL DRIVE DESCRIBED IN DOCKET 918, PAGE 574; AND PARCEL 1 DESCRIBED IN DOCKET 1967, PAGE 587, RECORDS OF COCONINO COUNTY, LYING IN THE LOT 2 OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING FOR REFERENCE AT A POINT OF TANGENCY IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66 NORTHEAST OF FOURTH STREET; THENCE NORTH 56 DEGREES 57 MINUTES 16 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, 35.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTH 58 DEGREES 57 MINUTES 16 SECONDS EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE 1154.90 FEET; THENCE SOUTH 33 DEGREES 02 MINUTES 44 SECONDS EAST, PERPENDICULAR TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, 39.49 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY AND THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 37 DEGREES 26 MINUTES 34 SECONDS WEST; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF THE NEW RAILWAY SHOWN THEREON AND ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 7718.99 FEET AND CENTRAL ANGLE 10 DEGREES 37 MINUTES 12 SECONDS, AN ARC LENGTH OF 1430.75 FEET; THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 205.84 FEET; THENCE SOUTH 48 DEGREES 03 MINUTES 46 SECONDS EAST, ALONG SAID NORTHWESTERLY LINE, 12.00 FEET; THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 373.32 FEET; THENCE NORTH 42 DEGREES 59 MINUTES 24 SECONDS WEST, PARALLEL WITH AND 52 FEET EASTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN THEREON 53.01 FEET; THENCE NORTH 28 DEGREES 59 MINUTES 56 SECONDS WEST, 60.86 FEET; THENCE NORTH 40 DEGREES 09 MINUTES 12 SECONDS WEST, 223.43 FEET; THENCE NORTH 05 DEGREES 56 MINUTES 36 SECONDS EAST, 37.99 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 42 DEGREES 46 MINUTES 55 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, RADIUS 3750.72 FEET AND CENTRAL ANGLE 02 DEGREES 37 MINUTES 04 SECONDS, AN ARC LENGTH OF 171.37 FEET; THENCE NORTH 31 DEGREES 15 MINUTES 33 SECONDS EAST, 21.79 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 39 DEGREES 50 MINUTES 57 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3757.72 FEET AND CENTRAL ANGLE 01 DEGREES 47 MINUTES 06 SECONDS, AN ARC LENGTH OF 117.07 FEET; THENCE NORTH 51 DEGREES 55 MINUTES 35 SECONDS EAST, 141.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 38 DEGREES 03 MINUTES 52 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3860.32 FEET AND CENTRAL ANGLE 05 DEGREES 05 MINUTES 23 SECONDS, AN ARC LENGTH OF 342.92 FEET; THENCE NORTH 49 DEGREES 02 MINUTES 29 SECONDS EAST, 29.52 FEET TO THE TRUE POINT OF BEGINNING. THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH,

RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE—SYSTEM DATA DATED NOVEMBER 1997.

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THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE-SYSTEM DATA DATED NOVEMBER 1997.



MINUTES - Draft

City of Flagstaff
PLANNING & ZONING COMMISSION
4:00 PM– Wednesday, May 14, 2014
City of Flagstaff, Staff Conference Room

CALL TO ORDER

Chairman Dorsett called the meeting to order at 4:03 p.m.

COMMISSION MEMBERS:

PRESENT: Stephen Dorsett, Chairman; Steve Jackson (arrived just after roll call); Paul Moore; Tina Pfeiffer; David Carpenter; Paul Turner; Justin Ramsey, Vice Chairman

Absent:

CITY STAFF:

Mark Sawyers, Staff Liaison
Elaine Averitt, Planning Development Manager
Becky Cardiff, Recording Secretary

I. GENERAL BUSINESS

A. PUBLIC COMMENT

None

B. APPROVAL OF MINUTES

- 1) Regular meeting of April 23, 2014.

Motion: Move to approve the minutes of the Regular Meeting of April 23, 2014 with an addition of "and the classical Greek architecture not fitting into Flagstaff architecture" under the Miscellaneous/To/From All recommended by Chairman Dorsett Action: Approved with recommended addition Moved by: Commissioner Carpenter Seconded by: Commissioner Moore. Motion carried unanimously

II. PUBLIC HEARING

A. THE TRAX

Address: Fourth Street & Route 66/Huntington Drive
Assessor's Parcel Number: 107-13-009, 010, 011
Property Owner: City of Flagstaff
Applicant: Evergreen Devco, Inc.
Application Number: PGMP 2014-0001
City Staff: ELAINE AVERITT
Action Sought: Regional Land Use Plan Amendment

A minor Regional Land Use and Transportation Plan amendment request from Evergreen Development to change the land use designation from Office/Business Park/Light Industrial and Light/Medium Industrial to Community/Regional Commercial for approximately 33.6 acres located at the southwest and southeast corners of Route 66 and Fourth Street and at the northwest corner of Huntington Drive and Fourth Street.

B. THE TRAX

Address: Fourth Street & Route 66/Huntington Drive
Assessor's Parcel Number: 107-13-009, 010, 011
Property Owner: City of Flagstaff
Applicant: Evergreen Devco, Inc.
Application Number: PREZ 2014-0002
City Staff: ELAINE AVERITT
Action Sought: Zoning Map Amendment

A proposed Zoning Map Amendment to the official Zoning Map for approximately 33.6 acres to rezone property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC), located at the southwest and southeast corners of Route 66 and 4th Street, and the northwest corner of Huntington Drive and 4th Street.

Ms. Averitt gave two separate PowerPoint presentations on the proposed Regional Land Use Plan Amendment and Zoning Map Amendment and answered questions from Commissioners.

Mr. Sawyers was present and answered questions from Commissioners.

Laura Ortiz, Evergreen Development, gave a brief background of Evergreen Development and an overview of the proposed project and answered questions from Commissioners

[Motion: Move to open the public hearing](#) Moved by: [Commissioner Turner](#) Seconded by: [Commissioner Ramsey](#). Motion carried unanimously.

[Public Comment: None](#)

[Motion: Move to close the public hearing](#) Moved by: [Commissioner Moore](#) Seconded by: [Commissioner Turner](#). Motion carried unanimously.

Discussion was held on the proposed project. Neil Gullickson, Planning Development Manager, answered Commissioners questions on the density of a previous plan that had been submitted at an earlier date. The vote on the proposed project will occur at the next public hearing.

III. OTHER BUSINESS

A. DISCUSSION OF CONDITIONAL USE PERMIT 12-002 FOR COLLEGE AMERICA.

Mr. Gullickson handed out additional information to Commissioners. Mr. Gullickson indicated that the light reflective value plays a bigger role than staff anticipated and that the color that was approved matched the color that was used on the project. Mr. Dorsett indicated his concern was more with the architecture not fitting into Flagstaff architecture rather than the color, other Commissioners expressed the same concern. Further discussion was held on the conditions of the Conditional Use Permit that was approved. Mr. Sawyers gave the Commission the option to contact the owner or to have a hearing. Chairman Dorsett indicated that if Staff believes that the conditions were met according to Staff understanding that he will accept that and will make sure that in the future specifics of conditions will be very clear and will make sure that Staff understands exactly what the Commission wants.

Patrick Hurley, representative for College America, indicated the owner wanted columns in the front of his building. Mr. Hurley stated there were several items on the building that were done by the builder without owner knowledge and some changes to those (i.e. retaining wall) will be made soon. Mr. Hurley indicated the owner was never told that the Commission didn't want the columns in the front of the building but suggested that there is a possibility to change the color of the columns to something that was less reflective.

IV. MISCELLANEOUS ITEMS TO/FROM COMMISSION MEMBERS

Mr. Sawyers gave an update on some projects that will be coming soon to the Commission on the agendas in future months June and discussed potential traffic issues for projects in general.

ADJOURNMENT

The meeting was adjourned at 6:05 p.m.

**PLANNING AND DEVELOPMENT SERVICES REPORT
ZONING MAP AMENDMENT**

**PUBLIC HEARING
PREZ 2014-0002**

DATE: May 6, 2014
MEETING DATE: May 14, 2014 & May 28, 2014
REPORT BY: Elaine Averitt
CONTACT: 928-213-2616

REQUEST:

Zoning Map Amendment to the official Zoning Map for approximately 33.6 acres to rezone property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC), located at the southwest and southeast corners of Route 66 and 4th Street, and the northwest corner of Huntington Drive and 4th Street on parcel numbers 107-13-009, 107-13-010, and 107-13-011.

STAFF RECOMMENDATION:

On May 14, 2014, open the Public Hearing, receive input and close the Public Hearing. On May 28, 2014, staff recommends approval of PREZ 2014-0002 with the conditions as noted in the Recommendation section of this report.

PRESENT LAND USE:

Undeveloped land in the Light Industrial (LI) and Light Industrial-Open (LI-O) zones.

PROPOSED LAND USE:

A commercial development, consisting of approximately 250,000 square feet of retail, service and office uses to be constructed on these three sites.

NEIGHBORHOOD DEVELOPMENT:

North: Route 66, then Commercial Uses, HC Zone;
East: Aquaplex, Light Industrial-Open Zone; Undeveloped Land, Light Industrial Zone;
South: BNSF Railway, Industrial Uses and Undeveloped Land, Light Industrial Zone; Aquaplex is south of Area B, Light Industrial-Open Zone; Gore is south of Area D, Light Industrial zone;
West: Undeveloped Land and Industrial Uses, Light Industrial Zone.

REQUIRED FINDINGS:

STAFF REVIEW. An application for an amendment to the Zoning Map shall be submitted to the Planning Director and shall be reviewed and a recommendation prepared. The Planning Director's recommendation shall be transmitted to the Planning Commission in the form of a staff report prior to a scheduled public hearing. The recommendation shall set forth whether the Zoning Map amendment should be granted, granted with conditions to mitigate anticipated impacts caused by the proposed development, or denied; and shall include an evaluation of the consistency and conformance of the proposed amendment with the goals of the General Plan and any applicable specific plans; and a recommendation on the amendment based on the standards of the zones set forth in Division 10-40.20 (Establishment of Zones).

FINDINGS FOR REVIEWING PROPOSED AMENDMENTS: All proposed amendments shall be evaluated as to whether the application is consistent with and conforms to the goals of the General Plan and any applicable specific plans; and the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City and will add to the public good as described in the General Plan; and the affected site is physically suitable in terms of design, location, shape, size, operating characteristics and the provision of public and emergency vehicle access, public services, and utilities to ensure that the requested zone designation and the proposed or anticipated uses and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located. If the application is not consistent with the General Plan and any other applicable specific plan, the applicable plan must be amended in compliance with the procedures established in City Code Title 11, Chapter 11-10 (General Plans) prior to considering the proposed amendment.

STAFF REVIEW:

Introduction/Background

As indicated in the previous report, this Zoning Map amendment (rezoning) request is the second of two related items on the Commission's agenda; the first item is identified as a *Regional Plan* amendment request. The rezoning request is to amend 33.6 acres of property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial zone in the vicinity of Route 66 and 4th Street.

The site is currently vacant, undeveloped and un-subdivided land. At the date of this report, the property is owned by the City of Flagstaff. The applicant, Evergreen Devco, Inc., intends to close escrow on the property by September 2014 and following site plan and engineering construction plan approvals, to provide the development with new public and private infrastructure that includes roadway work, FUTS trail construction, water, sewer, and storm water infrastructure. The Regional Plan amendment report includes an attachment, "General Plan Amendment Submittal Requirement" narrative by the applicant, which provides additional information on the reason for the request and anticipated community benefits.

Land uses north of the property, across Route 66, consist of commercial buildings with uses that include motels, restaurants, auto repair, retail, plant nursery and offices. New commercial construction on the north side of Route 66 includes the completed Walgreens at the northeast corner of Route 66 and 4th Street, a new bank east of the Walgreens (in construction), and a Tractor Supply Co. (in construction) at the northeast corner of Route 66 and Arrowhead Drive. The east property line is the narrow end of the eastern parcel, east of Postal Boulevard and is only about 40 feet wide. This area is adjacent to vacant city-owned land. The western parcel (Areas A and C) is bordered on the south by BNSF railway, industrial uses, and undeveloped land. Area D at 4th Street and Huntington is bordered on the south by Huntington Drive and then W.L. Gore & Associates (light industry). The eastern parcel (Area B) is bordered on the south by the BNSF railway, then the Aquaplex and Industrial Drive further east. The west property line is the narrow end of the western parcel (about 65 feet wide) west of Arrowhead Drive and is adjacent to vacant city-owned land. The terrain on the Areas A, B, and C of the subject site is generally flat at an elevation ranging between approximately 6,840 to 6,860 feet. Other than some planted trees along Route 66, this area is mostly devoid of vegetation. Area D is flattest at the corner of 4th Street and Huntington, and then slopes down towards the west; it has a fairly even distribution of Ponderosa pine tree resources.

If the zoning map amendment request is approved, the next steps in the process will be applications for Site Plan, followed by civil engineering and building plan permits. The shopping center will need to be platted;

however, a first phase with limited buildings may proceed prior to platting. A resolution for the development agreement must be approved prior to the second reading of the zoning ordinance (see attached draft development agreement). The development agreement will address responsibilities for constructing a FUTS trail, providing outdoor public space, preserving the trestle bridge, ensuring that construction of public improvements coincide with the phased development of the project, and designing drive-through facilities to ensure the safe movement of pedestrians and vehicles. Additionally, the Developer will be required to contribute an agreed upon monetary sum into the City's escrow account towards future I-40 Bridge improvements and to cover a pedestrian crossing study and any recommended improvements to Route 66 related to the development of the property. The development agreement also covers Route 66 lighting (ADOT requirements) and dedication of public easements and rights-of-way. The applicant received Inter-Division Staff (IDS) approval for the Conceptual Site Plan on April 3, 2014. The conditions of IDS review were addressed when the applicant submitted a revised Conceptual Site Plan for the Planning & Zoning Commission (P&Z). The conditions of P&Z submittal were satisfied so that staff could schedule the public hearings. Those conditions relating to requirements for future Site Plan submittals were agreed by the Developer in the "response to conditions." Any outstanding, unresolved provisions addressed in the Conditions of Approval will be included in the development agreement.

Proposed Development Conceptual Site Plan

The applicant, Evergreen Devco, Inc., is requesting a zoning map amendment for a multi-phase commercial development named "The Trax." The 33.6-acre site is located at the intersection of Route 66 and Fourth Street, and is adjacent to approximately one mile of the Burlington Northern Santa Fe railway, as seen on the attached Conceptual Site Plan. In 2006, the railway was re-located to the south, enabling construction of the Fourth Street Overpass and creating additional developable land on both sides of the new Fourth Street bridge. Access to the development will be created along Route 66 at Arrowhead Drive, First Street, Second Street, Postal Boulevard and two additional minor driveways. Access will be created from Fourth Street to the east and west sides of the shopping center. For Area D, access will be created from Fourth Street and from Huntington Drive. A Flagstaff Urban Trail System trail will be constructed along the rear portion of the shopping center adjacent to the railway, compatible with the Flagstaff Urban Trail System plan. The proposed timing of development will be dictated by market demand; however, the developer anticipates having the first users break ground by 2015, with other to follow between 2015-2022. Areas A and B are expected to be developed first and Areas C and D are anticipated to be completed later.

The applicant had two Conceptual Site Plans prepared which are attached with this application:

- 1) architectural plan with building and parking data (prepared by Butler Design Group, Inc.); and
- 2) preliminary engineering plan (prepared by Shephard Wesnitzer).

The proposed project consists of 195,000 square feet (sq ft) of commercial buildings and 931 parking spaces in Areas A, B, and C north of the railway, and a 57,000 sq ft office building and 190 parking spaces in Area D south of the railway. The development includes a variety of building types which are best described within the conceptual phasing areas (A, B, C, and D) as shown on the Conceptual Site Plan prepared by Butler Design Group. Starting at the west end of the project, Area C (beginning at Arrowhead) includes two 4,000 sq ft office buildings, a 5,000 sq ft casual dining building, and a 45,000 sq ft 3-story hotel. Area A (beginning roughly at N. First St.) depicts a gas station/convenience store, an 8,000 sq ft restaurant, a 30,000 sq ft "Major," two drive-through restaurants, a 6,570 sq ft multi-tenant retail building, a 12,900 sq ft retail building at the corner of Route 66 and 4th Street, and a car wash. Area B (beginning on the east side of 4th Street) includes a 7,940 sq ft restaurant, a 30,000 sq ft "Major," two multi-tenant shops (8,200 and 8,400 sq

ft), a drive-through restaurant, and 5,000 sq ft retail shop located at Postal Blvd. Area D (northwest corner of 4th St. and Huntington Dr.) proposes a 57,000 sq ft office building with surface parking.

Pedestrian amenities will be included in the development and are identified generally in the Conceptual Site Plan. The design of these amenities will need to be identified specifically in the more detailed Site Plan application for each building, or group of buildings, following the zoning case. In general, pedestrian amenities are provided adjacent to buildings, in pedestrian path locations between buildings and parking lots, and in unique areas such as the trestle bridge location over Spruce Wash. They may include open and covered seating, small plazas, and landscaped pedestrian walkways around the site. Architectural design is discussed under Design Review.

The developer will be required to complete the pedestrian sidewalk system along Route 66, 4th Street (at new driveway locations) and Huntington Drive, provide on-site landscaping, street buffer landscaping, outdoor lighting, and a new high-speed FUTS trail along the rear of the project.

General Plan/Regional Land Use and Transportation Plan

The *Flagstaff Regional Land Use and Transportation Plan* identifies the subject property as in the Office/Business Park/Light Industrial and Light/Medium Industrial categories. All substantive Regional Plan issues were addressed in the previous Regional Land Use and Transportation Plan amendment report. The proposed minor Land Use Amendment would change the designation to Community/Regional Commercial; thus if the Regional Plan amendment is approved, the rezoning request would comply with the Regional Plan.

Zoning/Flagstaff Zoning Code

If the rezoning request is approved and the 33.6-acre site is rezoned to Highway Commercial (HC) Zone, the proposed commercial development will be considered a permitted use in the HC zone. Per the Flagstaff Zoning Code, Retail Trade, Drive-through Service, Restaurant, General Services, Office uses, Automobile Service Stations and Convenience Stores, Car Washes, Lodging (e.g., hotels, motels) are all classified as allowed uses in the HC zone (Section 10-40.30.040, p.40.30-15 through 40.30-18). Under the current LI and LI-O zoning, most of these uses (e.g., General Retail, Restaurants, Offices) would only be allowed with a Conditional Use Permit or not allowed at all (e.g., no lodging, or drive-through uses permitted in the LI zone) and auto service stations are not allowed in the LI or LI-O zones.

Table 1 compares development standards for existing LI and LI-O zones, compared to the proposed development with the requested HC zone. Resource protection only applies to Area D, 6.5 acres, at Huntington and 4th Street. The requested HC zone has a higher level of forest resource protection (30%) than the current light industrial zone requires (20%). Approximately 37% of the tree resources will be preserved. There is no difference in slope protection requirements between the existing and proposed zones.

There will be no change in the maximum permitted height with the request since 60 feet is the maximum height permitted in the LI, LI-O and HC zones. The maximum building height proposed for this project is a 3-story hotel. The specific heights are not proposed with the Conceptual Site Plan but will be reviewed for zoning code compliance with the more specific Site Plan submittals in the future. Most of the other buildings are proposed as single story. Civic or public space is required for all non-residential developments larger than 20,000 sq ft in gross floor area. As agreed upon in the development agreement, the new FUTS

trail area being constructed by the developer may be applied towards this requirement. The quantity of Civic/Public space will be reviewed for compliance with future Site Plan submittals.

Regarding intensity of development, the table below shows a proposed Floor Area Ratio (FAR) of only 0.14 to 0.21. This intensity is significantly less than either the existing zone would permit (1.5 FAR) or the proposed zone would permit (3.0 FAR).

TABLE 1

Subject Site	Existing Zones (LI & LI-O)	Proposed Zone (HC)
Acres (total project area)	33.6	33.6
Total Resource Protection Land (acres) Area "D" only	6.5	6.5
Forest Resource Protection as % of Site Area	20%	30%
Slope Protection 0-16.99% 17-24.99% 25-34.99%	No protection 60% of slope area No development allowed	No protection 60% of slope area No development allowed
Maximum Height	60'	60'
Building Placement Requirements		
Setbacks : Front	25'	0*
Setbacks: Side	0	0*
Setbacks: Side Exterior	15'	10'
Setbacks: Rear	0	0*
Min. Public/Civic Space	<i>5% of site</i>	<i>5% of site</i>
Max. Floor Area Ratio	1.5	3.00
* Setbacks are based on buffer requirements.		

Parking

The Flagstaff Zoning Code (Table 10-50.80.040.A) addresses the minimum number of parking spaces for "Shopping Centers". The requirement for shopping centers with greater than or equal to 100,000 gross square feet (gsf) is: *One (1) space per 300 gsf for gsf over 100,000 gsf.* Restaurants will calculate parking separately as: *one (1) space per employee plus one (1) space per 100 gsf.* Once the shopping center development exceeds 100,000 gsf, it can use: *One (1) space per 325 gsf.*

The applicant provided parking calculations for the proposed development. This includes a requirement of a total of 1,106 parking spaces for Areas A, B, C and D, and a provided 1,121 parking spaces. Staff's review of the parking calculations found that the proposed plan is in general compliance for each area. A final parking analysis will be done with review of the more detailed Site Plan submittals and will ensure that general parking requirements and accessible parking space standards are met.

Design Review

Site Planning Design Standards (Section 10-30.60.030)

The applicant's engineer conducted a site analysis (see attachment) that considers topography, solar orientation, climate, views, built environment, and pedestrian/vehicular traffic and the findings were taken into account during project design development. Areas A, B, and C have views of Mount Elden and a portion of the San Francisco Peaks to the north (see photos in Site Analysis appendix). Design standards encourage orienting outdoor civic spaces to mountain views and/or views of pedestrian activity.

Circulation Systems (Auto, Pedestrian, Bicycle and Transit, Sec. 10-30.60.040)

The project design provides a diverse range of transportation choices for getting to and from the property. Bus transit is readily available along both Route 66 and 4th Street, bicyclers have access via the proposed high-speed FUTS, vehicles have easy access to and from all public streets, and pedestrians are served via public sidewalks with signalized cross walks at Arrowhead, 1st Street, 4th Street, Postal, and Huntington. Bicycle racks are required through the zoning code parking standards and will need to be shown on the Site Plan submittals.

The proposed project will maintain the existing sidewalk system along Route 66, while the rest will be modified to accommodate new access points. Additional sidewalks and paths will be included throughout Areas A, B, and C and will provide connectivity with public sidewalks along Route 66 and 4th Street. New sidewalks proposed within Area D will connect to sidewalks along 4th Street and Huntington Drive.

There are several existing transit stops for the Mountain Line bus system in the vicinity of the project. Bus stops are located at Arrowhead Avenue and Route 66, at the southeast corner of Route 66 and 4th Street, at Steve's Boulevard (just east of Postal Ave.) and on both side of 4th Street north of Huntington Drive. These stops provide immediate pedestrian access to the proposed development.

Parking Lots, Driveways and Service Areas (Section 10-30.60.050)

Site Planning Design Standards seek to reduce the visual impact of parking lots. A few of the requirements are listed below:

- To the maximum extent feasible, parking lots shall be completely or mostly located to the side or behind a building rather than in front;
- Parking areas must be screened from public view with low walls and/or evergreen hedges;
- Parking areas over one acre must be divided into smaller lots with planted buffers between them to minimize the perceived scale of the parking lot.

The proposed plan to a large extent complies with these standards; however, with future Site Plan submittals staff will be working with the applicant to achieve better compliance in Area B (parking in front of Major B), more effectively breaking up the larger parking lots, and modifying some of the drive-through facility designs to provide adequate screening and ensure pedestrian safety.

Design standards require new developments to minimize the number of curb cuts (and driveways) onto a public street. Six access points along Route 66 are proposed, with two of them requiring modification of existing traffic signals and one requiring a new traffic signal (First St.). Non-signalized driveways are spaced relatively far apart, considering the approximately one (1) mile of frontage along Route 66. There will be one driveway on each side of 4th Street providing access to the west and east sides of the shopping center, a driveway from 4th Street to access Area D, and a driveway from Huntington Dr. to access Area D.

During Site Plan review, staff will review to ensure that dumpsters and other services uses are effectively screened and meet Public Works standards for access.

“Scale” refers to proportions, overall height and width, the visual intensity of the development, and the building massing. The proposed new development, with predominantly one-story buildings and relatively low building coverage will be compatible in scale with the existing commercial uses along the north side of Route 66. The largest proposed buildings, Major A and Major B, both 30,000 sq ft are significantly smaller than the 51,000 sq ft Aquaplex recreation center located at 4th Street and Huntington Drive. The 2-story, 57,000-sq ft office building proposed in Area D is slightly larger than the Aquaplex.

Architectural Design Standards (Section 10-50.20.030)

As depicted in the attached 11x17” color elevations and described by the applicant, building designs have been created to maintain the natural setting by incorporating a range of styles that are well-suited for a mountain town and incorporate many of the raw materials that are representative of the surrounding area. These materials include founders finish and split face masonry (tan and red), board & batten, board formed concrete, timber supports, rusted and galvanized metal roofing/awnings and paint colors such as “Weathered Leather” and “Aged Eucalyptus.”

Staff believes that the proposed building materials meet the intent of the zoning code. During Site Plan review staff will confirm that any secondary materials, such as stucco, make up less than 25 percent of the exterior walls of each elevation.

Landscaping

A preliminary landscape plan was submitted and reviewed with the concept plan in October 2013. The plan meets the general intent of landscaping requirements for parking lots, building foundations, street buffers and open space. A final landscape plan will be reviewed with the Site Plan submittal.

PUBLIC SYSTEMS IMPACT ANALYSIS:

Traffic and Access

The site (Areas A, B, and C) is bounded on the north by Route 66, on the south by BNSF railway, on the east and west by narrow undeveloped city property. Area D is bounded on the north by BNSF railway, on the south by Huntington Drive, on the east by 4th Street, and on the west by light industrial business.

The site is accessed locally via 4th Street, Route 66, and Huntington Drive. Regional access is expected to be provided by Route 66 and Interstate 40 and by other arterial streets in the vicinity such as 4th Street, Industrial Drive/Huntington Drive, Soliere Avenue, Sparrow Avenue and Butler Avenue.

Access points are discussed generally under Circulation Systems on page 6 of this planning report. The TIA provides detailed turning movements for each driveway associated with the proposed development.

A Traffic Impact Analysis (TIA) dated December 2013, was prepared for the applicant by Kimley-Horn and Associates, Inc. Principle findings and recommendations in the TIA include:

- Access drives to the site operate at acceptable levels of service for all scenarios.

- Some intersections in the immediate vicinity of the project, such as 4th Street and Route 66 as well as Route 66 will operate below desirable levels of service due to background volumes.
- Turn (deceleration) lanes are recommended at access points along Route 66, 4th Street and Huntington Drive, and are incorporated into the Conceptual Site Plan.
- Recommended mitigation strategies are provided for 4th Street and Soliere Avenue, and 4th Street and Sparrow Avenue.
- Potential demand for pedestrian crossing of Route 66 was considered. Currently there are three locations where pedestrians can utilize signalized intersections to cross from the north side of Route 66 to the south; at Arrowhead Ave., 4th Street, and Postal Blvd.the addition of new traffic signal at the intersection of 1st Street and Route 66 will reduce the distance between signalized intersections west of 4th Street to approximately 1,200 feet....with the addition of the signalized crossing at 1st Street the maximum distance a pedestrian could possibly travel before reaching a signalized crossing would be approximately 600'. [Note: the development agreement includes provisions for a pedestrian study and mitigation strategies]
- Due to the increase in activity along the Route 66 frontage of the project and the addition of new access point, lighting levels should be reviewed along Route 66 to ensure adequate visibility for motorist and pedestrians. [Note: a lighting analysis by the applicant is in process and will be discussed with ADOT]

The City of Flagstaff traffic engineer accepted the TIA with conditions which are outlined in the attached memo and included in the development agreement between the City and Evergreen Devco. ADOT has not yet responded to Evergreen's most recent TIA submittal.

Water and Wastewater

A public water and sewer impact analysis was prepared by the City for the proposed development as part of a rezoning application in August 2008. After reviewing the current TRAX Concept Plans dated July 27, 2011, the City of Flagstaff Utilities Department concluded that the proposed site plans reveal no significant water and sewer changes. As long as water and sewer demands do not increase from the original analysis, no additional analysis work will be required. However, the city will require that the onsite water and sewer system be addressed in the Engineer's Design Report. According to the water and sewer impact analysis, the existing off-site and proposed on-site sewer and water system infrastructure were deemed adequate to accommodate the development, and no off-site improvements were required.

Each parcel has an 8-inch PVC water main stubbed out for development of this land. Within the Route 66 right-of-way and Huntington Drive are 18-inch and 16-inch diameter ductile iron transmission lines. All new on-site infrastructure will have to be designed and built to connect to the public water system and will be required to provide a looped water system.

The nearest sewer main that allows for gravity flow from this site is located within Parcel A. This existing 14-inch trunk line turns into a 21-inch diameter PVC line that follows the alignment of Spruce Avenue Wash. This 21-inch interceptor line has sufficient capacity to convey all anticipated sewage flows generated by this development.

Stormwater

The Stormwater Manager reviewed and accepted the Drainage Impact Analysis that was provided with the Conceptual Site Plan for the proposed rezoning. The report demonstrated that there are no concerns of downstream flooding impacts to property and no rise in ‘Lake Continental.’

According to the Site Analysis report, Areas A, B, and C will be graded to drain towards the south, where a series of inlets will collect and divert runoff to various detention basins and LID features located throughout the site. Area D will be graded to drain to the west and northwest, where grate inlets will collect and divert runoff to a proposed extended detention basin on the northwest corner of the site.

OTHER REQUIREMENTS:

Resources

As previously mentioned, Areas A, B, and C are relatively flat and do not contain any slope, floodplain, or tree resources. Table 1 and page 4 of this report discuss resource preservation requirements for Area D.

Citizen Participation

Public hearings before the Planning and Zoning Commission and City Council are conducted in conjunction with any request for zoning map amendment. This application for a “new commercial development that exceeds 20 acres or 100,000 square feet of gross floor area” meets the requirements for Additional Requirements for Citizen Outreach (Section 10-20.30.070, p. 20.30-8). In accordance with state statute and the “Additional Requirements” in the zoning code, notice of the public hearing was provided by placing an ad in the Daily Sun, posting notices on the property, and mailing a notice to all property owners within 600 feet of the subject property. Step Two of the additional requirements includes the scheduling of no less than two public hearings with the Planning Commission to provide additional opportunities for interested members of the public to be informed of and provide comments on the new development proposals. As of this writing, Planning staff has received one e-mail dated 4/29/14 from a Flagstaff resident (see attached email). The e-mail expresses several concerns including: the effect (commercial competition) the zoning amendment might have on the 4th Street corridor north of Route 66; increased traffic flow and pedestrian safety; and reducing the amount of light industrial land in areas that have easy access to housing. Two business owners within the notification area stopped by the Community Development counter (4/28/14 and 5/6/14) with a few general questions about the proposal, including timing.

Section 10-20.30.060 of the Flagstaff Zoning Code requires the applicant for a Zoning Map or General Plan amendment to conduct a neighborhood meeting prior to the Planning Commission public hearing. A Record of Proceedings is included with this application for Zoning Map amendment (see attachment). The applicant held a neighborhood meeting on February 20, 2014, at the Aquaplex located at the northeast corner of 4th Street and Huntington Drive. According to the report, 37 people signed in for the meeting. Evergreen Devco representatives answered a variety of questions as recorded in the record of proceedings. The neighborhood meeting notification, meeting, and record of proceedings were conducted in compliance with the zoning code requirements.

RECOMMENDATION:

Staff believes that the Zoning Map Amendment request has been justified in light of being consistent with objectives and policies of the Regional Land Use Plan and would recommend in favor of amending the zoning designation on 33.6 acres of property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC).

Because this zoning application requires two Planning & Zoning Commission meetings, on May 14, 2014, staff recommends that the Commission open the Public Hearing, receive input and close the Public Hearing. On May 28, 2014, staff recommends approval of PREZ 2014-0002 with the conditions as noted below.

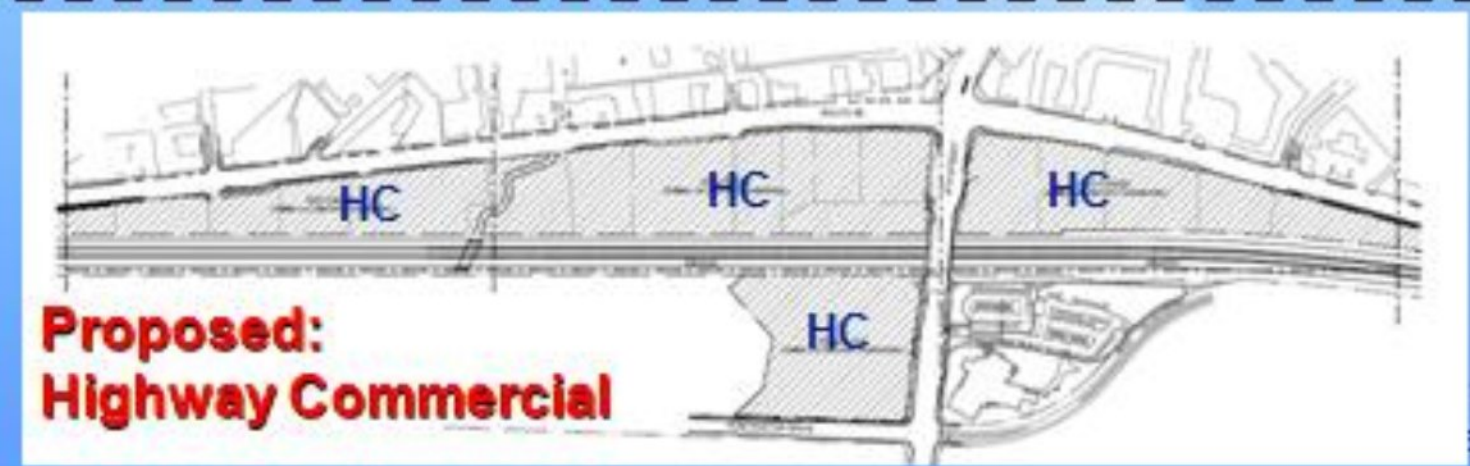
Staff would recommend that such amendment be subject to the following conditions:

1. That the subject property is developed in substantial accordance to the entire conceptual plans approved by the Inter-Division Staff (IDS) on April 3, 2014, with the zoning map amendment request.
2. That all terms, conditions and restrictions detailed within "Development Agreement and Waiver between City of Flagstaff and Evergreen-TRAX, L.L.C." are fully satisfied.

ATTACHMENTS:

- Zoning Map Amendment Application
- Vicinity Map for Zoning Map Amendment (with existing zoning, 8.5x11")
- Applicant's response to city staff comments, dated March 27,2014
- Record of Proceedings for Neighborhood Meeting
- Citizen Email, dated April 29, 2014
- IDS Conditions of Approval, dated April 3, 2014
- TIA acceptance w/conditions memo, Jeff Bauman, dated Feb. 20, 2014
- WSIA compliance memo, Ryan Roberts, dated July 15, 2013
- Draft Development Agreement, dated May 2014
- Color Elevations (11" x 17"), proposed conceptual
- Site Analysis
- Existing Zoning Exhibit
- Conceptual Site Plan, dated 4/9/2014 (architectural, 24" x 36", 5 sheets, Butler Design Group)
- Conceptual Site Plan, dated March 2014 (engineering, 24" x 36", 6 sheets, SWI)

The TRAX - Rezoning Request – PREZ2014-000





City of Flagstaff

Community Development Division

211 W. Aspen Ave
 Flagstaff, AZ 86001
 www.flagstaff.az.gov

P: (928) 213-2618
 F: (928) 213-2609

PREZ/PGM

Date Received	Application for Zoning Map Amendment and/or Regional Plan Amendment			File Number <i>DEV13-040</i>
Property Owner(s) <i>CITY OF FLAGSTAFF</i>	Title	Phone	Email	
Mailing Address			City, State, Zip	
Applicant(s) <i>Evergreen Devco, Inc.</i>	Title	Phone <i>602.808.8600</i>	Email <i>dbackling@evgre.com</i>	
Mailing Address <i>2390 E Camelback Rd. #410</i>			City, State, Zip <i>Phx, AZ 85016</i>	
Project Representative) <i>Danny Backling</i>	Title <i>Dir. PM</i>	Phone	Email	
Mailing Address			City, State, Zip	
<i>PREZ2014-0002</i>			<i>PGMP2014-0001</i>	
Requested Review <input checked="" type="checkbox"/> Zoning Map Amendment ↑ <input checked="" type="checkbox"/> Regional Plan Amendment ↑ <input type="checkbox"/> Continued				

Site Address <i>TBD 2499 E. Rt. 66</i>	Parcel Number(s) <i>107-13-010-009, 011</i>	Subdivision, Tract & Lot Number
Existing Zoning District <i>LI + LI-O</i>	Proposed Zoning District: <i>HC</i>	Existing Regional Plan Land Use Category <i>office Bus. Park-LI; and Light-Med. Ind.</i>
Existing Use <i>Undeveloped</i>	Proposed Use <i>Commercial</i>	
Property Information:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Located in an existing Local/National Historic District? (Name: _____) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Existing structures are over 50 years old at the time of application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subject property is undeveloped land?	
Requested Urban Growth Boundary Change (If Applicable)	State Reason for Request <i>LARGE SCALE ZONING MAP AMENDMENT:</i>	
Note: Indicate how the change of zone will not be detrimental to the majority of persons or properties in the surrounding area, or to the community in general. If modification to the Regional Plan is requested, clearly state reason(s) for modification. (Attach separate sheets as necessary). Incomplete submittals will not be scheduled.		
Property Owner Signature(required)	Date:	Applicant Signature <i>[Signature]</i>
		Date: <i>10/4/13</i>

For City Use		
Date Filed:	File Number(s): <i>PREZ2014-0002</i>	Type of Zoning Map Amendment:
P & Z Hearing Date: <i>May 14, 28, 2014</i>	Publication and Posting Date: <i>4-27-14</i>	<input type="checkbox"/> Small-scale
Council Hearing Date: <i>June 17, 2014</i>	Publication and Posting Date: <i>4-28-14</i>	<input type="checkbox"/> Medium-scale
Fee Receipt Number: <i>#37361</i>	Amount: <i>13,736.</i>	Date: <i>10-8-13</i>
		<input checked="" type="checkbox"/> Large-scale

Action by Planning and Zoning Commission:			Action by City Council:		
<input checked="" type="checkbox"/> Approved	<i>5-28-14</i>		<input type="checkbox"/> Approved		
<input type="checkbox"/> Denied			<input type="checkbox"/> Denied		
<input type="checkbox"/> Continued			<input type="checkbox"/> Continued		
Staff Assignments	Planning <i>Elaine</i>	Engineering <i>Gary</i>	Fire <i>Kent</i>	Public Works/Utilities <i>Jim</i>	Stormwater <i>Kyle</i>

PROJECT TEAM

Developer:
 Evergreen 2390 East Camelback Rd. Suite 410
 Phoenix, AZ 85016
 602-808-8600
 Contact: Danny Bocking

Architect:
 Butler Design Group
 5017 E. Washington St. Suite 107
 Phoenix, AZ 85034
 602-957-1800
 Contact: John Mocarasi

PROJECT NARRATIVE

The project consists of a multi-phase retail development in Flagstaff, Arizona. The Site for Areas A, B and C are located at southwest and southeast corners of Route 66 and 4th Street. The Site for Area D is located at the Northwest corner of 4th Street and Huntington Drive. See separate project narrative for additional information.

SITE DATA

Site:
 APN: 107-13-010 (Area A & C)
 107-13-009 (Area B)
 107-13-011 (Area D)

Existing Zoning: LI (Light Industrial)
 Proposed Zoning: HC (Highway Commercial)

Site Area
 Area A & C: 800,750 S.F. (18.4 AC.)
 (Area A): 523,883 S.F. (12.0 AC.)
 (Area C): 276,867 S.F. (6.4 AC.)
 Area B: 380,698 S.F. (8.7 AC.)
 Area D: 284,914 S.F. (6.5 AC.)

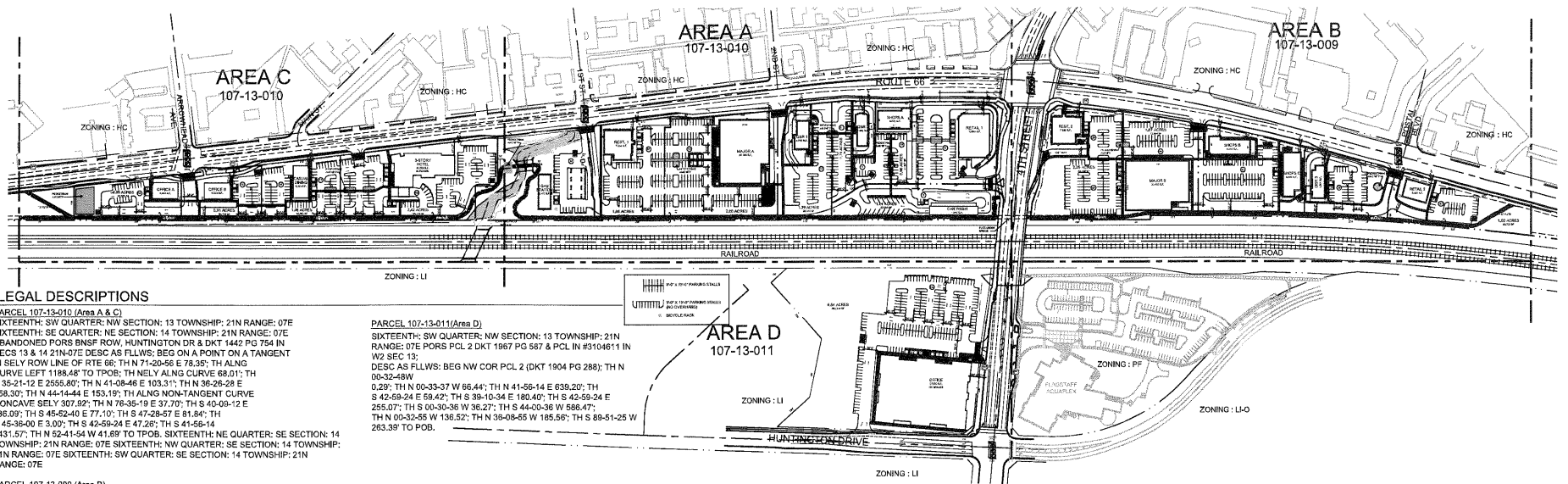
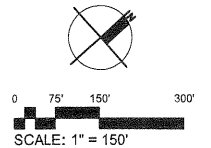
BUILDING DATA:

Building:
 Building Area (Area A): 73,856 S.F.
 % Coverage: 14%
 FAR: .14
 Building Area (Area B): 63,039 S.F.
 % Coverage: 16.6 %
 FAR: .17
 Building Area (Area C): 58,000 S.F.
 % Coverage: 20.9%
 FAR: .21
 Building Area (Area D): 57,000 S.F.
 % Coverage: 20 %
 FAR: .20
 Max. Building Height (10-40-30.040): 60 Feet

PARKING DATA:

Standard Stall: 9' x 18' / Accessible Stall: 11' x 20' (HC included in overall count for each user)
Parking Spaces Totals:
 Parking Required / Provided (Area A): 400 / 405
 Parking Required / Provided (Area B): 318 / 302
 Optional Parking (Area B): 25
 Parking Required / Provided (Area C): 198 / 201
 Parking Required / Provided (Area D): 190 / 190
TOTALS: 1106 / 1123

(See Area Sheets for Breakdowns)

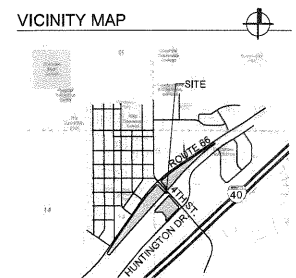


LEGAL DESCRIPTIONS

PARCEL 107-13-010 (Area A & C)
 SIXTEENTH: SW QUARTER; NW SECTION: 13 TOWNSHIP; 21N RANGE; 07E SIXTEENTH; SE QUARTER; NE SECTION: 14 TOWNSHIP; 21N RANGE; 07E ABANDONED PORS BNSF ROW, HUNTINGTON DR & DKT 1442 PG 754 IN SECS 13 & 14 21N-07E DESC AS FLLWS; BEG ON A POINT ON A TANGENT IN SELV ROW LINE OF RTE 66; TH N 71-20-56 E 78.35; TH ALNG CURVE LEFT 1188.48' TO TPOB; TH NELY ALNG CURVE 68.01'; TH N 35-21-12 E 2655.80'; TH N 41-08-46 E 103.31'; TH N 36-26-28 E 288.30'; TH N 44-14-44 E 153.19'; TH ALNG NON-TANGENT CURVE CONCAVE SELY 307.32'; TH N 16-35-10 E 37.79'; TH S 40-03-12 E 136.09'; TH S 45-52-40 E 77.10'; TH S 47-28-57 E 81.84'; TH N 45-36-00 E 3.00'; TH S 42-59-24 E 47.26'; TH S 41-56-14 3431.57'; TH N 52-41-54 W 41.69' TO TPOB. SIXTEENTH: NE QUARTER; SE SECTION: 14 TOWNSHIP; 21N RANGE; 07E SIXTEENTH; NW QUARTER; SE SECTION: 14 TOWNSHIP; 21N RANGE; 07E SIXTEENTH; SW QUARTER; SE SECTION: 14 TOWNSHIP; 21N RANGE; 07E

PARCEL 107-13-011 (Area D)
 SIXTEENTH: SW QUARTER; NW SECTION: 13 TOWNSHIP; 21N RANGE; 07E PORS PCL 2 DKT 1967 PG 587 & PCL IN #3104611 IN W2 SEC 13; DESC AS FLLWS: BEG NW COR PCL 2 (DKT 1904 PG 288); TH N 09-32-49W 0.29'; TH N 00-33-37 W 66.44'; TH N 41-56-14 E 630.20'; TH S 42-59-24 E 59.42'; TH S 39-10-34 E 180.40'; TH S 42-59-24 E 255.07'; TH S 00-30-36 W 36.27'; TH S 44-00-36 W 586.47'; TH N 00-32-55 W 138.52'; TH N 35-08-55 W 185.59'; TH S 88-51-25 W 283.39' TO POB.

