

MINUTES OF THE REGULAR MEETING OF THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, held in the Council Chambers, 88 E. Chicago Street, on Thursday, September 13, 2012 at 7:01 p.m.

THE MEETING WAS CALLED TO ORDER BY MAYOR JAY TIBSHRAENY.

The following members answered roll call:

Jay Tibshraeny	Mayor
Jeff Weninger	Vice-Mayor
Trinity Donovan	Councilmember
Kevin Hartke	Councilmember
Rick Heumann	Councilmember
*Matt Orlando	Councilmember
Jack Sellers	Councilmember

\*Councilmember Orlando attended the meeting telephonically.

Also in attendance:

Rich Dlugas	City Manager
Pat McDermott	Assistant City Manager
Mary Wade	City Attorney
Marla Paddock	City Clerk

INVOCATION: Susan Stevens-Clarke – Chandler Bahai Faith

PLEDGE OF ALLEGIANCE: Former Congressman Matt Salmon led the Pledge of Allegiance.

UNSCHEDULED PUBLIC APPEARANCES:

Chandler resident, Mike Moore, came forward to express his concerns about a vacant former McDonald's restaurant located on the corner of Arizona Avenue and Ray Road. Mr. Moore said that the building has been vacant for approximately two years and he was interested in learning if there is a City ordinance that could address this issue.

MAYOR TIBSHRAENY directed staff to assist with answering Mr. Moore's questions.

CONSENT:

MOVED BY VICE-MAYOR WENINGER SECONDED BY COUNCILMEMBER HARTKE, to approve the Consent Agenda as presented.

VICE-MAYOR WENINGER said he would like to recap Item no. 21, which was discussed during Monday night's Study Session. VICE-MAYOR WENINGER said Item no. 21 is an agreement with a law firm for legal services to collect unpaid privilege taxes from online travel companies such as Orbitz, Expedia, etc. He explained that these companies purchase blocks of rooms from hotels and sell them online. VICE-MAYOR WENINGER said that sometimes there is a difference in the price that the companies pay for the hotel room and the price that they resell the hotel rooms to the consumer. VICE-MAYOR WENINGER advised that he believes that the City should be taxing

on this item. He said that he has done some research and learned that there are municipalities that have made a specific law to address these types of issues, rather than relying on a vague part of tax code. He asked Dawn Lang, Management Services Director or City Attorney Mary Wade, to share their thoughts.

MS. LANG asked Tax Audit Supervisor, Lee Grafstrom, to come forward to address this question.

MR. GRAFSTROM explained that the broker provision that the City currently has in place treats anyone who acts on behalf of another, such as a broker, as if he/she were that person in business. He said that this is typically done with property rentals. Property managers will collect one rent and the owner of the property will receive a lesser amount because the property manager has kept a portion of it. MR. GRAFSTROM explained that under the current tax code, as it is written, the taxable amount is the full amount of rent received from the tenant. He said this is the same type of situation. When someone is using one of the online travel companies, he/she is paying for a hotel room at a certain rate and that rate is taxed. Under the City's broker provision, all of these online companies are treated as if they were the hotel that is selling that room and the taxable measure is the amount they sell it to the person who is going to use the room. It is already within our code. This is why the City is doing the audit and have the assessment and are hiring a law firm to help to defend that assessment.

VICE-MAYOR WENINGER asked if this item went forward, would it be voluntary since the books for these companies are not able to be inspected.

MR. GRAFSTROM said that the company's books have been inspected and the City has created an audit period and assessment for all of the companies. He said that we are now hiring attorneys to assist. MR. GRAFSTROM said that at the advice of the attorneys, the City has not issued the assessment yet.

VICE-MAYOR WENINGER asked how staff would inspect the books on an on-going basis.

MR. GRAFSTROM said that the books can be inspected through a follow on audit four years later. Once the companies are licensed and paying it would be voluntary compliance basis, just like every other taxpayer is required to file, report, and pay. MR. GRAFSTROM said that the City would have the authority to produce an audit and go examine the books.

VICE-MAYOR WENINGER asked what happens if a block of rooms is purchased for \$60 and later sold for \$40. He asked if a credit would be issued.

MR. GRAFSTROM said that normally the online travel companies do not buy a block of rooms ahead of time. Instead, they enter into an agreement with the hotel that they will be able to sell a specific number of rooms at the agreed upon price. They then pay the hotel based on the number of rooms they managed to sell. The dollar value that the room is sold for is the taxable measure, which is the amount subject to tax. If the room is sold for less than the previously agreed upon amount with the hotel, there is an adjustment in those contracts that lowers the amount that gets paid to the hotel so that the travel company maintain its commission level, service fees.

VICE-MAYOR WENINGER asked if these companies have been paying any municipalities. He said he has heard about many court cases.

MR. GRAFSTROM confirmed that there have been dozens of court cases that have split in a variety of ways. There are situations where the city, county, or state have won and the travel

companies have had to pay. MR. GRAFSTROM said there have also been a number of losses for the municipalities and for the various taxing jurisdictions. He said those have typically fallen in one of two areas; either the taxing jurisdiction failed to extinguish all of its administrative relief and remedies prior to bringing lawsuit. He noted that the City has already done the audit and assessment, so that issue would not apply to Chandler. MR. GRAFSTROM said that the other issue pertains to the language for a specific state or municipality tax code. He said that it does not include the online travel companies. Consequently, some of those municipalities have changed its tax code to capture these online travel companies. MR. GRAFSTROM said he does not know whether the travel companies are paying the other jurisdictions.

VICE-MAYOR WENINGER asked if adding on the broker fee is as strong of a case as making something specific in the tax code, like other municipalities have done.

MR. GRAFSTROM said that it is the City's opinion that the broker provisions in the City's tax code does specifically apply to travel companies. The tax is due as written. He said there is nothing more that can be added to make it more specific to online travel companies that would not violate other items. MR. GRAFSTROM said that the broker provision that is in place applies to anyone who acts on behalf of another to perform a transaction. He said it is his opinion that these companies clearly fall within this realm.

COUNCILMEMBER HEUMANN said that he frequently travels and when using these services there is a tax added to the price. He said that the taxes and fees are listed. COUNCILMEMBER HEUMANN asked Mr. Grafstrom if the issue is that the travel companies are not charging enough tax.

MR. GRAFSTROM said that the most frequently encountered model has been a lump fee, which includes service charges, convenience fees, and all applicable taxes. One item that was found is that the fee varies based on the dollar value of the room being sold and it appears that they are charging the tax at a higher rate. But because it is lumped into one charge, the charge moves up and down as the rate of the room moves up and down. The companies then take and pay to the hotel the agreed upon hotel rate plus the tax that is due at that rate and the hotel in turn pays the City. It is unknown if the correct tax rate is being charged for the correct tax amount. He said it certainly appears so, but it could not be verified within the books and records.

MAYOR TIBSHRAENY thanked Mr. Grafstrom.

MAYOR TIBSHRAENY thanked Transportation and Development Manager, R.J. Zeder, and Transportation Manager, Dan Cook, and other City staff for their work on Item no. 13, an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the transfer of jurisdiction and operation and maintenance responsibilities to the City for Arizona Avenue from Ocotillo Road to approximately 1,325 feet south of Riggs Road.

He said that the City will take over maintenance responsibilities for that part of Arizona Avenue. He noted that the City previously had some responsibility from the northern borders to this area. MAYOR TIBSHRAENY said that ADOT repaved the road and plans to pay the City 4.5 million dollars of one-time money that can be used to complete some of those badly needed roads in Southeast Chandler.

VICE-MAYOR WENINGER voted nay on Item no. 21.

COUNCILMEMBER HARTKE voted nay on Items no. 21 and 24.

COUNCILMEMBER HEUMANN voted nay on Item no. 24.

MAYOR TIBSHRAENY declared a conflict on Item no. 14.

MOTION CARRIED UNANIMOUSLY (7-0) with the exceptions noted.

CONSENT:

1. MINUTES:

APPROVED the following Minutes:

- 1a. Minutes of the Chandler City Council Regular Meeting of August 13, 2012.
- 1b. Minutes of the Chandler City Council Special Meeting of August 16, 2012.
- 1c. Minutes of the Chandler City Council Regular Meeting of August 16, 2012.

2. REZONING: The Enclave Ord. #4386

ADOPTED Ordinance No. 4386, DVR12-0001 The Enclave, rezoning from PAD for commercial with a transit-oriented, multi-family residential overlay to PAD (Multi-Family Residential) for an apartment development and Preliminary Plat located at the SEC of Arizona Avenue and Chandler Heights Road.

3. SETBACK DECREASE: Chandler Airport Water Reclamation Facility Ord. #4387

ADOPTED Ordinance No. 4387 authorizing a decrease in the setback area established in the Arizona Department of Environmental Quality (ADEQ) Rule R18-9-B201(I) for the Chandler Airport Water Reclamation Facility located on Queen Creek Road, west of McQueen Road.

4. REZONING: Banner Health Center – Chandler Ord. #4383

ADOPTED Ordinance No. 4383, DVR12-0008 Banner Health Center – Chandler, rezoning from PAD (Commercial/Retail/Office and Live/Work) to PAD (Medical Office and Commercial) with a Mid-Rise Overlay for medical office use located at the NEC of Alma School and Willis roads, immediately south of the Loop 202 Santan Freeway.

5. AGREEMENT AMENDMENT: Verizon Wireless Ord. #4372

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4372, Amendment No. 2, to the agreement with Verizon Wireless (VAW) LLC, dba Verizon Wireless for wireless telecommunications facilities at the Snedigar Sportsplex.

BACKGROUND

On July 26, 2002, the City Council approved Ordinance 3353 authorizing the City to enter into a Wireless Telecommunications Use Agreement and Encroachment Permit with Verizon Wireless to install communication facilities at the Snedigar Sportsplex. On June 28, 2007, the City Council approved Ordinance 3917 authorizing Amendment No. 1 to the agreement which provided for an

extension of five years, as authorized pursuant to the agreement, from August 23, 2007 to August 22, 2012 and amended the lease amount in a series of annual increases that ended the Amendment No. 1 term at an amount of \$1,626.00 per month. This ordinance adopts Amendment No. 2 to the agreement by extending it an additional five years and raises the new base rate to \$1,839.67. Other provisions of the agreement remain in place.

The Police and Fire departments have determined that the extension of this agreement will not cause any interference to the City's public safety communication systems. The Community Services Park Staff has also stated that there are no outstanding issues with the tenant in terms of the City's operations or property. Staff has concluded that the proposed amendment would be in the best interests of the City of Chandler and its citizens and would satisfy the License provisions.

#### FINANCIAL IMPLICATIONS

The company will pay permit inspection and pavement damage fees if applicable. Verizon Wireless will also pay \$1,839.67 per month rent for the Snedigar Sportsplex site with provisions for rent increases detailed in the agreement. There will also be 2.75% privilege tax applied on any non-interest telecommunication services.

6. RIGHT-OF-WAY DE-ANNEXATION: Chandler Blvd. and Pecos Road Ord. #4384

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4384, Right-Of-Way De-Annexation for certain Gilbert Road rights-of-way between Chandler Boulevard and Pecos Road contingent upon annexation by the Town of Gilbert.

#### BACKGROUND/DISCUSSION

The 1987 Intergovernmental Agreement (IGA) between the City of Chandler and Town of Gilbert defined an ultimate jurisdictional boundary line. This line was based on build-out R.O.W. widths with the intent to have full roadway control (and intersections) under one jurisdiction or the other. It was agreed the Town of Gilbert would have control of Gilbert Road R.O.W. from Chandler Boulevard to Pecos Road including the full intersection at Chandler Boulevard, but excluding the full intersection at Pecos Road.

This de-annexation is a follow-up to previously completed actions to meet the intent of the 1987 IGA. Currently, strips of R.O.W. remain in the jurisdiction of the City of Chandler. The annexation map depicts the entire area to be de-annexed contingent upon annexation by the Town of Gilbert.

A.R.S. §9-471.02 allows for county R.O.W. with no taxable real property to be annexed to an adjacent city by mutual consent of the city governing body and the county's board of supervisors.

The A.R.S. §9-471.02 annexation process requires the city adopt an "ordinance of intent" to annex the R.O.W. If approved by the city, a request for annexation, together with a copy of the ordinance, will appear as a published agenda item at a regular meeting of the Maricopa County Board of Supervisors. If the county approves the annexation, the R.O.W. parcels will be annexed into the city.

7. ENCROACHMENT PERMIT AMENDMENT: Sprint Ord. #4385

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4385, Amendment No. 2, to the encroachment permit and agreement for the use of public property executed November 9, 2007, with Sprint Communications Company L.P.

BACKGROUND

Sprint Communications Company L.P., including its predecessor companies, has had a Use Fee Agreement with the City since 1986 for its long haul interstate telecommunications fiber system. There is no new construction planned at this time. Council last approved this agreement in 2007 by Ordinance No. 3944 which expires November 8, 2012. This ordinance extends the agreement for an additional five years and sets the new annual footage fee rates for this time period by amending Section 4. It also updates the contact information for invoicing.

FINANCIAL IMPLICATIONS

It is estimated that there will be 58,799 linear feet in place in public property. The right of way use fee will amount to \$118,658.83 owed on November 9, 2012, which will be increased by 2.6 percent each year thereafter for the term of the agreement resulting in fees of \$121,743.95 due on November 9, 2013; \$124,909.29 on November 9, 2014; \$128,156.93 on November 9, 2015 and \$131,489.01 on November 9, 2016.

8. RIGHT-OF-WAY ANNEXATION: SEC Pecos Road Ord. #4390

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4390, Right-of-Way Annexation of certain Gilbert Road rights-of-way of approximately 0.03 acres at the SEC of Pecos Road contingent upon de-annexation by the Town of Gilbert.

BACKGROUND/DISCUSSION

The 1987 Intergovernmental Agreement (IGA) between the City of Chandler and Town of Gilbert defined an ultimate jurisdictional boundary line. This line was based on build-out R.O.W. widths with the intent to have full roadway control (and intersections) under one jurisdiction or the other. It was agreed the Town of Gilbert would have control of Gilbert Road R.O.W. from Chandler Boulevard to Pecos Road including the full intersection at Chandler Boulevard, but excluding the full intersection at Pecos Road.

This annexation is a follow-on to previously completed actions to meet the intent of the 1987 IGA. Currently, a strip of roadway R.O.W. remains in the jurisdiction of the Town of Gilbert. The annexation map depicts the entire area to be annexed contingent upon de-annexation by the Town of Gilbert.

A.R.S. §9-471.02 allows for county R.O.W. with no taxable real property to be annexed to an adjacent city by mutual consent of the city's governing body and the county's board of supervisors.

The A.R.S. §9-471.02 annexation process requires the City adopt an "ordinance of intent" to annex the R.O.W. If approved by the city, a request for annexation, together with a copy of the ordinance, will appear as a published agenda item at a regular meeting of the Maricopa County Board of Supervisors. If the county approves the annexation, the R.O.W. parcels will be annexed into the city.

9. INTERGOVERNMENTAL AGREEMENT: ADOT Res. #4541

ADOPTED Resolution No. 4541 authorizing an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the City to perform minor maintenance of roads, sound walls, sweeping, and graffiti removal/painting located within the ADOT right-of-way.

#### BACKGROUND/DISCUSSION

Since the opening of the Price Freeway in December 2000 and the Santan Freeway between 2003 and 2005, the City has been maintaining the frontage roads and interchanges along the Price Frontage Road within the ADOT right-of-way. The activities include emergency maintenance, routine maintenance and scheduled road repair. The City has been sweeping these same locations along the ADOT right-of-way as an added measure of the City air quality.

City control over these roads allows Chandler to provide better inspection, quality assurance and maintenance across jurisdictional boundaries between the City and ADOT. It also allows the City to provide a better response time and excellent service to residents.

This IGA will formalize an agreement that has been on-going for more than 10 years. The total cost of all additional maintenance is estimated at an average of \$19,000.00 per year over the five (5) year permit period for both labor and materials. Minor road maintenance procedures shall include asphalt crack seals, fog seals, micro seals and minor asphalt repairs. Minor concrete repairs shall be provided on sidewalks, curb and gutter and sound walls. Sweeping of streets and removal of graffiti/painting on City facing features shall similarly apply.

#### 10. INTERGOVERNMENTAL AGREEMENT: ADOT

Res. #4542

ADOPTED Resolution No. 4542 authorizing an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the City to operate and maintain electrical facilities within the ADOT right-of-way.

#### BACKGROUND/DISCUSSION

Since the opening of the Price Freeway in December 2000 and the Santan Freeway between 2003 and 2005, the City has been operating and maintaining the traffic signals at the interchanges and the street lights along the Price Frontage Road within the ADOT right-of-way. These activities include emergency maintenance, routine maintenance and utility payments for electricity.

City control over these electrical facilities allows Chandler to provide synchronization of traffic signals across jurisdictional boundaries between the City and ADOT-owned traffic signals. It also allows the City to provide better response time to streetlight outages as a service to residents.

This agreement will formalize this ad-hoc arrangement that has been on-going for more than 10 years with the exception of two minor changes. One change includes adding Preventative Maintenance to the list which includes cleaning signal lenses, tightening camera installation, etc. This is a service that the City currently provides to City-owned signals, but not to ADOT signals. The other additional effort is Bluestaking (i.e. marking City-maintained traffic signal conduits) prior to construction by various agencies. These are rare occurrences, as private developments and utilities do not typically do construction with a freeway right-of-way. The total cost of all additional maintenance is estimated at \$9,000.00 per year for both labor and materials.

#### TRANSPORTATION COMMISSION

At the Transportation Commission meeting of October 20, 2011, the Commission unanimously voted to recommend approval.

11. 2012-2013 ANNUAL ACTION PLAN AMENDMENT: HOME

Res. #4630

ADOPTED Resolution No. 4630 amending the FY 2012-2013 Annual Action Plan and authorizing the City Manager to execute and submit Substantial Amendment No. 1 to the U.S. Department of Housing and Urban Development (HUD) for its consideration in order to reallocate HOME Investment Partnership Program funds and amend Target Areas for the City's Neighborhood Stabilization Program 3.

BACKGROUND

The Annual Action Plan is the document approved by the City Council that describes the activities to be undertaken by the City for the annual expenditure of funds awarded to the City by the U.S. Department of Housing and Urban Development (HUD). The City of Chandler's Citizen Participation Plan for programs funded by HUD requires that a Substantial Amendment be submitted when there is a collective change in the use of Chandler's federal HUD funds that exceeds 20% of the grant amount and, in the case of Neighborhood Stabilization Program (NSP) funds, when there is a substantial change to the Target Areas for the operation of the program.

Staff is recommending a Substantial Amendment to the FY 2012-2013 Annual Action Plan for two purposes. First, in order to insure the timely expenditure of the City's HOME Investment Partnership Program (HOME) funds, Staff is recommending a reallocation of HOME funds to two new activities from funds originally allocated to the City's Moderate Rehabilitation Housing Program. Second, Staff is recommending an expansion of the current Target Areas for the Neighborhood Stabilization Program 3 (NSP3).

DISCUSSION

In reviewing the balance of unexpended funds in the City's HOME Program, Staff identified \$447,434.00 that is available for reallocation due to slow expenditure. These funds are currently allocated to the City's Moderate Rehabilitation Program to assist single family owner occupants with up to \$50,000.00 for home rehabilitation. After analyzing the significant workload associated with each rehabilitation, the lack of federal funds for program administration and taking into account a shift toward prioritizing housing rehabilitations under the City's Exterior Rehabilitation Program, it was decided that to insure timely expenditure of these HOME dollars, a reallocation was called for. As a result of this decision, a Request for Proposals (RFP) regarding the availability of approximately \$447,434.00 in HOME funding was announced to the non-profit community in early July.

Two responses to the RFP were received; one from Newtown Community Development Corporation for funds for additional housing units under their Community Land Trust Program and a second from Community Bridges, Inc. (CBI) for the expansion of their Tenant Based Rental Assistance Program (TBRA) for homeless individuals and families. After review and ranking of the applications, Community Development Staff proposes to reallocate previous unexpended HOME funds, in a total amount of \$447,434.00 as follows:

- \$241,522.00 to Newtown Community Development Corporation for the acquisition, rehabilitation and re-sale of single-family homes through the Chandler Community Land Trust, and
- \$205,912.00 to Community Bridges, Inc. for the provision of a Supportive Housing Assistance Program including TBRA for Chandler individuals and families experiencing homelessness.

Through this reallocation, it is anticipated that Newtown will be able to provide their program to up to three additional first time homebuyers and CBI estimates they will be able to assist up to 12 homeless individuals or families.

An additional component of the Substantial Amendment is the clarification of HOME funded projects by funding year. This clarification insures the timely expenditure of HOME funds.

The second purpose of Substantial Amendment 1 is to expand the number of Census Tracts for the operation of Chandler's NSP 3 Program. The NSP 3 Program targets foreclosed or Real Estate Owned (REO) properties as the source of housing units for the implementation of the program. Over the past six months, the number of foreclosed properties has declined significantly, shrinking the pool of housing units that can be utilized for the program. Substantial Amendment 1 calls for the addition of three new Census Tracts including 522729, 522902 and 523102 to the Target Areas for program operation. Attachment B in the Substantial Amendment 1 includes the two current Census Tracts and the three proposed Census Tracts. The expansion of the Target Areas for the NSP 3 Program will enable the City and its non-profit partners to meet the City's goal of purchasing repairing and selling foreclosed homes to first time homebuyers utilizing NSP 3 funds.

#### HOUSING AND HUMAN SERVICES COMMISSION

The Housing and Human Services Commission (HHSC) held a public hearing on proposed Substantial Amendment 1 at their meeting on August 8, 2012. At this same meeting, the Commission also unanimously approved recommending Resolution No. 4630 to the City Council.

#### FINANCIAL IMPLICATIONS

All costs associated with the reallocation of HOME funds will be paid by the U.S. Department of Housing and Urban Development (HUD) and do not require repayment on the part of the City of Chandler. There is no additional program cost associated with expansion of the NSP 3 Target Areas.

#### 12. INTERGOVERNMENTAL AGREEMENT: ADOT

Res. #4639

ADOPTED Resolution No. 4639 authorizing an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the construction administration and maintenance of the proposed Galveston Street Pedestrian Bridge over the Price Freeway.

#### BACKGROUND/DISCUSSION

In 2009, the City received a federal grant for the design and construction of the Galveston Street Bridge over the Price Freeway. About that time, ADOT constructed a pedestrian bridge pier in the median of the Price Freeway for this bridge as part of the high occupancy vehicle (HOV) lane construction project. This pier was funded by the City at a cost of \$162,000.00. In early 2012, the City received additional federal grant funding for the construction of the pedestrian bridge. The additional federal funding is anticipated to be adequate for construction and construction administration of the project, meaning the remaining work for the project is fully funded. However, due to a recent change in ADOT requirements, the City will need to reimburse ADOT \$10,000.00 for their design review before the project is authorized for construction.

As part of the implementation of the project, the City will need to enter into an IGA with ADOT regarding the operation and maintenance of the bridge. Additionally, ADOT requested, and the City agreed, that ADOT would be best qualified to do the construction administration on the project. This includes the project bidding and the award of the construction contract, which will

also require an IGA. Because the City is responsible for all costs in excess of the grant amount, should the bids come in too high, the City will have the opportunity to make an informed decision about proceeding with the project before ADOT awards the project. The key terms of the IGA are as follows:

- Chandler will:
  - Sweep, clean, pick up litter and paint over graffiti
  - Maintain the bridge cage and the aesthetic elements
  - Maintain the solar lighting system for the bridge
  - Pay for the required bridge inspections that are required every three years
  - Make any minor repairs to the bridge that are not structural in nature
  - Maintain the landscaped areas at the base of the access ramps
  - Have approval authority of any project change orders
  - Provide any necessary City permits at no cost
  - Enter into an agreement with the design consultant for special bridge inspections the cost of which will be reimbursed by the grant
  - Be responsible for any project costs over the available federal funding of \$3.7 M
  
- ADOT will:
  - Do the construction administration for the project, including advertising bidding, awarding the contract, construction management and project close-out
  - Provide any necessary ADOT permits at no cost to the project
  - Be responsible for structural repairs to the bridge substructure and superstructure from abutment to abutment.

TRANSPORTATION COMMISSION

At the May 9, 2012 meeting of the Transportation Commission, the Commission voted unanimously to forward a recommendation for approval of the IGA with ADOT for the construction administration and the maintenance of the Galveston Street Pedestrian Bridge over the Price Freeway.

FINANCIAL IMPLICATIONS

The remaining work on this project is funded with a federal Congestion Management Air Quality (CMAQ) grant designated for pedestrian and bicycle facilities in an amount of \$3,707,625.00. This funding can only be used for this project. The estimated project costs are:

\$2,999,684.00	Construction
\$ 449,952.00	ADOT Construction Administration – 15%
\$ 30,000.00	Special Inspections by Designer – 1%
\$ 149,984.00	Contingency – 5%
<u>\$3,629,620.00</u>	<u>Estimated Total Project Cost</u>

If the project costs are more than the grant amount of \$3, 707,625.00, the City will be responsible for funding those costs. If the project costs are less than the grant amount, the unused federal funding will be de-obligated back to the federal government. Additionally, the City needs to reimburse ADOT \$10,000.00 for their design review costs before the project is authorized for construction.

ADOPTED Resolution No. 4640 authorizing an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the transfer of jurisdiction and operation and maintenance responsibilities to the City for Arizona Avenue (State Route 87) from Ocotillo Road to approximately 1,325 feet south of Riggs Road.

#### BACKGROUND/DISCUSSION

Arizona Avenue south of Ocotillo Road is currently under the jurisdiction of ADOT at State Route 87. Arizona Avenue north of Ocotillo Road to Frye Road was transferred from ADOT to the City in 1993; and Arizona Avenue from Frye Road to the north City limits at the Western Canal was transferred to the City in 1999. This transfer of jurisdiction and operations and maintenance of Arizona Avenue from Ocotillo Road to approximately 1,325 feet south of Riggs Road will complete the transfer of Arizona Avenue within the Chandler City limits, with the exception of a small portion at the Santan Freeway.

With the City having jurisdiction of this section of Arizona Avenue, the City will be able to design and operate the roadway to City standards rather than ADOT standards which are typically more restrictive. These differences include driveway openings and permitting for adjacent development that access Arizona Avenue, median breaks, landscaping, aesthetic improvements, signage, signal coordination, bike lanes and traffic control and enforcement. The City will now be responsible for pavement maintenance, landscape maintenance along the roadway and signal and sign maintenance.

In return for the City accepting jurisdiction of this section of Arizona Avenue, ADOT will transfer to the City \$4,500,000.00 in federal funds. These federal funds can only be used on a federally eligible road project and needs to be obligated by June 15, 2013. To meet this obligation date, Staff has identified that this funding can be used on either the Gilbert Road or McQueen Road projects. This funding can be used to supplant other funding on either of these projects. In addition, in 2011, ADOT milled and overlaid this section of Arizona Avenue providing a new pavement with at least a 25-year remaining life.

14. PROCEDURAL PRE-ANNEXATION AGREEMENT: Ashton Woods Homes and Carter M. Green and Glenna J. Green Res. #4641

MAYOR TIBSHRAENY DECLARED A CONFLICT OF INTEREST ON THIS ITEM.

ADOPTED (6-0) Resolution No. 4641 authorizing a procedural pre-annexation agreement with Ashton Woods Homes, and Carter M. Green and Glenna J. Green for 10.04 acres located west of the SWC of Appleby and Gilbert roads. (Parties: City of Chandler; Jeremy Ramsdell, Ashton Woods Homes; Carter N. Green, Property Owner; Glenna J. Green, Property Owner.)

#### BACKGROUND

The prospective developer and an owner of 10.04 acres within the proposed annexation of 33.8 acres located northwest and west of the SWC of Appleby and Gilbert roads, wish to enter into an agreement with the City of Chandler in order to facilitate annexation of the property for future development within the City's municipal boundaries. The developer's interest in the development is contingent upon the developer receiving its desired zoning of the property. The property owner of the 10.04 acres does not want the annexation to become effective if the zoning desired by the developer does not occur. This resolution authorizes a Procedural Pre-Annexation Agreement whereby the parties agree that if the desired zoning is not approved, the property owner may request a reconsideration of the annexation ordinance at a Council meeting to be held within

thirty (30) days after the adoption of the annexation ordinance at which meeting the City would repeal the annexation ordinance.

15. MEMBERSHIP DUES: Valley Metro Rail, Inc.

AUTHORIZED the payment of FY 2012-2013 membership dues to Valley Metro Rail, Inc., (METRO) in the amount of \$50,000.00.

BACKGROUND/DISCUSSION

In 2007, the City of Chandler joined Valley Metro Rail, Inc. This enables the City an opportunity to participate in the planning and design of the regional light rail system and future light rail extensions that could serve Chandler.

Regional, high-capacity transportation systems such as light rail, require years of advanced planning and coordination with participating communities, as well as regional, state and federal agencies. In 2003, the City of Chandler completed a High Capacity Transit Major Investment Study which designated the Rural Road, Chandler Boulevard and Arizona Avenue/Union Pacific Railroad Chandler Branch Line as corridors for future development of high capacity transit systems.

Currently, METRO is working with the City on a high-capacity transit feasibility study on Arizona Avenue/Country Club Drive that was funded from a portion of the City's annual membership fees. The initial study results have been positive and show this corridor as having a good potential for being a high-performing, high-capacity transit corridor. The study also presents suggestions for transit-oriented planning and development policies along the corridor.

16. MEMBERSHIP DUES: Arizona Municipal Water Users Association

AUTHORIZED the payment of FY 2012-2013 membership dues to the Arizona Municipal Water Users Association (AMWUA) in the amount of \$76,511.00.

BACKGROUND/DISCUSSION

Arizona Municipal Water Users Association (AMWUA) is a voluntary non-profit corporation established in 1969 to develop and advocate regional water resource management policies in the interest of its members, their citizens and ratepayers. AMWUA's current members include the cities of Avondale, Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Tempe, Scottsdale and the Town of Gilbert.

AMWUA provides a forum for its member cities to meet and discuss water resource planning, legislation, conservation and management issues. This allows member cities to work together on regional projects such as drought response, groundwater management, groundwater recharge, augmentation, conservation, legislation and environmental issues affecting the members' water supply.

Each city's membership dues are a prorated share (based on population) of AMWUA's water operating budget. AMWUA's fiscal year 2012-2013 water operating budget decreased 2.37% from fiscal year 2011-2012. Chandler's membership dues for fiscal year 2011-2012 were \$77,004.00. Chandler's membership dues for fiscal year 2012-2013 are \$76,511.00.

17. BOARD AND COMMISSION APPOINTMENTS

APPROVED the following Board and Commission Appointments:

**Industrial Development Authority**

David Rose

**Mayor's Youth Commission**

Miruthula Jegadesan

18. **ELECTION CANVASS**

CANVASSED the results of the City of Chandler Primary Election of August 28, 2012. Jay Tibshraeny was re-elected to the office of Mayor. Nora Ellen was elected at the Primary to the office of Councilmember. No other candidate for the office of Councilmember received a majority of votes cast, based on the office of mayor. The next four top vote recipients: Rick Heumann, Terry Roe, Jack Sellers and Scott Taylor will proceed to the runoff election to be held on November 6, 2012.

19. **AGREEMENT**: TSG Constructors, LLC

APPROVED Agreement #ST3-914-3126 with TSG Constructors, LLC, for wall repairs at various locations in an amount not to exceed \$77,700.00.

20. **INTERGOVERNMENTAL AGREEMENT AMENDMENT**: City of Phoenix

APPROVED Intergovernmental Agreement (IGA) #101746, Amendment No. 1, with the City of Phoenix for the sharing of telecommunication communication facilities for a second ten (10) year period.

**BACKGROUND/DISCUSSION**

In 2002, the Council approved the transfer of dispatching services for the Fire Department to the Phoenix Fire Regional Dispatch System. Included in this transfer was the participation of the Fire Department in the development of a valley wide 800 MHz radio system. The concept of a valley wide 800 MHz system has developed into the Regional Wireless Cooperative (RWC). In 2009, the City of Chandler entered into an IGA with the RWC to allow public safety (Police and Fire) in the City of Chandler to be part of a regional public safety radio network. As part of the original IGA in 2002, a 800 HAZ radio tower was built at the Fire Department Training Facility to accommodate 800 MHz radio traffic in the City of Chandler. This tower continues to be a shared asset with the City of Phoenix and is necessary for participation in the RWC by both the Police and Fire departments.

21. **AGREEMENT**: Holm Wright Hyde and Hays, PLC

VICE MAYOR WENINGER AND COUNCILMEMBER HARTKE VOTED NAY ON THIS ITEM.

APPROVED (5-2) an agreement with the law firm of Holm Wright Hyde and Hays, PLC, for legal services for the purposes of collecting unpaid privilege tax from online travel companies.

**BACKGROUND/DISCUSSION**

The City of Chandler imposes a Privilege Tax (currently 1.5%) on the business activity of hotels. The City imposes an additional tax on the activity of transient lodging (currently 2.9%). This additional tax is often referred to as the "bed tax". The City of Chandler, as well as other cities and towns, has also adopted language in its tax code that allows the broker for a taxable activity to be liable for the taxes of their principal.

For several years, the City of Chandler and other “non-program” cities (large cities whose tax collection is not administered by the Arizona Department of Revenue) have been involved with conducting a joint privilege tax audit of the online travel company (OTC) industry. This industry (e.g. Priceline, Hotels.com, Orbits, etc.) provides the ability for people to search for and book hotel rooms by assessing OTC websites. The OTC industry charges the user a fee or charge over and above the rate charged by the hotel for occupancy of the room. It is the contention of the cities that taxes are owed on the difference between what the OTC collects from the customer and what the hotel ultimately collects (and would remit taxes on).

The City of Tempe has acted as the lead audit jurisdiction and has issued a request for proposal for legal representation. After a competitive process, Tempe awarded the contract for the requested services to the firm of Holm Wright Hyde & Hays, PLC. The awarded contract provides for cooperative use by other cities.

The City Attorney’s office has reviewed the contract awarded by the City of Tempe and has confirmed that the awardee will extend substantially the same terms to the City of Chandler. The law firm has agreed to a professional services contract with the City of Chandler which incorporates the contract by reference the terms and conditions of the Tempe solicitation. Due to the expertise possessed by the OTC’s attorneys in litigating this issue across the country, it is beneficial to the City at this point to also obtain representation by outside counsel with the necessary expertise in this area of law, as well as familiarity with the industry and similar litigation experience elsewhere to assure that the City effectively presents its position.

#### FINANCIAL IMPLICATIONS

The City is not required to pay the awardee for providing any legal representation or other legal service unless the City recovers unpaid taxes. The awardee has offered to provide legal services on a contingency basis of 27%. Further, the awardee is not requiring the City to reimburse it for any costs unless unpaid taxes are recovered. Should the City not prevail, no monies are owed to awardee. Based on estimates provided by the joint audit, Chandler is owed approximately \$131,000.00 in unpaid taxes for the audit period. Should the City prevail, the awardee will recoup their costs and take their percentage fee from the recovery before remitting the remainder to the City. The RFP process used by Tempe established that this arrangement is standard for this type of representation.

22. AGREEMENT: Municipal Emergency Services, Inc.

APPROVED Agreement #FD3-340-3133 for fire protective clothing and uniforms to Municipal Emergency Services, Inc., in an amount not to exceed \$201,975.00.

23. AGREEMENT: The Omega Group

APPROVED an agreement with The Omega Group for the purchase of FireView software and implementation services, sole source, in the amount of \$59,520.00.

#### BACKGROUND/DISCUSSION

The Fire Department requires a tight integration of fire incident and geographical data to meet the day-to-day operational and accreditation process needs and/or requirements. This has been a very manual process, relying on a single resource within fire to produce the required reports. Managing and publishing the data for accreditation and monthly reports needs to be accurate, efficient and easily accessible. An interface with the fire incident and geographical data resulting in real-time data access for day-to-day operations and analysis is necessary and critical when

managing day-to-day operations. The Fire Department needs a user-friendly, centralized location of the fire data with a dashboard-like solution for end-user analysis, mapping and reporting. The FireView solution provides access to all levels of management and the work-force to a centralized, web-enabled reporting and mapping tool. It illustrates visual reports on all aspects of the fire service such as effective response, time analysis, deployment and call-volume statistical data.

#### EVALUATION PROCESS

Extensive research was done to find another solution similar to the FireView software and no others were found. Several other local municipalities that have purchased and use FireView were contacted and they also purchased the software as a sole source. The price offered to Chandler is comparable to what the other municipalities paid for the same software. Because the system is proprietary, the ongoing maintenance will also only be available from The Omega Group. No other vendors are authorized to provide the software or maintenance services. The first year of support and maintenance is included in the software cost.

24. CONTRACT CHANGE ORDER: Standard Construction Company, Inc.

COUNCILMEMBERS HEUMANN AND HARTKE VOTED NAY ON THIS ITEM.

APPROVED (5-2) contract #ST0704-401, Change Order No. 1, with Standard Construction Company, Inc., for Alma School Road and Ray Road Intersection Improvements in the amount of \$172,000.00, for a revised contract price of \$7,262,112.50.

25. EMERGENCY CHANGE ORDER: Achen Gardner Engineering

APPROVED the Report to Council of the emergency City Manager approval of Change Order No. 2 to Achen-Gardner Engineering, LLC for the Gilbert Road Improvements, Project #ST0809-401, in an amount not to exceed \$250,000.00 for a revised contract total of \$12,807,569.48.

#### BACKGROUND/DISCUSSION

During the early morning of August 26, 2012, City Staff at the Pecos Water Treatment Plant noticed a significant drop in water pressure. Staff investigated and discovered a 12" main break at Chandler Boulevard. Staff took immediate action to shut down the water main. The location and nature of the water main break has been discovered and repaired. However, the discharge of the water into the subgrade has significantly damaged the roadway and it must be repaired using heavy construction assets.

City Staff does not have the equipment to excavate and repair the damage caused by the water or the equipment to replace the extensive amount of compromised pavement. With the impact on the major arterial roadway and associated safety issues, City Staff negotiated a change order with the contractor on a nearby similar roadway and utilities project, Achen-Gardner Engineering, LLC (AGC). AGC has the resources to perform the work and was already mobilized in the vicinity to they could begin work immediately.

Due to the waterline leak's location, it represented a potential threat to the traveling public. Arizona Revised Statute §34-606 provides for the procurement of emergency services in the event of a public health or safety concern. City Code Section 3-13.3 provides for City Manager approval of emergency procurement of services if a situation exists that makes it contrary to the public interest to utilize normal procurement procedures and approval of City Council. Staff found this situation was an emergency and required immediate attention and therefore, recommended

the City Manager approve the contract in the amount of \$250,000.00. City Code requires Staff to advise Council of the need to procure emergency services in excess of \$50,000.00 in construction services.

26. PURCHASE: Nippon Electric Corporation

APPROVED the purchase of Cisco network equipment and professional services from Nippon Electric Corporation (NEC) for the Police Department Refresh project, utilizing the City of Tempe Contract, in an amount not to exceed \$439,480.00.

IT continues to perform annual upgrades to various parts of the network that are end of life. The City needs to upgrade two network areas that have reached end of life. The first area is the various firewalls throughout the City. These firewalls protect the City from unwanted access into the various systems. Replacing them with newer units will provide continued service and support from the vendor along with a secure infrastructure that protects the City's applications and data. The second area is an upgrade of the PD network switches. The equipment provides PD with the capability of accessing its systems in providing service to Chandler citizens. Upgrading this equipment will provide continued support from the vendor and provide a faster network than what exists today.

The total cost of \$439,480.00 will cover the cost of equipment and installation to complete the two network area upgrade projects.

Project #1: Upgrade all internal Cisco firewalls at various City facility locations  
Cost: \$124,400.00

Project #2: Upgrade Police Department core network gear and workgroup switched at headquarters facility  
Cost: \$315,080.00

By bundling the purchase of these two projects, the City will receive a larger volume discount for the equipment and installation.

27. USE PERMIT: Santan Brewing Company

APPROVED Use Permit LUP12-0014 Santan Brewing Company, Series 3 Domestic Microbrewery License, to use several suites dedicated to alcohol production and packaging adjacent to an existing restaurant at 8 South San Marcos Place. (Applicant/Owner: Anthony Canecchia, SanTan Brewing Company.)

BACKGROUND

The subject site is located at the SEC of San Marcos Place and Commonwealth Avenue within Historic Downtown Chandler. The restaurant and brewery has occupied the three eastern suite spaces of the 6-suite historic building since 2007 when its renovation was completed. In 2010, the business received approval to expand its microbrewery operations into the three remaining suites. No expansion of servicing area and the accompanying Series 12 Restaurant License occurred in 2010 nor is requested at this time.

The subject building is adjacent to several other retail and restaurant establishments in the Historic Square. The San Marcos Hotel is to the north across Commonwealth Avenue and a small parking lot. West of the subject site are a service alley and another small parking lot.

The business consists of an indoor/outdoor bar, indoor restaurant seating, outdoor seating adjacent to both streets, kitchen and office space, a small-scale brewing operation and canning/storage. A City-funded pedestrian colonnade wraps the building along both street frontages, part of it covering the outdoor patio. Two second-floor office tenant spaces are located above Suite 6 on the building's western end.

The application requests permission to conduct the microbrewery's production and storage operations in the three western suites under a Series 3 Domestic Microbrewery License. These operations include a walk-in cooler, fermentation tanks, a canning machine and pallets of supplies and finished product. The 2010 approval allowed for the microbrewery to operate in all three western suites though the westernmost suite (Suite 6) was characterized at the time as potential retail sales (kegs, bottles, t-shirts, etc.) rather than production and storage. The subject application modifies the previous characterization by expanding the production/storage element to Suite 6.

As represented in 2010, the applicant has a longer-term plan to expand brewery/restaurant operations westward along Commonwealth Avenue, including additional serving area and possibly a banquet room through a future project. This longer-term plan is also anticipated to involve shifting most of the on-site loading operations from Commonwealth Avenue to the alley behind the building. The longer term plan is not financially feasible at this time and will require a future Use Permit application and approval in order to establish its floor plan and operational details.

Notably, the applicant is currently pursuing an off-site facility for expanded production and storage operations. If such a facility is acquired, it could greatly lessen the amount of production and storage conducted on the subject site. As such, the applicant would like to maintain the ability to potentially conduct retail sales in Suite 6 if that space can be freed up.

The CCD zoning district allows consideration of microbreweries and brewpubs by Use Permit. The CCD's purpose, in part, is to "promote specialty retail, cultural, dining, entertainment and other storefront businesses traditional to a downtown setting". Uses that encourage a lively pedestrian atmosphere during both day and evening are encouraged. Pure manufacturing and store uses not associated with a retail or restaurant function are not allowed in the CCD.

The South Arizona Avenue Corridor Area Plan (SAZACAP) designates the subject site for Urban Commercial land uses, which allows for restaurants and encourages urban pedestrian oriented design. A large area west of the subject site (all the way to Palm Lane) is designated "Growth Area" for future expansion of Cultural and Entertainment uses. The intent of the Cultural and Entertainment land use category is "to create a vibrant, mixed use, pedestrian oriented, urban environment that is linked to the historic downtown square with shaded pedestrian walkways".

Since the 2010 approval, the business has added a grain silo in the storage yard behind the building. However, since the silo does not contain alcohol, it does not need Use Permit approval.

#### DISCUSSION

The Planning Commission and Staff find the requested microbrewery operations to be compatible with the surrounding land uses and in conformance with CCD standards and the SAZACAP if viewed as Phase One of a longer-term plan. The subject use, viewed as a whole along with the restaurant, brings great vitality to the corner of Commonwealth Avenue and San Marcos Place. In the longer-term, it is important that Commonwealth Avenue also present a vital pedestrian

atmosphere both for itself and as a connection to future Cultural and Entertainment uses to the west. The continued production/storage use of Suites 4-6 allows the applicant financially feasible means of staging the expansion in a manner that results in fulfillment of City goals. The recommended three (3) year time limit allows for re-evaluation of future phases when it is more likely that they will be financially feasible and when an off-site facility will likely be in operation, so as to lessen the production/storage needs for the subject site and allow more flexibility. The off-site facility could reasonably take up to 24 months to begin production if it involves new construction.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on August 2, 2012. There was one nearby property owner in attendance in support of the request. A neighbor who resides at San Marcos Commons asked that the storage areas be kept clean and organized and perhaps spruced up with SanTan Brewing's logo added to the windows. Additionally, the neighbor asked that bikes (often employee bikes) parked in front of the restaurant be moved elsewhere out of pedestrians' way. The neighbor is not opposed to the application. The applicant is currently working with the DCCP on a solution to the bikes issue. Staff has received no correspondence in opposition to the request. The Police Department has been informed of the application and has no issues or concerns.

#### PLANNING COMMISSION VOTE

The Commission unanimously approved the request.

#### RECOMMENDED ACTION

Upon finding consistency with the General Plan and City Center District (CCD) zoning, the Planning Commission and Staff recommend approval subject to the following conditions:

1. The Use Permit granted is for a Series 3 license only and any change of license shall require reapplication and new Use Permit approval.
2. The Use Permit is non-transferable to any other location.
3. Expansion or modification beyond the approved exhibits (Site Plan/Floor Plan and Narrative) shall void the Use Permit and require new Use Permit application and approval.
4. The area adjacent to the establishment shall be maintained in a clean and orderly manner.
5. The Use Permit shall remain in effect for three (3) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.

#### 28. USE PERMIT: Crooks Chiropractic

APPROVED Use Permit ZUP12-0009 Crooks Chiropractic, extension for the continued operation of a chiropractic office within a single-family residential home located at 100 S. Cooper Road, south of the SWC of Chandler Boulevard and Cooper Road. (Applicant: Leland Crooks, Owner.)

#### BACKGROUND

The subject site is located south of the SWC of Cooper Road and Chandler Boulevard and is currently zoned Agricultural (AG-1). Directly north and south of the subject site are single-family homes. West, adjacent to the subject site, is the Consolidated Canal. Directly east, adjacent to the subject site, is Cooper Road.

The site received Use Permit approval in 1983 to operate a chiropractic office for two years, with the potential of the Use Permit being extended by Council. The Use Permit was never extended; however, it remained in operation as a chiropractic office until 1993. In 2006, the property changed ownership and was used as an office. In 2008, a Use Permit was approved to allow the use of the home as a chiropractic office. The building is approximately 1,350 square feet and employs approximately five. The office is open Monday thru Saturday with half days on Tuesdays, Thursdays and Saturdays.

#### DISCUSSION

With the 2008 approval, conditions were added requiring the home to meet Commercial Design Standards for landscaping due to the home, at that point in time, providing very little landscaping. Following the approval, the applicant planted a number of shrubs consistent with the Design Standards along the frontage; however, was unable to plant trees in front of the home due to an underground pipe. Landscaping was also added north of the parking area in an effort to create a buffer and adjacent to the parking lots' west side and along the Consolidated Canal. Additionally a sidewalk was extended to the front of the house, a parking lot was provided and a screen wall was located along Cooper Road. However, even with all of the additional landscaping that was added, the site does not meet the letter-of-the-law for landscaping. The Planning Commission and Staff find the current landscaping to meet the intent of the Commercial Design Standards, as well as with similar properties that operate under the Residential Conversion Policy. Additionally, the Planning Commission and Staff are supportive of the extension citing the successful operation of the business with a lack of negative impacts to the surrounding area.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code. A neighborhood meeting was held with no neighbors in attendance. Staff has received no correspondence in opposition to the request.

#### PLANNING COMMISSION VOTE

The Commission unanimously approved the request.

#### RECOMMENDED ACTION

Upon finding consistency with the General Plan and the Residential Conversion Policy, the Planning Commission and Staff recommend approval subject to the following conditions:

1. The Use Permit shall remain in effect for three (3) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.
2. Expansion or modification beyond the approved exhibits (Site Plan, Floor Plan and Narrative) shall void the Use Permit and require new Use Permit application and approval.
3. The site shall be maintained in a clean and orderly manner.

#### 29. CONTINUED USE PERMIT: Chamberlain Development

CONTINUED TO OCTOBER 25, 2012, Use Permit ZUP12-0013 Chamberlain Development, to allow automobile sales in a PAD zoning district located at 6948 W. Chandler Boulevard, north of the NEC of Chandler Boulevard and 56<sup>th</sup> Street.

This application was continued from the August 16, 2012, City Council Meeting to the September 13, 2012, Council meeting in order to allow the applicant to provide a parking allocation plan which has been signed off by all of the tenants. The opposing tenant has since agreed to the

parking plan but continues to have concerns with parking enforcement by the property owner regarding parking on dirt areas and in fire lanes/drive aisles as well as the amount of vehicles related to auto sales businesses. Planning Staff has spoken with the concerned tenant and the applicant regarding the issues. Continuance is requested to allow the applicant time to update the narrative statement and parking allocation plan with tenants.

30. USE PERMIT: Vista Star Vacant Lot

APPROVED Use Permit ZUP12-0014 Vista Star Vacant Lot, to allow storage in a Medium-Density (MF-1) zoning district on a vacant lot located west of (in the rear of) a duplex at 516 N. Washington Street, south and east of Galveston Street and Arizona Avenue. (Applicant/Owner: James Barrett, Vista Star Properties.)

BACKGROUND

The application requests Use Permit approval to allow storage as the primary use on a 4,491 square foot vacant lot located behind the duplex at 516 N. Washington Street. Residential uses are located north, south and east of the subject site. To the west, across an alley, are a variety of commercial and multi-family residential uses, including an apartment complex at 509 and 519 N. Arizona Avenue owned by the same entity as the subject site. The apartment complex and the subject site were sold together to the current owner in 1998.

The subject site was rezoned in September 1982 along with the front portion (516 N. Washington Street) from Single-Family District (SF-7) to MF-1 in order to allow for the duplex to be constructed. Some time prior to the end of December 1982, the lot was illegally subdivided into a front lot (the duplex) and a rear lot (the subject site). The resulting subdivision left the front half conforming to minimum lot size requirements and the duplex was built upon the site in 1983. However, the subject site became too small to legally build anything on it without either rezoning the property or receiving a Use Permit.

The subject site has a long history of being used for nonconforming uses, but was only recently directed to the Use Permit process as a result of recent Code Enforcement targeted sweeps in this area. According to the applicant, the site was used for parking vehicles starting in the 1970s and became used exclusively for storage some time prior to the mid-1990s. Available aerial photos show parking on the site in 1979 and some degree of storage from 1996 to the present. The amount of storage on the site varies significantly from year to year.

The application requests permission to use the subject site for storage in a similar manner to the existing situation. The site currently has two small storage sheds, a larger shed, two trailers and some residential construction materials (e.g. pipes, blocks, window screens). The three sheds are visible above the property walls. All materials are currently visible from the alley, which has a chain-link fence and some wood fencing. The applicant has committed to constructing a block wall and solid gate along the alley upon Use Permit approval.

DISCUSSION

The Planning Commission and Staff find the requested use to be compatible with the surrounding uses if maintained in a residential-like condition. If the subject site were a residential back yard, it would be allowed most of the storage already occurring on the site, except only one of the small storage sheds would have to be removed and the larger shed would need to receive a building permit. The illegally subdivided lot presents the complicating issue of having separate ownership for the duplex versus the yard, which eliminates a key incentive to maintain the yard (i.e. the residents have to look at it). However, it is still plausible that the subject site could be used for

storage in a manner typical of any residential back yard, without negative effect, if the recommended conditions are abided by.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on July 26, 2012. The owners of the adjacent duplex (516 N. Washington Street) attended to inquire about the proposal. The neighbors had some problems with the site's maintenance a few years ago, though not recently. The neighbors requested that a solid fence be placed along the alley and that the site be kept clean. The applicant has committed to a solid fence with a solid gate along the alley if the Use Permit is approved.

A neighboring property owner contacted Staff to express support for the request if a block wall and solid gate are installed along the alley (as proposed by the applicant). The neighbor wants to avoid theft of any goods stored on the property. Staff has received no correspondence in opposition to the request.

#### PLANNING COMMISSION VOTE

The Planning Commission unanimously approved the request.

#### RECOMMENDED ACTION

Upon finding consistency with the General Plan, the Planning Commission and Staff recommend approval subject to the following conditions:

1. Expansion or modification beyond the approved exhibits and representations shall void the Use Permit and require new Use Permit application and approval.
2. The Use Permit shall remain in effect for five (5) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.
3. One of the smaller storage sheds shall be removed.
4. All necessary building permits shall be obtained within six (6) months of City Council approval.
5. The site shall be maintained free of weeds or nuisance-inducing materials.
6. Storage materials shall not exceed the height of the property walls.
7. A 6'-high block fence and slatted-fence gate shall be installed along the property line adjacent to the alley within six (6) months of City Council approval.

#### 31. USE PERMIT: Allred CAC II

APPROVED Use Permit ZUP12-0021 Allred CAC II, for an athletic training facility within a PAD zoned district located at 2150 E. Germann Road, east of the NEC of Cooper and Germann roads. (Applicant: Mike Curley; Earl, Curley & Lagarde, P.A.)

#### BACKGROUND

The subject site is located east of the NEC of Cooper and Germann roads, within the Allred Chandler Airport Center II (Allred CAC II) development (previously known as Panattoni). The request is to locate the use within the western most suite of the western most building. The building is currently unoccupied and is adjacent to a vacant site planned for commercial retail development. East of the subject site is Wright Drive, with the Red Rock development located east of Wright Drive.

The subject site is part of a 245-acre master planned employment center, Chandler Airport Center, which flanks both sides of Cooper Road south of the Loop 202 Santan Freeway. The master plan established the land along Cooper Road for hotel, office, service retail and freeway-related retail uses. The 11-acre Allred CAC II site allows office, showroom, adult education and light industrial uses, including call center offices. The eastern building is fully occupied within an educational related call center.

In recent months, Staff has seen an increased interest in providing specialized sport/athletic training facilities. Historically, Staff has opposed these types of uses when located in larger industrial business parks where concerns in incorporating commercial type operations within industrial operations exist such as traffic and land use conflicts. In this particular situation, Staff is comfortable with the Use Permit citing that the business park operates largely like a commercial business park allowing for showroom/warehousing/and office uses, with office uses being the predominant use of the site. Due to the nature of the business park, parking is addressed and can accommodate the additional use; however, if parking is an issue in the future, a Preliminary Development Plan was approved in 2010 for a parking lot expansion area to the north of the subject suite. Furthermore, specialized sport/athletic training facilities are usually restrictive when it comes to the hours of operation, number of clients, and size of the business and often is appointment based, further restricting the ability for a large amount of traffic, which historically has been one of Staff's concerns.

The proposed business will be open seven days a week with hours of operation generally ranging from 5 a.m. to 8 p.m. Operational times that generate the most traffic are before and after typical working hours, as many of the clients are students or those that have typical work hours. It is anticipated that there will be four employees at the site during the business hours. Worst case scenario would require 25 parking spaces; 451 parking spaces are provided on site.

#### DISCUSSION

The Planning Commission and Staff support the request citing that previous experience with specialized sport/athletic training facilities have operated effectively without negative impacts when land use conflicts have been addressed.

Prior to and during the Planning Commission study session, there were discussions regarding the timing condition and whether or not the condition of approval should be for a greater period of time. The Planning Commission and Staff determined that due to the operational nature of the business, the adjacent land uses and the fact that the business park in which the site is located is currently all office uses, that a greater timing condition beyond the typical one-year approval is appropriate; the Planning Commission and Staff recommend approval for three years.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on August 7, 2012. There were no neighbors in attendance. Staff has received no correspondence in opposition to this request.

#### PLANNING COMMISSION VOTE

The Planning Commission unanimously approved the request.

#### RECOMMENDED ACTION

Upon finding consistency with the General Plan, the Planning Commission and Staff recommend approval subject to the following conditions:

1. Expansion or modification beyond the approved exhibits (Site Plan, Floor Plan and Narrative) shall void the Use Permit and require new Use Permit application and approval.
2. The Use Permit is non-transferable to other locations.
3. Use Permit approval does not constitute Final Development Plan approval; compliance with the details required by all applicable codes and conditions of the City of Chandler and this Use Permit shall apply.
4. The Use Permit shall remain in effect for three (3) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.
5. The site shall be maintained in a clean and orderly manner.
6. Fitness activities shall be restricted to indoors only.

32. WITHDREW LIQUOR LICENSE: El Zacatecano Restaurant

WITHDREW a Series 7 Beer and Wine Bar Liquor License application for Elisa Marie Acosta, Agent, El Zacatecano Restaurant located at 474 W. Ray Road.

33. CONTINUED LIQUOR LICENSE: Wal-Mart market #4324

CONTINUED TO OCTOBER 25, 2012, Liquor License, Series 9, for Clare Hollie Abel, Agent, Wal-Mart Stores, Inc., dba Wal-Mart Market #4324, located at 1900 E. Chandler Boulevard to allow the applicant time to complete the zoning requirements for a new Use Permit.

34. LIQUOR LICENSE: Sprouts Farmers Market #15

APPROVED a Series 10 Beer and Wine Store Liquor License (Chandler #134948 L10) for Randy D. Nations, Agent, SF Markets LLC, dba Sprouts Farmers Market #15, 2855 S. Alma School Road. A recommendation for approval of State Liquor License #10076303 will be forwarded to the State Department of Liquor Licenses and Control. This application reflects a change in ownership. Transportation and Development advises that a new Use Permit is not required since this will be a continuation of the location's previous use as Sprouts Farmers Market #15. The Police Department reports no objections to the issuance of this license and no written protests have been received. All licenses, permits and fees have been paid and the applicant is in compliance with the City's Tax Code.

35. LIQUOR LICENSE: Sprouts Farmers Market #1

APPROVED a Series 10 Beer and Wine Store Liquor License (Chandler #134951 L10) for Randy D. Nations, Agent, SF Markets LLC, dba Sprouts Farmers Market #1, 1959 W. Ray Road. A recommendation for approval of State Liquor License #10076308 will be forwarded to the State Department of Liquor Licenses and Control. This application reflects a change in ownership. Transportation and Development advises that a new Use Permit is not required since this will be a continuation of the location's previous use as Sprouts Farmers Market #1. The Police Department reports no objections to the issuance of this license and no written protests have been received. All licenses, permits and fees have been paid and the applicant is in compliance with the City's Tax Code.

36. LIQUOR LICENSE: I Sushi

APPROVED a Series 12 Restaurant Liquor License (Chandler #142393 L12) for Jonathan Morgan Shuck, Agent, YNJ Restaurant LLC, dba I Sushi, 4939 W. Ray Road, Suites 1 and 2. A

recommendation for approval of State Liquor License #12079200 will be forwarded to the State Department of Liquor Licenses and Control. Transportation and Development advises a new Use Permit is not required since this will be a continuation of the location's previous use as Mi Sushi & Teppanyaki. The Police Department reports no objections to the issuance of this license and no written protests have been received. All licenses, permits and fees have been paid, and the applicant is in compliance with the City's Tax Code.

37. TEMPORARY EXTENSION OF PREMISES: Kokopelli Winery and Bistro

APPROVED a Temporary Extension of Premises for a Series 7 Beer and Wine Bar Liquor License (Chandler #118476 L07) held by KWB Chandler LLC, dba Kokopelli Winery and Bistro, 35 W. Boston Street, for their Soccer Saturday Silent Auction on September 28, 2012. A recommendation for approval of a Temporary Extension of Premises for State Liquor License #07070623 will be forwarded to the State Department of Liquor Licenses and Control. The Police department has no objections to this extension and the applicant has applied for a Temporary Sales and Promotional Event Permit through Neighborhood Resources.

38. SPECIAL EVENT LIQUOR LICENSE: Xico, Inc.

APPROVED a Special Event Liquor License for Xico Inc., for a Mexican Independence Day Festival on September 15, 2012, at El Palacio Restaurant & Cantina, 2950 E. Germann Road. A recommendation for approval will be forwarded to the State Department of Liquor Licenses and Control. With a Special Event Liquor License, the organization can sell all alcoholic beverages within the confines of the event during the designated event periods. The Police Department has no objections to this extension and the applicant has applied for a Temporary Sales and Promotional Event Permit through Neighborhood Resources.

39. SPECIAL EVENT LIQUOR LICENSE: Praise and Worship Center

APPROVED a Special Event Liquor License for the Praise and Worship Center for an Oktoberfest Fundraiser, October 6, 2012, at the Praise and Worship Center, 2551 N. Arizona Avenue. A recommendation for approval will be forwarded to the State Department of Liquor Licenses and Control. With a Special Event Liquor License, the organization can sell all alcoholic beverages within the confines of the event during the designated event periods. The Police Department has no objections to this extension and the applicant has applied for a Temporary Sales and Promotional Event Permit through Neighborhood Resources.

PUBLIC HEARING

PH1 AIR PRODUCTS LICENSE AGREEMENT

The Mayor opened the public hearing at 7:18 p.m and asked Regulatory Affairs Manager Margaret Coulter to come forward to present.

DISCUSSION

MS. COULTER said the public hearing is required by State Statute, Title 9, Chapter 5, related to the issuance of licenses for industrial gas pipelines. She said that notice of this public hearing was advertised twice in the Arizona Republic, as required by law, and her contact information was published for those who had questions or wanted to provide input related to this action. MS. COULTER advised that she did not receive any inquiries from the public.

MS. COULTER summarized the information contained in the Council memo. She said that Ordinance 4362 presented to Council for approval updates the language to be in line with current operations, it has the support of both City staff and Air Products management.

COUNCILMEMBER HEUMANN asked Ms. Coulter if this changes any of the work that is being conducted at Queen Creek and Dobson Roads.

MS. COULTER said that it is related to that work; however, it does not change anything. She said that it clarifies some of the easement language and it is more operational on how the license is administered.

COUNCILMEMBER HEUMANN said that with the Air Products portion of the Intel expansion, it nearly doubled its size. He said Air Products are currently laying its lines at Dobson and Queen Creek. COUNCILMEMBER HEUMANN said that Intel should be able to start moving in this fall and start its production work. He said Air Products is a great asset to the City and noted that the road work has been efficient.

VICE-MAYOR WENINGER said he would like to compliment City staff, Air Products, and the construction crew. He said that he has been watching the progress of the project and said everyone is doing it right and fast. VICE-MAYOR WENINGER said that Alma School and Ray Road project is also going well.

#### BACKGROUND

Air Products and Chemicals, Inc., has had a License Agreement to operate a nitrogen gas pipeline in the City of Chandler since 1981. This agreement was amended in 1998 in respect to its relocation costs when the Price Freeway (101) was constructed. There has been no new construction on this pipeline in Chandler since that time, but construction resumed related to a contract Air Products received to serve the new Intel Fab plant being built. During the process of issuing encroachment permits to Air Products in relation to this project, it became apparent that it would be beneficial to both Air Products and the City to update and clarify the language in its License Agreement to reflect today's operational structure. These changes would be adopted per a new Ordinance 4362 which is on the City Council agenda for consideration at this meeting.

Arizona Revised Statutes, Title 9, Chapter 5 related to Industrial Gas Pipelines, requires a public hearing with reasonable notice to the public published in a newspaper once a week for two consecutive weeks. The first publication shall not be less than 14 days before the day of the hearing. Such notifications were published in The Arizona Republic on August 28, 2012, and September 4, 2012. No action regarding the License Agreement is required of Council at the public hearing. Following the close of the public hearing, the Council will be asked to vote on the adoption of a License Agreement for Air Products as detailed in Ordinance 4362, repealing Ordinance Nos. 2651 and 2800, and granting to Air Products and Chemicals, Inc., its Successors and Assigns, a nonexclusive license for transportation of nitrogen gas through pipelines under, along and across public streets, roads and alleys in Chandler, Arizona, as the same may now or hereafter exist, and prescribing certain rights, duties, terms and conditions in respect to said license.

There was no discussion from the audience for the public hearing.

The Mayor closed the public hearing at 7:21 p.m.

40. REPEAL ORDINANCE NOS. 2651 & 2800: Air Products and Chemicals Ord. #4362

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4362 repealing Ordinance Nos. 2651 and 2800, and granting to Air Products and Chemicals, Inc., its successors and assigns, a nonexclusive license for transportation of nitrogen gas through pipelines under, along and across public streets, roads and alleys in Chandler, Arizona, as the same may now or hereafter exist, and prescribing certain rights duties, terms and conditions in respect to said license.

BACKGROUND

Air Products and Chemicals, Inc. has operated a nitrogen gas pipeline in the City of Chandler since 1981, which was authorized by Ordinance No. 2651 and amended in 1998 by Ordinance No. 2800, in respect to its relocation costs when the Price Freeway (101) was constructed. There has been no new construction on this pipeline in the City in recent years, but construction is to resume related to a contract Air Products and Chemicals, Inc. has received to serve the new Intel Fab plant being built. Since Air Products and Chemicals, Inc. is now applying for encroachment permits from the City in relation to this project, it became apparent that it would be beneficial to both Air Products and Chemicals, Inc. and the City to update and clarify the language in its License Agreement to reflect today's operational structure.

Specifically, an Arizona State Statute changed how the City is compensated for the use of right-of-way. This ordinance deletes the old compensation language and retains only the applicable language. There have also been some operational changes related to financial reporting and easement recordings. Again, this ordinance restates the original relevant language from the two adopted City ordinances while deleting non-applicable language and establishing new relevant language that reflects current operational practices, particularly those adopted in Chapter 4 of the Chandler City Code.

FINANCIAL IMPLICATIONS

Air Products and Chemicals, Inc. will continue to pay the City two percent (2%) of its gross annual sales of nitrogen gas. It is anticipated that the company's contract with Intel will result in higher revenues for the City.

MOVED BY COUNCILMEMBER HEUMANN SECONDED BY COUNCILMEMBER SELLERS,  
TO INTRODUCE ORDINANCE NO. 4362.

MOTION CARRIED UNANIMOUSLY (7-0).

CURRENT EVENTS:

A. Mayor's Announcements

MAYOR TIBSHRAENY announced that there were a number of Intergovernmental Agreements (IGAs) on tonight's Council Agenda. He thanked staff for working closely with Arizona Department of Transportation (ADOT). He said this partnership with a State agency are good for our citizens, as they help to spread tax dollars and bring additional benefits to the residents of Chandler.

MAYOR TIBSHRAENY thanked residents who attended the Mayor's Listening Tour Meeting at Knox Elementary School on Tuesday evening. He announced that the next Listening Tour stop will be November 13 at Kyrene del Pueblo Middle School.

MAYOR TIBSHRAENY invited residents to sign up for the Traditional Neighborhood Academy that begins on September 19. Details are online at [www.chandleraz.gov/neighborhoods](http://www.chandleraz.gov/neighborhoods).

MAYOR TIBSHRAENY then announced that the expansion of the City's Innovations Science & Technology Incubator is complete and now 23 companies and nearly 100 employees operate out of the facility in west Chandler. Learn more at [www.chandleraz.gov/ed](http://www.chandleraz.gov/ed).

MAYOR TIBSHRAENY stated that the Police Department's annual G.A.I.N. event is October 20, and the kickoff meeting for neighborhood representatives is September 22. Residents who want more information can contact the Police Department at 480-782-4967.

MAYOR TIBSHRAENY concluded his remarks by thanking residents for voting in the August 28 Primary Election and giving him another term to serve the community.

B. Councilmembers' Announcements

COUNCILMEMBER HEUMANN announced that the G.A.I.N. event has become very popular over the years and said it is an exciting event.

COUNCILMEMBER HEUMANN also announced the Anniversary of September 11 and the loss of our Ambassador in Libya. He said his prayers go out to the family of the government servants who really believed in freedom and helped Libya become a Democratic society.

COUNCILMEMBER HEUMANN wished members of Chandler's Jewish community L'Shanah Tovah or a Happy and Healthy New Year.

VICE MAYOR WENINGER praised Fire Chief Jeff Clark and Police Chief Sherry Kiyler for their speeches at the City's September 11<sup>th</sup> memorial and the Fire Department staff for their work in designing and reconstructing the new 9/11 memorial that is displayed at the Fire headquarters.

COUNCILMEMBER DONOVAN congratulated the Mayor and Nora Ellen on the election results. She then invited residents to go online to [www.chase.com/ChaseGiving](http://www.chase.com/ChaseGiving) to vote for their favorite local charities and give them an opportunity to receive grant funding from Chase.

COUNCILMEMBER HARTKE congratulated Mayor Tibshraeny and Nora Ellen for their wins during the primary election. He closed the remarks by wishing both Basha and Chandler high schools good luck on their Friday night football games.

C. City Manager's Announcements

None.

Adjournment: The meeting was adjourned at approximately 7:32 p.m.

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Approved: September 27, 2012

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the City Council of Chandler, Arizona, held on the 13<sup>th</sup> day of September 2012. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this \_\_\_\_\_ day of September 2012.

\_\_\_\_\_  
City Clerk