

# **COMBINED WORK SESSION/SPECIAL MEETING**

## **A M E N D E D**

COMBINED WORK SESSION/SPECIAL MEETING  
TUESDAY  
NOVEMBER 9, 2021

COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
3:00 P.M.

## **ATTENTION**

### **IN-PERSON AUDIENCES AT CITY COUNCIL MEETINGS HAVE RESUMED WITH LIMITED CAPACITY**

The meetings will continue to be live streamed on the city's website  
(<https://www.flagstaff.az.gov/1461/Streaming-City-Council-Meetings>)

### **\*\*\*PUBLIC COMMENT\*\*\***

#### **WE ARE NO LONGER USING TELEPHONE COMMENTS**

**All verbal public comments will be given through a virtual public comment platform**

**If you want to provide a verbal comment during the Council Meeting, use the link below to join the virtual public comment room.**

#### **[VIRTUAL PUBLIC COMMENT WAITING ROOM](#)**

Written comments may be submitted to [publiccomment@flagstaffaz.gov](mailto:publiccomment@flagstaffaz.gov). All comments submitted via email will be considered written comments and will be documented into the record as such.

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#### **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 work session, 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 DEASY  
VICE MAYOR DAGGETT  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY

COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI  
COUNCILMEMBER SWEET

3. **PLEDGE OF ALLEGIANCE, MISSION STATEMENT, AND LAND ACKNOWLEDGEMENT**

**MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

**LAND ACKNOWLEDGEMENT**

*The Flagstaff City Council humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.*

4. **Public Participation**

*Public Participation enables the public to address the council about items that are not on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. 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 to have 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.*

5. **Recognition:** Mrs. Cleo Wilson Murdoch

6. **Review of Draft Agenda for the November 16, 2021 City Council Meeting**

*Citizens wishing to speak on agenda items not specifically called out by the City Council may submit a speaker card for their items of interest to the recording clerk.*

7. **Discussion about a citywide comprehensive cost recovery policy**

Council Direction

8. **Review the current tax code with respect to exemptions on rental, leasing, and licensing of real property.**

Council Discussion and Direction

9. **Northern Arizona Healthcare Update**

10. **Adjournment**

**SPECIAL MEETING**

1. **Request from Lowell Observatory for letter from City Council supporting proposed bill regarding Section 17.**

**STAFF RECOMMENDED ACTION:**

Staff has no recommendation for this item.

2. **Consideration and Adoption of Resolution No. 2021-53:** A resolution of the Flagstaff City Council, authorizing a development agreement between Lowell Observatory and the City of Flagstaff related to the development of approximately 615 acres of land located west of Lowell Observatory, commonly referred to as Section 17.

**STAFF RECOMMENDED ACTION:**

If the City Council chooses to enter into the proposed development agreement:

- 1) Read Resolution No. 2021-53 by title only
- 2) City Clerk reads Resolution No. 2021-53 by title only (if approved above)
- 3) Adopt Resolution No. 2021-53

3. **Consideration and Adoption of Resolution No. 2021-54:** A resolution of the Flagstaff City Council in support of the Endangered Species Act

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2021-54 by title only
- 2) City Clerk reads Resolution No. 2021-54 by title only (if approved above)
- 3) Adopt Resolution No. 2021-54

4. **Public Participation**

5. **Informational Items To/From Mayor, Council, and City Manager; future agenda item requests**

6. **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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Stacy Saltzburg, MMC, City Clerk

## **CITY OF FLAGSTAFF**

### **STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Rick Tadder, Management Services Director  
**Date:** 11/02/2021  
**Meeting Date:** 11/09/2021



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#### **TITLE**

**Discussion about a citywide comprehensive cost recovery policy**

#### **STAFF RECOMMENDED ACTION:**

Council Direction

#### **EXECUTIVE SUMMARY:**

On February 16, 2021, a Future Agenda Item Request (FAIR) was brought forward by Councilmember Salas to seek Council approval for a discussion about a citywide comprehensive cost recovery policy. The FAIR was introduced and received the support of the Council for future discussion.

Staff will seek Council direction on this FAIR and with the approval of four or more Councilmembers, staff will develop a citywide comprehensive cost recovery policy.

#### **INFORMATION:**

The City of Flagstaff does not currently have a city-wide policy related to cost recovery. Historically, discussions related to cost recovery occurred when the staff brought forward formal user fee studies and were seeking Council adoption of increased and new fees. When discussing cost recovery during fee adoption, staff used two components to assist in considering what level of recovery the city would like to adopt for the fees. First, a user fee study would address the full cost of services for each individual fee and second would consider who benefits from the service being provided by the city.

The City charges fees for many services it provides to the community. The City must have statutory authority to adopt fees. The City is not able to adopt fees for all services it provides. Per law, fees must be reasonable and related to the services being received by the individual. The City may charge fees that are less than the actual costs of providing services but is not able to charge fees to generate revenue for other city operations.

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**Attachments:** [Presentation](#)



# F.A.I.R: Discussion about a citywide comprehensive cost recovery policy

*Council Meeting - November 9, 2021*







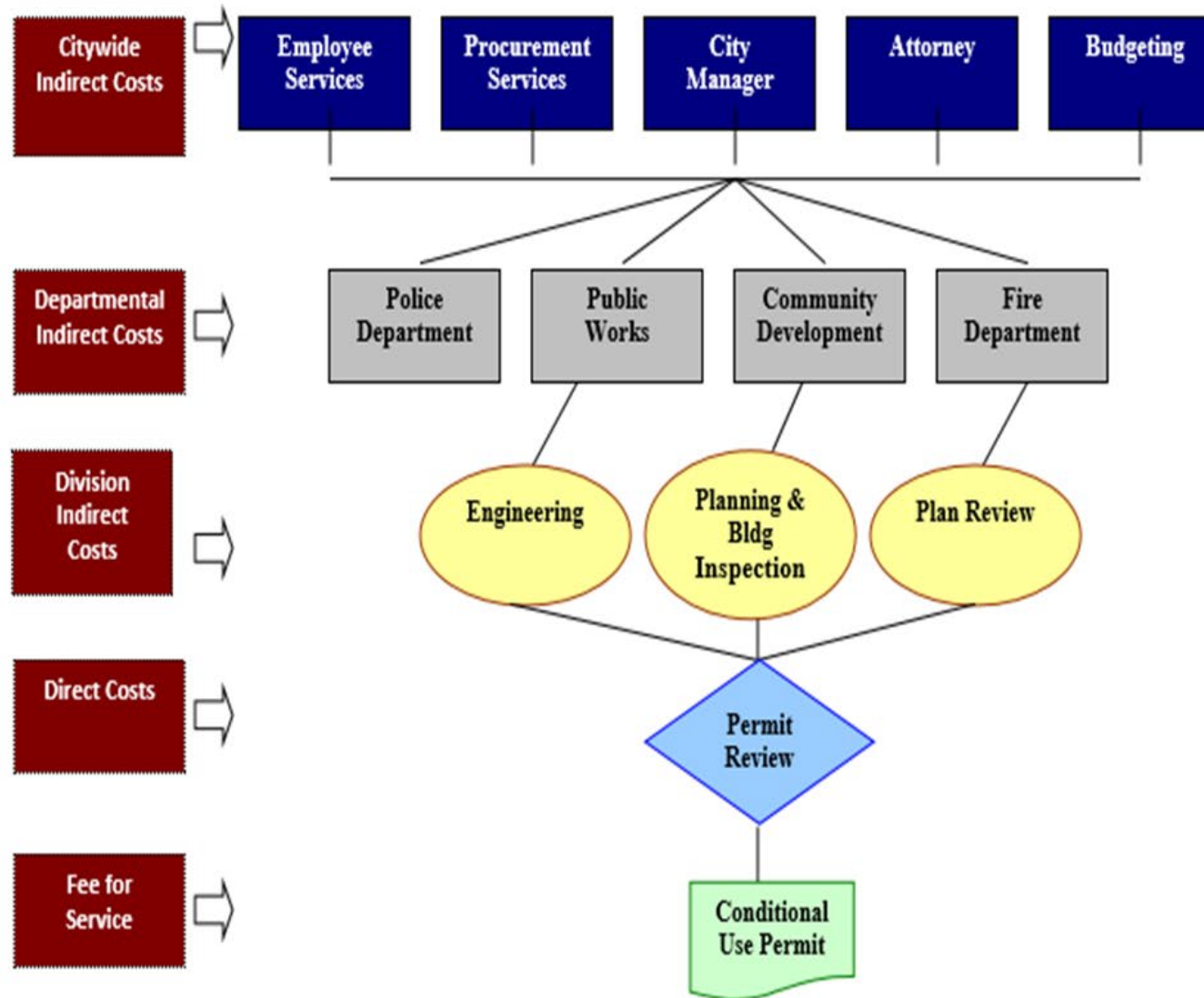
# Fees and Service Charges

## Historically

- Cost recovery is discussed during fee and service charge adoptions
- Use of full cost and direct cost in previous calculations
- Use the who benefits approach to fee setting
- Currently no formal citywide cost recovery policy
- Last user fee study completed fiscal year 2017
  - Planning, Engineering, Fire and Parks and Recreation



# Full Cost of Service



## STEP 1

### City Cost Allocation Plan – Indirect Costs:

- Calculate and assign costs of supporting programs that serve operating programs
- Assigning support cost in a manner that is logical and reflective of the use of the service
  - Allocation: i.e. Payroll – FTE, # of paychecks.