PARCEL 107-13-009 (Area B)
 SIXTEENTH: NW QUARTER; NW SECTION: 13 TOWNSHIP; 21N RANGE; 07E POR OF BNSF RR (DKT 918 PG 574) & PCL 1 (DKT 1967 PG 587) IN LOT 2 SEC 13; DESC AS FLLWS: BEG POINT OF TANGENCY IN SELV ROW OF RTE 66 OF 4TH ST; TH N 65-57-16 E 35.78' TO POB; TH N 58-57-16 E 1154.90'; TH S 33-02-44 E 39.49'; TH ALNG NON-TANGENT CURVE CONCAVE SELY 1430.78'; TH S 41-56-14 W 205.84'; TH S 48-03-46 E 12.00'; TH S 41-56-14 W 375.32'; TH N 42-59-24 W 53.01'; TH N 29-59-56 W 60.85'; TH N 40-35-12 W 223.43'; TH N 05-56-36 E 37.89'; TH ALNG NON-TANGENT CURVE CONCAVE SELY 171.37'; TH N 31-15-33 E 21.79'; TH ALNG NON-TANGENT CURVE CONCAVE SELY 117.07'; TH N 51-55-35 E 141.45'; TH ALNG NON-TANGENT CURVE CONCAVE SELY 342.59'; TH N 40-02-29 E 29.52' TO TPOB. SIXTEENTH: SW QUARTER; NW SECTION: 13 TOWNSHIP; 21N RANGE; 07E



THE TRAX
 FOURTH STREET / ROUTE 66
 PROPOSED REDEVELOPMENT SITE
 Flagstaff, Arizona



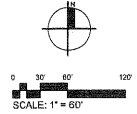
03-21-14
 11086-ST17

PARKING BREAKDOWN

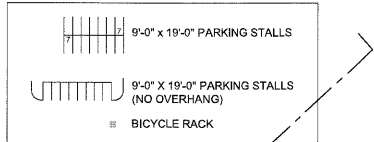
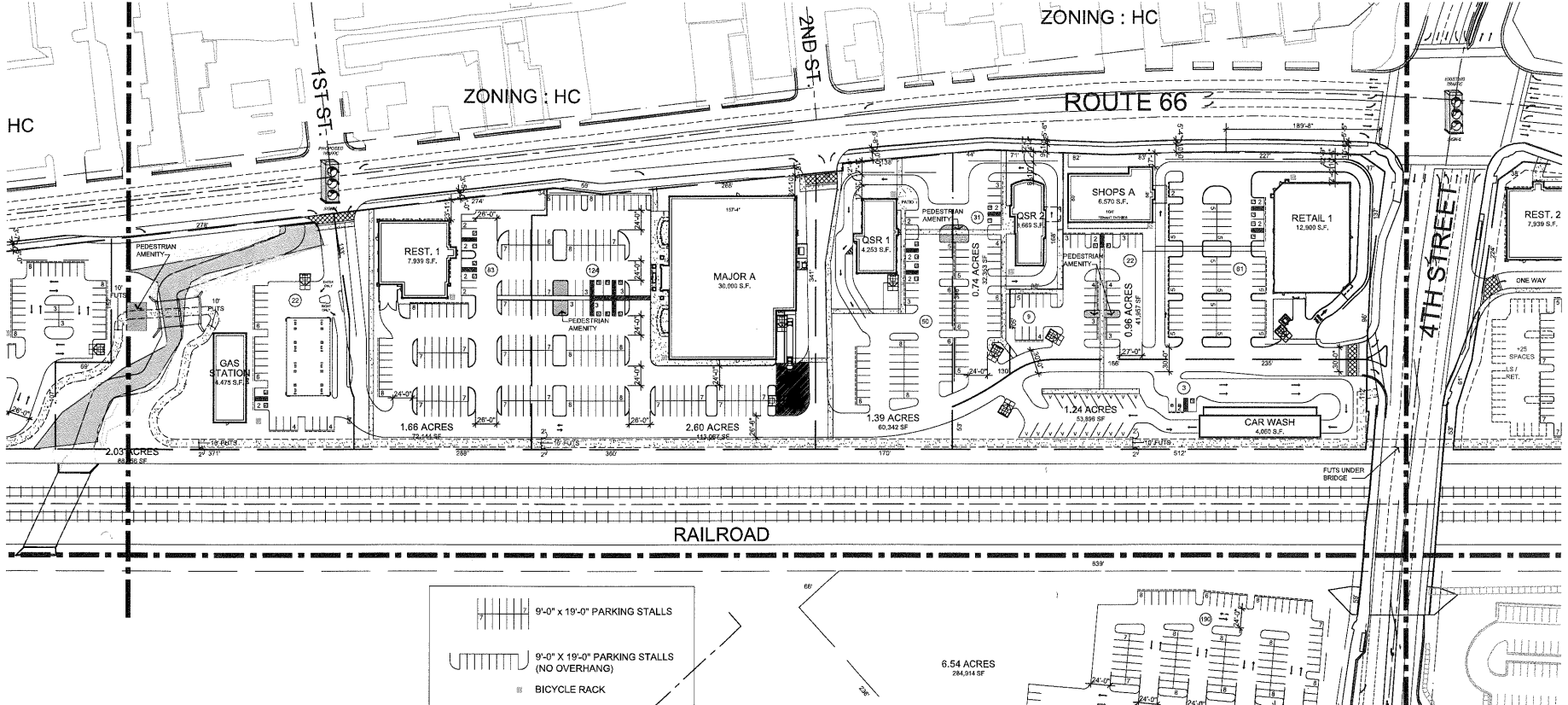
Standard Stall: 9' x 18' / Accessible Stall: 11' x 20' (HC included in overall count for each user)

Area A

QSR 1: (1/100 + 10)	53 spaces required (3 HC) 50 spaces provided (HC provided: 4 spaces)	Major A: (1/300)	100 space required (5 HC) 124 spaces provided (HC provided: 6 spaces)	Shops A (1/200)	28 space required (2 HC) 31 spaces provided (HC provided: 2 spaces)
Gas Station: (1/300)	20 spaces required (1 HC) 22 spaces provided (HC provided: 2 spaces)	QSR 2 (1/100 + 10)	53 space required (3 HC) 31 spaces provided (HC provided: 4 spaces)	Retail 1 (1/300)	43 space required (3 HC) 61 spaces provided (HC provided: 4 spaces)
		Rest 1 (1/100 + 20)	100 space required (5 HC) 83 spaces provided (HC provided: 4 spaces)	Car Wash (1.5 + Drive Thru)	3 space required (1 HC) 3 spaces provided (HC provided: 1 space)



AREA A



THE TRAX

FOURTH STREET / ROUTE 66

PROPOSED REDEVELOPMENT SITE
Flagstaff, Arizona

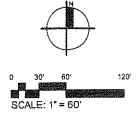


PARKING BREAKDOWN

Standard Stall: 9' x 18' / Accessible Stall: 11' x 20' (HC Included in overall count for each user)

Area B

Rest 2: (1/100 + 20)	100 spaces required (5 HC) 26 spaces provided (HC provided: 3 spaces)	Shops C (1/300)	28 space required (2 HC) 41 spaces provided (HC provided: 2 spaces)	Note: 25 Additional (future) spaces located South of Rest 2.
Major B: (1/300)	100 spaces required (5 HC) 132 spaces provided (HC provided: 6 spaces)	QSR 3 (1/100 + 10)	45 space required (3 HC) 35 spaces provided (HC provided: 2 spaces)	
Shops B: (1/300)	28 space required (2 HC) 41 spaces provided (HC provided: 2 spaces)	Retail 2 (1/300)	17 space required (1 HC) 27 spaces provided (HC provided: 2 spaces)	

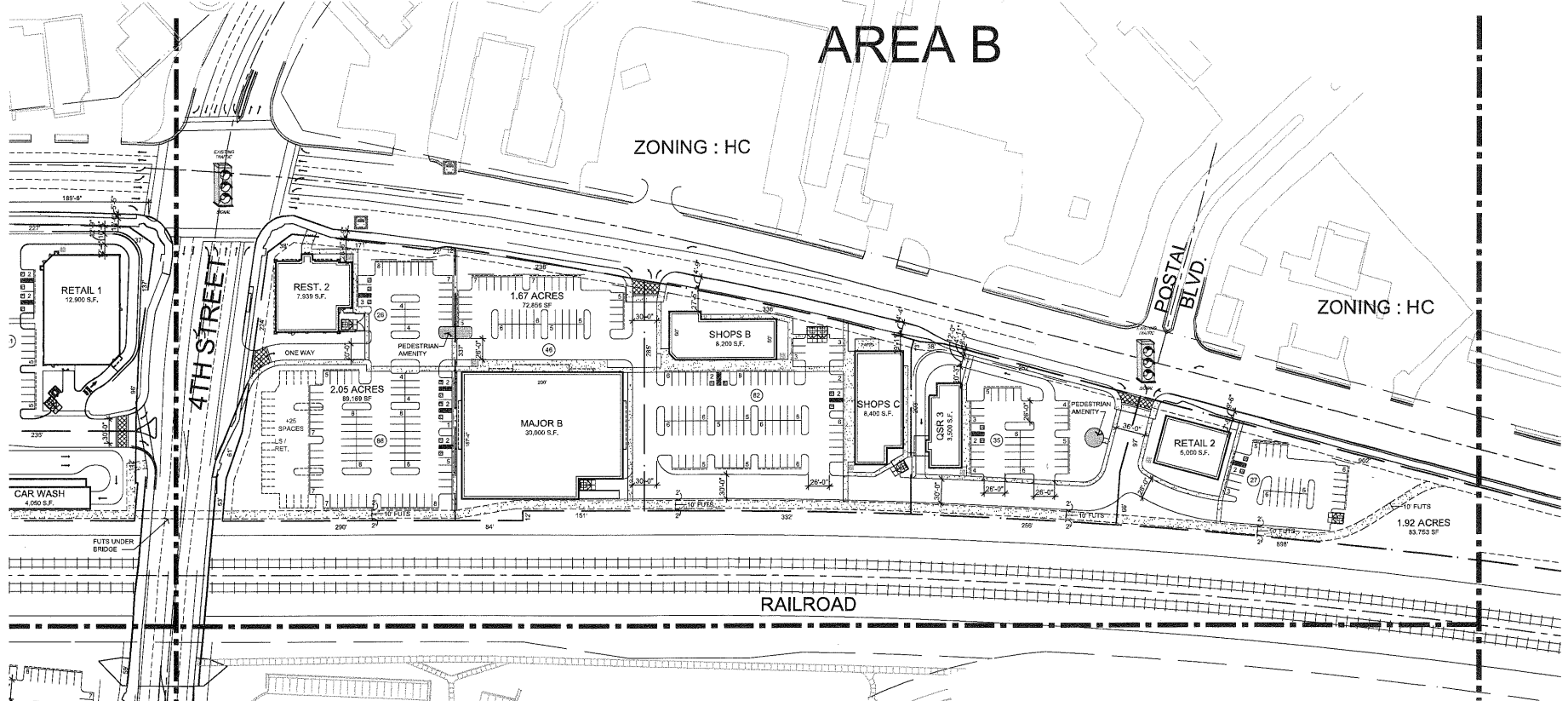


AREA B

AREA B

ZONING : HC

ZONING : HC



THE TRAX

FOURTH STREET / ROUTE 66

PROPOSED REDEVELOPMENT SITE
Flagstaff, Arizona

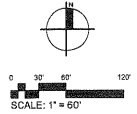


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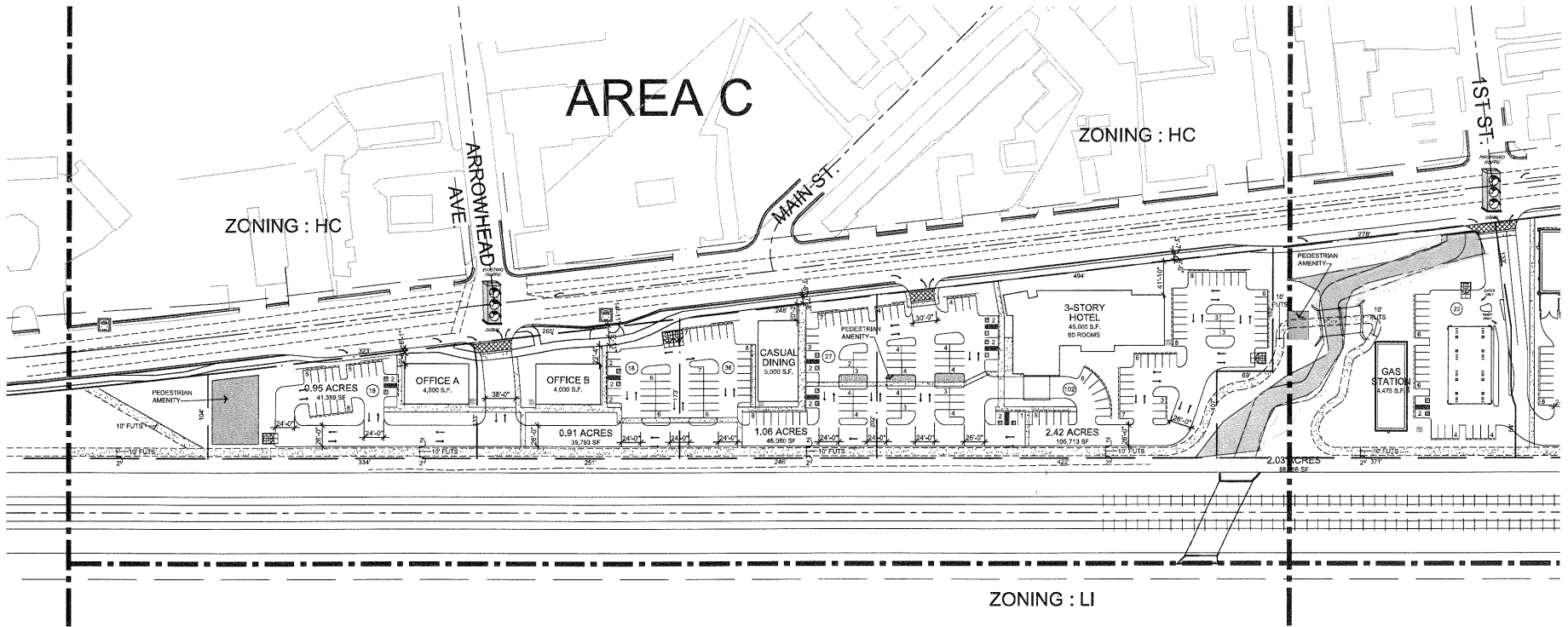
PARKING BREAKDOWN

Area C

Office A: (1/300)	14 spaces required (1 HC) 18 spaces provided (HC provided: 2 spaces)	Casual Dining: (1/100 + 20)	70 space required (4 HC) 83 spaces provided (HC provided: 4 spaces)
Office B: (1/300)	14 spaces required (1 HC) 18 spaces provided (HC provided: 2 spaces)	Hotel (1 Per Room) (1 per 3 employees) (1 per 3 people - meeting room)	100 space required (5 HC) 102 spaces provided (HC provided: 6 spaces)



AREA C



THE TRAX
FOURTH STREET / ROUTE 66
 PROPOSED REDEVELOPMENT SITE
 Flagstaff, Arizona

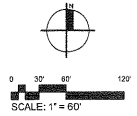


PARKING BREAKDOWN

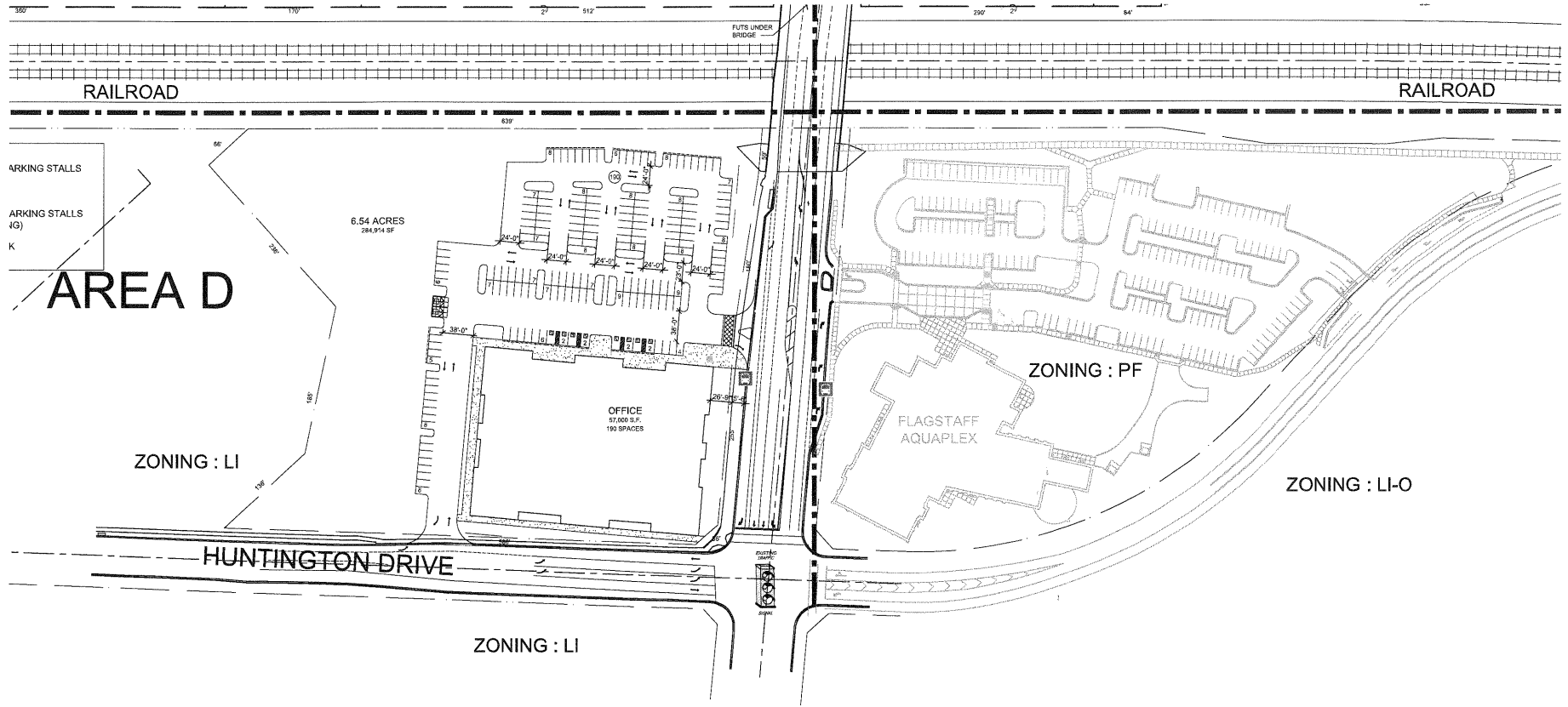
Standard Stall: 9' x 18' / Accessible Stall: 11' x 20' (HC included in overall count for each user)

Area D

Office: (1/300) 190 spaces required (7 HC)
 190 spaces provided
 (HC provided: 8 spaces)



AREA D



THE TRAX

FOURTH STREET / ROUTE 66

PROPOSED REDEVELOPMENT SITE

Flagstaff, Arizona



When recorded, mail to:

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

DEVELOPMENT AGREEMENT AND WAIVER
between
City of Flagstaff
and
Evergreen – TRAX, L.L.C.

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this _____ day of _____, 2014, by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”) and Evergreen - TRAX, LLC, an Arizona limited liability company (“**Developer**”). City and Developer are sometimes referred to herein collectively as the “**Parties.**”

RECITALS

A. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City.

B. Developer is the owner of approximately 33.6 acres of real property generally located at the intersection of Route 66 & Fourth Street, within the corporate limits of Flagstaff, Arizona, more specifically described and depicted in *Exhibit “A”* (the “**Property**”).

C. The Property is currently zoned Light Industrial (“**LI**”) and Light Industrial – Open (“**LI-O**”) and the Developer is requesting a zoning map amendment to Highway Commercial (“**HC**”).

D. Under the Flagstaff Regional Land Use and Transportation Plan in effect on the Effective Date of this Agreement, the Property is currently designated Office/Business Park/Light Industrial and Light/Medium Industrial and the Developer is requesting an amendment to Community/Regional Commercial.

E. The City has an interest in ensuring that the development of the Property complies with City standards for development and engineering improvements, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety and other benefits to the City and its residents.

F. The Developer acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to the Developer by providing assurances to the Developer that it will have the ability to develop the Property within the City pursuant to this Agreement, under the zoning described in Recital C above, and in accordance with the Conceptual Site Plan.

G. The City and Developer acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to fulfill the foregoing objectives, the parties agree as follows:

1. INCORPORATION OF RECITALS

Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

2. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1 **“City”** shall mean and refer to the City of Flagstaff, an Arizona municipal corporation, and any successor public body or entity.

2.2 **“Developer”** shall mean and refer to Evergreen - TRAX, LLC, an Arizona limited liability company, and any permitted successor-in-interest or assignee of Evergreen - TRAX, LLC acquiring a specific Phase of the Project as contemplated pursuant to Section 11.14.

2.3 **“Improvements”** shall mean and refer to all the improvements which may be constructed from time to time as part of the Project, including, without limitation, public roads, utilities, driveways, landscaping and other improvements of any type or kind to be built by Developer.

2.4 **“Phase”** shall mean and refer to each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement.

2.5 **“Project”** shall mean and refer to the development of the Property for the uses, intensities and densities currently shown in the approved Conceptual Site Plan.

2.6 **“Property”** shall mean and refer to all of the real property which is legally described in *Exhibit “A”*.

2.7 **“Purchase and Sale Agreement”** shall mean and refer to the Purchase and Sale Agreement entered into between the City and Evergreen Devco, Inc., dated June 12, 2013, assigned to Developer via Assignment and Assumption of Contracts and Intangible Property

Agreement dated August 13, 2013, and as amended pursuant to First Amendment to Purchase and Sale Agreement, dated (*).

3. CONCEPTUAL SITE PLAN

The City and Developer hereby acknowledge that the City approved the Conceptual Site Plan for the Project on April 3, 2014, attached hereto as *Exhibit "B"* and incorporated herein by this reference (the "**Conceptual Site Plan**"). The Conceptual Site Plan sets forth the basic land uses, intensity and density of such uses, relative height, bulk and size of buildings and structures proposed by Developer and approved by the City for development within the Property. Notwithstanding anything contained in the foregoing, however, the City acknowledges that, while the Developer intends to develop the Project in general conformance with the Conceptual Site Plan, in order to make the Project economically viable and otherwise feasible, as the Project progresses through formal site plan review, Developer may request modifications to the Conceptual Site Plan and shall incorporate modifications as set forth in this Agreement. The City shall process all submittals made by Developer in conformance with Section 9.1, below, and nothing contained herein shall preclude the City from the exercise of its normal review process and requirements in connection with its approval of such submittals. Modifications to the Conceptual Site Plan that exceed the thresholds set forth in Flagstaff Zoning Code Section 10-20.40.090.B.2 shall require a Zoning Map Amendment to process the requested modifications to the approved Conceptual Site Plans.

4. DEVELOPMENT STANDARDS

Development of the Property shall be governed by the City's codes, ordinances, regulations, rules, guidelines and policies controlling permitted uses of the Property, design review standards, the density and intensity of uses, the maximum height and size of the buildings within the Property, as well as the standards for off-site and on-site public improvements in existence as of the Effective Date of this Agreement, except as modified herein and by the Purchase and Sale Agreement; provided, however, that Developer obtain off-site construction permits for one or more components of the Project within two (2) years following the effective date of this Agreement. If Developer fails to obtain any off-site construction permits within this two (2) year period, then development of the Project shall be subject to the City's codes, ordinances, regulations, rules, guidelines and policies in effect at the time Developer applies for such construction permits. Notwithstanding the above, the parties expressly acknowledge and agree that the City reserves the right to adopt future ordinances assessing or imposing development fees under the authority of A.R.S. § 9-463.05, which shall be applicable to development of the Property. Developer agrees and understands that upon the effective date of this Agreement all building permits and other fees normally applicable to construction within the City shall apply to the Project.

5. GUIDING PRINCIPLES

The parties acknowledge that development activities for the Property may extend over several years and that many of the requirements and procedures provided for in this Agreement contemplate that use of the Property in the future may be subject to procedures, requirements,

regulations and ordinances not presently in effect, as well as actions and decisions by City staff and officials which cannot be provided for with particularity at the time the Agreement was executed. With respect to such, the parties agree that they will act in good faith and with reasonableness in implementing, operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law. However, denying a permit for the Developer's failure to meet the City's criteria for such permit shall not be deemed a breach by the City of this Agreement.

6. PROJECT DESCRIPTION, SITE LAYOUT AND DESIGN STANDARDS

6.1 Commercial Development. The Project, as contemplated by this Agreement and as depicted in the Conceptual Site Plan, will consist of approximately two hundred fifty thousand (250,000) square feet of leasable **building** space. The site layout of the commercial portion of the Project must conform generally to the arrangement of buildings as depicted in the Conceptual Site Plan. Developer may submit commercial buildings individually or in groups of buildings to the City for development review approval, and the approval process for such submissions will proceed for the building or buildings submitted without the requirement that other buildings proceed through the development review process simultaneously.

6.2 Pedestrian Pathways. Clear, direct, safely lit, and continuous pedestrian pathways are required between public sidewalks and adjacent commercial buildings located within the Project, as generally depicted in the Conceptual Site Plan. In addition, clear, direct, safely lit, and continuous pedestrian pathways are required through private parking lots between adjacent commercial buildings located within the Project. These pedestrian pathways will include a distinct, all-weather surface material, such as stamped or colored concrete, and will be located in conjunction with landscape islands. To the maximum extent feasible, the location of pedestrian pathways shall be coordinated with FUTS access pathways, as described in Section 7.2, Flagstaff Urban Trail System, below.

6.3 Design Standards. Developer will follow the City's architectural standards with regard to exterior building materials and colors, which will conform to the City's Design Review standards. Developer will ensure that massing, bulk and scale of commercial buildings will also conform to these standards.

7. DEVELOPER OBLIGATIONS

7.1 Construction of Public and Other Related Improvements. Prior to issuance of a grading permit for any phase or component of the Project, Developer shall provide security, in a form satisfactory to the City as set forth in the City's Zoning Code, that public and other related improvements will be constructed in accordance with approved plans. Developer shall, at its sole expense, construct or cause to be constructed all public and other related improvements as required by the City's codes, ordinances and this Agreement, and in accordance with approved specifications, as well as those public and related improvements required by the Arizona Department of Transportation ("ADOT") as a condition of approval. Following the construction of the described public improvements, and dedication of same to the City, unless otherwise provided, the City shall assume, at its expense, the maintenance and repairs of all public

improvements in accordance with City policies. The Developer agrees that the construction of the public and other related improvements will coincide with the phased development of the Project.

7.2 Flagstaff Urban Trail System (“FUTS”). The Developer, at its sole cost and expense, shall construct a concrete FUTS trail in accordance with City standards, except as modified by the Purchase and Sale Agreement, through a portion of the Property, as generally depicted in the Conceptual Site Plan. This FUTS trail cross section shall consist of a minimum ten foot (10’) wide concrete trail, with a minimum two foot (2’) wide shoulder adjacent to that portion of the FUTS trail fronting the railroad right-of-way, and a minimum five foot (5’) wide landscaping buffer adjacent to that portion of the FUTS trail fronting the Project, except for that portion of the FUTS trail abutting that parking lot directly serving the building designated as “Major A” on the Conceptual Site Plan. This portion of trail need not meet the minimum five foot (5’) wide landscaping buffer, and, at the Developer’s discretion, may be reduced to two feet (2’). The construction of the FUTS trail shall be phased and coordinated in conjunction with the overall phasing of the Project, as set forth in Section 8, Phasing, below. For any phase of the Project occurring in any one of those sections of the Property designated Area A, B and C on the Conceptual Site Plan, a corresponding section of the FUTS trail, extending the entire length of either Area A, B or C, shall be constructed. In addition, until the entire FUTS alignment has been constructed and opened to the public, Developer agrees to maintain pedestrian and bicycle connectivity between any phase of FUTS construction and the current FUTS alignment. Such temporary connection(s) shall be ten feet (10’) in width and paved in accordance with City standards and specifications. Further, Developer agrees to provide three FUTS access pathways through the Project. Such pathways shall serve as a connection between those pedestrian and bicycle resources adjacent to Route 66 and the FUTS trail. FUTS access points shall be located in the general area of the intersection of Route 66 & Arrowhead Avenue, Route 66 & First Street, and Route 66 & Postal Boulevard. FUTS access pathways shall not be gated or otherwise obstructed and shall be open to the general public at all times.

7.3. Outdoor Public Space. Pursuant to Section 10-30.60.060.B.1 of the Flagstaff Zoning Code, Developer agrees that a minimum five percent (5%) of the Property, 72,963 sq. ft. (“**Outdoor Public Space Requirement**”), shall be devoted to outdoor pedestrian amenity areas which shall act as transition spaces between parking areas and the entrance(s) to adjacent commercial buildings. Outdoor pedestrian amenity areas shall include landscaping, structures providing protection from the weather, benches, tables, or other pedestrian friendly features. At the Developer’s sole discretion, that portion of the Property necessary for fulfilling Developer’s FUTS obligations, 47,800 sq. ft., may be treated as an offset against the Outdoor Public Space Requirement. Developer agrees that the areas on both sides of the historic trestle bridge, described in Section 7.4, below, shall, to the maximum extent feasible, be used as outdoor pedestrian amenity areas.

7.4 Trestle Bridge. Developer agrees that the historic trestle bridge spanning the Spruce Avenue Wash, currently connecting those portions of the Property designated Area A and Area C on the Conceptual Site Plan, shall be preserved in its current location and in its current

form, and shall be used to provide vehicular and/or pedestrian connectivity between Area A and Area C.

7.5 Drive-through Facilities. Developer agrees that drive-through facilities shall be designed to ensure the safe movement of pedestrians from public sidewalks to commercial building entrances as well as the safe movement of vehicular traffic in parking lots. To the maximum extent feasible, Developer agrees to comply with the “Specific to Uses” requirements as detailed in Section 10-40.60.160, Drive-through Retail, of the City’s Zoning Code.

7.6 Fourth Street Bridge Spanning Interstate 40 (“I-40 Bridge”). In addition to those obligations set forth in Section 7.1, Developer agrees to contribute three hundred twenty thousand dollars (\$320,000.00) (“**I-40 Bridge Contribution**”) towards I-40 Bridge improvements. Such sum constitutes the Developer’s pro-rata “fair share” contribution towards mitigating the Project’s traffic impact on the I-40 Bridge, in accordance with the City’s Transportation Engineering Program Memorandum dated February 20, 2014. Developer’s I-40 Contribution shall be phased in conjunction with the overall phasing of the Project. For any phase of the Project occurring in any one of those sections of the Property designated Area A, B, C and D on the Conceptual Site Plan, Developer shall place eighty thousand dollars (\$80,000.00) into the City’s I-40 Bridge improvement escrow account, for a total of three hundred twenty thousand dollars (\$320,000.00). Notwithstanding the foregoing, the Parties agree that if development has not occurred in all four areas of the Project within ten years of the Effective Date of this Agreement, Developer shall pay the remaining unpaid balance of the I-40 Contribution on the tenth (10th) anniversary of this Agreement. The Parties agree that should the I-40 Bridge improvements be funded through alternate funding sources, including capital bonding, the \$320,000.00 in escrowed funds shall be used to retire or repay any outstanding debt obligation(s) the City has incurred related to Fourth Street improvements; to construct, fund or contribute to future improvements along the Fourth Street commercial corridor that benefit, directly, indirectly or in any manner whatsoever, the Project; or to construct, fund or contribute to those pedestrian crossing improvements identified in the pedestrian crossing study, as detailed in Section 7.7, below. Alternate funding sources for I-40 Bridge improvements, if available prior to full payment of the I-40 Bridge Contribution, shall in no way relieve the Developer of their obligations with respect to I-40 Bridge Contribution payment(s). Should alternate funding sources become available prior to full payout, all moneys due shall be used for the secondary purposes set forth in this Section. In no event will the Developer be entitled to any credit, refund or reimbursement of any portion of the funds placed in escrow pursuant to this section.

7.7 Pedestrian Crossing Study and Improvements. Prior to the recording of the Final Plat for the Property, Developer agrees to place One Hundred Seventy Nine Thousand Dollars and 00/100 (\$179,000.00) (“**Pedestrian Study Contribution**”) into a dedicated City escrow account to be used for a pedestrian crossing study and any recommended improvements to Route 66 related to the development of the Property. Specifically, these escrowed funds shall be utilized by the City for (i) a pedestrian crossing study which will evaluate the crossing patterns of pedestrians to, through and from the Project; and (ii) additional pedestrian safety improvements on Route 66, if any, identified in the study. Following the placement of the Pedestrian Study Contribution into the City’s dedicated escrow account, Developer shall have no further

obligations or liability, financial or otherwise, with respect to the pedestrian crossing study or the installation or maintenance of those improvements identified therein.

7.8 Route 66 Lighting. Developer agrees to implement those measures set forth in the Arizona Department of Transportation Submittal Review Memorandum dated February 8, 2014 (“ADOT Memorandum”), attached hereto as *Exhibit “C”* and incorporated herein by this reference, detailing those improvements that Developer is obligated to make to ADOT owned fixtures, facilities, improvements and rights-of-way. In particular, Developer agrees to improve the street lighting along the entire frontage of Route 66 adjacent to the property to a standard of PGP 700 and AASHTO’s Roadway Lighting Design Guidelines with a modification to utilize Low Pressure Sodium source of lighting exclusively. Upon acceptance, Developer shall not be responsible for the maintenance, repair or replacement of those improvements required as a condition of ADOT approval, as set forth in the ADOT Memorandum.

7.9 Dedication of Public Easements. Public utility and drainage easements with respect to the Project must be identified on the construction plans and dedicated prior to issuance of building permits. Dimensions for these easements must be in accordance with City and ADOT requirements. A minimum fifty foot (50’) wide public utility easement, generally located in the area of the Spruce Wash and specifically identified on Sheet SP01 of the Conceptual Site Plan, shall be identified on all relevant construction plans.

7.10 Water and Sewer. Water and sewer mains must be designed and extended by Developer at Developer’s cost in accordance with the approved water and sewer impact analysis and the 2012 City of Flagstaff Engineering and Design Standards.

7.11 Dedication of Public Rights-Of-Way. Public rights-of-way for all streets must be identified on the Final Plat and dedicated with Final Plat approval. Dimensions for these rights-of-way and easements must be in accordance with City standards and requirements.

7.12 Existing and Modified Streetscape Landscaping. Existing streetscape landscaping along adjacent public rights-of-way must be maintained, transplanted to equivalent locations, or replaced with landscaping of a similar species in equivalent locations. Existing streetscape landscaping can be used to offset the landscape requirements of the Flagstaff Zoning Code. Pursuant to the Flagstaff Zoning Code, a minimum ten foot (10’) wide landscaping buffer adjacent to public thoroughfares, which does not include public right-of-way, is required for those sections of the Property designated Area A, B, C and D on the Conceptual Site Plan. However, the Parties agree that in Area A, B, or C, the Developer may utilize public right-of-way to meet the ten foot (10’) wide landscaping buffer requirement. However, the Parties agree that a minimum five foot wide buffer, not including a sidewalk, shall be maintained behind public right-of-way when adjacent to buildings. For parking lots fronting the right-of-way, the Developer shall construct a three-and-a-half foot (3.5’) high screen wall in combination with the required ten foot (10’) wide landscaping buffer requirement.

7.13 Zoning. Developer hereby agrees to be subject to all the terms, conditions, and stipulations of City Ordinance 2014-XX, attached hereto as *Exhibit “D”* and incorporated herein by this reference.

7.14 Permits and Building Fees. Developer agrees and understands that upon the Effective Date of this Agreement all building permits, development fees, and other fees normally applicable to construction within the City shall apply to the Project.

8. PHASING

The Parties acknowledge that development of the Project will be affected by numerous factors outside the control of the Developer, e.g., general economic conditions, interest rates and market demand. Accordingly, the City acknowledges that the Developer may submit multiple applications from time-to-time to develop and/or construct portions of the Conceptual Site Plan for the Project in phases as long as each phase provides for the logical extension of vehicle and pedestrian connectivity, infrastructure and utilities through the Project, as approved by the City, in compliance with the terms of this Agreement and other applicable provisions of the City's codes, ordinances, regulations, rules, guidelines and policies. Further, each phase of this development must be designed and constructed to stand alone in perpetuity per Subdivision Regulation 11-20.130.010.B as well as the approved water and sewer, traffic and drainage impact analyses. Specific phasing for the FUTS trail is addressed in Section 7.2, Flagstaff Urban Trail System, above.

9. DEVELOPMENT PROCESS.

9.1 Diligence in Responding to Approval Requests. The City hereby acknowledges and agrees that development of the Property may occur over a span of a number of years and will require the City's ongoing participation in the review and approval of modifications and amendments to any phasing plans, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications and inspections which are a part of the City's current building and development requirements (hereinafter collectively called "**Approval Requests**"). The City hereby agrees that, in connection with all such Approval Requests relating to the planning or development of the Property or any portion thereof, and the construction of Improvements thereon, it shall cooperate with Developer in good faith to process all such Approval Requests.

9.2 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law.

10. DEFAULT; REMEDIES

10.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance and such breach or default continues for a period of thirty days after written notice thereof from the party not in default hereunder. For purposes of determining default and termination, those Developer

obligations set forth in Section 7, Developer Obligations, are severable, and each individual obligation shall terminate upon the successive completion of the individual obligation.

10.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediations shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be divided equally between the City and the Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.

10.3 Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 10.1 above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.

10.4 City's Remedies. In the event that the Developer is in default under this Agreement, and the Developer thereafter fails to cure any such default within the time period described in Section 10.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Developer.

10.5 Development Rights in the Event of Termination. With the exception of a termination that occurs under Section 10.3 above, upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

10.6 No Personal Liability. No current or former member, official or employee of the City or Developer when acting within the scope of their official capacity shall be personally liable (a) in the event of any default or breach by the City or Developer, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assign; or (c) pursuant to any obligation of the City or Developer, as applicable, under the terms of this Agreement.

10.7 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by the Developer.

11. GENERAL PROVISIONS

11.1 Effective Date and Term. This Agreement shall be effective (the “**Effective Date**”) upon execution by the parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty years from such date.

11.2 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

To City:

To Developer:

City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

11.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

11.4 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

11.5 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the City that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

11.6 Entire Agreement. This Agreement, including the following exhibits which are incorporated in this Agreement by reference, constitutes the entire agreement between the parties and supersedes any prior written or oral understandings or agreements between the parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

Exhibit “A” Legal Description of Property

Exhibit “B” Conceptual Site Plans

Exhibit “C” ADOT Submittal Review Memorandum dated February 8, 2014

Exhibit “D” Ordinance No. 2014-XX

11.7 Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Coconino County Recorder.

11.8 Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

11.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. This Agreement has been made and entered into in Coconino County, Arizona.

11.10 Recordation of Agreement and Subsequent Amendment; Cancellation. The City will record this Agreement, and any amendment or cancellation of it, in the official records of the Coconino County Recorder no later than ten (10) days after the City and the Developer execute the Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

11.11 No Partnership; Third-Party. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

11.12 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have an personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

11.13 Compliance with All Laws. Developer will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations and policies.

11.14 Successors and Assigns. Upon prior written notice to City, Developer may assign its interest in this Agreement, in whole or in part, to any entity that controls, is controlled by or is under common control with Developer (including but not limited to a limited liability company of which the original Developer is a member), who undertakes to proceed with development of the Project. Provided that the assignee has provided City with the name, address and designated representative of the assignee, and has assumed the rights, liabilities and obligations of Developer under this Agreement pursuant to a written instrument (a true and correct copy of which shall be provided to City), then the assignor shall be released from any obligations or liabilities arising under this Agreement from and after the date of assignment. Neither Developer nor any permitted assignee of Developer may otherwise assign its interest in this Agreement, in whole or in part, without the prior written consent of the City, which consent may be reasonably withheld by City. This Agreement shall be personal to Developer and its permitted successors and assigns, and shall not run with the land.

11.15 Vested Rights. Nothing in this Development Agreement shall preclude the Developer from claiming that the Developer has vested rights to complete the development of the Project in accordance with currently applicable regulations based on the significant investment and improvements made on the Property by the Developer.

12. WAIVER OF CLAIM FOR DIMINUTION IN VALUE.

Developer hereby waives and fully releases any and all financial loss, injury, claims and causes of action that the Developer may have, now or in the future, for any “diminution in value” and for any “just compensation” under the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, (the “Act”) in connection with the application of the City’s existing land use laws and including Ordinance Number 2011-01 regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney’s fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney’s fees or costs under the Act that they may have, as a result of the application of the City’s existing land use laws, including Ordinance Number 2014-**, upon the Property

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

City of Flagstaff

Evergreen – TRAX, LLC, an Arizona
limited liability company

Gerald W. Nabours, Mayor

By: _____

Name: _____

Attest:

Title: _____

City Clerk

Approved as to form and authority:

City Attorney

STATE OF ARIZONA)
COUNTY OF _____)

ACKNOWLEDGMENT

On this _____ day of _____, 2014, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that _he executed the same on behalf of Evergreen - TRAX LLC, an Arizona limited liability company, for the purposes therein contained.

Notary Public
My Commission Expires: _____

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Elaine Averitt, Planning Development Manager
Date: 06/10/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Adoption of Resolution No. 2014-25: A resolution authorizing the execution of a Development Agreement between City of Flagstaff and Evergreen - Trax, L.L.C. related to the development of approximately 33.6 acres of real property generally located at the intersection of Route 66 and Fourth Street, Flagstaff, Arizona.

RECOMMENDED ACTION:

- 1) Read Resolution No. 2014-25 by title only.
- 2) City Clerk reads Resolution No. 2014-25 by title only (if approved above).
- 3) Adopt Resolution No. 2014-25.

Policy Decision or Reason for Action:

State law allows cities to enter into development agreements by resolution. The proposed Development Agreement ensures that the development of the Property complies with City standards for development and engineering improvements, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety and other benefits to the City and its residents.

This request is the first of two related items; the second item is the second reading and adoption of the rezoning ordinance.

On June 17, 2014, the City Council conducted a Public Hearing concerning the Zoning Map amendment request for The Trax development. On June 17, 2014, the City Council unanimously approved the Zoning Map amendment for the first time.

Subsidiary Decisions Points:

A resolution approving a Development Agreement which includes a Waiver of Claims for Diminution of Value is included on the Council agenda for the July 1, 2014 meeting to be read and, at the Council's direction, approved prior to the second reading and approval of Zoning Map Amendment Ordinance No. 2014-14.

Financial Impact:

None.

Connection to Council Goal:

Retain, expand, and diversify economic base
Effective governance

Has There Been Previous Council Decision on This:

No previous Council discussion has occurred as it relates to this Development Agreement. The Developer has processed a Regional Land Use and Transportation Plan amendment and a Zoning Map amendment for the subject property concurrently with the processing of this application. The Council also approved a purchase agreement for the sale of this property and have also amended that agreement.

Prior to the consideration of this application, the Council has taken action on the previously identified amendments.

Options and Alternatives:

The City Council may approve, deny, or modify the agreement as necessary to ensure that the development meets the objectives of the Regional Land Use and Transportation Plan, the Zoning Code, and the City's development goals.

Background/History:

The Developer has requested a Regional Land Use and Transportation Plan amendment and a Zoning Map amendment to accommodate the development of approximately 250,000 square feet of leasable building space to be named "The Trax" shopping center. The City and the Developer have agreed to development standards, guiding principles, obligations, phasing, process and other general provisions detailed in the Development Agreement. The Development Agreement addresses Developer responsibilities for constructing a FUTS trail, providing outdoor public space, preserving the historic trestle bridge, complying with Drive-through Facility requirements as detailed in the Zoning Code, and ensuring that construction of public improvements coincide with the phased development of the project. Additionally, the Developer will be required to contribute \$320,000.00 towards I-40 Bridge improvements, and to contribute \$179,000.00 to cover a pedestrian crossing study and any recommended improvements to Route 66 related to the development of the Property.

Key Considerations:

State law allows the City to enter into development agreements by resolution. The proposed Development Agreement, along with the Rezoning Ordinance, would govern the terms and conditions of the zoning and development of The Trax proposal.

Expanded Financial Considerations:

None

Community Benefits and Considerations:

The Trax development area is anticipated to be a significant contribution to the regional economy which is needed in the east side of the Flagstaff community and directly to the Sunnyside neighborhood. Additionally, this development disperses the shopping and services geographically to assure efficiencies in the delivery of private/public services and investment within the community.

Community Involvement:

Inform.

Development agreements do not require public or neighborhood notification. However, this agreement is tied to the proposed Regional Land Use and Transportation Plan amendment and Zoning Map amendments which require public notifications, and have had public hearings before the Planning and Zoning Commission and the City Council.

Expanded Options and Alternatives:

None.

Attachments: [Resolution No. 2014-25](#)
 [Trax Development Agreement](#)
 [D.A. Exhibits](#)
 [PZC Staff Report \(excluding attachments\)](#)

Form Review

Inbox	Reviewed By	Date
Planning Director	Dan Folke	06/17/2014 04:02 PM
Legal Assistant	Vicki Baker	06/18/2014 08:34 AM
Senior Assistant City Attorney JS	James Speed	06/18/2014 09:30 AM
Community Development Director	Mark Landsiedel	06/19/2014 05:17 PM
DCM - Jerene Watson	Jerene Watson	06/19/2014 10:00 PM
Form Started By: Elaine Averitt		Started On: 06/10/2014 09:29 AM
Final Approval Date: 06/19/2014		

RESOLUTION NO. 2014-25

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT AND WAIVER OF CLAIMS FOR DIMINUTION IN VALUE FOR LAND USE LAWS APPLICABLE TO REAL PROPERTY GENERALLY LOCATED AT THE INTERSECTION OF ROUTE 66 AND FOURTH STREET, FLAGSTAFF, ARIZONA.

WHEREAS, Arizona Revised Statutes Sections 12-1131 through 12-1138 specifically recognize that private property owners can enter into agreements with political subdivisions to waive any claim for diminution in value of property if any land use law enacted after the date property is transferred to the owner reduces the fair market value of that property, and

WHEREAS, Arizona law, A.R.S. § 9-500.05, authorizes the City and the owner of property to enter into a development agreement relating to the development of the Property, and

WHEREAS, the parties seek to avoid any potential argument that a rezoning for the subject property will impose any land use law that will reduce the fair market value of the subject property or constitute a diminution in value of the subject property entitling any owner of the subject property, now or in the future, to seek compensation;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Mayor and City Council of the City of Flagstaff hereby approve the "Development Agreement and Waiver" by and between the City of Flagstaff and Evergreen - TRAX, LLC, attached to the staff summary in support of this Resolution, or as modified on the record at the public meeting at which this Resolution is approved and authorize the Mayor to sign the Development Agreement and Waiver on behalf of the City.

SECTION 2. That within ten days of execution of this Agreement the Clerk for the City of Flagstaff record this Agreement in the Office of the Coconino County Recorder.

PASSED AND ADOPTED by the Council and approved by the Mayor of the City of Flagstaff, this ___ day of _____, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

When recorded, mail to:

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

DEVELOPMENT AGREEMENT AND WAIVER
between
City of Flagstaff
and
Evergreen – TRAX, L.L.C.

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this _____ day of _____, 2014, by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”) and Evergreen - TRAX, LLC, an Arizona limited liability company (“**Developer**”). City and Developer are sometimes referred to herein collectively as the “**Parties.**”

RECITALS

A. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City.

B. Developer is the owner of approximately 33.6 acres of real property generally located at the intersection of Route 66 & Fourth Street, within the corporate limits of Flagstaff, Arizona, more specifically described and depicted in *Exhibit “A”* (the “**Property**”).

C. The Property is currently zoned Light Industrial (“**LI**”) and Light Industrial – Open (“**LI-O**”) and the Developer is requesting a zoning map amendment to Highway Commercial (“**HC**”).

D. Under the 2001 Flagstaff Regional Land Use and Transportation Plan, in effect on the date Developer first made application, the Property is currently designated Office/Business Park/Light Industrial and Light/Medium Industrial and the Developer is requesting an amendment to Community/Regional Commercial.

E. The City has an interest in ensuring that the development of the Property complies with City standards for development and engineering improvements, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety and other benefits to the City and its residents.

F. The Developer acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to the Developer by providing assurances to the Developer that it will have the ability to develop the Property within the City pursuant to this Agreement, under the zoning described in Recital C above, and in accordance with the Conceptual Site Plan.

G. The City and Developer acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to fulfill the foregoing objectives, the parties agree as follows:

1. INCORPORATION OF RECITALS

Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

2. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1 **“City”** shall mean and refer to the City of Flagstaff, an Arizona municipal corporation, and any successor public body or entity.

2.2 **“Developer”** shall mean and refer to Evergreen - TRAX, LLC, an Arizona limited liability company, and any permitted successor-in-interest or assignee of Evergreen - TRAX, LLC acquiring a specific Phase of the Project as contemplated pursuant to Section 11.14.

2.3 **“Improvements”** shall mean and refer to all the improvements which may be constructed from time to time as part of the Project, including, without limitation, public roads, utilities, driveways, landscaping and other improvements of any type or kind to be built by Developer.

2.4 **“Phase”** shall mean and refer to each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement.

2.5 **“Project”** shall mean and refer to the development of the Property for the uses, intensities and densities currently shown in the approved Conceptual Site Plan.

2.6 **“Property”** shall mean and refer to all of the real property which is legally described in *Exhibit “A”*.

2.7 **“Purchase and Sale Agreement”** shall mean and refer to the Purchase and Sale Agreement entered into between the City and Evergreen Devco, Inc., dated June 12, 2013, assigned to Developer via Assignment and Assumption of Contracts and Intangible Property Agreement dated August 13, 2013, and as amended pursuant to First Amendment to Purchase and Sale Agreement, dated June 6, 2014.

3. CONCEPTUAL SITE PLAN

The City and Developer hereby acknowledge that the City approved the Conceptual Site Plan for the Project on April 3, 2014, attached hereto as *Exhibit "B"* and incorporated herein by this reference (the "**Conceptual Site Plan**"). The Conceptual Site Plan sets forth the basic land uses, intensity and density of such uses, relative height, bulk and size of buildings and structures proposed by Developer and approved by the City for development within the Property. Notwithstanding anything contained in the foregoing, however, the City acknowledges that, while the Developer intends to develop the Project in general conformance with the Conceptual Site Plan, in order to make the Project economically viable and otherwise feasible, as the Project progresses through formal site plan review, Developer may request modifications to the Conceptual Site Plan and shall incorporate modifications as set forth in this Agreement. The City shall process all submittals made by Developer in conformance with Section 9.1, below, and nothing contained herein shall preclude the City from the exercise of its normal review process and requirements in connection with its approval of such submittals. Modifications to the Conceptual Site Plan that exceed the thresholds set forth in Flagstaff Zoning Code Section 10-20.40.090.B.2 shall require a Zoning Map Amendment to process the requested modifications to the approved Conceptual Site Plans.

4. DEVELOPMENT STANDARDS

Development of the Property shall be governed by the City's codes, ordinances, regulations, rules, guidelines and policies controlling permitted uses of the Property, design review standards, the density and intensity of uses, the maximum height and size of the buildings within the Property, as well as the standards for off-site and on-site public improvements in existence as of the Effective Date of this Agreement, except as modified herein and by the Purchase and Sale Agreement; provided, however, that Developer obtain off-site construction permits for one or more components of the Project within two (2) years following the effective date of this Agreement. If Developer fails to obtain any off-site construction permits within this two (2) year period, then development of the Project shall be subject to the City's codes, ordinances, regulations, rules, guidelines and policies in effect at the time Developer applies for such construction permits. Notwithstanding the above, the parties expressly acknowledge and agree that the City reserves the right to adopt future ordinances assessing or imposing development fees under the authority of A.R.S. § 9-463.05, which shall be applicable to development of the Property. Developer agrees and understands that upon the effective date of this Agreement all building permits and other fees normally applicable to construction within the City shall apply to the Project.

5. GUIDING PRINCIPLES

The parties acknowledge that development activities for the Property may extend over several years and that many of the requirements and procedures provided for in this Agreement contemplate that use of the Property in the future may be subject to procedures, requirements, regulations and ordinances not presently in effect, as well as actions and decisions by City staff and officials which cannot be provided for with particularity at the time the Agreement was

executed. With respect to such, the parties agree that they will act in good faith and with reasonableness in implementing, operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law. However, denying a permit for the Developer's failure to meet the City's criteria for such permit shall not be deemed a breach by the City of this Agreement.

6. PROJECT DESCRIPTION, SITE LAYOUT AND DESIGN STANDARDS

6.1 Commercial Development. The Project, as contemplated by this Agreement and as depicted in the Conceptual Site Plan, will consist of approximately two hundred fifty thousand (250,000) square feet of building space. The site layout of the commercial portion of the Project must conform generally to the arrangement of buildings as depicted in the Conceptual Site Plan. Developer may submit commercial buildings individually or in groups of buildings to the City for development review approval, and the approval process for such submissions will proceed for the building or buildings submitted without the requirement that other buildings proceed through the development review process simultaneously.

6.2 Pedestrian Pathways. Clear, direct, safely lit, and continuous pedestrian pathways are required between public sidewalks and adjacent commercial buildings located within the Project, as generally depicted in the Conceptual Site Plan. In addition, clear, direct, safely lit, and continuous pedestrian pathways are required through private parking lots between adjacent commercial buildings located within the Project. These pedestrian pathways will include a distinct, all-weather surface material, such as stamped or colored concrete, and will be located in conjunction with landscape islands. To the maximum extent feasible, the location of pedestrian pathways shall be coordinated with FUTS access pathways, as described in Section 7.2, Flagstaff Urban Trail System, below.

6.3 Design Standards. Developer will follow the City's architectural standards with regard to exterior building materials and colors, which will conform to the City's Design Review standards. Developer will ensure that massing, bulk and scale of commercial buildings will also conform to these standards.

7. DEVELOPER OBLIGATIONS

7.1 Construction of Public and Other Related Improvements. Prior to issuance of a grading permit for any phase or component of the Project, Developer shall provide security, in a form satisfactory to the City as set forth in the City's Zoning Code, that public and other related improvements will be constructed in accordance with approved plans. Developer shall, at its sole expense, construct or cause to be constructed all public and other related improvements as required by the City's codes, ordinances and this Agreement, and in accordance with approved specifications, as well as those public and related improvements required by the Arizona Department of Transportation ("ADOT") as a condition of approval. Following the construction of the described public improvements, and dedication of same to the City, unless otherwise provided, the City shall assume, at its expense, the maintenance and repairs of all public improvements in accordance with City policies. The Developer agrees that the construction of

the public and other related improvements will coincide with the phased development of the Project.

7.2 Flagstaff Urban Trail System (“FUTS”). The Developer, at its sole cost and expense, shall construct a concrete high-speed FUTS trail in accordance with City standards, except as modified by the Purchase and Sale Agreement, through a portion of the Property, as generally depicted in the Conceptual Site Plan. This FUTS trail cross section shall consist of a minimum ten foot (10’) wide concrete trail, with a minimum two foot (2’) wide shoulder adjacent to that portion of the FUTS trail fronting the railroad right-of-way, and a minimum five foot (5’) wide landscaping buffer adjacent to that portion of the FUTS trail fronting the Project, except for that portion of the FUTS trail abutting that parking lot directly serving the buildings designated as “Major A” and “Rest. 1” on the Conceptual Site Plan. This portion of trail need not meet the minimum five foot (5’) wide landscaping buffer, and, at the Developer’s discretion, may be reduced to two feet (2’). The construction of the FUTS trail shall be phased and coordinated in conjunction with the overall phasing of the Project, as set forth in Section 8, Phasing, below. For any phase of the Project occurring in any one of those sections of the Property designated Area A, B and C on the Conceptual Site Plan, a corresponding section of the FUTS trail, extending the entire length of either Area A, B or C, shall be constructed. In addition, until the entire FUTS alignment has been constructed and opened to the public, Developer agrees to maintain pedestrian and bicycle connectivity between any phase of FUTS construction and the current FUTS alignment. Such temporary connection(s) shall be ten feet (10’) in width and paved in accordance with City standards and specifications. Further, Developer agrees to provide three FUTS access pathways through the Project. Such pathways shall serve as a connection between those pedestrian and bicycle resources adjacent to Route 66 and the FUTS trail. FUTS access points shall be located in the general area of the intersection of Route 66 & Arrowhead Avenue, Route 66 & First Street, and Route 66 & Postal Boulevard. FUTS access pathways shall not be gated or otherwise obstructed and shall be open to the general public at all times.

7.3. Outdoor Public Space. Pursuant to Section 10-30.60.060.B.1 of the Flagstaff Zoning Code, Developer agrees that a minimum five percent (5%) of the Property, 72,963 sq. ft. (**“Outdoor Public Space Requirement”**), shall be devoted to outdoor pedestrian amenity areas which shall act as transition spaces between parking areas and the entrance(s) to adjacent commercial buildings. Outdoor pedestrian amenity areas shall include landscaping, structures providing protection from the weather, benches, tables, or other pedestrian friendly features. At the Developer’s sole discretion, that portion of the Property necessary for fulfilling Developer’s FUTS obligations, 47,800 sq. ft., may be treated as an offset against the Outdoor Public Space Requirement. Developer agrees that the areas on both sides of the historic trestle bridge, described in Section 7.4, below, shall, to the maximum extent feasible, be used as outdoor pedestrian amenity areas.

7.4 Trestle Bridge. Developer agrees that the historic trestle bridge spanning the Spruce Avenue Wash, currently connecting those portions of the Property designated Area A and Area C on the Conceptual Site Plan, shall be preserved in its current location and in its current form, and shall be used to provide vehicular and/or pedestrian connectivity between Area A and Area C.

7.5 Drive-through Facilities. Developer agrees that drive-through facilities shall be designed to ensure the safe movement of pedestrians from public sidewalks to commercial building entrances as well as the safe movement of vehicular traffic in parking lots. To the maximum extent feasible, Developer agrees to comply with the “Specific to Uses” requirements as detailed in Section 10-40.60.160, Drive-through Retail, of the City’s Zoning Code.

7.6 Fourth Street Bridge Spanning Interstate 40 (“I-40 Bridge”). In addition to those obligations set forth in Section 7.1, Developer agrees to contribute three hundred twenty thousand dollars (\$320,000.00) (“**I-40 Bridge Contribution**”) towards I-40 Bridge improvements. Such sum constitutes the Developer’s pro-rata “fair share” contribution towards mitigating the Project’s traffic impact on the I-40 Bridge, in accordance with the City’s Transportation Engineering Program Memorandum dated February 20, 2014. Developer’s I-40 Contribution shall be phased in conjunction with the overall phasing of the Project. Prior to the City issuing a building permit for any development occurring in any one of those sections of the Property designated Area A, B, C and D on the Conceptual Site Plan, Developer shall place eighty thousand dollars (\$80,000.00) into the City’s I-40 Bridge improvement escrow account, for a total of three hundred twenty thousand dollars (\$320,000.00). Notwithstanding the foregoing, the Parties agree that if development has not occurred in all four areas of the Project within ten years of the Effective Date of this Agreement, Developer shall pay the remaining unpaid balance of the I-40 Contribution on the tenth (10th) anniversary of this Agreement. The Parties agree that should the I-40 Bridge improvements be funded through alternate funding sources, including capital bonding, the \$320,000.00 in escrowed funds shall be used to retire or repay any outstanding debt obligation(s) the City has incurred related to Fourth Street improvements; to construct, fund or contribute to future improvements along the Fourth Street commercial corridor that benefit, directly, indirectly or in any manner whatsoever, the Project; or to construct, fund or contribute to those pedestrian crossing improvements identified in the pedestrian crossing study, as detailed in Section 7.7, below. Alternate funding sources for I-40 Bridge improvements, if available prior to full payment of the I-40 Bridge Contribution, shall in no way relieve the Developer of their obligations with respect to I-40 Bridge Contribution payment(s). Should alternate funding sources become available prior to full payout, all moneys due shall be used for the secondary purposes set forth in this Section. In no event will the Developer be entitled to any credit, refund or reimbursement of any portion of the funds placed in escrow pursuant to this section. Following the placement of the full I-40 Bridge Contribution into the City’s I-40 Bridge improvement escrow account, Developer shall have no further obligations or liability, financial or otherwise, with respect to the I-40 Bridge.

7.7 Pedestrian Crossing Study and Improvements. Prior to the recording of the Final Plat for the Property, Developer agrees to place One Hundred Seventy Nine Thousand Dollars and 00/100 (\$179,000.00) (“**Pedestrian Study Contribution**”) into a dedicated City escrow account to be used for a pedestrian crossing study and any recommended improvements to Route 66 related to the development of the Property. Specifically, these escrowed funds shall be utilized by the City for (i) a pedestrian crossing study which will evaluate the crossing patterns of pedestrians to, through and from the Project; and (ii) additional pedestrian safety improvements on Route 66, if any, identified in the study. Following the placement of the Pedestrian Study Contribution into the City’s dedicated escrow account, Developer shall have no further

obligations or liability, financial or otherwise, with respect to the pedestrian crossing study or the installation or maintenance of those improvements identified therein.

7.8 Route 66 Lighting. Developer agrees to implement those measures set forth in the Arizona Department of Transportation Submittal Review Memorandum dated February 8, 2014 (“ADOT Memorandum”), attached hereto as *Exhibit “C”* and incorporated herein by this reference, detailing those improvements that Developer is obligated to make to ADOT owned fixtures, facilities, improvements and rights-of-way. In particular, Developer agrees to improve the street lighting along the entire frontage of Route 66 adjacent to the property to a standard of PGP 700 and AASHTO’s Roadway Lighting Design Guidelines with a modification to utilize Low Pressure Sodium source of lighting exclusively. Upon acceptance, Developer shall not be responsible for the maintenance, repair or replacement of those improvements required as a condition of ADOT approval, as set forth in the ADOT Memorandum. The Parties agree that *Exhibit “C”* shall be automatically amended, without further action of the Parties, at such time as ADOT provides developer with a revised Submittal Review Memorandum addressing Developer’s obligations in regard to ADOT owned fixtures, facilities, improvements and rights-of-way resulting from the Project.

7.9 Dedication of Public Easements. Public utility and drainage easements with respect to the Project must be identified on the construction plans and dedicated prior to issuance of building permits. Dimensions for these easements must be in accordance with City and ADOT requirements. A minimum fifty foot (50’) wide public utility easement, generally located in the area of the Spruce Wash and specifically identified on Sheet SP01 of the Conceptual Site Plan, shall be identified on all relevant construction plans.

7.10 Water and Sewer. Water and sewer mains must be designed and extended by Developer at Developer’s cost in accordance with the approved water and sewer impact analysis and the 2012 City of Flagstaff Engineering and Design Standards.

7.11 Dedication of Public Rights-Of-Way. Public rights-of-way for all streets must be identified on the Final Plat and dedicated with Final Plat approval. Dimensions for these rights-of-way and easements must be in accordance with City standards and requirements.

7.12 Existing and Modified Streetscape Landscaping. Existing streetscape landscaping along adjacent public rights-of-way must be maintained, transplanted to equivalent locations, or replaced with landscaping of a similar species in equivalent locations. Existing streetscape landscaping can be used to offset the landscape requirements of the Flagstaff Zoning Code. Pursuant to the Flagstaff Zoning Code, a minimum ten foot (10’) wide landscaping buffer adjacent to public thoroughfares, which does not include public right-of-way, is required for those sections of the Property designated Area A, B, C and D on the Conceptual Site Plan. However, the Parties agree that in Area A, B, or C, the Developer may utilize public right-of-way to meet the ten foot (10’) wide landscaping buffer requirement. The Parties agree that a minimum five foot wide buffer, not including a sidewalk, shall be maintained behind public right-of-way when adjacent to buildings. For parking lots fronting the right-of-way, the Developer shall construct a three-and-a-half foot (3.5’) high screen wall in combination with the required ten foot (10’) wide landscaping buffer requirement.

7.13 Zoning. Developer hereby agrees to be subject to all the terms, conditions, and stipulations of City Ordinance 2014-14, attached hereto as *Exhibit "D"* and incorporated herein by this reference.

7.14 Permits and Building Fees. Developer agrees and understands that upon the Effective Date of this Agreement all building permits, development fees, and other fees normally applicable to construction within the City shall apply to the Project.

8. PHASING

The Parties acknowledge that development of the Project will be affected by numerous factors outside the control of the Developer, e.g., general economic conditions, interest rates and market demand. Accordingly, the City acknowledges that the Developer may submit multiple applications from time-to-time to develop and/or construct portions of the Conceptual Site Plan for the Project in phases as long as each phase provides for the logical extension of vehicle and pedestrian connectivity, infrastructure and utilities through the Project, as approved by the City, in compliance with the terms of this Agreement and other applicable provisions of the City's codes, ordinances, regulations, rules, guidelines and policies. Further, each phase of this development must be designed and constructed to stand alone in perpetuity per Subdivision Regulation 11-20.130.010.B as well as the approved water and sewer, traffic and drainage impact analyses. Specific phasing for the FUTS trail is addressed in Section 7.2, Flagstaff Urban Trail System, above.

9. DEVELOPMENT PROCESS.

9.1 Diligence in Responding to Approval Requests. The City hereby acknowledges and agrees that development of the Property may occur over a span of a number of years and will require the City's ongoing participation in the review and approval of modifications and amendments to any phasing plans, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications and inspections which are a part of the City's current building and development requirements (hereinafter collectively called "**Approval Requests**"). The City hereby agrees that, in connection with all such Approval Requests relating to the planning or development of the Property or any portion thereof, and the construction of Improvements thereon, it shall cooperate with Developer in good faith to process all such Approval Requests.

9.2 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law.

10. DEFAULT; REMEDIES

10.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance and such breach or default continues for a period of thirty days, unless such breach or default cannot be fully resolved in thirty days and such remedy is being diligently pursued, after written notice thereof from the party not in default hereunder. For purposes of determining default and termination, those Developer obligations set forth in Section 7, Developer Obligations, are severable, and each individual obligation shall terminate upon the successive completion of the individual obligation.

10.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediations shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be divided equally between the City and the Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.

10.3 Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 10.1 above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.

10.4 City's Remedies. In the event that the Developer is in default under this Agreement, and the Developer thereafter fails to cure any such default within the time period described in Section 10.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Developer.

10.5 Development Rights in the Event of Termination. With the exception of a termination that occurs under Section 10.3 above, upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

10.6 No Personal Liability. No current or former member, official or employee of the City or Developer when acting within the scope of their official capacity shall be personally liable (a) in the event of any default or breach by the City or Developer, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assign; or (c) pursuant to any obligation of the City or Developer, as applicable, under the terms of this Agreement.

10.7 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney’s fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by the Developer.

11. GENERAL PROVISIONS

11.1 Effective Date and Term. This Agreement shall be effective (the “**Effective Date**”) upon execution by the parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty years from such date.

11.2 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid, or by overnight mail by a reliable overnight delivery to:

To City:

City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

To Developer:

Evergreen – Trax, LLC
c/o Laura Ortiz
Evergreen Devco, Inc
2390 East Camelback, #410
Phoenix, Arizona 85016

With copy to:

Trax Investors, LLC
Robert Karber
2828 N. Central, Suite 1110
Phoenix, Arizona 85004

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

11.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be

construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

11.4 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

11.5 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the City that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

11.6 Entire Agreement. This Agreement, including the following exhibits which are incorporated in this Agreement by reference, constitutes the entire agreement between the parties and supersedes any prior written or oral understandings or agreements between the parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

Exhibit "A" Legal Description of Property

Exhibit "B" Conceptual Site Plans

Exhibit "C" ADOT Submittal Review Memorandum dated February 8, 2014

Exhibit "D" Ordinance No. 2014-14

11.7 Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Coconino County Recorder.

11.8 Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

11.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. This Agreement has been made and entered into in Coconino County, Arizona.

11.10 Recordation of Agreement and Subsequent Amendment; Cancellation. The City will record this Agreement, and any amendment or cancellation of it, in the official records of the

Coconino County Recorder no later than ten (10) days after the City and the Developer execute the Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

11.11 No Partnership; Third-Party. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

11.12 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

11.13 Compliance with All Laws. Developer will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations and policies.

11.14 Successors and Assigns. Upon prior written notice to City, Developer may assign its interest in this Agreement, in whole or in part, to any entity that controls, is controlled by or is under common control with Developer (including but not limited to a limited liability company of which the original Developer is a member), who undertakes to proceed with development of the Project. Provided that the assignee has provided City with the name, address and designated representative of the assignee, and has assumed the rights, liabilities and obligations of Developer under this Agreement pursuant to a written instrument (a true and correct copy of which shall be provided to City), then the assignor shall be released from any obligations or liabilities arising under this Agreement from and after the date of assignment. Neither Developer nor any permitted assignee of Developer may otherwise assign its interest in this Agreement, in whole or in part, without the prior written consent of the City, which consent may be reasonably withheld by City. This Agreement shall be personal to Developer and its permitted successors and assigns, and shall not run with the land.

11.15 Vested Rights. Nothing in this Development Agreement shall preclude the Developer from claiming that the Developer has vested rights to complete the development of the Project in accordance with currently applicable regulations based on the significant investment and improvements made on the Property by the Developer.

12. WAIVER OF CLAIM FOR DIMINUTION IN VALUE.

Developer hereby waives and fully releases any and all financial loss, injury, claims and causes of action that the Developer may have, now or in the future, for any “diminution in value” and for any “just compensation” under the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, (the “Act”) in connection with the application of the City’s existing land use laws and including Ordinance Number 2011-01 regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or

may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney's fees or costs under the Act that they may have, as a result of the application of the City's existing land use laws, including Ordinance Number 2014-14, upon the Property

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

City of Flagstaff

Evergreen – TRAX, LLC, an Arizona limited liability company

Gerald W. Nabours, Mayor

By: TRAX Investors, LLC, an Arizona limited liability company
Its: Manager

Attest:

By: _____

Name: _____

Its: _____

City Clerk

Approved as to form and authority:

City Attorney

STATE OF ARIZONA)
COUNTY OF _____)

ACKNOWLEDGMENT

On this _____ day of _____, 2014, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of Evergreen - TRAX LLC, an Arizona limited liability company,

Manager of TRAX Investors, LLC, an Arizona limited liability company, for the purposes therein contained.

Notary Public
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTIONS OF THREE PARCELS FOR "THE TRAX" PROJECT

Consists of:

EXHIBIT "A": Written Description of Parcels

EXHIBIT 'B-1': Map/Survey of Parcel A, APN #107-13-010 (part)

EXHIBIT 'B-2': Map/Survey of Parcel A, APN #107-13-010 (part)

EXHIBIT 'B-3': Map/Survey of Parcel B, APN #107-13-009

EXHIBIT 'B-4': Map/Survey of Parcel D, APN #107-13-011

“EXHIBIT A”

LEGAL DESCRIPTION

There are three parcels for The Trax project (collectively referred to herein as the “Property”):

1. Parcel 107-13-010 (Shown on the Concept Plan as Areas A & C)
2. Parcel 107-13-009 (Shown on the Concept Plan as Area B)
3. Parcel 107-13-011 (Shown on the Concept Plan as Area D)

PARCELS A, B AND D AS SET FORTH ON COF CONSOLIDATION MAP RECORDED IN 2006-3396857, OFFICIAL RECORDS OF COCONINO COUNTY ARIZONA AND MORE PARTICULARLY DESCRIBED BELOW; AND EXCEPT FROM SAID PARCELS ALL MINERALS CONTAINED THEREIN INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS AS RESERVED BY THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION IN DEED RECORDED IN DOCKET 1442, PAGE 754.

PARCEL A

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY, HUNTINGTON DRIVE AS DESCRIBED IN DOCKET 861, PAGE 914 AND DOCKET 918, PAGE 574; PARCELS A, B, AND C RECORDED IN BOOK 8, PAGE 57; AND THE PARCEL DESCRIBED IN DOCKET 1442, PAGE 754, COCONINO COUNTY RECORDS; LYING IN SECTIONS 13 AND 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING FOR REFERENCE AT A POINT ON A TANGENT IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66, MONUMENTED BY A FOUND BRASS CAP; THENCE NORTH 71 DEGREES 20 MINUTES 56 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT- OF-WAY LINE, 78.35 FEET TO A POINT OF CURVATURE THEREIN; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE, CONCAVE NORTHWESTERLY, WITH RADIUS 2000.00 FEET AND CENTRAL ANGLE 34 DEGREES 02 MINUTES 50 SECONDS, AN ARC LENGTH OF 1188.48 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01 DEGREES 56 MINUTES 54 SECONDS AN ARC LENGTH OF 68.01 FEET; THENCE NORTH 35 DEGREES 21 MINUTES 12 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT - OF-WAY LINE, 2555.80 FEET; THENCE NORTH 41 DEGREES 08 MINUTES 46 SECONDS EAST 103.31 FEET; THENCE NORTH 36 DEGREES 26 MINUTES 28 SECONDS EAST, 258.30 FEET; THENCE NORTH 44 DEGREES 14 MINUTES 44 SECONDS EAST, 153.19 FEET TO THE BEGINNING OF A NONTANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 50 DEGREES 35 MINUTES 21 SECONDSWEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3745.72 FEET AND CENTRAL ANGLE 04 DEGREES 42 MINUTES 36 SECONDS, AN ARC LENGTH OF 307.92 FEET; THENCE NORTH 76 DEGREES 35 MINUTES 19 SECONDS EAST 37.30 FEET; THENCE SOUTH 40 DEGREES 09 MINUTES 12 SECONDS EAST, PARALLELWITH AND 74 FEET SOUTHWESTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN THEREON , 136.09 FEET; THENCE SOUTH 45 DEGREES 52 MINUTES 40 SECONDS EAST 77.10 FEET; THENCE SOUTH 47 DEGREES 28 MINUTES 57 SECONDS EAST 81.84 FEET; THENCE NORTH 45 DEGREES 36 MINUTES 00 SECONDS EAST 3.00 FEET; THENCE SOUTH 42 DEGREES 59 MINUTES 24 SECONDS EAST, PARALLELWITH AND 59 FEET SOUTHWESTERLY FROM SAID NEWFOURTH STREET CENTERLINE, 47.26 FEET TO THE NORTHWESTERLY LINE OF THE NEW RAILWAY SHOWN THEREON;

THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 3431.57 FEET TO THE NORTHWESTERLY LINE OF THE EXISTING RAILWAY SHOWN THEREON; THENCE NORTH 52 DEGREES 41 MINUTES 54 SECONDS WEST, RADIAL TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66, 41.69 FEET TO THE TRUE POINT BEGINNING. THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE-SYSTEM DATA DATED NOVEMBER 1997.

PARCEL B

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY; INDUSTRIAL DRIVE DESCRIBED IN DOCKET 918, PAGE 574; AND PARCEL 1 DESCRIBED IN DOCKET 1967, PAGE 587, RECORDS OF COCONINO COUNTY, LYING IN THE LOT 2 OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING FOR REFERENCE AT A POINT OF TANGENCY IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF ROUTE 66 NORTHEAST OF FOURTH STREET; THENCE NORTH 56 DEGREES 57 MINUTES 16 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, 35.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTH 58 DEGREES 57 MINUTES 16 SECONDS EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE 1154.90 FEET; THENCE SOUTH 33 DEGREES 02 MINUTES 44 SECONDS EAST, PERPENDICULAR TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, 39.49 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY AND THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 37 DEGREES 26 MINUTES 34 SECONDS WEST; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF THE NEW RAILWAY SHOWN THEREON AND ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 7718.99 FEET AND CENTRAL ANGLE 10 DEGREES 37 MINUTES 12 SECONDS, AN ARC LENGTH OF 1430.75 FEET; THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 205.84 FEET; THENCE SOUTH 48 DEGREES 03 MINUTES 46 SECONDS EAST, ALONG SAID NORTHWESTERLY LINE, 12.00 FEET; THENCE SOUTH 41 DEGREES 56 MINUTES 14 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 373.32 FEET; THENCE NORTH 42 DEGREES 59 MINUTES 24 SECONDS WEST, PARALLEL WITH AND 52 FEET EASTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN THEREON 53.01 FEET; THENCE NORTH 28 DEGREES 59 MINUTES 56 SECONDS WEST, 60.86 FEET; THENCE NORTH 40 DEGREES 09 MINUTES 12 SECONDS WEST, 223.43 FEET; THENCE NORTH 05 DEGREES 56 MINUTES 36 SECONDS EAST, 37.99 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 42 DEGREES 46 MINUTES 55 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, RADIUS 3750.72 FEET AND CENTRAL ANGLE 02 DEGREES 37 MINUTES 04 SECONDS, AN ARC LENGTH OF 171.37 FEET; THENCE NORTH 31 DEGREES 15 MINUTES 33 SECONDS EAST, 21.79 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 39 DEGREES 50 MINUTES 57 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3757.72 FEET AND CENTRAL ANGLE 01 DEGREES 47 MINUTES 06 SECONDS, AN ARC LENGTH OF 117.07 FEET; THENCE NORTH 51 DEGREES 55 MINUTES 35 SECONDS EAST, 141.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, TO WHICH POINT A RADIAL LINE BEARS NORTH 38 DEGREES 03 MINUTES 52 SECONDS WEST; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, WITH RADIUS 3860.32 FEET AND CENTRAL ANGLE 05 DEGREES 05 MINUTES 23 SECONDS, AN ARC LENGTH OF 342.92 FEET; THENCE NORTH 49 DEGREES 02 MINUTES 29 SECONDS EAST, 29.52 FEET TO THE TRUE POINT OF BEGINNING. THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH,

RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE—SYSTEM DATA DATED NOVEMBER 1997.

PARCEL D

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF PARCEL 2 DESCRIBED IN DOCKET 1967, PAGE 587 AND OF THE PARCEL DESCRIBED IN INSTRUMENT 2001-3104611, RECORDS OF COCONINO COUNTY, LYING IN THE WEST HALF OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL 2 DESCRIBED IN DOCKET 1904, PAGE 288, RECORDS OF COCONINO COUNTY, MONUMENTED BY A FOUND ALUMINUM CAP MARKED "ARENCO LS 13010 LS 18297; THENCE NORTH 00 DEGREES 32 MINUTES 48 SECONDS WEST ALONG THE WESTERLY LINE OF PARCEL 2 DESCRIBED IN SAID DOCKET 1967, PAGE 587, PARALLEL WITH AND 40 FEET EASTERLY FROM THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 13, 0.29 FEET TO AN ANGLE POINT THEREIN; THENCE NORTH 00 DEGREES 33 MINUTES 37 SECONDS WEST, CONTINUING ALONG SAID WESTERLY LINE, PARALLEL WITH AND 40 FEET EASTERLY FROM THE WEST LINE OF THE LOT 2 OF SAID SECTION 13, 66.44 FEET TO THE SOUTHEASTERLY LINE OF THE NEW RAILWAY SHOWN THEREON; THENCE NORTH 41 DEGREES 56 MINUTES 14 SECONDS EAST, ALONG SAID SOUTHEASTERLY LINE, 639.20 FEET; THENCE SOUTH 42 DEGREES 59 MINUTES 24 SECONDS EAST, PARALLEL WITH AND 57 FEET SOUTHWESTERLY FROM THE NEW FOURTH STREET CENTERLINE SHOWN HEREON, 59.42 FEET; THENCE SOUTH 39 DEGREES 10 MINUTES 34 SECONDS EAST 180.40 FEET; THENCE SOUTH 42 DEGREES 59 MINUTES 24 SECONDS EAST, PARALLEL WITH AND 69 FEET SOUTHWESTERLY FROM SAID NEW FOURTH STREET CENTERLINE, 255.07 FEET TO THE BEGINNING OF A 25-FOOT CORNER CUTOFF; THENCE SOUTH 00 DEGREES 30 MINUTES 36 SECONDS WEST, ALONG SAID CORNER CUTOFF, 36.27 FEET TO THE END THEREOF; THENCE SOUTH 44 DEGREES 00 MINUTES 36 SECONDS WEST, PARALLEL WITH AND 40 FEET NORTHWESTERLY FROM THE NEW HUNTINGTON DRIVE CENTERLINE SHOWN THEREON, 586.47 FEET TO THE EAST LINE OF PARCEL 1 DESCRIBED IN SAID DOCKET 1904, PAGE 288; THENCE NORTH 00 DEGREES 32 MINUTES 55 SECONDS WEST ALONG SAID EAST LINE, 136.52 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 1, MONUMENTED BY A FOUND ALUMINUM CAP MARKED "AEC LS 13010 LS 18297; THENCE NORTH 36 DEGREES 08 MINUTES 55 SECONDS WEST, ALONG THE EASTERLY LINE OF PARCEL 2 DESCRIBED IN SAID DOCKET 1904, PAGE 288, 185.56 FEET TO THE NORTHEASTERLY CORNER THEREOF, MONUMENTED BY A FOUND ALUMINUM CAP MARKED "NES LS 14671; THENCE SOUTH 89 DEGREES 51 MINUTES 25 SECONDS WEST, ALONG THE LINE BETWEEN THE SOUTHWEST QUARTER OF SECTION 13 AND LOT 2 THEREOF, AND ALONG THE NORTH LINE OF SAID PARCEL 2, 236.39 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE LINE BETWEEN THE EAST AND SOUTH QUARTER CORNERS OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, WITH BEARING SOUTH 43 DEGREES 20 MINUTES 20 SECONDS WEST PER CITY OF FLAGSTAFF COORDINATE-SYSTEM DATA DATED NOVEMBER 1997.

EXHIBIT B
CONCEPTUAL SITE PLANS

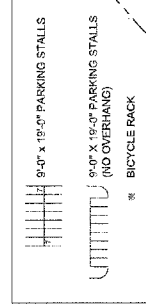
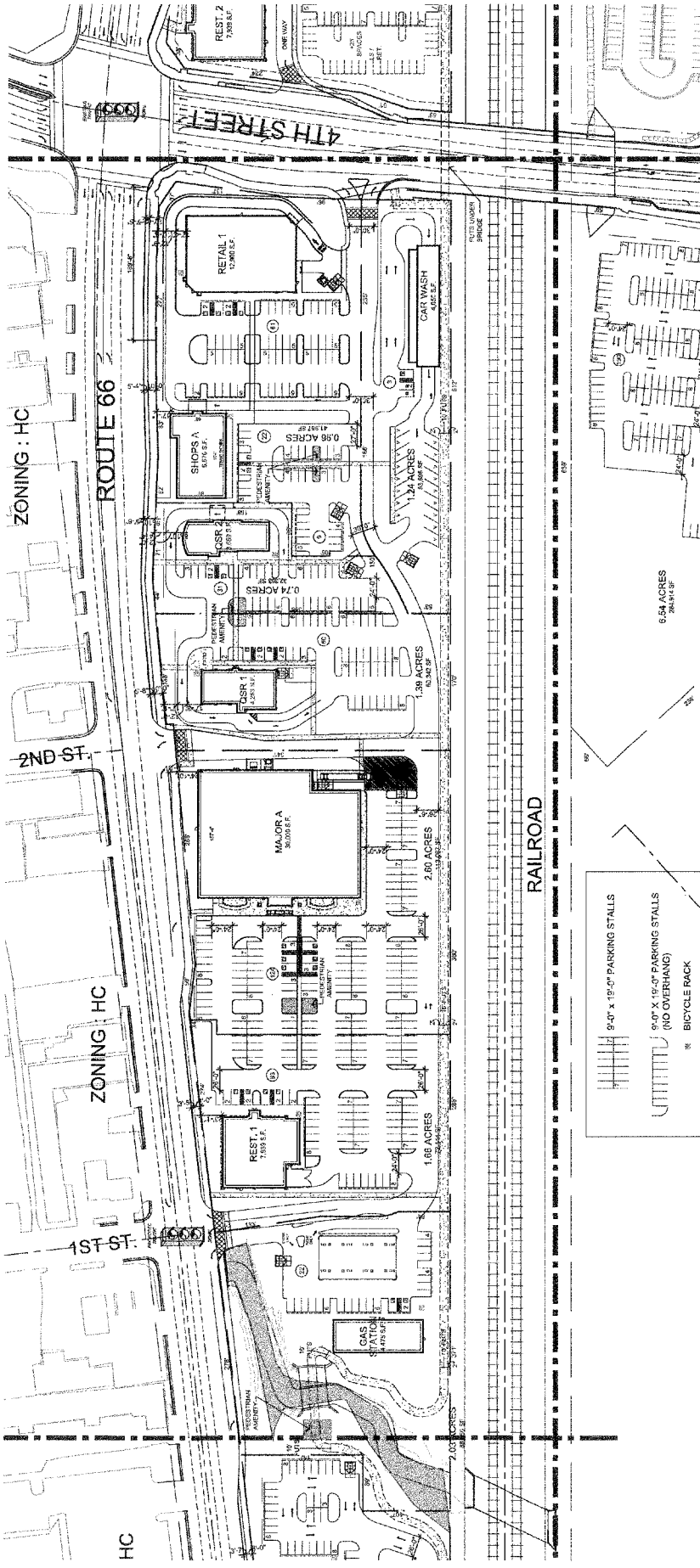
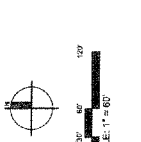
PARKING BREAKDOWN

Standard Stall: 9' x 18' (Accessible Stall: 11' x 20' (HC includes 1h overall count for each user))

Area	OSR 1: (1700 + 10)	Major A: (1200)	110 spaces required (5 HC)	Shops A: (1500)	28 spaces required (2 HC)
Gas Station: (1200)	OSR 2: (1700 + 10)	OSR 2: (1700 + 10)	124 spaces provided (HC provided: 6 spaces)	Retail 1: (1000)	31 spaces provided (HC provided: 2 spaces)
		Rest 1: (1700 + 20)	83 spaces required (3 HC)	Car Wash (1.5 + Drive Thru)	43 spaces required (3 HC)
			31 spaces provided (HC provided: 4 spaces)		61 spaces provided (HC provided: 4 spaces)
			100 spaces required (5 HC)		3 spaces required (1 HC)
			81 spaces provided (HC provided: 4 spaces)		3 spaces provided (HC provided: 1 space)

Area	OSR 1: (1700 + 10)	Major A: (1200)	110 spaces required (5 HC)	Shops A: (1500)	28 spaces required (2 HC)
Gas Station: (1200)	OSR 2: (1700 + 10)	OSR 2: (1700 + 10)	83 spaces required (3 HC)	Retail 1: (1000)	31 spaces provided (HC provided: 4 spaces)
		Rest 1: (1700 + 20)	31 spaces provided (HC provided: 4 spaces)	Car Wash (1.5 + Drive Thru)	43 spaces required (3 HC)
			100 spaces required (5 HC)		61 spaces provided (HC provided: 4 spaces)
			81 spaces provided (HC provided: 4 spaces)		3 spaces required (1 HC)
					3 spaces provided (HC provided: 1 space)

Area	OSR 1: (1700 + 10)	Major A: (1200)	110 spaces required (5 HC)	Shops A: (1500)	28 spaces required (2 HC)
Gas Station: (1200)	OSR 2: (1700 + 10)	OSR 2: (1700 + 10)	83 spaces required (3 HC)	Retail 1: (1000)	31 spaces provided (HC provided: 4 spaces)
		Rest 1: (1700 + 20)	31 spaces provided (HC provided: 4 spaces)	Car Wash (1.5 + Drive Thru)	43 spaces required (3 HC)
			100 spaces required (5 HC)		61 spaces provided (HC provided: 4 spaces)
			81 spaces provided (HC provided: 4 spaces)		3 spaces required (1 HC)
					3 spaces provided (HC provided: 1 space)



03.21.14
1086-ST17



Butler Design Group, Inc
architects & planners

THE TRAX

FOURTH STREET / ROUTE 66

PROPOSED REDEVELOPMENT SITE
Flagstaff, Arizona



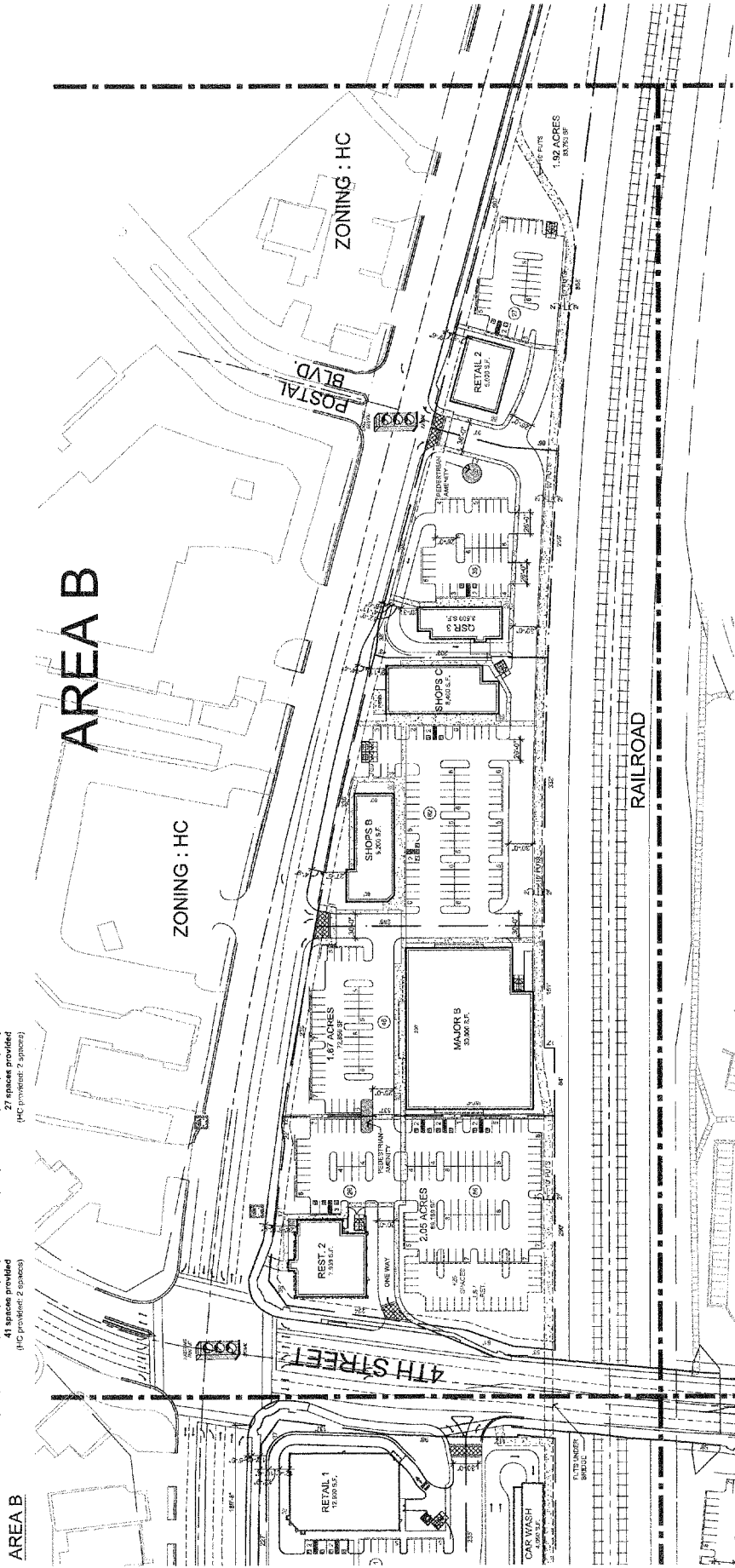
Development | Services | Investments

PARKING BREAKDOWN

Standard Shift: 9' x 18' / Accessible Shift: 11' x 20' (HC included in overall count for each user)

- Area B: (1/100 + 20) 100 spaces required (5 HC)
 (HC provided: 3 spaces)
 Major B: (1/100) 100 spaces required (5 HC)
 (HC provided: 3 spaces)
 Shop B: (1/500) 28 spaces required (2 HC)
 (HC provided: 2 spaces)
 Rest 1: (1/500) 41 spaces provided
 (HC provided: 2 spaces)
- Area B: (1/100 + 10) 132 spaces provided
 (HC provided: 6 spaces)
 Major 2: (1/100 + 10) 45 spaces required (3 HC)
 (HC provided: 2 spaces)
 Retail 2: (1/500) 17 spaces required (1 HC)
 (HC provided: 2 spaces)
- Area B: (1/100 + 20) 29 spaces required (2 HC)
 (HC provided: 2 spaces)
 Shop C: (1/500) 45 spaces required (3 HC)
 (HC provided: 2 spaces)
 QSR 3: (1/100 + 10) 35 spaces provided
 (HC provided: 2 spaces)
 Retail 2: (1/500) 27 spaces provided
 (HC provided: 2 spaces)

Note: 25 Additional Culture spaces located South of Front 2.



03-21-14
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THE TRAX

FOURTH STREET / ROUTE 66

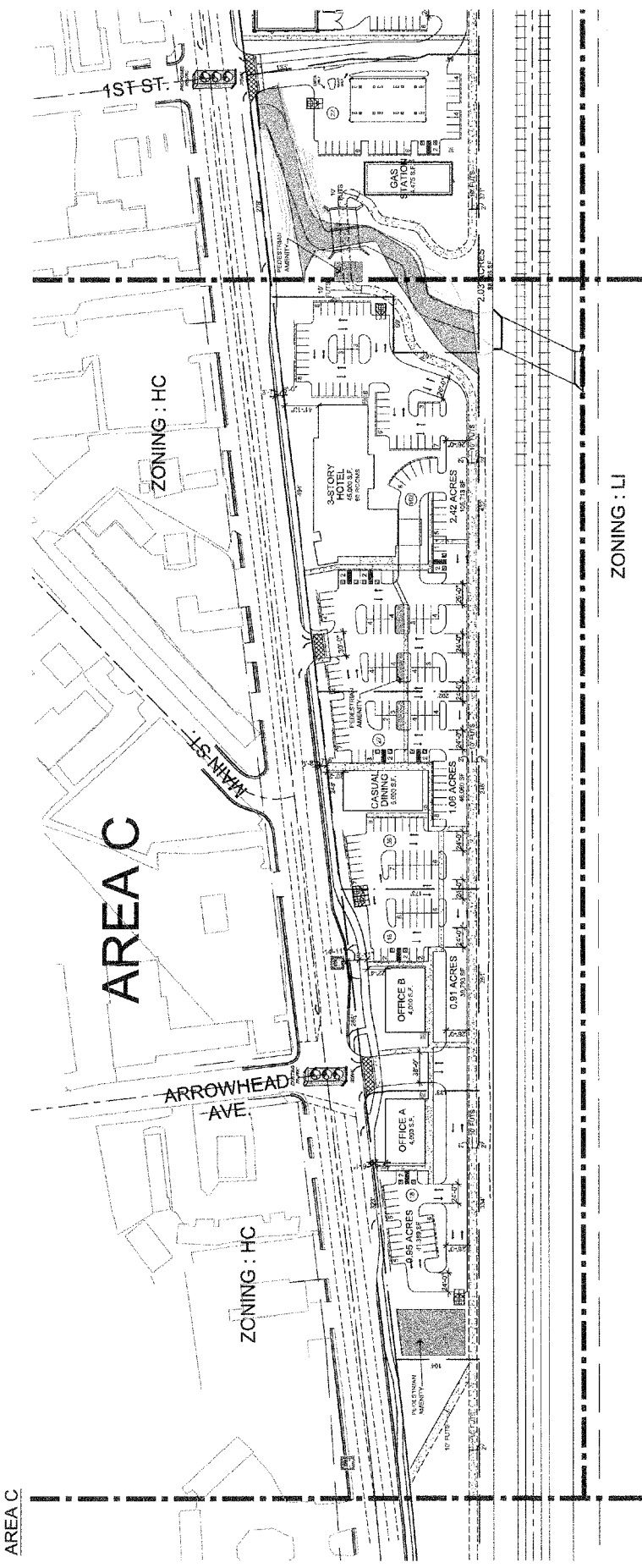
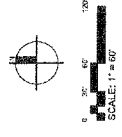
PROPOSED REDEVELOPMENT SITE
Flagstaff, Arizona



Evergreen
Development Services | Investments

PARKING BREAKDOWN

Area C		
Office A: (1,000)	14 spaces required (1 HC) 18 spaces provided (HC provided: 2 spaces)	70 spaces required (4 HC) 63 spaces provided (HC provided: 4 spaces)
Office B: (1,000)	14 spaces required (1 HC) 18 spaces provided (HC provided: 2 spaces)	100 spaces required (6 HC) 102 spaces provided (HC provided: 6 spaces)
	Hotel (1 Per Floor) (1 per 3 employees) (1 per 2 employees) (1 per 1 employee - meeting room)	
	Casual Dining: (1,100 + 20)	



03-211-4
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B²⁰
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FOURTH STREET / ROUTE 66
PROPOSED REDEVELOPMENT SITE
Flagstaff, Arizona

Evergreen
Development | Services | Investments

ZONING : LI

ZONING : HC

ZONING : HC

AREA C

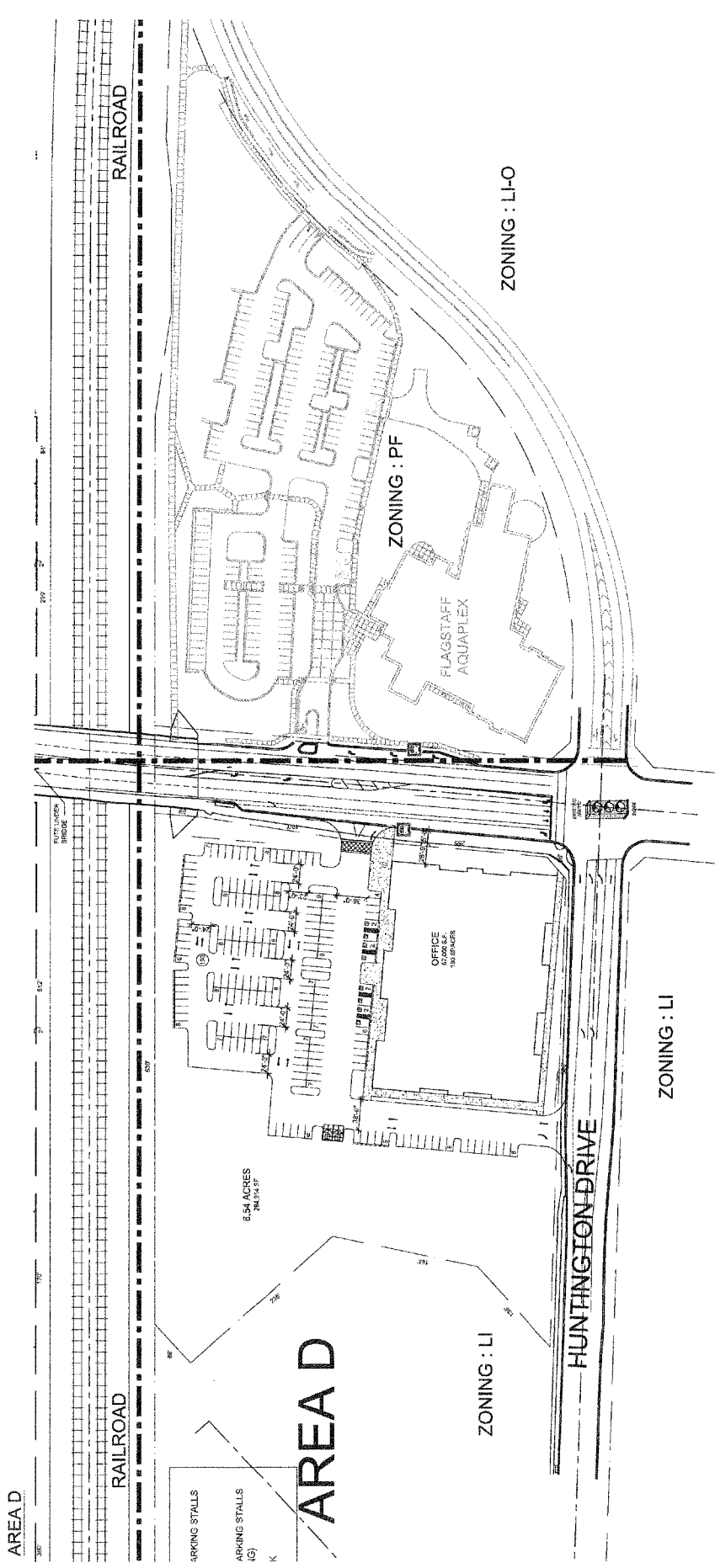
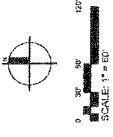
PARKING BREAKDOWN

Standard Stalls: 9' x 16' / Accessible Stalls: 11' x 20' (NC includes in overall count for each user)

AREA B Office (1300) 100 spaces required (7 NC)

AREA C Office (1300) 100 spaces provided

(NC includes 8 spaces)



THE TRAX

FOURTH STREET / ROUTE 66

PROPOSED REDEVELOPMENT SITE
Flagstaff, Arizona



PROJECT TEAM

Client: Evergreen (289) Bldg
 5917 E. Washington St.
 Suite 110
 Phoenix, AZ 85034
 Contact: John Muzarek

PROJECT NARRATIVE

The project consists of a multi-phase retail development in the area bounded by the intersection of 4th Street and Huntington Drive. The site for Areas A, B and C are located at the southwest and northeast corners of Route 66 and 4th Street. The site for Area D is located at the Northwest corner of 4th Street and Huntington Drive. See separate project narrative for additional information.

SITE DATA

Size	APN
107-13-010 (Area A, S & C)	107-13-010 (Area A, S & C)
107-13-011 (Area B)	107-13-011 (Area B)
107-13-012 (Area D)	107-13-012 (Area D)
LI (Light Industrial)	LI (Light Industrial)
HC (Highway Commercial)	HC (Highway Commercial)
380,750 S.F. (18.6 AC.)	380,750 S.F. (18.6 AC.)
223,983 S.F. (10.2 AC.)	223,983 S.F. (10.2 AC.)
35,868 S.F. (1.6 AC.)	35,868 S.F. (1.6 AC.)
298,914 S.F. (13.6 AC.)	298,914 S.F. (13.6 AC.)

BUILDING DATA:

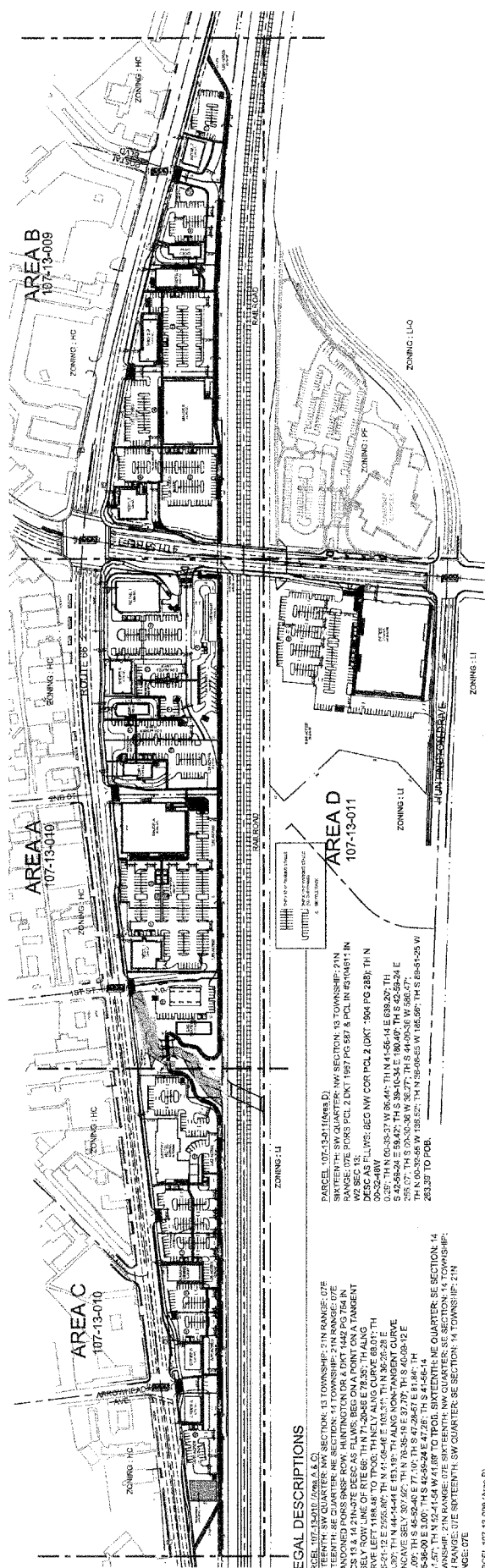
Building	Building Area (Area A)	% Coverage	FAR	Building Area (Area B)	% Coverage	FAR	Building Area (Area C)	% Coverage	FAR	Building Area (Area D)	% Coverage	FAR
	73,858 S.F.	19%	1.14	62,038 S.F.	16.8%	1.17	56,000 S.F.	20.9%	1.17	57,000 S.F.	20%	1.17
	409 / 409			319 / 302			183 / 193			1106 / 1123		

Max. Building Height (10-45-90-100): 80 Feet

PARKING DATA:

Building	Parking System	Trails	Trails
	409 / 409	319 / 302	183 / 201
	183 / 193	1106 / 1123	

(See Area Sheets for Breakdown)



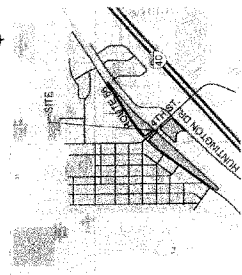
LEGAL DESCRIPTIONS

PARCEL 107-13-010 (Area D)
 SIXTEENTH, SW QUARTER, NE SECTION, 13 TOWNSHIP, 21N RANGE, 07E FOR CF
 BNSF RR, DKT #18 PG 574 & POL 1 DKT 187 PG 597 IN
 SELY ROW OF THE S.E. COR. OF 4TH ST. TH N 86°45'48" E 363.78' TO TP08;
 TH N 86°47'30" E 1154.80' TH S 30°32'41" E 218.49'; TH A LING
 NON-TANGENT CURVE CONCAVE SELY 149.75'; TH S 41°56'14" W
 203.84'; TH S 85°00'48" E 1530.64'; TH S 74°16'58" W 373.25'; TH
 223.43'; TH N 05°55'38" E 37.89'; TH ALING NON-TANGENT CURVE
 CONCAVE SELY 77.37'; TH N 31°16'33" E 21.79'; TH ALING NON-TANGENT
 CURVE CONCAVE SELY 171.97'; TH N 52°58'56" E 144.65'; TH N 45°02'28" E
 26.07' TO TP08. SIXTEENTH, SW QUARTER, NW SECTION, 13 TOWNSHIP, 21N
 RANGE, 07E

PARCEL 107-13-011 (Area B)
 SIXTEENTH, SW QUARTER, NW SECTION, 13 TOWNSHIP, 21N
 RANGE, 07E FOR S POL 2 DKT 187 PG 587 & POL IN #370491 IN
 W/ SEC 13;
 00°32'48" W LWS; BEG NW COR POL 2 DKT 186 PG 289; TH N
 0°35' TH N 05°33'37" W 86.44'; TH N 41°56'14" E 638.20'; TH
 S 42°45'24" E 594.97'; TH S 39°10'34" E 190.49'; TH S 42°59'24" E
 TH N 00°32'48" W 138.52'; TH N 29°56'55" W 185.25'; TH S 88°54'05" W
 283.39' TO POB.

PARCEL 107-13-010 (Area A)
 SIXTEENTH, SW QUARTER, NE SECTION, 13 TOWNSHIP, 21N RANGE, 07E
 ABANDONED PONS (BNSF) ROW, HUNTINGTON DR & DKT 1442 PG 754 IN
 SELY ROW OF THE S.E. COR. OF 4TH ST. TH N 86°45'48" E 363.78' TO TANGENT
 CURVE LEFT 1188.48' TO TP08; TH NELY ALING CURVE 88.01'; TH
 N 85°41'19" E 2955.80'; TH N 47°05'46" E 103.81'; TH N 85°26'28" E
 136.09'; TH S 45°52'40" E 71.00'; TH S 47°28'57" E 81.84'; TH
 N 45°06'00" E 3.00'; TH S 45°56'24" E 47.26'; TH S 41°46'14" E
 10.00' TO POB. SIXTEENTH, SW QUARTER, SE SECTION, 14 TOWNSHIP, 21N
 RANGE, 07E

VICINITY MAP



05-21-14
 1106A-ST17



Butler Design Group, Inc.
 a partner in

THE TRAX

FOURTH STREET / ROUTE 66

PROPOSED REDEVELOPMENT SITE

Flagstaff, Arizona



EXHIBIT C

ADOT Memorandum Dated February 8, 2014



Intermodal Transportation

MEMORANDUM

TO: Warren Sutphen, Flagstaff District Permits Office

FROM: Walter K. Link, Northern Regional Traffic Office (NRT)

DATE: February 8, 2014

RE: Trax Development, 2nd submittal, received December 16, 2013

Review comments on the 2nd submittal consist of evaluation to responses from the initial review. Only responses from the permittee that require additional comments or follow-up are presented. The following are recommendations to the Flagstaff District Permits Office concerning traffic engineering related concepts.

Item Number 1 (1st St. Signal):

Comment from initial review concerning the traffic signal warrant analysis at First Street/B40:

The traffic signal warrant analysis for the First Street/ Route 66/ Site Driveway needs to be more rigorous and provide some narrative about the decision to signalize. The Department requires explanation and justification to signalize in addition to meeting the numerical criteria. Please consult ADOT PGP 611 for a discussion on estimating or projecting warrants. Also, please provide a diagram of the expected layout of the signalized intersection including roadway geometrics, parking (internal throat distances), driveways, sidewalks, etc. pertinent to the study. The needs study should also include an analysis of and the need for and location of pedestrian signals, pedestrian push-buttons, and marked crosswalks. Access to existing business on the North side of Route 66 should be depicted and impact to their driveways discussed with mitigation.

Permittee response: Conceptual design and additional signal warrant detail will be provided with permit submittal.

NRT Comment: The above review comment stands: it is unwise to wait until a permit submittal to establish whether a traffic signal at First St/B40 will be allowed. Substantial delay will be incurred during the permitting process. If a traffic signal is approved, PGP 614(Review Process of Traffic Signals for Permits) must be followed; this process is also time-consuming.

Item Number 2 (Pedestrian Crossing):

Comment from initial review concerning pedestrian crossing of B40 to access development:

The TIA briefly discusses earlier ADOT concerns over pedestrian crossings of B40 to access the development. This remains a concern and given the distances of 1,200 feet and 1,400 feet between a potential traffic signal at 1st Street and Arrowhead and 4th St. signals respectively, the situation may not wait for an area wide planning effort as the TIA suggests. There is no such planning effort or project underway using public money to address this concern. As the TRAX development is the primary driving mechanism for these likely pedestrian movements the TIA needs to further analyze and either satisfy the Department these crossings are unlikely to occur or provide alternative solutions.

Permittee response: Additional discussion was added to the TIA and is paraphrased here. Medians were investigated and existing pavement width was found to be inadequate for pedestrian refuge. Further, there would be impact to existing driveways on the north side. "Median configuration and access control changes would best be addressed in the context of an area wide planning effort to address improvements to mitigate regional traffic demand" Further, the TIA discusses the distances between existing traffic signals and the proposed 1st St signal would provide approximately 600 feet between signalized crossings. "Since the likely pedestrian paths for potential users of the site will utilize routes that pass by signalized pedestrian crossings, additional pedestrian crossing provisions are not anticipated to be needed"

NRT Comment: The regional traffic engineer remains concerned the development has not made provision to address potential pedestrian crossing issues created expressly by the development. Admittedly, it is difficult to predict pedestrian volumes and crossing paths. The permittee should enter discussion with the City of Flagstaff (COF) regarding bonded provisions for an independent engineering study and pedestrian mitigation construction following the opening of the development and settling of vehicle and pedestrian traffic. After sufficient time, pedestrian volumes, patterns and concerns should be evident. This time could occur up to 12 months after the last parcel is developed. If the study did not develop into a project, any remaining bonded funds would be returned to the permittee. Until such agreement is made, or other analysis and/or mitigation provided, recommendation to approve access permits for the development cannot be provided.

Item Number 3 (Lighting):

Comment from the initial review concerning roadway and pathway lighting levels along the south side of B40 along the development frontage:

Recommend the TIA be modified to provide a stronger position on roadway and pathway lighting than it "should be considered". The Regional Traffic Office recommends an encroachment permit not be issued until a satisfactory study is completed and approved. This study will need to precede construction documents. Although the City of Flagstaff maintains lighting within the ADOT Right-of Way in City Limits via an intergovernmental agreement - the roadway lighting must be designed utilizing the illuminance method with appropriate design values and uniformity ratio selected. ADOT PGP 700 and AASHTO's Roadway Lighting Design Guide would be the primary reference documents.

Permittee response: Additional lighting discussion added. "Due to the increase in activity along the Route 66 frontage of the project and the addition of new access points, lighting levels should be

reviewed along Route 66 to ensure adequate visibility for motorist and pedestrians. It should be implemented according to local standards and practices during the permitting process. A lighting analysis should be provided along with the encroachment permit submittal”

NRT Comment: Although the City of Flagstaff will maintain the roadway lighting after its construction, the lighting design and target values will need to be approved by ADOT. It is recommended this analysis and design approach be completed prior to the permit submittal. Typically, the permit submittal would contain the construction plans for the lighting system: the target values for maintained illuminance and uniformity ratio and related discussions should take place prior to avoid excessive delay in the permitting process.

Item Number 4 (2nd Street):

Comment from the initial review concerning the site access driveway at 2nd Street and Route 66:

Site Driveway at 2nd Street. As above, please provide the Synchro HCM unsignalized capacity analysis report. Independent work suggests both AM and PM peak hour level of service for the NB left is poor. The westbound dedicated left-turn lane described in the report would appear to result in access issues for at least one property on the north side of Route 66. Please discuss and suggest mitigation for both concerns.

Permittee response: The access point is intended to be full-movement. HCM 2010 TWSC worksheets were included.

NRT Comment: Volumes for the SB movements from 2nd St and the EB left from Route 66 were not included in the analysis; however, with and without those volumes the NB left onto WB Route 66 is anticipated to have a Level of Service of F in both the AM and PM peak hours. Typically, an LOS of F for any individual movement for a new site driveway would be cause to eliminate the movement through a raised island. At this location, I would recommend allowing the driveway to be permitted as outlined in the TIA. The low volumes estimated to make this turn coupled with the availability of the proposed traffic signal at 1st St. should allow this driveway to function in an overall acceptable manner. As the encroachment permit is not a static permit, the permittee can be approached at a later time if the NB left movement onto Route 66 creates concerns. A likely mitigation would be the construction of a raised island preventing a left out movement from this driveway.

The TIA recommends a Westbound Left-Turn lane on Route 66 with 240 feet of storage be implemented through striping. After field-reviewing this location, it is recommended a dedicated left-turn lane **not be implemented through re-striping**. Rather, the Two-Way-Center-Turn-Lane (TWCTL) continues to function as it currently is. If the TWCTL is removed and replaced, access into and out of driveways on the north side of Route 66 will be impacted. Although left-turning movements across double-yellow striping are a legal maneuver, driver behavior often does not follow the specifics of law in this case. Additionally, utilizing the TWCTL is consistent with other locations at non-signalized intersections in the area.

Item Number 5 (4th St/Rte 66):

Comment from the initial review concerning 4th St. and Route 66:

Analysis presented for 4th St/Rte 66 in the 2015 Total Traffic Scenario predicts the EB left and the WB left will deteriorate to LOS E and F respectively. Under ADOT Policy 240, mitigation is needed.

Permittee response: Discussion of impact of background traffic growth and lack of mitigation and alternative land use options added.

NRT Comment: The development will cause deterioration in the Level of Service at the Route 66/4th Street intersection. ADOT Policy acknowledges and allows a deterioration in urban areas to an LOS of D. The project will deteriorate all four left turning movements to below LOS D by 2017 when all parcels are complete. The NB left movement from 4th Street onto WB Route 66 in the PM peak hour will deteriorate from an LOS of D (2015 background) to LOS F in 2017 with Total traffic. Other left-turn movements will deteriorate from D to E. Typically, ADOT policy would require mitigation in a manner to not allow further degradation of the approach delay from LOS D or lower. The Route 66/4th St. intersection is currently at a maximum practical configuration by providing dual left-turn lanes in all directions. The ability to prevent individual movements from deteriorating below LOS D cannot be achieved by timing alone and geometric changes are not feasible. Complex interactions between travel patterns and demand use by the public combined with other retail developments in the area constantly changing in location and scope, can mitigate travel patterns in ways hard to predict. It is recommended that adherence to policy at this location be waived as compliance would likely require such fundamental change in the development as to render it infeasible.

Item Number 6 (Main St. – Site Driveway D1/Route 66):

NRT Comment: The TIA recommends a Westbound Left-Turn lane on Route 66 with 200 feet of storage be implemented through striping. After field-reviewing this location, it is recommended a dedicated left-turn lane **not be implemented through re-striping**. Rather, the Two-Way-Center-Turn-Lane (TWCTL) continues to function as it currently is. The same rationale discussed in Item Number 4 above.

Comments prepared by:

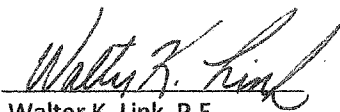
By:  Date: 2-8-14
Walter K. Link, P.E.
Northern Region Traffic Engineer
Arizona Department of Transportation
State of Arizona (Civil), License 25979

EXHIBIT D

Ordinance No. 2014-14

ORDINANCE NO. 2014-14

AN ORDINANCE AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 33.6 ACRES OF REAL PROPERTY GENERALLY LOCATED AT THE INTERSECTION OF ROUTE 66 AND FOURTH STREET, FROM LIGHT INDUSTRIAL ("LI") AND LIGHT INDUSTRIAL OPEN ("LI-O"), TO HIGHWAY COMMERCIAL ("HC").

RECITALS:

WHEREAS, the applicant has applied for a Zoning Map amendment of approximately 33.6 acres of real property located within the City of Flagstaff, a legal description of which is designated as **Exhibit "A"**, attached hereto and incorporated by this reference, from "LI," Light Industrial, and "LI-O," Light Industrial Open, to "HC," Highway Commercial, for purposes of developing a commercial retail center with approximately 250,000 square feet of commercial building space; and

WHEREAS, the Council finds that the applicant has complied with all application requirements set forth in Chapter 10-20 of the Flagstaff Zoning Code; and

WHEREAS, the Planning and Zoning Commission has formally considered the proposed Zoning Map amendment application, following proper notice and hearings, on May 14, 2014 and May 28, 2014, with the result that the Planning and Zoning Commission has recommended approval of the requested Zoning Map amendment application, subject to the following conditions:

1. That the subject property is developed in substantial accordance to the entire conceptual plans approved by the Inter-Division Staff (IDS) on April 3, 2014, with the zoning map amendment request.
2. That all terms, conditions and restrictions detailed within "Development Agreement and Waiver between City of Flagstaff and Evergreen-TRAX, L.L.C." are fully satisfied.

WHEREAS, the City Council has read and considered the staff reports prepared by Current Planning Division staff and has considered the narrative prepared by the applicant; and

WHEREAS, staff recommends approval of the Zoning Map amendment application, subject to the condition proposed by the Planning and Zoning Commission, and the Council has considered the condition and has found it to be appropriate for the site; and

WHEREAS, the Council finds that the proposed Zoning Map amendment with the condition will not be detrimental to the uses of adjoining parcels or to other uses within the vicinity;

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. The zoning map designation for the subject property is amended to "HC," Highway Commercial.

SECTION 3. That City staff is hereby authorized to take such other and further measures and actions as are necessary and appropriate to carry out the terms, provisions and intents of this Ordinance.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**PLANNING AND DEVELOPMENT SERVICES REPORT
ZONING MAP AMENDMENT**

**PUBLIC HEARING
PREZ 2014-0002**

DATE: May 6, 2014
MEETING DATE: May 14, 2014 & May 28, 2014
REPORT BY: Elaine Averitt
CONTACT: 928-213-2616

REQUEST:

Zoning Map Amendment to the official Zoning Map for approximately 33.6 acres to rezone property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC), located at the southwest and southeast corners of Route 66 and 4th Street, and the northwest corner of Huntington Drive and 4th Street on parcel numbers 107-13-009, 107-13-010, and 107-13-011.

STAFF RECOMMENDATION:

On May 14, 2014, open the Public Hearing, receive input and close the Public Hearing. On May 28, 2014, staff recommends approval of PREZ 2014-0002 with the conditions as noted in the Recommendation section of this report.

PRESENT LAND USE:

Undeveloped land in the Light Industrial (LI) and Light Industrial-Open (LI-O) zones.

PROPOSED LAND USE:

A commercial development, consisting of approximately 250,000 square feet of retail, service and office uses to be constructed on these three sites.

NEIGHBORHOOD DEVELOPMENT:

North: Route 66, then Commercial Uses, HC Zone;
East: Aquaplex, Light Industrial-Open Zone; Undeveloped Land, Light Industrial Zone;
South: BNSF Railway, Industrial Uses and Undeveloped Land, Light Industrial Zone; Aquaplex is south of Area B, Light Industrial-Open Zone; Gore is south of Area D, Light Industrial zone;
West: Undeveloped Land and Industrial Uses, Light Industrial Zone.

REQUIRED FINDINGS:

STAFF REVIEW. An application for an amendment to the Zoning Map shall be submitted to the Planning Director and shall be reviewed and a recommendation prepared. The Planning Director's recommendation shall be transmitted to the Planning Commission in the form of a staff report prior to a scheduled public hearing. The recommendation shall set forth whether the Zoning Map amendment should be granted, granted with conditions to mitigate anticipated impacts caused by the proposed development, or denied; and shall include an evaluation of the consistency and conformance of the proposed amendment with the goals of the General Plan and any applicable specific plans; and a recommendation on the amendment based on the standards of the zones set forth in Division 10-40.20 (Establishment of Zones).

FINDINGS FOR REVIEWING PROPOSED AMENDMENTS: All proposed amendments shall be evaluated as to whether the application is consistent with and conforms to the goals of the General Plan and any applicable specific plans; and the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City and will add to the public good as described in the General Plan; and the affected site is physically suitable in terms of design, location, shape, size, operating characteristics and the provision of public and emergency vehicle access, public services, and utilities to ensure that the requested zone designation and the proposed or anticipated uses and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located. If the application is not consistent with the General Plan and any other applicable specific plan, the applicable plan must be amended in compliance with the procedures established in City Code Title 11, Chapter 11-10 (General Plans) prior to considering the proposed amendment.

STAFF REVIEW:

Introduction/Background

As indicated in the previous report, this Zoning Map amendment (rezoning) request is the second of two related items on the Commission's agenda; the first item is identified as a *Regional Plan* amendment request. The rezoning request is to amend 33.6 acres of property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial zone in the vicinity of Route 66 and 4th Street.

The site is currently vacant, undeveloped and un-subdivided land. At the date of this report, the property is owned by the City of Flagstaff. The applicant, Evergreen Devco, Inc., intends to close escrow on the property by September 2014 and following site plan and engineering construction plan approvals, to provide the development with new public and private infrastructure that includes roadway work, FUTS trail construction, water, sewer, and storm water infrastructure. The Regional Plan amendment report includes an attachment, "General Plan Amendment Submittal Requirement" narrative by the applicant, which provides additional information on the reason for the request and anticipated community benefits.

Land uses north of the property, across Route 66, consist of commercial buildings with uses that include motels, restaurants, auto repair, retail, plant nursery and offices. New commercial construction on the north side of Route 66 includes the completed Walgreens at the northeast corner of Route 66 and 4th Street, a new bank east of the Walgreens (in construction), and a Tractor Supply Co. (in construction) at the northeast corner of Route 66 and Arrowhead Drive. The east property line is the narrow end of the eastern parcel, east of Postal Boulevard and is only about 40 feet wide. This area is adjacent to vacant city-owned land. The western parcel (Areas A and C) is bordered on the south by BNSF railway, industrial uses, and undeveloped land. Area D at 4th Street and Huntington is bordered on the south by Huntington Drive and then W.L. Gore & Associates (light industry). The eastern parcel (Area B) is bordered on the south by the BNSF railway, then the Aquaplex and Industrial Drive further east. The west property line is the narrow end of the western parcel (about 65 feet wide) west of Arrowhead Drive and is adjacent to vacant city-owned land. The terrain on the Areas A, B, and C of the subject site is generally flat at an elevation ranging between approximately 6,840 to 6,860 feet. Other than some planted trees along Route 66, this area is mostly devoid of vegetation. Area D is flattest at the corner of 4th Street and Huntington, and then slopes down towards the west; it has a fairly even distribution of Ponderosa pine tree resources.

If the zoning map amendment request is approved, the next steps in the process will be applications for Site Plan, followed by civil engineering and building plan permits. The shopping center will need to be platted;

however, a first phase with limited buildings may proceed prior to platting. A resolution for the development agreement must be approved prior to the second reading of the zoning ordinance (see attached draft development agreement). The development agreement will address responsibilities for constructing a FUTS trail, providing outdoor public space, preserving the trestle bridge, ensuring that construction of public improvements coincide with the phased development of the project, and designing drive-through facilities to ensure the safe movement of pedestrians and vehicles. Additionally, the Developer will be required to contribute an agreed upon monetary sum into the City's escrow account towards future I-40 Bridge improvements and to cover a pedestrian crossing study and any recommended improvements to Route 66 related to the development of the property. The development agreement also covers Route 66 lighting (ADOT requirements) and dedication of public easements and rights-of-way. The applicant received Inter-Division Staff (IDS) approval for the Conceptual Site Plan on April 3, 2014. The conditions of IDS review were addressed when the applicant submitted a revised Conceptual Site Plan for the Planning & Zoning Commission (P&Z). The conditions of P&Z submittal were satisfied so that staff could schedule the public hearings. Those conditions relating to requirements for future Site Plan submittals were agreed by the Developer in the "response to conditions." Any outstanding, unresolved provisions addressed in the Conditions of Approval will be included in the development agreement.

Proposed Development Conceptual Site Plan

The applicant, Evergreen Devco, Inc., is requesting a zoning map amendment for a multi-phase commercial development named "The Trax." The 33.6-acre site is located at the intersection of Route 66 and Fourth Street, and is adjacent to approximately one mile of the Burlington Northern Santa Fe railway, as seen on the attached Conceptual Site Plan. In 2006, the railway was re-located to the south, enabling construction of the Fourth Street Overpass and creating additional developable land on both sides of the new Fourth Street bridge. Access to the development will be created along Route 66 at Arrowhead Drive, First Street, Second Street, Postal Boulevard and two additional minor driveways. Access will be created from Fourth Street to the east and west sides of the shopping center. For Area D, access will be created from Fourth Street and from Huntington Drive. A Flagstaff Urban Trail System trail will be constructed along the rear portion of the shopping center adjacent to the railway, compatible with the Flagstaff Urban Trail System plan. The proposed timing of development will be dictated by market demand; however, the developer anticipates having the first users break ground by 2015, with other to follow between 2015-2022. Areas A and B are expected to be developed first and Areas C and D are anticipated to be completed later.

The applicant had two Conceptual Site Plans prepared which are attached with this application:

- 1) architectural plan with building and parking data (prepared by Butler Design Group, Inc.); and
- 2) preliminary engineering plan (prepared by Shephard Wesnitzer).

The proposed project consists of 195,000 square feet (sq ft) of commercial buildings and 931 parking spaces in Areas A, B, and C north of the railway, and a 57,000 sq ft office building and 190 parking spaces in Area D south of the railway. The development includes a variety of building types which are best described within the conceptual phasing areas (A, B, C, and D) as shown on the Conceptual Site Plan prepared by Butler Design Group. Starting at the west end of the project, Area C (beginning at Arrowhead) includes two 4,000 sq ft office buildings, a 5,000 sq ft casual dining building, and a 45,000 sq ft 3-story hotel. Area A (beginning roughly at N. First St.) depicts a gas station/convenience store, an 8,000 sq ft restaurant, a 30,000 sq ft "Major," two drive-through restaurants, a 6,570 sq ft multi-tenant retail building, a 12,900 sq ft retail building at the corner of Route 66 and 4th Street, and a car wash. Area B (beginning on the east side of 4th Street) includes a 7,940 sq ft restaurant, a 30,000 sq ft "Major," two multi-tenant shops (8,200 and 8,400 sq

ft), a drive-through restaurant, and 5,000 sq ft retail shop located at Postal Blvd. Area D (northwest corner of 4th St. and Huntington Dr.) proposes a 57,000 sq ft office building with surface parking.

Pedestrian amenities will be included in the development and are identified generally in the Conceptual Site Plan. The design of these amenities will need to be identified specifically in the more detailed Site Plan application for each building, or group of buildings, following the zoning case. In general, pedestrian amenities are provided adjacent to buildings, in pedestrian path locations between buildings and parking lots, and in unique areas such as the trestle bridge location over Spruce Wash. They may include open and covered seating, small plazas, and landscaped pedestrian walkways around the site. Architectural design is discussed under Design Review.

The developer will be required to complete the pedestrian sidewalk system along Route 66, 4th Street (at new driveway locations) and Huntington Drive, provide on-site landscaping, street buffer landscaping, outdoor lighting, and a new high-speed FUTS trail along the rear of the project.

General Plan/Regional Land Use and Transportation Plan

The *Flagstaff Regional Land Use and Transportation Plan* identifies the subject property as in the Office/Business Park/Light Industrial and Light/Medium Industrial categories. All substantive Regional Plan issues were addressed in the previous Regional Land Use and Transportation Plan amendment report. The proposed minor Land Use Amendment would change the designation to Community/Regional Commercial; thus if the Regional Plan amendment is approved, the rezoning request would comply with the Regional Plan.

Zoning/Flagstaff Zoning Code

If the rezoning request is approved and the 33.6-acre site is rezoned to Highway Commercial (HC) Zone, the proposed commercial development will be considered a permitted use in the HC zone. Per the Flagstaff Zoning Code, Retail Trade, Drive-through Service, Restaurant, General Services, Office uses, Automobile Service Stations and Convenience Stores, Car Washes, Lodging (e.g., hotels, motels) are all classified as allowed uses in the HC zone (Section 10-40.30.040, p.40.30-15 through 40.30-18). Under the current LI and LI-O zoning, most of these uses (e.g., General Retail, Restaurants, Offices) would only be allowed with a Conditional Use Permit or not allowed at all (e.g., no lodging, or drive-through uses permitted in the LI zone) and auto service stations are not allowed in the LI or LI-O zones.

Table 1 compares development standards for existing LI and LI-O zones, compared to the proposed development with the requested HC zone. Resource protection only applies to Area D, 6.5 acres, at Huntington and 4th Street. The requested HC zone has a higher level of forest resource protection (30%) than the current light industrial zone requires (20%). Approximately 37% of the tree resources will be preserved. There is no difference in slope protection requirements between the existing and proposed zones.

There will be no change in the maximum permitted height with the request since 60 feet is the maximum height permitted in the LI, LI-O and HC zones. The maximum building height proposed for this project is a 3-story hotel. The specific heights are not proposed with the Conceptual Site Plan but will be reviewed for zoning code compliance with the more specific Site Plan submittals in the future. Most of the other buildings are proposed as single story. Civic or public space is required for all non-residential developments larger than 20,000 sq ft in gross floor area. As agreed upon in the development agreement, the new FUTS

trail area being constructed by the developer may be applied towards this requirement. The quantity of Civic/Public space will be reviewed for compliance with future Site Plan submittals.

Regarding intensity of development, the table below shows a proposed Floor Area Ratio (FAR) of only 0.14 to 0.21. This intensity is significantly less than either the existing zone would permit (1.5 FAR) or the proposed zone would permit (3.0 FAR).

TABLE 1

Subject Site	Existing Zones (LI & LI-O)	Proposed Zone (HC)
Acres (total project area)	33.6	33.6
Total Resource Protection Land (acres) Area "D" only	6.5	6.5
Forest Resource Protection as % of Site Area	20%	30%
Slope Protection 0-16.99% 17-24.99% 25-34.99%	No protection 60% of slope area No development allowed	No protection 60% of slope area No development allowed
Maximum Height	60'	60'
Building Placement Requirements		
Setbacks : Front	25'	0*
Setbacks: Side	0	0*
Setbacks: Side Exterior	15'	10'
Setbacks: Rear	0	0*
Min. Public/Civic Space	<i>5% of site</i>	<i>5% of site</i>
Max. Floor Area Ratio	1.5	3.00
* Setbacks are based on buffer requirements.		

Parking

The Flagstaff Zoning Code (Table 10-50.80.040.A) addresses the minimum number of parking spaces for "Shopping Centers". The requirement for shopping centers with greater than or equal to 100,000 gross square feet (gsf) is: *One (1) space per 300 gsf for gsf over 100,000 gsf.* Restaurants will calculate parking separately as: *one (1) space per employee plus one (1) space per 100 gsf.* Once the shopping center development exceeds 100,000 gsf, it can use: *One (1) space per 325 gsf.*

The applicant provided parking calculations for the proposed development. This includes a requirement of a total of 1,106 parking spaces for Areas A, B, C and D, and a provided 1,121 parking spaces. Staff's review of the parking calculations found that the proposed plan is in general compliance for each area. A final parking analysis will be done with review of the more detailed Site Plan submittals and will ensure that general parking requirements and accessible parking space standards are met.

Design Review

Site Planning Design Standards (Section 10-30.60.030)

The applicant's engineer conducted a site analysis (see attachment) that considers topography, solar orientation, climate, views, built environment, and pedestrian/vehicular traffic and the findings were taken into account during project design development. Areas A, B, and C have views of Mount Elden and a portion of the San Francisco Peaks to the north (see photos in Site Analysis appendix). Design standards encourage orienting outdoor civic spaces to mountain views and/or views of pedestrian activity.

Circulation Systems (Auto, Pedestrian, Bicycle and Transit, Sec. 10-30.60.040)

The project design provides a diverse range of transportation choices for getting to and from the property. Bus transit is readily available along both Route 66 and 4th Street, bicyclers have access via the proposed high-speed FUTS, vehicles have easy access to and from all public streets, and pedestrians are served via public sidewalks with signalized cross walks at Arrowhead, 1st Street, 4th Street, Postal, and Huntington. Bicycle racks are required through the zoning code parking standards and will need to be shown on the Site Plan submittals.

The proposed project will maintain the existing sidewalk system along Route 66, while the rest will be modified to accommodate new access points. Additional sidewalks and paths will be included throughout Areas A, B, and C and will provide connectivity with public sidewalks along Route 66 and 4th Street. New sidewalks proposed within Area D will connect to sidewalks along 4th Street and Huntington Drive.

There are several existing transit stops for the Mountain Line bus system in the vicinity of the project. Bus stops are located at Arrowhead Avenue and Route 66, at the southeast corner of Route 66 and 4th Street, at Steve's Boulevard (just east of Postal Ave.) and on both side of 4th Street north of Huntington Drive. These stops provide immediate pedestrian access to the proposed development.

Parking Lots, Driveways and Service Areas (Section 10-30.60.050)

Site Planning Design Standards seek to reduce the visual impact of parking lots. A few of the requirements are listed below:

- To the maximum extent feasible, parking lots shall be completely or mostly located to the side or behind a building rather than in front;
- Parking areas must be screened from public view with low walls and/or evergreen hedges;
- Parking areas over one acre must be divided into smaller lots with planted buffers between them to minimize the perceived scale of the parking lot.

The proposed plan to a large extent complies with these standards; however, with future Site Plan submittals staff will be working with the applicant to achieve better compliance in Area B (parking in front of Major B), more effectively breaking up the larger parking lots, and modifying some of the drive-through facility designs to provide adequate screening and ensure pedestrian safety.

Design standards require new developments to minimize the number of curb cuts (and driveways) onto a public street. Six access points along Route 66 are proposed, with two of them requiring modification of existing traffic signals and one requiring a new traffic signal (First St.). Non-signalized driveways are spaced relatively far apart, considering the approximately one (1) mile of frontage along Route 66. There will be one driveway on each side of 4th Street providing access to the west and east sides of the shopping center, a driveway from 4th Street to access Area D, and a driveway from Huntington Dr. to access Area D.

During Site Plan review, staff will review to ensure that dumpsters and other services uses are effectively screened and meet Public Works standards for access.

“Scale” refers to proportions, overall height and width, the visual intensity of the development, and the building massing. The proposed new development, with predominantly one-story buildings and relatively low building coverage will be compatible in scale with the existing commercial uses along the north side of Route 66. The largest proposed buildings, Major A and Major B, both 30,000 sq ft are significantly smaller than the 51,000 sq ft Aquaplex recreation center located at 4th Street and Huntington Drive. The 2-story, 57,000-sq ft office building proposed in Area D is slightly larger than the Aquaplex.

Architectural Design Standards (Section 10-50.20.030)

As depicted in the attached 11x17” color elevations and described by the applicant, building designs have been created to maintain the natural setting by incorporating a range of styles that are well-suited for a mountain town and incorporate many of the raw materials that are representative of the surrounding area. These materials include founders finish and split face masonry (tan and red), board & batten, board formed concrete, timber supports, rusted and galvanized metal roofing/awnings and paint colors such as “Weathered Leather” and “Aged Eucalyptus.”

Staff believes that the proposed building materials meet the intent of the zoning code. During Site Plan review staff will confirm that any secondary materials, such as stucco, make up less than 25 percent of the exterior walls of each elevation.

Landscaping

A preliminary landscape plan was submitted and reviewed with the concept plan in October 2013. The plan meets the general intent of landscaping requirements for parking lots, building foundations, street buffers and open space. A final landscape plan will be reviewed with the Site Plan submittal.

PUBLIC SYSTEMS IMPACT ANALYSIS:

Traffic and Access

The site (Areas A, B, and C) is bounded on the north by Route 66, on the south by BNSF railway, on the east and west by narrow undeveloped city property. Area D is bounded on the north by BNSF railway, on the south by Huntington Drive, on the east by 4th Street, and on the west by light industrial business.

The site is accessed locally via 4th Street, Route 66, and Huntington Drive. Regional access is expected to be provided by Route 66 and Interstate 40 and by other arterial streets in the vicinity such as 4th Street, Industrial Drive/Huntington Drive, Soliere Avenue, Sparrow Avenue and Butler Avenue.

Access points are discussed generally under Circulation Systems on page 6 of this planning report. The TIA provides detailed turning movements for each driveway associated with the proposed development.

A Traffic Impact Analysis (TIA) dated December 2013, was prepared for the applicant by Kimley-Horn and Associates, Inc. Principle findings and recommendations in the TIA include:

- Access drives to the site operate at acceptable levels of service for all scenarios.

- Some intersections in the immediate vicinity of the project, such as 4th Street and Route 66 as well as Route 66 will operate below desirable levels of service due to background volumes.
- Turn (deceleration) lanes are recommended at access points along Route 66, 4th Street and Huntington Drive, and are incorporated into the Conceptual Site Plan.
- Recommended mitigation strategies are provided for 4th Street and Soliere Avenue, and 4th Street and Sparrow Avenue.
- Potential demand for pedestrian crossing of Route 66 was considered. Currently there are three locations where pedestrians can utilize signalized intersections to cross from the north side of Route 66 to the south; at Arrowhead Ave., 4th Street, and Postal Blvd.the addition of new traffic signal at the intersection of 1st Street and Route 66 will reduce the distance between signalized intersections west of 4th Street to approximately 1,200 feet....with the addition of the signalized crossing at 1st Street the maximum distance a pedestrian could possibly travel before reaching a signalized crossing would be approximately 600'. [Note: the development agreement includes provisions for a pedestrian study and mitigation strategies]
- Due to the increase in activity along the Route 66 frontage of the project and the addition of new access point, lighting levels should be reviewed along Route 66 to ensure adequate visibility for motorist and pedestrians. [Note: a lighting analysis by the applicant is in process and will be discussed with ADOT]

The City of Flagstaff traffic engineer accepted the TIA with conditions which are outlined in the attached memo and included in the development agreement between the City and Evergreen Devco. ADOT has not yet responded to Evergreen's most recent TIA submittal.

Water and Wastewater

A public water and sewer impact analysis was prepared by the City for the proposed development as part of a rezoning application in August 2008. After reviewing the current TRAX Concept Plans dated July 27, 2011, the City of Flagstaff Utilities Department concluded that the proposed site plans reveal no significant water and sewer changes. As long as water and sewer demands do not increase from the original analysis, no additional analysis work will be required. However, the city will require that the onsite water and sewer system be addressed in the Engineer's Design Report. According to the water and sewer impact analysis, the existing off-site and proposed on-site sewer and water system infrastructure were deemed adequate to accommodate the development, and no off-site improvements were required.

Each parcel has an 8-inch PVC water main stubbed out for development of this land. Within the Route 66 right-of-way and Huntington Drive are 18-inch and 16-inch diameter ductile iron transmission lines. All new on-site infrastructure will have to be designed and built to connect to the public water system and will be required to provide a looped water system.

The nearest sewer main that allows for gravity flow from this site is located within Parcel A. This existing 14-inch trunk line turns into a 21-inch diameter PVC line that follows the alignment of Spruce Avenue Wash. This 21-inch interceptor line has sufficient capacity to convey all anticipated sewage flows generated by this development.

Stormwater

The Stormwater Manager reviewed and accepted the Drainage Impact Analysis that was provided with the Conceptual Site Plan for the proposed rezoning. The report demonstrated that there are no concerns of downstream flooding impacts to property and no rise in ‘Lake Continental.’

According to the Site Analysis report, Areas A, B, and C will be graded to drain towards the south, where a series of inlets will collect and divert runoff to various detention basins and LID features located throughout the site. Area D will be graded to drain to the west and northwest, where grate inlets will collect and divert runoff to a proposed extended detention basin on the northwest corner of the site.

OTHER REQUIREMENTS:

Resources

As previously mentioned, Areas A, B, and C are relatively flat and do not contain any slope, floodplain, or tree resources. Table 1 and page 4 of this report discuss resource preservation requirements for Area D.

Citizen Participation

Public hearings before the Planning and Zoning Commission and City Council are conducted in conjunction with any request for zoning map amendment. This application for a “new commercial development that exceeds 20 acres or 100,000 square feet of gross floor area” meets the requirements for Additional Requirements for Citizen Outreach (Section 10-20.30.070, p. 20.30-8). In accordance with state statute and the “Additional Requirements” in the zoning code, notice of the public hearing was provided by placing an ad in the Daily Sun, posting notices on the property, and mailing a notice to all property owners within 600 feet of the subject property. Step Two of the additional requirements includes the scheduling of no less than two public hearings with the Planning Commission to provide additional opportunities for interested members of the public to be informed of and provide comments on the new development proposals. As of this writing, Planning staff has received one e-mail dated 4/29/14 from a Flagstaff resident (see attached email). The e-mail expresses several concerns including: the effect (commercial competition) the zoning amendment might have on the 4th Street corridor north of Route 66; increased traffic flow and pedestrian safety; and reducing the amount of light industrial land in areas that have easy access to housing. Two business owners within the notification area stopped by the Community Development counter (4/28/14 and 5/6/14) with a few general questions about the proposal, including timing.

Section 10-20.30.060 of the Flagstaff Zoning Code requires the applicant for a Zoning Map or General Plan amendment to conduct a neighborhood meeting prior to the Planning Commission public hearing. A Record of Proceedings is included with this application for Zoning Map amendment (see attachment). The applicant held a neighborhood meeting on February 20, 2014, at the Aquaplex located at the northeast corner of 4th Street and Huntington Drive. According to the report, 37 people signed in for the meeting. Evergreen Devco representatives answered a variety of questions as recorded in the record of proceedings. The neighborhood meeting notification, meeting, and record of proceedings were conducted in compliance with the zoning code requirements.

RECOMMENDATION:

Staff believes that the Zoning Map Amendment request has been justified in light of being consistent with objectives and policies of the Regional Land Use Plan and would recommend in favor of amending the zoning designation on 33.6 acres of property from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC).

Because this zoning application requires two Planning & Zoning Commission meetings, on May 14, 2014, staff recommends that the Commission open the Public Hearing, receive input and close the Public Hearing. On May 28, 2014, staff recommends approval of PREZ 2014-0002 with the conditions as noted below.

Staff would recommend that such amendment be subject to the following conditions:

1. That the subject property is developed in substantial accordance to the entire conceptual plans approved by the Inter-Division Staff (IDS) on April 3, 2014, with the zoning map amendment request.
2. That all terms, conditions and restrictions detailed within "Development Agreement and Waiver between City of Flagstaff and Evergreen-TRAX, L.L.C." are fully satisfied.

ATTACHMENTS:

- Zoning Map Amendment Application
- Vicinity Map for Zoning Map Amendment (with existing zoning, 8.5x11")
- Applicant's response to city staff comments, dated March 27,2014
- Record of Proceedings for Neighborhood Meeting
- Citizen Email, dated April 29, 2014
- IDS Conditions of Approval, dated April 3, 2014
- TIA acceptance w/conditions memo, Jeff Bauman, dated Feb. 20, 2014
- WSIA compliance memo, Ryan Roberts, dated July 15, 2013
- Draft Development Agreement, dated May 2014
- Color Elevations (11" x 17"), proposed conceptual
- Site Analysis
- Existing Zoning Exhibit
- Conceptual Site Plan, dated 4/9/2014 (architectural, 24" x 36", 5 sheets, Butler Design Group)
- Conceptual Site Plan, dated March 2014 (engineering, 24" x 36", 6 sheets, SWI)

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Roger Eastman, Zoning Code Administrator
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Adoption of Ordinance No. 2014-13: An ordinance of the Council of the City of Flagstaff, Arizona amending Flagstaff City Code Title 6, Police Regulations, Chapter 6-01, General Offenses, by adding a new Section 6-01-001-0004, Graffiti Prohibited; and amending Title 7, Health and Sanitation, by adding a new Chapter 7-01, Graffiti Abatement.

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2014-13 by title only for the final time
- 2) City Clerk reads Ordinance No. 2014-13 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2014-13

Policy Decision or Reason for Action:

Ordinance 2014-13 will amend City Code Chapter 6-01 by adding a new section to prohibit graffiti within the City. The ordinance also adds a new Chapter 7-01 to provide standards for the removal and abatement of graffiti, including the recovery of expenses by the City for abatement.

Subsidiary Decisions Points: This ordinance provides tools and procedures that will enable City staff to more comprehensively deal with an increase of graffiti within our community, thereby ensuring the preservation of property values, a reduction in urban blight, and causing the removal of graffiti within a reasonable period of time.

Financial Impact:

None. The adoption of Ordinance 2014-13 will not result in increased costs to the Comprehensive Planning and Code Administration Program. Currently \$7,750 is allocated for graffiti removal by volunteers as part of the Graffiti Busters Program, including costs associated with the graffiti van, purchase of materials and supplies, etc.

Connection to Council Goal:

11. Effective governance

Has There Been Previous Council Decision on This:

The idea of developing improved standards for the abatement of graffiti was considered when a proposed Property Maintenance Ordinance was first discussed with the Council some years ago. In a work session on November 12, 2013 in which an update on various distressed properties was presented to the Council, a majority directed staff to prepare amendments to the City Code to provide tools and standards for graffiti removal and abatement. At the Council's June 17, 2014 meeting, Council directed staff to reconsider three sections of Ordinance 2014-13. These are described in further detail below.

Options and Alternatives:

Please see Expanded Options and Alternatives below.

Background/History:

The prevalence of graffiti within the City of Flagstaff has been an ongoing concern to the Flagstaff Police Department and City residents for many years. A volunteer program to abate graffiti was initially developed under the Police Department, but over time and due to limited resources, the program became difficult to administer and fund. However, when the Sustainability and Environmental Management enforcement staff were combined with the code enforcement staff in the Community Development Division, staff saw an opportunity to reinvigorate this program under the leadership of Tom Boughner, Code Compliance Manager. Following a presentation to the Council by Lt. Frank Higgins of the Police Department on November 21, 2012 on the issues and challenges associated with graffiti and its abatement during the FY13 budget process, funds were allocated for the creation of a "Graffiti Busters" graffiti removal and abatement program. The kick-off for this event was held on May 3, 2013 as illustrated in the attached photographs.

The Graffiti Busters program has been effective in that volunteers are deployed to roll out or otherwise remove graffiti on public and private property. The number of cases abated by year is summarized below (Note that these totals under count the number of actual sites abated because not all abatements (such as on street poles or small utility cabinets) were documented:

2012	172 reported cases
2013	392 reported cases
2014	410 cases (YTD).

While staff has been successful in removing graffiti through the use of volunteers, a number of issues have prevented the more effective removal and abatement of graffiti, as described below:

1. If graffiti is observed on private property, staff and volunteers seek the property owner's permission before entering the property to remove the graffiti. When the property owner is out-of-town, on vacation, or lives in another state, it sometimes takes a long time to secure this permission. It has been proven in numerous studies by police departments across the country that prompt removal of graffiti is critical to avoid its detrimental impacts on a city and its residents, and to prevent the spread of additional graffiti. In one case a downtown offensive graffiti remained in place for over two weeks before permission was secured for staff and/or volunteers to remove it. The proposed ordinance allows staff and volunteers to enter private property to abate graffiti after notice has been provided to the property owner.
2. Consistent with similar ordinances adopted by cities in Arizona, Ordinance 2014-13 requires property owners to remove any graffiti on their property visible from public or quasi-public spaces within a reasonable period of time. This will save the use of City resources to abate this graffiti.
3. The proposed ordinance provides a method for the recovery of costs associated with the removal of graffiti by the City.

A comprehensive description of the proposed amendments to City Code Title 6 (Police Regulations) and Title 7 (Health and Sanitation) is provided below:

City Code Title 6 (Police Regulations); Chapter 6-01 (General Offenses)

Add a new Section 6-01-0001-0004 (Graffiti Prohibited)

This new section prohibits graffiti within the City and is inserted into the Police Regulations Title of the City Code so that any person found to be in violation of this section may be cited by a Police officer for criminal damage as provided for in existing law.

Title 7 (Health and Sanitation);

Add a new Chapter 7-01 (Graffiti Abatement)

This new chapter in Title 7 provides a procedure for the removal and abatement of graffiti in order to reduce blight and deterioration within the City. The general provisions included within this chapter include the following:

1. A comprehensive definition of graffiti;
2. A statement that graffiti is prohibited on, for example, walls, buildings, utility structures, etc. when it is viewed from public or quasi-public property;
3. A provision that the person who created the graffiti, if caught in the act, is required to remove it within 24 hours after notice by the City or the property owner;
4. If the graffiti is not removed by the perpetrator (because the individual may be unknown), then the property owner is required to remove the graffiti within 5 calendar days after notice has been served by the City;
5. If the property owner fails to abate the graffiti within 5 calendar days the City may abate the graffiti and may bill the property owner for the costs of the abatement;
6. If a property owner has an active maintenance program that includes graffiti removal (as property management companies often do), then the graffiti must be scheduled to be removed within 10 calendar days;
7. An appeal procedure is established in which an aggrieved person may file an appeal to the City Manager within 5 calendar days after receipt of the notice of violation;
8. In the event that the property owner fails to abate the graffiti as required in the notice of violation or fails to appeal the notice within 5 days, the City may proceed to abate the graffiti and may bill the owner for the costs of the abatement;
9. The City or its authorized contractor is authorized to enter private property and abate graffiti visible from public or quasi -public spaces located within or on it;
10. Any person found guilty of violating the prohibition on graffiti established in Section 6-01-001-0003 is guilty of a class 1 misdemeanor.

As an outcome from the Council's June 17, 2014 meeting, staff was asked to reconsider and possibly amend the following sections of Ordinance 2014-13.

- Section 7-01-001-0001 (Purpose and Intent): A Reconsider the definition of graffiti from the perspective of a presumption that a property owner has not granted permission for the graffiti. More information will be forthcoming on this topic.
- Section 7-01-001-0003 (Graffiti Removal): B - Clarification of "actual notice". Staff has modified the second paragraph of this subsection to better clarify the distinction between "actual notice" and "notice by first class mail". Consistent with the desire to expedite the removal of graffiti, staff recommends that the 5 calendar day requirement should be retained. Actual notice has been clarified as "the giving of notice directly in person, by telephone, or e-mail". This may not occur immediately following receipt of a report of the graffiti based on staff demands at the time (egregious graffiti, such as that containing profanity will be addressed as the highest priority). Thus a property owner may have more time to remove the graffiti. If notice is sent via first class mail to the property owner, they have 5 calendar days after receipt of the notice to remove the graffiti. As the notice also will include information on the City's graffiti removal assistance program, staff recommends that no further amendments to this section are needed.
- Section 7-01-001-0006 (Right of City to Remove): Councilor Oravits suggested that staff amend this section to include a clearly defined threshold to define the circumstance when a lien may be

placed on the subject property to cover the cost of graffiti abatement by the City. After doing some follow-up research staff has determined that the language proposed in this section of Ordinance 2014-13 came from the City of Phoenix's graffiti ordinance. Interestingly, the City of Tucson has a different approach – regardless of the amount of graffiti on a property, the City contracts with an independent contractor and pays for the removal of the graffiti, i.e. the property owner is not responsible for doing so. The justification for this approach is the City's desire to ensure a safe, clean, and graffiti-free City. This is certainly an approach Flagstaff could emulate but there are budget and staffing considerations if we should do so.

Staff suggests that Section 7-01-001-0006 as written should not be amended and no threshold should be included. A principal reason for this is that the lien serves as the only threat of a penalty in the case when a property owner fails to abate graffiti as required in a notice of violation. Stated another way, the lien serves in lieu of civil penalties, which in staff's opinion is the appropriate approach to take. If a threshold is established, for example at 10 sq. ft., then a property owner who has 11 sq. ft. or more of graffiti could be subject to a lien for failing to abate the graffiti, whereas if the area of graffiti was less than 10 sq. ft., then no lien would be served and the City volunteer program would abate the graffiti. This essentially establishes as a policy, therefore, that all property owners are entitled to a max. of 10 sq. ft. of graffiti that will be removed by the City. This means that City staff would have to record the area of graffiti abated on all properties, as well as the address, etc., the tracking of which would be complicated and time consuming. Staff also considered a possible voucher program – the idea came from a city in Victoria, Australia; but this too will involve considerable staff time.

In summary, staff suggests that Section 7-01-001-0006 as written should not be amended and no threshold should be included.

Key Considerations:

Graffiti has been determined to be obnoxious, contributes to neighborhood blight and deterioration, provides a communication system for gangs and other vandals, damages property, and constitutes a public nuisance. Further, graffiti must be abated as quickly as possible in order to avoid its detrimental impacts on the City and its residents, and to prevent the spread of additional graffiti.

Expanded Financial Considerations:

Not applicable.

Community Benefits and Considerations:

The incidents of graffiti on businesses, homes, utility cabinets, fences, and other structures has increased significantly in recent years. As a result Flagstaff residents have expressed concern that the continued presence of graffiti erodes community spirit and adversely impacts the overall attractiveness of their neighborhoods. It has also been determined that graffiti is a demoralizing visual symbol detrimental to the safety and welfare of the public as it tends to reduce the value of private property, invites vandalism, additional graffiti and other criminal activities, and it allows gangs to communicate threats. In general, graffiti produces urban blight which is adverse to the maintenance and continuing development of the City.

Ordinance 2014-13 is intended to ensure the prompt removal of graffiti. It also provides the Flagstaff Police Department with additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement as well providing code enforcement personnel with the tools necessary for compelling property owners to remove graffiti within a reasonable amount of time or, in the alternate, for the removal of graffiti by City staff or volunteers within a reasonable amount of time.

Community Involvement:

Inform - over the past few months when staff has been meeting with various local stakeholders and organizations such as NAAR, NABA, Chamber of Commerce, etc. the issue of graffiti has been discussed. Community residents have been informed of the proposed amendments to the City Code to provide more effective tools for graffiti removal and abatement by notice on the City's webpage and traditional noticing locations of the Council's meetings on these amendments.

Expanded Options and Alternatives:

OPTION 1: Adopt Ordinance 2014-13 to amend City Code Chapter 6-01 by adding a new section to prohibit graffiti within the City, and add a new Chapter 7-01 to provide standards for the removal and abatement of graffiti.

OPTION 2: Do not adopt Ordinance 2014-13, and, therefore, maintain the *status quo* without adequate standards to require the removal and abatement of graffiti.

Attachments: [Ord. 2014-20](#)
 [Graffiti Photographs](#)

Form Review

Inbox	Reviewed By	Date
Planning Director	Dan Folke	05/30/2014 09:51 AM
Legal Assistant	Vicki Baker	05/30/2014 09:57 AM
Senior Assistant City Attorney JS	James Speed	06/02/2014 07:26 AM
Community Development Director	Mark Landsiedel	06/02/2014 06:05 PM
DCM - Jerene Watson	Jerene Watson	06/03/2014 06:14 AM
DCM - Jerene Watson	Stacy Saltzburg	06/20/2014 09:23 AM
Legal Assistant	Vicki Baker	06/20/2014 09:50 AM
Senior Assistant City Attorney JS	James Speed	06/20/2014 09:52 AM
Planning Director	Dan Folke	06/20/2014 11:24 AM
Community Development Director	Elizabeth A. Burke	06/20/2014 11:25 AM
DCM - Jerene Watson	Jerene Watson	06/20/2014 11:31 AM

Form Started By: Roger Eastman

Started On: 05/22/2014 02:11 PM

Final Approval Date: 06/20/2014

ORDINANCE NO. 2014-13

AN ORDINANCE AMENDING FLAGSTAFF CITY CODE TITLE 6, POLICE REGULATIONS, CHAPTER 6-01, *GENERAL OFFENSES*, BY ADDING A NEW SECTION 6-01-001-0004, *GRAFFITI PROHIBITED*; AMENDING TITLE 7, *HEALTH AND SANITATION*, BY ADDING A NEW CHAPTER 7-01, *GRAFFITI ABATEMENT*; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PENALTIES

RECITALS:

WHEREAS, the incidents of graffiti on businesses, homes and fences has increased significantly over the years and the citizens of Flagstaff have expressed concern that the continued presence of such visual symbols of disorder erodes community spirit and cohesion as well as adversely impacts the overall attractiveness of their neighborhoods; and

WHEREAS, reducing incidents of graffiti requires a comprehensive strategy that includes increased efforts to apprehend and hold accountable those responsible for such vandalism as well as the prompt removal of graffiti; and

WHEREAS, the City and many private property owners commit substantial financial and human resources to diligently remove graffiti within a reasonable amount of time, and the City supports the efforts of community and business members who work to promptly eradicate graffiti from their communities; and

WHEREAS, these combined private and public efforts can be undermined by property owners who fail to cooperate in removing graffiti from their property; and

WHEREAS, the City Council finds and determines that graffiti is a demoralizing visual symbol detrimental to the safety and welfare of the public; tends to reduce the value of private property; invites vandalism, additional graffiti and other criminal activities; allows gangs to communicate threats; and produces urban blight which is adverse to the maintenance and continuing development of the City; and

WHEREAS, the City Council intends, through the adoption of this ordinance, to provide the Flagstaff Police Department with additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement as well providing code enforcement personnel with those tools necessary for compelling property owners to remove graffiti within a reasonable amount of time or, in the alternate, for the removal of graffiti by City staff or volunteers within a reasonable amount of time.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Title 6, *Police Regulations*, Chapter 6-01, *General Offenses*, is hereby amended by adding the following section:

Section 6-01-001-0004 GRAFFITI PROHIBITED

- A. No person may write, paint, draw, etch or otherwise apply any inscription, figure, or mark of any type on any public or private building or other real or personal property, owned, operated, or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm, or corporation, unless the express permission of the owner or operator of the property has been obtained.
- B. No person may possess an aerosol spray paint container, broad-tipped indelible marker, solidified paint marker or etching implement or solution with the intent to violate the provisions of Subsection A.
- C. No person may possess an aerosol spray paint container, broad-tipped indelible marker, solidified paint marker or etching solution on any private property unless the owner, agent, manager, or other person having control of the property consented to the presence of the aerosol spray paint container, broad-tipped indelible marker, solidified paint marker or etching solution.
- D. A person convicted of a violation of this section is guilty of a class 1 misdemeanor. In addition to any other punishment that may be imposed, the Court shall order restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense, or to any person or entity including a political subdivision that has incurred expense to repair or abate such damage or loss to the victim's property, in an amount to be determined by the Court.

SECTION 2. That Title 7, *Health and Sanitation*, is hereby amended by adding the following chapter:

Chapter 7-01 GRAFFITI ABATEMENT**Section 7-01-001-0001. PURPOSE AND INTENT**

- A. It is the purpose and intent of this section to provide a procedure for the removal of graffiti from walls, structures, or surfaces on public and private property in order to reduce blight and deterioration within the City, and to protect the public health and safety. For purposes of this chapter, "graffiti" means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted, or otherwise applied to property without the prior authorization of the owner of the property regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property.
- B. The City finds and determines that graffiti is obnoxious, contributes to neighborhood deterioration, provides a communication system for gangs and other vandals, damages property, and constitutes a public nuisance. Further, the City finds that graffiti must be abated as quickly as possible in order to avoid its detrimental impacts on the City and its residents, and to prevent the spread of additional graffiti.

Section 7-01-001-0002. GRAFFITI PROHIBITED

All sidewalks, walls, buildings, fences, signs, utility structures, and other structures or surfaces shall be kept free from graffiti when the graffiti is visible from the street or other public or quasi-

public property. For the purposes of this chapter, "quasi-public property" means any private street, highway, lane, alley or other roadway which is open to the public or to which the public is invited, and shall in this context include any and all parking lots, alleys, plazas, or similar public spaces generally open to the public.

Section 7-01-001-0003 GRAFFITI REMOVAL

- A. Removal by the Perpetrator. Any person applying graffiti on public or private property shall have the duty to remove the graffiti within 24 hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Director of the Department of Public Works, or any additional City department head, as authorized by the City Manager. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Ordinance. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.
- B. Property Owner Responsibility. If graffiti is not removed by the perpetrator according to Subsection A, above, or if the perpetrator is unknown, graffiti shall be removed pursuant to the following provisions:

It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the City to permit property that is defaced with graffiti to remain defaced for a period of 5 calendar days after actual notice **(i.e. notice provided directly in person, by telephone, or by e-mail)**, or service by first class mail of notice of the defacement. The notice shall contain the following information:

1. The street address and legal description of the property sufficient for identification of the property; and
2. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding; and
3. A statement that the graffiti must be removed within 5 calendar days after receipt of the notice and that if the graffiti is not abated within that time the City will declare the property to be a public nuisance, subject to the abatement procedures in City Code Chapter 7-01, Graffiti Removal; and
4. A statement that in the event the owner or responsible party fails to abate the graffiti within the time period specified in the notice of violation, the City may abate the graffiti and bill the owner or responsible party for the costs thereof; and
5. An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors; and
6. A statement that the notice of violation may be appealed, as provided in Section 7-01-001-0004.

The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of 10 days after service by first class mail of notice of the defacement.

Section 7-01-001-0004 NOTICE OF VIOLATION HEARING

- A. Any owner or responsible party aggrieved by the determination of the City in the notice of violation may appeal that determination to the City Manager within 5 calendar days of receipt. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of \$250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.
- B. Notice. The City Manager, or his or her designee, serving as the Hearing Officer, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different from the owner, not less than 48 hours notice of the City's intent to hold a notice of violation hearing at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. Notice shall be served in the same manner as a summons in a civil action in accordance Flagstaff City Code Section 1-15-001-0011, Civil Enforcement Procedures.
- C. Determination of Hearing Officer. The determination of the Hearing Officer after the notice of violation hearing shall be final and not appealable. If, after the hearing, the Hearing Officer determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice in an eradication order that, unless the graffiti is removed within 5 calendar days, the City shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer), or such other eradication thereof as the Hearing Officer determines appropriate, and shall provide the owner and the responsible party thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis.
- D. Eradication Effort. Not sooner than the time specified in the order of the Hearing Officer, the City Manager, or the designee of the City Manager, shall implement the eradication order and shall provide an accounting to the owner and the responsible party of the costs thereof.

Section 7-01-001-0005 LIEN

As to such property where the responsible party is the property owner, if all or any portion of the assessed charges for the eradication of graffiti remain unpaid after 30 days, the portion thereof that remains unpaid shall constitute a lien on the property that was the subject of the eradication effort.

Section 7-01-001-0006 RIGHT OF CITY TO REMOVE

In the event that the owner or responsible party fails to abate the graffiti as required by the notice of violation, or fails to appeal the notice of violation within 5 calendar days of service, the City may proceed to abate the graffiti, and bill the owner or responsible party for the costs thereof. Pursuant to Section 7-01-001-0005, Lien, the City may place a lien on the subject property for the actual cost of graffiti removal plus 10 percent of actual cost for administrative overhead thereof. The City or its authorized private contractor is expressly authorized to enter

private property and abate graffiti thereon in accordance with this section. The Flagstaff Police Department shall assist in the enforcement of this Chapter.

SECTION 3. Should any sentence, paragraph, section, subsection, division, subdivision, clause or phrase of this ordinance be adjudged to be unconstitutional, illegal or invalid, the same shall not affect the validity of the document as a whole, or any part or provision thereof other than that part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of this ordinance as a whole.

SECTION 4. A violation of Section 6-01-001-0004, *Graffiti Prohibited*, shall be punished as follows:

Any person found guilty by the Flagstaff Municipal Court of violating Section 6-01-001-0004, *Graffiti Prohibited*, shall be guilty of a class 1 misdemeanor. A class 1 misdemeanor shall be punished by a fine of not more than \$2,500.00, plus surcharges and any applicable court fees, and/or confinement in jail for not more than six months.

SECTION 5. That the City Clerk be authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk be authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 1st day of July, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Photographs of Recent Graffiti that has been Abated



Graffiti Busters Kick-Off Event - May 3, 2013



**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Barbara Goodrich, Management Services
Director
Co-Submitter: Brian Grube
Date: 06/05/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Adoption of Ordinance No. 2014-18: An ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, Title 3, Business Regulations, Chapter 10, User Fees, Section 3-10-001-0005, Recreation Fees, by increasing certain Parks and Recreation Fees; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date. *(Increasing recreation fees)*

RECOMMENDED ACTION:

At the Council Meeting of July 1, 2014:

- 1) Read Ordinance No. 2014-18 by title only for the first time
- 2) City Clerk reads Ordinance No. 2014-18 by title only for the first time (if approved above)

At the Council Meeting of July 15, 2014:

- 3) Read Ordinance No. 2014-18 by title only for the final time
- 4) City Clerk reads Ordinance No. 2014-18 by title only for the final time (if approved above)
- 5) Adopt Ordinance No. 2014-18 (and establish an effective for the recreation fees of September 1, 2014)

Policy Decision or Reason for Action:

At the Council Budget Hearings held April 23, 2014 through April 25, 2014 the City Council directed the increase of recreation fees to balance the FY2015 budget. City fees are set forth in Title 3, Chapter 10 User Fees of the City Municipal code

Financial Impact:

This fee amendment will increase General Fund revenues by an estimated \$70,000 annually.

Connection to Council Goal:

Effective governance

Has There Been Previous Council Decision on This:

Final FY2015 budget adoption June 17, 2014
Council budget study sessions April 23 - 25, 2014
Council budget study sessions April 24 - 24, 2013

Options and Alternatives:

Approve Ordinance No. 2014-18 as written
Approve Ordinance No. 2014-18 with amendments
Do not approve Ordinance No. 2014-18

Background/History:

As part of the FY2014 budget process, the City Council approved fee increases to generate additional revenue of approximately \$210,000. To ease the impact on our citizens that use Recreation Services, the City Council directed staff to implement the fee increase over a three-year period, realizing additional incremental revenue of approximately \$70,000 per year. FY2015 is the second year of the three year implementation plan.

Key Considerations:

This fee increase was an integral component of the Council budget add's as agreed upon at the April 23 - 25, 2014, Council budget study sessions.

Expanded Financial Considerations:

The General Fund is dependent on increased fees in order to maintain a structural balance. Should the fees not be adopted, the General Fund will have to re-evaluate those line items funded with this increase. While the recreation fees were not the sole source of the funds, they are a component of funding the Police market pay adjustment, Police and Fire assignment pay increases, and Police and Fire uniform allowance increases.

Community Benefits and Considerations:

The primary community benefit is through a continued structurally balanced budget.

Community Involvement:

Inform: Posted on City website from April 28, 2014 to date. An informational letter was sent out in late May discussing the proposed fee increase and notice of the public meeting on July 1. This was sent to all registered Recreation users. Posters and flyers have been placed at all Recreation facilities in early May alerting the public about the proposed fee increase and notification of the July 1 meeting. The Parks and Recreation Commission approved the proposed fee increase at their April meeting.

Collaborate. As the Recreation fee increases were being considered last year, representatives from many community sectors that utilize these services provided feedback to the Council. The community was overall supportive of the increases, but asked that the fees be phased in over a three-year period. Council agreed with that recommendation and provided that direction to staff.

Expanded Options and Alternatives:

Approve Ordinance No. 2014-18 as written
Approve Ordinance No. 2014-18 with amendments
Do not approve Ordinance No. 2014-18

Attachments: [Ordinance 2014-18](#)

Form Review

Inbox
Recreation Services Director

Reviewed By
Brian Grube

Date
06/09/2014 12:53 PM

Management Services Director (Originator)	Barbara Goodrich	06/16/2014 10:53 AM
Recreation Services Director	Brian Grube	06/17/2014 01:25 PM
Legal Assistant	Vicki Baker	06/17/2014 01:33 PM
Senior Assistant City Attorney AW	Anja Wendel	06/17/2014 03:22 PM
Management Services Director (Originator)	Barbara Goodrich	06/17/2014 03:37 PM
DCM - Josh Copley	Stacy Saltzburg	06/17/2014 04:41 PM
Management Services Director (Originator)	Barbara Goodrich	06/18/2014 09:28 AM
DCM - Jerene Watson	Jerene Watson	06/19/2014 10:07 PM
Form Started By: Barbara Goodrich		Started On: 06/05/2014 10:43 AM
Final Approval Date: 06/19/2014		

ORDINANCE NO. 2014-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 3, *BUSINESS REGULATIONS*, CHAPTER 10, *USER FEES*, SECTION 3-10-001-0005, *RECREATION FEES*, BY INCREASING CERTAIN PARKS AND RECREATION FEES; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff strives to provide quality parks and recreation services;

WHEREAS, the City Council finds that it is in the best interests of the community to recover a greater portion of the costs of providing parks and recreation services;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 10, *User Fees*, Section 3-10-001-0005, *Recreation Fees*, is hereby amended by deleting the current fee schedule in its entirety and replacing it with a new fee schedule and subsection A, and by adding new subsections B and C related to civil penalties and enforcement of fees (additions shown in capitalized text) to read as follows:

- A. ANY PERSON SEEKING TO USE OR USING CITY PARKS AND RECREATION FACILITIES SHALL PAY THE APPLICABLE RECREATION USER FEES AS SET FORTH IN THE FOLLOWING SCHEDULE.

Admission/Pass/Facility/Equipment	9/1/2014
Ice Arena	
Admissions - single entry per person	
Preschool (4 & under)	N/C w/paid CG
Child (5-11)	\$3.50
Youth (12-17)	\$3.50
Adult (18 & over)	\$6.75
Senior (55+)	\$5.00
Active Military	\$5.00
Chaperoned Youth Group Participant (15 or more youth, 1:15 ratio)	\$3.00
Specialty Session (ex. Scrimmage, Stick Time)	\$13.50

Admissions - punch cards	
Child (5-11) - 20 admissions	\$49.00
Youth (12-17) - 20 admissions	\$49.00
Adult (18+) - 20 admissions	\$98.00
Senior (55+)- 20 admissions	\$75.00
Active Military - 20 admissions	\$75.00
Specialty Session (10 admissions)	\$98.00
Skate Rental/Sharpening - per person	
Figure/Hockey Skates Rental	\$4.00
Skate Rental Punch Pass (20 rentals)	\$59.00
Skate Shapening	\$6.75
Deposit for Room/Facility Rentals (refundable)	
Room And Facility Deposit (25% of total rental costs)	25%
Arena Rental (Note 1, 8) - hourly, plus tax	
Non-Public Arena Time	
Individuals	\$130.25
Youth Non-Profit Community Organizations	\$65.25
Adult Non-Profit Community Organizations	\$141.25
Commercial, For-Profit, or Out of Community Organizations	\$282.75
Holiday Rental (add 25% to facility charges)	25%
Public Session Arena "Buy Out" Time - hourly, plus tax (entire session only)	
Individuals	Not Available
Youth Non-Profit Community Organizations	\$325.50
Adult Non-Profit Community Organizations	\$651.00
Commercial, For-Profit, or Out of Community Organizations	\$1,302.25
Holiday Rental (add 25% to facility charges)	25%
Arena Rental Without Ice (Note 3) (May-Jun subject to avail.) - hourly, plus tax	
Individuals	\$39.50
Youth Non-Profit Community Organizations	\$20.00
Adult Non-Profit Community Organizations	\$39.50
Commercial, For-Profit, or Out of Community Organizations	\$78.50
Holiday Rental (add 25% to facility charges)	25%
Spectator Admission (Note 2) - single entry per person	

Preschool (4 & under)	N/C w/paid CG
Child (5-11)	\$1.75
Youth (12-17)	\$1.75
Adult (18 & over)	\$3.00
Senior (55+)	\$2.25
Active Military	\$2.25
Facility Permits	
Concession/Merchandise Table - per table, per event	\$9.00
Party/Meeting Room (Note 3, 8) - hourly, plus tax	
Individuals	\$21.25
Youth Non-Profit Community Organizations	\$12.00
Adult Non-Profit Community Organizations	\$21.25
Commercial, For-Profit, or Out of Community Organizations	\$39.50
Holiday Rental (add 25% to facility charges)	25%
Training Room (Note 3, 8) - hourly, plus tax	
Individuals	\$18.50
Youth Non-Profit Community Organizations	\$9.50
Adult Non-Profit Community Organizations	\$18.50
Commercial, For-Profit, or Out of Community Organizations	\$36.75
Holiday Rental (add 25% to facility charges)	25%
Flagstaff Recreation Center	
Deposit for Room/Facility Rentals (refundable)	
Room Deposit (per room)	\$50.00
Facility Rental Deposit (5 rooms or more)	\$200.00
Club Annual Meeting Permit - during regular hours only (Note 3, 8) - plus tax	
1-3 meetings/yr	\$35.50
4-12 meetings/yr	\$64.00

13-26 meetings/yr	\$92.00
27-52 meetings/yr	\$120.50
53 + meetings/yr	\$148.50
Meeting Room (Note 3, 8) - hourly, plus tax	
Individuals	\$21.25
Youth Non-Profit Community Organizations	\$12.00
Adult Non-Profit Community Organizations	\$21.25
Commercial, For-Profit, or Out of Community Organizations	\$39.25
Holiday Rental (add 25% to facility charges)	
Gymnasium - hourly, plus tax	
Individuals	\$34.25
Youth Non-Profit Community Organizations	\$17.25
Adult Non-Profit Community Organizations	\$34.25
Commercial, For-Profit, or Out of Community Organizations	\$78.50
Holiday Rental (add 25% to facility charges)	25%
Concession/Merchandise Table - per table, per event	\$9.00
Annual Weight Room Pass - per person	
Youth (12-17)	\$20.00
Adult (18+)	\$59.00
Senior (55+)	\$48.25
Active Military	\$48.25
Monthly Weight Room Pass - per person	
Youth (12-17)	\$2.25
Adult (18+)	\$6.50
Senior (55+)	\$5.50
Active Military	\$5.50
Joe C. Montoya Community & Senior Center	
Deposit for Room/Facility Rentals (refundable)	

Room Deposit (per room)	\$50.00
Facility Rental Deposit (5 rooms or more)	\$200.00
Club Annual Meeting Permit - during regular hours only, (Note 3, 8) - plus tax	
1-3 meetings/yr	\$35.50
4-12 meetings/yr	\$64.00
13-26 meetings/yr	\$92.00
27-52 meetings/yr	\$120.50
53 + meetings/yr	\$148.50
Facility Rental (Note 3, 8) - hourly, plus tax	
Standard Room	
Individuals	\$21.25
Youth Non-Profit Community Organizations	\$12.00
Adult Non-Profit Community Organizations	\$21.25
Commercial, For-Profit, or Out of Community Organizations	\$39.00
Holiday Rental (add 25% to facility charges)	25%
Allen Room (includes both sections)	
Individuals	\$44.75
Youth Non-Profit Community Organizations	\$22.50
Adult Non-Profit Community Organizations	\$44.75
Commercial, For-Profit, or Out of Community Organizations	\$89.00
Holiday Rental (add 25% to facility charges)	25%
Kitchen (special rules apply)	
Individuals	\$20.00
Youth Non-Profit Community Organizations	\$10.25
Adult Non-Profit Community Organizations	\$20.00
Commercial, For-Profit, or Out of Community Organizations	\$39.50
Holiday Rental (add 25% to facility charges)	25%
Concession/Merchandise Table - per table, per event	
	\$9.00
Annual Weight Room Pass - per person	
Youth (12-17)	\$75.25
Adult (18 & over)	\$97.75
Senior (55+)	\$65.50
Active Military	\$65.50
Monthly Weight Room Pass - per person	
Youth (12-17)	\$6.75
Adult (18 & over)	\$8.75
Senior (55+)	\$6.00
Active Military	\$6.00

Aquaplex	
Admissions - single entry per person	
Preschool (4 & under) Resident	N/C w/paid CG
Preschool (4 & under) Non-Resident	N/C w/paid CG
Child (5-11) Resident	\$3.75
Child (5-11) Non-Resident	\$4.00
Youth (12-17) Resident	\$5.00
Youth (12-17) Non-Resident	\$6.50
Adult (18-54) Resident	\$6.50
Adult (18-54) Non-Resident	\$9.50
Adult 55+ Resident	\$5.00
Adult 55+ Non-Resident	\$6.50
Household Resident	\$25.25
Household Non-Resident	\$32.75
Active Military Resident	\$5.00
Active Military Non-Resident	\$6.00
Chaperoned Youth Group Resident (15 or more participants)	10%
Chaperoned Youth Group Non-Resident (15 or more participants)	10%
Aquaplex Passes	
Business Pass Program Discount (applies to 12 month passes only)	
1-3 Years	10%
4-6 Years	15%
7-10 Years	20%
12 Month Pass	
Child Resident	\$176.00
Child Non Resident	\$203.00
Youth Resident	\$223.00
Youth Non-Resident	\$257.00
Adult Resident	\$365.00
Adult Non-Resident	\$418.00
Adult 55+ Resident	\$224.00
Adult 55+ Non-Resident	\$257.00
2 Member HH Resident	\$500.00

2 Member Household Non-Resident	\$576.00
Household Pass Resident	\$589.00
Household Pass Non-Resident	\$677.00
Active Military Resident	\$224.00
Active Military Non-Resident	\$257.00
6 Month Pass	
Child Resident	\$106.00
Child Non Resident	\$122.00
Youth Resident	\$129.00
Youth Non-Resident	\$149.00
Adult Resident	\$206.00
Adult Non-Resident	\$236.00
Adult 55+ Resident	\$129.00
Adult 55+ Non-Resident	\$149.00
2 Member HH Resident	\$276.00
2 Member Household Non-Resident	\$315.00
Household Pass Resident	\$324.00
Household Pass Non-Resident	\$372.00
Active Military Resident	\$129.00
Active Military Non-Resident	\$149.00
3 Month Pass	
Child Resident	\$59.00
Child Non Resident	\$67.00
Youth Resident	\$76.00
Youth Non-Resident	\$87.00
Adult Resident	\$124.00
Adult Non-Resident	\$142.00
Adult 55+ Resident	\$77.00
Adult 55+ Non-Resident	\$88.00
2 Member HH Resident	\$174.00
2 Member Household Non-Resident	\$202.00
Household Pass Resident	\$205.00
Household Pass Non-Resident	\$236.00
Active Military Resident	\$77.00
Active Military Non-Resident	\$87.00
Additional HH Member Discount For Passes (more than 5 members in a HH)	
	25%
Deposit for Room/Facility Rentals (refundable)	
Room And Facility Deposit (of total rental costs)	25%

Meeting Rooms - per hour, plus tax	
Non-Profit Community Organizations/Individuals	
Room Without Kitchen	
Non-Peak Time	\$29.50
Peak-Time	\$47.00
Room With Kitchen	
Non-Peak Time	\$41.25
Peak-Time	\$59.00
Combined Rooms	
Non-Peak Time	\$70.75
Peak-Time	\$88.25
Commerical, For Profit, Out of Community	
Room Without Kitchen	
Non-Peak Time	\$47.00
Peak-Time	\$59.00
Room With Kitchen	
Non-Peak Time	\$59.00
Peak-Time	\$70.75
Combined Rooms	
Non-Peak Time	\$106.00
Peak-Time	\$129.50
Internal City Rate	
Room Without Kitchen	
Non-Peak Time	\$14.75
Peak-Time	\$23.50
Room With Kitchen	
Non-Peak Time	\$20.75
Peak-Time	\$29.50
Combined Rooms	
Non-Peak Time	\$35.25
Peak-Time	\$44.25
Gymnasium - per hour, plus tax	
Non-Profit Community Organizations/Individuals	
Non-Peak Time	\$62.75
Peak-Time	\$87.75
Commerical, For Profit, Out of Community	
Non-Peak Time	\$87.75

Peak-Time	\$119.00
Internal City Rate	
Non-Peak Time	\$31.25
Peak-Time	\$44.00
Aerobics Room - per hour, plus tax	
Non-Profit Community Organizations/Individuals	
Non-Peak Time	\$37.75
Peak-Time	\$50.25
Commerical, For Profit, Out of Community	
Non-Peak Time	\$50.25
Peak-Time	\$62.50
Internal City Rate	
Non-Peak Time	\$19.00
Peak-Time	\$25.25
Climbing Wall - per hour, plus tax	
Non-Profit Community Organizations/Individuals	
Non-Peak Time	\$37.75
Peak-Time	\$50.50
Commerical, For Profit, Out of Community	
Non-Peak Time	\$50.25
Peak-Time	\$62.50
Internal City Rate	
Non-Peak Time	\$19.00
Peak-Time	\$25.25
Party Room - per hour, plus tax	
Non-Profit Community Organizations/Individuals	
Room Rental	\$25.25
Commerical, For Profit, Out of Community	
Room Rental	Not Available
Pool Rental (Note 1,3) - per hour, 2 hour minimum, plus tax (only available after hours of operation)	
Non-Profit Community Organizations/Individuals	
1-50 individuals	\$275.50

51-100 individuals	\$501.00
101-150 individuals	\$626.00
Commerical, For Profit, Out of Community	
1-50 individuals	\$438.25
51-100 individuals	\$563.50
101-150 individuals	\$688.50
Internal City Rate	
1-50 individuals	\$187.75
51-100 individuals	\$250.50
101-150 individuals	\$313.00
Pool Buyout (Note 1,3) - per hour, 2 hour minimum, plus tax	
Non-Profit Community Organizations/Individuals	
1-50 individuals - Non Peak Time	\$751.25
1-50 individuals - Peak Time	\$813.75
51-100 individuals Non Peak Time	\$1,001.50
51-100 individuals - Peak Time	\$1,095.50
101-150 individuals - Non-Peak Time (5 hr. min.)	\$1,252.00
101-150 individuals - Peak Time (5 hr. min.)	\$1,377.00

Commerical, For Profit, Out of Community	
1-50 individuals - Non Peak Time	\$813.75
1-50 individuals - Peak Time	\$876.25
51-100 individuals Non Peak Time	\$1,095.50
51-100 individuals - Peak Time	\$1,189.50
101-150 individuals - Non-Peak Time (5 hr. min.)	\$1,377.00
101-150 individuals - Peak Time (5 hr. min.)	\$1,565.00
Entire Facility Including Pool (Note 1,3) - per hour, 2 hour min, plus tax	
Non-Profit Community Organizations/Individuals	
After Hours	\$939.00
Non-Peak Time	\$1,189.25
Peak-Time	\$1,565.00
Commerical, For Profit, Out of Community	

After Hours	\$1,565.00
Non-Peak Time	\$1,815.25
Peak-Time	\$1,878.00
Internal City Rate	
After Hours	\$469.50
Non-Peak Time	\$595.00
Peak-Time	\$782.50
Ramadas - per hour	
Level A (Bushmaster South, Foxglenn 1, Thorpe)	\$13.50
Level B (Bushmaster North, Foxglenn 2 & 3, Arroyo, Ponderosa)	\$10.25
Level C (Buffalo, Mobile Haven, Old Town Springs, Ponderosa Trls)	\$6.75
Equipment Rental - each, per day	
Equipment/Picnic Bag	\$21.50
Outdoor Courts	
Basketball, Handball, Horseshoe, Volleyball - hourly per court	
Reserved Practice and Game Allocations	
Individuals	\$3.50
Youth Non-Profit Community Organizations	\$2.00
Adult Non-Profit Community Organizations	\$3.50
Commercial, For-Profit, or Out of Community Organizations	\$6.75
Holiday Rental (add 25% to facility charges)	25%
Reserved Tournament Rentals	
Individuals	\$6.75
Youth Non-Profit Community Organizations	\$3.50
Adult Non-Profit Community Organizations	\$6.75
Commercial, For-Profit, or Out of Community Organizations	\$13.50
Holiday Rental (add 25% to facility charges)	
Tennis Courts - hourly per court	
Reserved Practice and Game Allocations	
Individuals	\$6.75

Youth Non-Profit Community Organizations	\$2.75
Adult Non-Profit Community Organizations	\$6.75
Commercial, For-Profit, or Out of Community Organizations	\$13.50
Holiday Rental (add 25% to facility charges)	25%
Reserved Tournament Rentals	
Individuals	\$13.50
Youth Non-Profit Community Organizations	\$6.75
Adult Non-Profit Community Organizations	\$13.50
Commercial, For-Profit, or Out of Community Organizations	\$26.75
Holiday Rental (add 25% to facility charges)	25%
Outdoor Fields	
Baseball, Softball - hourly per field	
Practice and Game Allocations	
Individuals	\$6.75
Youth Non-Profit Community Organizations - per participant, per season \$16 maximum per family	\$6.75
Adult Non-Profit Community Organizations	\$6.75
Commercial, For-Profit, or Out of Community Organizations	\$13.50
Holiday Rental (add 25% to facility charges)	25%

Tournament Rentals (Note 4)	
Individuals	\$13.50
Youth Non-Profit Community Organizations - per team, per tournament	\$6.75
Adult Non-Profit Community Organizations	\$13.50
Commercial, For-Profit, or Out of Community Organizations	\$26.75
Holiday Rental (add 25% to facility charges)	25%
Soccer - hourly per field	
Practice and Game Allocations	
Individuals	\$6.75
Youth Non-Profit Community Organizations - per participant, per season \$16 maximum per family	\$6.75
Adult Non-Profit Community Organizations	\$6.75
Commercial, For-Profit, or Out of Community Organizations	\$13.50
Holiday Rental (add 25% to facility charges)	25%

Tournament Rentals (Note 4)	
Individuals	\$13.50
Youth Non-Profit Community Organizations - per team, per tournament	\$6.75
Adult Non-Profit Community Organizations	\$13.50
Commercial, For-Profit, or Out of Community Organizations	\$26.75
Additional Field Prep. - Per Field	\$21.50
Holiday Rental (add 25% to facility charges)	25%
Field & Court Concession Permits (per hours, per week and number of fields/courts allocated at site)	
Concession/Merchandise Stand	\$9.00
Concession Permits for Allocated Fields (per month), based on electrical and water usage	
Small concession buildings (WFlag LL Fields, Montalvo Field)	\$100.50
Large Concession buildings (Contiental LL)	\$140.00
Field and Court Lights	
Sport Courts - per court, per hour	\$13.50
Sport Fields - per field, per hour	\$39.50
Sport Fields - Youth Non-Profit Community Organizations - per field, per hour	\$13.50
Field/Facility Fee	
For City Athletic Programs	
Adult Fee - Per Participant	\$7.50
Youth Fee - Per Participant	\$0.00
Special Events - Other Areas Reserved in Parks for Exclusive Use (Note 5, 9)	
Refundable Deposits (per event)	
A & B Events	\$350.00
C Events	\$100.00
Special Event Application Fee	
"A" Events	\$70.25
"B" Events	\$53.50
"C" Events	\$35.50

Late Fee	
"A" Events	\$125.25
"B" Events	\$94.00
"C" Events	\$65.25
Most Sites - excludes Wheeler, Heritage Square, Parking, Street Closure, Event Series, Ramada Rental (Note 5, 9, 10)	
Half Day - 7 Hours or Less	
Individuals/Private Gatherings on City Property	\$26.50
Non-Profit Community Organizations/Public Gatherings on City Property	\$52.50
Commercial, For-Profit, or Out of Community Organizations on City Property	\$104.50
Full Day - More than 7 Hours	
Individuals/Private Gatherings on City Property	\$42.00
Non-Profit Community Organizations/Public Gatherings on City Property	\$83.75
Commercial, For-Profit, or Out of Community Organizations on City Property	\$169.75
Heritage Square/Wheeler Park (Note 5)	
Half Day - 7 Hours or Less	
Individuals/Private Gatherings on City Property	\$59.00
Non-Profit Community Organizations/Public Gatherings on City Property	\$59.00
Commercial, For-Profit, or Out of Community Organizations on City Property	\$117.75
Full Day More than 7 Hours	
Individuals/Private Gatherings on City Property	\$91.50
Non-Profit Community Organizations/Public Gatherings on City Property	\$91.50
Commercial, For-Profit, or Out of Community Organizations on City Property	\$183.00
Event Series (Note 5,9) - each day, per event	
Half Day - 7 Hours or Less	
3-6 events	\$23.50
7-12 events	\$20.00
13-24	\$15.75
25+	\$12.00
Full Day - More than 7 Hours	
3-6 events	\$32.00
7-12 events	\$26.25
13-24	\$21.50

25+	\$16.00
Half Day Commercial - 7 Hours or Less	
3-6 events	\$36.00
7-12 events	\$30.00
13-24	\$24.00
25+	\$18.00
Full Day Commercial -More than 7 Hours	
3-6 events	\$50.00
7-12 events	\$41.75
13-24	\$34.25
25+	\$25.75
Parking Lot Closure for Events -excludes Wheeler and City Hall Lots (Note 5)	
Half Day - 7 Hours or Less	
Individuals/Private Gatherings on City Property	\$29.00
Non-Profit Community Organizations/Public Gatherings on City Property	\$29.00
Commercial, For-Profit, or Out of Community Organizations on City Property	\$57.75
Full Day - More than 7 Hours	
Individuals/Private Gatherings on City Property	\$45.75
Non-Profit Community Organizations/Public Gatherings on City Property	\$45.75
Commercial, For-Profit, or Out of Community Organizations on City Property	\$91.50
Wheeler Park & City Hall Parking Lot Closure for Event (Note 5)	
Half Day - 7 Hours or Less	
Individuals/Private Gatherings on City Property	\$56.50
Non-profit/Community Organization on City Property	\$39.50
Commercial, For-Profit, or Out of Community Organizations on City Property	\$78.50
Full Day - More than 7 Hours	
Individuals/Private Gatherings on City Property	\$65.25
Non-Profit Community Organizations/Public Gatherings on City Property	\$65.25
Commercial, For-Profit, or Out of Community Organizations on City Property	\$130.25
Street Closure/Parade - Per Street Block (Note 5)	
Staging Area	\$31.25

Half Day - 7 Hours or Less	
Non-Profit	\$12.50
Commercial, For-Profit, or Out of Community Organization	\$25.25
Full Day - More than 7 Hours	
Non-Profit	\$19.00
Commercial, For-Profit, or Out of Community Organization	\$37.75
Overnight (10pm - 8am)	\$26.50
Wheeler Park & Heritage Square Electrical Use	
Half Day - 7 Hours or Less	
"A", "B" Events	\$42.00
"C" Events	\$22.00
Full Day - More than 7 Hours	
"A", "B" Events	\$70.25
"C" Events	\$35.25
Event Series - Each Day of Use	
Half Day - 7 Hours or Less	
"A", "B" Events	\$11.50
Full Day - More than 7 Hours	
"A", "B" Events	\$22.75
Event Equipment Rental - each pair, per event	
Banner poles (pair)	\$8.50
Downtown Banner (Note 7) - each	
North Downtown	
A Pricing (Premium)	
1-3 month display	\$64.50
4-6 month display	\$80.75
7-9 month display	\$106.00
10-12 month display	\$133.00
B Pricing (Mid-Range)	
1-3 month display	\$42.00
4-6 month display	\$64.00
7-9 month display	\$84.00
10-12 month display	\$106.00
C Pricing (Outlining Areas)	
1-3 month display	\$35.25
4-6 month display	\$52.75

7-9 month display	\$70.50
10-12 month display	\$87.50
South Downtown	
4-6 month display	\$53.75
7-9 month display	\$80.75
10-12 month display	\$133.25

Notes for Parks and Recreation Fee Schedule

1. Pool and arena rentals include one Site Supervisor. Additional payment is required for Lifeguard or Rink Guard staff, the number of which will be determined by guard/participant safety ratios, identified at the time of reservation. Minimum charge for guard is \$10.00 per hour (minimum 2 hrs.) per guard.
2. Local non-profit organizations desiring to collect "at door" admissions will be assessed a surcharge per spectator, or they have the option of renting the facility at the full commercial rate and retaining all admission fees. Organizations may be required to hire off-duty police or provide security personnel if determined to be in the best interest of the City of Flagstaff.
3. When use is not during established public operating hours, indoor recreation center facility rentals require additional payment for additional staffing at \$10.00 per hour, per staff member. Organizations may be required to hire off-duty police or provide security personnel if determined to be in the best interest of the City of Flagstaff.
4. Payment of the commercial tournament rate includes one beginning of day field lining.
5. Other fees may apply for special events based upon review of application. Organizations may be required to hire off-duty police or provide security personnel if determined to be in the best interest of the City of Flagstaff.
6. An event series consists of a minimum quantity of regularly scheduled public entertainments of the same type which is identified at the time of application for the permit. The series is scheduled in a manner that forms a pattern, i.e., every other Thursday at 6 p.m. or the first Friday of each month.
7. Installation and removal provided by City Staff (Parks, Recreation, or Streets).
8. Non-profit community organizations may receive credits against rentals for quantifiable support of facility construction and improvement. Projects must be pre-approved by the Public Works Director and receipts for materials and professional labor must be provided. Program operating costs are not eligible for credit consideration. Credits are intended for fixed assets that remain with the property, not consumables.
9. Special events that need exclusive use of a park with multiple amenities or are so large as to affect the rental of those amenities may be required to rent all major amenities within the park. Major amenities may include rental of soccer fields, baseball fields, softball fields, volleyball courts, ramadas, parking lots, tennis courts and basketball courts. If rented for

more than a 24 hour period they will be charged a maximum of 12 hours per day at either the Adult Non-Profit Community Organizations rate or the Commercial, For-Profit, or Out of Community Organizations rate. Playgrounds, skate parks, and BMX parks may not be rented and must be kept free and accessible to the general public.

10. Special Events at Ponderosa Park, Bushmaster Park, and Mobile Haven Park will be charged one half of the established rate for facilities and amenities within the park (excludes application fees).

- B. ANY PERSON FOUND IN VIOLATION OF SECTION 3-10-001-0005(A) SHALL BE GUILTY OF A CIVIL INFRACTION AND SHALL BE FINED A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00). ANY VIOLATION WHICH IS CONTINUING IN NATURE SHALL CONSTITUTE A SEPARATE OFFENSE ON EACH SUCCESSIVE DATE THE VIOLATION CONTINUES, UNLESS OTHERWISE PROVIDED. ANY ENFORCEMENT ACTION IS SUBJECT TO THE CIVIL ENFORCEMENT PROCEDURES SET FORTH IN SECTION 1-15-001-0011.
- C. THE CITY RECREATION SERVICES DIRECTOR OR HIS DESIGNEE MAY REQUIRE ANY PERSON SEEKING TO USE CITY PARKS AND RECREATION FACILITIES TO ENTER INTO A CONTRACT RELATED TO PAYMENT OF FEES, DEPOSITS, INDEMNIFICATION OF THE CITY AND/OR CONDITIONS OF USE. THE IMPOSITION OF A CIVIL PENALTY FOR A VIOLATION OF THIS SECTION SHALL NOT PREVENT THE CITY FROM FILING A CIVIL ACTION TO COLLECT THE BALANCE OF ANY UNPAID FEES OR AMOUNTS OWED PURSUANT TO SUCH CONTRACT.

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. Clerical Corrections.

The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary related to this ordinance as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency, within thirty (30) days following adoption by the City Council.

SECTION 6. Effective Date.

This ordinance shall become effective from and after September 1, 2014.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Barbara Goodrich, Management Services
Director

Co-Submitter: Patrick Bourque

Date: 06/06/2014

Meeting Date: 07/01/2014



TITLE:

Consideration and Adoption of Ordinance No. 2014-19: An ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, Title 7, Health and Sanitation, Chapter 7-04, Municipal Solid Waste Collection Service, Section 7-04-001-0009, Fees, by reinstating the \$2.50 per ton Environmental Maintenance Facility Fee, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date. ***(Reinstate the \$2.50 per ton landfill tipping fee).***

RECOMMENDED ACTION:

At the meeting of July 1, 2014.

- 1) Read Ordinance No. 2014-19 by title only for the first time.
- 2) City Clerk reads Ordinance No. 2014-19 by title only for the first time (if approved above)

At the meeting of July 15, 2014.

- 3) Read Ordinance No. 2014-19 by title only for the final time
- 4) City Clerk reads Ordinance No. 2014-19 by title only for the final time (if approved above)
- 5) Adopt Ordinance No. 2014-19 (effective September 1, 2014)

Policy Decision or Reason for Action:

City staff have narrowed options on the Core Services Maintenance Facility to two viable properties. Extensive analysis was completed on these properties and staff is bringing forward additional discussion to Council on June 24, 2014.

Once the final property decision is made, City staff will be able to quickly move forward with a formal solicitation process to construct the facility. The reinstatement of this fee will allow the City to pay for design and/or construction costs prior to the debt being issued. Once construction is complete, this fee will be used to fund approximately \$4.4 million in debt service.

Financial Impact:

This fee is proposed to be reinstated at the prior level of \$2.50 per ton at the landfill. At this rate, the fee is estimated to generate \$300,000 annually. \$300,000 on an annual basis will support an estimated amount of debt of \$4.1 million to \$4.7 million dependent on market rate conditions and the term for which the debt would be issued.

Connection to Council Goal:

Address Core Services Maintenance Facility

Has There Been Previous Council Decision on This:

Yes. There was a Council decision to implement the \$2.50 landfill fee in October, 2007 with a one year sunset and three Council decisions to extend the fee; once in November, 2008 for an additional year; once in November, 2009 until May, 2010; once in May, 2010 for an additional year.

Options and Alternatives:

- Adopt the fee to be in effect on September 1, 2014
- Adopt the fee to be in effect for a date certain other than September 1, 2014
- Delay the adoption of the fee

Background/History:

In October, 2007, staff initiated a discussion with the City Council regarding the need for a new Public Works Maintenance Facility (now Core Services Maintenance Facility). The consensus of Council was that there is a compelling need to research and develop a plan to pursue a new facility. At that time, Council approved a \$2.50 per ton fee at the landfill, with a one year sunset, to begin collecting funds for a capital reserve for Environmental Services' (now Solid Waste) proportionate share of debt service for a new facility. Staff was to provide to Council key components for a facility including facility location, property size, public involvement, and funding options.

In November, 2008, staff provided Council with a list of alternative site locations, facility space needs, and a conceptual layout plan. Staff requested a renewal of the fee until the project could be completed. Council approved the extension of the \$2.50 fee for another year instructing staff to produce 1) a property/location selection; 2) conceptual site plan development; and 3) preliminary cost estimate.

In November, 2009, progress had been made on the Core Services Maintenance Facility. As of that date, Staff had 1) completed a property/location selection for the facility, identified the space needs for each Section of the Division, selected a consultant, which Council approved at its August 18, 2009 meeting, who now had the information and was working on the 2) conceptual site plan development which would provide us with the 3) preliminary cost estimate. Council approved the extension of the \$2.50 fee until May, 2010 in order to see and decide on a completed conceptual site plan and preliminary cost estimate for the Facility.

In May, 2010, Council extended the collection of the fee for an additional year until it was decided if the Core Services Maintenance Facility would be selected for the November bond election and, if so, the outcome of that election. The \$42 million Facility was selected for the bond election but failed and the fee sunset in May, 2011.

Key Considerations:

The City then re-designed the facility that now has an estimated cost of \$21.4 million to \$27.8 million dependent on whether the City builds on City land or purchases land at a different site. In 2012, the City successfully passed a \$14 million dollar secondary property tax/ bond measure to assist with the construction.

The key consideration is the timing of the construction and the accumulation of funds needed to complete the facility as designed. It is estimated that this capital reserve will have a balance of \$865,000 at June 30, 2014. Should the fee be reinstated on September 1, 2014, the fee will generate an additional \$250,000 in FY2015, for a total of \$1.1 million available to be used for the design and/or construction.

When this dedicated landfill fee is collected for a full year, \$300,000 is expected to be generated

annually. This \$300,000 will support an estimated additional \$4.4 million dollars in debt. This fee is a critical component to the overall sources needed to fund the construction.

Expanded Financial Considerations:

The total resources available for the project to date include:

- \$14 million General Obligation Bonds
- \$1.1 million in capital reserve (should the landfill fee be reinstated effective September 1, 2014)
- \$4.4 million in Revenue Debt secured by the estimated \$300,000 annual landfill fee proposed by this action
- \$2.3 million - \$4.4 million in land sale/trade proceeds dependent if the City constructs or sells the McAllister Property.

Total resources are \$21.8 million - \$23.9 million.

Community Benefits and Considerations:

The City will benefit in a number of ways by moving from the current location and constructing a modernized facility. By vacating the current site, an infill opportunity in the downtown area of Flagstaff will be available. No planned alternate use has been determined at this time.

By constructing a new facility, the City will be able to better protect and maintain the 420 pieces of equipment currently used on a daily or seasonal basis. Additional capacity will also be provided to Streets, Parks and Facilities for equipment and materials storage as well as consolidating the service personnel for Streets, Parks, Facilities, Fleet Services, Solid Waste Collections and Public Works Administration.

Community Involvement:

Consult - the City has provided numerous work sessions and agenda council sessions to discuss the progress in the development of the Core Services Maintenance Facility.

Involve - the community will be further engaged as the future of the current Public Works Yard site is determined.

Empower - The community approved the 2012 bond election authorizing the \$14 million dollars in funding to be used for this project.

Expanded Options and Alternatives:

- Adopt the fee to be in effect for September 1, 2014
- Adopt the fee to be in effect for a date certain other than September 1, 2014
- Delay the adoption of the fee

Attachments: [Ord. 2014-19](#)

Form Review

Inbox	Reviewed By	Date
Public Works Director	Erik Solberg	06/17/2014 03:45 PM
Public Works Section Head - Bourque	Patrick Bourque	06/17/2014 04:55 PM
Legal Assistant	Vicki Baker	06/18/2014 08:34 AM
Senior Assistant City Attorney AW	Vicki Baker	06/18/2014 08:37 AM
Senior Assistant City Attorney DW	David Womochil	06/18/2014 09:14 AM
Management Services Director (Originator)	Barbara Goodrich	06/18/2014 09:29 AM
DCM - Josh Copley	Stacy Saltzburg	06/18/2014 11:58 AM

DCM - Jerene Watson

Jerene Watson

06/19/2014 10:03 PM

Form Started By: Barbara Goodrich

Started On: 06/06/2014 08:00 AM

Final Approval Date: 06/19/2014

ORDINANCE NO. 2014-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 7, *HEALTH AND SANITATION*, CHAPTER 7-04, *MUNICIPAL SOLID WASTE COLLECTION SERVICE*, SECTION 7-04-001-0009, *FEES*, BY REINSTATING THE \$2.50 PER TON ENVIRONMENTAL MAINTENANCE FACILITY FEE, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City Council implemented a \$2.50 per ton Environmental Maintenance Facility Fee in 2007; and

WHEREAS, the purpose of the Environmental Maintenance Facility Fee was to fund the facilities that support the activities associated with municipal solid waste collection; and

WHEREAS, the Environmental Maintenance Facility Fee implemented in 2007 had a one year sunset clause and was subsequently extended by the City Council, in 2008, 2009, and 2010; and

WHEREAS, the Environmental Maintenance Facility Fee was allowed to sunset on May 3, 2011; and

WHEREAS, the City Council finds that it is in the best interests of the community to reinstate the \$2.50 per ton Environmental Maintenance Facility Fee in order to assist in funding the construction of a Core Services Maintenance Facility.

ENACTMENTS

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

The Flagstaff City Code, Title 7, Health and Sanitation, Chapter 7-04, Municipal Solid Waste Collection Service, Section 7-04-001-0009(H)(1), Environmental Maintenance Facility Fee, is hereby amended as follows:

SECTION 1. In General.

H. Landfill Fees:

Landfill fees shall be calculated at the actual cost per ton plus an additional amount to be determined by City Council to establish a capital account to fund future projects and equipment purchases. The City shall establish a legal reserve within the Environmental Services Fund for the purpose of funding costs of closing the landfill as required by the EPA or its designee. Monies shall be appropriated and set aside monthly in an amount to meet the estimated capital costs, to include; liner system; methane collection and cover material. Interest shall accrue to this account to be used for all the same purposes mentioned above.

1. Environmental Maintenance Facility Fee. The City shall ~~collect~~ establish a fee of \$2.50 per ton to fund the facilities that support the activities associated with municipal solid waste collection. Monies shall be allocated annually in the amount of \$2.50 of the per-ton tipping fee on scaled tonnage based on the posted landfill tipping fee. Environmental Maintenance Facility Fee funds shall be used, in part, to service the debt associated with construction of the Core Services Maintenance Facility. The City shall establish a legal reserve fund for this purpose. Interest shall accrue to this account to be used for all of the same purposes mentioned above.

The \$2.50 per ton fee referenced in this subsection shall remain in effect until retirement of the debt associated with construction of the Core Services Maintenance Facility. ~~May 3, 2011, and shall be renewed upon development of a plan for the design and construction of facilities that support the activities associated with municipal solid waste collection.~~ (Ord. No. 2003-01; Ord No. 2007-40, Amended; Res. No. 2008, 10/07/08; Res. No. 2009-51, 11/03/09 Amended; Res. 2010-27, 05/03/10 Amended).

SECTION 2. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Clerical Corrections.

The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary related to this ordinance as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency, within thirty (30) days following adoption by the City Council.

SECTION 5. Effective Date.

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: David Wessel, Metro Planning Org Manager
Co-Submitter: Stacey Brechler-Knaggs, Grants Manager
Date: 06/12/2014
Meeting Date: 07/01/2014



TITLE:

Consideration of Ratifying Approval of Agreement Amendment: Joint Project Agreement 11-085 between the State of Arizona and the City of Flagstaff acting for and on behalf of the Flagstaff Metropolitan Planning Organization, Amendment 3 for Fiscal Year 2015

RECOMMENDED ACTION:

Ratify JPA 11-085 Amendment 3

Policy Decision or Reason for Action:

This ratifies the Mayor's approval of JPA 11-085 Amendment 3 with the Arizona Department of Transportation. The City benefits from its current relationship with the FMPO and, through the FMPO, the Arizona Department of Transportation. FMPO provides resources for regional planning, participation in state transportation plans, support for traffic impact analysis and access to federal transportation construction funding. Regional planning, and more specifically transportation planning, is an on-going function in which the City participates to meet other state and federal mandates. This JPA establishes the relationship with ADOT to permit the pass-through of federal funds. The JPA is amended annually to reflect changes in federal or state mandates, rules or expectations, and to create the new completion date, June 30, 2015.

Subsidiary Decisions Points: This Amendment has been reviewed and approved by the City Attorney's office and the City Grants Management office.

Financial Impact:

Annually, FMPO brings in about \$260,000 in planning funds, \$500,000 in general construction funds, and \$600,000 in safety project funds. Failure to approve the amendment will de-fund the FMPO and essential services in transportation modeling, trails planning and more will fall to City staff. Loss of the FMPO will result in the City's eligibility for federal transportation construction funds.

Connection to Council Goal:

1. Repair Replace maintain infrastructure (streets & utilities)
5. Retain, expand, and diversify economic base
11. Effective governance

Has There Been Previous Council Decision on This:

Yes, the original JPA was considered by Council on June 7, 2011. Amendment 2 on June 18, 2013.

Options and Alternatives:

Approve as written: This is the most expeditious path.

Approve with conditions: This will result in delays due to state and local reviews.

Reject the amendment: The FMPO will not be funded.

Background/History:

The FMPO has been in place since 1996. It started with an intergovernmental agreement between the City, County and State. More recently, an IGA between the City and County establishes the FMPO and this JPA 11-085 establishes the FMPO relation to the state.

Key Considerations:

The FMPO Executive Board approved the FY 2015 Work Program referenced by this Amendment 3.

Community Benefits and Considerations:

Ensure continuation of important transportation planning and support functions.

Community Involvement:

Consult - a 30-day comment period on the work program was provided. The work program seeks to advance the regional transportation plan that enjoyed considerable public involvement

Attachments: [JPA 11-085 Amnd 3](#)

Form Review

Inbox	Reviewed By	Date
Grants Manager	Stacey Brechler-Knaggs	06/16/2014 08:21 AM
Metro Planning Org Manager (Originator)	David Wessel	06/16/2014 08:49 AM
Grants Manager	Stacey Brechler-Knaggs	06/16/2014 11:10 AM
Finance Director	Rick Tadder	06/16/2014 11:13 AM
Metro Planning Org Manager (Originator)	David Wessel	06/16/2014 11:14 AM
Legal Assistant	Vicki Baker	06/16/2014 01:30 PM
Senior Assistant City Attorney JS	James Speed	06/17/2014 10:38 AM
Community Development Director	Mark Landsiedel	06/17/2014 08:29 PM
DCM - Jerene Watson	Jerene Watson	06/19/2014 09:59 PM
Form Started By: David Wessel		Started On: 06/12/2014 10:16 AM
Final Approval Date: 06/19/2014		

CAR Agreement No	JPA-14-0004188-T
MPD Internal Agreement No	JPA 11-085 Amendment Three
AG Contract No	P0012011001543-85
Advantage Project No	PLA0121P; PSA0121P
Section	Multimodal Planning Division
Advantage Vendor No	86600024401
MPO DUNS No	088302625
Description	FMPO Metropolitan Planning Organization Agreement for Work Program Implementation

JOINT PROJECT AGREEMENT
 BETWEEN
 THE STATE OF ARIZONA
 AND
 THE CITY OF FLAGSTAFF ACTING FOR AND ON BEHALF OF
 THE FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT JPA 11-085 Amendment Three, established pursuant to Arizona Revised Statutes (A.R.S.), § 28-101, § 28-334, § 28-367et seq., is entered into _____, 2014 between the STATE OF ARIZONA, acting by and through the ARIZONA DEPARTMENT OF TRANSPORTATION, herein referred to as the ADOT, established pursuant to Arizona Revised Statutes (A.R.S.), § 28-101, § 28-334, § 28-367et seq., and authorized to enter into this Agreement under A.R.S. § 28-401; and the CITY OF FLAGSTAFF ACTING FOR AND ON BEHALF OF FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION (FMPO) METROPOLITAN PLANNING ORGANIZATION, herein referred to as the MPO. ADOT and the MPO are collectively referred to as the “Parties”, and individually as ADOT, MPO, and “Party.”

RECITALS

- 1) To ensure a continuing, cooperative, and comprehensive transportation planning process that involves cooperation/coordination between the MPO and ADOT through the sharing of information.
- 2) The MPO is charged with the responsibility of carrying out transportation planning and programming processes that lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods; and supports metropolitan community development and social goals.

The Original agreement and any Amendments are being amended.

The parties agree to amend the above-referenced Agreement to extend the completion date to June 30, 2015 and to the following modifications, replacements, and additions:

- Modify Recital Item 7
- Modify Section 2.0 Paragraph 10, Item 2, Sentence 2
- Replace Section 3.0 Paragraph 3
- Modify Section 5.0 Item (c)
- Replace Section 5.0 Item (d)
- Modify Section 5.0 Item (e), Sentence 1
- Replace Section 5.0 Item (g)
- Modify Section 6.0 Paragraph 1
- Replace Section 6.0 Item (a)
- Replace Section 6.0 Item (b) Sub-Item 1
- Replace Section 6.0 Item (b) Sub-Item 2
- Modify Section 6.0 Item (b) Sub-Item 3
- Replace Section 6.0 Item (b) Sub-Item 4
- Modify Section 6.0 Item (b) Sub-Item 5
- Modify Section 6.0 Item (d) Sub-Item 1, Paragraph 1
- Modify Section 6.0 Item (d) Sub-Item 1.d
- To Section 7.0, add paragraph two to Item (a) (2)
- To Section 7.0 Item (a), add a sub-item (6)
- To Section 7.0 Item (a), add a sub-item (7)
- Modify Section 7.0 Item (b) Paragraph 1
- Replace Section 7.0 Item (d)
- Modify Section 7.0 Item (e)
- Modify Section 8.0 Item (b), Sentence 2
- Replace Section 30.0 Item 2
- Modify EXHIBIT A
- Add item: Project Summary – Example to EXHIBIT A

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representation herein, the parties desiring to be legally bound, do agree as follows:

Recitals

Within **Item 7**, "2 CFR 225" is replaced with "2 CFR 200 et seq."

Section 2.0 WORK PROGRAM BUDGET

Paragraph 10, Item 2, Sentence 2 is modified to read:

The value of third party in-kind contributions may be accepted as the match for federal funds, in accordance with the provisions of 49 CFR 18.20, 49 CFR 18.24(a)(2), and 2 CFR 200.306.

Section 3.0 WORK PROGRAM APPROVAL AND TIMELINES

Paragraph 3 is replaced to read:

The MPO may not incur any costs for work outlined in the WP or any subsequent amendments prior to receiving written approval from ADOT, FHWA, and FTA. Any costs incurred prior to receiving written approval from the federal awarding agency shall not be eligible for reimbursement from federal funds in accordance with 2 CFR 200.458.

Section 5.0 ACCOUNTING RECORDS

Item (c) Costs Incurred for the Project is modified by adding "and 2 CFR 200 et seq." before the final period.

Item (d) Documentation of Project Costs is replaced to read:

All costs charged to the WP including any approved services contributed by the MPO or others, shall be supported as required by 49 CFR 18.20 and 18.22 and 2 CFR 200 Subpart E – Cost Principles.

Item (e) Documentation of Matching Funds

Within sentence 1, "49 CFR 18.20 and 18.24" is modified to read "49 CFR 18.20, 49 CFR 18.24, and 2 CFR 200.306".

Item (g) Indirect Costs is replaced to read:

The MPO will submit an annual Indirect Cost Plan to the cognizant agency, ADOT, FHWA and FTA pursuant to the requirements of 2 CFR 200 Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals. The plan must be submitted to ADOT by April 1st of the preceding fiscal year that it is to take effect. The plan shall reflect a "fixed rate" methodology as defined by 2 CFR 200 Appendix VII. After the plan has been approved by the cognizant-agency and verified and reviewed by ADOT, the rate used for billing indirect costs shall be established in accordance with the approved plan. ADOT will not reimburse the MPO for indirect costs if an Indirect Cost Plan is not in place. A copy of an indirect cost allocation plan that includes a written letter of acceptance from the MPO's cognizant-agency will be accepted by ADOT.

Section 6.0 AUDIT

Item (a) Monitoring is replaced to read:

In addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F, et seq., monitoring procedures may include, but not be limited to, on-site visits by ADOT staff or designees, limited scope audits as defined by 2 CFR 200 et seq. and/or other procedures. By entering into this Agreement, the MPO agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by ADOT. In the event ADOT determines that a limited scope audit of the MPO is

appropriate, the MPO agrees to comply with any additional instructions provided by ADOT staff to the MPO regarding such audit. The MPO further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the ADOT's Office of Audit and Analysis, ADOT's Office of the Inspector General (OIG), and ADOT's Financial Management Services.

It is the responsibility of the MPO to monitor their sub-recipients.

Item (b) Federally funded

Within Paragraph 1: "OMB Circular A-133 as revised" is modified to read "2 CFR 200 Subpart F, et seq."

Sub-Item 1 is replaced to read:

In the event that the MPO or their subrecipient expends \$750,000 or more in Federal awards in its fiscal year, the MPO and the subrecipient must have a Single Audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq. In determining the Federal awards expended in its fiscal year, the MPO and subrecipient shall consider all sources of Federal awards, including Federal resources received from ADOT. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR 200 et seq. An audit of the MPO conducted by the Arizona Auditor General or an independent auditor in accordance with the provisions 2 CFR 200 Subpart F, et seq. will meet the requirements of this part.

Sub-Item 2 is replaced to read:

In connection with the audit requirements, the MPO shall fulfill the requirements relative to auditee responsibilities as provided in "2 CFR 200.508, et seq.

Sub-Item 3 is replaced to read:

If the MPO expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq., is not required. However, if the MPO elects to have an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq., the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from MPO resources obtained from other than Federal entities).

Sub-Item 4 is replaced to read:

Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) number and title, name of the awarding federal agency, and either percentage or fixed dollar amount of federal participation.

Within Sub-Item 5, "OMB A-133.235(c)" is replaced with "2 CFR 200.507, et seq."

Item (d) Report submission

Sub-Item 1, Paragraph 1 is modified to read:

Copies of reporting packages for audits conducted in accordance with 2 CFR 200 Subpart F, et seq., and required by this section titled AUDIT and/or the section titled REQUISITIONS AND PAYMENTS of this Agreement shall be submitted when required by 2 CFR 200 Subpart F, et seq., directly to each of the following:

Within Sub-Item 1.d, "OMB Circular A-133, as revised" is modified to read "2 CFR 200 Subpart F, et seq."

Within Sub-Item 2.b, "OMB Circular A-133" is modified to read "2 CFR 200 Subpart F, et seq."

Within Sub-Item 2.c, "OMB Circular A-133" is modified to read "2 CFR 200 Subpart F, et seq."

Section 7.0 REQUISITIONS AND PAYMENTS

Add paragraph two to **Item (a) (2)** to read:

Project Summary. A tabular summary must be submitted with the Progress Report that lists all work elements / projects of the WP showing the budget of that item, each funding source contributing toward completing that item, the amounts billed to date, the total remaining work element/project balance, and the percent billed. Refer to Exhibit A examples.

Add a sub-item to **Item (a)** to read:

(6) Certifications Required: As required pursuant to 2 CFR 200.415 to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the M, which reads as follows:

"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

Add a sub-item to **Item (a)** to read:

(7) Financial Management: The MPOs financial management systems must comply with all the requirements of 2 CFR 200.302.

Within **(b) ADOT's Obligations**, Paragraph 1, "2 CFR 225" is modified to read "2 CFR 200 et seq."

Replace **Item (d) Reconciliation Process** to read:

Exhibit A consisting of the Reimbursement Request, Project Summary, and the narrative progress report will be used as the tool to ensure that all invoices have been properly accounted for by both parties and to ensure both parties are in agreement as to the remaining balances for each work element and funding source. If there are variances, ADOT and the COG shall research and resolve the variance within 30 days. The COG shall be responsible for providing any necessary supplemental information to reconcile variances.

Within **(e) Billing Limitation and WP Closeout**, Paragraph 2, "49 C.F.R. 18.50" is modified to read "2 CFR 220.343".

Section 8.0 PROCUREMENT, FIXED ASSETS, TRAVEL

Item **(b)**, Sentence 2 is modified to read:

"This shall be done in accordance with the requirements of 2 CFR 200 et seq., 23 CFR 420, 49 CFR 18, and all other applicable federal and state regulations."

Section 30.0 MISCELLANEOUS PROVISIONS

Item 2 is replaced to read:

This Agreement shall become effective July 1, 2014 upon its execution by all Parties hereto and shall remain in force and effect through June 30 of the following year, unless terminated, cancelled or extended as otherwise provided herein. By mutual written amendment, this Agreement may be extended for supplemental periods of up to a maximum of twelve (12) months. The Department reserves the right to unilaterally extend the period for thirty-one (31) days beyond the stated expiration date.

EXHIBIT A

Modify EXHIBIT A: Progress Billing Report – Sample to read: “Reimbursement Request”.

Arizona Department of Transportation Multimodal Planning Division										
REIMBURSEMENT REQUEST										
Report No.		Contract No.		Project No.		Purchase Order No.		<i>For ADOT Use Only</i>		
Name of Vendor										
Vendor's Invoice No.					Invoice Date					
Invoice Period					Partial or Final Invoice					
Name of Project										
Remit Payment to										
Date Work Started					Estimated Completion Date					
Roll Over of Prior Year Apportionment As Of:					Current Fiscal Year Apportionment					
SUMMARY OF WORK FOR WHICH PAYMENT IS REQUESTED										
Work Element Number	Work Element Title	Select Funding Type*	Apportioned Amount	Select Appropriate Non-Federal Match* 0.0%	TOTAL BUDGET	PRIOR INVOICES	NEW COSTS	Withholding		Amount Due
								%	Amount	
1			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
2			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
3			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
4			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
5			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
6			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
7			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
8			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
9			\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
TOTALS	% Billed = #DIV/0!		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
Match Due From Vendor Y/N	Match Due From ADOT Y/N	Match Due From Other Y/N	Non-Federal Match Required Over Life of Grant	Non-Federal Match Provided Prior Periods	Non-Federal Match Provided This Invoice	Total Amount Due to Vendor This Invoice (Amount Due - Match IF Required)				
			\$ -	\$ -	\$ -	\$ -				
<p>* Only One Funding Source Per Invoice and Per Progress Billing Report * Only one Non-Federal Match Ratio per Invoice and Per Progress Billing Report</p>										
<p><i>All Invoices and Progress Billing Reports must be mailed to:</i> Arizona Department of Administration Mail Drop 310B - MPD Finance and Administration 206 S. 17th Avenue Phoenix, AZ 85007</p>										
Submitter Approval: Date: _____ Signed: _____					MPD F&A Approval to Pay: Date: _____ Signed: _____					
ADOT PM Approval: Date: _____ Signed: _____					MPD F&A Notes: _____					

Add **Project Summary** – Example as a requirement to accompany the Narrative Progress Report

Arizona Department of Transportation Multimodal Planning Division													
PROJECT SUMMARY													
Report No.	Quarter End			WP Period	July 1, 2014 - June 30, 2015					Contract No.			
COG/MPO Name					Reported Approved By					Date Submitted			
Work Element Number	Work Element Description / Project Title	BUDGET								Total Budget	Billed to Date	Project Balance	Percent Billed
		Funding Source											
		PL	SPR	STP	HSIP	CMAQ							
1		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
2		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
3		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
4		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
5		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
6		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
7		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
8		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
9		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!
TOTALS		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION

**STATE OF ARIZONA
Department of Transportation**

By _____
**Gerald W. Nabours, Mayor
City of Flagstaff**

By _____
**Joseph S. Omer, Division Director
Multimodal Planning Division**

Date

Date

APPROVAL OF THE FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION

I have reviewed the above referenced proposed intergovernmental agreement, BETWEEN the ARIZONA DEPARTMENT OF TRANSPORTATION, MULTIMODAL PLANNING DIVISION and FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION, and declare this agreement to be in proper form and within the powers and authority granted to the CITY OF FLAGSTAFF ACTING FOR AND ON BEHALF OF THE FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this _____ day of _____, 2014

Attorney for the City of Flagstaff
Acting on behalf of the Flagstaff Metropolitan Planning Organization

**Page reserved for
AG Determination Letter**

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Dan Musselman, Deputy Police Chief (Support Services)
Co-Submitter: Rick Compau, Purchasing Director
Date: 06/18/2014
Meeting Date: 07/01/2014



TITLE:

Consideration of amendment to agreement: Authorizing an increase in funding to the Coconino Humane Association.

RECOMMENDED ACTION:

Approve the increase to the Coconino Humane Association in the amount of \$50,000 for the final year of the current agreement.

Policy Decision or Reason for Action:

The Coconino Humane Association has provided animal sheltering and care services for the City of Flagstaff for over 60 years. The Humane Association entered an agreement with the City in 2010 for a one year contract at a value of \$165,000. The contract allowed for four (4) additional one year term renewals making it valid through June 30, 2015. When the City began to face financial difficulty the City requested partner agencies take cuts as well. The Humane Association accepted these reductions graciously in the spirit of community service to assist the City of Flagstaff. The contract was reduced through the years as follows:

FY 2011 = \$165,000.00
 FY 2012 = \$161,985.00
 FY 2013 = \$161,985.00
 FY 2014 = \$161,985.00

Total reduction over the course of these years was \$9,045.00

The Humane Association reports that they cut back as far as possible, while continuing to provide the services as outlined in the scope of work as well as additional services outside the scope of work. Due to rising costs of business, additional financial liabilities for compliance with changing laws, drops in total revenue, restricted grant opportunities, and very limited sources of other available revenue, the Coconino Humane Association has had to contribute substantial funds from donations and shelter service fees to what it costs to fulfill the contract with the City. Additionally, they withdrew \$118,000 from savings earmarked for capital improvements, and cashed in a certificate of deposit several months ago just to cover payroll. They have requested a substantial increase of \$78,000.00 for an annual contracted amount of \$240,000.00 for the 2014-2015 animal sheltering contract, which is the last extension year.

Financial Impact:

The Coconino Humane Association has requested an increase of \$78,000.00 (added to \$161,985.00) for an annual contracted amount of \$240,000.00 for the 2014-2015 animal sheltering contract. City Council was supportive of funding an additional amount of \$50,000, during the budget retreat for FY 2015, which if approved would fund the final year of the contract at \$211,985.00.

Connection to Council Goal:

Effective Governance (Public Safety)

An animal control program is necessary to ensure public health and safety to people as well as safe and humane care for the unwanted and stray (sometimes vicious) animals in our community.

Has There Been Previous Council Decision on This:

The Council has approved previous agreements with the Coconino Humane Association and discussed additional funding in the amount of \$50,000 during the fiscal year 2015 budget retreat.

Options and Alternatives:

- 1) The council may approve \$50,000 in additional funds for the contract with the Coconino Humane Association.
- 2) The Council may choose to deny or limit any additional funding to the Coconino Humane Association.

Background/History:

The City of Flagstaff is currently contracted with the Coconino County Humane Association to provide Animal Shelter Services. The contract was originally signed on July 29, 2010 for one year at a contract value of \$165,000. The contract was reduced to \$161,985.00 in fiscal year 2012 and subsequent years in response to the recession. The contract allowed for four (4) additional one year terms, and if all renewals are exercised, the contract will be valid through June 30, 2015. The FY2014 appropriation for this contract was \$161,985. Throughout the duration of the contract the Humane Association continued to provide those services required within the scope of work as well as additional services outside the scope of work. In fiscal year 2015, the Humane Association re-approached the City requesting increased funding for the final year of the agreement. The attached memorandum from Michelle Ryan outlines the cost increases they have had to absorb, as well as the costs of services provided outside the scope of work listed in the original contract with the City.

During the April 2015 budget retreat the City Council was supportive of additional funding to the Humane Association in the total amount of \$50,000. City Council supported providing \$12,000 in one time money not tied to any additional services. An additional amount of \$38,000 in one time money was recommended to help assist with those services the Humane Association provided over and above the original scope of work in the contract with the City. According to the Humane Association these additional services include: emergency animal ambulance and medical services, cruelty investigations, public education, low costs spay and neuter, and low cost euthanasia. The Humane Association estimates providing these services to the residents of the City have cost them approximately \$168,572.32, during the course of the current agreement with the City. The Humane Association estimates to continue providing these services during the final year of the contract will cost them an additional \$45,150.00. Additionally the Council supported providing \$12,000 in one time money not tied to additional services.

Key Considerations:

An animal shelter is necessary for the humane treatment of stray and injured animals within the City of Flagstaff. There has been an ongoing concern about the possibility of transferring impounded animals to “no-kill” shelters. The Humane Association has an agreement with Second Chance Center for Animals and Paw Placement of Northern Arizona that allows for the transfer of impounded animals to a “no-kill” shelter or a home. In addition the Humane Association participates in numerous adoption programs including Petsmart, Petfinder.com, Pet-a-Palooza and other rescue organizations.

Expanded Financial Considerations:

This contract will go to Request for Proposals (RFP) in Spring of 2015.

Community Benefits and Considerations:

The Flagstaff Community utilizes many services of the Humane Association, several of which are beyond the scope of work the Police Department requires for their operations. The Police Department is responsible for the enforcement of ordinances and statutes pertaining to animals. Services of the Humane Association are used regularly by the Police Department to house or quarantine impounded animals. The City of Flagstaff benefits by having an available facility that will accept, house and adopt stray dogs and cats as well as offering low-cost services (spay/neuter, euthanasia, adoption, and vaccinations). The Coconino Humane Association also provides free public education.

Community Involvement:

The Coconino Humane Association and its supporters presented to council previously at the April 8th, 2014 City Council Work Session, requesting additional funding. The Humane Association request was again discussed in public during the three day budget retreat in late April.

Attachments: Humane Association Memo

Form Review

Inbox	Reviewed By	Date
Deputy Police Chief - Musselman (Originator)	Dan Musselman	06/18/2014 02:18 PM
Finance Director	Rick Tadder	06/19/2014 03:43 PM
Management Services Director	Barbara Goodrich	06/20/2014 07:51 AM
Legal Assistant	Stacy Saltzburg	06/20/2014 09:37 AM
Deputy Police Chief - Musselman (Originator)	Dan Musselman	06/20/2014 11:28 AM
Purchasing Director	Rick Compau	06/20/2014 11:52 AM
Legal Assistant	Vicki Baker	06/20/2014 11:53 AM
Management Services Director	Barbara Goodrich	06/20/2014 12:15 PM
Form Started By: Dan Musselman		Started On: 06/18/2014 11:24 AM
	Final Approval Date: 06/20/2014	

PO Box 66
Flagstaff, AZ 86002
928-526-1076



Honorable Mayor and Council Members
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001

RE: FY 2014-2015 Animal Sheltering Contract – Contract Amendment

June 16, 2014

Dear Mayor Nabours and Council Members,

The Coconino Humane Association has been placed into the unique position of providing animal sheltering services for the City of Flagstaff and the city's residents for nearly 60 years. We recognize that the City has been in a difficult financial situation and not in a position to operate a city-run animal shelter. Both of our agencies are stronger, more effective and generally can accomplish more (with less) because of our partnership.

In 2008-2009, the Coconino Humane Association contracted with the City of Flagstaff to provide Animal Sheltering Services for the contractual amount of \$243,000.00. In 2009-2010, at a time when all city departments were being asked to cut 12% from their budgets, we were being asked to accept a 28% (\$68,040) decrease in our contract funding to \$175,000.00. When the contract went to RFP for the 2010-2011 fiscal year, the City advised us that the total amount budgeted for the Animal Sheltering Contract was \$165,000.00. Every year since we signed the contract in 2010-2011 we have been asked by the city to provide our contracted services at \$161,985.00, an overall annual decrease of 34% from the 2008-2009 contract. We accepted these reductions graciously in the spirit of community service to assist the city through hard times. We cut back as far as possible, while continuing to provide the services that were expected by our community and our contracts.

During this same time period, Coconino County Health District asked the Coconino Humane Association to accept a 10% reduction in their contract, which since has been reinstated along with inflation and cost of services increases.

Due to rising costs of business, additional financial liabilities for compliance with changing laws, drops in total revenue, restricted grant opportunities, and very limited sources of other available revenue the Coconino Humane Association has requested a substantial increase of \$78,000.00 for an annual contracted amount of **\$240,000.00 for the 2014-2015 animal sheltering contract.**

Justifications for funding increase:

- 1. Cost of compliance with changing laws and ordinances:** It is estimated that to be compliant with changing Federal, State and County laws and ordinances it will cost an additional **\$89,235.00 per year.**

Estimated Cost for New/Changed Law Compliance

County Ordinances	\$32,500.00
Arizona State Changes	\$4,735.00
Federal Minimum Wage	\$4,000.00
Affordable Care Act	\$48,000.00
Total Estimated New Costs for 2014-15	\$89,235.00

- 2. Cost of Business:** Since the original budget cut in 2009 the Coconino Humane Association has experienced increases in expenses that greatly exceeded inflation. CPI Index rates have only increased 8.4% but expenses have increased an overall 14.8%. **Our expenses were \$90,000 more last year than they were in 2009/2010.**

Increases in Expenses (Annual Average 2009-2013)

Vaccinations and supplies	189%
Veterinary Services and Supplies	107%
Pet Food	68%
Vehicle – repairs, fuel, oil	39%
Cat Litter	27%
Telephones/Internet	23%
Electricity	19%
General Liability Insurance	14%
Cleaning Supplies	13%
Payroll Expenses	7%

- 3. Limited Funding Sources:** While our expenses have increased 14.8% there has been an overall 6.7% decrease in revenue. Our annual revenue is (\$42,500.00) less in 2012/2013 than it was in 2009/2010. Since 2009/2010 we have had to use **\$118,777.00 (in addition to the \$365,000 from donations and our service fees)** of our savings and investments that were earmarked for Capital Improvements for general fund expenditures. These funds are above and beyond the donations and investments we have used to make up the shortfall in City funding.

Decreases in Revenue (Annual Average 2009-2013)

City of Flagstaff	(34%)
Coconino County	(10%)*
Grant Funding	(50%)
Shelter Service Fees	6%
Donations	(2%)

- Coconino County has since reinstated the 10% reduction in addition to an increase for inflation and cost of services.

The services we provide to the City of Flagstaff, whether within the “Scope of Work” or beyond, and the services the City of Flagstaff provides are the most basic of services an Animal Control Program, whether governmental or contracted, should be providing to the residents and animals of their community.

RFP No. 2010-41 Contract - Exhibit A “Scope of Work”

- Operate animal shelter
- Receive unwanted and stray animals from residents
- Receive animals impounded by Animal Control and Police Officers
- Humanely euthanize animals not claimed or adopted, or as ordered by the court.
- Transfer animals to “no-kill” rescues and shelters.
- Collect impoundment, license, and rabies fees and remit collected fees to the City on a monthly basis with required reports
- Insure rabies vaccination of all dogs, either claimed or adopted
- Submit a monthly report to the City detailing month’s activity, including fees collected, animals impounded and disposition of each animal
- Comply with all federal, state, county and municipal laws

RFP No. 2010-41 “Beyond the Scope” Services provided to the City of Flagstaff

- Public Education (rabies, pet care, bite safety etc.)
- Vaccinations upon intake (Core Dog/Cat- AVMA recommended) (**\$23,750.00 for City Animals in 2013**)
- Adoption Services
- Low cost spay/neuter services for dogs/cats
- Lost and Found
- Pet Food Bank for low income assistance
- Low cost euthanasia services
- Animal rescue
- Rabies processing center
- City Court, Coconino County Superior Court, and Coconino County Probations approved Community Services provider.
- Animal Cruelty Investigations (**City of Flagstaff only**)
- Animal Control and Police Officer Assistance 24 hours a day at shelter and offsite (**City of Flagstaff only**)
- Animal Ambulance Service for ill/injured (stray) –24 hours a day (**City of Flagstaff only**)
- Emergency Veterinary Medical Care ill/injured stray animals (**Coconino County pays their own medical bills**)

Estimated Cost of Services that are “Beyond the Scope” of Services

Ambulance Runs				
	# of Runs	Cost per hour	Est. Time (hr)	Cost of service
2009/10	35	\$ 33.50	1	\$ 1,172.50
2010/11	31	\$ 33.50	1	\$ 1,038.50
2011/12	43	\$ 33.50	1	\$ 1,440.50
2012/13	57	\$ 33.50	1	\$ 1,909.50
TOTAL	166			\$ 5,561.00
Cruelty Investigations				
	# of Runs	Cost per hour	Est. Time (hr)	Cost of service
2009/10	11	\$ 33.50	2.5	\$ 921.25
2010/11	11	\$ 33.50	2.5	\$ 921.25
2011/12	31	\$ 33.50	2.5	\$ 2,596.25
2012/13	19	\$ 33.50	2.5	\$ 1,591.25
TOTAL	72			\$ 6,030.00
Humane Education Classes				
	# of Classes	Cost per hour	Est. Time (hr)	Cost of service
2009/10	443	\$ 33.50	1.5	\$ 22,260.75
2010/11	451	\$ 33.50	1.5	\$ 22,662.75
2011/12	467	\$ 33.50	1.5	\$ 23,466.75
2012/13	433	\$ 33.50	1.5	\$ 21,758.25
TOTAL	1794			\$ 90,148.50
Events - Education Booths- Adoption days				
	# of Events	Cost per hour	Est. Time (hr)	Cost of service
2009/10	34	\$ 33.50	5	\$ 5,695.00
2010/11	34	\$ 33.50	5	\$ 5,695.00
2011/12	40	\$ 33.50	5	\$ 6,700.00
2012/13	79	\$ 33.50	5	\$ 13,232.50
TOTAL	187			\$ 31,322.50

Examples of Events held within City Limits for the benefit of community residents and adoptable animals.

- | | |
|--|---------------------------------------|
| Armour Self Storage Adoption Event | National Night Out - Wheeler Park |
| Bookman's Adoption Event | Petco Adoption Weekend (12X a year) |
| Cal-Ranch Pet Expo | Pets in the Pines |
| Children's Art and Music Festival | Petsmart Adoption Weekend (4X a year) |
| FACTS Party - Bushmaster Park | Pride in the Pines (2014) |
| Forest Ridge Apartments Adoption Event | Rescue Roundup - Wheeler Park |
| Gift Wrapping at the Mall | Woofstock - Bushmaster Park |
| Flagstaff Home Show | |

Spay/Neuter Assistance						
	# of Cats	# of Dogs	Total Resident co-pay	Total Shelter Subsidies	Total cost of S/N Assistance (City Only)	
2009/10	37	42	\$ 1,975.00	\$ 3,250.00	\$ 5,225.00	
2010/11	70	49	\$ 2,975.00	\$ 4,432.00	\$ 7,407.00	
2011/12	46	62	\$ 2,700.00	\$ 4,560.00	\$ 7,260.00	
2012/13	106	135	\$ 6,025.00	\$ 10,075.00	\$ 16,100.00	
TOTAL	259	288	\$ 13,675.00	\$ 22,317.00	\$ 35,992.00	

Emergency Medical Charges	
(2013-2014 current charges are \$3,868.72)	
2009/10	\$1,321.00
2010/11	\$703.60
2011/12	\$1,192.73
2012/13	\$1,055.99
TOTAL	\$4,273.32

Euthanasia Requests					
	# of Cats & Other Species	# of Dogs	Total Resident co-pay	Total Shelter Subsidies	Total cost of Euthanasia Assistance (City Only)
2009/10	24	40	\$ 1,147.00	\$ 2,560.00	\$ 3,707.00
2010/11	11	38	\$ 875.00	\$ 1,960.00	\$ 2,835.00
2011/12	8	52	\$ 1,150.00	\$ 2,400.00	\$ 3,550.00
2012/13	14	36	\$ 970.00	\$ 2,000.00	\$ 2,970.00
TOTAL	57	166	\$ 4,142.00	\$ 8,920.00	\$ 13,062.00

Four Year Total of Cost of Services Provided to City Residents Above Contract	\$ 168,572.32
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Projected FY 2014-15 Cost of Services "Beyond the Scope" for City Residents' Benefit (Animal Ambulance, Cruelty Investigations, Humane Education, Events, Spay and Neuter Assistance, Emergency Medical Care, Euthanasia Services, etc.)	\$ 45,150.00
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We have been providing animal sheltering services to the City of Flagstaff for decades and sincerely hope that we will continue to work together to ensure public health and safety to the people as well as safe and humane care for the unwanted and stray animals in our community.

Sincerely,

Michelle Ryan
Executive Director

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Andy Wagemaker, Revenue Director
Date: 05/21/2014
Meeting Date: 07/01/2014



TITLE:

Public Hearing, Consideration and Adoption of Ordinance No. 2014-17: An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title 7, Health and Sanitation, Chapter 7-3, City Water System Regulations, Section 7-03-001-0003, Deposit Required, to change water service deposits; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date. ***(Changing the amount of water service deposits)***

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

- 1) Hold Public Hearing
- 2) Read Ordinance No. 2014-17 by title only for the first time
- 3) City Clerk reads Ordinance No. 2014-17 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

- 4) Read Ordinance No. 2014-17 by title only for the final time
- 5) City Clerk reads Ordinance No. 2014-17 by title only for the final time
- 6) Adopt Ordinance No. 2014-17 and establish an effective date for the deposit adjustments of September 1, 2014

Policy Decision or Reason for Action:

The City has charged a \$25 deposit for residential accounts and a two month estimate for non-residential accounts for approximately 20 years. The proposed deposit adjustments will help realign the deposit amount to help mitigate the losses from customers that do not pay the final bill on utility accounts. This will also aid in reducing the total amount of write-offs per year.

Financial Impact:

The financial impact of the increase in utility deposits is the reduction in the amount of write-offs processed each fiscal year. Many times, the initial deposit is applied to the final bill on the customer's account, reducing the total amount owed on the final bill. However, there is often a balance remaining on the account after the deposit is applied. Customers often neglect to pay the final balance on the account and the account is eventually placed on the write-off list after collection efforts are exhausted. The increased deposit will help reduce or eliminate the balances left on the final bill, increasing the amount of money the City is able to collect on final bills. Based on FY14 write off data, the proposed deposits could have reduced the total amount written off by approximately \$40,000.

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

- 1) Adopt the ordinance as presented with an effective date of September 1, 2014.
- 2) Do not adopt the ordinance as presented and do not establish an effective date of September 1, 2014.

Background/History:

As previously noted, the water service deposits for the City of Flagstaff have remained the same for approximately 20 years. The amount of the deposit has lagged behind increases in utility rates and fees.

The proposed increases will bring the City's deposits closer to the average of other municipalities throughout the state. With available data, staff was able to calculate an average residential deposit of \$143.37, as of April 4, 2014. There is no exact average available for non-residential deposits due to the varying calculations used. However, a recommended ratio of non-residential deposit to residential deposit of 2.00 was derived using readily available information.

There are several steps a municipality must complete as required by state law to consider and adopt changes to its utility rates, fees and charges. All utility rates, fees and charges must be just and reasonable; and therefore a written report and/or data supporting the changes to utility deposits is required. This staff report along with the attached data are intended to satisfy this legal requirement. The following calendar provides a brief outline of the required steps and the dates identified by staff for the City to fully comply with Arizona Revised Statutes (A.R.S. § 9-511).

April 28, 2014	Notice of proposed changes placed on main City website page at least 60 days prior to Council action.
May 20, 2014	Written report and data supporting the utility deposit changes placed on file at the City Clerk's office. Council adopts "Notice of Intention" by motion - notice to the public that the City is considering a new or adjusted rate, fee, or charge and setting a public hearing date, time and place.
June 1, 2014	Publish Notice of Intention in a newspaper of general circulation in the area of the municipality with the date, time, and place of the public hearing.
July 1, 2014	Hold a public hearing and consider adoption of ordinance amending Section 7-03-001-0003 of the City Code; read the ordinance for the first time.
July 15, 2014	Read the ordinance for the second and final time.
On or about September 1, 2014	If approved, the new deposit rates become effective 30 days after adoption of the ordinance.

Key Considerations:

The current deposit the City charges is significantly lower than other municipal utilities throughout the state. With available data, staff was able to calculate an average residential deposit of \$143.37, as of April 4, 2014. There is no exact average available for non-residential deposits due to the varying calculations used. However, a recommended ratio of non-residential deposit to residential deposit of 2.00 was derived using readily available information. With the proposed increases to the deposits, the City will also allow new customers to have the deposits billed in a maximum of three monthly installments, upon request.

Community Benefits and Considerations:

The increase in utility deposits will reduce the final amount of accounts that are written-off each year.

Community Involvement:

Inform.

Attachments: Ord. No. 2014-17
 Utility Deposit Report

Form Review

Inbox	Reviewed By	Date
Legal Assistant	Vicki Baker	05/29/2014 09:24 AM
Senior Assistant City Attorney AW	Anja Wendel	05/29/2014 01:31 PM
Management Services Director	Barbara Goodrich	06/03/2014 03:34 PM
DCM - Josh Copley	Josh Copley	06/04/2014 02:38 PM
Form Started By: Andy Wagemaker		Started On: 05/21/2014 10:38 AM
	Final Approval Date: 06/04/2014	

ORDINANCE NO. 2014-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 7, *HEALTH AND SANITATION*, CHAPTER 7-3, *CITY WATER SYSTEM REGULATIONS*, SECTION 7-03-001-0003, *DEPOSIT REQUIRED*, TO CHANGE WATER SERVICE DEPOSITS; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff desires to change the deposits required to obtain residential or non-residential water service in an effort to reduce financial losses incurred when customers fail to pay for water service and to provide for a more uniform system of deposits;

WHEREAS, consistent with the spirit of A.R.S. § 9-499.15 the City has posted notice on its website concerning proposed changes to water service deposits;

WHEREAS, pursuant to A.R.S. § 9-511.11 the City has filed a written report with data supporting changes to the water service deposits with the City Clerk, published a notice of a public hearing, and conducted a public hearing concerning the proposed changes; and

WHEREAS, the City Council hereby finds it is in the best interests of the community to change the deposits required to obtain residential and commercial water service.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code, Title 7 *Health and Sanitation*, Chapter 7-03, *City Water System Regulations*, is hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

7-03-001-0003. DEPOSIT REQUIRED.

- A. Deposit Required: There shall be charged all persons applying for RESIDENTIAL water service to be provided to any premises, a non-interest bearing deposit of ~~twenty-five dollars for residence service inside the City, twenty-seven dollars and fifty cents (\$27.50) for residence outside the City and for all other service, a non-interest bearing deposit equal to twice estimated amount of the monthly bill.~~ ONE HUNDRED FIFTY DOLLARS (\$150). THERE SHALL BE CHARGED ALL PERSONS APPLYING FOR NON-RESIDENTIAL WATER SERVICE TO BE PROVIDED TO ANY PREMISES, A NON-INTEREST BEARING DEPOSIT OF THREE HUNDRED DOLLARS (\$300). Specific exemption from this provision shall apply to churches, nonprofit community organizations and other utilities. Additionally, persons who have qualified for a deposit refund pursuant

to paragraph (B) below and have no other Municipal account delinquency shall be exempt from any deposit requirement or additional or new water service. New customers providing the City with a recent letter from a present or previous utility supplier which shows a good payment history may be exempted from the deposit requirements.

- B. Deposit Refund: Except as provided below, a customer shall be entitled to a refund of deposits on hand ~~either one year after the effective date of this Section or one year after the required deposit is deposited with the City whichever occurs later.~~ However, in the event a customer fails to make timely payment of a monthly billing, or allows any arrearage to accrue on the customer's account, then the customer shall not be entitled to a refund until the customer has first established a one-year record of timely payments with no arrearage. ~~If a customer should be issued a turn-off notice (appear on a cut-off listing) due to nonpayment, a new or additional deposit may be required. This deposit shall be the greater of either the basic deposit required under subsection (A) of this Section or twice the amount of the highest monthly billing during the preceding twelve (12) months.~~ No interest shall be paid by the City upon any deposit refund.

SECTION 2. Penalties.

Any person convicted of a violation of this ordinance is guilty of a misdemeanor and shall be fined a sum not to exceed two thousand five hundred dollars (\$2,500.00) and may be sentenced to confinement in jail for a period not to exceed ninety (90) days for any one offense, all in accordance with the Flagstaff City Code Chapter 1-04. Any violation which is continuing in nature shall constitute a separate offense on each successive date the violation continues, unless otherwise provided.

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. Clerical Corrections.

The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary related to this ordinance as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency within thirty (30) days following adoption by the City Council.

SECTION 6. Effective Date.

This ordinance shall become effective on September 1, 2014, following adoption by the City Council.

PASSED AND ADOPTED by the Mayor and City Council of the City of Flagstaff this _____ day
of _____, 2014.

MAYOR

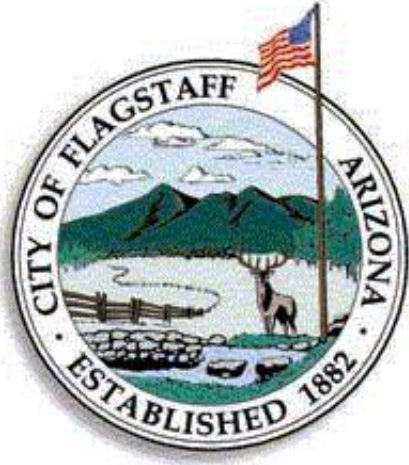
ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

City of Flagstaff



Water Service Utility Deposit Report

May 20, 2014

Andy Wagemaker, Revenue Director

I. Background

The City of Flagstaff operates water, reclaimed water, and wastewater networks within the City. These networks serve an estimated 20,000 residential and non-residential utility accounts.

The water service utility deposits for the City of Flagstaff have remained the same for approximately 20 years. The current amount of the deposit has lagged behind increases in utility rates and fees. The most recent rate study, completed in 2010, updated water, reclaimed water, and wastewater rates, leaving all other fees and charges the same. This report serves as a recommendation for revised residential and non-residential deposits.

II. Objective

The current analysis will address the following objectives:

- Calculate a water service utility deposit charge for residential accounts.
- Calculate a water service utility deposit charge for non-residential accounts.

III. Deposit Calculation

The deposit calculation for residential accounts is based upon the 2012-2013 winter sewer average calculation of 4,448 gallons. For purposes of the deposit calculation, a typical residential account with a reduced amount of 4,000 gallons is used. A two month average is used to best approximate charges on the final bill sent to a customer. Utilizing current rates effective January 1, 2014, the deposit is calculated as follows:

RESIDENTIAL DEPOSIT CALCULATION		
	Monthly Consumption (in gallons)	Dollar Amount
3/4" Meter Base Charge	N/A	\$ 13.03
Water Charge	4,000	\$ 10.96
Water Energy Surcharge	4,000	\$ 3.60
Sewer Charge	4,000	\$ 15.20
Environmental Fee	N/A	\$ 4.00
Trash Charge	N/A	\$ 17.73
Stormwater Charge	N/A	\$ 3.90
Sales Tax	N/A	\$ 2.33
ADEQ Tax	N/A	\$ 0.02
TOTAL:		\$ 70.77
	2 Months Average Bill:	\$ 141.54
	Recommended Deposit:	\$ 150.00

Due to the varied rate classes and consumption patterns of non-residential accounts, the deposit calculation for non-residential accounts is based upon a review of other Arizona municipalities with readily available information that charge a flat non-residential deposit. Based upon that information, an average ratio of the non-residential deposit amount to the residential deposit amount was calculated at 1.70, as found in the table below.

NON-RESIDENTIAL TO RESIDENTIAL DEPOSIT RATIO CALCULATION				
	Residential Deposit	Non-Residential Deposit	Ratio	
Prescott	\$ 125.00	\$ 125.00	1.00	
Tempe	\$ 50.00	\$ 150.00	3.00	
Gilbert	\$ 200.00	\$ 200.00	1.00	
Surprise	\$ 182.40	\$ 249.72	1.37	
Glendale	\$ 200.00	\$ 250.00	1.25	
Winslow	\$ 100.00	\$ 275.00	2.75	
Avondale	\$ 175.00	\$ 300.00	1.71	
El Mirage	\$ 200.00	\$ 300.00	1.50	
AVERAGES:		\$ 231.22	1.70	
			Recommended Ratio:	2.00

Using the recommended ratio of 2.00, the deposit is calculated as follows:

NON-RESIDENTIAL DEPOSIT CALCULATION	
Residential Deposit:	\$ 150.00
2x Residential Deposit:	\$ 300.00
Recommended Deposit:	\$ 300.00

IV. Conclusion

City staff developed recommended deposits from internally available information. This information forms the basis for the updated deposit recommendations of \$150 for residential accounts and \$300 for non-residential accounts. Staff will continue to periodically analyze internal deposits and provide updates as changes in operations occur.

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Andy Wagemaker, Revenue Director
Date: 05/27/2014
Meeting Date: 07/01/2014



TITLE:

Public Hearing, Consideration and Possible Adoption of Resolution No. 2014-23 and Ordinance No. 2014-15: A Resolution of the City Council of the City of Flagstaff, Arizona, Declaring that Certain Document Known as "The 2014 BBB Tax Re-Codification Amendments as a Public Record, and Providing for an Effective Date; and an Ordinance of the City Council of the City of Flagstaff, Amending the Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-06, *Privilege and Excise Taxes*, Chapter 3-06, *Lodging, Restaurant and Lounge Tax*, are Hereby Amended by Adopting "The 2014 BBB Tax Re-Codification Amendments" as Set Forth in that Public Record on File with the City Clerk; Providing for Penalties, Repeal of Conflicting Ordinances, Severability, Authority for Clerical Corrections, and Establishing Effective Dates. **(Recodification of BBB Tax)**

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

- 1) Hold the Public Hearing
- 2) Read Resolution No. 2014-23 by title only
- 3) The City Clerk reads Resolution No. 2014-12 by title only (if approved above)
- 4) Read Ordinance No. 2014-15 by title only for the first time
- 5) City Clerk reads Ordinance No. 2014-15 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

- 6) Adopt Resolution No. 2014-12
- 7) Read Ordinance No. 2014-15 by title only for the final time
- 8) City Clerk reads Ordinance No. 2014-15 by title only for the final time (if approved above)
- 9) Adopt Ordinance No. 2014-15

Policy Decision or Reason for Action:

The Model City Tax Code is the City of Flagstaff's guiding tax document. By adopting the proposed ordinance, the City is doing its part to help in the Governor's Transaction Privilege Tax Simplification Task Force's efforts to simplify municipal tax collections. The recommended action re-codifies portions of Chapter 3-06 of the City Code and will not establish new taxes or increase taxes on any taxpayer. The recommended action will also aid in the transition to tax collections performed by the State of Arizona's Department of Revenue, set to begin on January 1, 2015.

Financial Impact:

None. The proposed ordinance does not make any changes to City policies and or practices. The proposed ordinance merely consolidates the tax rate in the City Tax Code to be more uniform with the Model City Tax Code. This consolidation makes it easier for the taxpayer to understand the City Tax Code and increases compliance.

Connection to Council Goal:

Effective governance

Has There Been Previous Council Decision on This:

No

Options and Alternatives:

- 1) Adopt the proposed resolution and proposed ordinance and re-codify Chapter 3-06 of the Flagstaff City Code.
- 2) Do not adopt the proposed resolution and proposed ordinance and do not re-codify Chapter 3-06 of the Flagstaff City Code.

Background/History:**Model City Tax Code**

In 1987 the City of Flagstaff and other Arizona cities and towns adopted the Model City Tax Code. The Model City Tax Code enables businesses to be taxed uniformly. Cities have the option of establishing the rate (%) of tax applied to gross income, and there are model and local options under the Model City Tax Code which cities may adopt. The City's base tax rate is currently 1.721% and there is an additional voter approved 2% BBB tax levied on the restaurant/bar and the hotel/motel classifications.

City of Flagstaff Bed, Board, and Beverage (BBB) Tax

In 1987, the City of Flagstaff adopted a lodging, restaurant, and lounge tax, often referred to as the Bed, Board, and Beverage, or BBB, tax. The tax was adopted as an additional 2% tax levied on the restaurant/bar and the hotel/motel classifications. The details of the 2% tax are outlined in Chapter 3-06 of the City Code. In general, the Chapter allocates the 2% tax into separate funds (Section 3-06-001-0003 Distribution) and creates commissions and establishes uses of the revenues (Section 3-06-001-0004 Financial Control). Chapter 3-06 is attached to this summary for more detail.

Proposed Bed, Board, and Beverage Tax Code Changes

The attached ordinance consolidates and re-codifies the additional 2% tax approved by voters and levied on the restaurant/bar and the hotel/motel classifications and incorporates the additional 2% tax into the Model City Tax Code. Currently, the City levies the additional 2% tax outside of the Model City Tax Code in a separate ordinance. The 2% tax is levied as an additional line item on taxpayer transaction privilege tax returns for those businesses that report under the restaurant/bar or hotel/motel categories. In essence, taxpayers reporting under the previously mentioned categories pay a total of 3.721% (1.721% + 2%) on two lines of the tax return. The proposed ordinance will allow the City to collect the 3.721% on one line and aid in the Governor's Transaction Privilege Tax Simplification Task Force's efforts to make the Model City Tax Code simpler to follow.

The consolidation and re-codification of the additional 2% tax will not result in new or increased tax on any taxpayer, nor will it change how revenues are distributed for Tourism, Beautification, Economic development, Parks and Recreation, and Arts and Sciences. It will simplify the City's Tax Code by locating the total restaurant/bar and hotel/motel tax rates in one place.

Key Considerations:

The City of Flagstaff and other Cities in the State of Arizona abide by the rules and regulations found in the Model City Tax Code. The proposed re-codification is another part of the Governor's Transaction Privilege Tax Simplification Task Force's efforts to make the Model City Tax Code more uniform. If the City chose not to adopt the ordinance, the City's Tax Code would continue to include a separate section with an additional 2% tax rate for restaurants/bars and hotel/motel categories. The separate code section has worked for the City in the past as City staff was able to enforce the code. However, with the takeover of transaction privilege tax collections by the State of Arizona on January 1, 2015, there is no guarantee the separate code section would be as fastidiously enforced. The re-codification will make enforcement by the State of Arizona much simpler, ensuring the continued collection of revenues vital to the City of Flagstaff.

Expanded Financial Considerations:

None.

Community Benefits and Considerations:

The proposed re-codification of Chapter 3-06 of the City Code will make it much easier for the Arizona Department of Revenue to collect transaction privilege taxes and to enforce the City of Flagstaff Tax Code. In turn, the City will continue to receive important BBB revenues that the voters have approved.

Community Involvement:

Inform.

Attachments: [Res. 2014-23](#)
 [Ord. No. 2014-15](#)

Form Review

Inbox	Reviewed By	Date
Legal Assistant	Vicki Baker	05/30/2014 04:38 PM
Senior Assistant City Attorney AW	Anja Wendel	06/03/2014 03:24 PM
Management Services Director	Barbara Goodrich	06/03/2014 03:42 PM
DCM - Josh Copley	Josh Copley	06/04/2014 02:38 PM
Form Started By: Andy Wagemaker		Started On: 05/27/2014 08:22 AM
	Final Approval Date: 06/04/2014	

RESOLUTION NO. 2014-23

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF,
ARIZONA, DECLARING THAT CERTAIN DOCUMENT KNOWN AS "THE
2014 BBB TAX RE-CODIFICATION AMENDMENTS" AS A PUBLIC
RECORD, AND PROVIDING FOR AN EFFECTIVE DATE**

RECITALS:

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full;

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1.

That certain document known as "The 2014 BBB Tax Re-Codification Amendments" attached hereto as Exhibit A is hereby declared to be a public record, and three (3) copies shall remain on file with the City Clerk.

SECTION 2.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 15th day of July, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Attachment: Exhibit A The 2014 BBB Tax Re-Codification Amendments

EXHIBIT A

THE 2014 BBB TAX RE-CODIFICATION AMENDMENTS

The Flagstaff City Code, Title 3 *Business Regulations*, Chapter 3-06 *Privilege and Excise* Section 3-05-004-0444 *Hotels* and Section 3-05-004-0455 *Restaurants and Bars* are hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

3-05-004-0444 HOTELS:

The tax rate shall be at an amount equal to THREE ~~one~~ and seven hundred, twenty-onethousandths percent (3.721%) (~~4.721%~~) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or space furnished to any:

- (a) Reserved.
- (b) Transient. "Transient" means any person who, for any period of not more than twenty-nine (29) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel for which lodging or use of lodging space a charge is made.)
- (c) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this section.

3-05-004-0455 RESTAURANTS AND BARS:

- (a) The tax rate shall be at an amount equal to THREE ~~one~~ and seven hundred, twenty-onethousandths percent (3.721%) (~~4.721%~~) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.
- (b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises, shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this Section.
- (c) The tax imposed by this Section shall not apply to sales to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

- (d) The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-1310.01(a)(48), that serves the food and beverages to its passengers, without additional charge, for consumption in flight.
- (e) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours.
- (f) For the purposes of this Section, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

The Flagstaff City Code, Title 3 *Business Regulations*, Chapter 3-06 *Lodging, Restaurant and Lounge Tax*, is hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

CHAPTER 3-06
~~**LODGING, RESTAURANT AND LOUNGE TAX**~~
HOSPITALITY INDUSTRY TAX REVENUES

3-6-001-0001 DEFINITIONS:

ARTS AND SCIENCES: Support for Flagstaff arts, scientific and cultural activities, events and organizations to provide direct and indirect citizen participation and enhancement of the overall quality of life and community image including support of public art.

~~**BAR/LOUNGE:** Any public or private establishment where spirituous liquor, as defined by Arizona Revised Statutes, section 4-101.26, is sold for consumption on the premises.~~

BEAUTIFICATION: Any modification of the urban physical environment to increase pleasure to the senses or pleasurably exalt the mind or spirit or strengthen the urban design framework of the City.

ECONOMIC DEVELOPMENT: The encouragement, promotion and assistance of the expansion of economic activity for the purposes of expanding revenue and providing jobs to the community.

HOSPITALITY INDUSTRY: Those establishments engaged in business as bar/lounge, restaurant or hotel/motel/campground.

HOSPITALITY INDUSTRY TAX REVENUES: A SHARE OF THE LOCAL TRANSACTION PRIVILEGE TAX REVENUES COLLECTED AND RECEIVED PURSUANT TO THE CITY TAX CODE, SECTION 3-05-0004-0444 HOTELS AND 3-05-004-0455 RESTAURANTS AND BARS, WHICH SHARE IS EQUIVALENT TO TWO DIVIDED BY THREE AND SEVEN HUNDRED, TWENTY-ONETHOUSANDTHS ($2 \div 3.721$) OR APPROXIMATELY 53.749% OF ALL SUCH REVENUES.

~~HOTEL/MOTEL/CAMPGROUNDS: Any public or private establishment which provides transient lodging for compensation; except hospitals, rest homes, nursing homes, foster homes, sheltered care homes or residential treatment facilities operated on a not-for-profit basis.~~

PARKS AND RECREATION: The development and management of public parks, recreational facilities, and programs which are available to the residents and visitors including funding the Flagstaff Urban Trail System.

~~RESTAURANT: Any business activity where articles of food, drink or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".~~

TOURISM: The guidance, management, marketing, accommodation, promotion and encouragement of tourists.

TOURISTS/VISITORS: Individuals or groups which visit Flagstaff and surrounding areas for business, recreational, educational, scientific or cultural purposes.

~~TRANSIENT: Person who obtains, at his own or another's expense, lodging for a period of thirty (30) days or less.~~

~~3-06-001-0002~~ ~~TAX RATE:~~

~~There is hereby levied against all hotels/motels/campgrounds, bars and restaurants a tax in the amount of two percent (2%) on the gross sales of that portion of all revenue defined as hotel/motel/ campgrounds, bar or restaurant business. This tax shall be in addition to all other taxes.~~

~~3-06-001-00030002~~ ~~DISTRIBUTION:~~ ~~DISTRIBUTION OF HOSPITALITY INDUSTRY TAX REVENUES:~~

~~There shall be a separate accounting for all funds HOSPITALITY INDUSTRY TAX REVENUES collected under this Chapter. Said funds shall be distributed and expended in an manner consistent with CITY ORDINANCES, the City Charter and State law. The funds collected under this Chapter shall be allocated as follows:~~

~~A. An initial allocation of \$40,000 in 1997, \$30,000 in 1998, \$20,000 in 1999 and \$10,000 in 2000, shall be made for economic development purposes.~~

~~B. After the initial allocation above, the balance of the tax collected shall be distributed as follows:~~

- ~~1. Thirty percent (30%) for tourism in conformance with subsection 3-06-001-0003(A) 3-06-001-0004(A).~~
- ~~2. Twenty percent (20%) for beautification in conformance with subsection 3-06-001-0003(B) 3-06-001-0004(B).~~

3. Nine and one-half percent (9.5%) for economic development in conformance with subsection 3-06-001-0003(C) ~~3-06-001-0004(C)~~.
4. Thirty-three percent (33%) for Parks and Recreation, in conformance with Section 3-0-001-0003(D) ~~3-06-001-0004(D)~~.
5. Seven and one-half percent (7.5%) for Arts and Science in conformance with Section 3-06-001-0003(E) ~~3-06-001-0004(E)~~.

3-06-001-~~0004~~0003 FINANCIAL CONTROL:

- A. Tourism: Those funds designated for tourism shall be administered as follows:
1. The City Council shall appoint a Tourism Commission composed of nine (9) members, five (5) of whom shall be from the hospitality industry. Recommendations for members will be made by the Flagstaff tourism industry; or
 2. The City Council shall designate an appropriate public or private agency to form a Tourism Committee. Said Committee shall be composed of one City Council person and additional members as required, the majority of whom will be from the hospitality industry.
 3. This public or private agency, or Commission shall review the expenditure of the portion of this tax to be applied to tourist related activities and projects and;
 - a. Develop and transmit to the Council an annual master plan outlining the Commission's or public or private agency's program recommendations for the upcoming year.
 - b. Make recommendations to the Council concerning the annual budgetary allocation of the tourism portion of this tax to include, but not be limited to:
 - (1) Providing funding to the qualified, established public or private agency to administer, on a contract basis, tourism programs as required.
 - (2) Developing and implementing a marketing plan. Major elements of the marketing plan will include, but not be limited to, developing a specific image for Flagstaff, identifying target market segments, implementing a promotional plan directed to target market segments.
 - (3) Establishing visitor information center(s) to include, but not be limited to, a high profile location, easy visitor access, adequate staffing, a toll-free telephone number for visitor information, and develop other facilities as needed to benefit visitors and the community.

- (4) Establishing an educational program to include, but not be limited to, scholarships for hospitality education at Northern Arizona University.
 - (5) Promoting activities that enhance the community's image and the overall quality of life.
 - (6) Retaining of appropriate staff to implement approved programs.
 - c. Perform those additional duties determined by the Council as set forth by ordinance.
- B. Beautification: Those funds designated for beautification and public art shall be administered as follows:
 1. The City Council shall appoint a Beautification and Public Art Commission composed of nine (9) members to review the expenditure of the portion of this tax to be applied to beautification activities and projects. Funds for the public art program shall be derived from an allocation of the arts and sciences portion of this tax as set out in Section 3-06-001-0003(E) ~~3-06-001-0004(E)~~ and from other monies as the City Council may consider appropriate.
 2. The Beautification and Public Art Commission shall:
 - (a) Make recommendations concerning the allocation of this tax.
 - (b) Make recommendations to the Council concerning the annual budgetary allocation of the beautification and public art portions of this tax and other monies as deemed appropriate, to include but not be limited to:
 - (1) Purchase, installation or modification of landscaping and irrigation systems
 - (2) Purchase, removal or modification of billboards and nonconforming signs.
 - (3) Beautification of buildings and facilities, streetscapes and gateways.
 - (4) Development and support of the City's public art program.
 - (5) Purchase or lease of easements or property necessary for beautification projects.
 3. Perform those additional duties determined by the Council as set forth by ordinance.

- C. Economic Development: Those funds designated for economic development shall be administered as follows:

The City Council shall:

1. Appoint or act as an Economic Development Commission;
2. Designate an appropriate public or private economic development agency. Said agency shall be composed of at least two City Council persons and additional members as required;
3. This public or private agency, shall:
 - a. Develop and transmit to the Council an annual master plan outlining the Commission's or public or private agency's program recommendations for the upcoming year. Said plan shall be presented to the Council prior to April 1 of each year.
 - b. Make recommendations to the Council concerning the annual budgetary allocation of the economic development portion of this tax, to include but not be limited to:
 - (1) Developing, acquiring and distributing advertising material to promote economic development.
 - (2) Providing financial assistance programs to stimulate relocation and retention of industrial prospects to Flagstaff.
 - (3) Retaining of appropriate staff to implement approved programs.
 - (4) Perform those additional duties determined by the Council as set forth by ordinance.

- D. PARKS AND RECREATION: Those funds designated for Parks and Recreation shall be administered as follows:

The City Council shall:

1. Appoint a Parks and Recreation Commission which shall:
 - a. Review the expenditure of the portion of this tax to be applied to Parks and Recreation related activities and projects.
 - b. Develop and transmit to the Council an annual operating plan outlining the Commission's program recommendations for the upcoming year.
 - c. Make recommendations to the Council concerning the annual budgetary allocation of the Parks and Recreation portion of this tax, to include but not be limited to:

- (1) Developing Parks and Recreation facilities, and programs as needed to benefit the community and its visitors.
- (2) Funding for the Flagstaff Urban Trails System development and maintenance.
- (3) Developing, acquiring and distributing material to promote Parks and Recreation.
- (4) Retaining of appropriate staff to implement approved programs.

d. Perform those additional duties determined by the Council as set forth by ordinance.

E. ARTS AND SCIENCE: Those funds designated for Arts and Science shall be administered as follows:

The City Council shall:

1. Allocate an annual amount for the support and development of the City's public art program to be administered by the Beautification Commission as provided in Section 3-06-001-003(B) ~~3-06-001-0004(B)~~.
2. Designate an appropriate public or private arts and science agency or board.
3. This public or private agency or board, shall:
 - a. Review the expenditure of the portion of this tax to be applied to arts and science related activities and projects; and
 - b. Develop and transmit to the Council an Annual Plan outlining program recommendations for the upcoming year in conjunction with the City's annual budgetary process.
 - c. Make recommendations to the Council concerning the annual budgetary allocation of the Arts and Science portion of this tax, to include but not be limited to:
 - (1) Developing and supporting the Flagstaff arts, scientific and cultural activities, events and organizations to provide direct and indirect citizen participation, and opportunities for enhancement of the overall quality of life and community image.
 - (2) Developing, acquiring and distributing material to promote arts and science.
 - (3) Developing financial assistance programs to stimulate artistic and scientific activities in Flagstaff.
 - (4) Retaining of appropriate staff to implement approved programs.

- d. Perform those additional duties determined by the Council as set forth by ordinance.

~~3-06-001-0005 TECHNICAL ADMINISTRATION:~~

~~The tax shall be collected by the City of Flagstaff. Technical administration, collection, audits, appeals not covered by this Chapter shall be in accordance with the City of Flagstaff Transaction Privilege Tax Ordinance No. 1491 and its amendments.⁴ Should any conflict arise between this Chapter and the City of Flagstaff Transaction Privilege Tax Ordinance, this Chapter shall prevail as it relates to the lodging, restaurant and lounge tax.~~

~~3-06-001-0006-0004 EXEMPTION:~~

~~The HOSPITALITY INDUSTRY TAX REVENUES tax shall be exempt from the limits imposed on spending by article IX, section 20, of the Arizona State Constitution.~~

ORDINANCE NO. 2014-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 3, *BUSINESS REGULATIONS*, CHAPTER 3-05, *PRIVILEGE AND EXCISE TAXES*, CHAPTER 3-06, *LODGING, RESTAURANT AND LOUNGE TAX*, ARE HEREBY AMENDED BY ADOPTING “THE 2014 BBB TAX RE-CODIFICATION AMENDMENTS” BY REFERENCE, AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff imposes a local transaction privilege tax rate of 1.721% on the gross income received from engaging in the business of hotels, restaurants and bars, as set forth in Chapter 3-05 of the City Code (the City Tax Code); and

WHEREAS, the City of Flagstaff imposes an additional local transaction privilege tax rate of 2% on the gross income received from engaging in such business, as set forth in Chapter 3-06 of the City Code, commonly known as the “bed, board and beverage tax”, “BBB tax”, or “hospitality industry tax”; and

WHEREAS, the City desires to consolidate all tax provisions within the City Tax Code to simplify tax collection and reporting; and

WHEREAS, consolidation and re-codification will not result in a new or increased tax on any taxpayer; and

WHEREAS, consolidation and re-codification will not change how tax revenues are distributed for tourism, beautification, economic development, Parks and Recreation, and Arts and Sciences.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, and Chapter 3-06, *Lodging, Restaurant and Lounge Tax*, are hereby amended by adoption of the amendments set forth in that document known as the “2014 BBB Tax Re-Codification Amendments,” declared a public record by Resolution No. 2014-23 and on file with the City Clerk.

SECTION 2. Penalties.

Any person convicted of a violation of Section 3-05-0004-0444, *Hotels*, or Section 3-05-004-0455 *Restaurants and Bars*, of the City Code as amended by this ordinance is guilty of a misdemeanor and shall be fined a sum not to exceed two thousand five hundred dollars (\$2,500.00) and may be sentenced to confinement in jail for a period not to exceed six (6) months for any one offense, all in accordance with Section 3-05-0005-0580, *Criminal Penalties*, of the City Code, and may owe interest and penalties pursuant to Section 3-05-005-0540, *Interest and Civil Penalties*, of the City Code. Any violation which is continuing in nature shall constitute a separate offense on each successive date the violation continues, unless otherwise provided.

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. Clerical Corrections.

The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary related to this ordinance as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency within thirty (30) days following adoption by the City Council.

SECTION 6. Effective Date.

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the Mayor and City Council of the City of Flagstaff this 15th day of July, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Andy Wagemaker, Revenue Director
Date: 05/27/2014
Meeting Date: 07/01/2014



TITLE:

Public Hearing, Consideration and Adoption of Resolution No. 2014-24, and Consideration and Adoption of Ordinance No. 2014-16: A Resolution of the City Council of the City of Flagstaff, Arizona, Declaring that Certain Document Known as "The 2014 Use Tax Adoption and Related City Tax Code Amendments" as a Public Record, and Providing for an Effective Date; and an Ordinance of the City Council of the City of Flagstaff, Arizona, Amending the Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, is Hereby Amended by Adopting "The 2014 Use Tax Adoption and Related City Tax Code Amendments" by reference as Set Forth in that Public Record on File with the City Clerk; Providing for Penalties, Repeal of Conflicting Ordinances, Severability, Authority for Clerical Corrections, and Establishing an Effective Date. **(Adoption of local 1% use tax)**

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

- 1) Hold the Public Hearing
- 2) Read Resolution No. 2014-24 by title only
- 3) The City Clerk reads Resolution No. 2014-24 by title only (if approved above)
- 4) Read Ordinance No. 2014-16 by title only for the first time
- 5) City Clerk reads Ordinance No. 2014-16 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

- 6) Adopt Resolution No. 2014-24
- 7) Read Ordinance No. 2014-16 by title only for the final time
- 8) City Clerk reads Ordinance No. 2014-16 by title only for the final time (if approved above)
- 9) Adopt Ordinance No. 2014-16

Policy Decision or Reason for Action:

As part of the FY15 budget preparations, a list of possible revenue sources was presented to City Council. After further discussion at FY15 budget retreats, City Council requested staff to proceed with steps necessary for adoption of a use tax at the base rate of 1%. The public hearing, resolution adoption, and ordinance adoption are the formal procedures required to adopt the use tax.

Subsidiary Decisions Points: None.

Financial Impact:

The City does not currently levy a use tax. If the proposed resolution and ordinance are approved, the City will levy a use tax at a rate of 1%. The estimated revenue for the first year is \$100,000. Future years are estimated at \$250,000 per year.

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

Yes. Use tax has been discussed multiple times during budget preparations for FY15.

Options and Alternatives:

- 1) Adopt the proposed resolution and proposed ordinance and set an effective date of October 1, 2014.
- 2) Do not adopt the proposed resolution and proposed ordinance and do not set an effective date of October 1, 2014.

Background/History:**Model City Tax Code; Use Taxes**

Arizona cities and towns have had the ability to impose local taxes since before statehood. Local taxes include local transaction privilege taxes, use taxes, license taxes, and property taxes. In 1987 the City of Flagstaff and other Arizona cities and towns approved the Model City Tax Code ("MCTC"), a uniform tax code that includes several options for imposition of a local transaction privilege tax, use tax, and some exemptions. Each city has the right to set its own tax rates. A copy of all MCTC options is located on the Arizona Department of Revenue website, www.azdor.gov. The City of Flagstaff's adopted version of the MCTC is located at Chapter 3-05 of the City Code and can be accessed on the City website, www.flagstaffaz.gov. The City imposes a local transaction privilege tax ("TPT"), which is a tax on gross income or gross proceeds from engaging in business within the City. This is a tax on certain businesses, although businesses may elect to "pass through" the tax to the customer. The City's base TPT rate is currently 1.721% and there is an additional voter approved 2% levied on the restaurant/bar and the hotel/motel classifications ("BBB Tax"). The City Charter requires voters to approve any rate change in the TPT.

The City is considering adoption of a use tax. A use tax is a tax on storage or use of tangible personal property in the City. The use tax is similar to the local transaction privilege tax but is an "affiliated excise tax." A use tax is imposed on the user, not the business that sold the item. However in some instances the business may collect and remit the use tax. A use tax is typically imposed in the situation where a person has purchased an item outside the state of Arizona where there is no sales tax (such as Oregon), but uses the item within the City. The City will not collect a use tax from anyone who has already paid an equivalent local transaction privilege tax. Many times, the use tax is considered an equitability tax because it creates a level playing field for all businesses. Local businesses that are required to levy a transaction privilege tax will not have an unfair disadvantage over those non-City businesses that can sell products tax free. The City Charter does not require or allow voters to approve a use tax.

Use tax is a common tax levied throughout the United States and within the State of Arizona. The State of Arizona collects use tax. 52% of all Arizona cities collect a use tax. Of Arizona cities with a population over 20,000, 73% collect a use tax. Of Arizona cities larger than Flagstaff, 83% collect a use tax.

Examples of Use Tax Remittance

Three examples of use tax remittance are noted below.

Example 1: New Car Sales from Outside the State of Arizona

A vehicle is purchased from an out-of-state car dealer and brought back to Arizona. The purchaser did not pay any local sales tax in the other state. The owner of the vehicle lives in Flagstaff and registers the

car in Flagstaff. The owner is subject to Arizona and Flagstaff Use Tax.

Example 2: New Chain Restaurant Opens in Flagstaff

A new chain restaurant is opened in Flagstaff. Fixtures and equipment are purchased from out-of-state and delivered to Flagstaff. The purchaser did not pay any local sales tax in the other state. The new store's fixtures and equipment are subject to Arizona and Flagstaff Use Tax.

Example 3: New Equipment for Dental Office in Flagstaff

A dentist in Flagstaff purchases dental equipment from an out-of-state vendor. The purchaser did not pay any local sales tax in the other state. The dentist is subject to Arizona and Flagstaff Use Tax.

Important Points

There are exemptions within the use tax category that will apply with a use tax adoption. Key exemptions are noted below.

- New residents that move to Flagstaff and transfer their possessions from other areas are not subject to a use tax on such transfers.
- An item purchased by an individual for less than \$1,000 for personal use and enjoyment is not subject to a use tax.
- Casual sales between individuals are not subject to a use tax.
- Purchases where an equivalent sales tax is paid are not subject to a use tax.

Propose Use Tax Code Changes

Model Option 15 (Proposed City Code Division 3-05-006)

In order to implement a use tax, City Council must remove Model Option 15. The removal of this option will allow the City to impose a use tax.

Local Option AA (Proposed City Code Section 3-05-006-0660(X))

Staff recommends adopting Local Option AA and exempt cost of restaurant employee meals from use tax. The amount of revenue from this portion of the use tax is projected to be relatively small and it may be an undue burden on businesses to report.

Local Option HH (Proposed City Code Section 3-05-006-0660(Y))

Staff recommends adopting Local Option HH and exempt cost of charitable donations from use tax. The amount of revenue from this portion of the use tax is projected to be relatively small and it may hamper future donations by individuals or businesses if there is a tax associated with the donation.

Local Option JJ (Information Only) (Proposed City Code Section 3-05-006-0660(Z)(Reserved))

There is no decision for Council on Local Option JJ. However, staff wanted Council to be aware that the City does not exempt itself from the remittance of use tax. The City currently pays use tax to the state and if the resolution and ordinance are passed, the City will start paying use tax to itself.

Key Considerations:

If the Council adopts the proposed resolution and ordinance, staff will perform outreach to notify Flagstaff area businesses. Examples of outreach staff will perform, include, but are not limited to: informational inserts in transaction privilege tax returns, mailers, newspaper releases, web notices, and tax information sessions.

Expanded Financial Considerations:

None.

Community Involvement:

Inform. The public has been made aware of the possible adoption of a proposed use tax via the following: A use tax was discussed at the FY15 budget meetings held in April, which were public meetings, and information concerning budget discussions was reported in the local paper, the Arizona Daily Sun. Notice of a proposed use tax has been posted on the homepages of the City website continuously since April 28, 2014. In addition, notice of a public hearing on the proposed use tax was published in the newspaper at least ten (10) days prior to the July 1, 2014 Council Meeting. The public hearing enables the public to voice their support or concerns. In addition, City staff has personally contacted some taxpayers to discuss possible impact of the tax.

Attachments: Resolution No. 2014-24
 Ordinance No. 2014-16

Form Review

Inbox	Reviewed By	Date
Legal Assistant	Vicki Baker	06/02/2014 03:01 PM
Senior Assistant City Attorney AW	Vicki Baker	06/16/2014 04:53 PM
Management Services Director	Barbara Goodrich	06/17/2014 03:45 PM
DCM - Josh Copley	Stacy Saltzburg	06/17/2014 04:41 PM
Management Services Director	Barbara Goodrich	06/18/2014 09:28 AM
Form Started By: Andy Wagemaker		Started On: 05/27/2014 01:53 PM
	Final Approval Date: 06/18/2014	

RESOLUTION NO. 2014-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING THAT CERTAIN DOCUMENT KNOWN AS "THE 2014 USE TAX ADOPTION AND RELATED CITY TAX CODE AMENDMENTS" AS A PUBLIC RECORD, AND PROVIDING FOR AN EFFECTIVE DATE

RECITALS:

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full;

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1.

That certain document known as "The 2014 Use Tax Adoption and Related City Tax Code Amendments" attached hereto as Exhibit A is hereby declared to be a public record, and three (3) copies shall remain on file with the City Clerk.

SECTION 2.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 15th day of July, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Attachment: Exhibit A The 2014 Use Tax Adoption and Related City Tax Code Amendments

EXHIBIT A**THE 2014 USE TAX ADOPTION AND RELATED TAX CODE AMENDMENTS**

The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, Division 3-05-002, *Determination of Gross Income*, Section 3-05-002-0270, *Exclusion Of Gross Income of Persons Deemed Not Engaged in Business*, is hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

3-05-002-0270 EXCLUSION OF GROSS INCOME OF PERSONS DEEMED NOT ENGAGED IN BUSINESS:

- A. For the purposes of this Section, the following definitions shall apply:
1. **FEDERALLY EXEMPT ORGANIZATION:** An organization which has received a determination of exemption, or qualifies for such exemption, under 26 U.S.C. Section 501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity", "nonlicensed business", or " public educational entity".
 2. **GOVERNMENTAL ENTITY:** The Federal government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.
 3. **NONLICENSED BUSINESS:** Any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.
 4. **PROPRIETARY CLUB:** Any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. Section 502(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.
 5. **PUBLIC EDUCATIONAL ENTITY:** Any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.
- B. Transactions which, if conducted by any other person, would produce gross income subject to tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a public educational entity; governmental entity, except "proprietary activities" of municipalities as provided by regulation; or nonlicensed business.
- C. Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:

1. Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. Section 501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona-fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue, as prescribed by regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.

2. Gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and the administrative interpretations and guidelines.

3. Reserved

D. Except as may be provided elsewhere in this Chapter, transactions where customers are exempt organizations, proprietary clubs, public educational entities, governmental entities, or nonlicensed businesses shall be deemed taxable transactions for the purpose of the imposition of taxes under this Chapter, notwithstanding that property so acquired may in fact be resold or leased by the acquiring person to others. In the case of sales, rentals, leases, or licenses to proprietary clubs or exempt organizations, the vendor may be relieved from the responsibility for reporting and paying tax on such income only by obtaining from its vendee a verified statement that includes:

1. A statement that when the property so acquired is resold, rented, leased, or licensed, that the otherwise exempt vendee chooses, or is required to pay City privilege tax or an equivalent excise tax on its gross income from such transactions and does in fact file returns on same; and

2. The privilege license number of the otherwise exempt vendee; and

3. Such other information as the Tax Collector may require.

E. Franchisees or concessionaires operating businesses for or on behalf of any exempt organization, governmental entity, public educational entity, proprietary club, or nonlicensed business shall not be considered to be such an exempt organization, club, entity, or nonlicensed business, but shall be deemed to be a taxpayer subject to the provisions of this Chapter, except as provided in the definition of governmental entity, regarding urban mass transit.

F. ~~Reserved.~~ IN ANY CASE, IF A FEDERALLY EXEMPT ORGANIZATION, PROPRIETARY CLUB, OR NON-LICENSED BUSINESS RENTS, LEASES, LICENSES, OR PURCHASES ANY TANGIBLE PERSONAL PROPERTY FOR ITS OWN STORAGE OR USE, AND NO CITY PRIVILEGE OR USE TAX OR EQUIVALENT EXCISE TAX HAS BEEN PAID ON SUCH TRANSACTION, SAID ORGANIZATION, CLUB, OR BUSINESS SHALL BE LIABLE FOR THE USE TAX UPON SUCH ACQUISITIONS OR USE OF SUCH PROPERTY.

...

The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, Division 3-05-003, *Licensing and Recordkeeping*, Section 3-0-003-0300, *Licensing Requirements*, is hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

3-05-003-0300 LICENSING REQUIREMENTS:

A. The following persons shall make application to the Tax Collector for a privilege license, accompanied by a nonrefundable fee of forty-six dollars (\$46.00), and no person shall engage or continue in business or engage in such activities until he shall have such a license:

1. Every person desiring to engage or continue in business activities within the City upon which a privilege tax is imposed by this Chapter.
2. ~~Reserved.~~ EVERY PERSON, ENGAGING OR CONTINUING IN BUSINESS WITHIN THE CITY, STORING OR USING TANGIBLE PERSONAL PROPERTY IN THIS CITY UPON WHICH A USE TAX IS IMPOSED BY THIS CHAPTER.
3. Reserved.

B. A person engaged in more than one activity subject to City privilege and use taxes at any one business location is not required to obtain a separate license for each activity; provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged. The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.

C. Limitation: The issuance of a privilege license by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.

...

The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05 *Privilege and Excise Taxes*, Division 3-05-004 *Privilege Taxes*, Section 3-05-004-0415 *Construction Contracting; Construction Contractors*, Section 3-05-004-0416 *Construction Contracting; Speculative Builders*, Section 3-05-004-0417 *Construction Contracting; Owner Builders who are not Speculative Builders*, are hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

3-05-004-0415 CONSTRUCTION CONTRACTING; CONSTRUCTION CONTRACTORS

(a) The tax rate shall be at an amount equal to one and seven hundred twenty-one thousandths percent (1.721%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.

- (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by Arizona Revised Statutes Section 45-604.
 - (2) Reserved.
 - (3) Gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 3-05-004-0427.
 - (4) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.
- (b) Deductions and exemptions:
- (1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.
 - (2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).
 - (3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
 - (A) Section 3-05-004-0465, Subsections (g) and (p)
 - (B) ~~(Reserved)~~ SECTION 3-05-006-0660, SUBSECTIONS (G) AND (P)
Shall be exempt or deductible, respectively, from the tax imposed by this section.
 - (4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 3-05-001-0110, that is deducted from the retail classification pursuant to Section 3-05-004-0465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project development or improvement shall be exempt from the tax imposed by this section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "Permanent Attachment" means at least one of the following:

- (A) To be incorporated into real property.
- (B) To become so affixed to real property that it becomes part of the real property.
- (C) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.

(6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 3-05-004-0465, subsection (g) shall be exempt from the tax imposed under this section.

(7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water, or land pollution shall be exempt from the tax imposed under this section.

(8) The gross proceeds of sales or gross income received from a post-construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this section.

(9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

- (A) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, subsection D.
- (B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.
- (C) Any other information considered to be necessary.

(10) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(A) the attributable amount shall not exceed the value of the development fees actually imposed.

(B) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(C) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(11) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(c) Subcontractor means a construction contractor performing work for either:

(1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his city Privilege License number.

(2) an owner-builder who has provided the subcontractor with a written declaration that:

(A) the owner-builder is improving the property for sale; and

(B) the owner-builder is liable for the tax for such construction contracting activity; and

(C) the owner-builder has provided the contractor his city Privilege License number.

(3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

3-05-004-0416 CONSTRUCTION CONTRACTING; SPECULATIVE BUILDERS:

(a) The tax shall be equal to one and seven hundred twenty-one thousandths percent (1.721%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.

(1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

(2) "Improved real property" means any real property:

(A) Upon which a structure has been constructed; or

(B) Where improvements have been made to land containing no structure (such as paving or landscaping); or

(C) Which has been reconstructed as provided by regulation; or

(D) Where water, power, and streets have been constructed to the property line.

(3) "Sale of improved real property," includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.

(4) "Partially Improved Residential Real Property," as used in this Section means any improved real property, as defined in Subsection A.2. above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

(b) Exclusions:

(1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by regulation.

(2) Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this section.

(3) Reserved.

(4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in A.4. above to another speculative builder only if all of the following conditions are satisfied:

(A) The speculative builder purchasing the partially improved residential real property has a valid City privilege license for construction contracting as a speculative builder; and

(B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and

(C) The seller also:

(i) Maintains proper records of such transactions in a manner similar to the requirements provided in this Chapter relating to sales for resale; and

(ii) Retains a copy of the written declaration provided by the buyer for the transaction; and

(iii) Is properly licensed with the City as a speculative builder and provides the City with a written declaration attached to the City privilege tax return where he claims the exclusion.

(5) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to deductions and tax credits.

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section 3-05-004-0465, subsections (g) and (p)

(ii) ~~(Reserved)~~ SECTION 3-05-006-0660, SUBSECTIONS (G) AND (P) Shall be exempt or deductible, respectively, from the tax imposed by this section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 3-05-004-0465, subsection (g) shall be exempt from the tax imposed under this section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water, or land pollution shall be exempt from the tax imposed under this section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) the attributable amount shall not exceed the value of the development fees actually imposed.

(ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-

producing capital equipment, as defined in Section 3-05-110, that is deducted from the retail classification pursuant to Section 3-05-004-0465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project development or improvement shall be exempt from the tax imposed by this section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "Permanent Attachment" means at least one of the following:

- (i) To be incorporated into real property.
- (ii) To become so affixed to real property that it becomes part of the real property.
- (iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(3) Tax Credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:

(A) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of Privilege Taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

3-05-004-0417 CONSTRUCTION CONTRACTING; OWNER-BUILDERS WHO ARE NOT SPECULATIVE BUILDERS

(a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to one and seven hundred twenty-one thousandths percent (1.721%) of:

(1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in subsection 3-05-004-0415 C.2.; and

(2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) The tax liability of this Section is subject to the following provisions, relating to exemptions, deductions and tax credits.

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section 3-05-004-0465, subsections (g) and (p)

(ii) ~~(Reserved)~~ SECTION 3-05-006-0660 SUBSECTIONS (G) AND (P)

Shall be exempt or deductible, respectively, from the tax imposed by this section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 3-05-004-0465, subsection (g) shall be exempt from the tax imposed under this section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water, or land pollution shall be exempt from the tax imposed under this section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) the attributable amount shall not exceed the value of the development fees actually imposed.

(ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 3-05-001-0110, that is deducted from the retail classification pursuant to Section 3-05-004-0465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project development or improvement shall be exempt from the tax imposed by this section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the

installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "Permanent Attachment" means at least one of the following:

- (i) To be incorporated into real property.
- (ii) To become so affixed to real property that it becomes part of the real property.
- (iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(3) Tax Credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:

(A) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of Privilege Taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(d) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 3-05-005-0540, will be based on reportable date.

(e) Reserved.

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The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, Division 3-05-006, *Miscellaneous Provisions*, is amended by renumbering such division as Division 3-05-008, and by renumbering sections 3-05-006-0600 through 3-05-006-0610 as 3-05-006-0800 through 3-05-006-0810.

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The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, is amended by adopting a new Division 3-05-006, *Use Tax*, as set forth below (additions shown as capitalized text):

**DIVISION 3-05-006
USE TAX**

SECTIONS:

- 3-05-006-0600 USE TAX: DEFINITIONS.
- 3-05-006-0610 USE TAX: IMPOSITION OF TAX; PRESUMPTION.
- 3-05-006-0620 USE TAX: LIABILITY FOR TAX.
- 3-05-006-0630 USE TAX: RECORDKEEPING REQUIREMNTS.
- 3-05-006-0640 USE TAX: CREDIT FOR EQUIVALENT EXCISE TAXES PAID TO ANOTHER JURISDICTION
- 3-05-006-0650 USE TAX: EXCLUSION WHEN ACQUISITION SUBJECT TO USE TAX IS TAXED OR TAXABLE ELSEWHERE IN THIS CHAPTER; LIMITATION.
- 3-05-006-0660 USE TAX: USE TAX EXEMPTIONS.

SEC. 3-05-006-0600. USE TAX: DEFINITIONS.

FOR THE PURPOSES OF THIS DIVISION ONLY, THE FOLLOWING DEFINITIONS SHALL APPLY, IN ADDITION TO THE DEFINITIONS PROVIDED IN DIVISION 3-05-001:

"ACQUIRE (FOR STORAGE OR USE)" MEANS PURCHASE, RENT, LEASE, OR LICENSE FOR STORAGE OR USE.

"RETAILER" ALSO MEANS ANY PERSON SELLING, RENTING, LICENSING FOR USE, OR LEASING TANGIBLE PERSONAL PROPERTY UNDER CIRCUMSTANCES WHICH WOULD RENDER SUCH TRANSACTIONS SUBJECT TO THE TAXES IMPOSED IN DIVISION 3-05-004, IF SUCH TRANSACTIONS HAD OCCURRED WITHIN THIS CITY.

"STORAGE (WITHIN THE CITY)" MEANS THE KEEPING OR RETAINING OF TANGIBLE PERSONAL PROPERTY AT A PLACE WITHIN THE CITY FOR ANY PURPOSE, EXCEPT FOR THOSE ITEMS ACQUIRED SPECIFICALLY AND SOLELY FOR THE PURPOSE OF SALE, RENTAL, LEASE, OR LICENSE FOR USE IN THE REGULAR COURSE OF BUSINESS OR FOR THE PURPOSE OF SUBSEQUENT USE SOLELY OUTSIDE THE CITY.

"USE (OF TANGIBLE PERSONAL PROPERTY)" MEANS CONSUMPTION OR EXERCISE OF ANY OTHER RIGHT OR POWER OVER TANGIBLE PERSONAL PROPERTY INCIDENT TO THE OWNERSHIP THEREOF EXCEPT THE HOLDING FOR THE SALE, RENTAL, LEASE, OR LICENSE FOR USE OF SUCH PROPERTY IN THE REGULAR COURSE OF BUSINESS.

SEC. 3-05-006-0601. (RESERVED).

SEC. 3-05-006-602. (RESERVED).

SEC. 3-05-006-610. USE TAX: IMPOSITION OF TAX; PRESUMPTION.

(A) THERE IS HEREBY LEVIED AND IMPOSED, SUBJECT TO ALL OTHER PROVISIONS OF THIS CHAPTER, AN EXCISE TAX ON THE STORAGE OR USE IN THE CITY OF TANGIBLE PERSONAL PROPERTY, FOR THE PURPOSE OF RAISING REVENUE TO BE USED IN DEFRAYING THE NECESSARY EXPENSES OF THE CITY, SUCH TAXES TO BE COLLECTED BY THE TAX COLLECTOR.

(B) THE TAX RATE SHALL BE AT AN AMOUNT EQUAL TO ONE PERCENT (1.0%) OF THE:

(1) COST OF TANGIBLE PERSONAL PROPERTY ACQUIRED FROM A RETAILER, UPON EVERY PERSON STORING OR USING SUCH PROPERTY IN THIS CITY.

(2) GROSS INCOME FROM THE BUSINESS ACTIVITY UPON EVERY PERSON MEETING THE REQUIREMENTS OF SUBSECTION 3-05-006-0620(B) OR (C) WHO IS ENGAGED OR CONTINUING IN THE BUSINESS ACTIVITY OF SALES, RENTALS, LEASES, OR LICENSES OF TANGIBLE PERSONAL PROPERTY TO PERSONS WITHIN THE CITY FOR STORAGE OR USE WITHIN THE CITY, TO THE EXTENT THAT TAX HAS BEEN COLLECTED UPON SUCH TRANSACTION.

(3) COST OF THE TANGIBLE PERSONAL PROPERTY PROVIDED UNDER THE CONDITIONS OF A WARRANTY, MAINTENANCE, OR SERVICE CONTRACT.

(4) COST OF COMPLIMENTARY ITEMS PROVIDED TO PATRONS WITHOUT ITEMIZED CHARGE BY A RESTAURANT, HOTEL, OR OTHER BUSINESS.

(5) (RESERVED)

(C) IT SHALL BE PRESUMED THAT ALL TANGIBLE PERSONAL PROPERTY ACQUIRED BY ANY PERSON WHO AT THE TIME OF SUCH ACQUISITION RESIDES IN THE CITY IS ACQUIRED FOR STORAGE OR USE IN THIS CITY, UNTIL THE CONTRARY IS ESTABLISHED BY THE TAXPAYER.

(D) EXCLUSIONS. FOR THE PURPOSES OF THIS DIVISION, THE ACQUISITION OF THE FOLLOWING SHALL NOT BE DEEMED TO BE THE PURCHASE, RENTAL, LEASE, OR LICENSE OF TANGIBLE PERSONAL PROPERTY FOR STORAGE OR USE WITHIN THE CITY:

(1) STOCKS, BONDS, OPTIONS, OR OTHER SIMILAR MATERIALS.

(2) LOTTERY TICKETS OR SHARES SOLD PURSUANT TO ARTICLE I, CHAPTER 5, TITLE 5, ARIZONA REVISED STATUTES.

(3) PLATINUM, BULLION, OR MONETIZED BULLION, EXCEPT MINTED OR MANUFACTURED COINS TRANSFERRED OR ACQUIRED PRIMARILY FOR THEIR NUMISMATIC VALUE AS PRESCRIBED BY REGULATION.

(E) (RESERVED)

(F) (RESERVED)

SEC. 3-05-006-0620. USE TAX: LIABILITY FOR TAX.

THE FOLLOWING PERSONS SHALL BE DEEMED LIABLE FOR THE TAX IMPOSED BY THIS DIVISION; AND SUCH LIABILITY SHALL NOT BE EXTINGUISHED UNTIL THE TAX HAS BEEN PAID TO THIS CITY, EXCEPT THAT A RECEIPT FROM A RETAILER SEPARATELY CHARGING THE TAX IMPOSED BY THIS CHAPTER IS SUFFICIENT TO RELIEVE THE PERSON ACQUIRING SUCH PROPERTY FROM FURTHER LIABILITY FOR THE TAX TO WHICH THE RECEIPT REFERS:

(A) ANY PERSON WHO ACQUIRES TANGIBLE PERSONAL PROPERTY FROM A RETAILER, WHETHER OR NOT SUCH RETAILER IS LOCATED IN THIS CITY, WHEN SUCH PERSON STORES OR USES SAID PROPERTY WITHIN THE CITY.

(B) ANY RETAILER NOT LOCATED WITHIN THE CITY, SELLING, RENTING, LEASING, OR LICENSING TANGIBLE PERSONAL PROPERTY FOR STORAGE OR USE OF SUCH PROPERTY WITHIN THE CITY, MAY OBTAIN A LICENSE FROM THE TAX COLLECTOR AND COLLECT THE USE TAX ON SUCH TRANSACTIONS. SUCH RETAILER SHALL BE LIABLE FOR THE USE TAX TO THE EXTENT SUCH USE TAX IS COLLECTED FROM HIS CUSTOMERS.

(C) EVERY AGENT WITHIN THE CITY OF ANY RETAILER NOT MAINTAINING AN OFFICE OR PLACE OF BUSINESS IN THIS CITY, WHEN SUCH PERSON SELLS, RENTS, LEASES, OR LICENSING TANGIBLE PERSONAL PROPERTY FOR STORAGE OR USE IN THIS CITY SHALL, AT THE TIME OF SUCH TRANSACTION, COLLECT AND BE LIABLE FOR THE TAX IMPOSED BY THIS DIVISION UPON THE STORAGE OR USE OF THE PROPERTY SO TRANSFERRED, UNLESS SUCH RETAILER OR AGENT IS LIABLE FOR AN EQUIVALENT EXCISE TAX UPON THE TRANSACTION.

(D) ANY PERSON WHO ACQUIRES TANGIBLE PERSONAL PROPERTY FROM A RETAILER LOCATED IN THE CITY AND SUCH PERSON CLAIMS TO BE EXEMPT FROM THE CITY PRIVILEGE OR USE TAX AT THE TIME OF THE TRANSACTION, AND UPON WHICH NO CITY PRIVILEGE TAX WAS CHARGED OR PAID, WHEN SUCH CLAIM IS NOT SUSTAINABLE.

(E) EVERY PERSON STORING OR USING TANGIBLE PERSONAL PROPERTY UNDER THE CONDITIONS OF A WARRANTY, MAINTENANCE, OR SERVICE CONTRACT.

SEC. 3-05-006-0630. USE TAX: RECORDKEEPING REQUIREMENTS.

ALL DEDUCTIONS, EXCLUSIONS, EXEMPTIONS, AND CREDITS PROVIDED IN THIS DIVISION ARE CONDITIONAL UPON ADEQUATE PROOF OF DOCUMENTATION AS REQUIRED BY DIVISION 3-05-003 OR ELSEWHERE IN THIS CHAPTER.

SEC. 3-05-006-0-640. USE TAX: CREDIT FOR EQUIVALENT EXCISE TAXES PAID ANOTHER JURISDICTION.

IN THE EVENT THAT AN EQUIVALENT EXCISE TAX HAS BEEN LEVIED AND PAID UPON TANGIBLE PERSONAL PROPERTY WHICH IS ACQUIRED TO BE STORED OR USED WITHIN THIS CITY, FULL CREDIT FOR ANY AND ALL SUCH TAXES SO PAID SHALL BE ALLOWED BY THE TAX COLLECTOR BUT ONLY TO THE EXTENT USE TAX IS IMPOSED UPON THAT TRANSACTION BY THIS DIVISION.

SEC. 3-05-006-0650. USE TAX: EXCLUSION WHEN ACQUISITION SUBJECT TO USE TAX IS TAXED OR TAXABLE ELSEWHERE IN THIS CHAPTER; LIMITATION.

THE TAX LEVIED BY THIS DIVISION DOES NOT APPLY TO THE STORAGE OR USE IN THIS CITY OF TANGIBLE PERSONAL PROPERTY ACQUIRED IN THIS CITY, THE GROSS INCOME FROM THE SALE, RENTAL, LEASE, OR LICENSE OF WHICH WERE INCLUDED IN THE MEASURE OF THE TAX IMPOSED BY DIVISION 3-05-004 OF THIS CHAPTER; PROVIDED, HOWEVER, THAT ANY PERSON WHO HAS ACQUIRED TANGIBLE PERSONAL PROPERTY FROM A VENDOR IN THIS CITY WITHOUT PAYING THE CITY PRIVILEGE TAX BECAUSE OF A REPRESENTATION TO THE VENDOR THAT THE PROPERTY WAS NOT SUBJECT TO SUCH TAX, WHEN SUCH CLAIM IS NOT SUSTAINABLE, MAY NOT CLAIM THE EXCLUSION FROM SUCH USE TAX PROVIDED BY THIS SECTION.

SEC. 3-05-006-0660. USE TAX: EXEMPTIONS.

THE STORAGE OR USE IN THIS CITY OF THE FOLLOWING TANGIBLE PERSONAL PROPERTY IS EXEMPT FROM THE USE TAX IMPOSED BY THIS DIVISION:

(A) TANGIBLE PERSONAL PROPERTY BROUGHT INTO THE CITY BY AN INDIVIDUAL WHO WAS NOT A RESIDENT OF THE CITY AT THE TIME THE PROPERTY WAS ACQUIRED FOR HIS OWN USE, IF THE FIRST ACTUAL USE OF SUCH PROPERTY WAS OUTSIDE THE CITY, UNLESS SUCH PROPERTY IS USED IN CONDUCTING A BUSINESS IN THIS CITY.

(B) TANGIBLE PERSONAL PROPERTY, THE VALUE OF WHICH DOES NOT EXCEED THE AMOUNT OF ONE THOUSAND DOLLARS (\$1,000) PER ITEM, ACQUIRED BY AN INDIVIDUAL OUTSIDE THE LIMITS OF THE CITY FOR HIS PERSONAL USE AND ENJOYMENT.

(C) CHARGES FOR DELIVERY, INSTALLATION, OR OTHER CUSTOMER SERVICES, AS PRESCRIBED BY REGULATION.

(D) CHARGES FOR REPAIR SERVICES, AS PRESCRIBED BY REGULATION.

(E) SEPARATELY ITEMIZED CHARGES FOR WARRANTY, MAINTENANCE, AND SERVICE CONTRACTS.

(F) PROSTHETICS.

(G) INCOME-PRODUCING CAPITAL EQUIPMENT.

(H) RENTAL EQUIPMENT AND RENTAL SUPPLIES.

(I) MINING AND METALLURGICAL SUPPLIES.

(J) MOTOR VEHICLE FUEL AND USE FUEL WHICH ARE USED UPON THE HIGHWAYS OF THIS STATE AND UPON WHICH A TAX HAS BEEN IMPOSED UNDER THE PROVISIONS OF ARTICLE I OR II, CHAPTER 16, TITLE 28, ARIZONA REVISED STATUTES.

(K) TANGIBLE PERSONAL PROPERTY PURCHASED BY A CONSTRUCTION CONTRACTOR, BUT NOT AN OWNER-BUILDER, WHEN SUCH PERSON HOLDS A VALID PRIVILEGE LICENSE FOR ENGAGING OR CONTINUING IN THE BUSINESS OF CONSTRUCTION CONTRACTING, AND WHERE THE PROPERTY ACQUIRED IS INCORPORATED INTO ANY STRUCTURE OR IMPROVEMENT TO REAL PROPERTY IN FULFILLMENT OF A CONSTRUCTION CONTRACT.

(L) SALES OF MOTOR VEHICLES TO NONRESIDENTS OF THIS STATE FOR USE OUTSIDE THIS STATE IF THE VENDOR SHIPS OR DELIVERS THE MOTOR VEHICLE TO A DESTINATION OUTSIDE THIS STATE.

(M) TANGIBLE PERSONAL PROPERTY WHICH DIRECTLY ENTERS INTO AND BECOMES AN INGREDIENT OR COMPONENT PART OF A PRODUCT SOLD IN THE REGULAR COURSE OF THE BUSINESS OF JOB PRINTING, MANUFACTURING, OR PUBLICATION OF NEWSPAPERS, MAGAZINES OR OTHER PERIODICALS. TANGIBLE PERSONAL PROPERTY WHICH IS CONSUMED OR USED UP IN A MANUFACTURING, JOB PRINTING, PUBLISHING, OR PRODUCTION PROCESS IS NOT AN INGREDIENT NOR COMPONENT PART OF A PRODUCT.

(N) RENTAL, LEASING, OR LICENSING FOR USE OF FILM, TAPE, OR SLIDES BY A THEATER OR OTHER PERSON TAXED UNDER SECTION 3-05-004-0410, OR BY A RADIO STATION, TELEVISION STATION, OR SUBSCRIPTION TELEVISION SYSTEM.

(O) FOOD SERVED TO PATRONS FOR A CONSIDERATION BY ANY PERSON ENGAGED IN A BUSINESS PROPERLY LICENSED AND TAXED UNDER SECTION 3-05-004-0455, BUT NOT FOOD CONSUMED BY OWNERS, AGENTS, OR EMPLOYEES OF SUCH BUSINESS.

(P) TANGIBLE PERSONAL PROPERTY ACQUIRED BY A QUALIFYING HOSPITAL, QUALIFYING COMMUNITY HEALTH CENTER OR A QUALIFYING HEALTH CARE ORGANIZATION, EXCEPT WHEN THE PROPERTY IS IN FACT USED IN ACTIVITIES RESULTING IN GROSS INCOME FROM UNRELATED BUSINESS INCOME AS THAT TERM IS DEFINED IN 26 U.S.C. SECTION 512.

(Q) (RESERVED).

(R) (RESERVED)

(1) (RESERVED)

(2) (RESERVED)

(3) (RESERVED)

(4) (RESERVED)

(S) GROUNDWATER MEASURING DEVICES REQUIRED BY A.R.S. SECTION 45-604.

(T) (RESERVED)

(U) AIRCRAFT ACQUIRED FOR USE OUTSIDE THE STATE, AS PRESCRIBED BY REGULATION.

(V) SALES OF FOOD PRODUCTS BY PRODUCERS AS PROVIDED FOR BY A.R.S. SECTION 3-561, 3-562 AND 3-563.

(W) (RESERVED)

(X) FOOD AND DRINK PROVIDED BY A PERSON WHO IS ENGAGED IN BUSINESS THAT IS CLASSIFIED UNDER THE RESTAURANT CLASSIFICATION WITHOUT MONETARY CHARGE TO ITS EMPLOYEES FOR THEIR OWN CONSUMPTION ON THE PREMISES DURING SUCH EMPLOYEES' HOURS OF EMPLOYMENT.

(Y) TANGIBLE PERSONAL PROPERTY DONATED TO AN ORGANIZATION OR ENTITY QUALIFYING AS AN EXEMPT ORGANIZATION UNDER 26 U.S.C SECTION 501(C)(3); IF AND ONLY IF:

(1) THE DONOR IS ENGAGED OR CONTINUING IN A BUSINESS ACTIVITY SUBJECT TO A TAX IMPOSED BY DIVISION 3-05-004; AND

(2) THE DONOR ORIGINALLY PURCHASED THE DONATED PROPERTY FOR RESALE IN THE ORDINARY COURSE OF THE DONOR'S BUSINESS; AND

(3) THE DONOR OBTAINED FROM THE DONEE A LETTER OR OTHER EVIDENCE SATISFACTORY TO THE TAX COLLECTOR OF QUALIFICATION UNDER 26 U.S.C. SECTION 501(C)(3) FROM THE INTERNAL REVENUE SERVICE OR OTHER APPROPRIATE FEDERAL AGENCY; AND

(4) THE DONOR MAINTAINS, AND PROVIDES UPON DEMAND, SUCH EVIDENCE TO THE TAX COLLECTOR, IN A MANNER SIMILAR TO OTHER DOCUMENTATION REQUIRED UNDER 3-05-003.

(Z) (RESERVED)

(AA) TANGIBLE PERSONAL PROPERTY USED IN REMEDIATION CONTRACTING AS DEFINED IN SECTION 3-05-100 AND REGULATION 3-05-100.5.

(BB) MATERIALS THAT ARE PURCHASED BY OR FOR PUBLICLY FUNDED LIBRARIES INCLUDING SCHOOL DISTRICT LIBRARIES, CHARTER SCHOOL LIBRARIES, COMMUNITY COLLEGE LIBRARIES, STATE UNIVERSITY LIBRARIES OR FEDERAL, STATE, COUNTY OR MUNICIPAL LIBRARIES FOR USE BY THE PUBLIC AS FOLLOWS:

- (1) PRINTED OR PHOTOGRAPHIC MATERIALS.
- (2) ELECTRONIC OR DIGITAL MEDIA MATERIALS.

(CC) FOOD, BEVERAGES, CONDIMENTS AND ACCESSORIES USED FOR SERVING FOOD AND BEVERAGES BY A COMMERCIAL AIRLINE, AS DEFINED IN A.R.S. SECTION 42-5061(A)(49), THAT SERVES THE FOOD AND BEVERAGES TO ITS PASSENGERS, WITHOUT ADDITIONAL CHARGE, FOR CONSUMPTION IN FLIGHT. FOR THE PURPOSES OF THIS SUBSECTION, "ACCESSORIES" MEANS PAPER PLATES, PLASTIC EATING UTENSILS, NAPKINS, PAPER CUPS, DRINKING STRAWS, PAPER SACKS OR OTHER DISPOSABLE CONTAINERS, OR OTHER ITEMS WHICH FACILITATE THE CONSUMPTION OF THE FOOD.

(DD) WIRELESS TELECOMMUNICATION EQUIPMENT THAT IS HELD FOR SALE OR TRANSFER TO A CUSTOMER AS AN INDUCEMENT TO ENTER INTO OR CONTINUE A CONTRACT FOR TELECOMMUNICATION SERVICES THAT ARE TAXABLE UNDER SECTION 3-05-004--0470.

(EE) (RESERVED)

(FF) ALTERNATIVE FUEL AS DEFINED IN A.R.S. SECTION 1-215, BY A USED OIL FUEL BURNER WHO HAS RECEIVED A DEPARTMENT OF ENVIRONMENTAL QUALITY PERMIT TO BURN USED OIL OR USED OIL FUEL UNDER A.R.S. SECTION 49-426 OR SECTION 49-480.

(GG) FOOD, BEVERAGES, CONDIMENTS AND ACCESSORIES PURCHASED BY OR FOR A PUBLIC EDUCATIONAL ENTITY, PURSUANT TO ANY OF THE PROVISIONS OF TITLE 15, ARIZONA REVISED STATUTES, INCLUDING A REGULARLY ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 15-802; TO THE EXTENT SUCH ITEMS ARE TO BE PREPARED OR SERVED TO INDIVIDUALS FOR CONSUMPTION ON THE PREMISES OF A PUBLIC EDUCATIONAL ENTITY DURING SCHOOL HOURS. FOR THE PURPOSES OF THIS SUBSECTION, "ACCESSORIES" MEANS PAPER PLATES, PLASTIC EATING UTENSILS, NAPKINS, PAPER CUPS, DRINKING STRAWS, PAPER SACKS OR OTHER DISPOSABLE CONTAINERS, OR OTHER ITEMS WHICH FACILITATE THE CONSUMPTION OF THE FOOD.

(HH) PERSONAL HYGIENE ITEMS PURCHASED BY A PERSON ENGAGED IN THE BUSINESS OF AND SUBJECT TO TAX UNDER SECTION 3-05-004-0444 OF THIS CODE IF THE TANGIBLE PERSONAL PROPERTY IS FURNISHED WITHOUT ADDITIONAL CHARGE TO AND INTENDED TO BE CONSUMED BY THE PERSON DURING HIS OCCUPANCY.

(II) THE DIVERSION OF GAS FROM A PIPELINE BY A PERSON ENGAGED IN THE BUSINESS OF OPERATING A NATURAL OR ARTIFICIAL GAS PIPELINE, FOR THE SOLE PURPOSE OF FUELING COMPRESSOR EQUIPMENT TO PRESSURIZE THE PIPELINE, IS NOT A SALE OF THE GAS TO THE OPERATOR OF THE PIPELINE.

(JJ) FOOD, BEVERAGES, CONDIMENTS AND ACCESSORIES PURCHASED BY OR FOR A NONPROFIT CHARITABLE ORGANIZATION THAT HAS QUALIFIED AS AN EXEMPT ORGANIZATION UNDER 26 U.S.C SECTION 501(C)(3) AND REGULARLY SERVES MEALS TO THE NEEDY AND INDIGENT ON A CONTINUING BASIS AT NO COST. FOR THE PURPOSES OF THIS SUBSECTION, "ACCESSORIES" MEANS PAPER PLATES, PLASTIC EATING UTENSILS, NAPKINS, PAPER CUPS, DRINKING STRAWS, PAPER SACKS OR OTHER DISPOSABLE CONTAINERS, OR OTHER ITEMS WHICH FACILITATE THE CONSUMPTION OF THE FOOD.

(KK) SALES OF MOTOR VEHICLES THAT USE ALTERNATIVE FUEL IF SUCH VEHICLE WAS MANUFACTURED AS A DIESEL FUEL VEHICLE AND CONVERTED TO OPERATE ON ALTERNATIVE FUEL AND SALES OF EQUIPMENT THAT IS INSTALLED IN A CONVENTIONAL DIESEL FUEL MOTOR VEHICLE TO CONVERT THE VEHICLE TO OPERATE ON AN ALTERNATIVE FUEL, AS DEFINED IN A.R.S. SECTION 1-215 .

(LL) THE STORAGE, USE OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY IN THE CITY OR TOWN BY A SCHOOL DISTRICT OR CHARTER SCHOOL.

(MM) RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.

(NN) MAGAZINES OR OTHER PERIODICALS OR OTHER PUBLICATIONS BY THIS STATE TO ENCOURAGE TOURIST TRAVEL.

(OO) PAPER MACHINE CLOTHING, SUCH AS FORMING FABRICS AND DRYER FELTS, SOLD TO A PAPER MANUFACTURER AND DIRECTLY USED OR CONSUMED IN PAPER MANUFACTURING.

(PP) OVERHEAD MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS USED IN PERFORMING A CONTRACT BETWEEN THE UNITED STATES GOVERNMENT AND A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, INCLUDING PROPERTY USED IN PERFORMING A SUBCONTRACT WITH A GOVERNMENT

CONTRACTOR WHO IS A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, TO WHICH TITLE PASSES TO THE GOVERNMENT UNDER THE TERMS OF THE CONTRACT OR SUBCONTRACT.

(QQ) COAL, PETROLEUM, COKE, NATURAL GAS, VIRGIN FUEL OIL AND ELECTRICITY SOLD TO A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR AS DEFINED IN A.R.S. SECTION 41-1514.02 AND DIRECTLY USED OR CONSUMED IN THE GENERATION OR PROVISION OF ON-SITE POWER OR ENERGY SOLELY FOR ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING OR ENVIRONMENTAL PROTECTION. THIS PARAGRAPH SHALL APPLY FOR TWENTY FULL CONSECUTIVE CALENDAR OR FISCAL YEARS FROM THE DATE THE FIRST PAPER MANUFACTURING MACHINE IS PLACED IN SERVICE. IN THE CASE OF AN ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR WHO DOES NOT MANUFACTURE PAPER, THE TIME PERIOD SHALL BEGIN WITH THE DATE THE FIRST MANUFACTURING, PROCESSING OR PRODUCTION EQUIPMENT IS PLACED IN SERVICE.

(RR) MACHINERY, EQUIPMENT, MATERIALS AND OTHER TANGIBLE PERSONAL PROPERTY USED DIRECTLY AND PREDOMINANTLY TO CONSTRUCT A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING FACILITY AS DESCRIBED IN A.R.S. SECTION 41-1514.02. THIS SUBSECTION APPLIES FOR TEN FULL CONSECUTIVE CALENDAR OR FISCAL YEARS AFTER THE START OF INITIAL CONSTRUCTION.

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The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, Division 3-05-007, *Regulations-Privilege and Excise Taxes*, Reg. 3-5-115.1 *Computer Hardware, Software, and Data Services*, Reg. 3-5-300.1, *Who must apply for a License*, Reg. 3-5-350.2, *Recordkeeping; Expenditures*; Reg. 3-5-520.1, *Reports made to the City*, are hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

Reg. 3-5-115.1. COMPUTER HARDWARE, SOFTWARE, AND DATA SERVICES:

(a) Definitions.

(1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.

(2) "Computer Software" (also called "computer program") is tangible personal property, and includes:

(A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of

which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.

(B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: Payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.

(3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, diskpack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.

(4) A "Terminal Arrangement" (also called "'on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.

(5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.

(b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:

(1) Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.

(2) Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:

(A) The entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.

(B) The entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.

(C) License fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.

(D) The entire amount charged for transfer of a prewritten ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.

(E) Any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:

(i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(ii) if such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(iii) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.

(c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:

(1) Statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.

(2) Additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

(d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.

(e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 3-5-100.2 (e):

(1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.

(A) Customer computer programming is deemed a professional service regardless of the form in which the programming is transferred.

(B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.

(C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.

(2) Training services related to computer hardware or software, provided further that:

(A) The provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.

(B) Training deemed a direct customer service does not include:

(i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.

(ii) training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.

(3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).

(4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.

(F) THE PURCHASE, RENTAL, LEASE, OR LICENSE FOR USE OF COMPUTER HARDWARE, STORAGE MEDIA, OR COMPUTER SOFTWARE WHICH IS NOT DEEMED CUSTOM PROGRAMMING IS DEEMED THE USE OR STORAGE OF TANGIBLE PERSONAL PROPERTY FOR THE PURPOSE OF THIS CHAPTER, AND THE AMOUNT WHICH MAY BE

SUBJECT TO USE TAX SHALL BE DETERMINED IN THE SAME MANNER AS THE DETERMINATION OF THE GROSS INCOME FROM THE SALE, RENTAL, LEASE, OR LICENSE FOR USE OF SUCH.

...

Reg. 3-5-300.1. WHO MUST APPLY FOR A LICENSE:

(a) For the purposes of determining whether a license is required under Section 3-05-003-0300, a person shall be deemed to be "engaged in or continuing in business" within the City, if he meets any of the following conditions:

(1) He is engaged in any activity subject to the City's Privilege Taxes as principal or broker.

(2) He has or maintains within the City directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this City under the authority of such person or if a corporation its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily or whether such person or subsidiary is authorized or licensed to do business in this State or this City.

(3) He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the City from customers, consumers, or users located within the City, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this City.

(4) ~~Reserved.~~ HE IS REGULARLY ENGAGED IN ANY ACTIVITY SUBJECT TO THE CITY'S USE TAX; PROVIDED, HOWEVER, THAT INDIVIDUALS ARE NOT NORMALLY REQUIRED TO OBTAIN A LICENSE BECAUSE THEY ACQUIRE ITEMS OUTSIDE THE CITY FOR THEIR OWN OR THEIR FAMILY'S PERSONAL USE AND ENJOYMENT.

(5) Reserved.

(b) Reserved.

...

Reg. 3-5-350.2. RECORDKEEPING: EXPENDITURES:

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

(a) The total price of all goods acquired for use or storage in the City.

(b) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City.

- (c) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.
- (d) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (e) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
 - (1) All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
 - (2) Disbursement of collected gratuities and related payroll information required of restaurants.
 - (3) (RESERVED). ~~Franchise and license fee payments and computations thereto which relate to:~~
 - (A) (RESERVED) ~~Utility service~~
 - (B) (RESERVED) ~~Telecommunication service.~~
 - (4) The validity of any claims of proof of exemption, as provided by Regulation.
 - (5) A claimed alternative prior value for reconstruction.
 - (6) ~~Reserved.~~ ALL CLAIMED EXEMPTIONS TO THE USE TAX IMPOSED BY DIVISION 3-05-006 OF THIS CHAPTER.
 - (7) Costs used to compute the "computed charge" claimed for retail service and repair.
 - (8) Payments of tax to the Arizona Department of Transportation and computations therefor, when a motor-vehicle transporter claims such the exemption.
 - (9) Reserved.
- (f) Any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.

...

Reg. 3-5-520.1. REPORTS MADE TO THE CITY:

(a) Each taxpayer shall provide, as a minimum, all of the following when reporting taxes due as provided in this Chapter:

- (1) Legal business name of the taxpayer or his agent.
- (2) Mailing address of the taxpayer.
- (3) City Privilege License number of the taxpayer.
- (4) Period of time for which the report is intended.
- (5) For each category of income to which the taxpayer is subject, for the reporting period, as provided on the official City tax return:
 - (A) All amounts subject to, excluded from, exempt from, or deductible from the tax imposed upon that category of business activity, summarized in total as "gross receipts" of that category of business activity.
 - (B) The total amount claimed as excludable, exempted, or deducted from such "gross receipts", itemized as provided on the official City tax return, and summarized in total as "total deductions" for that category.
 - (C) The difference between such "gross receipts" and "total deductions" as "net taxable" for that category.
 - (D) The tax due and payable for that category.
- (6) ~~Reserved.~~ THAT TOTAL AMOUNT SUBJECT TO USE TAX, SUMMARIZED AS "NET TAXABLE", AND THE USE TAX DUE AND PAYABLE FOR THAT REPORTING PERIOD.
- (7) Any excess tax collected which is due and payable.
- (8) Any claimed tax credits against taxes due and payable.
- (9) Total amount remitted with the return.
- (10) A statement verifying that the information provided on the return is accurate to the best of the preparer's knowledge. Such statement must be accompanied by a dated signature of the preparer, and also show the preparer's title or relationship to the taxpayer.
- (11) The tax collector may prescribe and will notify taxpayers of alternative methods for signing, subscribing or verifying any report or statement required to be filed, including, but not limited to, electronic signatures and/or security codes, and such methods shall have the same validity and consequence as the actual signature or written declaration of the taxpayer or other person required to sign, subscribe or verify the return, statement, or other document.

ORDINANCE NO. 2014-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 3, *BUSINESS REGULATIONS*, CHAPTER 3-05, *PRIVILEGE AND EXCISE TAXES*, IS HEREBY AMENDED BY ADOPTING “THE 2014 USE TAX ADOPTION AND RELATED CITY TAX CODE AMENDMENTS” AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff imposes a local transaction privilege tax on the gross income received from engaging in certain business within the City limits, as set forth in Chapter 3-05 of the City Code (the City Tax Code); and

WHEREAS, the City Council finds that adoption of a use tax will have the indirect effect of encouraging purchase of goods from local businesses versus businesses outside City limits which are not subject to the City transaction privilege tax;

WHEREAS, the City Council further finds that adoption of a use tax will generate tax revenues to help replace tax revenues being lost as a result of changes in state laws (preemption of local tax collection authority and new tax exemptions mandated by the State Legislature);

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, is hereby amended by adoption of the amendments set forth in that document known as “The 2014 Use Tax Adoption and Related City Tax Code Amendments,” declared a public record by Resolution No. 2014-24 and on file with the City Clerk.

SECTION 2. Penalties.

Any person convicted of a violation of the City Code as amended by this ordinance is guilty of a class one misdemeanor and shall be fined a sum not to exceed two thousand five hundred dollars (\$2,500.00) and may be sentenced to confinement in jail for a period not to exceed six (6) months for any one offense, all in accordance with Section 3-05-005-0580, *Criminal Penalties*, of the City Code, and may owe interest and penalties pursuant to Section 3-05-005-0540, *Interest and Civil Penalties*, of the City Code. Any violation which is continuing in nature shall constitute a separate offense on each successive date the violation continues, unless otherwise provided.

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. Clerical Corrections.

The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary, related to this ordinance as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency within thirty (30) days following adoption by the City Council.

SECTION 6. Effective Dates.

This ordinance and City Code amendments adopted herein shall be effective from and after October 1, 2014.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 15th day of July, 2014.

MAYOR

ATTEST:

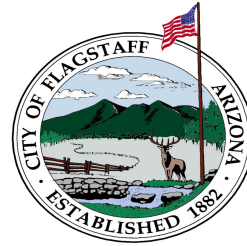
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Brian Kulina, Planning Development Manager
Date: 06/18/2014
Meeting Date: 07/01/2014



TITLE:

Public Hearing, Consideration and Adoption of Ordinance No. 2014-21: An ordinance amending the Flagstaff Zoning Map designation of approximately 3.06 acres of real property located at 703 South Blackbird Roost from "MH," Manufactured Housing, to "HC," Highway Commercial. (***Zoning Map amendment ordinance review for the development known as "The Standard".***)

RECOMMENDED ACTION:

At the July 1, 2014 Council Meeting:

- 1) Hold the Public Hearing
- 2) Read Ordinance No. 2014-21 by title only for the first time
- 3) City Clerk reads Ordinance No. 2014-21 by title only for the first time (if approved above)

At the July 15, 2014 Council Meeting:

- 4) Read Ordinance No. 2014-21 by title only for the final time
- 5) City Clerk reads Ordinance No. 2014-21 by title only for the final time (if approved above)
- 6) Adopt Ordinance No. 2014-21

Policy Decision or Reason for Action:

The Planning and Zoning Commission conducted a Public Hearing to consider this Zoning Map amendment request at its regular meeting on June 11, 2014. The Planning and Zoning Commission voted (6-0) to continue discussion and action to the next regular meeting scheduled for June 25, 2014. Should the Planning Commission make a recommendation at that time, staff will update this report, and the accompanying ordinance, to reflect the decision. The draft ordinance attached to this report incorporates staff recommended conditions of approval.

Staff recommends approval subject to the following nine conditions:

1. Unless modified to comply with these conditions, the site shall be developed in substantial conformance to the entire Rezone Plan as accepted by the Inter-Division Staff (IDS) on May 7, 2014 and as presented to the Planning and Zoning Commission with this Zoning Map amendment request.
2. Development shall be limited to the number of units (191) and beds (650) identified in the Rezone Plan and used for the preparation of all impact analyses. Any increase to either the number of units or beds must be approved by the City Council through the review of a Zoning Map amendment application.
3. Development along Blackbird Roost shall be limited to three stories in height within the first 50-feet of frontage. Additional stories, up to the maximum allowed building height as defined by the Zoning Code, may be achieved provided they are setback at least 35-feet from the façade of the stories below.
4. The parking garage shall be designed with color integral or stained concrete that matches the

- primary body colors of the residential buildings.
5. As proposed, the parking garage exceeds the maximum allowed building height as defined by the Zoning Code. Prior to building permit submittal, a Conditional Use Permit shall be obtained from the Planning and Zoning Commission for an increase in the maximum allowed building height.
 6. Any portion of parking garage that is visible from a public street (Route 66, Blackbird Roost, and Chateau Drive) shall be designed with building materials, techniques, detail, and colors to simulate a residential building.
 7. Prior to building permit submittal, a Conditional Use Permit shall be obtained from the Planning and Zoning Commission for the establishment of a Rooming and Boarding Facility on the development site. If the Developer chooses to establish a Rooming and Boarding Facility on the development site, it is recommend as part of the review of the associated Conditional Use Permit that development along Route 66 comply with the elevations, three and four stories of residential above one story of commercial, as presented with this Zoning Map amendment application. Additional stories may be achieved provided those stories are setback at least 35-feet from the façade of the stories below. If the additional stories exceed the maximum allowed building height as defined by the Zoning Code, a Conditional Use Permit for the additional height must be obtained from the Planning and Zoning Commission prior to building permit submittal.
 8. The Developer shall enter into a Development Agreement with the City to, at a minimum, address the following: enforcement of the relocation package, establishment and maintenance of an On-site Management Plan and Good Neighbor Policy, affordable housing, and the pedestrian crossings of Route 66.
 9. Prior to building permit submittal, the Developer shall combine Coconino County Assessor parcel numbers 103-02-020, 103-02-021, 103-01-003, and 103-01-005E.

Subsidiary Decision Points:

If the first reading or the ordinance is successful, the accompanying Development Agreement will be scheduled for consideration by the City Council on July 15, 2014 prior to the final reading of the ordinance.

Financial Impact:

No financial liabilities are associated from the approval of this Zoning Map amendment.

Connection to Council Goal:

Repair Replace maintain infrastructure (streets & utilities)
Retain, expand, and diversify economic base
Effective governance

Has There Been Previous Council Decision on This:

No previous City Council action or decisions have been made related to this Zoning Map amendment request or the Subject Property.

Options and Alternatives:

- 1) Approve the ordinance with the proposed conditions.
- 2) Approve the ordinance with no condition, additional conditions, or modified conditions.
- 3) Deny the ordinance.

Background/History:

Landmark Properties, Inc. (the “Developer”), is requesting a Zoning Map amendment to rezone approximately 3.06 acres located at 703 S Blackbird Roost (the “Subject Property”) from the Manufactured Housing (MH) zone to the Highway Commercial (HC) zone. This amendment, along with other parcels, would allow the development of a mixed-use multi-family style student housing development consisting of 191-units (650 beds) located within two buildings and including approximately 10,000 square feet of commercial uses and a six-level parking garage. The Subject Property is currently developed as a manufactured home park known as Arrowhead Village. There are no natural resources on-site and all existing slope is manmade from previous development. For additional information on the reason for the request, site characteristics, and anticipated community benefits, please reference the attached Site Analysis and Reason for Request Narrative.

Land use north of the Subject Property is predominately light industrial and office development including automotive repair, motorcycle repair, and carpentry services. Land uses to the east of the Subject Property are a mixture of residential and commercial development including two apartment complexes, automotive repair, automotive accessories sales, and motorcycle rentals. Land uses to the south of the Subject Property are comprised of primarily commercial including automotive parts sales and lodging. Land uses to the east of the Subject property is primarily residential with a small amount of commercial including an existing manufactured home park known as Millpond Village Apartments and lodging.

If the proposed Zoning Map amendment request is approved, the next steps in the process will be the filing of an application for Site Plan and Conditional Use Permit review followed by Civil Improvement Plan submittal and Building Plan submittal. A Development Agreement between the City and Landmark Properties has been drafted, a copy of which is attached to this report, to address various impacts on the surrounding neighborhood (i.e. building height, pedestrian crossing of Route 66, traffic calming and landscaping enhancements on Clay Avenue, etc.), affordable housing, project management, and good neighbor responsibilities. The Development Agreement must be approved by the City Council via a resolution prior to the second reading of the Zoning Map amendment ordinance. The proposed development encompasses four separately identified parcels (APN’s 103-02-021, 103-02-020, 103-01-003, and 103-01-005E). Only parcel APN 103-02-021 is subject to the proposed Zoning Map amendment; however, all parcels within the proposed development were analyzed for conformance to existing and proposed development standards. As a condition of approval, all parcels must be combined into one parcel prior to building permit submittal.

Key Considerations:

Zoning Map amendments are adopted by the City Council via ordinance when the proposed amendment meets the following findings: the proposed amendment is consistent with and conforms to the goals of the General Plan and any applicable specific plans; the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City of Flagstaff and will add to the public good as described in the General Plan; and, the affected site is physically suitable in terms of design, location, shape, size, operating characteristics and the provision of public and emergency vehicle access, public services, and utilities, to ensure that the requested zone designation and the proposed or anticipated uses and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located.

Community Benefits and Considerations:

Community benefits and considerations related to this Zoning Map amendment are addressed in the attached Planning and Zoning Commission staff report dated June 5, 2014.

Community Involvement:

Inform, Consult, Involve, Collaborate

Public hearings before the Planning and Zoning Commission and the City Council are conducted in conjunction with any request for Zoning Map amendment. In accordance with Arizona Revised Statute and City Code, notice of the public hearing must be provided by placing an ad in a newspaper of general circulation within the City, posting a notice on the property subject to the proposed amendment, and mailing a notice to all property owners within 300-feet of the property subject to the proposed amendment. All notifications must be completed at least 15-days prior to the first scheduled public hearing. In order to notice as many people as possible, staff ensured that a notice was published in the Daily Sun, four notice signs were posted on the site (one at the north driveway of Arrowhead Village on Blackbird Roost, one at the south driveway of Arrowhead Village on Blackbird Roost, one at the driveway between the Snow Peak Inn and AAMCO on Route 66, and one adjacent to the abandon gas station on Route 66), and a notice was mailed to all property owners within 600-feet of the site as well as all residents within the Arrowhead Village park. A copy of the publication notice, pictures of the postings, a mailing list, and a copy of the mailing notice are attached to this report.

As of the writing of the attached staff report, staff has received eight letters, 37 e-mails, and one online petition, which can be divided into three categories: opposed, neutral, and support. Those comments in opposition (43 total) expressed concerns over location, traffic, neighborhood character, displacement of low income residents, view shed preservation, building height, student behavior, pedestrian connectivity, parking, availability of land within Northern Arizona University, inflated rent, conflict to Flagstaff Regional Plan 2030, conflict to La Plaza Vieja Neighborhood Plan, conflict to the Flagstaff Regional Land Use and Transportation Plan, and the implementation of a Health Impact Assessment. The online petition, which contains approximately 395 signatures, opposes the proposed Zoning Map amendment and expresses support for the immediate creation of a plan to accommodate expected student body growth. Those neutral comments (2 total) expressed support for using a Health Impact Assessment as a tool in the decision making process. Those comments in support (1 total) expressed the need for student housing, conformance with the goals of the Regional Plan, conformance with the goals of Friends of Flagstaff's Future, and compatibility. A table summarizing all public comments received to the date of this writing as well as copies of each comment is attached to this report.

As of the writing of this report, staff has received 9 additional e-mails, one letter, and one online petition, which can be divided into three categories: opposed, neutral, and support. Those comments in opposition (8 total) expressed concerns over traffic, clarifying Friends of Flagstaff's future position, location, displacement of low income residents, adequacy of proposed compensation package, neighborhood character, affordable housing, noise, heavy truck traffic, littering, lighting, building height infill, ghetto-ization of students, increased crime, loss of rental income, building size, building design, increase in housing prices, availability of land within Northern Arizona University, number of students, conformance with Flagstaff Regional Plan 2030. The online petition, which contains approximately 445 signatures, opposes the proposed Zoning Map amendment and expresses support for the immediate creation of a plan to accommodate expected student body growth. Those neutral comments (2 total) clarified the position of NAIPTA regarding the relocation of the Barnes & Nobel transit stop. Those comments in support (1 total) expressed the need for a pedestrian crossing of Route 66, the need for traffic calming along Blackbird Roost, support for staff recommended conditions regarding building mass and appearance, improvements to the community, support for the relocation package, and potential energy conservation.

Section 10-20.30.060 of the Zoning Code (Page 20.30-5) requires the Developer to conduct a neighborhood meeting prior to the Planning and Zoning Commission public hearing in accordance with an approved neighborhood meeting plan. After completion of the neighborhood meeting, the Developer must prepare a Record of Proceedings in accordance with Section 10-20.30.060.F of the Zoning Code (Page 20.30-7). That record is then presented as part of the report to the Planning and Zoning Commission and City Council. The Neighborhood Meeting Plan, a copy of which is attached to this report, was submitted on February 7, 2014 and approved by staff on February 11, 2014. The required neighborhood meeting was conducted on February 19, 2014 at the Doubletree by Hilton Hotel Flagstaff.

The meeting was noticed in accordance with established City standards. The meeting was conducted in an open house format with several stations set-up to discuss the various topics of interest. The results of the meeting were submitted on February 24, 2014 in a Neighborhood Meeting Summary, a copy of which is attached to this report. The meeting was attended by approximately 150 people. Comments were divided into two categories, non-supportive and supportive. The key areas of non-support were: concerns about the relocation of existing Arrowhead Village residents; traffic (into/through the neighborhood and along Route 66); and, gentrification of the area (increasing of property values and therefore rents). The key areas of support were: Northern Arizona University is not providing sufficient student housing (especially for Juniors/Seniors); location and proximity to campus (i.e. ability to walk and avoid automobile use); and, income/investment into the City. The Developers response to the comments received (i.e. relocation, traffic, gentrification, student housing needs, location and proximity to campus, and investment in the City) are included on Pages 4 and 5 of the Neighborhood Meeting Summary. As a result of this meeting, the Developer identified the need for two additional meetings, the first to discuss the relocation needs of the existing residents and the second to discuss “zoning” related topics (i.e. building design, traffic, site planning, etc.).

The second (Relocation) and third (Zoning) neighborhood meetings were held on April 21, 2014 and April 23, 2014, respectively, at the Doubletree by Hilton Hotel Flagstaff. Each meeting was noticed in accordance with established City standards. The meetings were conducted in a more traditional speaker/audience format with a primary presentation given in both English and Spanish followed by a question and answer (Q&A) session. The results of the meeting were submitted to staff on May 6, 2014 in a Follow-up Neighborhood Meeting Summary, a copy of which is attached to this report. The second neighborhood meeting was attended by approximately 101 people. During the Q&A session, the major topics of discussion were:

- When will the 180-day vacate notice be issued?
- Will residents have to sign any sort of a contract with the Developer in order to establish ownership of their trailer before May 20th?
- Will undocumented residents be eligible for state relocation funding? If not, will the Developer cover those funds?
- Are there enough spaces at trailer parks around the City at \$425 per month (or less) to accommodate all relocations?
- Can residents access the funds before the 180-day vacate notice?
- I want to be paid now and the proposed compensation is not enough.
- I want a mobile home fair first, will the Developer do that?
- The La Plaza Vieja Neighborhood Association Board of Directors has adopted the following position: All displaced residents must be fairly compensated and ensured access to permanent affordable housing. The Developers responses to these topics are included in Section C of the Follow-up Neighborhood Meeting Plan. The third neighborhood meeting was attended by approximately 98 people. During the Q&A session, the major topics of discussion were:
- How will students be “kept in line?”
- Are there “RAs” or “floor managers?”
- On-site management?
- There is a big need for student housing in the City. Upper-class students are being pushed off campus.
- What about traffic? Students crossing Route 66 will be at risk.
- We don’t want cars in our neighborhood.
- What happens after project is built and there are traffic issues?
- Who pays for these improvements? The City shouldn’t pay for these.
- Why can’t the project be two or three stories? Fifth floor isn’t wanted.
- Can the Developer reduce the height?

The Developers responses to these topics are included in Section D of the Follow-up Neighborhood Meeting Plan. Upon completion of all neighborhood meetings, it is the understanding of staff that the Developer continues to have conversations with the neighborhood regarding solutions to the above-referenced topics of discussion. One such conversation is the reduction of the building height for Building 200 along Blackbird Roost from a four and five story building to a four story building. The Developer intends to relocate these units to Building 100 adjacent to Route 66, which may require the

issuance of a Conditional Use Permit by the Planning and Zoning Commission to exceed the established maximum building height.

Council Action:

ATTACHMENTS:

May be accessed at <http://www.flagstaff.az.gov/DocumentCenter/View/44493>

(Please allow time for this document to download - it is very large)

Attachments:

Form Review

Inbox	Reviewed By	Date
Current Planning Manager	Mark Sawyers	06/19/2014 08:56 AM
Planning Director	Dan Folke	06/19/2014 10:54 AM
Legal Assistant	Vicki Baker	06/19/2014 11:48 AM
City Attorney	Michelle D'Andrea	06/19/2014 12:25 PM
Community Development Director	Mark Landsiedel	06/19/2014 05:21 PM
DCM - Jerene Watson	Jerene Watson	06/19/2014 09:59 PM
Form Started By: Brian Kulina		Started On: 06/18/2014 03:27 PM
	Final Approval Date: 06/19/2014	

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Brian Kulina, Planning Development Manager
Date: 06/17/2014
Meeting Date: 07/01/2014



TITLE:

Public Hearing for Zoning Map Amendment Request: To amend the Flagstaff Zoning Map designation of approximately 3.06 acres of real property located at 703 South Blackbird Roost from "MH," Manufactured Housing, to "HC," Highway Commercial. (***Zoning Map Amendment request for the development known as "The Standard"***)

RECOMMENDED ACTION:

Hold Public Hearing

Policy Decision or Reason for Action:

The Planning and Zoning Commission conducted a Public Hearing to consider this Zoning Map amendment request at its regular meeting on June 11, 2014. The Planning and Zoning Commission voted (6-0) to continue discussion and action to the regular meeting on June 25, 2015. Since a July 1, 2014 City Council Public Hearing was legally noticed, staff recommends that the public hearing proceed but City Council discussion and consideration be delayed until the Planning and Zoning Commission has made its recommendation.

Subsidiary Decision Points: If the City Council Public Hearing is closed on July 1, 2014, staff will prepare a Zoning Map amendment ordinance for consideration at the July 15, 2014 City Council regular meeting.

Financial Impact:

No financial liabilities are associated from the approval of this Zoning Map amendment.

Connection to Council Goal:

Repair Replace maintain infrastructure (streets & utilities)
Retain, expand, and diversify economic base
Effective governance

Has There Been Previous Council Decision on This:

No previous City Council decisions have been made related to the requested Zoning Map amendment or the Subject Property.

Options and Alternatives:

1. Open the Public Hearing, receive public testimony, close the Public Hearing.
2. Open the Public Hearing, receive public testimony, continue the Public Hearing to a date specific.
3. Continue the Public Hearing to a date specific

Background/History:

Landmark Properties, Inc. (the "Developer"), is requesting a Zoning Map amendment to rezone approximately 3.06 acres located at 703 S Blackbird Roost (the "Subject Property") from the Manufactured Housing (MH) zone to the Highway Commercial (HC) zone. This amendment, along with other parcels, would allow the development of a mixed-use multi-family style student housing development consisting of 191-units (650 beds) located within two buildings and including approximately 10,000 square feet of commercial uses and a six-level parking garage. The Subject Property is currently developed as a manufactured home park known as Arrowhead Village. There are no natural resources on-site and all existing slope is manmade from previous development. For additional information on the reason for the request, site characteristics, and anticipated community benefits, please reference the attached Site Analysis and Reason for Request Narrative.

Land use north of the Subject Property is predominately light industrial and office development including automotive repair, motorcycle repair, and carpentry services. Land uses to the east of the Subject Property are a mixture of residential and commercial development including two apartment complexes, automotive repair, automotive accessories sales, and motorcycle rentals. Land uses to the south of the Subject Property are comprised of primarily commercial including automotive parts sales and lodging. Land uses to the east of the Subject property are primarily residential with a small amount of commercial including an existing manufactured home park known as Millpond Village Apartments and lodging.

If the proposed Zoning Map amendment request is approved, the next steps in the process will be the filing of an application for Site Plan and Conditional Use Permit review followed by Civil Improvement Plan submittal and Building Plan submittal. A Development Agreement between the City and Landmark Properties has been drafted, a copy of which is attached to this report, to address various impacts on the surrounding neighborhood (i.e. building height, pedestrian crossing of Route 66, traffic calming and landscaping enhancements on Clay Avenue, etc.), affordable housing, project management, and good neighbor responsibilities. The Development Agreement must be approved by the City Council via a resolution prior to the second reading of the Zoning Map amendment ordinance. The proposed development encompasses four separately identified parcels (APN's 103-02-021, 103-02-020, 103-01-003, and 103-01-005E). Only parcel APN 103-02-021 is subject to the proposed Zoning Map amendment; however, all parcels within the proposed development were analyzed for conformance to existing and proposed development standards. As a condition of approval, all parcels must be combined into one parcel prior to building permit submittal.

Key Considerations:

Zoning Map amendments are adopted by the City Council via ordinance when the proposed amendments meet the following findings: the proposed amendment is consistent with and conforms to the goals of the General Plan and any applicable specific plans; the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City of Flagstaff (the "City") and will add to the public good as described in the General Plan; and, the affected site is physically suitable in terms of design, location, shape, size, operating characteristics and the provision of public and emergency vehicle access, public services, and utilities, to ensure that the requested zone designation and the proposed or anticipated uses and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located. If the application is not consistent with the General Plan and any other applicable specific plan, the applicable plan must be amended in compliance with the procedures established in Chapter 11-10 of the City Code (Title 11: General Plans and Subdivisions) prior to considering the proposed amendment.

Community Benefits and Considerations:

Community benefits and considerations related to this Zoning Map amendment request are addressed in the attached Planning and Development Services Report dated June 5, 2014.

Community Involvement:

Inform, Consult, Involve, Collaborate

Public hearings before the Planning and Zoning Commission and the City Council are conducted in conjunction with any request for Zoning Map amendment. In accordance with Arizona Revised Statute and City Code, notice of the public hearing must be provided by placing an ad in a newspaper of general circulation within the City, posting a notice on the property subject to the proposed amendment, and mailing a notice to all property owners within 300-feet of the property subject to the proposed amendment. All notifications must be completed at least 15-days prior to the first scheduled public hearing. In order to notice as many people as possible, staff ensured that a notice was published in the Daily Sun, four notice signs were posted on the site (one at the north driveway of Arrowhead Village on Blackbird Roost, one at the south driveway of Arrowhead Village on Blackbird Roost, one at the driveway between the Snow Peak Inn and AAMCO on Route 66, and one adjacent to the abandon gas station on Route 66), and a notice was mailed to all property owners within 600-feet of the site as well as all residents within the Arrowhead Village park. A copy of the publication notice, pictures of the postings, a mailing list, and a copy of the mailing notice are attached to this report.

As of this writing, staff has received eight letters, 37 e-mails, and one online petition, which can be divided into three categories: opposed, neutral, and support. Those comments in opposition (43 total) expressed concerns over location, traffic, neighborhood character, displacement of low income residents, view shed preservation, building height, student behavior, pedestrian connectivity, parking, availability of land within Northern Arizona University, inflated rent, conflict to Flagstaff Regional Plan 2030, conflict to La Plaza Vieja Neighborhood Plan, conflict to the Flagstaff Regional Land Use and Transportation Plan, and the implementation of a Health Impact Assessment. The online petition, which contains approximately 395 signatures, opposes the proposed Zoning Map amendment and expresses support for the immediate creation of a plan to accommodate expected student body growth. Those neutral comments (2 total) expressed support for using a Health Impact Assessment as a tool in the decision making process. Those comments in support (1 total) expressed the need for student housing, conformance with the goals of the Regional Plan, conformance with the goals of Friends of Flagstaff's Future, and compatibility. A table summarizing all public comments received to the date of this writing as well as copies of each comment is attached to this report.

Section 10-20.30.060 of the Zoning Code (Page 20.30-5) requires the Developer to conduct a neighborhood meeting prior to the Planning and Zoning Commission public hearing in accordance with an approved neighborhood meeting plan. After completion of the neighborhood meeting, the Developer must prepare a Record of Proceedings in accordance with Section 10-20.30.060.F of the Zoning Code (Page 20.30-7). That record is then presented as part of the report to the Planning and Zoning Commission and City Council. The Neighborhood Meeting Plan, a copy of which is attached to this report, was submitted on February 7, 2014 and approved by staff on February 11, 2014. The required neighborhood meeting was conducted on February 19, 2014 at the Doubletree by Hilton Hotel Flagstaff. The meeting was noticed in accordance with established City standards. The meeting was conducted in an open house format with several stations set-up to discuss the various topics of interest. The results of the meeting were submitted on February 24, 2014 in a Neighborhood Meeting Summary, a copy of which is attached to this report. The meeting was attended by approximately 150 people. Comments were divided into two categories, non-supportive and supportive. The key areas of non-support were: concerns about the relocation of existing Arrowhead Village residents; traffic (into/through the neighborhood and along Route 66); and, gentrification of the area (increasing of property values and therefore rents). The key areas of support were: Northern Arizona University is not providing sufficient student housing (especially for Juniors/Seniors); location and proximity to campus (i.e. ability to walk and

avoid automobile use); and, income/investment into the City. The Developers response to the comments received (i.e. relocation, traffic, gentrification, student housing needs, location and proximity to campus, and investment in the City) are included on Pages 4 and 5 of the Neighborhood Meeting Summary. As a result of this meeting, the Developer identified the need for two additional meetings, the first to discuss the relocation needs of the existing residents and the second to discuss “zoning” related topics (i.e. building design, traffic, site planning, etc.).

The second (Relocation) and third (Zoning) neighborhood meetings were held on April 21, 2014 and April 23, 2014, respectively, at the Doubletree by Hilton Hotel Flagstaff. Each meeting was noticed in accordance with established City standards. The meetings were conducted in a more traditional speaker/audience format with a primary presentation given in both English and Spanish followed by a question and answer (Q&A) session. The results of the meeting were submitted to staff on May 6, 2014 in a Follow-up Neighborhood Meeting Summary, a copy of which is attached to this report. The second neighborhood meeting was attended by approximately 101 people. During the Q&A session, the major topics of discussion were:

- When will the 180-day vacate notice be issued?
- Will residents have to sign any sort of a contract with the Developer in order to establish ownership of their trailer before May 20th?
- Will undocumented residents be eligible for state relocation funding? If not, will the Developer cover those funds?
- Are there enough spaces at trailer parks around the City at \$425 per month (or less) to accommodate all relocations?
- Can residents access the funds before the 180-day vacate notice?
- I want to be paid now and the proposed compensation is not enough.
- I want a mobile home fair first, will the Developer do that?
- The La Plaza Vieja Neighborhood Association Board of Directors has adopted the following position: All displaced residents must be fairly compensated and ensured access to permanent affordable housing. The Developers responses to these topics are included in Section C of the Follow-up Neighborhood Meeting Plan. The third neighborhood meeting was attended by approximately 98 people. During the Q&A session, the major topics of discussion were:

- How will students be “kept in line?”
- Are there “RAs” or “floor managers?”
- On-site management?
- There is a big need for student housing in the City. Upper-class students are being pushed off campus.
- What about traffic? Students crossing Route 66 will be at risk.
- We don’t want cars in our neighborhood.
- What happens after project is built and there are traffic issues?
- Who pays for these improvements? The City shouldn’t pay for these.
- Why can’t the project be two or three stories? Fifth floor isn’t wanted.
- Can the Developer reduce the height?

The Developers responses to these topics are included in Section D of the Follow-up Neighborhood Meeting Plan. Upon completion of all neighborhood meetings, it is the understanding of staff that the Developer continues to have conversations with the neighborhood regarding solutions to the above-referenced topics of discussion. One such conversation is the reduction of the building height for Building 200 along Blackbird Roost from a four and five story building to a four story building. The Developer intends to relocate these units to Building 100 adjacent to Route 66, which may require the issuance of a Conditional Use Permit by the Planning and Zoning Commission to exceed the established maximum building height.

Council Action:

ATTACHMENTS:

May be accessed at <http://www.flagstaff.az.gov/DocumentCenter/View/44493>

(Please allow time for this document to download - it is very large)

Attachments:

Form Review

Inbox	Reviewed By	Date
Current Planning Manager	Mark Sawyers	06/17/2014 11:43 AM
Planning Director	Dan Folke	06/18/2014 11:47 AM
Legal Assistant	Vicki Baker	06/18/2014 01:31 PM
City Attorney	Michelle D'Andrea	06/19/2014 12:22 PM
Community Development Director	Mark Landsiedel	06/19/2014 05:19 PM
DCM - Jerene Watson	Jerene Watson	06/19/2014 09:59 PM
Form Started By: Brian Kulina		Started On: 06/17/2014 08:07 AM
	Final Approval Date: 06/19/2014	

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Walt Miller, Deputy Chief
Co-Submitter: Michelle D'Andrea, City Attorney
Date: 06/19/2014
Meeting Date: 07/01/2014



TITLE:

Consideration and Adoption of Ordinance/Resolution No. 2014-20: An Ordinance prohibiting the use of wireless communication devices while operating a motor vehicle or bicycle.

RECOMMENDED ACTION:

At the July 1, 2014, Council Meeting:

- 1) Read Ordinance No. 2014-20 by title only for the first time
- 2) City Clerk reads Ordinance No. 2014-20 by title only (if approved above)

At the July 15, 2014, Council Meeting:

- 3) Read Ordinance No. 2014-20 by title only for the final time
- 4) City Clerk reads Ordinance No. 2014-20 by title only (if approved above)
- 5) Adopt Ordinance No. 2014-20

Policy Decision or Reason for Action:

The Flagstaff Police Department, in collaboration with the Flagstaff City Attorney's Office, is requesting the approval of Ordinance 2014-20, which would prohibit the use of wireless communication devices while operating a motor vehicle or bicycle.

Coconino County adopted a distracted-driving ordinance that is applicable within incorporated areas of the County. On May 20, 2014, a resolution of the Council of the City of Flagstaff, Arizona, declared the use of portable communication devices in the City of Flagstaff to be a matter of local concern and such matter will be governed by a City Ordinance.

Financial Impact:

There is no financial impact to the City of Flagstaff by adopting this ordinance.

Connection to Council Goal:

Effective governance

Has There Been Previous Council Decision on This:

No formal decision. Council, however, adopted a resolution enabling the City to opt out of the County's distracted driving ordinance on May 20, 2014. (See Page 2 under Community Involvement for further information)

Options and Alternatives:

- Adopt Ordinance 2014-20 prohibiting the use of wireless communication devices while operating a motor vehicle or bicycle.
- Amend Ordinance 2014-20
- Do not adopt Ordinance 2014-20

Background/History:

On April 22, 2014 the Coconino County Board of Supervisors unanimously approved County Ordinance 2014-03 which states that; A person shall not drive a motor vehicle while using a portable communications device to engage in a call unless that device is specifically designed and configured to allow hands-free listening and talking, and is used exclusively in that manner while driving. Texting and typing are banned while operating a motor vehicle

This Ordinance is effective 30 days after adoption by the Coconino County Board of Supervisors. However, for the purpose of informing and educating persons who operate motor vehicles and motor driven cycles any law enforcement office may only issue verbal warnings to persons who would be violating this Coconino County Ordinance for a six (6) month period after the Ordinance is adopted. Enforcement and penalties under this ordinance are as follows; a law enforcement officer may stop a motor vehicle or motor driven cycle if the officer has reasonable cause to believe a violation of this Ordinance is occurring (primary offense).

A violation of this article is a civil traffic violation and a person found to be in violation of this Ordinance and not involved in a motor vehicle collision is subject to a civil penalty of \$100 dollars. A person found to be in violation of this Ordinance and involved in a motor vehicle collision is subject to a civil penalty of \$250 dollars.

Key Considerations:

Adopting Ordinance 2014-20 may deter individuals from using wireless communication devices while operating a motor vehicle or bicycle. It is believed that an ordinance prohibiting the use of a wireless communication device will enhance all motorist safety and change driving behavior. The use of a wireless communication device is considered to be a distraction. Distractions endanger the driver, passenger, and bystanders. The U.S. Department of Transportation defines three main types of distraction, visual, manual and cognitive. Text messaging, and other similar uses of wireless electronic devices, require visual, manual and cognitive attention from the driver and, are considered to be the worst common distraction to drivers.

The draft ordinance that Council will consider has two options. The first option is to ban only texting and similar communication while driving. It would allow those activities while stopped, such as at a railroad crossing. It would also allow dialing a phone number, checking a calendar, hitting a key on a phone to play music, and activities involving wireless devices other than written communication. The second option is more similar to the County's ordinance with an exception for amateur radio operators.

Community Benefits and Considerations:

The Flagstaff Police Department believes that increased education is the key element of this ordinance. It will deter individuals from using wireless communication devices while operating a motor vehicle or bicycle.

Community Involvement:

There has been prior discussion of a proposed ordinance. During the Council work session on April 29, 2014, the Mayor and Council were presented with a PowerPoint presentation, discussing the County ordinance that had been passed by the Board of Supervisors on April 22, 2014. Much of the discussion was about whether the City should decide to opt in or opt out of the County Ordinance. At the conclusion of the presentation there was a consensus to have the City Attorney provide legal information about the options and the Council would make an opt in or opt out decision at the next Council meeting.

On May 13, 2014, during the Council work session, a PowerPoint presentation was presented and further discussion occurred with respect to opting in or opting out of the County Ordinance. At the conclusion of the presentation, staff was directed by Council to move forward with drafting an ordinance and a resolution declaring the use of portable communication devices in the City of Flagstaff to be a matter of local concern and such matter will be governed by a City ordinance. The resolution was adopted May 20, 2014.

The proposed ordinance and staff summary will be posted in accordance with law, and interested persons are invited to comment at the City Council meetings at which the ordinance will be under consideration.

Expanded Options and Alternatives:

Do not adopt Ordinance No. 2014-20

Amend Ordinance No. 2014-20

Attachments: [Ord. 2014-20](#)

Form Review

Inbox	Reviewed By	Date
Legal Assistant	Vicki Baker	06/19/2014 04:56 PM
City Attorney	Walt Miller	06/20/2014 10:26 AM
Legal Assistant	Vicki Baker	06/20/2014 12:13 PM
City Attorney	Elizabeth A. Burke	06/20/2014 12:29 PM
Police Chief	Kevin Treadway	06/20/2014 01:33 PM
Management Services Director	Barbara Goodrich	06/20/2014 02:13 PM
Form Started By: Walt Miller		Started On: 06/19/2014 10:39 AM
	Final Approval Date: 06/20/2014	

ORDINANCE NO. 2014-20

AN ORDINANCE AMENDING TITLE 9, TRAFFIC, CHAPTER 9-01, TRAFFIC CODE, BY ADDING A NEW SECTION 9-01-001-0013, USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; EXCEPTIONS; AND PROVIDING FOR PENALTIES

RECITALS:

WHEREAS, while there is ample research regarding the dangers of distracted driving generally, there is an increasing amount of evidence showing that text messaging is the most dangerous driver distraction of all; and

WHEREAS, this Council finds that prohibiting text messaging and similar behaviors while driving is necessary for the health and safety of Flagstaff citizens.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. General.

Title 9, Traffic, Chapter 9-01, Traffic Code, is amended by adding the following section:

9-01-001-0013. USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; EXCEPTIONS.

- A. A person shall not operate a motor vehicle or a bicycle on a street while using a handheld wireless communications device to compose manually, send or read a written message for the purpose of non-voice interpersonal communication, including but not limited to texting, emailing and instant messaging, while the motor vehicle or bicycle is in motion.
- B. This section does not apply to any of the following persons if the use of the handheld wireless communications device is made as part of their official duties:
 - 1. Law enforcement and public safety personnel.
 - 2. Drivers of authorized emergency vehicles.

OR

SECTION 1. General.

Title 9, Traffic, Chapter 9-01, Traffic Code, is amended by adding the following section:

9-01-001-0013. USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; EXCEPTIONS.

- A. A person shall not drive a motor vehicle or bicycle while using a portable communications device to engage in a call unless that device is specifically designed and configured to allow hands-free listening and talking, and is used exclusively in that manner while driving a motor vehicle or bicycle. Texting and typing are banned while driving a motor vehicle or bicycle.
- B. This Section does not apply to:
1. Drivers using a Hands-free mobile device to engage in a call.
 2. Calls made for the purpose of communication during an emergency with a police or fire department, physician's office, or an ambulance service.
 3. Law enforcement officials or other peace officers or emergency-vehicle operators when performing official duties.
 4. drivers who have a valid amateur radio operator license or any license issued by the Federal Communications Commission or drivers who use a two-way radio, including radios used in the Citizens Band (CB) service.
 5. Operation of a motor vehicle on private property.
 6. Operators of a motor vehicle that is parked in the non-traveled portion of the roadway in a safe and legal location.
- C. Definitions:
1. "Hands-free mobile device" shall mean: A device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such device, which is not held by the driver during motor vehicle use. The device must not obstruct the driver's view of the front or sides of the motor vehicle or interfere with the safety or operating equipment of the motor vehicle; or a device that is programmed before a person begins to drive or operate a motor vehicle such as a Global Positioning Device (GPS).
 2. "Portable communications device" shall mean: any handheld mobile telephone, personal digital assistant (PDA), handheld device with mobile data access, laptop computer, pager, broadband personal communications device, two-way messaging device, electronic game, or portable computing device.
 3. "Motor vehicle," "Drive" and "Driver" have the same meaning as those terms are defined in Title 23, Chapter 1, Arizona Revised Statutes, Transportation.
 4. "Use" means: holding a portable communications device and performing the illegal activities stated in Section A.

SECTION 2. Enforcement and Penalties.

1. Any peace officer may stop a motor vehicle or bicycle if the officer has reasonable cause to believe a violation of this Ordinance is occurring.

2. A violation of this article is a civil traffic violation.
3. A person found to be in violation of this Ordinance and not involved in a motor vehicle or bicycle crash is subject to a civil penalty of \$100 dollars plus any other penalty assessment authorized by law.
4. A person found to be in violation of this Ordinance and involved in a motor vehicle or bicycle crash is subject to a civil penalty of \$250 dollars plus any other penalty assessments authorized by law.
5. Violations of this Ordinance shall be administered pursuant to the procedures for civil traffic violations as set out in A.R.S. 28-1591 through 28-1601.

SECTION 3. Warning Period

For the purpose of informing and educating persons who operate motor vehicles and motor driven cycles and bicyclists, any law enforcement office may only issue verbal warnings to persons who would be violating this ordinance for a six month period after the ordinance is in effect.

SECTION 4. Severability

Should any sentence, paragraph, section, subsection, division, subdivision, clause or phrase of this ordinance be adjudged to be unconstitutional, illegal or invalid, the same shall not affect the validity of the document as a whole, or any part or provision thereof other than that part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of this ordinance, or the Flagstaff City Code, as amended, as a whole.

SECTION 5. Clerical Corrections

That the City Clerk is authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk is authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code.

SECTION 6. This Ordinance is effective 30 days after adoption by the Flagstaff City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY