

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, July 11, 2013 at 7:00 p.m.

THE MEETING WAS CALLED TO ORDER BY MAYOR JAY TIBSHRAENY.

The following members answered roll call:

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

Councilmember Heumann participated via telephone.

Also in attendance:

Rich Dlugas	City Manager
Pat McDermott	Assistant City Manager
Marsha Reed	Assistant City Manager
Kay Bigelow	Asst. City Attorney
Marla Paddock	City Clerk

INVOCATION: Councilmember Kevin Hartke

PLEDGE OF ALLEGIANCE: Boy Scout Troop 613 led the Pledge of Allegiance.

CONSENT:

MOVED BY VICE MAYOR SELLERS, SECONDED BY COUNCILMEMBER HARTKE, TO APPROVE THE CONSENT AGENDA AS PRESENTED.

COUNCILMEMBER WENINGER asked if the information on Item 4 (Rate increase) could be noticed via social media. Mr. Dlugas said it would.

COUNCILMEMBER HEUMANN stated he would vote no on Item 10 (Alma School & Chandler Boulevard Intersection Imps).

MOTION CARRIED UNANIMOUSLY (7-0) WITH THE EXCEPTION NOTED ON ITEM 10.

1. REZONING: SWC Norman Way & Pecos Road Ord. #4468

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4468, DVR13-0006 SWC Norman Way & Pecos Road, rezoning from AG-1/PAD (Agricultural District with a Planned Area Development of one single-family residence with Preliminary Development Plan (PDP) for site layout and building design located at the SWC of Pecos Road and Norman Way, west of Gilbert Road. (Applicant: Jim Crudele)

## GENERAL PLAN CONFORMANCE

The General Plan identifies the property as being located in the Airpark Area Plan, which identifies the property as Public/Semi-Public Facilities and Medium Density Residential. It is important to note that the land use designations in the Airpark Area Plan do not follow property lines and therefore, it may appear that the subject property is designated as Regional Commercial. However, when the Rancho del Ray subdivision as zoned in 2001, it effectively moved the Regional Commercial land use area further east to where the Chandler 202 Auto Park is currently located.

## BACKGROUND

The subject parcel is located just off of the southwest intersection corner of Pecos Road and Norman Way. The property wraps around a small 0.04-acre parcel owned by Qwest Corporation (now CenturyLink) for a telephone switching facility at the corner. The surrounding properties include Chandler-Gilbert Community College north of Pecos Road; Honda of Chandler to the east across Norman Way, and to the south and west is the residential townhouse component of the larger Rancho del Ray residential development. The property abuts perimeter block walls as part of Rancho del Ray. Beyond the western block wall is an approximately 10-foot wide landscape area and an adjacent 3-unit townhouse building. Adjacent to the southern wall is a landscape area, private street and a 4-unit townhouse building approximately 30 feet away.

The property's underlying zoning is AG-1 (Agricultural District) which allows one single-family home per 43,000 sq. ft. In 2011, Council approved a request to rezone the subject site from AG-1 to AG-1/PAD (Planned Area Development overlay) to allow the installation of a 150 KW solar photovoltaic (PV) system. This project never commenced and the property was sold to the current owner proposing to build a single-family residence.

The request is to construct one, single-story residential home on approximately 0.55 acres (23,958 sq. ft.). The home is approximately 3,633 livable square feet including 4 bedrooms, 3 bathrooms, an integral rear yard covered patio area and a 2-car side entry garage with a 1-car forward facing garage. The home is facing and accessed off of Norman Way. The minimum building setbacks include a front yard of 20 feet, rear yard of 20 feet, interior side yard of 10 feet, and corner street side yard of 10 feet. The home is sited to provide larger yards on all sides of the home. The parcel's maximum lot coverage is 40%. The home's height is approximately 22 ½ feet from grade.

The architectural style of the home incorporates sand finished stucco, a gable roof, an entry tower, stone veneer accent, shutters, trim around windows, wrought iron accent detail, tile roof, decorative wood rafter tails, recessed windows and decorative garage doors. The home has varied rooflines and four-sided architecture.

This parcel is not a part of the Rancho del Ray subdivision and therefore not a part of that HOA. This was an exception piece not included with that community. There is no vehicular access from this property south into the subdivision's private street.

Additional perimeter block walls will be added along Pecos Road and Norman Way in accordance with City standards. The wall design shall be compatible with the adjacent Rancho del Ray perimeter walls. City sidewalks and off-site improvements are already completed along both street frontages. However, with the addition of a perimeter block wall along Pecos Road, there

will be approximately 15 feet of City right-of-way to be landscaped. Rezoning Condition No. 5 addresses landscape improvements required by the developer.

#### DISCUSSION

The Planning Commission and Planning Staff find the proposed development of one, single-story residence on the ½-acre property appropriate and compatible with surrounding uses. The property is surrounded by two streets, medium-density townhouses with two-story units, a telephone switching facility, an auto dealership parking lot and a community college. The home is positioned on the southern end of the parcel with access limited to Norman Way. The home is setback from Norman Way 35 feet and 83 feet from Pecos Road. The minimum building setbacks are typical for a traditional subdivision lot size and allow for the main residence to expand and/or allow for detached buildings/structures as permitted by Zoning Code.

#### AIRPORT COMMISSION RECOMMENDATION

The Airport Commission reviewed the zoning amendment request in accordance with the Airport Conflicts Evaluation Process on June 12, 2013. The Airport's Economic Development Specialist/Airport Administrator has issued a conflicts evaluation report indicating that the Airport Commission determined the proposed uses do not constitute a conflict with existing or planned airport uses.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on June 5, 2013. There were no citizens in attendance. Planning Staff has received no correspondence in opposition. However, Planning Staff did receive one voice message from a nearby property owner who is on the Rancho del Ray HOA Board requesting information on the project to present to the HOA. The HOA conveyed their support for the request.

#### PLANNING COMMISSION VOTE REPORT

The motion to approve passed unanimously 6 – 0 with Commissioner Ryan absent.

#### RECOMMENDATIONS

##### **Rezoning**

Upon finding consistency with the General Plan and Chandler Airpark Area Plan, the Planning Commission and Planning Staff recommend approval subject to the conditions listed in the ordinance.

##### **Preliminary Development Plan**

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

1. Development shall be in substantial conformance with Exhibits, A, B, C, and D as represented by the applicant in Case DVR13-0006 SWC NORMAN WAY & PECOS ROAD, except as modified by condition herein.
2. Approval by the Director of Transportation & Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls and the Director of Transportation & Development for arterial street median landscaping.
3. The landscaping in all open spaces and rights-of-way shall be maintained by the adjacent property owner or association.
4. The perimeter wall design shall be compatible with the adjacent Rancho del Ray perimeter walls.

2. 2013 ANNUAL ACTION PLAN: Neighborhood Stabilization Program 3 Res. #4695

ADOPTED Resolution No. 4695 amending the 2013 Annual Action Plan and submitting to the U.S. Department of Housing and Urban Development (HUD), Amendment 2 to the Substantial Amendment for the Neighborhood Stabilization Program 3 in order to reallocate funds and revise program activity budgets; and authorized the City Manager, or his designee, to take those actions necessary to implement Amendment 2 and the program.

BACKGROUND

The Annual Action Plan is the document approved by City Council that describes the activities to be undertaken by the City for the 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.

The City of Chandler's deadline for the expenditure of NSP 3 funds is March 9, 2014. Currently, Staff and the Housing and Human Services Commission (HHSC) are recommending that City Council approve a revision to the Substantial Amendment which defines the activities and budget for the NSP 3 Program. The revisions include the deletion of the Chandler Land Bank activity, a decrease to the budget for Newtown Community Development Corporation's Home-Ownership Assistance Program for First-time Homebuyers and an increase to the budget for the Newtown Chandler Land Trust Program.

DISCUSSION

A review of the balance of unexpended funds in the City's NSP 3 Program identified \$330,000 available for reallocation due to slow expenditure. Of the \$330,000, \$150,000 is currently allocated to the City's Land Bank Activity which was created to allow the City to be able to purchase foreclosed properties in the City's established Land Bank area. Unfortunately, no suitable foreclosure properties were available during the operation of the program.

In addition, Newtown and the City have been concerned about the slow rate of expenditure of Newtown's Home-Ownership Assistance Program for First-Time Homebuyers. This program was developed to provide down payment and closing cost assistance of up to \$10,000 for up to 20 program participants. All potential program participants are limited by the regulations of the NSP 3 program requiring the purchase of foreclosed or abandoned properties. As the housing market has improved in Chandler, the availability of housing choice among foreclosed properties has substantially declined. Newtown has assisted two homebuyers with this program since the program was initiated, leaving the balance for reallocation of \$180,000.

To facilitate a reallocation of funds and to meet HUD requirements, a Request for Proposals (RFP) regarding the availability of \$330,000 in NSP 3 funding was announced to the non-profit community in early May. The RFP called for responses from proposers to implement programs limited to the acquisition, rehabilitation and resale of vacant, abandoned or foreclosed properties to households with incomes at or below 120 percent of the Area Median Income. An important criterion for the award of funds was for the selected developer to take title of properties funded with reallocated dollars, and/or have fully executed construction contracts (in case of rehabilitation) for NSP-assisted properties by December 31, 2013.

Two responses to the RFP were received; one from Newtown Community Development Corporation to fund additional housing units under their Chandler Land Trust Program and a second from Chicanos Por La Causa for an acquisition, rehabilitation and re-sale program for first-time homebuyers. While both non-profit housing developers have the experience and expertise to implement their described programs, in the scoring of the proposals, Newtown scored higher in the area of readiness to proceed. Each applicant was rated on their ability to implement program activities within 30-45 days of the commitment of funds and the ability to meet expenditure requirements within six months of commitment. Newtown has demonstrated their ability to expend funds for their Chandler Land Trust Program in a timely manner. In addition, Newtown's current contract for the Chandler Land Trust Program under NSP 3 can be amended with a one-page document to complete the reallocation of funds.

In the case of Chicanos Por La Causa, a negotiated developer agreement and a second negotiated agreement for required housing counseling services would need to be finalized between the City and Chicanos Por La Causa prior to the commencement of program implementation. Due to the time constraints with insuring that HUD's requirement that all NSP 3 funds be expended by March 9, 2014, Staff and the HHSC recommend that \$330,000 in NSP 3 funds be reallocated to Newtown Community Development Corporation for the acquisition, rehabilitation and re-sale of up to four single-family homes through the Chandler Land Trust Program.

#### FINANCIAL IMPLICATIONS

All costs associated with the reallocation of NSP 3 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.

#### 3. PRELIMINARY DEVELOPMENT PLAN: Chandler Midway Corporate Center

APPROVED Preliminary Development Plan PDP13-0002 Chandler Midway Corporate Center, to allow freestanding multi-tenant monument signs for an existing development located at the NEC of Chandler Boulevard and Gila Springs Boulevard. (Applicant: Caliber Signs & Graphics.)

#### BACKGROUND

The request is for PDP approval for two freestanding multi-tenant monument signs. A PDP comprehensive sign package was approved in April 2009 for building mounted signage only requiring monument signs to be reviewed and approved through a separate PDP.

The subject site is located on the southwest portion of the Intel Gila Springs campus at Chandler and Gila Springs boulevards. The site is bounded by light industrial development to the north with the Intel campus to the east. South of Chandler Boulevard is an assisted living facility. Gila Springs Boulevard abuts the subject site to the west, with a fast-food restaurant (Pizza Hut/Taco Bell) and a townhouse development located west of Gila Springs Boulevard. A Preliminary Development Plan was approved in June 2005 for the construction of the Chandler Midway Corporate Center commercial office development that includes nine office buildings totaling 133,200 square feet on the 20-acre site.

The proposed multi-tenant monument signs include one along Chandler Boulevard (Sign A/a) and one along Gila Springs Boulevard (Sign B/b). Sign A has an overall height of 14 feet with 5 tenant panels. Sign B has an overall height of 10 feet with 5 tenant panels. The signs are located in proximity to the main entrances to Chandler Midway Corporate Center.

The signs incorporate building materials, colors and elements from the development's office buildings. The sign is constructed with an aluminum cabinet and internal illumination and a split face block base. The center identification name and tenant panels are routed-out push-thru acrylic letters. Lettering projects from the sign's face to provide dimension from side elevations. The acrylic lettering is a perforated vinyl which appears black during the day and white at night when illuminated. There are a maximum of 5 tenant panels of equal size and height. There is an option to combine only the top two panels creating a total of 4 tenant panels. The Development Booklet includes exhibits representing both options.

#### DISCUSSION

The Planning Commission and Planning Staff find the proposed two freestanding monument sign's height and number of tenant panels appropriate for this development. The development's largest tenant buildings are located approximately 500 feet north of Chandler Boulevard with limited visibility. The monument signs are architecturally designed to match the office development incorporating a geometric element, which enhances the sign's quality. The proposed signage is consistent with office developments of this size with height and number of panels.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code. A neighborhood notice was mailed in May in lieu of a meeting due to the surrounding area being primarily commercial with one apartment community nearby. Planning Staff has received no correspondence in opposition.

#### PLANNING COMMISSION VOTE REPORT

The motion to approve passed unanimously 6 – 0 with Commissioner Ryan absent.

#### RECOMMENDATION

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

1. Development shall be in substantial conformance with Exhibit A, Development Booklet entitled "CHANDLER MIDWAY CORPORATE CENTER", kept on file in the City of Chandler Planning Division, in File No. "PDP13-0002", except as modified by condition herein.
2. Sign packages, including free-standing signs as well as wall-mounted signs, shall be designed in coordination with landscape plans, planting materials, storm water retention requirements, and utility pedestals, so as not to create problems with sign visibility or prompt the removal of required landscape materials.
3. All future signage shall be consistent with the signage contained within the attached exhibits with regards to sign type and quality. Any deviations shall require separate Preliminary Development Plan approval.
4. NOTICE OF INTENTION: Water / Wastewater / Reclaimed Fee Increase

NOTICE OF INTENTION to increase certain water, wastewater and reclaimed water fees and set the date for the public hearing for August 12, 2013.

#### BACKGROUND/DISCUSSION

As required by the City' Financial Policies, a review of current utility rates was conducted as part of the FY 2013-14 Budget process. A review was completed for the Water, Wastewater

(including Reclaimed Water), and Solid Waste Enterprises. The review of the Water and Solid Waste current financial situation and future revenues expenditures determined that no rate increases for residents was required at this time, although there are two fees included related to Utility Billing and recommended changes to utility account deposits collected. The review of Wastewater's current financial situation (including the Reclaimed Water component) determined that rate increases were required for FY 2013-14.

The multi-year financial plan prepared by Staff indicates that in the first year, rate increases are not to exceed 9% for wastewater and 18% for reclaimed water revenues. The Wastewater increases are needed to cover additional debt service costs due to current and future infrastructure needs. As part of the FY 2013-14 review of utility rates, the City engaged a consultant to evaluate the City's reclaimed water services. The review determined that the City spends approximately \$1.4 million per year to provide reclaimed water to users, but only recovers about \$1.0 million in revenues. The proposed 18% increase in Reclaimed Water fees will add approximately \$200,000 in revenue to partially offset operating production costs. Rate increases are proposed to go into effect on October 1, 2013.

Further analysis determined the impact of the proposed increase will result in the average Chandler household's average monthly wastewater bill to increase \$2.00. Since the wastewater user fee is a flat fee, all residents would have the same increase. Reclaimed Water rates would increase by 18% to partially offset the cost of operating the reclaimed water system. The primary users of Reclaimed Water are home owner associations (HOA) and golf courses. Although the use of reclaimed water varies from one HOA to another, a survey of five typical HOAs showed an average annual expenditure of \$4,365 would go to \$5,150 with the 18% increase. Assuming the HOA passes this cost on to homeowners (an average of 278 homes per HOA in the survey), it equates to an annual increase per home from \$15.70 (\$1.30 per month) to \$18.52 (\$1.54 per month).

Outside City rates will continue to be calculated using the current differentials of 1.4 times the Inside City rates for reclaimed water and 1.6 times the Inside City rates for wastewater.

#### PUBLIC NOTIFICATION

The notice of the proposed increases in rates and fees was published on the City's web site on May 31, 2013. In accordance with State Statutes, the "Official Notice of Intention to Increase Certain Water, Wastewater and Reclaimed Water Rates" will be posted on the City's web site and published in the Arizona Republic newspaper showing the date, time and place of the public hearing. Also, as required by State Statutes, a copy of the documents supporting the revised wastewater and reclaimed water fees will be filed with the City Clerk for public review for 30 days prior to the hearing.

#### FINANCIAL IMPLICATIONS

The financial plan reflects rate increases needed up to a maximum 9% for wastewater and 18% for reclaimed water revenues as well as some water fees and deposit changes related to Utility Billing. These increases will cover additional debt service costs due to infrastructure needs and maintain the financial integrity of the water/sewer enterprise, including debt service coverage and cash reserve policy requirements over the next fiscal year.

#### 5. AGREEMENT: Terra Verde Services

APPROVED Agreement No. IT3-918-3172 with Terra Verde Services for network security audit services in an amount not to exceed \$35,000.00.

A routine security audit is necessary to ensure that citizen data is adequately protected. The audit will also identify any risks to City computer systems that could impair City services. Funding for this audit was identified in the FY 2012-13 budget. This audit will check security documents and processes along with the network infrastructure to identify if there are any risks to the City's various systems. Any risks identified will be prioritized by the severity of the issue. IT will then develop a strategy to mitigate those risks, which may include the need for additional professional services. If additional services are needed, they will be competitively procured as a separate process utilizing funds identified in the FY 2013-14 budget. The last audit was performed over 5 years ago.

6. AGREEMENT AMENDMENT: Brown Wholesale Electric

APPROVED Agreement No. WH1-914-3005, Amendment No. 2, a one-year extension with Wesco Distribution dba Brown Wholesale Electric, for the purchase of electrical supplies in an amount not to exceed \$175,000.00, with options to renew for two additional one-year periods. This is the second of four optional one-year extensions. The contractor has requested an overall price increase of 3%.

7. AGREEMENT: Tri Com Corporation

APPROVED Agreement No. TE3-968-3261 with Tri Com Corporation for Community Development Block Grant (CDBG) Americans with Disabilities Act (ADA) Ramps & Routes in an amount not to exceed \$218,594.39.

As part of the 2012-13 CDBG funding in Chandler, the City's Transportation & Development Department received funding to improve mobility and connectivity throughout an established, low to moderate income, residential neighborhood by constructing improvements to current ADA standards. The improvements will be in the area north of Chandler Boulevard, east of Hartford Street, south of Erie Street and west of Nebraska Street. This portion of the CDBG area in Chandler has the most need for the proposed improvements without the complication of additional right-of-way or the relocation of existing structures. In addition, Hartford Street is programmed for a mill and overlay pavement replacement in the next year and these ADA – related improvements need to be made before the paving work starts. Improvements of curb ramps, alley entrance ramps, driveways and sidewalk will ensure that citizens and visitors, especially those with mobility impairments, can travel throughout neighborhoods in a safe and convenient manner.

This project will have a positive impact on residents and visitors associated with approximately 115 single-family homes, the Church of the Nazarene, the Chandler Christian Academy, Park Manors Park and Chandler High School.

8. AGREEMENT: Arizona Metro Mix and Arizona Materials, LLC

APPROVED Agreement No. ST3-750-3270 with Arizona Metro Mix and Arizona Materials, LLC, for Ready Mix Concrete and Aggregate Slurry, for two years with options to renew for two additional one-year periods, in a combined total amount not to exceed \$130,000.00 for the initial two-year contract.

9. CONTRACT: Arizona Beeman Drilling

APPROVED Contract No. WA1301-401 with Morex Investments LLC, dba Arizona Beeman Drilling for West Pecos Well Drilling in an amount not to exceed \$1,063,597.00.

The West Pecos Well is located east of Alma School Road and south of Pecos Road. Last year, the interior well casing collapsed. The City purchased a small parcel of land north of the current site to provide additional room to re-drill the well. The scope of this project abandons the existing well and re-drills the well on the adjacent parcel.

10. CONTRACT AMENDMENT: Kimley-Horn and Associates, Inc.

COUNCILMEMBER HEUMANN VOTED NAY ON THIS ITEM.

APPROVED (6-1) Contract No. ST0807-201. Amendment No. 4, with Kimley-Horn Associates, Inc., for design services for the Alma School Road and Chandler Boulevard Intersection Improvements in an amount not to exceed \$355,627.00 for a revised contract amount of \$1,095,651.00.

In April 2008, City Council approved a design contract with Kimley-Horn and Associates, Inc., for intersection improvements at Alma School Road and Chandler Boulevard. However, due to lack of right-of-way and construction funding, the project design was shelved near 60% design until the funding could be secured in the future.

Staff applied to the Federal Highway Administration/Arizona Department of Transportation (FHWA/ADOT) for Highway Safety Improvement Program (HSIP) funds. The City was awarded \$5,393,119.00 for right-of-way, utility relocation and construction funding in April 2012. The Alma School Road and Chandler Boulevard intersection currently has one of the highest accident rates in the City. Through the grant application, Staff demonstrated that at least a 20% reduction in crashes can occur at this intersection by adding dual left turn lanes and right turn lanes. Over the last 10 plus years, the City has completed several intersection improvement projects similar in scope. Since completion, there has been an average of 35% reduction in overall accidents, a 38% reduction in injury crashes and a 100% reduction in fatal crashes.

11. CONTRACT: Deutsch Architecture Group

APPROVED Contract No. FI09002-202 with Deutsch Architecture Group for architectural design and construction administration services for the Fire Station No. 1 Relocation Project in an amount not to exceed \$183,462.00.

The Fire Station No. 1 relocation project was the result of recommendations from the Fire Department Standards of Response Coverage study. As part of the study, the Department expanded the scope of planning to include the National Fire Protection Association's Standard (NFPA) 1710. This standard has changed the response parameters for the Department resulting in a change of fire station locations. This proposal relocates the current Fire Station No. 1 to 1475 E. Pecos Road and eliminates one of the planned growth fire stations that were projected for the southeast portion of the City. The existing station will be renovated to accommodate shop, office, storage and laboratory space for the Transportation & Development and Neighborhood Resources departments.

The original design drawings for the new First Station No. 1 were done by Deutsch Architecture Group in 2009. This set of drawings progressed through the permit review stage of the City's

approval process. The permit was never issued because the project was stopped when grant funding was denied. Now that this project is scheduled for FY 2013/14 in the CIP, the plans are required to be updated to the 2012 Building Codes and current civil requirements.

The contract amount exceeds the direct select amount provided for in the City Administrative Regulations. The Administrative Regulations also provide for a waiver of that limitation if approved by the City Manager. Staff is certain that hiring the original designers will be more cost effective than having a new firm review the plans from scratch. The construction administration services portion of the work contained no increase in cost from the original 2009 proposal.

12. PURCHASE: MorphoTrak, Inc.

APPROVED the purchase of annual maintenance for existing Automated Fingerprint Identification System/Livescan equipment from MorphoTrak, Inc., utilizing State of Arizona Contract #ADPSO13-038750, in the amount of \$74,726.00.

13. PURCHASE: Tata Consultancy Services, Ltd.

APPROVED the purchase of annual maintenance for the Tax Mantra system from Tata Consultancy Services, Ltd., sole source, in an amount not to exceed \$138,800.00.

The Tax Mantra system is the City's Privilege (sales tax) collection and licensing software system providing the administration and processing functionality necessary for collection of nearly 50% of the City's General Fund revenues. The original five-year maintenance agreement ended July 31, 2010. Because the City's client-based version is approaching obsolescence, the vendor will not enter into a long-term maintenance agreement. Therefore, ongoing maintenance agreements will only be renewed on an annual basis. Because the system is proprietary, the ongoing maintenance service is available only from Tata Consultancy Services. No other vendors are authorized to provide these maintenance services.

14. USE PERMIT: Max & Ted's 480

APPROVED Use Permit LUP13-0004 Max & Ted's 480, Series 6 Bar License, to sell liquor as permitted for on-premise consumption and have live music indoors at an existing bar located at 480 N. Arizona Avenue, south of the SWC of West Oakland Street and North Arizona Avenue. (Applicant: Ted W. Smith.)

BACKGROUND

The subject site is south of the southwest corner of Oakland Street and Arizona Avenue. The surrounding businesses include Coyotes Bar to the east, Redwood Motel to the south and apartments to the north and west. The nearest single-family neighborhood is Hoy Homes to the northwest. Chandler High School is approximately 500 feet south of the site.

The Liquor Use Permit approved in 1999 did not impose a time condition; however, a condition of approval stated that any change of bar operator required Use Permit re-application. The current request is twofold; one is due to the new ownership and the second is to add live music to the bar's operation.

The bar is an existing business and has been in operation since 1961. Since it was established, the business name and ownership has changed several times. The bar is under new ownership as of April 2013.

The subject business is approximately 2,600 square feet in floor area on a lot of approximately 11,250 square feet. The bar has 64 seats, including bar stools and chairs, and eight tables. The bar has five employees plus the owner/operator. Business hours are from 10 a.m. to 2 a.m., Monday through Saturday and from noon until 2 a.m. on Sunday.

The business currently operates with four pool tables, 12 televisions and a juke box. Karaoke, pool tournaments and pool leagues also take place. The new owner requests to include live music once a month on Saturday nights. There is no proposal for an interior stage or expanded floor area.

The proposed live music would occur on the first Saturday of each month starting at 9 p.m. and ending at 1 a.m. The live music will occur indoors only and be located where pool tables are normally placed. Two conditions addressing any potential noise concerns have been added as conditions of approval. Planning Staff recommends a one-year time limit to allow evaluation of neighborhood compatibility under the new ownership.

#### DISCUSSION

Planning Staff supports the request finding that the bar with live music indoors is appropriate at this location if controlled so as to not unreasonably disturb the surrounding businesses and residents. There have been no complaints filed with the Police Department or opposition during the neighborhood meeting and public notification processes.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on May 30, 2013. There was one neighbor in attendance with concerns focused on an establishment across the street. The Police Department has been informed of the application and has no issues or concerns. Planning Staff has received one phone call followed by an email concerning parking.

#### PLANNING COMMISSION VOTE REPORT

The motion to approve passed unanimously 6 – 0 with Commissioner Ryan absent.

The item remained on the consent agenda, however, a rental property owner who previously called and sent an email wished to comment on the application. The concerns raised were related to parking availability in the neighborhood and how business patrons use all the parking along Arizona Avenue.

The new bar owner was pro-active and made an agreement with a tire business located on the same block to utilize their parking lot for overflow parking. The agreement was made at the time the bar came under new ownership in April 2013 well in advance of the concerns noted at Planning Commission. The parking agreement allows bar patrons to use the tire business's parking lot in the evening on any day of the week. Additionally, the bar owner indicates he monitors on-site parking and when the lot is nearing capacity, a movable sign notifying patrons of the additional parking is placed outdoors. Moreover, the property exceeds parking requirements by three spaces; 16 spaces are required and 19 spaces are provided.

#### RECOMMENDED ACTION

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

1. The Use Permit granted is for a Series 6 license only and any change of license shall require reapplication and new Use Permit approval.
2. The Use Permit shall remain in effect for one (1) year from the date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.
3. The Use Permit is non-transferable to any other location.
4. Expansion or modification beyond the approved exhibits (Site Plan, Floor Plan and Narrative) shall void the Use Permit and require a new Liquor Use Permit application and approval.
5. Music shall be controlled so as to not unreasonably disturb area residents and shall not exceed the ambient noise level as measured at the commercial property line.
6. No noise shall be emitted from the live entertainment occurring indoors that exceeds the general level of noise emitted by uses outside the premises of the business and further will not disturb adjacent businesses and residential areas.
7. The site shall be maintained in a clean and orderly manner.

15. LIQUOR LICENSE: Max and Ted's 480

APPROVED a Series 6 Bar Liquor License (Chandler #147114 L6) for Ted Weston Smith, Agent, TWS, Inc., dba Max and Ted's 480, 480 N. Arizona Avenue. A recommendation for approval of State Liquor License #06070133 will be forwarded to the State Department of Liquor Licenses and Control. 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. This application reflects a change in ownership. The Transportation and Development Department advises that a new Use Permit is required for modification beyond the approved floor plan of the location's previous use as Maxted, Inc., dba Max & Ted's 480.

16. USE PERMIT: Nabers

APPROVED Use Permit LUP13-0005 Nabers, Series 6 Bar License, to sell and serve liquor as permitted for on-premise consumption indoors and within an outdoor patio and have live music indoors at a new restaurant located at 825 N. 54<sup>th</sup> Street, NEC of West Harrison and North 54<sup>th</sup> streets in the Chandler Pavilions. (Applicant: Denise Holliday.)

BACKGROUND

The subject site is located at the immediate corner of Harrison and 54<sup>th</sup> streets in the Chandler Pavilions commercial shopping center. The surrounding businesses include Polar Ice Arena, several inline restaurants/fast food, Casa Paloma shopping center and other retailers such as Petsmart and Home Depot. To the east will be The Plaza, a 65-unit townhome project.

Nabers will be located in an existing building that was formerly occupied by Jilly's American Grille and Ernie's Inn. The restaurant, bar and outdoor patio are approximately 7,575 square feet. The business will employ four full time management positions and 20 to 25 full and/or part time service positions. The business is planned to open in August 2013.

The restaurant will be open seven days a week. Business hours will be Monday through Thursday from 11 a.m. to midnight, Friday from 11 a.m. to 2 a.m., Saturday from 10 a.m. to 2 a.m., and Sunday from 10 am. to midnight. Restaurant seating is approximately 278 total with 225 seats indoors and 43 seats on the patio. The indoor bar seats 23 patrons and the outdoor bar seats 10 patrons.

The request includes providing live music to its entertainment venue. Live music would be scheduled a few days per week and occur indoors only. There will be no live, amplified, or acoustic music in the outdoor patio. On Thursday nights, there may be acoustical or amplified single, duo or musicians playing rock, country, blues or Irish music from 7 p.m. to 10 p.m. On Friday and Saturday nights, amplified country or rock bands would play from 9 p.m. to 1 a.m. Acoustical or amplified musicians may play on Sunday afternoons from noon until dinner or 9 p.m.

Entertainment will perform on portable commercial hotel ballroom risers which will be set on the southwest wall of the restaurant. Existing ceiling and wall-installed speakers will be used for television sound and satellite music indoors. The two outdoor patio speakers, existing above the bar, will not be used to amplify any live music. Televisions will broadcast sporting events via Direct TV. Other entertainment includes Golden Tee and shuffleboard games.

Planning Staff has added two conditions to address any potential noise concerns. Planning Staff recommends a one-year time limit to allow evaluation of compatibility under the new ownership.

#### DISCUSSION

Planning Staff supports the request finding that the restaurant and bar with live music indoors and the outdoor patio are appropriate at this location if the live music is controlled so as to not unreasonably disturb the surrounding businesses and residents. There have been no complaints filed with the Police Department or opposition during the neighborhood notification and public notification processes.

#### PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code. A neighborhood notification letter was sent on May 13, 2013. There have been no issues or concerns received. The Police Department has been informed of the application and has no issues or concerns. Staff has received no correspondence in opposition.

#### PLANNING COMMISSION VOTE REPORT

The motion to approve passed unanimously 6 – 0 with Commissioner Ryan absent.

#### RECOMMENDED ACTION

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

1. The Use Permit granted is for a Series 6 license only and any change of license shall require reapplication and new Use Permit approval.
2. The Use Permit shall remain in effect for one (1) year from the date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.
3. The Use Permit is non-transferable to any other location.
4. Expansion or modification beyond the approved exhibits (Site Plan, Floor Plan and Narrative) shall void the Use Permit and require a new Liquor Use Permit application and approval.
5. Music shall be controlled so as to not unreasonably disturb area residents and businesses and shall not exceed the ambient noise level as measured at the commercial property line.

6. No noise shall be emitted from the live entertainment occurring indoors that exceeds the general level of noise emitted by uses outside the premises of the business and further will not disturb adjacent businesses and residential areas.
7. The site shall be maintained in a clean and orderly manner.
8. The patio shall be maintained in a clean and orderly manner.

17. LIQUOR LICENSE: Nabers

APPROVED a Series 6 Bar Liquor License (Chandler #147837 L6) for Denise Ann Holliday, Agent, 1 D-AND-D LLC, dba Nabers, 825 North 54<sup>th</sup> Street. A recommendation for approval of State Liquor License #06070620 will be forwarded to the State Department of Liquor Licenses and Control. 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.

18. LIQUOR LICENSE: Taka Sushi & Korean BBQ

APPROVED a Series 12 Restaurant Liquor License (Chandler #147571 L12) for Young Cho, Agent, Ha Eun, Inc., dba Taka Sushi & Korean BBQ, 3002 N. Arizona Avenue, Suites 18 & 19. A recommendation for approval of State Liquor License #12079522 will be forwarded to the State Department of Liquor Licenses and Control. 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. 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 Takamatsu of Chandler.

19. LIQUOR LICENSE: Sun Chinese Dining

APPROVED a Series 12 Restaurant Liquor License (Chandler #147423 L12) for Randy Nations, Agent, Grilled Ave LLC, dba Sun Chinese Dining, 1381 N. Alma School Road. A recommendation for approval of State Liquor License #12079526 will be forwarded to the State Department of Liquor Licenses and Control. 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. 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 Sun Chinese Dining.

20. CONTINUED LIQUOR LICENSE: America's Taco Shop

CONTINUED TO AUGUST 15, 2013, a Series 12 Restaurant Liquor License for Michael Moore, Agent, JMI Enterprises LLC, dba America's Taco Shop, 3235 W. Ray Road, Suite #1, to allow the applicant time to complete the requirements for a new Use Permit.

21. CONTINUED LIQUOR LICENSE: Moreno's Mexican Grill

CONTINUED TO SEPTEMBER 12, 2013, a Series 12 Restaurant Liquor License for Jose Angel Moreno, Agent, Moreno's Mexican Grill Number Five, LLC, dba Moreno's Mexican Grill, 2100 S. Gilbert Road, to allow the applicant time to complete the requirements for a new Use Permit.

22. SPECIAL EVENT LIQUOR LICENSE: Suns Nite Hoops

APPROVED a Special Event Liquor License for Suns Nite Hoops for the Mark Taylor Summer of Love Community Event, July 13, 2013 at San Palacio Apartments, 2255 W. Gemann 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 reports no objections to the issuance of this license. The special event liquor fee has been paid; however, as this applicant is a non-profit organization, no sales tax license is required.

23. SPECIAL EVENT LIQUOR LICENSE: Suns Nite Hoops

APPROVED a Special Event Liquor License for Suns Nite Hoops for the Mark Taylor Summer of Love Community Event, July 27, 2013 at San Cervantes Apartments, 400 N. Coronado Street. 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 reports no objections to the issuance of this license. The special event liquor fee has been paid; however, as this applicant is a non-profit organization, no sales tax license is required.

24. SPECIAL EVENT LIQUOR LICENSE: Suns Nite Hoops

APPROVED a Special Event Liquor License for Suns Nite Hoops for the Mark Taylor Summer of Love Community Event, August 17, 2013 at Parcland Crossing Apartments, 800 W. Willis 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 reports no objections to the issuance of this license. The special event liquor fee has been paid; however, as this applicant is a non-profit organization, no sales tax license is required.

25. CONDOMINIUM PLAT: Ray Ranch Professional Plaza, Amendment to Bldg. R

APPROVED a Condominium Plat, DPT12-0001, Ray Ranch Professional Plaza, a Condominium – Amendment to Building R, creating one parcel and new building boundaries for Building R, which amends the existing plat for Ray Ranch Professional Plaza located at the NEC of Bullmoose Drive and Ray Road; north side of Ray Road between Price and Dobson roads. (Applicant: Bowman Consulting.)

26. AGREEMENT: Chandler Fire Fighters Employee Benefit Trust Fund Res. #4701

ADOPTED Resolution No. 4701 authorizing the Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund (CFFEBT).

BACKGROUND/DISCUSSION

The CFFEBT Fund was established July 9, 2006, as a result of the meet and confer process between the City and the United Phoenix Firefighters Association Local 493, I.A.F.F. (FFA). The original Agreement and Declaration of Trust for the CFFEBT Fund was executed on November 20, 2007. The CFFEBT Fund was designed to mirror a program previously adopted by the City of Phoenix and was intended to provide a tax-preferred vehicle to fund retiree medical benefits for the City's retired firefighters. The Memorandum of Understanding (MOU) states the City will

contribute twenty-five dollars (\$25) per Unit member, per pay period, to the fund and the contribution will be matched by each Unit member by the same amount.

The legal structure of the CFFEBT Fund is referred to under the Internal Revenue Service (IRS) Code as a tax-exempt voluntary employees' beneficiary association or a "VEBA". A VEBA is a tax-exempt entity that exists as a legally independent trust. The primary tax advantages associated with a VEBA are pre-tax employer contributions to the CFFEBT Fund, tax-deferred earnings accumulations in the CFFEBT Fund and tax-exempt benefit payments to the retirees and their spouses. Because of these tax advantages, the IRS imposes several procedural and substantive restrictions on the operation of a VEBA.

With the help of outside counsel, who was asked to review the taxability and structure of the CFFEBT Fund, it was determined that the IRS has not yet reviewed the CFFEBT Fund and issued a VEBA approval letter. Such approval may be obtained retroactively after the VEBA has been in place for some time. The CFFEBT board, with the help of counsel, is currently preparing to submit the CFFEBT Fund to the IRS under that retroactive approval process.

The Trust Agreement is being amended to tailor its provisions to the parties' needs and to incorporate some of the provisions previously included in the MOU between the City and the FFA. The amendment to the MOU was recently approved by the City Council and the CFFEBT Fund agreement is being amended to include the provisions transferred from the MOU to the trust, add IRS compliance provisions and clarify the current administration of the Trust to assist future Fire Trust Board Members as they transition into positions and responsibilities.

## 29. CITY CLERK CONTRACT

APPROVED the Employment Contract with Marla Paddock as City Clerk for an annual base salary of \$120,373.

### ACTION:

The Mayor moved Item 28 before Item 27.

## 28. CONSIDERATION OF POSSIBLE NEW EMPLOYMENT AGREEMENT WITH CITY ATTORNEY

Mayor Tibshraeny stated two weeks ago the Chandler City Council instructed their outside legal counsel to work with the City Attorney's attorney to work out a new agreement and return to the Council. They have been in discussion and not been able to come up with a proposed agreement that both attorneys could jointly recommend to the Council.

MAYOR TIBSHRAENY MOVED TO NOT RENEW THE CITY ATTORNEY'S EMPLOYMENT AGREEMENT OR ENTER INTO A NEW AGREEMENT WITH HER TO SERVE AS CITY ATTORNEY SO THAT THE CITY ATTORNEY'S LAST DAY OF EMPLOYMENT WILL BE FRIDAY, JULY 12, 2013. ALSO, AUTHORIZE MR. COHEN, THE CITY'S ATTORNEY, ON BEHALF OF THE CITY TO CONTINUE TO DISCUSS FOR THE NEXT TWO WEEKS A POSSIBLE SEPARATION AGREEMENT WITH MS. WADE'S ATTORNEY. THE MOTION WAS SECONDED BY COUNCILMEMBER WENINGER.

COUNCILMEMBER DONOVAN clarified Mr. Cohen was the outside legal counsel for the City.

MOTION CARRIED UNANIMOUSLY (7-0).

27. ZONING CODE/CITY CODE AMENDMENTS: Chapters 35, 14 & 11  
Ord. Nos. 4449 & 4457

Ordinance No. 4449, Zoning Code Amendment ZCA12-0004 Urban Chickens, City initiative to amend Chapter 35 of the City Code to permit residents to raise chickens on single-family lots. Ordinance No. 4457, City initiative to amend Chapter 11 of the City Code designating unreasonably loud chickens as a disturbing noise and amend Chapter 14 by repealing the requirement to obtain written consent to keep animals within 200 feet of residences.

BACKGROUND:

This item was discussed at the City Council meeting of May 23, 2013. The initial motion to approve Ordinance 4449 failed for lack of a majority. Several points of concern were raised by the City Council including the possible creation of a permanent zoning right should the proposed ordinance be adopted along with concerns regarding enforcement. After additional discussion, the City Council voted to reconsider its denial of Ordinance 4449. Staff was then directed to research options regarding Use Permits to address the enforcement issue and both Ordinances 4449 and 4457 were continued to the City Council meeting of July 11, 2013.

Staff from various departments met following the May 23<sup>rd</sup> City Council meeting and determined that there were at least two points of general consensus: (a) Staff gleaned from the City Council meeting that Councilmembers may have concerns in extending the *right* to keep chickens to all residences in all single-family zoning districts; and (b) any changes to the zoning code or other City codes that would modify current regulations affecting the keeping of chickens will likely increase the difficulty of enforcing against violations of such regulations.

Staff has also heard concerns from residents living in neighborhoods with an active homeowners association (HOA) that the HOA's covenants, conditions and restrictions (CC&Rs) regarding keeping of chickens would be voided through the passage of an ordinance that permits the keeping of chickens. City Legal Staff advises that none of the options discussed below would supersede HOA rules regarding this issue.

The main options identified and considered at the Staff meetings are as follows:

1. **No change to the current codes.** Currently, the keeping of *poultry* is prohibited in Chandler except in AG-1 and SF-33 (large lot) residential zoning districts, with the latter district requiring the poultry be contained within a fence or cage. Roosters are prohibited everywhere within Chandler. Code Sec. 14-3 prohibits any animal or fowl (including a chicken) from being kept within 200 feet from a residence other than the residence of the animal's owner or the residence of a person who provides written consent for a shorter distance.

*Pros:* No new property right is established. Zoning code enforcement is relatively straight forward, i.e., there is a violation whenever a chicken is in a district where no chicken is allowed to be. The same is true with the rooster prohibition. There is little indication that the City has aggressively enforced the 200-foot distance requirement, although

Neighborhood Resources has customarily informed property owners within the AG-1 and SF-33 districts about this provision.

*Cons:* This option does not extend the right to keep chickens that is sought by a segment of Chandler residents.

2. **Make the changes submitted to Council.** This option provides a blanket *right* to keep backyard chickens to all residences within all single-family zoning districts, subject to certain conditions applicable to all but the AG-1 and SF-33 districts. It eliminates the 200-foot consent to keep requirement. It prohibits the raising of unreasonably loud chickens.

*Pros:* Citizens interested in keeping chickens would be able to, and it is not uncommon today for municipalities to regulate the keeping of a small number of chickens in residential districts. As with barking dogs, unreasonably loud chickens would constitute a disturbance of the peace.

*Cons:* Allowing a blanket right for any resident to keep chickens, even where the right is subject to compliance with specified conditions will create enforcement challenges. By law, zoning enforcement is the responsibility of a municipality's Zoning Administrator; the tools available for enforcement are limited and cumbersome; the process required remedying a complaint often protracted and limited. If in the future, the City wishes to reinstitute prohibitions on the keeping of chickens in single-family district, it will be legally difficult and potentially costly to do. It is possible that disturbance of the peace calls, which are enforced by the Police, could increase – either from loud chickens or from loud dogs sensitive to the presence of chickens nearby.

3. **Conditional use permits.** This option would allow a homeowner to keep chickens if he/she first obtains a Conditional Use Permit. Thus, rather than a blanket right granted to all homeowners in any single-family district, this option would permit chickens to be kept by individual homeowners in any district on a case-by-case basis.

*Pros:* The main benefit is that this option does not extend a broad-based *right* to all homeowners, but gives *permission* to individual homeowners to raise chickens. Enforcement, while difficult, would be easier because a homeowner who violated the conditions of the Use Permit could have the permit suspended or revoked.

*Cons:* One problem is that Use Permits are issued through a process involving both the Planning and Zoning Commission and the City Council. The permitting process is also complicated by the need to comply with requirements of the new state statues applying the Arizona Regulatory Bill of Rights to municipal regulations. Enforcement against violations will not be necessarily quick or easy since (i) permit revocation cannot occur without according the permit holder due process and (ii) in some cases, establishing the violation or the materiality of the violation can be difficult.

4. **Licensing through health and safety codes.** This option involves a slightly different licensing process, which is established outside of the zoning code and focuses on protecting against health and safety problems that might arise in the keeping of chickens in residential areas. It can address such adverse effects as possible undue noise and odors. The focus of such a license would be on health and safety concerns, not neighborhood compatibility issues.

*Pros:* The licensing process would be handled without engaging the Planning and Zoning Commission and the City Council – presumably, it would be more expeditious and less political. Staff would be able to administer such a program utilizing existing resources.

*Cons:* The main problem with this with this option is it only has applications under circumstances where the zoning code no longer expressly prohibits the keeping of chickens in single-family residential districts. An amendment to the zoning code would be required, as the keeping of chickens is currently prohibited in all residential districts except AG-1 and SF-33. Also, such a license would not expedite enforcement should problems occur.

5. **Registration policy.** This option involves the development of a reporting policy where homeowners raising chickens would be required to register. It could be established as an independent, stand-alone policy if City approval for raising chickens is not required. Otherwise, it could be part of a larger licensing or permitting policy.

*Pros & Cons:* It is difficult to see what real benefit would be derived from a stand-alone registration requirement. Establishing such a requirement may give the appearance of significant regulation by the City, but it would be without teeth and would not allow for expedited enforcement should problems occur. It would add a level of bureaucracy that provides no real substantial benefit. This option would also require an amendment to the zoning code, as the keeping of chickens is currently prohibited in all residential districts except AG-1 and SF-33.

6. **“Public nuisance” prosecution.** This option would redefine “public nuisance” to encompass some of the potential health and safety conditions related to the raising of chickens. The land use conditions would not be included, but would remain part of the zoning code.

*Pros:* The biggest benefit would be the shifting of health and safety conditions related to the raising of chickens out of the zoning code so violations that reach the level of a public nuisance could be prosecuted as such, regardless of whether or not any licensing or permitting process is involved.

*Cons:* Declaring something a public nuisance does not by itself make enforcement against violations any easier. This option might be a useful adjunct to Option 4, but much less useful if it stands alone. This option would also require an amendment to the zoning code as the keeping of chickens is currently prohibited in all residential districts except AG-1 and SF-33.

Given the concerns raised at the City Council meeting of May 23, 2013, and the analysis by Staff of the various options described above, no recommendation regarding the creation of a permit system *to regulate urban chickens in Chandler is being proposed. Staff does not believe that such a system would achieve the desired goal of expedited enforcement should violations occur.*

As such, the original Ordinances 4449 and 4457 are returned for Council’s consideration with no recommended changes.

#### **BACKGROUND FROM PREVIOUS MEETINGS:**

This initiative began last year when a group of residents spoke at a City Council meeting and requested that the City Code be amended to allow them to raise chickens in their backyards.

Since that time, Staff has met with a Council Subcommittee, obtained input from residents and discussed the proposal with other departments including Police, Code Enforcement and the City Attorney's Office.

In addition, the draft amendment was posted on the Valley Permaculture Alliance's (VPA) website with a statement that encouraged Chandler residents to send comments directly to Planning Staff. The VPA is a local organization that promotes sustainable urban living in the desert southwest. Their website contains several forums dedicated to different sustainable living topics such as keeping backyard chickens. As a result, Staff received constructive feedback from residents who would like to have chickens as well as from experienced chicken owners.

Staff researched other municipalities in the Phoenix Metropolitan Area (PMA) and found that many allow chickens in single-family neighborhoods. Further research revealed that many cities across the country have amended their laws within recent years to allow chickens. Professional planning and zoning publications confirm that there is a nationwide trend to allow chickens in urban environments. The publications also report that the adopted ordinances regulating chickens are all quite different and no standard set of regulations has yet been established. Staff found this to be true with cities in the PMA. There are, however, common themes such as requiring droppings to be removed on a weekly basis, requiring coops to be setback from adjacent residences and declaring it to be unlawful for chickens to create a public nuisance.

#### EXISTING REGULATIONS

The four chapters of the City Code listed below address the primary issues of whether residents are permitted to keep chickens and the measures in place to protect neighbors from noise, odor and other nuisances that potentially could be created by chickens:

- Chapter 11 – Curfew, Graffiti, Smoking and Miscellaneous Offenses
  - Section 11-10 Disturbing the Peace Prohibited
- Chapter 14 – Animals, Article I – In General
  - Section 14-3 Consent required to keep animals within 200 feet of residences; exceptions as to household pets
  - Section 14-6 Cruelty to Animals
  - Section 14-7 Keeping Hogs, Donkeys, Roosters, etc.
  - Section 14-8 animals at Large
- Chapter 30 – Neighborhood Preservation
  - Section 30-5 Creating, Causing or Maintaining a Public Nuisance
- Chapter 35 – Land Use and Zoning
  - Section 35-401 Uses Permitted in AG-1 (Agricultural District)
  - Section 35-501 Use Permitted in SF-33 (Single Family District)

Other chapters in the City Code regulate different aspects of keeping chickens. For example, Chapter 44 – Garbage and Refuse, specifies that all refuse must be placed in leak-proof plastic bags that are tightly secured. Chapter 29 – Building Regulations, applies to any structure that exceeds 120 square feet or 7 feet in height. Section 35-200 of the Zoning Code identifies limitations to “home occupations” that prohibit residents from conducting a business from their home that involves customer traffic and selling commodities on the premises among other things.

Chapter 30, which is referenced in the proposed code, designates public nuisance as “anything which is injurious to health, safety, or is indecent or offensive to the senses...” More specifically, it designates the following as public nuisances:

- “Animal waste that is not securely protected from insects and the elements, or that is kept or handled in violation of this code or any other ordinance of the City or the county...”
- “Any putrid, unsound or unwholesome bones, meat, hides, skins or the whole or any part of any dead animal, butcher’s trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the health officer of the county or this code or any other ordinance of the City...”
- “The erection, continuance or use of any building, room or other place in the City that, by noxious exhalations, including but not limited to smoke, soot, dust, fumes or other gases, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public.”

These public nuisances are currently enforceable by Code Enforcement and can continue to be applied as they relate to keeping chickens.

Chapter 35 (Zoning Code) currently allows chickens to be raised in AG-1 and SF-33 zoning districts. This translates generally to any single family property with a minimum lot size of 33,000 square feet. There is no limit to how many chickens may be kept on these larger properties. In SF-33 districts, the fence or corral containing the chickens must be setback at least 100 feet from the front property line and must not be closer to the street side property line than the principal building on corner lots. No setbacks are required for corrals on AG-1 properties. However, any structure that exceeds 120 square feet or 7 feet in height, must comply with building setbacks for accessory buildings on both AG-1 and SF-33.

#### PROPOSED CODE AMENDMENTS

The proposed amendment would expand the areas where chickens are permitted to all single family lots regardless of size. In effect this includes the following zoning districts where a single family dwelling is the primary use: SF-8.5, SF-10, SF-18, MF-1, MF-2, MF-3 and Planned Area Development (PAD). The multi-family districts (MF-1, MF-2 and MF-3) are included to cover the numerous single family dwellings near the downtown area that are zoned multi-family.

The proposed regulations would allow residents to keep up to five hens and establish requirements dealing with chicken coop setbacks and regular maintenance that are aimed at preventing the chickens from becoming a nuisance. Roosters remain prohibited anywhere in the City. The proposal also makes it unlawful to keep chickens in such a manner that disturbs the peace as designated in Chapter 11 or that constitutes a public nuisance as designated in Chapter 30 of the City Code.

Section 11-10 designates noises that are considered to be disturbing the peace. Among the list are vehicles with loud exhaust systems, loud music and barking dogs. Staff is proposing to add unreasonably loud chickens to the list so that Police officers may respond to chicken related noise complaints in the same manner as barking dogs. Per the City Attorney’s office, the language for barking dogs is revised to match the language proposed for chickens.

Section 14-3, originally adopted in 1959, is proposed to be eliminated in its entirety. The section requires written consent from all residents within 200 feet in order to keep chickens among other animals. The law would be difficult to enforce and prove to be problematic for chicken and other animal owners when a new homeowner or resident in a rental property moves in next door.

Staff believes that keeping chickens in a backyard is a compatible use in single family residential neighborhoods when the number of chickens is limited, regulations are in place to require responsible maintenance, and provisions for the enforcement of violations are adopted. Many cities in the PMA allow chickens in most, if not all, of their single family neighborhoods. When contacted by staff, their code enforcement officer stated that chickens are not as much of a nuisance as some people might think. The following are Staff's findings for each potential issue:

### **Noise**

Roosters are the main problem when it comes to noise. For this reason, roosters are currently prohibited citywide. Hens, by comparison, are very quiet and their cackling is not louder than a barking dog. Typically, hens will cackle only once a day for about 5 minutes either immediately before or after laying an egg. Hens will typically remain quiet for the rest of the day. A healthy adult hen may lay one egg each day up to 300 eggs a year. The number of eggs laid depends on a variety of factors including the specific breed, the hen's egg cycle, number of hours of daylight, temperature and whether the hen is stressed. In the event that noise becomes an issue and the owner with chickens is unable to amicably resolve the issue, neighbors could call the Police Department who would have authority to issue a citation for disturbing the peace (Section 11-10) in the same manner as they would when responding to complaints regarding barking dogs.

### **Odor**

Odor is an issue that can be addressed by removing or composting droppings. Chickens don't stink, but their droppings can produce offensive odors if they are left to accumulate over time. For this reason, the proposed amendment requires droppings to be composted or removed at least once per week or more frequently as necessary. As stated previously, Chapter 30 states that any place or use of any building that causes offensive odors that are considered to be discomforting, offensive, or detrimental to the health of individuals or of the public, is considered to be a public nuisance and is enforceable by the City's Code Enforcement Division.

### **Health**

According to an article published by the American Planning Association titled "Urban Micro-Livestock Ordinances: Regulating Backyard Animal Husbandry", by Jaime Bouvier, public health scholars have concluded that backyard chickens present no greater threat to public health than other more common pets like dogs and cats. As with any animal, including dogs and cats, disease can be spread through droppings. According to the Center for Disease Control and Prevention (CDC), Salmonella is a bacterium that occurs naturally in poultry and is shed in their droppings. Salmonella can make people sick with diarrhea, vomiting, fever and/or abdominal cramps. Infants, elderly persons and those with weakened immune systems were more likely than others to develop severe illness. People may become infected with Salmonella after having direct contact with chickens, droppings or any surface in the area where the chickens are kept that may be contaminated and then transferring the bacteria into their mouth. In order to reduce the risk of infection, the CDC recommends regular cleaning and sanitation practices such as washing hands thoroughly with soap and water immediately after touching chickens or anything in the area where they live and roam. Neighbors are not at risk of infection unless they too have direct contact with the chickens or a contaminated surface.

Avian influenza (Bird-Flu) is a theoretical health risk potentially associated with urban chickens. It's considered theoretical because no cases have been reported in the U.S. or anywhere in the western hemisphere. Bird-Flu is a viral disease of birds that may be transmitted to people through direct contact with infected chickens. According to the World Health Organization, human to human transmission is extremely rare. Therefore, in the event that Bird-Flu was to

spread to the U.S., neighbors would not likely be at risk of becoming infected unless they too have direct contact with an infected chicken or contaminated surface.

Other health risks associated with the breeding of flies or mosquitoes, attracting wild birds and pests can be prevented by composting or removing and properly disposing of droppings and keeping the food and water supplies contained, fresh and clean. For this reason, the proposed amendment requires water and feeder containers to be kept sanitary and droppings to be removed or composted at least once per week. Again, Chapter 30 currently designates "animal waste that is not securely protected from insects and the elements" as a public nuisance, further reinforcing the requirement to pick up droppings on a regular basis.

### **Building Safety**

Building Safety concerns are addressed in the amendment by requiring any chicken coop that exceeds 120 square feet or 7 feet in height, or has any utility connections regardless of the coop's size, to obtain a permit. This is consistent with the City's current regulation that requires a building permit for any structure that exceeds 120 square feet or 7 feet in height.

### **Trespassing/Running at large**

The proposed amendment requires hens to be contained within the rear or side yards and prohibits them from trespassing upon other properties or upon any street or public place. The method of containing the hens is up to each individual owner. The backyard property wall may serve for this purpose. However, some may choose to contain the hens within a smaller area such as a chicken run within the boundaries of their rear yard. In any case, a chicken coop is required to be provided and can be placed no closer than 10 feet to any property line shared by another residential lot.

### **Homeowner Associations (HOA)**

If the proposed amendments were adopted, residents living within HOAs would still need to comply with their association's Codes, Covenants and Restrictions (CC&Rs). Many HOAs prohibit raising, breeding or keeping poultry and other animals that are not considered to be common household pets.

The City estimates that 82% of all single family lots in Chandler are located with HOAs; therefore, the code amendment may one affect 18% of the City's single family properties, most of which are located around the older parts of the City.

### **PUBLIC/NEIGHBORHOOD NOTIFICATION**

As required by Arizona Revised Statutes, hearing dates for the Planning Commission and City Council, as well as the complete text of the draft code amendments have been published in an eighth-page newspaper ad at least fifteen days prior to the first required public hearing. Notices containing a website link to view the proposed amendments were sent electronically to over 30 Chandler residents who had contacted the City in regards to this effort. The text of the draft code amendments and public hearing dates were posted on the Valley Permaculture Alliance's online forum. A news release was issued to the press in an effort to notify all Chandler residents of the proposed amendment and to give all residents an equal opportunity to submit their comments and participate in the scheduled public hearings. As of May 7, 2013, Staff has received 31 responses (both email and telephone calls) from Chandler residents who are in favor of the proposed amendments. Some proponents requested that the limit be increased to more than 5 chickens and the coop setbacks be reduced. As of the same date, Staff has received 9 responses opposed to the amendment.

PLANNING COMMISSION VOTE REPORT

The motion to approve passed 4-2 with Commissioners Donaldson and Ryan dissenting and Commissioner Wastchack absent.

RECOMMENDATION

Upon finding the request to promote the General Plan's goals encouraging sustainable living practices and upon finding hens to be compatible with single family residential areas, the Planning Commission and Planning Staff Recommend approval.

SPEAKERS:

Lisa DePasqual, 314 W. Curry Street, spoke in favor of allowing chickens.

Mary Tilden, 1155 N. Cholla Street, asked if there was a compromise that didn't infringe on people's property rights and the expectations.

Edwin DePasqual, 314 W. Curry Street, spoke in favor of allowing chickens.

Dane Cutting, 147 W. Ironwood Drive, said the information that was presented was not totally correct and misleading regarding chickens.

Bernadette Davidson, 189 W. Ironwood Drive, said Chandler has areas where chickens are currently allowed. She opposed expanding the allowance.

Megan Craghead, 4443 S. Basha Road, spoke in support allowing chickens.

James Baggett Jr, 165 W. Ironwood Drive, spoke against allowing chickens.

Sarah Cummings, 1733 San Tan Street, spoke in support of allowing chickens.

Patricia Murray, 1661 E. Carla Vista Drive, said the issue is property rights. She urged the Council to vote no.

Joe Papay, 1902 W. Canary Way, spoke in support of allowing chickens.

Robert Ortiz, 1661 E. Carla Vista Drive, cautioned granting a land use right to a small special interest group over the existing vested property rights of the majority of residents. He urged the Council to vote no.

John Repar, 1433 E. Jade Drive, spoke in support of the ordinance and said he sees it as giving back an individual right of property owners.

Cynthia Guthro, 4519 W. Jasper Drive, spoke against allowing chickens and explained her neighborhood was not part of an HOA and must rely on city ordinances to protect property values. Allowing chickens would run contrary to improve efforts to improve older neighborhoods.

Kelly Farrow, 3451 N. Verano Court explained decibel levels as it relates to chicken noise and spoke in favor.

A.Ruth Brazelton, 1610 E. Flint Street, spoke against the allowance of chickens citing odor, health hazards and chickens roaming.

Leslie Minkus, 3372 E. Gemini Court, reviewed points made in an e-mail sent to the Council regarding health and other concerns.

Laura Rivers, 2727 W. Geronimo Street, spoke in opposition to allowing chickens and gave concerns about burdening the Neighborhood Resources staff or Police Department with issues, as well as contradicting homeowner covenants.

Norman Knox, 800 W. Tyson Street, spoke in opposition to allowing chickens.

Leigh Rivers, 3737 W. Geronimo Street, spoke against the ordinance and urged the Council to vote no.

The following submitted comment cards:

In support: Kelly Farrow, R. Cummings, Julianne Hrubant, Sue Hoffman, Marc Van Horne,  
In Opposition: George Guthro, Eric Lentz, Dennis Mittelstedt

COUNCILMEMBER WENINGER MADE A MOTION TO DENY ORDINANCE NO. 4449. THE MOTION WAS SECONDED BY COUNCILMEMBER HEUMANN.

COUNCILMEMBER WENINGER stated for him, it is about existing property rights and the expectation that this use was not allowed.

COUNCILMEMBER HEUMANN said he asked for the continuance in order to give more notice to the public, allowed him additional research and staff to look at options. He agreed with Councilmember Weninger's comments about the existing property rights and expectations. He expressed concerned with adding additional burden to the Code Enforcement officers.

COUNCILMEMBER ELLEN said the privilege of having chickens should never have been revoked in the first place. She opined it was not the responsibility of this body to take away privileges. She stated the inconsistency in allowing other types of animals as dogs, cats, snakes, rats, etc. She felt the privilege should be restored.

THE MOTION TO DENY ORDINANCE 4449 WAS APPROVED BY MAJORITY (4-3) WITH COUNCILMEMBERS DONOVAN, HARTKE AND ELLEN VOTING NAY.

THE MAYOR asked if the Ordinance 4457 was necessary. ASST. CITY ATTORNEY BIGELOW said it would not be effective as there were not additional allowances for chickens, but it would make some changes to the AG-1 and SF-33 districts where the chickens are currently allowed. It would define unreasonably loud chickens.

THERE WAS NO MOTION AND NO ACTION TAKEN FOR ORDINANCE 4457.

UNSCHEDULED PUBLIC APPEARANCES:

None.

CURRENT EVENTS:

A. Mayor's Announcements

The Mayor thanked those who attended Chandler's 4<sup>th</sup> of July event. He thanked the Lions Club for their past sponsorship of this event and hoped a group would come forward in future years to assist the City with this event.

The next HOA Academy begins in August. He thanked Neighborhood Services for their work.

B. Councilmembers' Announcements

COUNCILMEMBER WENINGER reminded drivers to watch for kids as they return to school.

VICE MAYOR SELLERS said he had the privilege of helping kick off the peanut butter and jelly drive at Tumbleweed Recreation Center. The event is coordinated with Channel 12 and Bashas' Supermarkets. He encouraged donations to this cause.

VICE MAYOR SELLERS announced he was selected as Vice Chair of the Maricopa Association of Governments Transportation Policy Committee.

COUNCILMEMBER HARTKE thanked the citizens for participating tonight. Mr. Hartke announced the continuation of the City's water drive to donate water to heat relief stations and the Operation Back to School for back to school supplies.

C. City Manager's Announcements

None.

Adjournment: The meeting was adjourned at approximately 8:36 p.m.

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

\_\_\_\_\_  
Mayor

Approved: August 12, 2013

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 11<sup>th</sup> day of July 2013. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this \_\_\_\_\_ day of August, 2013.

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City Clerk