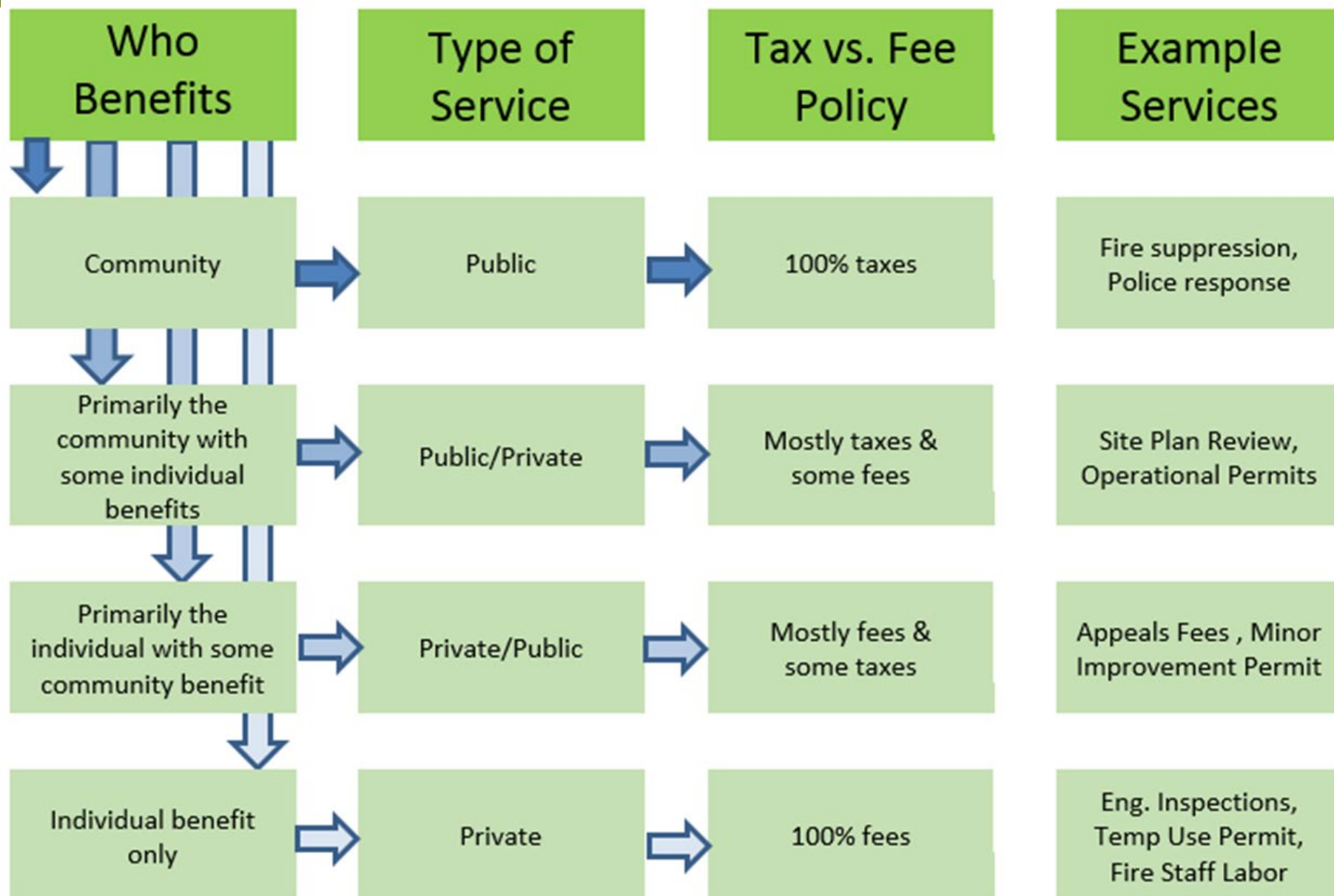
## STEP 2

### User Fee Calculations – Direct Costs:

- Who provides the service?
- How long does it take?
- How many do we do?
- Salary, benefits, services and supplies, support staff, etc.



# Cost Recovery Decision Making





# Council Discussion





## CITY OF FLAGSTAFF

### STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Rick Tadder, Management Services Director

**Co-Submitter:** Anja Wendel Senior Assistant City Attorney; Sharon Gonzales Billing/Collection Manager

**Date:** 11/02/2021

**Meeting Date:** 11/09/2021




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#### TITLE

**Review the current tax code with respect to exemptions on rental, leasing, and licensing of real property.**

#### STAFF RECOMMENDED ACTION:

Council Discussion and Direction

#### EXECUTIVE SUMMARY:

On March 16, 2021, a Future Agenda Item Request was brought forward by Councilmember Salas to seek Council approval for discussion for Council to review the current tax code with respect to exemptions on rental, leasing, and licensing of real property. The Future Agenda Item Request was introduced and received the support of the Council for future discussion.

Staff will present information related to our City Codes related to rental, leasing, and licensing of real property and tangible property including what is allowed by the Model City Tax Code for exemptions within these two categories.

#### INFORMATION:

Cities in Arizona are required to follow the Model City Tax Code (MCTC) for Transaction Privilege Tax (TPT) collections. The Model City Tax Code establishes taxable business activities, exemptions, and options that cities may adopt. The Model City Tax Code can be found at this website: <https://azdor.gov/model-city-tax-code/model-city-tax-code>

The City collects a transaction privilege tax for:

- Rental, leasing, and licensing for use of real property, City Code § 3-05-04-0445
- Rental, leasing, and licensing for use of tangible personal property, City Code § 3-05-04-0450

The MCTC incorporates all standard exemptions required by law. The City may adopt options within the Model City Tax Code that are not required by law. The City exempts residential rental business from taxation, Local Option #S. The City also exempts lodging under 30 days, under Local Option #T, as this business activity is taxed under the "hotel" category. If the City decided it was appropriate to tax residential rental business activity in the City, voter approval would be required. Most Arizona cities tax residential rental business activity.

Other options which the City may adopt are as follows:

- Model Options #4, #5A, #R: These all related to ways cities can exempt residential rental properties, however, since the City has already adopted the full exclusion of residential rental properties, these are not needed.
- Model Option #T: *Exempt from the tax imposed by this Section is the gross income derived from the rental, leasing, or licensing of real property to a corporation; provided that the lessor's aggregate holdings in the lessee corporation amount to at least eighty percent (80%) of the voting stock of the lessee corporation .*
- Local Option #OO: *Notwithstanding the other provisions of this Section, the tax imposed by this Section does not apply to the rental, leasing, or licensing for use of a commercial property.* This would eliminate commercial TPT

Under the tangible property TPT, the City is required to follow all standard deductions as required by law. There is only one option available in the Model City Tax Code which would remove coin-operated laundry and coin-operated car washes from the exempt list and therefore make those taxable. The City did not adopt this option.

Attached to the staff summary is a copy of the Model City Tax Codes being discussed. We have highlighted the code to show what is required by state law in green, what model options the City has adopted in blue, and the model options the city has not adopted in yellow.

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**Attachments:**     Presentation  
                         Tax Code Summary



# F.A.I.R: Discussion for Council to review the current tax code with respect to exemptions on rental, leasing, and licensing of real property



*Council Meeting - November 9, 2021*





# Rental, Leasing and Licensing Tax

## Background

- Cities conforms to the Model City Tax Code (MCTC)
- The Model City Tax Code establishes taxable business activities, exemptions, and options that cities may adopt
- The City collects TPT for these business activities:
  - Rental, leasing and licensing of real property
  - Rental, leasing and licensing of tangible personal property
  - City local transaction privilege tax (TPT) rate for these business activities is 2.281%



# Rental, Leasing and Licensing Tax

## **3-05-04-0445: Real Property TPT**

- The City collects TPT for commercial activities
- The City does not collect TPT for:
  - Standard State exemptions required by law
  - Council adopted options/exemptions allowed under the Model City Tax Code
    - Residential exclusion adopted
    - Lodging under 30 day adopted, taxed as a hotel/transient lodging
- The City cannot Adopt exceptions outside the Model City Tax Code



# Rental, Leasing and Licensing Tax

## 3-05-04-0445: Real Property TPT

- Other options available
  - Model Options #4,#5A,#R: Not needed as Residential is exempted
  - Model Option #T: *Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing of real property to a corporation; provided that the lessor's aggregate holdings in the lessee corporation amount to at least eighty percent (80%) of the voting stock of the lessee corporation.*
  - Local Option #OO: *Notwithstanding the other provisions of this Section, the tax imposed by this Section does not apply to the rental, leasing or licensing for use of commercial property*
    - This would eliminate commercial TPT



# Rental, Leasing and Licensing Tax

## **3-05-04-0445: Tangible Personal Property TPT**

- City collect TPT for personal property allowed under the Model City Tax Code
- The City does not collect TPT for:
  - Standard State exemptions required by law
- The City cannot Adopt exceptions outside the Model City Tax Code
- Option available:
  - Model Option #7: Eliminate the exemption for coin operated laundry or coin operated car washing machines



# Council Discussion





# **LOCAL TAXATION OF GROSS INCOME FROM RENTING, LEASING AND LICENSING OF PROPERTY Transaction Privilege Tax**

## **In general**

- City has adopted the Model City Tax Code
- City local transaction privilege tax (TPT) rate is 2.281%
- The MCTC establishes taxable business activities, exemptions, and options that cities may adopt
- Rental, leasing and licensing of real property is a taxable business activity
  - State does not tax, County does tax (0.3%)
- Rental, leasing and licensing of tangible personal property is a taxable activity
  - State and County both tax (5.6%, 1.3% respectively)

## **City Code § 3-05-04-0445 RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY**

### **What City taxes**

- Commercial revenues

### **What City does not tax**

- Residential revenues (City has elected to not tax)
- Standard exemptions required by law
- Model options/exemptions adopted by City

## **City Code § 3-05-04-0450 RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY**

- City taxes all personal property allowed/required under the MCTC, except:
- City has not adopted model option that would allow taxation of coin operated laundry or car washing machines

**Highlighted on the follow pages of the Municipal City Tax Code is as follows:**

**Green = required by law**

**Blue = model options the City HAS adopted**

**Yellow=model options the City HAS NOT adopted**

# Model City Tax Code

Rental, leasing, and licensing for use of real property  
(Reg. 445.1, Reg. 445.3)

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**Section Number:** 445.00

See also [Regulation 445.1](#) and [Regulation 445.3](#)

(a) The tax rate shall be at an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further that:

(1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

(2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

(3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section [-470](#).

(b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

(d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services or that is a cable operator OR THAT IS A CABLE OPERATOR, OR CHARGES FOR JOINT POLE USAGE to A person engaged in the business of providing or furnishing utility or telecommunication services OR THAT IS A CABLE

OPERATOR are exempt from the tax imposed by this Section. "CABLE OPERATOR" HAS THE SAME MEANING AS PRESCRIBED BY A.R.S. Section 9-505(link is external).

(e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512(link is external).

**\*\* (Model Option #4:**

(e) (Reserved) (Also See [Peoria](#) City Page))\*\*

(f) A person who has less than three (3) apartments, houses, trailer spaces, or other lodging spaces rented, leased or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State, is not deemed to be in the rental business, and is therefore exempt from the tax imposed by this Section on such income. However, a person who has one (1) or more units of commercial property is subject to the tax imposed by this Section on rental, lease and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than three (3) lodging spaces.

**\*\* (Model Option #5A:**

(f) A person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State, is not deemed to be in the rental business, and is therefore exempt from the tax imposed by this Section on such income. However, a person who has one (1) or more units of commercial property is subject to the tax imposed by this Section on rental, lease and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than two (2) lodging spaces.)\*\*

**\*\* (Model Option #5B:**

(f) (Reserved))\*\*

(g) (Reserved)

**++ (Local Option #R:**

(g) Single-unit/single-tenant rental, leasing, or licensing. A person who has only one unit of commercial property rented or available for rent, lease, or license shall be deemed not to be in the business of rental,



leasing, or licensing of real property, as provided by Regulation, and further provided that both of the following conditions exist:

(1) such lessor has income from any other source; and

(2) the scope and degree of rental activity clearly indicates that it is an investment rather than a business activity of the lessor.)++

(h) (Reserved)

**++(Local Option #S:**

(h) Except as may be provided in another Section of this Chapter, the tax prescribed by this Section shall not include gross income from the rental, leasing, or licensing of lodging or lodging space to an individual who resides therein.

OR

(h) The tax prescribed by this Section shall not include gross income from the rental, leasing, or licensing of lodging or lodging space to an individual who resides therein.)++

(i) (Reserved)

**++(Local Option #T:**

(i) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing of real property to a corporation; provided that the lessor's aggregate holdings in the lessee corporation amount to at least eighty percent (80%) of the voting stock of the lessee corporation.)++

(j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section \_\_\_\_-444 of this code.  
OR

(j) (Reserved) (See [Glendale city page](#))

(k) leasing or renting real property or the right to use real property at exhibition events in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under Section 501(c)(3)(link is external), 501(c)(4)(link is external) or 501(c)(6)(link is external) of the internal revenue code if the organization is associated with major league baseball teams or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. this paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association or professional golfing

association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were [exempt from taxation under A.R.S. Section 42-5073\(link is external\)](#). (NEED TO UPDATE CITY CODE TO MATCH STATE LAW)

(l) (Reserved)

(m) (Reserved)

**++(Local Option #00:**

(m) Notwithstanding the other provisions of this Section, the tax imposed by this Section does not apply to the rental, leasing or licensing for use of commercial property.)++

(n) Notwithstanding the provisions of Section \_\_\_\_-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.

(o) 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 of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.

(p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.

(q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to [Chapter 4 Title 36 Arizona Revised Statutes\(link is external\)](#) and [Title 9 of the Arizona Administrative Code \(link is external\)](#) are exempt.

(r) Income received from the rental of any "low-income unit" as established under [Section 42 of the Internal Revenue Code\(link is external\)](#), including the low-income housing credit provided by [IRC Section 42\(link is external\)](#), to the extent that the collection of tax on rental income causes the "gross rent" defined by [IRC Section 42\(link is external\)](#) to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory "low-income

unit" rent restrictions similar to [IRC Section 42](#)(link is external) to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the "gross rent" limitation for the unit and the rent received from that unit. (NEED TO UPDATE CITY CODE TO MATCH STATE LAW)

(s) The gross proceeds of a commercial lease of real property between affiliated companies, businesses, persons or reciprocal insurers are exempt. For the purposes of this paragraph:

(1) "affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, an affiliated entity holds a controlling interest in both the lessor and the lessee or an unrelated person holds a controlling interest in both the lessor and lessee.

(2) "controlling interest" means direct or indirect ownership of at least eighty per cent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

(3) "reciprocal insurer" has the same meaning as prescribed in [A.R.S. Section 20-762](#)(link is external).

# Model City Tax Code

Rental, leasing, and licensing for use of tangible personal property  
(Reg 450.1, Reg. 450.2, Reg 450.3)

See also [Regulation 450.1](#), [Regulation 450.2](#) and [Regulation 450.3](#)

(a) The tax rate shall be at an amount equal to \_\_\_\_\_ percent (\_\_\_%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation \_\_\_\_\_.

(b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.

(c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

(1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

(2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.

(3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section \_\_\_\_-410, or to a radio station, television station, or subscription television system.

(4) rental, leasing, or licensing for use of the following:

(A) prosthetics.

(B) income-producing capital equipment.

(C) mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

(5) rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in [26 U.S.C. Section 512](#)(link is external) or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under [Section 501\(c\)\(3\) of the United States Internal Revenue Code](#)(link is external) and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

(6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.

(7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services OR THAT IS A CABLE OPERATOR, OR CHARGES FOR JOINT POLE USAGE to A person engaged in the business of providing or furnishing utility or telecommunication services OR THAT IS A CABLE OPERATOR. "CABLE OPERATOR" HAS THE SAME MEANING AS PRESCRIBED BY [A.R.S. Section 9-505](#)(link is external).

(8) the gross income from coin-operated washing, drying, and dry cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.

**\*\* (Model Option #7:**

(8) (Reserved)\*\*

(9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.

(10) rental, leasing and licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and 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\(link is external\)](#).

(11) rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the Department of Revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and City, as applicable, for examination

(12) leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by [A.R.S. Section 28-1461\(link is external\)](#). For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in [A.R.S. Section 28-1301\(link is external\)](#).

# FLAGSTAFF CITY TAX CODE

## **3-05-004-0445 RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY:**

A. The tax rate shall be at an amount equal to two and two hundred eighty-one thousandths percent (2.281%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further, that:

1. Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
2. Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
3. However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section [3-05-004-0470](#).

B. If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

C. Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

D. Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this section.

E. Exempt from the tax imposed by this section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in [26](#) U.S.C. Section [512](#).

F. (Reserved)

G. (Reserved)

H. The tax prescribed by this section shall not include gross income from the rental, leasing, or licensing of lodging or lodging space to an individual who resides therein.

I. (Reserved)

J. Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section [3-05-004-0444](#).

K. (Reserved)

L. (Reserved)

M. (Reserved)

N. Notwithstanding the provisions of Section [3-05-002-0200](#), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this section.

O. 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.

P. Charges by a hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or any other real property during the course of their treatment by such facilities are exempt.

Q. Charges to patients receiving "personal care" or "directed care" by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4, Title [36](#) Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.

R. (Reserved)

S. The gross proceeds of a commercial lease of real property between affiliated companies, businesses, persons or reciprocal insurers are exempt. For the purposes of this subsection:

1. "Affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, an affiliated entity



holds a controlling interest in both the lessor and the lessee or an unrelated person holds a controlling interest in both the lessor and lessee.

2. "Controlling interest" means direct or indirect ownership of at least eighty percent (80%) of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

3. "Reciprocal insurer" has the same meaning as prescribed in A.R.S. Section [20-762](#). (Ord. 1851, 01/03/1995; Ord. 1979, 10/06/1998; Ord. 1989, Amended, 10/06/1998; Ord. 2008, Amended, 11/02/1999; Ord. 2000-14, Amended, 06/06/2000; Ord. 2004-25, Amended, 01/10/2005; Ord. 2006-16, Amended, 06/06/2006; Ord. 2011-21, Amended, 10/18/2011; Ord. 2013-26, Amended, 01/07/2014; Ord. 2014-34, Amended, 01/06/2015; Ord. 2019-01, Amended, 02/19/2019)

# FLAGSTAFF CITY TAX CODE

## 3-05-004-0450 RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY:

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A. The tax rate shall be at an amount equal to two and two hundred eighty-one thousandths percent (2.281%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by regulation.

B. Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a privilege tax or an equivalent excise tax upon the transaction.

C. Gross income derived from the following transactions shall be exempt from privilege taxes imposed by this section:

1. Rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
2. Rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
3. Rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section [3-05-004-0410](#), or to a radio station, television station, or subscription television system.
4. Rental, leasing, or licensing for use of the following:
  - a. Prosthetics.
  - b. Income-producing capital equipment.
  - c. Mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

5. Rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in [26 U.S.C. Section 512](#) or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
6. Separately billed charges for delivery, installation, repair, and/or maintenance as provided by regulation.
7. Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
8. The gross income from coin-operated washing, drying, and dry cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.
9. Rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by regulation, if such rental, leasing, or licensing had been a sale.
10. Rental, leasing and licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and 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](#).
11. Rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the Department of Revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and City, as applicable, for examination.
12. Leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by A.R.S. Section [28-1461](#). For the purposes of this subsection, "certified ignition interlock device" has the same meaning prescribed in A.R.S. Section [28-1301](#). (Ord. 1851, 01/03/1995; Ord. 1979, Amended, 10/06/1998; Ord. 2008, Amended, 11/02/1999; Ord. 2000-14, Amended, 06/06/2000;

Ord. 2004-25, Amended, 01/10/2005; Ord. 2007-28, Amended, 05/01/2007; Ord. 2009-16, Amended 06/16/2009; Ord. 2013-26, Amended, 01/07/2014; Ord. 2014-34, Amended, 01/06/2015; Ord. 2019-01, Amended, 02/19/2019)

## **CITY OF FLAGSTAFF**

### **STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Kevin Fincel, Deputy City Attorney  
**Date:** 11/05/2021  
**Meeting Date:** 11/09/2021



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#### **TITLE:**

**Request from Lowell Observatory for letter from City Council supporting proposed bill regarding Section 17.**

#### **STAFF RECOMMENDED ACTION:**

Staff has no recommendation for this item.

#### **Executive Summary:**

Lowell Observatory, a non-profit research and educational institution located in Flagstaff, owns a 640-acre parcel of land formally identified as "section 17, Township 21 north of range 7 east of the Gila and Salt River base and meridian in Coconino County, Arizona", hereby referred to as Section 17. Section 17 was deeded to Lowell Observatory in 1910 by the United States Congress with certain federal encumbrances related to the permitted use of the land. While Section 17 is owned by the Observatory, if the land is not used for observatory purposes, the land would revert to the federal government.

City staff and representatives from Lowell Observatory will discuss Section 17 and the draft bill that Lowell intends to introduce to remove the observatory purposes limitation that currently applies to Section 17. Lowell Observatory is requesting a letter of support from the Flagstaff City Council for this bill.

A draft of the bill, as well as a draft letter of support, are included as attachments in the agenda packet.

#### **Financial Impact:**

None.

#### **Policy Impact:**

None.

#### **Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

N/A

#### **Previous Council Decision on This:**

On February 4, 2020, the Flagstaff City Council approved a letter of support of S. 242 and H.R. 401, the "Lowell Observatory Conveyance Act" to support Lowell Observatory in its efforts to improve its capacity for science and outreach. However, the proposed "Lowell Observatory Conveyance Act" was not passed by Congress. On February 2, 2021, Lowell Observatory provided the Flagstaff City Council and the public with an overview of the history of Section 17 and discussed its intention for a revised bill. The Council requested that further discussion be had once the bill language had been drafted.

During the October 26, 2021 Council meeting, the Flagstaff City Council discussed the proposed bill and Lowell's intention to expand the use of Section 17 beyond "observatory purposes," with any such expansion guided by a public planning process and development of a binding planning document that will require City Council approval. The City Council directed staff to come back at a future meeting with options Council can consider to provide additional "guardrails" for Lowell's plans for Section 17. Staff will present the requested options at the November 9 meeting.

**Attachments:** Letter of Support  
Section 17 Bill

October 28, 2021

The Honorable Mark Kelly  
U.S. Senator  
516 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Kelly:

Lowell Observatory has requested that the Flagstaff City Council write you to express our support for legislation that would remove federal encumbrances on the Observatory's Section 17 parcel. Therefore, we formally request that you introduce this legislation and ask for its immediate consideration in the Senate Energy and Natural Resources Committee of which you are a member.

The City and Lowell have enjoyed a long and productive relationship over the 127 years the Observatory has been on Mars Hill. Lowell has contributed to the prestige and economy of Flagstaff in many ways: the discovery of Pluto at the Observatory in 1930, the establishment of the world's first "dark-sky city," wide-ranging research in astronomy and planetary science, and the local and regional impact of more than 100,000 people who visit Lowell every year.

Lowell Observatory is an important partner to the City, and we would love to see the Observatory grow and prosper in a way that benefits the Observatory, the City, and the residents of Flagstaff. As such, our support for the bill is predicated on the establishment of important safeguards. These include a planning process that will require robust public input, involvement, and approval of various land uses on the parcel to include some of the land being permanent open space, a strict limitation on publicly available housing, and approval of any potential development by the Planning and Zoning Commission and the City Council. This will ensure that the land is being used for mutually beneficial and agreed-upon purposes. The City and Lowell have recently entered into a development agreement that will allow for planning and development of a larger specific plan that will have these necessary, and agreed-upon, guardrails.

Under the Act as currently drafted, the community benefits provided by Lowell Observatory are limited by the "Observatory purposes" definition presently in the Act of Congress. By removing this federal encumbrance, the City and the Flagstaff community can work collaboratively with the Observatory to use this land for broader community purposes.

The City values its relationship with Lowell Observatory and wants to ensure that the Observatory continues to succeed in its mission while protecting this large parcel from unfettered development that is not in the public interest. We, the Council, believe it is imperative to protect one of the last large privately-owned parcels in the City, and this legislation and subsequent development agreement and specific plan will ensure that this

parcel will in large part remain dedicated forest lands that will benefit the public, the City, and the Observatory in perpetuity.

Only with passage of this legislation and a public planning process that culminates with the adoption of a binding specific plan can the full potential of Section 17 be realized to the benefit of the Flagstaff public and Lowell Observatory. We urge that you swiftly introduce this legislation and ask for its immediate consideration before your Committee.

Thank you in advance for your leadership on this issue. In the meantime, please accept our best regards.

Sincerely,



.....  
(Original Signature of Member)

117TH CONGRESS

1ST SESSION

**S.** \_\_\_\_\_

To require the Secretary of Agriculture to release certain reversionary and reserved interests in land in the Coconino National Forest in the State of Arizona, and for other purposes.

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IN THE UNITED STATES SENATE

Mr. XXXX introduced the following bill; which was referred to the  
Committee on

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**A BILL**

To require the Secretary of Agriculture to release certain reversionary and reserved interests in land in the Coconino National Forest in the State of Arizona, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Lowell Observatory  
Modernization Act”.

**SEC. 2. FINDINGS.**

Congress finds the following:

- (1) Lowell Observatory was founded in 1894, on what came to be known as Mars Hill in what then was within Flagstaff, Arizona City limits.
- (2) In 1910, Percival Lowell, through an Act of Congress, was deeded Forest Service land known as Section 17.
- (3) When Percival Lowell was deeded Section 17 in 1910, it was not within any City limits and was needed to protect the Observatory as a “dark sky” area and against potential development.
- (4) Percival Lowell’s will, which controls the Observatory, is explicit that the Observatory shall never be subsumed, governed, or incorporated by another entity, thus ensuring that the Observatory will continue its mission on Mars Hill and Section 17 for future generations.
- (5) Lowell Observatory welcomes visitors to enjoy the pristine and expansive undeveloped lands of this private property, and this shall be possible in the future with the 1910 Act as amended.
- (6) The Forest Service has identified Section 17 as an “orphaned” or disposal parcel to be auctioned if reverted to the Federal Government.
- (7) There is no worthwhile merchandisable timber on Section 17 and the current provision of the law related to timber unnecessarily burdens the United States Forest Service with time and resources.
- (8) In 1930, the discovery of the dwarf planet Pluto at Lowell Observatory solidified the Observatory and Flagstaff as a preeminent center for scientific research and discovery in the United States.
- (9) Lowell Observatory has been continuously operating for over 127 years at its Mars Hill location and has become one of the top tourist destinations in northern Arizona with more than 100,000 visitors annually.
- (10) Lowell Observatory has developed a master plan for its main campus to include a new Astronomy Discovery Center, increased parking, and other amenities.
- (11) Section 17 is now within the Flagstaff City limits.

(12) As Section 17 is now under the jurisdiction of the City, any further improvements to its amenities on Section 17 shall require the development of an additional planning document that shall be subject to the approval of the City's Planning and Zoning Commission and the City Council, and subject to the proviso that residential amenities not dedicated solely to Observatory staff, guests, and visitors shall be excluded.

(13) Lowell Observatory and the City of Flagstaff are finalizing a binding development agreement that will require the creation of a community-developed planning process to be approved by the Flagstaff City Council, which will dictate land uses for Section 17.

(14) The Observatory values its relationship with the City of Flagstaff, community organizations, and residents, who shall meaningfully contribute to the development of said Master Plan through the mechanism of a private-public partnership with all aforementioned constituents.

(15) Given the three previous clauses, the reversionary interest for "observatory purposes" in the Act of 1910 is now redundant and unnecessary; upon completion of said Master Plan, its contents shall represent the "purposes" of the Section thereafter.

### **SEC. 3. RELEASE OF REVERSIONARY AND RESERVED INTERESTS.**

(a) IN GENERAL.—The Act of May 30, 1910 (Chapter 261; 36 Stat. 452) is amended—

(1) in the long title, by striking “, for observatory purposes”;

(2) in the matter preceding the first proviso, by striking “, for observatory purposes in connection with the Lowell Observatory”;

(3) in the first proviso, by striking “or the use of said land by the grantee for other than observatory purposes”; and

(4) by striking “*Provided further*, That the title to the merchantable timber thereon and the right to cut and remove the same in such manner as to preserve the herbage and undergrowth in their natural condition shall remain in the United States.”.

(b) LAND DESCRIBED.—The parcel of land to be reverted pursuant to the amendments made by subsection (a) is the National Forest System land—

(1) conveyed by the United States to Percival Lowell and his heirs by the Act entitled “An Act granting certain lands in the Coconino National Forest, in Arizona, for observatory purposes”, approved 10 May 30, 1910 (36 Stat. 452; chapter 261); and

(2) described as section 17, T. 21 N., R. 7 E., of the Gila and Salt River base and meridian in Coconino County, Arizona.

(c) DEFINITIONS.—In this section:

(1) OBSERVATORY.—The term “Observatory” means Lowell Observatory in Flagstaff, Arizona.

(2) SECRETARY.—The term “Secretary” means

the Secretary of Agriculture, acting through the Chief of the Forest Service.

And, just to be clear, when done, the amended Act would read as follows:

CHAP. 261.- An Act Granting certain lands in the Coconino National Forest, in Arizona. [Public, No. 195.] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is granted to Percival Lowell, his heirs and assigns, section numbered seventeen, in township numbered twenty-one north of range seven east of the Gila and Salt River

base and meridian, the said tract of land being within the Coconino National Forest, in the Territory of Arizona: Provided, That in the event of the removal or abandonment of the said observatory the said land shall revert to the United States.

## CITY OF FLAGSTAFF

### STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Kevin Fincel, Deputy City Attorney  
**Date:** 11/05/2021  
**Meeting Date:** 11/09/2021



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#### TITLE:

**Consideration and Adoption of Resolution No. 2021-53:** A resolution of the Flagstaff City Council, authorizing a development agreement between Lowell Observatory and the City of Flagstaff related to the development of approximately 615 acres of land located west of Lowell Observatory, commonly referred to as Section 17.

#### STAFF RECOMMENDED ACTION:

If the City Council chooses to enter into the proposed development agreement:

- 1) Read Resolution No. 2021-53 by title only
- 2) City Clerk reads Resolution No. 2021-53 by title only (if approved above)
- 3) Adopt Resolution No. 2021-53

#### Executive Summary:

Lowell Observatory, a non-profit research and educational institution located in Flagstaff, owns a 640-acre parcel of land formally identified as "section 17, Township 21 north of range 7 east of the Gila and Salt River base and meridian in Coconino County, Arizona", hereby referred to as Section 17. Section 17 was deeded to Lowell Observatory in 1910 by the United States Congress with certain federal encumbrances related to the permitted use of the land. While Section 17 is owned by the Observatory, if the land is not used for observatory purposes, the land would revert to the federal government. Lowell Observatory is requesting a letter of support from the Flagstaff City Council for this bill. A draft of the bill, as well as a draft letter of support, are included as attachments in the agenda packet.

During the October 26, 2021 Council meeting, the Flagstaff City Council discussed the proposed bill and Lowell's intention to expand the use of Section 17 beyond "observatory purposes," with any such expansion guided by a public planning process and development of a binding planning document that will require City Council approval. The City Council directed staff to come back at a future meeting with options Council can consider to provide additional "guardrails" for Lowell's plans for Section 17. The proposed development agreement, which commits Lowell to developing a Council-approved specific plan for Section 17 if the bill passes, is an option for Council's consideration.

#### Financial Impact:

None.

#### Policy Impact:

None.

**Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

N/A

**Has There Been Previous Council Decision on This:**

No.

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**Attachments:**     Res. 2021-53  
                             Development Agreement  
                             DA Exhibits

## **RESOLUTION NO. 2021-53**

### **A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL AUTHORIZING A DEVELOPMENT AGREEMENT BETWEEN LOWELL OBSERVATORY AND THE CITY OF FLAGSTAFF RELATED TO THE DEVELOPMENT OF APPROXIMATELY 615 ACRES OF LAND LOCATED WEST OF LOWELL OBSERVATORY, COMMONLY REFERRED TO AS SECTION 17; AND ESTABLISHING AN EFFECTIVE DATE**

#### **RECITALS:**

WHEREAS, Lowell Observatory ("Lowell") owns approximately 615 acres of land located west of Lowell Observatory in Flagstaff, Arizona (APN # 111-03-001-B), commonly known as Section 17 ("Property"); and

WHEREAS, the Property was deeded to Percival Lowell in 1910 through an Act of Congress (the "Act"); and

WHEREAS, the Act granted the use of Section 17 "for observatory purposes in connection with the Lowell Observatory," and provides that the land shall revert back to the United States "in the event of the removal or abandonment of [Lowell Observatory] or the use of said land by [Lowell] for other than observatory purposes"; and

WHEREAS, Lowell would like to consider additional development opportunities on Section 17 that will be beneficial to Lowell and the Flagstaff community, but may not be considered "observatory purposes" under the Act; and

WHEREAS, Lowell understands that the Flagstaff community has a significant interest in Section 17, and in recognition of those interests, Lowell is willing to condition any improvements on Section 17, beyond those already in progress, on the development of a specific plan that will involve community input and shall be subject to the approval of the City Council; and

WHEREAS, the City and Lowell desire to enter into a Development Agreement, in the form attached to this Resolution as Exhibit A ("Development Agreement"), to provide for the terms and conditions under which the Property will be developed and to set forth in detail certain obligations of Lowell and the City; and

WHEREAS, developing the Property under the terms and conditions of the proposed Development Agreement and related specific plan would be consistent with the Flagstaff Regional Plan 2030, and Lowell and the City acknowledge that the Development Agreement would operate to the benefit of both parties; and

WHEREAS, Arizona Revised Statutes ("A.R.S.") § 9-500.05 authorizes the City to enter into development agreements in order to facilitate the orderly and effective development of properties.



**ENACTMENTS:**

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

SECTION 1. The Development Agreement provides benefit to the City of Flagstaff.

SECTION 2. The Development Agreement is consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan, any applicable specific plans, and the Zoning Code.

SECTION 3. The Development Agreement complies with the requirements of A.R.S. § 9-500.05.

SECTION 4. That the City of Flagstaff be hereby authorized to enter into the Development Agreement in the form attached to this Resolution as Exhibit A.

SECTION 5. The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Development Agreement and its related documents and to take all steps necessary to carry out the purpose and intent of this Resolution.

SECTION 6. That the City Clerk be hereby directed to record a copy of the agreement with the Coconino County recorder no later than ten days after the Development Agreement is executed.

SECTION 7. This Resolution shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 9th day of November, 2021.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Exhibits:  
Development Agreement

**WHEN RECORDED RETURN TO:**

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

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**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the \_\_\_\_ day of November, 2021, by and between the CITY OF FLAGSTAFF, ARIZONA, an Arizona municipal corporation (the "**City**"), and LOWELL OBSERVATORY, an Arizona Domestic Corporation ("**Lowell**"). The City and Lowell are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

**RECITALS**

A. Lowell Observatory was founded in 1894, on what came to be known as Mars Hill in what then was within Flagstaff, Arizona, City limits.

B. In 1910, Percival Lowell, through an Act of Congress (the "**Act**"), was deeded Forest Service land located west of Thorpe Park in Flagstaff, Arizona (APN # 111-03-001-B), commonly known as Section 17, which consists of approximately 615 acres and is more particularly described on **Exhibit A** ("**Section 17**").

C. The Act granted the use of Section 17 "for observatory purposes in connection with the Lowell Observatory," and provides that the land shall revert back to the United States "in the event of the removal or abandonment of [Lowell Observatory] or the use of said land by [Lowell] for other than observatory purposes."

D. The Lowell Observatory has been continuously operating for over 127 years at its Mars Hill location and has become one of the top tourist destinations in northern Arizona with more than 100,000 visitors annually.

E. Lowell has developed a master plan for its main campus to include a new Astronomy Discovery Center, increased parking, and other amenities more particularly described on **Exhibit B** ("**Main Campus Plan**").

F. In addition to the Main Campus Plan, Lowell would like to consider additional development opportunities on Section 17 that will be beneficial to Lowell and the Flagstaff community, but may not be considered "observatory purposes" under the Act.

G. In order for Lowell to use Section 17 for anything other than "observatory purposes," the Act will need to be amended by Congress, which Lowell will be seeking in the next legislative session.

H. Lowell understands that the Flagstaff community has a significant interest in Section 17, and in recognition of those interests, Lowell is willing to condition any improvements on Section 17, beyond those already included in the Main Campus Plan, on the development of a specific plan that will involve community input and shall be subject to the approval of the City Council (“**Section 17 Development Plan**”).

I. The Section 17 Development Plan will be a specific plan created and adopted pursuant to A.R.S. § 9-461.08 *et seq.* and Flagstaff City Code Division 11-10.30.

J. The City Council is willing to support Lowell’s proposed amendment to the Act, which will allow use and development of Section 17 for reasons other than observatory purposes, in exchange for Lowell agreeing to only allow future use and development of Section 17 not for observatory purposes pursuant to a specific plan approved by City Council. The proposed amending Bill is attached as Exhibit C.

K. The City believes that development of Section 17 pursuant to this Agreement will provide certain benefits to the City, and Lowell believes that development of Section 17 pursuant to this Agreement will be beneficial and advantageous to Lowell.

### **AGREEMENT**

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Recitals.** The recitals above, A through H, are incorporated into this Agreement.
2. **Observatory Purposes Defined.** As used in this Agreement, Observatory Purposes means any use or development of Section 17 that is in connection with the mission of Lowell Observatory, which is to pursue the study of astronomy, especially the study of our solar system and its evolution; to conduct pure research in astronomical phenomena; and to maintain quality public education and outreach programs to bring the results of astronomical research to the general public. An Observatory Purpose also includes any use of Section 17 Lowell has done since the Section was granted to it in 1910. Any proposed use or development of Section 17 that does not have a direct connection to the study of astronomy will not be considered a use or development for Observatory Purposes.
3. **Section 17 Development Conditions.** Pursuant to the Act, Lowell currently has the right to use Section 17 for observatory purposes, and nothing in this Agreement shall be construed to limit or condition that right in any way, nor should it be construed to limit or condition any development or uses included in the Main Campus Plan. The sole purpose of this Agreement is to condition further development and use of Section 17 for anything other than Observatory Purposes. If the Act is amended to expand use and development of Section 17 beyond Observatory Purposes, any such use and development, including any rezoning of all or a portion of Section 17, must be pursuant to and in compliance with the Section 17 Development Plan, which will be developed by Lowell and the Flagstaff community and approved by the Flagstaff City Council. No use or development of Section 17, other than for Observatory Purposes, will be permitted until the Section 17 Development Plan is approved by the Flagstaff City Council. To be clear, if the Act

is amended to expand use and development of Section 17 beyond Observatory Purposes, Lowell hereby waives and foregoes all rights to use and develop Section 17 for anything other than Observatory Purposes, unless such use and development is in compliance with an approved Section 17 Development Plan. However, if the Act is not amended, Lowell will have no obligations under this Agreement, at which time the City Council will take steps to terminate this Agreement.

4. **Section 17 Development Plan.** The Section 17 Development Plan will be a specific plan created and adopted pursuant to A.R.S. § 9-461.08 *et seq.* and Flagstaff City Code Division 11-10.30 (Specific Plans). The Section 17 Development Plan will be advanced by a specific plan steering committee that represents Flagstaff's diverse community. The specific plan steering committee will be formed by the Flagstaff City Manager, working in conjunction with Lowell representatives. The Section 17 Development Plan will include, among other things, regulations of the use of land, buildings, and structures, the height and bulk of buildings and structures, and the open spaces around buildings and structures, a water and sewer impact analysis, a transportation impact analysis for proposed development, and the conceptual location and plans for vehicular and multi-modal access to the area. Although there is no deadline for approving the Section 17 Development Plan, it is the intention of the Parties that the specific plan steering committee will be formed in December 2021 and a draft Section 17 Development Plan will be submitted to the City Council for consideration and review by Spring 2023. Upon City Council's approval of the Section 17 Master Development Plan, this Agreement may be amended to include applicable development standards, and resource protection and public infrastructure requirements if needed.

5. **Notices.** Unless otherwise specifically provided in this Agreement, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the third business day after mailing by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City:

City Manager  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001

To Lowell:

Jeff Hall  
Lowell Observatory  
1400 West Mars Hill Road  
Flagstaff, AZ 86001

Copy To:

City Attorney  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, AZ 86001

6. **General Provisions**

6.1 **Amendment.** This Agreement may be amended at any time by written amendment executed by the Parties, which amendment shall be recorded in the official records of Coconino County, Arizona, within ten (10) days

following its execution. Any proposed amendment shall require super majority approval of the entire City Council (six of seven members) at a noticed public hearing.

- 6.2 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Arizona.
- 6.3 Assignment. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties, pursuant to A.R.S. § 9-500.05(D). In addition, Lowell's rights and obligations may only be transferred or assigned to a person or entity that has acquired Section 17 or a portion of it and only by a written instrument recorded in the official records of Coconino County, Arizona, expressly assigning such rights and obligations. Any such transfer or assignment shall not be valid as to the City until written notice has been sent to the City in accordance with **Section 5** of this Agreement. All rights and obligations of Lowell under this Agreement shall constitute covenants running with the land and shall be binding on all of Lowell's successors and assigns.
- 6.4 Attorney's Fees and Costs. Subject to **Section 6.17**, Mediation, if legal action by any Party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs.
- 6.5 Authority. The person executing this Agreement on behalf of Lowell warrants and represents that they have the authority to execute this Agreement on behalf of Lowell, and that the execution of this Agreement has been approved by all required actions on the part of such Parties, and that this Agreement is fully binding on such Parties.
- 6.6 Cancellation for Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.
- 6.7 Consistent with General Plan. The Section 17 Master Development Plan, created through this Agreement, will ensure that all development on the Property shall be consistent with the City's General Plan recommendation for the Property as required by A.R.S. § 9-500.05(B).
- 6.8 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against any Party to it or against the Party who prepared the last draft.
- 6.9 Counterparts. This Agreement may be executed by the Parties in two (2) counterparts, which counterparts shall be construed as a single document and have the same effect as if all of the Parties had executed the same instrument.

- 6.10 Cooperation. In the event that any action or proceeding brought by a third party, whether private or governmental, challenging the validity of this Agreement or any provision of it, the Parties shall cooperate in defending against such a challenge, provided that each Party shall pay its own respective legal expenses and costs associated with such defense. During the entire course of any such proceeding, this Agreement shall remain in full force and effect.
- 6.11 Covenants Run with the Land. The covenants and agreements contained in this Agreement are mutual covenants and also constitute conditions to the subsequent or concurrent performance of the Party benefitted thereby. All covenants shall be covenants running with the land, and shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
- 6.12 Effective Date. This Agreement shall be effective upon execution by the Parties and recordation in the Office of the Coconino County Recorder.
- 6.13 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and shall not be changed or added to except in the manner provided in **Section 6.1**. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, other than those specifically incorporated in this Agreement, are superseded by this Agreement. The parties acknowledge and agree that this Agreement is to be read and interpreted with the resolution approving the rezoning ordinance.
- 6.14 Exhibits. All exhibits attached are incorporated by reference as though fully set forth in this Agreement.
- 6.15 Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.
- 6.16 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Coconino, State of Arizona, and the Parties waive all provisions of law providing for the filing, removal, or change of venue to any other court. This **Section 6.16** shall survive termination of this Agreement.
- 6.17 Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the Parties agree first to attempt in good faith to resolve the dispute by mediation before resorting to litigation or some other alternative dispute resolution procedure. Mediation will be self-administered. The Parties shall agree upon a mediator. Each

party agrees to bear its own costs in mediation. The Parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This section does not constitute a waiver of a Party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

- 6.18 Modification. No modification of this Agreement shall be deemed effective unless in writing and signed by the Parties, and any waiver granted shall not be deemed effective except for the instance and circumstances particularly specified in a written waiver executed by the Party against whom enforcement of the waiver is sought.
- 6.19 No Partnership; No Agency. It is specifically understood and agreed by and among the Parties that any development of Section 17 will be a private development, that no Party is acting as the agent of any other Party in any respect, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The Parties acknowledge and agree that this Agreement does not create a partnership, joint venture, or similar entity, and that no such partnership, joint venture, or similar entity has been created by the City and Lowell.
- 6.20 No Obligation to Develop Property. Except as specifically set forth in this Agreement, there shall be no obligation for Lowell to develop Section 17.
- 6.21 No Third Party Beneficiaries. No person or entity other than a Party to this Agreement or legal representative, successor in interest, or assign of such party shall be entitled to rely on this Agreement or the performance of any Party; this Agreement is not made for the benefit of any person or entity not a Party; and no such person or entity shall be entitled to assert any claim arising out of, or in connection with, this Agreement.
- 6.22 Proposition 207 Waiver. If the proposed Bill (Exhibit C) passes in the current session of the U. S. Congress, Lowell hereby waives and releases the City from any and all claims under A.R.S. § 12-1134 through 12-1138, including any right to compensation for the reduction to the fair market value of the Property which is or arises out of the subject matter of this Agreement, whether such reduction in value occurs now or in the future. The terms of this waiver shall survive termination of this Agreement, run with the land, and shall be binding upon all other successors in interest, heirs, successors, or assigns.
- 6.23 Recordation of Agreement. In accordance with A.R.S. § 9-500.05(D), this Agreement shall be recorded in its entirety in the official records of the Coconino County Recorder, State of Arizona, no later than ten (10) days from the date of its execution.

- 6.24 Remedies. If either party to this Agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at law and in equity, including specific performance.
- 6.25 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.
- 6.26 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.
- 6.27 Term. The term of this Agreement shall commence on the Effective Date of this Agreement as defined in **Section 6.12** and shall terminate when the City Council determines, in its sole discretion, that the terms, conditions, and obligations of the Agreement have been fulfilled by all Parties.
- 6.28 Waiver. No waiver by any Party to this Agreement of a breach of any of the terms, covenants, conditions of this Agreement shall be construed or be held to be a waiver of any succeeding or proceeding breach of the same or any other term, covenant, or condition of this Agreement.

[Signatures on Following Pages]





**CITY**

CITY OF FLAGSTAFF, an Arizona municipal corporation

By: \_\_\_\_\_  
Paul Deasy, Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA       )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Paul Deasy, the Mayor of the City of Flagstaff, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Exhibit A**  
**Legal Description of Section 17 Property**  
**APN # 111-03-001-B**

Quarter: NE Section: 17 Township: 21 Quarter: SE Section: 17 Township: 21 Quarter: SW  
Section: 17 Township: 21 Quarter: NW Section: 17 Township: 21 SEC 17 LESS 4.78 AC AT &  
SF RR R/W LESS BEG SE COR SEC 17 21N 07E, TH N0-47-36W 1642.82?, TPOB NC A  
969.59 R 716.47 C N51-38-52W R TC A 244.25 R 350 R TH N27-20-58E 1383.47?; TH S1-23-  
42E 991.85?; TH S0-47-36E 1031.57?, TPOB

**Exhibit B**  
**Main Campus Plan**





# KEYNOTES

1. IMPROVED SECONDARY FIRE APPARATUS ACCESS ROADWAY, 20' WIDE AGGREGATE PAVING PER CITY REQUIREMENTS
2. EXISTING PAVED SUBDIVISION ROADWAY, PRIVATE STREET WITH UNLIMITED PUBLIC ACCESS PER SUBDIVISION PLAT
3. DEVELOPMENT MASTER PLAN LIMITS, APPX 41 ACRES
4. PROPOSED RELOCATED PROPERTY LINE
5. EXISTING FUTS

JWA  
ARCHITECTS



LOWELL OBSERVATORY  
ASTRONOMY DISCOVERY CENTER  
FLAGSTAFF, ARIZONA

PROJECT: 19021  
SCALE: 1" = 300'  
DRAWN BY: ALP  
CHECKED BY: TW  
DATE: MAY 2020

TITLE: DEVELOPMENT MASTER PLAN  
SECTION 17

DMP1

JOHNSON WALZER ASSOCIATES LLC, 17 NORTH SAN FRANCISCO STREET, SUITE 3A, FLAGSTAFF, ARIZONA 86001 (928) 779-0470

1 OBSERVATORY MESA  
1" = 300'

10' CONTOURS





**Exhibit C**  
**Proposed Bill**

.....  
(Original Signature of Member)

117TH CONGRESS

1ST SESSION

**S.** \_\_\_\_\_

To require the Secretary of Agriculture to release certain reversionary and reserved interests in land in the Coconino National Forest in the State of Arizona, and for other purposes.

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IN THE UNITED STATES SENATE

Mr. XXXX introduced the following bill; which was referred to the  
Committee on

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**A BILL**

To require the Secretary of Agriculture to release certain reversionary and reserved interests in land in the Coconino National Forest in the State of Arizona, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Lowell Observatory  
Modernization Act”.

**SEC. 2. FINDINGS.**

Congress finds the following:

- (1) Lowell Observatory was founded in 1894, on what came to be known as Mars Hill in what then was within Flagstaff, Arizona City limits.
- (2) In 1910, Percival Lowell, through an Act of Congress, was deeded Forest Service land known as Section 17.
- (3) When Percival Lowell was deeded Section 17 in 1910, it was not within any City limits and was needed to protect the Observatory as a “dark sky” area and against potential development.
- (4) Percival Lowell’s will, which controls the Observatory, is explicit that the Observatory shall never be subsumed, governed, or incorporated by another entity, thus ensuring that the Observatory will continue its mission on Mars Hill and Section 17 for future generations.
- (5) Lowell Observatory welcomes visitors to enjoy the pristine and expansive undeveloped lands of this private property, and this shall be possible in the future with the 1910 Act as amended.
- (6) The Forest Service has identified Section 17 as an “orphaned” or disposal parcel to be auctioned if reverted to the Federal Government.
- (7) There is no worthwhile merchandisable timber on Section 17 and the current provision of the law related to timber unnecessarily burdens the United States Forest Service with time and resources.
- (8) In 1930, the discovery of the dwarf planet Pluto at Lowell Observatory solidified the Observatory and Flagstaff as a preeminent center for scientific research and discovery in the United States.
- (9) Lowell Observatory has been continuously operating for over 127 years at its Mars Hill location and has become one of the top tourist destinations in northern Arizona with more than 100,000 visitors annually.
- (10) Lowell Observatory has developed a master plan for its main campus to include a new Astronomy Discovery Center, increased parking, and other amenities.
- (11) Section 17 is now within the Flagstaff City limits.



(12) As Section 17 is now under the jurisdiction of the City, any further improvements to its amenities on Section 17 shall require the development of an additional planning document that shall be subject to the approval of the City's Planning and Zoning Commission and the City Council, and subject to the proviso that residential amenities not dedicated solely to Observatory staff, guests, and visitors shall be excluded.

(13) Lowell Observatory and the City of Flagstaff are finalizing a binding development agreement that will require the creation of a community-developed planning process to be approved by the Flagstaff City Council, which will dictate land uses for Section 17.

(14) The Observatory values its relationship with the City of Flagstaff, community organizations, and residents, who shall meaningfully contribute to the development of said Master Plan through the mechanism of a private-public partnership with all aforementioned constituents.

(15) Given the three previous clauses, the reversionary interest for "observatory purposes" in the Act of 1910 is now redundant and unnecessary; upon completion of said Master Plan, its contents shall represent the "purposes" of the Section thereafter.

### **SEC. 3. RELEASE OF REVERSIONARY AND RESERVED INTERESTS.**

(a) IN GENERAL.—The Act of May 30, 1910 (Chapter 261; 36 Stat. 452) is amended—

(1) in the long title, by striking “, for observatory purposes”;

(2) in the matter preceding the first proviso, by striking “, for observatory purposes in connection with the Lowell Observatory”;

(3) in the first proviso, by striking “or the use of said land by the grantee for other than observatory purposes”; and

(4) by striking “*Provided further*, That the title to the merchantable timber thereon and the right to cut and remove the same in such manner as to preserve the herbage and undergrowth in their natural condition shall remain in the United States.”.

(b) LAND DESCRIBED.—The parcel of land to be reverted pursuant to the amendments made by subsection (a) is the National Forest System land—

(1) conveyed by the United States to Percival Lowell and his heirs by the Act entitled “An Act granting certain lands in the Coconino National Forest, in Arizona, for observatory purposes”, approved 10 May 30, 1910 (36 Stat. 452; chapter 261); and

(2) described as section 17, T. 21 N., R. 7 E., of the Gila and Salt River base and meridian in Coconino County, Arizona.

(c) DEFINITIONS.—In this section:

(1) OBSERVATORY.—The term “Observatory” means Lowell Observatory in Flagstaff, Arizona.

(2) SECRETARY.—The term “Secretary” means

the Secretary of Agriculture, acting through the Chief of the Forest Service.

And, just to be clear, when done, the amended Act would read as follows:

CHAP. 261.- An Act Granting certain lands in the Coconino National Forest, in Arizona. [Public, No. 195.] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is granted to Percival Lowell, his heirs and assigns, section numbered seventeen, in township numbered twenty-one north of range seven east of the Gila and Salt River

base and meridian, the said tract of land being within the Coconino National Forest, in the Territory of Arizona: Provided, That in the event of the removal or abandonment of the said observatory the said land shall revert to the United States.

## CITY OF FLAGSTAFF

### STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 11/08/2021  
**Meeting Date:** 11/09/2021



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#### TITLE:

**Consideration and Adoption of Resolution No. 2021-54:** A resolution of the Flagstaff City Council in support of the Endangered Species Act

#### STAFF RECOMMENDED ACTION:

- 1) Read Resolution No. 2021-54 by title only
- 2) City Clerk reads Resolution No. 2021-54 by title only (if approved above)
- 3) Adopt Resolution No. 2021-54

#### Executive Summary:

Council requested a resolution in support of the Endangered Species Act in an effort to further the local support for a lone gray wolf that has taken occupancy in the national forests north of Williams and Flagstaff.

#### Financial Impact:

None

#### Policy Impact:

None

#### Connection to PBB Key Community Priorities/Objectives & Regional Plan:

##### **Priority Based Budget Key Community Priorities and Objectives**

Environmental Stewardship

#### Has There Been Previous Council Decision on This:

On November 2, 2021 Council requested staff bring a resolution in support of the Endangered Species Act for consideration and possible adoption.

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**Attachments:** Res. 2021-54

## **RESOLUTION NO. 2021-54**

### **A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL IN SUPPORT OF THE ENDANGERED SPECIES ACT**

#### **RECITALS:**

WHEREAS, the City of Flagstaff government exists to enhance the health, safety and quality of life for all residents and recognizes that a healthy planet is an integral part of the city's economy, society, and culture; and

WHEREAS, the City of Flagstaff has a responsibility to current residents and future generations to protect and conserve threatened and endangered species and their habitats; and

WHEREAS, the Endangered Species Act was passed in 1973 by a bi-partisan majority of Congress and signed into law by President Nixon in order to protect not only individual species, but the healthy landscapes upon which all life depends; and

WHEREAS, a review of nationwide polling data going as far back as 1996 shows that bi-partisan support for the Endangered Species Act has stayed strong and stable over the years; a 2015 national poll found 90% of Americans support the Endangered Species Act and 68% of voters are more likely to support members of Congress who back environmental safeguards; and

WHEREAS, protecting animal and plant species from extinction and habitat destruction benefits our own welfare by providing clean air, clean water, medicines, food pollination, buffer zones from severe weather, and a multitude of ecological services that provide economic benefits via diverse outdoor recreation opportunities, and more; and

WHEREAS, according to U.S. Fish and Wildlife Service data, the Endangered Species Act has saved from extinction over 99% of the species designated for protection, putting hundreds of endangered species of animals and plants on the path to recovery; and

WHEREAS, Northern Arizona contains some of the best remaining habitat for species such as the Mexican gray wolf, Black-footed ferret, Mexican spotted owl, Northern leopard frog, California condor, Narrow-headed garter snake, Razorback sucker and many more; and

WHEREAS, recovery of the Mexican gray wolf and other threatened and endangered species on Northern Arizona's vast mosaic of public lands will help to restore health and natural balance to those lands; and

WHEREAS, studies in areas where endangered wolves have been brought back have shown that tremendous economic benefits to local communities can be achieved through wolf related tourism; and

WHEREAS, the Endangered Species Act encourages and is compatible with programs that provide economic incentives to landowners engaged in effective endangered species and habitat conservation that can benefit both landowners and endangered species.

**ENACTMENTS:**

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

That the Flagstaff City Council strongly supports the Endangered Species Act and encourages the United States Congress to maintain its funding and enforcement while working to promote the restoration of threatened and endangered species in northern Arizona.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 9th day of November, 2021.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY