PROVO MUNICIPAL COUNCIL

Work Meeting

2:00 PM, Tuesday, September 17, 2024
Council Chambers (Room 100)
Hybrid meeting: 445 W. Center Street, Provo, UT 84601 or
https://www.youtube.com/provocitycouncil

The in-person meeting will be held in the **Council Chambers**. The meeting will be available to the public for live broadcast and on-demand viewing on YouTube and Facebook at: youtube.com/provocitycouncil and facebook.com/provocouncil. If one platform is unavailable, please try the other. If you do not have access to the Internet, you can join via telephone following the instructions below.

To listen to the meeting by phone: September 17 Work Meeting: Dial 346-248-7799. Enter Meeting ID 862 9180 2501 and press #. When asked for a participant ID, press #.

Agenda

Roll Call

Approval of Minutes

September 3, 2024 Council Meeting

Business

1. A presentation regarding the Fiscal Year 2024 Budget Carryover Report (24-080)

Policy Items Referred from the Planning Commission

2. A discussion regarding an ordinance amending Provo City Code regarding signs permitted in the downtown zones. Downtown Neighborhood. (PLOTA20240191)

3. A discussion regarding an ordinance amending Provo City Code regarding exceptions to signs and outdoor advertising regulations. Citywide Application. (PLOTA20240187)

4. A discussion regarding an ordinance amending the Zone Map classification of real property, generally located at 5544 N River Run Drive, from the OSPR Zone to the Medium Density Residential Zone. Riverbottoms Neighborhood. (PLRZ20230328)

Business

5. A discussion regarding a resolution approving the appropriation of $13,743 in the General Fund for a contractual sales tax increment post-performance payment to Day's Market. (24-011)

Redevelopment Agency Governing Board

6. A discussion regarding a resolution approving and adopting the Amended Project Area Plan for the Freedom Plaza Community Development Project Area. (24-078)

7. A discussion regarding a resolution approving the appropriation of $214,600 in the tax increment affordable housing set aside fund received from redevelopment projects last fiscal year. (24-081)

8. A discussion regarding a resolution of the Redevelopment Agency of Provo City designating a Survey Area for the proposed City Center Community Reinvestment Project Area. (24-082)

Closed Meeting

The Municipal Council or the Governing Board of the Redevelopment Agency will consider a motion to close the meeting for the purposes of holding a strategy session to discuss pending or reasonably imminent litigation, and/or to discuss the purchase, sale, exchange, or lease of real property, and/or the character, professional competence, or physical or mental health of an individual in conformance with 52-4-204 and 52-4-205 et. seq., Utah Code.

Adjournment

If you have a comment regarding items on the agenda, please contact Councilors at council@provo.org or using their contact information listed at: provo.org/government/city-council/meet-the-council

Materials and Agenda: agendas.provo.org
Council meetings are broadcast live and available later on demand at youtube.com/ProvoCityCouncil
To send comments to the Council or weigh in on current issues, visit OpenCityHall.provo.org.

The next Work Meeting will be held on Tuesday, October 1, 2024. The meeting will be held in the Council Chambers, 445 W. Center Street, Provo, UT 84601 with an online broadcast. Work Meetings generally begin between 12 and 4 PM. Council Meetings begin at 5:30 PM. The start time for additional meetings may vary. All meeting start times are noticed at least 24 hours prior to the meeting.

Notice of Compliance with the Americans with Disabilities Act (ADA)

In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting are invited to notify the Provo Council Office at 445 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email rcaron@provo.org at least three working days prior to the meeting. Council meetings are broadcast live and available for on demand viewing at youtube.com/ProvoCityCouncil.

Notice of Telephonic Communications

One or more Council members may participate by telephone or Internet communication in this meeting. Telephone or Internet communications will be amplified as needed so all Council members and others attending the meeting will be able to hear the person(s) participating electronically as well as those participating in person. The meeting will be conducted using the same procedures applicable to regular Municipal Council meetings.

Notice of Compliance with Public Noticing Regulations

This meeting was noticed in compliance with Utah Code 52-4-207(4), which supersedes some requirements listed in Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at agendas.provo.org. Council meeting agendas are available through the Utah Public Meeting Notice website at utah.gov/pmn, which also offers email subscriptions to notices.

PENDING APPROVAL - DRAFT MINUTES

Please Note – These minutes have been prepared with a timestamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.

PROVO MUNICIPAL COUNCIL

Regular Meeting Agenda

5:30 PM, Tuesday, September 03, 2024
Council Chambers
Hybrid meeting: 445 W. Center Street, Provo, UT 84601 or
https://www.youtube.com/provocitycouncil

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor Becky Bogdin	Councilor Craig Christensen
Councilor Gary Garrett	Councilor George Handley
Councilor Travis Hoban	Councilor Katrice MacKay
Councilor Rachel Whipple	Deputy Mayor Isaac Paxman
Chief Administrative Officer Scott Henderson	City Attorney Brian Jones
Council Executive Director Justin Harrison	City Recorder Heidi Allman

Conducting: Chair MacKay

Prayer – Richard Bowler

Pledge of Allegiance – Councilor Christensen

Public Comment 0:08:04

Chair MacKay read the public comment preamble and opened the public comment period.

Andrew Thompson, a Provo resident of 43 years, addressed the council regarding the urgent need for a full-time employee to oversee ADA (Americans with Disabilities Act) matters in the city. While he acknowledged that Provo has better accessibility than other areas in the county, he emphasized that significant improvements are still needed. He highlighted issues such as UTA buses not being accessible, utility poles on sidewalks, and many businesses and restaurants having barriers for wheelchair users. Thompson expressed frustration over the city's spending on art installations, such as the $73,000 allocated for signs at the Rec Center and on University Avenue, suggesting that taxpayer money would be better spent on accessibility needs. He specifically mentioned accessibility challenges at Rock Canyon and Pioneer Park, calling for action to address these concerns.

Bruce Fillmore, a resident of American Fork and owner of condominium in Provo, shared his concerns with the council regarding a city policy limiting the number of residents per unit. He explained that in 1993, when he purchased the condominium, he was allowed to have four people living there. However, about 10 years later, the city reduced the limit to three people per unit due to parking concerns. Fillmore feels this is unfair, as the rule is based on the number of cars rather than the number of residents, and not everyone owns a car. He suggested that this policy be reconsidered, especially since housing remains a significant issue in Provo.

Quinn Peterson, a Provo resident, and executive director of Downtown Provo Inc. thanked the council for their efforts and shared positive feedback from visitors. He mentioned that Provo has hosted large groups for events like the FilmQuest festival, the Buzzards and Bees music festival, and now, visitors from Big 12 universities. Peterson recounted conversations with visitors, including filmmakers and football game attendees, who were impressed by Provo's clean and well-maintained downtown. They were curious how Provo had avoided issues like homelessness camps in its historic downtown area. Peterson credited the city's outstanding resources and services that provide stability and housing for those in need, commending Provo as the best city in the state for permanent stability. He encouraged the council and community to recognize and appreciate this success.

With no other comments, Chair MacKay closed the public comment period.

Action Agenda

1. **An ordinance amending the Zone Map classification of approx. 1.53 acres of real property, generally located at 484 N 2760 W, from the Agricultural (A1.5) zone to the One-Family Residential (R1.8) Zone. Lakeview South Neighborhood. (PLRZ20240184)** 0:14:27

Motion: An implied motion to approve Ordinance 2024-44, as currently constituted, has been made by council rule.

Mary Barnes, Planner, presented. She explained that the rezone request involves a property with a portion zoned for agricultural use. The owners are seeking to rezone it to R1-8, a residential zoning commonly found in the surrounding area. This change would allow them to subdivide the property into two lots instead of keeping it as a single lot.

Chair MacKay asked if they chose to do something else, would it be required to come back to council for approval.

Ms. Barnes clarified that if the rezone is approved, any development on the property must comply with the R1-8 zoning requirements, just like all other properties in the neighborhood. She emphasized that the rezoned lots would be used for single-family homes, ensuring consistency with the surrounding area.

Chair MacKay opened the public comment period. With no comments, and no other discussion from council, she called for a vote.

Vote: The motion passed 7:0 with Councilors Bogdin, Christensen, Garrett, Handley, Hoban, MacKay, and Whipple in favor.

2. ****CONTINUED** Development Services request an Ordinance Text Amendment to Section 14.38.105 (Signs Permitted in the Downtown Zones) in order to add regulations for marquee signs. Downtown Neighborhood. (PLOTA20240191)**

3. ****CONTINUED** Jon Jensen requests approval of a Zone Map Amendment from the R1.8(PD) Zone to the AI Zone in order to develop a 24-acre flex-industrial campus, located approximately at 3450 West Center Street. Fort Utah Neighborhood. (PLRZ20240106)**

Adjournment

The meeting was adjourned by unanimous consent at approximately 5:42 PM.

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: KZARBOCK
Department: Finance
Requested Meeting Date: 09-17-2024

SUBJECT: A presentation regarding the Fiscal Year 2024 Budget Carryover Report (24-080)

RECOMMENDATION: Presentation Only

BACKGROUND: At the close of each fiscal year, Finance compiles a carryover list detailing budget amounts from the old year that should be "carried over" into the new year. The final carryover list is approved by the Mayor and then presented to the Council in a work meeting each fall.

FISCAL IMPACT: Yes

PRESENTER'S NAME: Andrea Wright

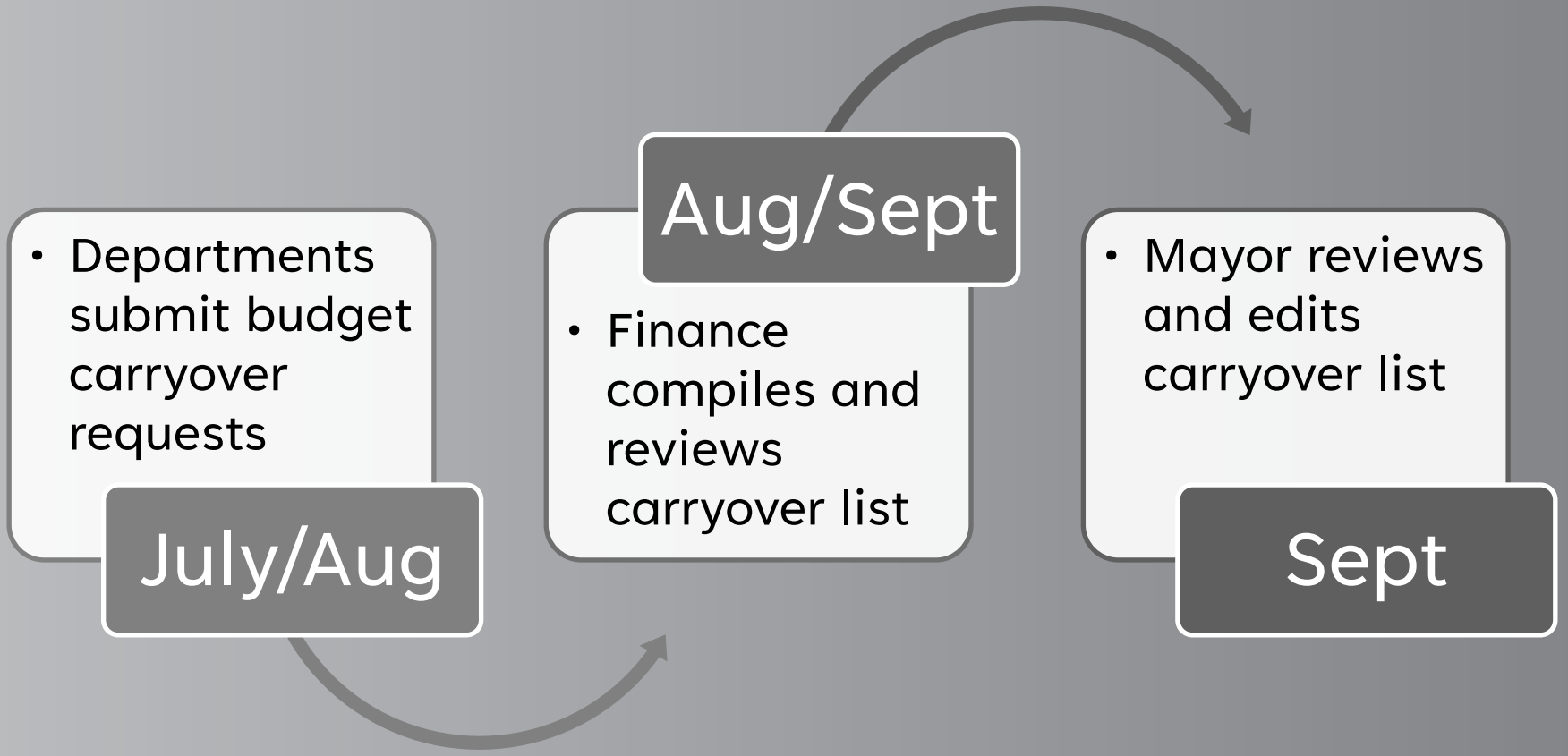
REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 24-080

BUDGET CARRYOVERS- FY24 TO FY25

What is the carryover process?



What types of requests are carried over?

Request Type	Examples
Encumbered on a Purchase Order	
Historically-universally-agreed-upon carryover	(Capital accounts, grant balances, tuition reimbursements)
FY24 Budget Unspent	(Savings for projects, projects tied to revenue sources, appropriations not yet spent)
Other critical equipment need	Operating Category balance we would like to use to fund large format plotter printer
Per Budget Ordinance	Vehicle Replacement

What does the budget ordinance authorize?

Budgets as described below will be automatically continued and re-apportioned from the prior fiscal year:

- **Equipment Maintenance and Replacement:** The City has been setting aside funds to provide funding to maintain general fund facilities and equipment over their useful lives. Any unused funds shall be continued and re-appropriated for expenditure in Fiscal Year 2025 in the following funds/accounts:
    - General Fund Facilities
    - Parks & Recreation Facilities Capital Fund
    - Vehicle replacement accounts
    - Computer bank accounts

- **Ongoing projects:** Budgets in the following areas fund projects or costs that often span multiple fiscal years. As a result, the following budget balances shall be continued and re-apportioned for expenditure in Fiscal Year 2025:
    - Wildland reimbursement budget
    - Capital improvement funds
    - Grants
    - My Hometown Initiative

- **Other expenses** in the following areas vary from year to year. As a result, the following budget balances shall be continued and re-apportioned for expenditure in Fiscal Year 2024:
    - Indigent defense
    - Tuition reimbursements
    - Elections - Every other year, the City has the responsibility to provide the funding for an election. To make the budget more comparable from year to year, half of the anticipated cost of the election is budgeted each year. Any unused funds shall be continued and re-appropriated for expenditure in Fiscal Year 2024.

FY24 to FY25 Operating Budget Carryover

Function	Source	Purpose	Carryover Amount	Available Budget	Added to Fund Balance
Key:	**Encumbered on a Purchase Order**				
	Historically-universally-agreed-upon carryover				
	FY24 Budget Unspent				
	Other critical equipment need				
	FY24 Supplemental Request				
	Per Budget Ordinance				
Council					
	FY24 Budget Unspent	Printing (Codebooks, Neighborhood Districts, Housing Summit), No FY24 POs, we are waiting for projects to be completed in order to open POs. New POs will be created for FY25.	5,000.00	145,302.81	
	FY24 Budget Unspent	Legal/professional services (as allowed in Council Handbook)	15,000.00		
	FY24 Budget Unspent	Travel - No FY24 POs, POs will be created for FY25.	5,000.00		
	FY24 Budget Unspent	Council Programs/Projects - FY24 POs	10,000.00		
	FY24 Budget Unspent	Neighborhood District Matching Grants from FY24 - No FY24 POs	54,530.46		
			89,530.46	**145,302.81**	**55,772.35**
Mayor's Office					
		No Carryover Requested	-	116,153.05	
			-	**116,153.05**	**116,153.05**
Recorder					
		No Carryover Requested	-	2,488.62	
			-	**2,488.62**	**2,488.62**
Human Resource					
		No Carryover Requested		19,492.82	
			-	**19,492.82**	**19,492.82**
Finance					
		Per Budget Ordinance - Indigent Defense	5,012.00	32,908.29	27,896.29
			5,012.00	**32,908.29**	**27,896.29**
Legal					
		No Carryover Requested	-	91,193.82	
			-	**91,193.82**	**91,193.82**
Development Services					
	Encumbered on PO	DP 57968 Stone Security Badge-in Security Doors	25,406.80	149,736.37	
	FY24 Budget Unspent	Wayfinding appropriation from scooter revenue	136,997.55	136,997.55	
	FY24 Budget Unspent	Per Budget Ordinance - My HomeTown	34,971.51	34,971.51	
			197,375.86	**321,705.43**	**124,329.57**
Economic Development					
		No Carryover Requested	-	48,502.22	
			-	**48,502.22**	**48,502.22**
Information Systems					
	FY24 Budget Unspent	City website	100,000.00	392,869.47	292,869.47
			100,000.00	**392,869.47**	**292,869.47**
General Services					
		Per Budget Ordinance - Vehicle replacement	3,258,769.29	4,161,594.74	
		Per Budget Ordinance - Grant related	229,932.03		
		Per Budget Ordinance - Tuition Reimbursement	20,750.06		
		Per Budget Ordinance - Employee Recognition	335,636.98		
		Per Budget Ordinance - General Fund Capital - Rec Capital fund related	87,556.00		
	FY24 Budget Unspent	Police Taser	87,722.40		
			4,020,366.76	**4,161,594.74**	**141,227.98**

Fire Department					
		No Carryover Requested	-	44,564.98	
			-	**44,564.98**	**44,564.98**
Police Department					
	FY24 Budget Unspent	Cleary building project	5,000.00	30,212.30	25,212.30
			5,000.00	**30,212.30**	**25,212.30**
Streets Division					
	Encumbered on a Purchase Order	FY24 DPs - Road Salt, Posts and Fittings for Sign Shop	15,988.60	221,093.75	205,105.15
			15,988.60	**221,093.75**	**205,105.15**
Engineering Division					
		No Carryover Requested	-	40,396.90	
			-	**40,396.90**	**40,396.90**
Parks & Recreation					
	FY24 Budget Unspent	DP 57983 Center Street remodel	35,550.00	228,705.53	
	FY24 Budget Unspent	DP 58943 Multi-use mower with attachments	35,742.04		
	FY24 Budget Unspent	DP 56101 Mobile Stage	115,853.00		
		Per Budget Ordinance - Rec Capital Fund	41,560.49		
			228,705.53	**228,705.53**	-
Non-General Fund Carryover					
Justice Court					
		No Carryover Requested	-	4,941.69	
			-	**4,941.69**	**4,941.69**
Dispatch					
	FY24 Budget Unspent	Grant funding	292,519.02	292,519.02	
			292,519.02	**292,519.02**	-
Library					
	FY24 Budget Encumbered	DP 53655 - Chiller - Second half after installation	284,254.00	503,013.84	218,759.84
			284,254.00	**503,013.84**	**218,759.84**
Covey Center					
		No Carryover Requested	-		
			-	-	-
Performance Fund					
		No Carryover Requested			
			-	-	-
Rental Rehab					
	FY24 Budget Unspent	Remaining Budget	3,484.77	3,484.77	
			3,484.77	**3,484.77**	-
CDBG					
	FY24 Budget Unspent	CDBG Admin	71,231.03	1,774,551.79	
	FY24 Budget Unspent	CDBG Special Funds	120,376.20		
	FY24 Budget Unspent	Operating budget for small business loans and improvements	340,191.34		
	FY24 Budget Unspent	CDBG Capital Projects	994,184.80		
			1,525,983.37	**1,774,551.79**	**248,568.42**
RDA - Tax Increment					
	FY24 Budget Unspent	Carryover All Remaining Budgets	2,989,393.54	2,975,893.54	
			2,989,393.54	**2,989,393.54**	-
Mountain Vista					
		No Carryover Requested	-	177,735.57	
			-	-	-

Home Consortium					
	FY24 Budget Unspent	Operating budget for HOME projects throughout the City	9,955,611.13	9,955,611.13	
			9,955,611.13	**9,955,611.13**	-
RDA - New Development					
	FY24 Budget Unspent	Carryover All Remaining Budgets	**147,951.27**	147,951.27	
			147,951.27	**147,951.27**	-
RDA- Special Purpose Grants					
	FY24 Budget Unspent	OIP Down Payment Assistance	435,639.66	435,639.66	
			435,639.66	**435,639.66**	-
Golf					
	Encumbered on a Purchase Order	FY24 DPs	29,047.00	294,847.27	
	FY24 Budget Unspent	Appropriated Budget in FY24 for Electrical Golf Cart Shed	265,800.27		
			294,847.27	**294,847.27**	-
Water					
	Encumbered on a Purchase Order	FY24 DPs	21,148.05	839,940.46	
	FY24 Budget Unspent	Carryover remaining Balance Historically agreed upon - capital	50,823.87		
			71,971.92	**839,940.46**	**767,968.54**
Wastewater					
	Encumbered on a Purchase Order	FY24 DPs	43,110.24	120,323.73	
	FY24 Budget Unspent	Carryover remaining Balance Historically agreed upon - capital	34,744.65		
			77,854.89	**120,323.73**	**42,468.84**
Energy					
		No Carryover Requested	-	11,889,212.98	
			-	**11,889,212.98**	**11,889,212.98**
Airport					
	Encumbered on a Purchase Order	FY24 DPs	9,657.71	11,889,212.98	
	FY24 Budget Unspent	Carryover remaining Balance Historically agreed upon - capital	1,842,267.88		
			1,851,925.59	**11,889,212.98**	**10,037,287.39**
Ice Sheet					
	Encumbered on a Purchase Order	FY24 DP	135,434.93	1,365,929.06	1,230,494.13
			135,434.93	**1,365,929.06**	**1,230,494.13**
Sanitation					
	Encumbered on a Purchase Order	FY24 DPs	81,765.97	1,193,753.42	
	FY24 Budget Unspent	For Purchase of new Rolloff and other containers	88,287.00		
	FY24 Budget Unspent	Carryover remaining Balance Historically agreed upon - capital	85,437.28		
		Per Budget Ordinance	754,440.40		
			1,009,930.65	**1,193,753.42**	**183,822.77**
Storm Drain					
	Encumbered on a Purchase Order	FY24 DPs	383.66	195,715.18	
	FY24 Budget Unspent	Carryover remaining Balance Historically agreed upon - capital	16,890.91		
	FY24 Budget Unspent	Vehicle Replacement	142,496.00		
			159,770.57	**195,715.18**	**35,944.61**

Customer Service					
	FY24 Budget Unspent	Cayenta upgrade	150,000.00	1,022,869.29	
	FY24 Budget Unspent	Silver blaze MyUsage Upgrade (contingent on Cayenta upgrade)	60,000.00		
	FY24 Budget Unspent	SeeClickFix (overlap year with POB and SeeClickFix/Website)	46,000.00		
	FY24 Budget Unspent	City Hall Improvements	15,000.00		
			271,000.00	**1,022,869.29**	**751,869.29**
Employee Benefits					
		No Carryover Requested		260,706.06	
			-	**260,706.06**	**260,706.06**
Vehicle Maintenance					
	Encumbered on a Purchase Order	FY24 DPs	26,009.63	453,539.10	
	FY24 Budget Unspent	Carryover remaining Balance Historically agreed upon - capital	9,597.05		
	FY24 Budget Unspent	Carryover remaining Balance Historically agreed upon - Vehicle Replacement	2,219.50		
			37,826.18	**453,539.10**	**415,712.92**
Telecom Internal Services					
		No Carryover Requested	-	808,511.06	
			-	**808,511.06**	**808,511.06**
Vehicle Replacement					
		Per Budget Ordinance	6,052,733.24	6,052,733.24	
			6,052,733.24	**6,052,733.24**	**-**
Computer Bank					
		Per Budget Ordinance	1,137,125.61	1,137,125.61	
			1,137,125.61	**1,137,125.61**	**-**
Facility Services					
	FY24 Budget Unspent	General Fund Facilities Maintenance - Ongoing Projects	2,113,467.95	2,134,849.15	21,381.20
			2,113,467.95	**2,134,849.15**	**21,381.20**
Total Non-General Fund Carryover			**28,848,725.56**	**55,766,375.30**	**26,917,649.74**

Mayor's Signature **Approval Date**

General Fund: Why are Carryovers so much lower this year?

- Revenue Shortfall
- Departments alerted that carryovers would be minimal.
- Payroll Savings not eligible for carryovers

Balancing the General Fund Revenue Shortage with Carryovers and Payroll Savings :

2024 Payrolll Turnover balance	1,699,940.78
Admin Services/HR Budget Early Year Budget Reductions	300,000.00
Operating Budget Savings After Carryovers	1,235,205.52
Budget Savings Measures	3,235,146.30
General Fund Revenue Shortage	(2,500,000.00)
	735,146.30
Amount Added to Innovation Fund	(183,786.58)
Amount Added to Employee Recognition	-
Amount Added to Local Government Disaster Fund	-
General Fund Balance Added	551,359.72

Questions?



PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: AARDMORE
Department: Development Services
Requested Meeting Date: 09-17-2024

SUBJECT: Development Services request an Ordinance Text Amendment to Section 14.38.105 (Signs Permitted in the Downtown Zones) in order to add regulations for marquee signs. Downtown Neighborhood.

RECOMMENDATION: Staff and Planning Commission recommend approval of proposed text amendment

BACKGROUND: Development Services is requesting a code amendment to add a new permitted sign type to the signs permitted in the downtown zones, Section 14.38.105, Provo City Code. This proposal was initiated after discussions with Downtown Provo Inc. (DPI) and drafted by staff.
The proposal adds a new marquee sign type to the signage options for downtown businesses with frontage on historic Center Street. The proposal limits the number of signs per block face, size of the sign, and regulates lighting options for the sign.
There is a history of marquee-style signs on Center Street dating back to the 1950's, and while only four remain (Fat Daddy Pizza, Harris Hearing Aids, B&H Pharmacy, and Bianca's) there is renewed interest in advertising downtown businesses in this way. Staff believe that by limiting the size and number of these signs the historic integrity of Center Street will remain intact, and business owners will be able to better advertise, all without having a messy or clustering effect on the street.

FISCAL IMPACT: None

PRESENTER'S NAME: Aaron Ardmore

REQUESTED DURATION OF PRESENTATION: 10 minutes (work session) / 5 minutes (council session)

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
(a) Public purpose for the amendment in question.
Staff response: The public purpose for the amendments is to help businesses thrive and in turn help Provo Center Street continue to thrive as the heart of the city.
(b) Confirmation that the public purpose is best served by the amendment in question.
Staff response: Staff believes that the proposed amendments will help to address the above public purpose.
(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

Staff response: The proposed amendments help to meet goals of the General Plan, specifically, Chapter 5, goal 1, to “Employ innovative approaches to promote local business and create community.” Also, Chapter 4, goal 2 in the Downtown Master Plan to encourages staff to “Continue to amend regulations for new developmentas the area continues to evolve.”
(d) Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated.
Staff response: There are no timing and sequencing issues related to this request.
(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan’s articulated policies.
Staff response: Staff believes that this proposal would not hinder or obstruct General Plan policies.
(f) Adverse impacts on adjacent land owners.
Staff response: Staff believes the only adverse impact from this amendment could be to those that desire a marquee sign after the maximum number on their block face has been met.
(g) Verification of correctness in the original zoning or General Plan for the area in question.
Staff response: Does not apply.
(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.
Staff response: Does not apply.

CITYVIEW OR ISSUE FILE NUMBER: PLOTA20240191

ORDINANCE 2024-____.

AN ORDINANCE AMENDING PROVO CITY CODE REGARDING SIGNS PERMITTED IN THE DOWNTOWN ZONES. DOWNTOWN NEIGHBORHOOD. (PLOTA20240191)

RECITALS:

It is proposed that Provo City Code Section 14.38.105 be amended to allow marquee signs in the downtown zones; and

On August 28, 2024, the Planning Commission held a public hearing to consider the proposed amendment, and after the hearing, the Planning Commission recommended approval to the Municipal Council by a vote of 7:0; and

On September 17, 2024, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

After considering the facts presented to the Municipal Council, the Council finds that (i) Provo City Code should be amended as set forth below, and (ii) such action furthers the health, safety, and general welfare of the citizens of Provo City.

THEREFORE, the Municipal Council of Provo City, Utah ordains as follows:

PART I:

Provo City Code Section 14.38.105 is amended as shown in Exhibit A.

PART II:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance prevails.

B. This ordinance and its various sections, clauses, and paragraphs are severable. If any part, sentence, clause, or phrase is judicially determined to be unconstitutional or invalid, the remainder of the ordinance is not affected by that determination.

C. This ordinance takes effect immediately after it has been posted or published in accordance with Utah Code Section 10-3-711, presented to the Mayor in accordance with Utah Code Section 10-3b-204, and recorded in accordance with Utah Code Section 10-3-713.

D. The Municipal Council directs that the official copy of Provo City Code be updated to reflect the provisions amended by this ordinance.

EXHIBIT A

14.38.105

Signs Permitted in the Downtown (DT1, DT2, ITOD, GW, and WG) Zones.

Signs within the General Downtown (DT1), Downtown Core (DT2), Interim Transit Oriented Development (ITOD), Gateway West (GW), and West Gateway (WG) zones are ~~shall be~~ regulated by the following provisions. Any signs, or types of sign, not expressly allowed by this Section are prohibited.

. . .

(10) *Marquee Signs.* Marquee signs are permitted for each block face having street frontage, subject to the following conditions:

(a) *Number.* No more than three (3) marquee signs are permitted for each block face.

(b) *Location.* Each sign must be located above the first floor of the business storefront.

(c) *Area.* Signs may not exceed one hundred (100) square feet in area.

(d) *Thickness.* Signs, including the cabinet, may not be more than one (1) foot thick.

(e) *Lighting.* Marquee signs may be illuminated internally or externally. Lighting must be stationary and shielded to direct solely onto the sign without causing glare. No neon lights are permitted.

(f) *Hold Harmless.* When a sign extends over a public right-of-way, a hold harmless agreement must be signed by the owner prior to approval and installation of said sign.

(g) *Sign Type.* Marquee signs may not include electronic display.

DEVELOPMENT SERVICES

Planning Commission Hearing Staff Report Hearing Date: August 28, 2024

***ITEM #7** Development Services request an Ordinance Text Amendment to Section 14.38.105 (Signs Permitted in the Downtown Zones) in order to add regulations for marquee signs. Downtown Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20240191

Applicant: Development Services

Staff Coordinator: Aaron Ardmore

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is September 11th, 2024, at 6:00 P.M.*

2. **Recommend Denial** of the requested ordinance text amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

Relevant History: Staff began discussing this proposal with the head of Downtown Provo Inc. (DPI) in May 2024, after realizing multiple businesses desired a marquee-style sign for their business. Staff then provided different versions of the proposed code to DPI in subsequent months and reached a working draft to bring forward on July 2nd.

Neighborhood Issues: No neighborhood issues have been reported to staff at the time of this report.

Summary of Key Issues:

- Provo Center Street has a history of marquee-style signs, giving the proposed amendment an example to draw from.
- The proposal would allow three (3) marquee signs per block face on Center Street between 500 West and 200 East.
- Signs would be limited to 100 square feet in size and not permitted to be electronic.

Staff Recommendation: Staff recommends that the Planning Commission recommend approval of the proposed amendment to the City Council.

OVERVIEW

Development Services is requesting a code amendment to add a new permitted sign type to the signs permitted in the downtown zones, Section 14.38.105, Provo City Code. This proposal was initiated after discussions with Downtown Provo Inc. (DPI) and drafted by staff.

The proposal adds a new marquee sign type to the signage options for downtown businesses with frontage on historic Center Street. The proposal limits the number of signs per block face, size of the sign, and regulates lighting options for the sign.

There is a history of marquee-style signs on Center Street dating back to the 1950's, and while only four remain (Fat Daddy Pizza, Harris Hearing Aids, B&H Pharmacy, and Bianca's) there is renewed interest in advertising downtown businesses in this way.

Staff believe that by limiting the size and number of these signs the historic integrity of Center Street will remain intact and business owners will be able to better advertise, all without having a messy or clustering effect on the street.

STAFF ANALYSIS

With any text amendment staff must review the proposed language against the goals and objectives of the General Plan. Section 14.02.020 of the Provo City Code provides specific criteria for this evaluation. That evaluation is as follows: (staff responses in bold)

(a) Public purpose for the amendment in question.

Staff response: The public purpose for the amendments is to help businesses thrive and in turn help Provo Center Street continue to thrive as the heart of the city.

(b) Confirmation that the public purpose is best served by the amendment in question.

Staff response: Staff believes that the proposed amendments will help to address the above public purpose.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

Staff response: The proposed amendments help to meet goals of the General Plan, specifically, Chapter 5, goal 1, to "Employ innovative approaches to promote local business and create community." Also, Chapter 4, goal 2 in the Downtown Master Plan to encourages staff to "Continue to amend regulations for new development

as the area continues to evolve."

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

Staff response: There are no timing and sequencing issues related to this request.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

Staff response: Staff believes that this proposal would not hinder or obstruct General Plan policies.

(f) Adverse impacts on adjacent land owners.

Staff response: Staff believes the only adverse impact from this amendment could be to those that desire a marquee sign after the maximum number on their block face has been met.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

Staff response: Does not apply.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

Staff response: Does not apply.

CONCLUSIONS

Staff have worked with DPI and legal to develop this proposed ordinance as a way to help business thrive and help the economic development of the city. Staff are comfortable with the proposed regulations and would hope that the Planning Commission recommends its adoption to the City Council.

ATTACHMENTS

1. Proposed Amendment
2. Current Marquee Signs on Center Street
3. Provo Center Street circa 1950s

ATTACHMENT 1 – PROPOSED AMENDMENT

14.38.105

Signs Permitted in the Downtown (DT1, DT2, ITOD, GW, and WG) Zones.

Signs within the General Downtown (DT1), Downtown Core (DT2), Interim Transit Oriented Development (ITOD), Gateway West (GW), and West Gateway (WG) zones shall be regulated by the following provisions. Any signs, or types of sign, not expressly allowed by this Section are prohibited.

[. . .]

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(b) *Location.* Each sign must be located above the first floor of the business storefront.

(c) *Area.* Signs may not exceed one hundred (100) square feet in area.

(d) *Thickness.* Signs, including the cabinet, may not be more than one (1) foot thick.

(e) *Lighting.* Marquee signs may be illuminated internally or externally. Lighting must be stationary and shielded to direct solely onto the sign without causing glare. No neon lights are permitted.

(f) *Hold Harmless.* When a sign extends over a public right-of-way, a hold harmless agreement must be signed by the owner prior to approval and installation of said sign.

(g) *Sign Type.* Marquee signs may not include electronic display.

ATTACHMENT 2 – CURRENT MARQUEE SIGNS ON CENTER STREET



286 West Center



90 West Center



223 West Center



330 West Center

ATTACHMENT 3 – PROVO CENTER STREET CIRCA 1950s



Brigham Young University, Lee Library, L. Tom Perry Special Collections: MSSP613

Provo City Planning Commission

Report of Action

August 28, 2024

***ITEM #7**	Development Services request an Ordinance Text Amendment to Section 14.38.105 (Signs Permitted in the Downtown Zones) in order to add regulations for marquee signs. Downtown Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20240191

The following action was taken by the Planning Commission on the above described item at its regular meeting of August 28, 2024:

RECOMMENDED APPROVAL

On a vote of 7:0, the Planning Commission recommended that the Municipal Council approve the above noted application.

Motion By: Adam Shin
Second By: Jonathon Hill
Votes in Favor of Motion: Adam Shin, Jonathon Hill, Jeff Whitlock, Lisa Jensen, Andrew South, Melissa Kendall, Barbara DeSoto
Jeff Whitlock was present as Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

TEXT AMENDMENT
The text of the proposed amendment is attached as Exhibit A.

STAFF PRESENTATION
The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Staff answered questions from the Planning Commission regarding existing marquee style signs, history of sign allowances, hold harmless agreements, and proposed limits for the sign type.

CITY DEPARTMENTAL ISSUES
- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

NEIGHBORHOOD MEETING DATE
- A neighborhood meeting is set to be held on 09/05/2024.

NEIGHBORHOOD AND PUBLIC COMMENT
- The Neighborhood District Chair was present /addressed the Planning Commission during the public hearing.

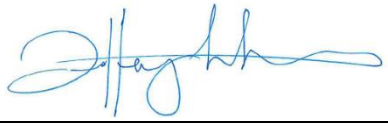
CONCERNS RAISED BY PUBLIC
Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- Quinn Peterson (Neighborhood Chair/Downtown Business Alliance) addressed the Commissions question on the history of sign regulation on Center Street, noted that he would be happy with more than the proposed three per block face, and indicated that there are two businesses waiting for this amendment so they can get marquee signs permitted.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Planning Commission expressed that the proposal seems reasonable and allowed some history of Center Street to return. They also indicated that it is helpful that the proposal started from business owners downtown, working with staff.



Planning Commission Chair



Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Development Services Department, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

14.38.105

Signs Permitted in the Downtown (DT1, DT2, ITOD, GW, and WG) Zones.

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(e) *Lighting.* Marquee signs may be illuminated internally or externally. Lighting must be stationary and shielded to direct solely onto the sign without causing glare. No neon lights are permitted.

(f) *Hold Harmless.* When a sign extends over a public right-of-way, a hold harmless agreement must be signed by the owner prior to approval and installation of said sign.

(g) *Sign Type.* Marquee signs may not include electronic display.

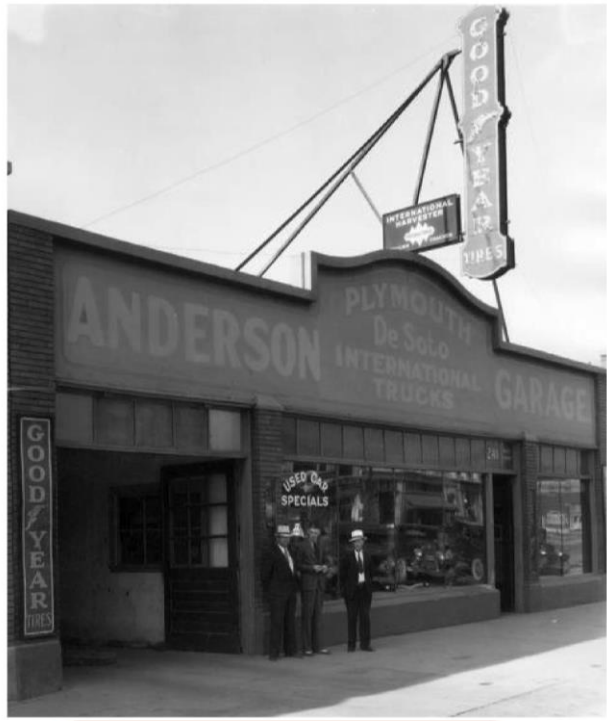
14.38.105 Amendment

Marquee Signs

- History → Future



1950s Center Street (looking NW from University Ave)



1922 - 241 West Center Street



Proposal - 241 West Center Street

14.38.105 Amendment

Marquee Signs

- Proposed Language

14.38.105

Signs Permitted in the Downtown (DT1, DT2, ITOD, GW, and WG) Zones.

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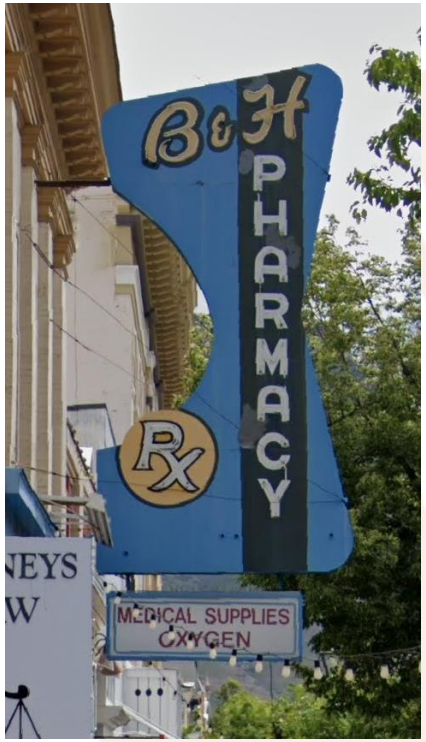
(f) *Hold Harmless.* When a sign extends over a public right-of-way, a hold harmless agreement must be signed by the owner prior to approval and installation of said sign.

(g) *Sign Type.* Marquee signs may not include electronic display.

14.38.105 Amendment

Marquee Signs

- Current Examples



286 West Center (nonconforming lighting)



223 West Center



330 West Center



90 West Center

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: SNJOHNSON
Department: Development Services
Requested Meeting Date: 09-17-2024

SUBJECT: AN ORDINANCE AMENDING SECTION 14.38.030 (SIGNS AND OUTDOOR ADVERTISING – EXCEPTIONS). CITYWIDE. (PLOTA20240187)

RECOMMENDATION: I reqeust the Council approve the reqeusted ordinance amendment.

BACKGROUND: Provo City has historically not allowed electronic signs to be in residential Zones. When the various exceptions to Chapter 14.38 Signs and Outdoor Advertising were adopted, the potential of such signs being electronic in nature was not anticipated. Provo City Development Services recently received a complaint regarding an electronic sign that fell within the “Exceptions” code of this chapter, and thus the City was not able to take any action regarding such sign.

FISCAL IMPACT:

PRESENTER’S NAME: Scott Johnson

REQUESTED DURATION OF PRESENTATION: 10 Minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
The General Plan states the following in Chapter Three: “Without restrictions, signs can become flashy and overbearing” The proposed changes help to fulfill this statement by requiring all electronic signs to follow the same location restrictions.

CITYVIEW OR ISSUE FILE NUMBER: PLOTA20240187

ORDINANCE 2024-____.

AN ORDINANCE AMENDING PROVO CITY CODE REGARDING EXCEPTIONS TO SIGNS AND OUTDOOR ADVERTISING REGULATIONS. CITYWIDE. (PLOTA20240187)

RECITALS:

It is proposed that Provo City Code Section 14.38.030 be amended regarding exceptions to signs and outdoor advertising; and

On August 28, 2024, the Planning Commission held a public hearing to consider the proposed amendment, and after the hearing, the Planning Commission recommended approval to the Municipal Council by a vote of 7:0; and

On September 17, 2024, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

After considering the facts presented to the Municipal Council, the Council finds that (i) Provo City Code should be amended as set forth below, and (ii) such action furthers the health, safety, and general welfare of the citizens of Provo City.

THEREFORE, the Municipal Council of Provo City, Utah ordains as follows:

PART I:

Provo City Code Section 14.38.030 is hereby amended as set forth in exhibit A.

PART II:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance prevails.

B. This ordinance and its various sections, clauses, and paragraphs are severable. If any part, sentence, clause, or phrase is judicially determined to be unconstitutional or invalid, the remainder of the ordinance is not affected by that determination.

C. This ordinance takes effect immediately after it has been posted or published in accordance with Utah Code Section 10-3-711, presented to the Mayor in accordance with Utah Code Section 10-3b-204, and recorded in accordance with Utah Code Section 10-3-713.

D. The Municipal Council directs that the official copy of Provo City Code be updated to reflect the provisions enacted by this ordinance.

EXHIBIT A

14.38.030 Exceptions.

This Chapter ~~shall have no application~~ does not apply to signs used exclusively for:

…

(6) ~~*Temporary election campaign signs*~~ Temporary election campaign purposes. However, these ~~These~~ signs:

(a) ~~shall~~ may not be located in the public right-of-way or on public property.

(b) may not be animated signs, and

(c) if an electronic display sign, are subject to all the provisions of Section 14.38.010(3) and Chapter 6.06, being treated for those purposes as on-premises electronic display signs.

DEVELOPMENT SERVICES

Planning Commission Hearing Staff Report
Hearing Date: August 28, 2024

ITEM # 1 Development Services request an Ordinance Text Amendment to Section 14.38.030 (Signs and Outdoor Advertising - Exceptions) in order to amend language to sign code exceptions for temporary election campaign signs. Citywide application. Scott Johnson (801) 852-6433 snjohnson@provo.org PLOTA20240187

Applicant: Scott Johnson

Staff Coordinator: Scott Johnson

Property Owner: City Wide
Parcel ID#: City Wide
Acreage: City Wide
Number of Properties: City Wide
Number of Lots: City Wide

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is September 11, 2024 5:00 P.M.*

2. **Deny** the requested variance. *This action would not be consistent with the recommendations of the Staff Report. The Board of Adjustment should state new findings.*

Relevant History: Provo City has historically not allowed electronic signs to be in residential Zones. When the various exceptions to Chapter 14.38 Signs and Outdoor Advertising were adopted, the potential of such signs being electronic in nature was not anticipated. Provo City Development Services recently received a complaint regarding an electronic sign that fell within the "Exceptions" code of this chapter, and thus the City was not able to take any action regarding such sign.

Summary of Key Issues: The proposed amendment would require electronic campaign signs to comply with section 14.38.010(3) – Electronic Display and Animated Signs, which does not permit such signs to be in residential zones.

Staff Recommendation: Staff recommends that the Planning Commission provide a positive recommendation to the City Council for the requested text amendment.

OVERVIEW

Provo City has historically not permitted electronic display signs in residential zones. Development Services received a complaint recently regarding an electronic temporary campaign sign located in a residential zone. Upon review of the city code, we found that the current language gave a broad exception to temporary campaign signs that did not allow us to address or take any enforcement actions on the sign that was brought to our attention. This amendment would ensure that if a temporary campaign sign is electronic or animated, it but must comply with section 14.38.010(3) (see attachment #2).

FINDINGS OF FACT

As with all text amendments, Provo City Staff have the responsibility to evaluate the requests against the goals and objectives of the General Plan. Section 14.020.020(2) establishes the criteria for that evaluation, and has been reviewed as follows: (**staff response in bold**)

(a) Public purpose for the amendment in question.

The public purpose for this amendment is to ensure that temporary election campaign signs which are electronic or animated will comply with other requirements for other electronic signs in Provo.

(b) Confirmation that the public purpose is best served by the amendment in question.

By requiring electronic or animated temporary election campaign signs to comply with section 14.38.010(3), Provo City Code would provide consistent requirements/restrictions regarding electronic signs.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

The General Plan states the following in Chapter Three: "Without restrictions, signs can become flashy and overbearing" The proposed changes help to fulfill this statement by requiring all electronic signs to follow the same location restrictions.

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

There are no timing and sequencing provisions related to this request.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

Staff believe that these amendments will only further the policies found in the General Plan, not hinder or obstruct them.

(f) Adverse impacts on adjacent landowners.

There should not be any adverse impacts on adjacent landowners due to this code change.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

Does not apply.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

Does not apply.

APPLICABLE ZONING CODES

14.38.030 – Exceptions

14.38.010(3) – Electronic Display and Animated Signs

CONCLUSIONS

Provo City Planning Commission should recommend approval of this Text Amendment proposal to provide clarification and consistency regarding the permitted location of electronic signs.

ATTACHMENTS

1. Proposed Amendment Text
2. 14.38.010(3) – Electronic Display and Animated Signs

Attachment #1:

14.38.030 Exceptions.

This Chapter shall have no application to signs used exclusively for:

…

(6) ~~*Temporary election campaign signs*~~ Temporary election campaign signs, except that~~. T~~ these signs ~~shall~~ may not be located in the public right-of-way or on public property and may not be electronic display or animated signs, except as such signs are permitted by section 14.38.010(3).

Attachment #2:

14.38.010 General Requirements.

[…]

(3) *Electronic Display and Animated Signs.* Except as otherwise provided in this Chapter, all animated signs are prohibited. On-premises electronic display signs are prohibited in all Project Redevelopment Option (PRO) zones, the Special Development Plan (SDP) Overlay zone, the Downtown Historic district, and the A1, RA, RC, R1, R2, VLDR, LDR, MDR, HDR, MU and NMU zones, but are permitted elsewhere. Businesses using electronic display signs are subject to the business licensing regulations contained in Chapter 6.06, Provo City Code. On-premises short hold time electronic display signs are prohibited in all zones, except as otherwise provided in Section 14.38.025, Provo City Code.

Provo City Planning Commission

Report of Action

August 28, 2024

Item #1: Development Services request an Ordinance Text Amendment to Section 14.38.030 (Signs and Outdoor Advertising - Exceptions) in order to amend language to sign code exceptions for temporary election campaign signs. Citywide application. Scott Johnson (801) 852-6433 snjohnson@provo.org PLOTA20240187

The following action was taken by the Planning Commission on the above described item at its regular meeting of August 28, 2024:

RECOMMENDED APPROVAL

On a vote of 7:0, the Planning Commission recommended that the Municipal Council approve the above noted application.

Motion By: Lisa Jensen
Second By: Jonathan Hill
Votes in Favor of Motion: Adam Shin, Lisa Jensen, Andrew South, Jonathon Hill, Melissa Kendall, Barbara DeSoto, Jeff Whitlock
Jeff Whitlock was present as Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

TEXT AMENDMENT
The text of the proposed amendment is attached as Exhibit A.

STAFF PRESENTATION
The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

CITY DEPARTMENTAL ISSUES
- Important issues raised by other departments – addressed in Staff Report to Planning Commission

NEIGHBORHOOD MEETING DATE
- City-wide application; all Neighborhood District Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT
- This item was City-wide or affected multiple neighborhoods.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

APPLICANT RESPONSE

This is a Staff Initiated application.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- General questions of clarification were asked and answered by city staff.
- Commissioner DeSoto suggested reformatting the proposed text to include bullet points as a potential for clearer reading of the text.

_____

Planning Commission Chair

_____

Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Development Services Department, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS



Sign Exceptions Code Amendment

Sign Exceptions

14.38.030 Exceptions.

This Chapter does not ~~shall have no~~ apply~~ication~~ to signs used exclusively for:

...

(6) ~~*Temporary election campaign signs*~~ Temporary election campaign purposes. However~~. T~~these signs ~~shall~~ may not be located in the public right-of-way or on public property and may not be electronic display or animated signs, except as permitted by section 14.38.010(3).

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: AARDMORE
Department: Development Services
Requested Meeting Date: 09-17-2024

SUBJECT: Jamie Chapman requests a Zone Map Amendment from the OSPR () Zone to the MDR (Medium Density Residential) Zone in order to build 24 new townhomes, located approximately at 5544 N River Run Drive. Riverbottoms Neighborhood.

RECOMMENDATION: Staff and the Planning Commission recommend approval of the zone map amendment.

BACKGROUND: Jamie Chapman, representing the property owners, is requesting a zone change from the OSPR Zone to the MDR Zone in order to move forward with phase two of the River District residential project. This piece of land was recently annexed into Provo with a boundary line adjustment between Provo and Orem and given the default OSPR Zone with that action.
Approval of this zone map amendment request would enable the applicant to submit for final project plans for 24 townhome apartments with related site improvements. The associated project plan shows four blocks of buildings facing the river and connecting the street access and pedestrian trail from phase one to the south. There are two large open areas on the site plan. The north area is a storm water retention area agreed to with Orem City, while the other open area will be a landscaped park amenity. The site also features an open canal running through, with a pedestrian bridge. As mentioned above, the property is bordered by Orem City on the north and east, both currently vacant. To the west and south is the MDR Zone with construction ongoing for phase one of this project, an additional 195 townhome apartments when finished. Southeast of the subject property the land is zoned General Commercial (CG) and is in the final stages of redevelopment.

FISCAL IMPACT: None

PRESENTER'S NAME: Aaron Ardmore

REQUESTED DURATION OF PRESENTATION: 5 minutes (work meeting) / 10 minutes (council meeting)

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
The continuation of this project is both expected and supported by the Planning Division. Allowing this zone change to occur will help to meet some of the goals and objectives of the General Plan as illustrated below from the criteria found in Section 14.02.020, Provo City Code. It reads:

Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City
General Plan. The following guidelines shall be used to determine consistency with the General Plan:
(a) Public purpose for the amendment in question.
Staff response: The public purpose for this change is to provide for additional housing and a variety of housing types in the northeast area of Provo.
(b) Confirmation that the public purpose is best served by the amendment in question.
Staff response: This amendment would enable the applicant to move forward with a townhome apartment community that meets the above purpose.
(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.
Staff response: Chapter Three of the General Plan lists goals to “encourage healthy and balanced neighborhoods” and “encourage the development of various types of housing inventory” within the city. Staff believes that allowing for residential uses in this location will help to meet these goals.
(d) Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated.
Staff response: There are no “timing and sequencing” issues with this request.
(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan’s articulated policies.
Staff response: Since the applicants have provided a development agreement to limit themselves to what is being shown, staff are confident that the goals above will be met.
(f) Adverse impacts on adjacent land owners.
Staff response: While increased traffic will impact adjacent land owners with the development of these properties, better access through the area as shown in the related project plan should mitigate this concern.
(g) Verification of correctness in the original zoning or General Plan for the area in question.
Staff response: Staff have verified that the OSPR zoning and the Residential General Plan designation for the area is correct.
(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.
Staff response: Staff does not see a conflict with the proposed change and the policies of the General Plan and believes that this amendment will be more aligned with the General Plan policies.

The General Plan also provides additional criteria (pg.47) when evaluating proposals for residential rezones, as follows: (staff response in bold)
• Would the rezone promote one of the top 3 housing strategies?
o Promote a mix of home types, sizes, and price points? Yes, the townhomes have a variety of floor plans/sizes. While they don’t provide a mix of home types in the development, it would provide a mix for the larger neighborhood, and the same could be said for the price points (rental rates in this case).
o Support zoning to promote ADUs and infill development? No, this rezone would not permit for ADUs and is not infill development.

o Recognize the value of single-family neighborhoods? While the proposal is for attached single-family units, it is far from any other single-family neighborhood.

• Are utilities and streets currently within 300 feet of the property proposed for rezone?
Yes, 1550 East in Orem connecting to River Run Drive in Provo through phase one creates the road and utility network that this proposal would feed into.

• Would the rezone exclude land that is currently being used for agricultural use?
Yes, the land associated with this request is not being used for agricultural purposes.

• Does the rezone facilitate housing that has reasonable proximity (1/2 mile) to public transport stops or stations?
Yes, UTA route 834 has a stop on River Park Drive to the south, approximately ½ mile away from the subject property.

• Would the rezone encourage development of environmentally or geologically sensitive, or fire or flood prone, lands? If so, has the applicant demonstrated these issues can reasonably be mitigated?
Yes, the property is adjacent to the Provo River and 100-yearflood plain. The applicant has provided buffering from the river and room to maintain the riverbank in the project plan.

• Would the proposed rezone facilitate the increase of on-street parking within 500 feet of the subject property? If so, is the applicant willing to guarantee use of a TDM in relation to the property to reduce the need for on-street parking?
Maybe. However, the streets impacted would most likely be 1550 East (in Orem) and the street moving through the townhomes, which is privately owned and maintained.

• Would the rezone facilitate a housing development where a majority of the housing units are owner-occupied?
No, they will all be owned by one party and rented.

• Would the proposed rezone facilitate a housing development where at least 10% of the housing units are attainable to those making between 50-79% AMI?
No, these will be market-rate rental units.

CITYVIEW OR ISSUE FILE NUMBER: PLRZ20230328

ORDINANCE 2024-____.

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF REAL PROPERTY, GENERALLY LOCATED AT 5544 N RIVER RUN DRIVE, FROM THE OPEN SPACE, PRESERVATION, AND RECREATION (OSPR) ZONE TO THE MEDIUM DENSITY RESIDENTIAL (MDR) ZONE. RIVERBOTTOMS NEIGHBORHOOD. (PLRZ20230328)

RECITALS:

It is proposed that the classification on the Provo Zoning Map for approximately 3.18 acres of real property, generally located at 5544 N River Run Drive (the legal description of which is provided in Exhibit A), be amended from the Open Space, Preservation, and Recreation (OSPR) Zone to the Medium Density Residential (MDR) Zone; and

On August 28, 2024, the Planning Commission held a public hearing to consider the proposal, and after the hearing the Planning Commission recommended **approval** of the proposal to the Municipal Council by a 7:0 vote; and

The Planning Commission's recommendation was based on the project design presented to the Commission; and

On September 17, 2024, the Municipal Council met to determine the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

After considering the Planning Commission's recommendation and the facts presented to the Municipal Council, the Council finds that (i) Provo Zoning Map should be amended as set forth below, and (ii) such action furthers the health, safety, and general welfare of the citizens of Provo City.

THEREFORE, the Municipal Council of Provo City, Utah ordains as follows:

PART I:

The classification on the Provo Zoning Map is amended from the Open Space, Preservation, and Recreation (OSPR) Zone to the Medium Density Residential (MDR) Zone for the real property described in this ordinance.

PART II:

The Mayor is authorized to negotiate and execute a development agreement as proposed by the applicant for this zone change, consistent with the representations made by the applicant and the applicant's representatives to the Council. The agreement must be in form substantially similar to the draft attached as Exhibit B. An executed copy of the agreement will be attached as Exhibit C after execution. The zone map classification change described in Part I is not effective until the date of final execution of the development agreement.

PART III:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance controls.

B. This ordinance and its various sections, clauses, and paragraphs are severable. If any part, sentence, clause, or phrase is judicially determined to be unconstitutional or invalid, the remainder of the ordinance is not affected by that determination.

C. This ordinance takes effect immediately after it has been posted or published in accordance with Utah Code Section 10-3-711, presented to the Mayor in accordance with Utah Code Section 10-3b-204, and recorded in accordance with Utah Code Section 10-3-713.

D. The Municipal Council directs that the Provo Zoning Map be updated and codified to reflect the provisions enacted by this ordinance.

E. Notwithstanding any provision or language to the contrary in this ordinance, if the Development Agreement authorized in Part II has not been fully executed by the necessary parties within one year from the date of the Municipal Council's approval of this ordinance, the entire ordinance expires, becoming null and void as if it had never been approved. Because the zone map classification change contemplated in Part I cannot come into effect if the Development Agreement is not executed, neither the applicant nor any successor(s) in interest has any vested rights under this ordinance if it expires.

EXHIBIT A

Part of Lot 1, Plat “C”, CANYON RIVER SUBDIVISION, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah.

Less and excepting those portions lying within the bounds of the Provo River

OTHERWISE DESCRIBED AS:

PART LOT 1, PLAT C, CANYON RIVER SUB DESCRIBED AS FOLLOWS; COM N 1807.225 FT & W 40.775 FT FR SE COR. SEC. 12, T6S, R2E, SLB&M.; S 32 DEG 40' 33" E .12 FT; N 89 DEG 40' 11" E 12.8 FT; N 0 DEG 53' 1" W 98.97 FT; ALONG A CURVE TO R (CHORD BEARS: N 6 DEG 36' 59" E 43.86 FT, RADIUS = 168 FT); N 14 DEG 6' 59" E 70.36 FT; S 88 DEG 1' 2" E 137.82 FT; S 19 DEG 1' 4" W 66.95 FT; S 0 DEG 50' 26" W 29.08 FT; S 79 DEG 13' 57" E 64.05 FT; ALONG A CURVE TO L (CHORD BEARS: S 1 DEG 37' 8" W 98.66 FT, RADIUS = 327.56 FT); ALONG A CURVE TO L (CHORD BEARS: S 19 DEG 50' 55" E 93.46 FT, RADIUS = 203 FT); S 55 DEG 8' 59" W 78.42 FT; S 9 DEG 47' 30" E 54.68 FT; S 21 DEG 5' 43" E 193.59 FT; S 8 DEG 44' 33" W 61.1 FT; S 23 DEG 15' 14" W 54.29 FT; S 22 DEG 55' 34" W .05 FT; S 89 DEG 6' 57" W 214.06 FT; N 1 DEG 17' 24" W 477.95 FT TO BEG. AREA 3.151 AC.

EXHIBIT B

DEVELOPMENT AGREEMENT
FOR
RIVER DISTRICT RESIDENTIAL
(Boundary Adjustment Incorporated from Orem City)

(5544 N. River Run Drive)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2024 (the "Effective Date"), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as "City," and CANYON RIVER HOLDCO, LLC, a Utah limited liability company, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer is the owner of approximately 3.18 acres of land located within the City of Provo as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On _____, 2024, the City Council approved Ordinance _____, vesting zoning, amending or modifying the City's general plan to include the Property in the Medium Density Residential (MDR) Zone, and zoning the Property to be included in the Medium Density Residential (MDR) Zone (including according to the City's zoning map) as modified by and subject to this Agreement (the "Vesting Ordinance"), based on the Concept Plans set forth on EXHIBIT B ("Concept Plan"), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the "Project").

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

D. The City Council accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting Ordinance be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Utah County Recorder.

E. The City Council further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

F. The City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and, except as explicitly provided otherwise in this Agreement, in accordance with applicable City Ordinances.

G. This Agreement is consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

I. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.

J. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property must be developed in accordance with (i) the requirements of the Medium Density Residential (MDR) Zone as modified by and subject to this Agreement ("Applicable Zoning"), (ii) all other features as generally shown on the Concept Plan, and (iii) this Agreement. Notwithstanding anything to the contrary in the Medium Density Residential (MDR) Zone or this Agreement, the Parties agree that the Property and Project must comply with the following zoning and development standards, which are modifications or exceptions to the Medium Density Residential (MDR) Zone as applicable to the Property and the Project:

a. **Purpose**. The purpose of the Applicable Zoning is to provide a planned development of attached residential dwelling units. The Applicable Zoning under this Agreement may only be applied to the Property.

b. **Development Standards**. The development standards set forth in the MDR Zone apply to the Property except as expressly modified as follows:

i. Density. The density for the Applicable Zoning may not exceed eight (8) units per gross acre.

ii. Height. Structures in the Applicable Zoning may not exceed three (3) stories above grade and may not exceed a height of forty (40) feet above grade.

iii. Setbacks. All buildings must be set back at least twenty (20) feet from any public street and from the boundary of the Applicable Zoning. There are not any setback limitations from any private drive or private street. All buildings

must be separated from other buildings by at least twenty (20) feet. There is no river setback requirement; however, residential unit pad elevations must be at least one foot (1') above the river floodplain.

iv. Utilities. The public sewer system and the public water supply must serve all dwellings. However, the sewer lines and water lines within the Applicable Zoning must be privately owned and maintained. All utilities must be underground.

v. Fences. Fencing is not required. However, the type, size and location of any fence must be included as part of the site plan.

vi. Exterior Finishing Materials. The exterior elevations and finishing materials must be a combination of brick, rock, stone, cement fiber siding, and/or stucco. Vinyl and aluminum siding are prohibited.

vii. No Stacked Units. Stacked units are not allowed in the Applicable Zoning.

viii. Private Street/Drive. The roadway(s) through the Property, as depicted on the Concept Plan, must be designated as a private drive or private street and must be privately owned and maintained.

ix. Parking. Required parking is 2.5 parking spaces per residential unit.

x. Yard Requirements. There are not any yard requirements in the Applicable Zoning, except as set forth on the Concept Plan.

c. **Concept Plan**. Development in the Applicable Zoning must substantially conform to the Concept Plan included herein as Exhibit B and incorporated herein by reference. The Concept Plan illustrates the site layout, types of uses, and design and architectural style of buildings to be developed within the Applicable Zoning. No request for development within the Applicable Zoning may be approved that significantly differs from the Concept Plan. The Concept Plan may be amended in the same manner as an amendment to a zoning ordinance. However, minor amendments to the Concept Plan may be administratively approved by the City's Development Services Director or the City's Development Services Director's designee.

d. The Developer may not seek to develop the Property in a manner that deviates materially from the Concept Plan as permitted by the aforementioned zoning designations for the Property.

3. Governing Standards. The Concept Plan, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project must be developed by the Developer in accordance with the Concept Plan, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Concept Plan, the Vesting Ordinance and this Agreement. Non-material variations to the Concept Plan, as defined and approved by the City's Development Services Director, such as exact building locations, exact locations of open space and parking may be varied by the

Developer without official City Council or Planning Commission approval. Such variations, however, may not alter the maximum density, use, and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

a. Permitted Principal Uses must be limited to One-family dwelling – attached (townhomes), not to exceed eight (8) units in one building.

b. Developer must construct and install a [10'] wide asphalt trail in the location set forth on the Concept Plan. After construction of said trail, the trail must be privately owned and maintained either by an owners association or Developer, and Developer must provide a public trail easement for said trail by means of a note on the final plat or a separately recorded public trail easement, the terms of which will be negotiated in good faith, and which public trail easement will be subject to the owner's reserved right to close the trail (on a temporary basis) to the extent reasonably necessary for reasonable construction, for repair and maintenance, for regulation and control of the safety and quiet enjoyment of the adjacent development, or to prevent a public dedication or the accrual of any rights to the public or any person in excess of the rights granted in the public trail easement.

5. Construction Standards and Requirements. Except to the extent that this Agreement imposes additional restrictions above and beyond those, or modifies restrictions, imposed by City Ordinances, all construction on the Property at the direction of the Developer must be conducted and completed in accordance with the City Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date, Developer has the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Concept Plan, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., §10-9a-509.

i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the Project is required to comply with future changes to City Ordinances that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

1. Developer Agreement. Future laws that Developer agrees in writing apply to the Project;

2. Compliance with State and Federal Laws. Future laws that are generally applicable to all properties in the City and that are required to comply with State and Federal laws and regulations affecting the Project;

3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law; or,

6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.

b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation may not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

7. Default. An "Event of Default" occurs under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party is not in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party has the right to exercise all of the following rights and remedies against the defaulting party:

1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney's fees.

2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.

3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.

The rights and remedies set forth herein are cumulative.

8. Notices. Any notices, requests and demands required or desired to be given hereunder must be in writing and must be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer:	Canyon River Holdco, LLC Attn: Jason White 50 W Broadway STE 333 PMB 42981 Salt Lake City, UT 84101 Phone: 949-335-8676
With a copy to:	Foulger-Pratt Development, LLC c/o Foulger Pratt 136 Calle de Los Molinos San Clemente, CA 92672 Attn: Bryan C. Foulger
To the City:	City of Provo Attention: City Attorney 351 W Center Provo, UT 84601 Phone: (801) 852-6140

9. General Term and Conditions.

a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

b. Binding Effect. This Agreement inures to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting

the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City is personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement does not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements.

e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement must be recorded in the Office of the Utah County Recorder against the Property and is intended to and is deemed to run with the land, and is binding on and benefits all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement must perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, site plans, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities are construed against the drafting party applies to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement must be given in a prompt and timely manner and may not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City will be given or withheld by the City in compliance with this Agreement and the City Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within ten (10) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City has the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement are rescinded or limited in any manner.

10. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the consent of the City as provided herein.

a. Notice. Developer must give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice must include providing the City with all necessary contact information for the proposed assignee.

b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee is responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer is released from any future obligations as to those obligations which are assigned but remains responsible for the performance of any obligations that were not assigned.

c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.

d. Assignee Bound by this Agreement. Any assignee must consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

e. Permissible Assignment. Notwithstanding anything to the contrary in this Section 10, Developer is authorized to assign this Agreement without the City's consent if (a) Developer assigns the Agreement to an Affiliate in which Developer or its Affiliates holds a direct or indirect interest, or manages and Controls such Affiliate, (b) Developer has already recorded the instruments required by subparagraphs (4)(b) and (9)(g) or agrees in writing as part of said assignment that it remains obligated to do so if the assignee fails to perform such obligations, and (c) within five (5) business days of such assignment, Developer delivers written notice thereof to the City, which notice must include proof of compliance with this subparagraph(e). For purposes of this subparagraph (e):

i. the term "Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person,

ii. the term "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority, and

iii. the term "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or membership interests or managerial rights, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person is deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

11. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed must bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and are subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

12. No Waiver. Any party's failure to enforce any provision of this Agreement does not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party may not be construed as a waiver of any succeeding breach of the same or other provisions.

13. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions continue in full force and effect.

14. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder excuses performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

15. Entire Agreement; Interpretation. This Agreement, and all Exhibits hereto, is the entire agreement between the Parties and may be amended only in writing signed by the Parties hereto. To the extent a specific provision of the Medium Density Residential (MDR) Zone conflicts with a specific provision of this Agreement or an interpretation necessary to give effect to the Agreement, then this Agreement shall control. If there is a conflict between the Exhibits to this Agreement and a specific provision or the language of this Agreement, then this Agreement's specific provision or language shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

CITY:

CITY OF PROVO

ATTEST:

By: _____ By:_____

City Recorder Mayor Michelle Kaufusi

DEVELOPER:

CANYON RIVER HOLDCO, LLC, a Utah limited liability company

By: _____

Name: _____

Title: _____

STATE OF UTAH)

:ss

COUNTY OF UTAH)

On the ____ day of _____, _____, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of CANYON RIVER HOLDCO, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

_____

Notary Public

Residing at:

Exhibit A

Legal Description of the Property

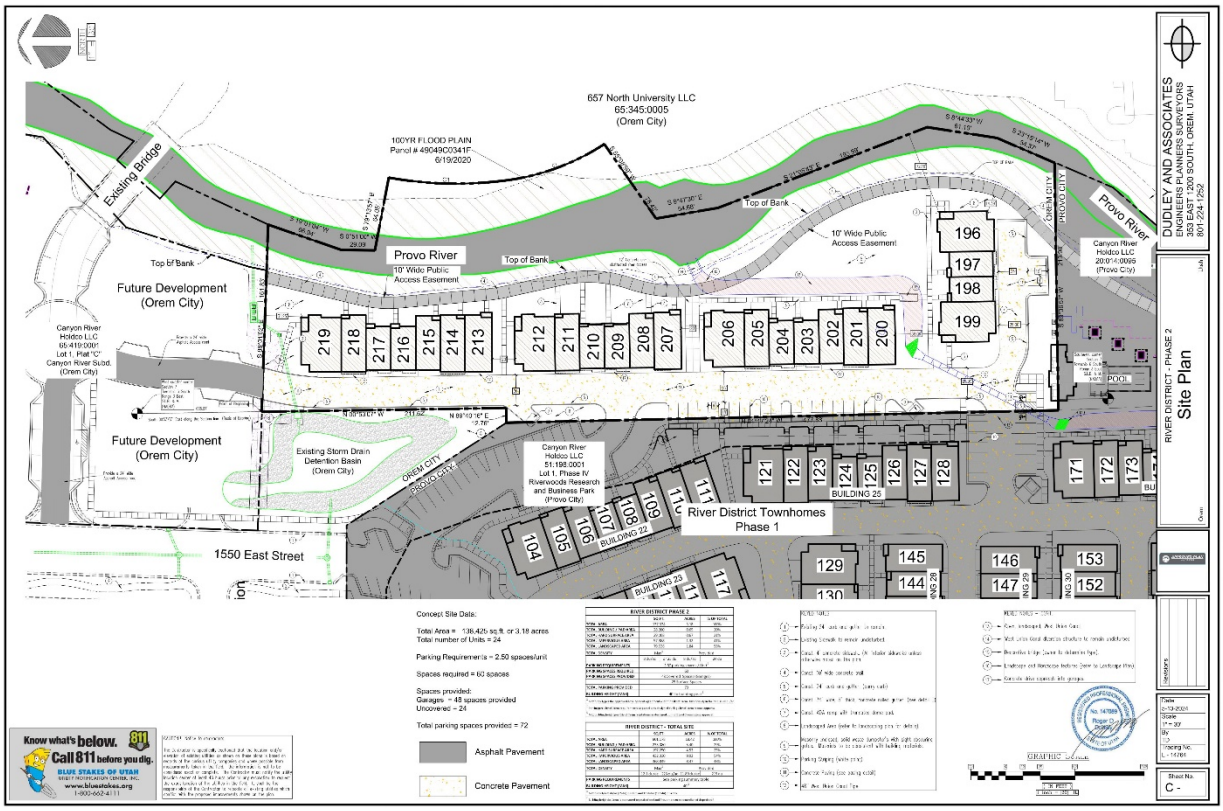
Commencing on a common boundary point between Orem City and Provo City, said point being located South 00°53'07" East along the Section line 635.97 feet from the West quarter corner of Section 7, Township 6 South, Range 3 East, Salt Lake Base and Meridian: thence South 88°01'02" East 161.82 feet; thence South 19°01'04" West 66.95 feet; thence South 00°50'26" West 29.08 feet; thence South 79°13'57" East 64.05 feet; thence along the arc of a 327.56 foot radius curve to the left 99.04 feet (chord bears South 01°37'08" West 98.66 feet); thence along the arc of a 203.00 foot radius curve to the left 94.31 feet (chord bears South 19°50'55" East 93.46 feet); thence South 55°08'59" West 78.42 feet; thence South 09°47'30" East 54.68 feet; thence South 21°05'43" East 193.59 feet; thence South 08°44'33" West 61.10 feet; thence South 23°15'14" West 54.37 feet more or less to the Orem City / Provo City common boundary line as shown on the Orem City / Provo City Common Boundary Adjustment as Entry No. 13418:2011, thence South 89°06'57" West along said boundary line 213.98 feet; thence North 01°17'24" West along said boundary line 477.88 feet ; thence North 89°40'16" East 12.76 feet; thence North 00°53'07" West 211.62 feet more or less to the point of beginning.

Area = 138,433 sq.ft. or 3.18 Acres

Basis of Bearing is South 00°53'07"East along the Section line from the West quarter corner to the Southwest corner of said Section 7.

Exhibit B

Concept Plan





PROVO RIVER TOWNHOMES

PROVO | UTAH

FOULGER PRATT | 21-133

DATE: 07.28.22 PRELIMINARY SUBMITTAL

COVER SHEET

URBAN ARENA



FRONT ELEVATION



REAR ELEVATION

Concept Elevations

PROVO RIVER TOWNHOMES
PROVO | UTAH
FOULGER PRATT | 21-133
DATE 07 | 28 | 22

PRELIMINARY SUBMITTAL

ELEVATIONS | OPTION A

URBAN ARENA

FRONT PERSPECTIVE

REAR PERSPECTIVE

SIDE ELEVATIONS

PROVO RIVER TOWNHOMES
PROVO | UTAH
FOULGER PRATT | 21-133
DATE: 07.22.22

PRELIMINARY SUBMITTAL

ELEVATIONS & PERSPECTIVES | OPTION A

URBAN ARENA

Material Boards

519
520

DEVELOPMENT SERVICES

Planning Commission Hearing Staff Report Hearing Date: August 28, 2024

***ITEM #5** Jamie Chapman requests a Zone Map Amendment from the OSPR (Open Space, Preservation, and Recreation) Zone to the MDR (Medium Density Residential) Zone in order to build 24 new townhomes, located approximately at 5544 N River Run Drive. Riverbottoms Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLRZ20230328

Applicant: James Chapman

Staff Coordinator: Aaron Ardmore

Property Owner: Canyon River Holdco LLC

Parcel ID#: 65:419:0002

Acreage: 3.18

Number of Units: 24

Number of Lots:1

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is September 11th, 2024, at 6:00 P.M.*

2. **Recommend Denial** of the requested zone map amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

Current Legal Use: Property is currently vacant land.

Relevant History: The property owner worked through a General Plan change, Rezone, Concept Plan, and Project Plan for the first phase of this project, known as River District Residential, over the last two years. Provo recently completed an annexation of this piece of land for phase two of this project.

Neighborhood Issues: The overall proposal was seen at the February 3rd, 2022, Neighborhood Meeting. Concerns shared at that time related to the lack of green space on the site and worry regarding occupancy of the units.

Summary of Key Issues:

- This phase two area will provide 24 new rental townhomes along Provo River.
- The proposed zone matches phase one to the south and west.
- The developer has guaranteed public access to the trail along Provo River, along with height and density caps through a development agreement.

Staff Recommendation: Staff recommends that the Planning Commission recommend approval of the proposed zone map amendment to the City Council.

OVERVIEW

Jamie Chapman, representing the property owners, is requesting a zone change from the OSPR Zone to the MDR Zone in order to move forward with phase two of the River District residential project. This piece of land was recently annexed into Provo with a boundary line adjustment between Provo and Orem and given the default OSPR Zone with that action.

Approval of this zone map amendment request would enable the applicant to submit for final project plans for 24 townhome apartments with related site improvements. The associated project plan shows four blocks of buildings facing the river and connecting the street access and pedestrian trail from phase one to the south. There are two large open areas on the site plan. The north area is a storm water retention area agreed to with Orem City, while the other open area will be a landscaped park amenity. The site also features an open canal running through, with a pedestrian bridge.

As mentioned above, the property is bordered by Orem City on the north and east, both currently vacant. To the west and south is the MDR Zone with construction ongoing for phase one of this project, an additional 195 townhome apartments when finished. Southeast of the subject property the land is zoned General Commercial (CG) and is in the final stages of redevelopment.

STAFF ANALYSIS

The continuation of this project is both expected and supported by the Planning Division. Allowing this zone change to occur will help to meet some of the goals and objectives of the General Plan as illustrated below from the criteria found in Section 14.02.020, Provo City Code. It reads:

> Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:
>
> (a) Public purpose for the amendment in question.

Staff response: The public purpose for this change is to provide for additional housing and a variety of housing types in the northeast area of Provo.

> (b) Confirmation that the public purpose is best served by the amendment

in question.

Staff response: This amendment would enable the applicant to move forward with a townhome apartment community that meets the above purpose.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

Staff response: Chapter Three of the General Plan lists goals to "encourage healthy and balanced neighborhoods" and "encourage the development of various types of housing inventory" within the city. Staff believes that allowing for residential uses in this location will help to meet these goals.

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

Staff response: There are no "timing and sequencing" issues with this request.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

Staff response: Since the applicants have provided a development agreement to limit themselves to what is being shown, staff are confident that the goals above will be met.

(f) Adverse impacts on adjacent land owners.

Staff response: While increased traffic will impact adjacent land owners with the development of these properties, better access through the area as shown in the related project plan should mitigate this concern.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

Staff response: Staff have verified that the OSPR zoning and the Residential General Plan designation for the area is correct.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

Staff response: Staff does not see a conflict with the proposed change and the policies of the General Plan and believes that this amendment will be more aligned with the General Plan policies.

The General Plan also provides additional criteria (pg.47) when evaluating proposals for residential rezones, as follows: **(staff response in bold)**

- Would the rezone promote one of the top 3 housing strategies?

  - Promote a mix of home types, sizes, and price points? **Yes, the townhomes have a variety of floor plans/sizes. While they don't provide a mix of home types in the development, it would provide a mix for the larger neighborhood, and the same could be said for the price points (rental rates in this case).**
  - Support zoning to promote ADUs and infill development? **No, this rezone would not permit for ADUs and is not infill development.**
  - Recognize the value of single-family neighborhoods? **While the proposal is for attached single-family units, it is far from any other single-family neighborhood.**

- Are utilities and streets currently within 300 feet of the property proposed for rezone? **Yes, 1550 East in Orem connecting to River Run Drive in Provo through phase one creates the road and utility network that this proposal would feed into.**

- Would the rezone exclude land that is currently being used for agricultural use? **Yes, the land associated with this request is not being used for agricultural purposes.**

- Does the rezone facilitate housing that has reasonable proximity (1/2 mile) to public transport stops or stations? **Yes, UTA route 834 has a stop on River Park Drive to the south, approximately ½ mile away from the subject property.**

- Would the rezone encourage development of environmentally or geologically sensitive, or fire or flood prone, lands? If so, has the applicant demonstrated these issues can reasonably be mitigated? **Yes, the property is adjacent to the Provo River and 100-year flood plain. The applicant has provided buffering from the river and room to maintain the riverbank in the project plan.**

- Would the proposed rezone facilitate the increase of on-street parking within 500 feet of the subject property? If so, is the applicant willing to guarantee use of a TDM in relation to the property to reduce the need for on-street parking? **Maybe. However, the streets impacted would most likely be 1550 East (in Orem) and the street moving through the townhomes, which is privately owned and maintained.**

- Would the rezone facilitate a housing development where a majority of the housing units are owner-occupied? **No, they will all be owned by one party and rented.**

- Would the proposed rezone facilitate a housing development where at least 10% of the housing units are attainable to those making between 50-79% AMI? **No, these will be market-rate rental units.**

CONCLUSIONS

Staff believes that the proposed Zone Map Amendment furthers the goals of Provo City to provide more dwelling units and should be approved with the proffered development agreement to allow the property owner to move forward with the Project Plans.

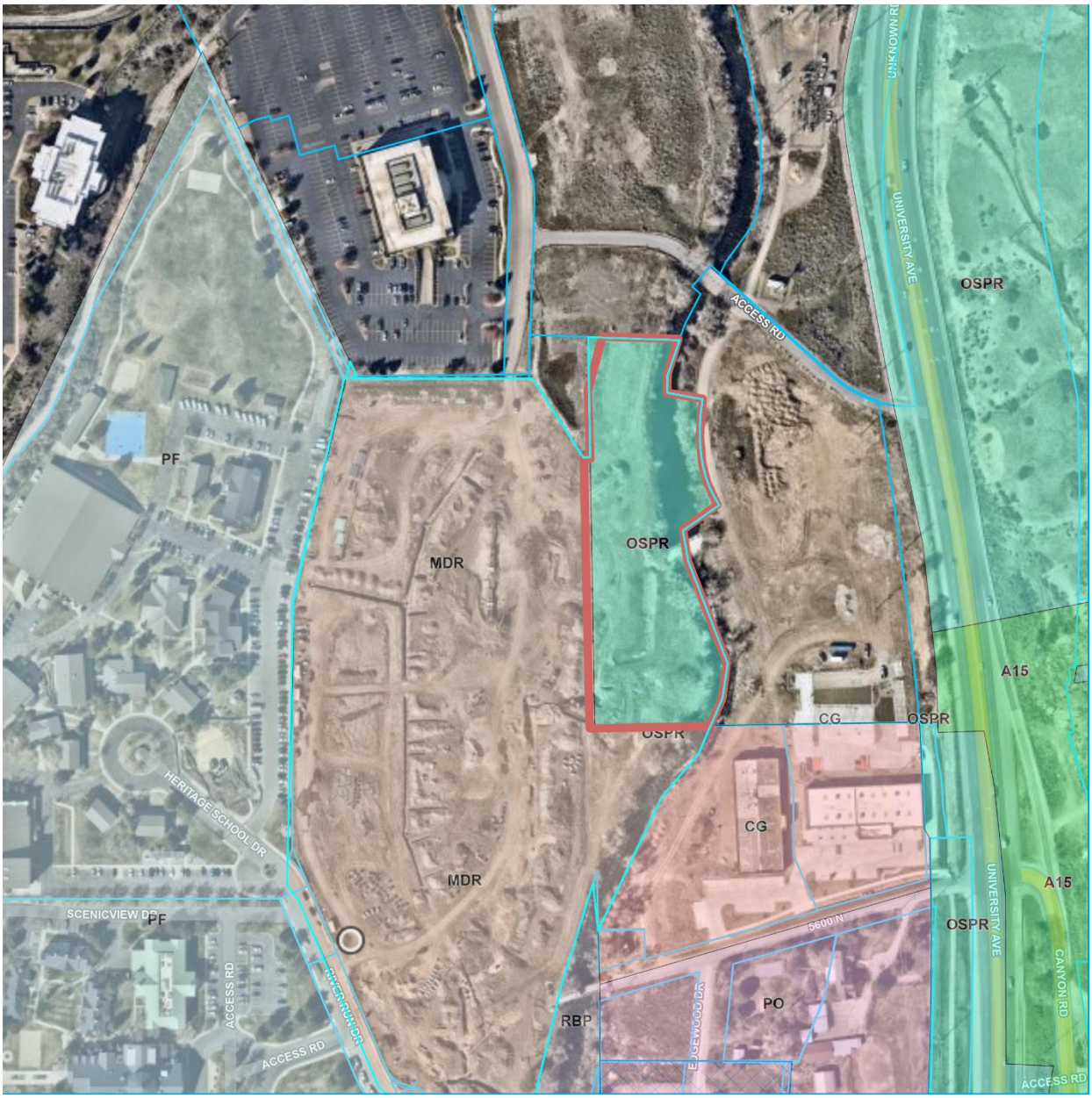
ATTACHMENTS

1. Property Map
2. Zone Map
3. General Plan Map
4. Project Site Plan

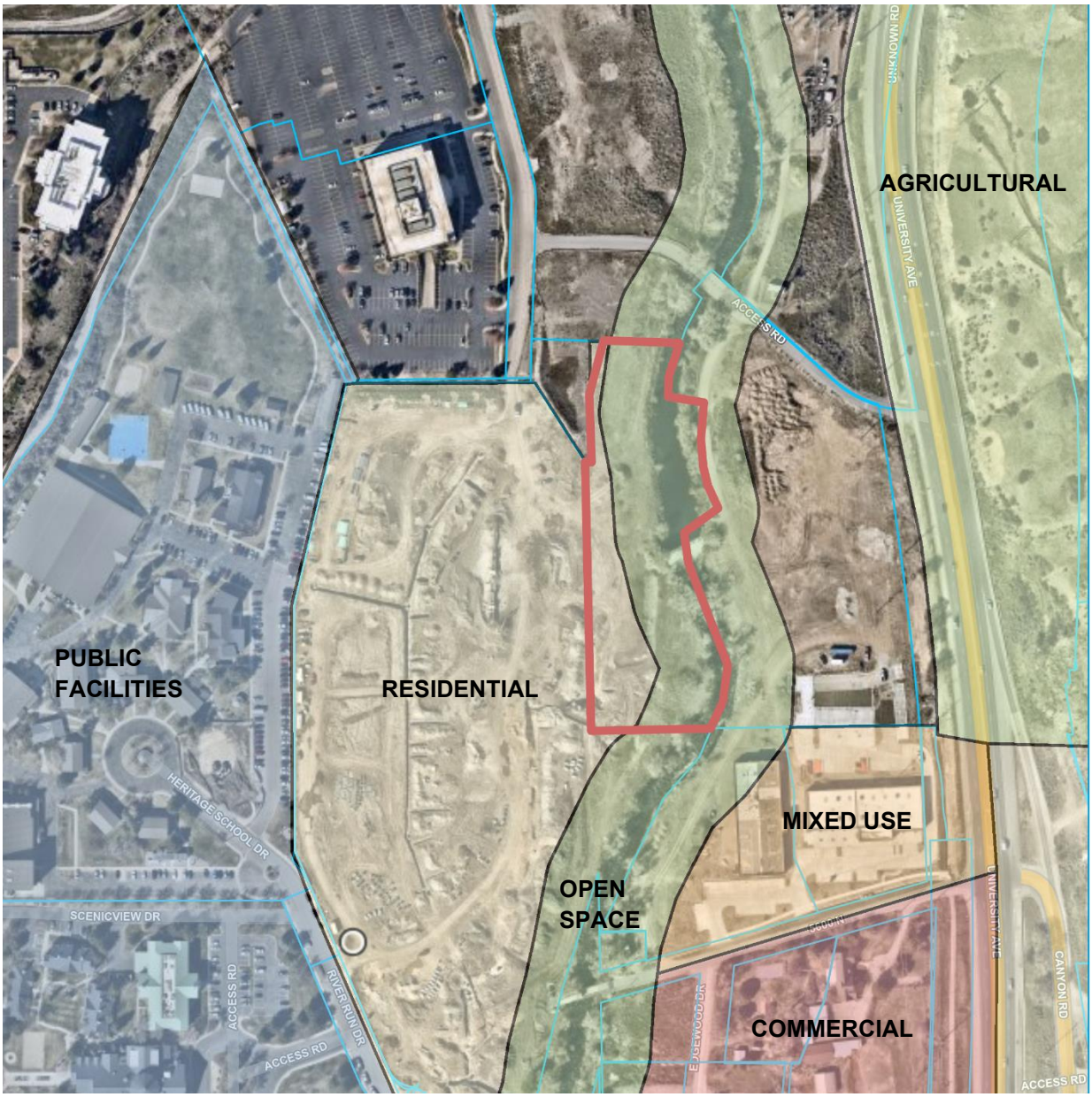
ATTACHMENT 1 – PROPERTY MAP



ATTACHMENT 2 – ZONE MAP



ATTACHMENT 3 – GENERAL PLAN MAP



ATTACHMENT 4 – PROJECT SITE PLAN



Provo City Planning Commission

Report of Action

August 28, 2024

***ITEM #5**	Jamie Chapman requests a Zone Map Amendment from the OSPR (Open Space, Preservation, and Recreation) Zone to the MDR (Medium Density Residential) Zone in order to build 24 new townhomes, located approximately at 5544 N River Run Drive. Riverbottoms Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLRZ20230328

The following action was taken by the Planning Commission on the above described item at its regular meeting of August 28, 2024

RECOMMENDED APPROVAL WITH CONDITIONS

On a vote of 7:0, the Planning Commission recommended that the Municipal Council approve the above noted application, with the following conditions:

Recommended Condition of Approval:

1. That the developer includes commitment to build and provide public access on the pedestrian path along the river, as shown in the plans.

Motion By: Barbara DeSoto
Second By: Melissa Kendall
Votes in Favor of Motion: Barbara DeSoto, Melissa Kendall, Jeff Whitlock, Jonathon Hill, Andrew South, Lisa Jensen, Adam Shin
Jeff Whitlock was present as Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED
The property to be rezoned to the MDR Zone is described in the attached Exhibit A.

RELATED ACTIONS
Planning Commission approved the related Project Plan (PLPPA20230330, Item #6, August 28th, 2024 agenda).

APPROVED/RECOMMENDED OCCUPANCY
*24 Total Units
*Type of occupancy approved: Family

APPROVED/RECOMMENDED PARKING
*60Total parking stalls required
*73 Total parking stalls provided
*3 Required parking stalls per unit

DEVELOPMENT AGREEMENT
- Applies - referred applicant to Council Attorney.

STAFF PRESENTATION
The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Staff also responded to Planning Commission questions regarding the Provo River access, ownership, and General Plan designation.

CITY DEPARTMENTAL ISSUES
- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

NEIGHBORHOOD MEETING DATE
- A neighborhood meeting was held on 02/03/2022.

NEIGHBORHOOD AND PUBLIC COMMENT
- Neighbors or other interested parties were present or addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC
Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:
- Robert Hammond sent an email to staff and the Planning Commission encouraging commitment to the pedestrian trail along the Provo River.
- Sharon Memmott expressed concerns regarding the final product matching what is shown in the plans, and hoped commitments would be made with the zone change as it reaches the City Council.

APPLICANT RESPONSE
Key points addressed in the applicant's presentation to the Planning Commission included the following:
- Jim Ivory summarized the history of the project and the current requests and answered Planning Commission questions regarding access to/through the site, open space, and potential of floods.

PLANNING COMMISSION DISCUSSION
Key points discussed by the Planning Commission included the following:
- Planning Commission discussed the details of the plans and verified with staff that the project meets the code requirements of the MDR Zone.
- Commissioner Whitlock verified that the concerns brought up by the public will be addressed in a future development agreement. The Commission also confirmed that the site improvements and amenities will be completed prior to the final certificate of occupancy.
- The Commission felt comfortable with the proposal as it is finishing up a project that is already being constructed, but mentioned the need to include the trail as a guarantee and expressed disappointment that no units will be for sale.

Planning Commission Chair

Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Development Services Department, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

Part of Lot 1, Plat “C”, CANYON RIVER SUBDIVISION, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah.

Less and excepting those portions lying within the bounds of the Provo River

OTHERWISE DESCRIBED AS:

PART LOT 1, PLAT C, CANYON RIVER SUB DESCRIBED AS FOLLOWS; COM N 1807.225 FT & W 40.775 FT FR SE COR. SEC. 12, T6S, R2E, SLB&M.; S 32 DEG 40' 33" E .12 FT; N 89 DEG 40' 11" E 12.8 FT; N 0 DEG 53' 1" W 98.97 FT; ALONG A CURVE TO R (CHORD BEARS: N 6 DEG 36' 59" E 43.86 FT, RADIUS = 168 FT); N 14 DEG 6' 59" E 70.36 FT; S 88 DEG 1' 2" E 137.82 FT; S 19 DEG 1' 4" W 66.95 FT; S 0 DEG 50' 26" W 29.08 FT; S 79 DEG 13' 57" E 64.05 FT; ALONG A CURVE TO L (CHORD BEARS: S 1 DEG 37' 8" W 98.66 FT, RADIUS = 327.56 FT); ALONG A CURVE TO L (CHORD BEARS: S 19 DEG 50' 55" E 93.46 FT, RADIUS = 203 FT); S 55 DEG 8' 59" W 78.42 FT; S 9 DEG 47' 30" E 54.68 FT; S 21 DEG 5' 43" E 193.59 FT; S 8 DEG 44' 33" W 61.1 FT; S 23 DEG 15' 14" W 54.29 FT; S 22 DEG 55' 34" W .05 FT; S 89 DEG 6' 57" W 214.06 FT; N 1 DEG 17' 24" W 477.95 FT TO BEG. AREA 3.151 AC.

River District Residential

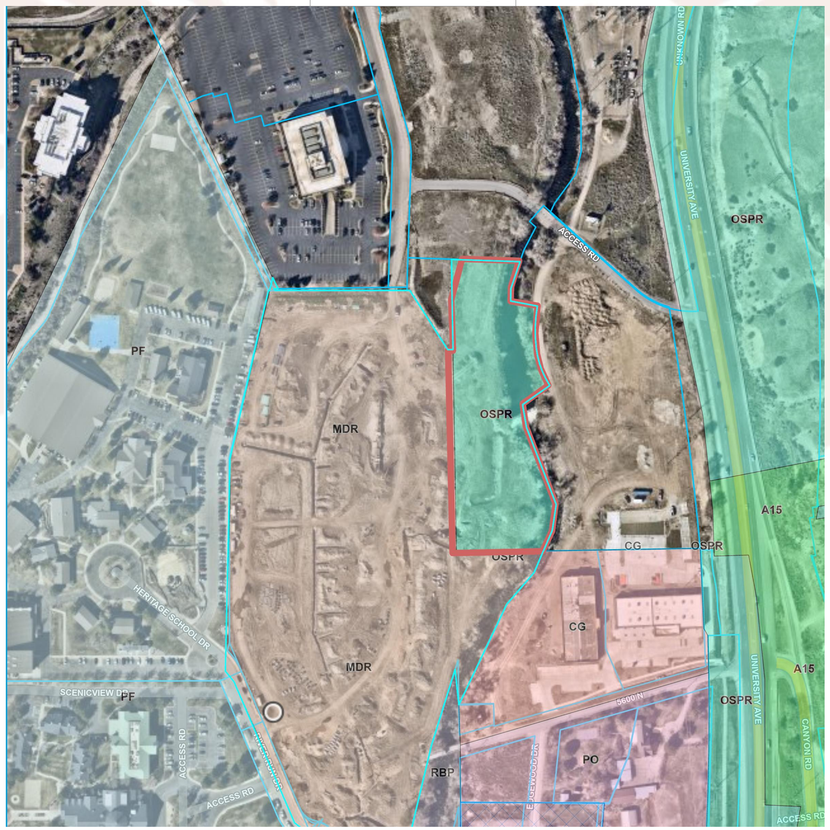
Phase 2

- Request for MDR Zone (same as phase 1).

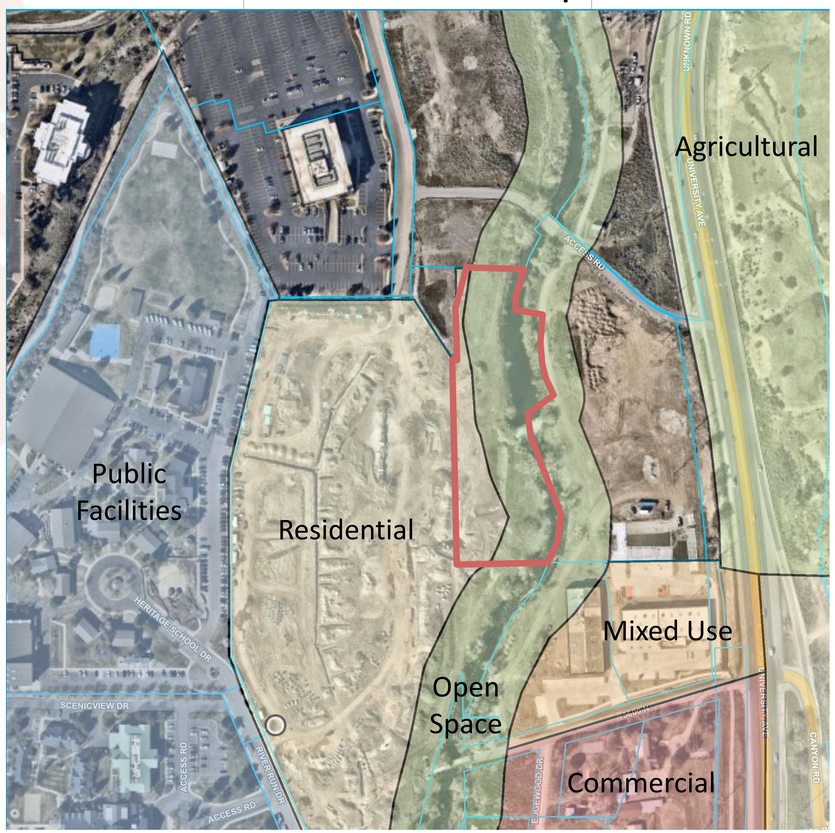
Area Map



Zone Map



General Plan Map



River District Residential

Phase 2

- Request for MDR Zone (same as phase 1).

- Proposal provides an additional 24 townhome apartments.



River District Residential

Phase 2

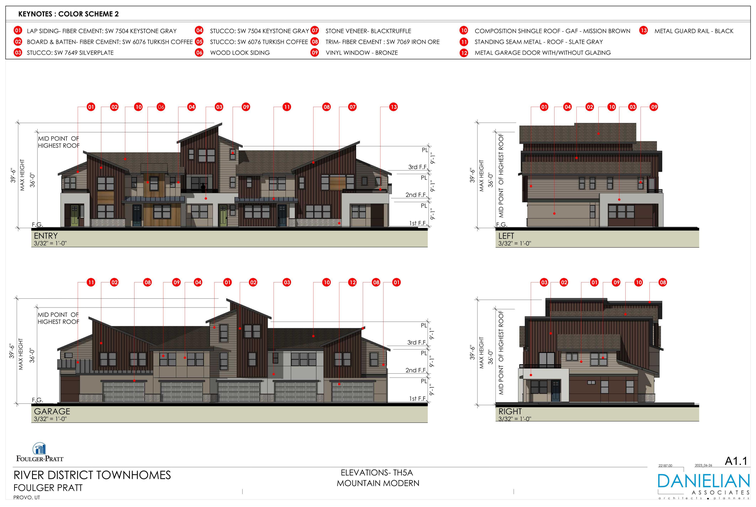
- Request for MDR Zone (same as phase 1).
- Proposal provides an additional 24 townhome apartments.
- Project Plan meets MDR standards.



River District Residential

Phase 2

- Request for MDR Zone (same as phase 1).
- Proposal provides an additional 24 townhome apartments.
- Project Plan meets MDR standards.
- Elevations match phase 1 and meet design standards for MDR Zone.

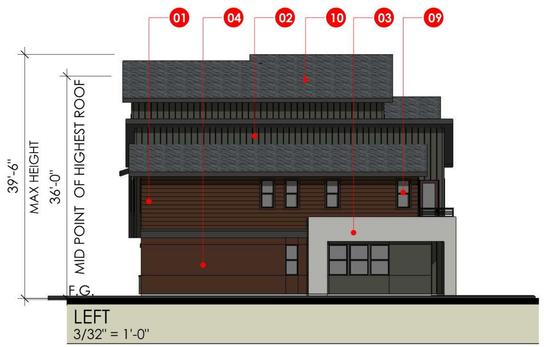


KEYNOTES : COLOR SCHEME 1

01 LAP SIDING- FIBER CEMENT: SW 6069 FRENCH ROAST	04 STUCCO: SW 6069 FRENCH ROAST	07 STONE VENEER - BLACKTRUFFLE	10 COMPOSITION SHINGLE ROOF - GAF - PEWTER GRAY
02 BOARD & BATTEN-FIBER CEMENT: SW 6188 SHADE-GROWN	05 METAL GUARDRAIL - BLACK	08 TRIM-FIBER CEMENT BOARD : SW 7069 IRON ORE	11 STANDING SEAM METAL - ROOF - CHARCOAL
03 STUCCO: SW 7649 SILVERPLATE	06 WOOD LOOK SIDING	09 VINYL WINDOW - BRONZE	12 METAL GARAGE DOOR WITH/WITHOUT GLAZING



ENTRY
3/32" = 1'-0"



LEFT
3/32" = 1'-0"



GARAGE
3/32" = 1'-0"



RIGHT
3/32" = 1'-0"

FOULGER-PRATT

RIVER DISTRICT TOWNHOMES
FOULGER PRATT
PROVO, UT

ELEVATIONS- TH5A
MOUNTAIN MODERN

22187.00 2023.06.26 A1.0

DANIELIAN ASSOCIATES
architects ▪ planners

PROVO MUNICIPAL COUNCIL STAFF REPORT

Submitter: Keith Morey
Department: Economic Development
Requested Meeting Date:

SUBJECT: A resolution appropriating $13,742.50 from General Fund sales tax revenues to the Economic Development Division in the General Fund for a contractual Sales Tax Increment post performance payment to Day's Market.

RECOMMENDATION: Approve the resolution.

BACKGROUND: In early 2018, the Economic Development Office worked with Day's Market to craft a post-performance sales tax increment agreement to partially reimburse the Day's Market, located on North Canyon Road. The owners of Day's Market were planning an extensive remodel of their aging store and requested that Provo City assist in reducing the construction costs by entering into a sales tax reimbursement agreement on a post-performance basis. Days Market would spend approximately $1.3 million dollars on the interior remodel of the store. Similar to other sales tax agreements, Day's would be able to earn back some of their costs if they produced sales above an established base line -- which in this case was set at $39,800. Based on sales tax information and a calculation, they qualify for sales tax reimbursement of $13,742.50 for fiscal year 2024. This is the fifth year of a ten-year agreement. A total of $64,902.12 has been reimbursed during these first 5 years.

FISCAL IMPACT: $13,742.50

PRESENTER'S NAME: Keith Morey, Economic & Redevelopment Director - Development Services

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Support economic retail growth of locally owned and operated businesses, especially grocery stores.

CITYVIEW OR ISSUE FILE NUMBER:

RESOLUTION 2024-

A RESOLUTION APPROVING THE APPROPRIATION OF $13,743 IN THE GENERAL FUND FOR A CONTRACTUAL SALES TAX INCREMENT POST-PERFORMANCE PAYMENT TO DAY'S MARKET. (24-011)

RECITALS:

It is proposed that $13,743 be appropriated in the Economic Development Division of the General fund for a contractual sales tax increment post-performance payment to Day's Market;

In March 2019, Provo City entered into a sales tax increment agreement with Day's Market to offset and incentivize the remodel of their development located in Provo on North Canyon Road;

The funding source for the appropriation is the General Fund sales tax revenues received because of the performance of the store;

On September 17, 2024 the Municipal Council met to consider the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

After considering the facts presented to the Municipal Council, the Council finds that (i) the appropriation should be approved, and (ii) such action furthers the health, safety, and general welfare of the citizens of Provo City.

THEREFORE, the Municipal Council of Provo City, Utah resolves as follows:

PART I:

The Mayor is authorized to appropriate $13,743 in the Economic Development Division of the General Gund for a contractual sales tax increment post-performance payment to Day's Market.

PART II:

This resolution takes effect immediately.

Base Year Start Date	May 1 2019
Base Sales Tax Amount	$39,800.00

Day's Market Total Sales 2020

May-19	Jun-19	Jul - 19	Aug - 19	Sep - 19	Oct - 19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr - 20
8,203	10,078	8,847	10,331	6,872	6,921	6,945	9,365	6,501	8,387	10,552	10,559

12 Month Total	12 Month Total less 50%
$103,559.51	$51,779.76

Day's Market Total Sales 2021

May - 20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan 21	Feb-21	Mar-21	Apr-21
8,425	8,060	8,233	9,674	7,548	9,562	7,456	7,837	8,711	7,087	7,264	7,286

12 Month Total	12 Month Total less 50%
$97,144.18	$48,572.09

Day's Market Total Sales 2022

May - 21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan 22	Feb-22	Mar-22	Apr-22
10,667	7,740	7,453	8,295	9,929	9,423	8,969	10,708	9,418	9,225	11,074	9,847

12 Month Total	12 Month Total less 50%
$112,746.53	$56,373.27

Day's Market Total Sales 2023

May - 22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan 23	Feb-23	Mar-23	Apr-23
8,306	8,118	10,386	7,623	-	-	-	41,109	7,484	7,955	7,876	8,512

12 Month Total	12 Month Total less 50%
$107,369	$53,684.50

Day's Market Total Sales 2024

23-May	23-Jun	23-Jul	23-Aug	23-Sep	23-Oct	23-Nov	23-Dec	24-Jan	24-Feb	24-Mar	24-Apr
9,369	8,635	9,329	8,853	9,290	8,871	8,911	9,887	8,389	9,794	9,095	6,661

12 Month Total	12 Month Total less 50%
$107,085.14	$53,542.57

Provo Sales Tax Owed

2020	$11,979.76
2021	$8,772.09
2022	$16,573.27
2023	$13,884.50
2024	$13,742.57
Total	$64,952.18



PARTICIPATION AND REIMBURSEMENT AGREEMENT

Day's Family Market
3121 North Canyon Road, Provo, Utah 84604

THIS PARTICIPATION AND REIMBURSEMENT AGREEMENT ("**Agreement**") is made and entered into as of the 21st day of Mar '19 ("**Effective Date**"), between the City of Provo ("**City**"), and Day's Family Market, LLC, a Utah limited liability company ("Day's"). Day's is referred to herein individually as an "**Owner**". City and Day's are referred to herein individually as a "**Party**", and collectively, as the "**Parties**".

RECITALS

A. This Agreement concerns Day's, located generally at 3121 North Canyon Road, Provo, Utah.

B. As of the Effective Date, Day's is the lessee of a building (located on the "**Subject Lot"** The Subject Lot is more particularly described in **Exhibit A and B** to this Agreement.

C. A breakdown of the Owner's Costs, estimated as of the Effective Date, is set forth on **Exhibit C** to this Agreement. As of the Effective Date, the Owner's Costs are estimated to be approximately One Million Three Hundred Thousand Dollars ($1,300,000) ("**Owner's Estimated Costs**"), for interior renovations, along with the purchase of necessary equipment for the operation of their business.

D. Day's has requested that City provide reimbursement for a portion of the Owner's Actual Costs (defined in **Section 1.5**) and City Approval Fees which are estimated to be up to, but probably less than $100,000.00 (defined in Section 1.3)

E. City has determined that the requested reimbursements are necessary to offset the costs of the Project, as described in Section D, for the purpose of retaining a local grocery store and continuing to capture the grocery leakage identified in retail studies and to demonstrate local support for the completion of the upgrades, and to recognize the positive impact that this investment will have on assessed values of Day's, and nearby business properties.

F. City has determined that the Project advances the purposes of City by retaining a large grocery store in the Northeast area of the City, continuing to capture the grocery leakage identified in retail studies and providing improvements to Day's.

City is willing to assist the Project by reimbursing Owner a portion of the sales tax increment generated from the Subject Lot to pay for a portion of the Owner's Actual Costs expended to improve Day's as defined in Section A and B.

G. Subject to the terms and conditions contained herein, the Owner shall make improvements to Day's particularly the interior of the building.

NOW, THEREFORE, in consideration of the foregoing Recitals, Owner's agreements with City, and the terms and conditions hereby agreed to, and other good and valuable consideration, the Parties hereby agree as follows:

1. **DEFINED TERMS**. The Recitals set forth above, and any exhibits attached hereto, are hereby incorporated as integral parts of this Agreement. As used herein, the following terms shall have the meanings respectively indicated:

1.1 "**Annual Sales Taxes**" for a particular Tax Year (defined in **Section 1.10**) means the amount of sales taxes received by City upon taxable retail sales generated by the Subject Lot for such Tax Year at Point of Sale (defined in **Section 1.6**), which, as of the Effective Date, is 0.5% (one-half (1/2) of one (1) percent) of such taxable retail sales.

1.2 "**Base Sales Tax Amount**" means the Annual Sales Tax received by the City for the twelve (12) month period ending March of 2018, which totaled Thirty Nine Thousand, Eight Hundred Dollars ($39,800) associated with as defined in Section A and B.

1.3 "**City Approval Fees**" means all fees paid by Owner or any entity controlled by Owner, to City in connection with any City approval, entitlement or permit, or application or submittal for any City approval, entitlement or permit, with respect to the Project in the pursuit of accomplishing Section G of the Recitals above. Owner shall pay any City Approval Fees to the City up-front.

Without limitation of the foregoing, City Approval Fees shall include any permit fees, plan check fees, impact or development fees or assessments, traffic mitigation fees, utility connection fees, or comparable fees or charges paid to the City or any department or agency of the City in the pursuit of accomplishing Section G of the Recitals above; provided however, that City Approval Fees shall not include any fees or charges paid to any party other than the City.

1.4 "**Commencement Date**" shall mean the first (1st) day of the first (1st) full calendar month following the date on which the Project, as defined in **Recital G** above, is completed. For purposes of determining the Commencement Date, the Project shall be deemed to be completed on the date when the Certificate of Completion has been issued.

1.5 "**Owner's Actual Costs**" means, collectively, the actual amount of Owner's Costs, to be determined after the Commencement Date, plus any City Approval Fees paid by Owners. Owner's Actual Costs shall be cost of construction of the interior store remodel, improvements, demolition, additions, retrofits or otherwise related to improving the interior of the store, estimated to be approximate $1,300,000.00, but shall not include legal fees or broker commissions.

Within a reasonable period following the Commencement Date, City, and Day's shall enter into an agreement, substantially in the form attached as **Exhibit D** to this Agreement ("**Owner's Actual Costs Confirmation Agreement**"), to confirm the amount of the Owner's Actual Costs, including without limitation, the amount of the City Approval Fees paid through the Commencement Date.

1.6 "**Point of Sale**" with respect to Annual Sales Taxes, refers to sales tax revenues received by City based on all taxable transactions made at the Subject Lot as the geographical point of sale. Point of Sale and/or Annual Sales Taxes do not include any sales tax revenues received by the City based on the City's population as a percentage of the overall population of the State of Utah.

1.7 "**Reimbursement Payment**" means, with respect to each Tax Year during the Reimbursement Term, a payment to Day's, equal to the Sales Tax Increment (defined below) for the applicable Tax Year, until Owner has collectively become entitled to total Reimbursement Payments during the Reimbursement Term up to the Target Reimbursement Amount (defined in **Section 1.9**).

Notwithstanding the foregoing, once Owner has become entitled to Reimbursement Payments up to the Target Reimbursement Amount, Owners, shall thereafter be entitled to Additional Incentive Payments (defined in **Section 3.1**) in accordance with **Section 3**, until such Owner has become entitled to Reimbursement Payments and Additional Incentive Payments up to the amount of Owner's Actual Costs.

"**Sales Tax Increment**" means the difference between (a) the Annual Sales Tax received by the City from the Subject Lot for the applicable Tax Year, and (b) the Base Sales Tax Amount. If in a given Tax Year the Sales Tax Increment is negative, such negative Sales Tax Increment will be offset against the positive Sales Tax Increment in subsequent Tax Years.

1.8 "**Reimbursement Term**" shall mean the term of this Agreement, beginning on the Commencement Date, and ending on the date which immediately precedes the tenth (10^{th}) anniversary of the Commencement Date ("**Expiration Date**").

1.9 "**Target Reimbursement Amount**" shall be fifty percent (50%) of the Owner's Actual Costs, including fifty percent (50%) of the amount of any City Approval Fees (as defined in **Section 1.3**) paid by Owner.

1.10 "**Tax Year**" shall mean the initial twelve (12) month period beginning on the Commencement Date, and ending on the day immediately preceding the first (1^{st}) anniversary of the Commencement Date, and each succeeding twelve (12) month period during the Reimbursement Term beginning on each successive anniversary of the Commencement Date.

2. ANNUAL REIMBURSEMENT PAYMENTS.

2.1 **Address for Payments**. For the period commencing on the Commencement Date and continuing through the expiration of the Reimbursement Term, City shall make annual Reimbursement Payments to Owner at the address for Reimbursement Payments to Owner set forth in **Section 7.1**, or such other address as Owner may designate from time to time in accordance with **Section 7.1**; provided however, that the total amount of the Reimbursement Payments shall not exceed the Target Reimbursement Amount.

2.2 **Timing of Payments & Supporting Documentation**. Reimbursement Payments pursuant to this Agreement shall be made by City within one hundred-twenty (120)

days after the end of each Tax Year and after: (i) Annual Sales Taxes for the Subject Lot for the applicable Tax Year are received by City; and (ii) documentation is received by City from the Utah State Tax Commission providing support for the Annual Sales Taxes received for the Subject Lot for the applicable Tax Year. City shall contemporaneously provide Owner with a written accounting by month, in the aggregate, of the annual Reimbursement Payment, demonstrating the City's determination of the amount of the Annual Sales Taxes (based on Point of Sale) for the Subject Lot for the applicable Tax Year and the amount of such Reimbursement Payment.

2.3 Confidentiality. Except for the amount and timing of Reimbursement Payments and any Additional Incentive Payments (defined in **Section 3.1**) made to Owner under this Agreement (if and to the extent such amounts and timing are public information), City and Owner shall keep Annual Sales Tax information confidential, unless disclosure is otherwise required by law.

2.4 Remedies. The failure of the City to timely make any Reimbursement Payment or Additional Incentive Payments hereunder in accordance with this Agreement shall constitute a material default by City under this Agreement, unless City pays any such Reimbursement Payment or Additional Incentive Payment to Owners in full in accordance with this Agreement within fifteen (15) days after City's receipt of a notice of non-payment from Owner. Upon the occurrence of a default by City, Owner shall have all remedies available to it in law or equity, including without limitation, specific performance.

3. ADDITIONAL INCENTIVE PAYMENTS.

3.1 Additional Incentive Payments - Examples. If, on or before the Expiration Date, Owner has become entitled to Reimbursement Payments equal to the Target Reimbursement Amount, then (i) the date on which the total Reimbursement Payments that Owners has become entitled to reaches the Target Reimbursement Amount shall be the "**Target Reimbursement Date**", and (ii) Owner shall be entitled to additional incentive payments equal to fifty percent (50%) of the Sales Tax Increment from the Target Reimbursement Date through the Expiration Date ("**Additional Incentive Payment**"), provided however, that in no event shall the total of all Reimbursement Payments and Additional Incentive Payments received by Owner exceed the Owner's Actual Costs.

The following examples of how the Reimbursement Payments and Additional Incentive Payments would be calculated are set forth below for purposes of illustration only. For each of the following examples, assume that the Owner's Actual Costs, without including any City Approval Fees, are the same as the Owner's Estimated Costs ($1,300,000):

Example: Example #1:

Assume that during the Reimbursement Term, the total Sales Tax Increment is Six Hundred Fifty Thousand Dollars ($650,000), and Day's has paid City Approval Fees totaling One Hundred Thousand Dollars ($100,000).

Step 1: Owner's eligible costs and fees: $1,300,000 (owner's actual costs + $100,000 (owner's actual fees) = $1,400,000.

Step 2: Eligible reimbursable costs:
.50 X 1,400,000 = 700,000

Step 3: Increment calculation
650,000 X 100% = 650,000

Step 4: Total to owner is $650,000 since the amount calculated in step 3 is less than the amount calculated in step 1.

Example #2: *Assume that during the Reimbursement Term, the total Sales Tax Increment is Eight Hundred Thousand Dollars ($800,000), and Day's has paid no City Approval Fees during the Reimbursement Term.*

Step 1: Owner's eligible costs and fees: $1,300,000 (owner's actual costs + $0 (owner's actual fees) = $1,300,000.

Step 2:
Eligible reimbursable costs:
.50 X 1,300,000 = 650,000

Step 3: Increment calculation
650,000 X 100% = 650,000
800,000-650,000) X .50 = 75,000
650,000 + 75,000 = 725,000

Step 4: Total to owner is $725,000 since the amount calculated in step 3 is less than the amount calculated in step 1.

Example #3: Assume that during the Reimbursement Term, the total Sales Tax Increment is Nine Hundred Thousand Dollars ($900,000), and Day's has paid Approval Fees totaling One Hundred Thousand Dollars ($100,000) City Approval Fees during the Reimbursement Term.

Step 1: Owner's eligible costs and fees: $1,300,000 (owner's actual costs + $100,000 (owner's actual fees) = $1,400,000.

Step 2:
Eligible reimbursable costs:
.50 X 1,400,000 = 700,000

Step 3: Increment calculation
700,000 X 100% = 700,000
900,000-700,000) X .50 = 100,000
700,000 + 100,000 = 800,000

Step 4: Total to owner is $800,000 since the amount calculated in step 3 is less than the amount calculated in step 1.

Example #4: Assume that during the Reimbursement Term, the total Sales Tax Increment is Two Million Five Hundred Thousand Dollars ($2,500,000), and Day's has paid City Approval Fees during the Reimbursement Term totaling One Hundred Thousand Dollars ($100,000).

Step 1: Owner's eligible costs and fees: $1,300,000 (owner's actual costs + $100,000 (owner's actual fees) = $1,400,000.

Step 2:
Eligible reimbursable costs:
.50 X 1,400,000 = 700,000

Step 3: Increment calculation
700,000 X 100% = 700,000
2,500,000-700,000) X .50 = 900,000
700,000 + 900,000 = 1,600,000

Step 4: Total to owner is $1,400,000 since the amount calculated in step 1 is less than the amount calculated in step 3.

3.2 Timing of Additional Incentive Payments. Additional Incentive Payments shall be made by the City within one hundred-twenty (120) days after the end of each Tax Year ending after the Target Reimbursement Date, and after: (i) Annual Sales Taxes for the Subject Lot for the applicable Tax Year are received by City; and (ii) documentation is received by the City from the Utah Department of Revenue verifying the accuracy of the amount of Annual Sales Taxes for the Subject Lot for the applicable Tax Year. The City shall contemporaneously provide Owner with a written accounting with the Additional Incentive Payments, demonstrating the City's determination of the amount of the Annual Sales Taxes

(based on Point of Sale) for the Subject Lot for the Reimbursement Term through the end of the applicable Tax Year, the amounts of all Reimbursement Payments and Additional Incentive Payments during the Reimbursement Term through the end of the applicable Tax Year, and the amount of the applicable Additional Incentive Payment.

3.3 Cap on Payments. Notwithstanding anything in this Agreement to the contrary, in no event shall the total amount of the Reimbursement Payments and any Additional Incentive Payments exceed the Owner's Actual Costs.

3.4 Acknowledgment of the Parties' Intent – Owner Incentive. The Parties acknowledge that the intent of this Agreement, including without limitation this **Section 3**, is intended to incentivize Owner to invest in the Subject Lot and to cause the Subject Lot to be improved, managed, and operated so as to generate increased Annual Sales Taxes. Accordingly, if Annual Sales Taxes are sufficient to result in a Sales Tax Increment exceeding the Target Reimbursement Amount pursuant to **Section 1.9**, then the Parties intend for City and Owner to share equally in the Sales Tax Increment during the Reimbursement Term above the Target Reimbursement Amount.

4. TERMINATION. The Parties acknowledge that any Reimbursement Payments and Additional Incentive Payments are to be made after the end of the applicable Tax Year, in accordance with **Section 2.2**, and **Section 3.2** (if applicable).

This Agreement shall automatically terminate and be of no further force or effect after the latest of the following have occurred: (i) the Expiration Date has occurred, and (ii) Owners have received the full amount of the Reimbursement Payments and Additional Incentive Payments to which Owner are entitled hereunder, for the final Tax Year during the Reimbursement Term and all prior Tax Years; provided however, that the Parties hereby disclaim any representation or warranty that the total Reimbursement Payments and Additional Incentive Payments will equal the amount of Owner's Actual Costs or any particular percentage of Owner's Actual Costs.

This Agreement shall also automatically terminate if construction of the Project has not commenced on or before December 31, 2019.

Upon termination of this Agreement, no Party shall have any further obligations to the other Parties. Following termination of this Agreement, upon request from any Party, the Parties agree to execute any reasonable documentation which may be necessary to confirm expiration and/or termination of this Agreement.

5. ASSIGNMENT OF AGREEMENT OR PAYMENTS.

5.1 Rights of Assignees. No future owner or tenant of all or any part of the Subject Lot, other than Owner, shall be entitled to claim any right or benefit by, through or under this Agreement, including, but not limited to, the right to receive all or any portion of any Reimbursement Payments or any Additional Incentive Payments, and no future owner or tenant of the Subject Lot, other than Owner, shall be deemed to be a third party beneficiary of this Agreement, unless and until Owner have expressly assigned such right, including any right to receive any portions of any Reimbursement Payments or any Additional Incentive Payments in

writing.

5.2 Assignment. Owner shall not have any right to assign this Agreement, in whole or in part, or the right to any Reimbursement Payments or any Additional Incentive Payments, except to Day's, or a successor to Day's as a fee owner of a Subject Lot. A conveyance of a fee ownership interest in the Subject Lot shall not by itself constitute or result in an assignment of this Agreement or the right to any Reimbursement Payment or any Additional Incentive Payments, and neither this Agreement nor the right to payment of any Reimbursement Payment or any Additional Incentive Payments shall run with the land.

An assignment or partial assignment of this Agreement or the right to any Reimbursement Payments or any Additional Incentive Payments may only be effected by a writing executed by Owner. No assignment or partial assignment of this Agreement or any right to any Reimbursement Payments or any Additional Incentive Payments shall be binding on City unless and until City has received (i) a written notice of such assignment, together with a copy of the applicable assignment document, from Owner, (ii) complete contact information and an address for payment of any Reimbursement Payments or any Additional Incentive Payments to any assignee to which any right to any Reimbursement Payments or any Additional Incentive Payments has been assigned, (iii) and the tax or employer identification number of any assignee to which any right to any Reimbursement Payments or any Additional Incentive Payments has been assigned. City shall be entitled to rely on any notice of any assignment or partial assignment of this Agreement and/or right to any Reimbursement Payments or any Additional Incentive Payments which the City receives from Owner.

7. NOTICES.

7.1 Addresses. Any notice, payment, demand, or communication required or permitted to be given to any Party pursuant to any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if sent by registered or certified mail (return receipt requested), postage and charges prepaid, or by Federal Express or other reputable overnight delivery service which maintains delivery records and requires a signature upon receipt, addressed as follows:

Notices to Day's:	Day's Family Market LLC 3121 N Canyon Rd Provo, Utah 84604 Attn: Steven Day
Reimbursement Payments & Additional Incentive Payment:	Day's Family Market, LLC 3121 N Canyon Rd Provo, Utah 84604
Notices to City:	City of Provo 351 West Center Street

Provo, UT 84601
Attn.: Dixon Holmes

7.2 Receipt. Notices shall be deemed effective upon receipt. The person and place to which notices are to be given may be changed by any Party by written notice to the other Parties. For purposes of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to this **Section 8** as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified by this **Section 7**, or (iii) in case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice or refusal or notice of non-delivery by the sending party.

8. MISCELLANEOUS.

8.1 Attorneys' Fees. If any Party to this Agreement commences a dispute resolution proceeding, whether litigation, arbitration, or otherwise, respecting any question between the Parties to this Agreement arising out of or relating to this Agreement or the breach thereof, the prevailing Party in such dispute resolution proceeding shall be entitled to the recovery of a reasonable attorneys' fee and all other reasonably incurred costs and expenses of the successful prosecution or defense of such proceeding. The term "dispute resolution proceeding" as used above shall be deemed to include appeals from a lower court judgment or arbitration award and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. For purposes of proceedings in the Federal Bankruptcy Court, the term "prevailing Party" as used above shall be deemed to mean the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt Party which are reasonably necessary to protect its rights.

8.2 Governing Law. This Agreement is intended to be performed in the State of Utah, and the laws of Utah shall govern the validity, construction, enforcement and interpretation of this Agreement.

8.3 Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by all of the Parties hereto.

8.4 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never composed a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

8.5 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed, and delivered by the Parties, the Parties agree to perform, execute, and deliver or cause to be performed, executed, and delivered any and all such

further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby.

8.6 Warranty Against Payment of Consideration for Agreement. Day's represent and warrant that neither it nor any of its members, managers, employees or officers has: (1) provided an illegal gift or payoff to an City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in City's conflict of interest ordinance; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, an City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance.

8.7 Non-liability of City Officials and Employees. No member, official, or employee of City shall be personally liable to Owner or any of their successors in interest, in the event of any default or breach by City, or for any amount which may become due to Owner or its successor, or on any obligation under the terms of this Agreement.

8.8 Governmental Immunity. Nothing in this Agreement shall be deemed to constitute or imply a waiver, modification or alteration of the caps or limitations on liability or privileges, immunities or other protection available to City under the Utah Governmental Immunity Act or such other statutes or laws affording governmental agencies caps or limitations on liability or privileges, immunities or other protections.

8.9 No Relationship of Principal and Agent. Nothing contained in this Agreement, nor any acts of the Parties or the City, the City planning director, the Planning Commission (or its designee), shall be deemed or construed to create the relationship of principal and agent, or of limited or general partnership, or of joint venture or of any other similar association between City and Owner.

8.10 No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Party.

8.11 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement.

8.12 Non-Disclosure. The Parties agree that the terms of this Agreement are confidential and constitute proprietary information of the respective Parties (collectively, the "**Information**"). Each of the Parties agrees that such Party, and its respective partners, members, managers, officers, directors, employees, advisors, consultants and attorneys, shall not disclose the Information to any other person without the prior written consent of the other Parties except pursuant to an order of a court of competent jurisdiction, or to the extent required as part of any statutory public approval process required for this Agreement and/or any Reimbursement Payments; provided, however, that any Party may disclose the Information to its lenders or

prospective lenders or the accountants who audit its financial statements or prepare its tax returns, to its constituent members, partners, shareholders, to its attorneys and consultants, to any prospective transferee of all or any portions of the Subject Lot, to any governmental entity, agency or person to whom disclosure is required by applicable law, regulation or duty of diligent inquiry and in connection with any action brought to enforce the terms of this Agreement, on account of the breach or alleged breach hereof or to seek a judicial determination of the rights or obligations of the parties under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the term, "Information", shall not include information which, at the time it is disclosed and through no fault of any Party, is in the public domain or is available or becomes available to the general public. Notwithstanding anything to the contrary contained in this Agreement, City will release information required by Utah Code 63G-2-101 et seq, Government Records and Access Management Act.

8.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one Agreement. Any Party may effectuate the execution and delivery of this Agreement by sending a signed copy to the other Parties by email (with .pdf attachment) or other form of electronic transmission. Any document sent in the foregoing manner shall be deemed and treated in all respects as an original instrument bearing the original signature of the transmitting party.

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EXHIBIT A

Aerial Photo of the Subject Lot



EXHIBIT B

Remodel Plans

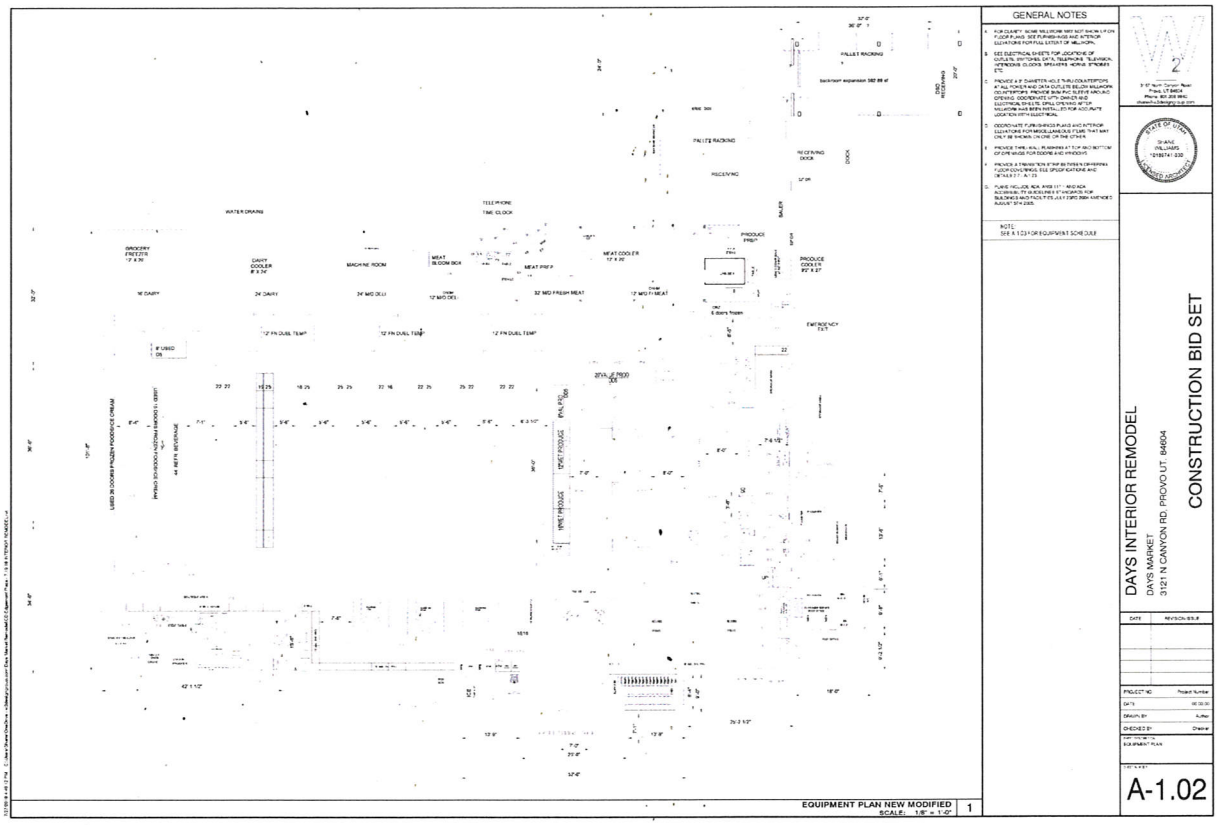


EXHIBIT C

Breakdown of Owner's Estimated Costs

Owners Shopping Center Sales Tax Participation Plan

City Approval Fees(estimated)	**$ 100,000**	
Construction, Demolition, Remodel Expenses	**$1,300,000**	
Total	**$1,400,000**	

EXHIBIT D

FORM OF OWNER'S ACTUAL COSTS CONFIRMATION AGREEMENT

OWNER'S ACTUAL COSTS CONFIRMATION AGREEMENT

This Owner's Actual Costs Confirmation Agreement ("**Confirmation Agreement**") is entered into as of _____, 20__ , by and between the City of Provo ("**City**"), Day's Family Market, LLC, a Utah limited liability company ("**Day's**") ("**Owner"**), pursuant to Section 1.5 of that certain Participation and Reimbursement Agreement, dated_____, 2018 ("**Reimbursement Agreement**").

City, and Day's, hereby acknowledge and agree that the amount of the Owner's Actual Costs (as defined in Section 1.5 of the Reimbursement Agreement) is _____ and ___/100ths Dollars ($_____.___), including City Approval Fees (as defined in Section 1.3 of the Reimbursement Agreement) paid through the Commencement Date (defined in Section 1.4 of the Reimbursement Agreement) totaling _____ and ___/100ths Dollars ($_____.___).

This Confirmation Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one Confirmation Agreement. Any party may effectuate the execution and delivery of this Confirmation Agreement by sending a signed copy to the other parties by email (with .pdf attachment) or other form of electronic transmission. Any document sent in the foregoing manner shall be deemed and treated in all respects as an original instrument bearing the original signature of the transmitting party.

[this space intentionally left blank – signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Confirmation Agreement as of the date first above written.

Attest: Amanda Ercanbrack
Provo City Recorder, 21-Mar-2019

CITY OF PROVO

By: _____

Name: Michelle Kaufusi

Its: Mayor

"CITY"

Day's Family Market, LLC

By: _____

Name: Steven L Day

Its: Prisident

"Day's"

Signature Page of Day's Family Market, LLC to
Participation and Reimbursement Agreement

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first above written.

Day's Family Market, LLC,
a Utah limited liability corporation

By: _____
Name: Steven Day
Title: President

"**Day's**"

State of Utah
County of Utah

The foregoing instrument was acknowledged before me this 3.18.19 by Steven Day President Day's Family Market, LLC.

Witness my hand and official seal

(Seal)

WHITNEY MATHWIG
NOTARY PUBLIC · STATE OF UTAH
COMMISSION# 699629
COMM. EXP. 03-21-2022

_____
Notary Public

CITY OF PROVO

By: _____
Name: Michelle Kaufusi, Mayor

PROVO CITY SEAL
INDUSTRY AND COMMERCE
UTAH COUNTY, UTAH

Attest:

By _____

ADMINISTRATIVE SERVICES
TEL 801 852 6504
351 W CENTER ST
PO BOX 1849
PROVO, UT 84603

NOTICE OF PUBLIC HEARING BEFORE THE PROVO MUNICIPAL COUNCIL

Notice is hereby given that the Municipal Council of Provo, Utah will hold a public hearing on the following item during the Council Meeting that will take place on Tuesday, September 17th, 2024 at 5:30 p.m. in the Council Chambers located at the Provo City Center Building, 445 West Center Street, Provo, Utah. Anyone interested is invited to attend.

Provo City Council will consider an appropriation of $13,743 in the general fund for a sales tax increment post-performance payment to Day's Market. The funding source of the appropriation is the general fund balance.

The meeting will also be available to the public for live broadcast and on-demand viewing at: youtube.com/provocitycouncil. Those who would like to participate in the meeting virtually may do so via Zoom. To join the Zoom meeting, visit zoom.us/join and enter Meeting ID 862 9180 2501and Passcode 212896. To listen or comment via phone, dial **346-248-7799**, enter Meeting ID 862 9180 2501and press **#**. Press **#** again for participant ID. Once connected, press ***9** to indicate that you would like to comment. For more information regarding how to comment in the electronic meeting, visit agendas.provo.org and click on the meeting agenda.

Kelsey Zarbock, Budget Officer

PROVO Redevelopment Agency
STAFF REPORT

Submitter: Keith Morey
Department: Development Services
Requested Meeting Date: September 17th, 2024

SUBJECT: The Redevelopment Agency of Provo is submitting a resolution for approval of the amended project area plan for the Freedom Plaza Community Development Project Area.

RECOMMENDATION: Approving the resolution will approve the amended project area plan.

BACKGROUND: The Freedom Plaza CDA was created in late 2010 to support development in downtown Provo and the surrounding area. The original project area included the single block that is now the state courthouse complex. When the courthouse block was sold to the state, the RDA and the developer made plans to amend the boundaries of the CDA to include the three blocks to the east of the original project area. The parties involved moved forward with plans to redevelop within a new project area boundary, but the new boundary was never defined through the correct legal process. To correct this the RDA is now formally amending the CDA boundaries.

The approval of this resolution is the Agency's approval of the amended project area plan. The City Council must also approve the ordinance adopting the amended plan before the plan is effective. Agency staff is working on negotiating interlocal agreements with the taxing entities. These agreements will also come to the Agency Board for approval at some point in the future.

FISCAL IMPACT:

PRESENTER'S NAME:

REQUESTED DURATION OF PRESENTATION: 20 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Support economic and redevelopment, retail growth, and vitality of the City's major retail centers.

CITYVIEW OR ISSUE FILE NUMBER:

AMENDED

PROJECT AREA PLAN FOR THE FREEDOM PLAZA COMMUNITY DEVELOPMENT PROJECT AREA

PREPARED BY THE REDEVELOPMENT AGENCY OF PROVO CITY CORPORATION

ADOPTED JULY 6, 2010

AMENDED ON SEPTEMBER 17, 2024

DRAFT

AMENDMENT – September 17, 2024

The project area plan for the Freedom Plaza Community Development Project Area (the "Project Area") was initially adopted on July 6, 2010. This amended Project Area Plan (the "Plan") modifies the boundaries of the Project Area so that the Project Area is now the entire three-block area that is between Freedom Blvd. and 100 West, from 100 North to 400 North, with a handful of parcels included on the east and west sides of the three core blocks. The original boundary of the Project Area is shown on Exhibit A. The amended boundary is shown on Exhibit B.

This amendment to the Project Area boundaries was intended to be done nearly ten years ago. The Agency obtained ownership of the land within the original project area boundaries in late 2010, with the intention of attracting desirable development. By 2016, the State of Utah acquired ownership of all land within the Project Area for the construction of a new courthouse complex. The Agency had intended to change the boundaries at that point; however, for whatever reason, that action was never formally taken. This amendment formally makes that boundary change.

This document reflects the amended boundary of the Project Area

AMENDED PROJECT AREA BOUNDARY DESCRIPTION

INCLUDING ALL OR PORTIONS OF BLOCKS 87, 89, 90,108 & 109, OF THE PROVO CITY SURVEY OF BUILDING LOTS, PLAT A, LOCATED IN PROVO, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE INTERSECTION OF 100 NORTH STREET AND 100 WEST STREET, PROVO CITY SURVEY OF BUILDING LOTS, PLAT A; THENCE N89°39'24"W ALONG THE CENTERLINE OF 100 NORTH STREET 482.21 FEET TO THE CENTERLINE INTERSECTION OF 100 NORTH STREET AND 200 WEST STREET; THENCE ALONG THE CENTERLINE OF 200 WEST STREET THE FOLLOWING (2) COURSES; THENCE N00°18'30"E 481.69 FEET; THENCE N00°17'50"E 480.79 FEET TO THE CENTERLINE INTERSECTION OF 200 WEST STREET AND 300 NORTH STREET; THENCE N89°38'28"W ALONG 300 NORTH STREET 238.70 FEET; THENCE N00°19'21"E 238.30 FEET; THENCE S89°29'30"E 99.35 FEET; THENCE N00°19'01"E 242.87 FEET TO THE CENTERLINE OF 400 NORTH STREET; THENCE ALONG THE CENTERLINE OF 400 NORTH STREET THE FOLLOWING (2) COURSES; THENCE S89°35'41"E 139.16 FEET; THENCE S89°39'11"E 482.39 FEET TO THE INTERSECTION OF 400 NORTH STREET AND 100 WEST STREET; THENCE S00°19'12"W ALONG THE CENTERLINE OF 100 WEST STREET 480.97 FEET TO THE INTERSECTION OF 100 WEST STREET AND 300 NORTH STREET; THENCE S89°39'25"E ALONG THE CENTERLINE OF 300 NORTH STREET 242.00 FEET; THENCE S00°39'43"W 242.54 FEET; THENCE S89°18'10"W 65.99 FEET; THENCE S00°19'06"W 236.95 FEET TO THE CENTERLINE OF 200 NORTH STREET; THENCE N89°38'56"W ALONG THE CENTERLINE OF 200 NORTH STREET 174.38 FEET TO THE INTERSECTION OF 200 NORTH STREET AND 100 WEST STREET; THENCE S00°18'23"W ALONG

THE CENTERLINE OF 100 WEST STREET 481.63 FEET TO THE POINT OF BEGINNING.

AREA: 886691 SQUARE FEET OR 20.356 ACRES.

See also Exhibit B, Amended Project Area Map.

GENERAL STATEMENT ON THE PROJECT AREA

Land Uses

The Freedom Plaza Community Development Project Area is three contiguous city blocks in downtown Provo, with a handful of parcels on the east and west sides of the three core blocks also included in the Project Area. The southernmost of the three blocks contains a Hyatt Place hotel, the Provo campus of Mountainland Technical college, and an office building and connected parking structure. The middle block is the former location of a large RC Willey furniture store, which has been demolished and removed; this block is now used primarily for surface parking. The northernmost block is occupied by a Smith's grocery store and accompanying parking. The additional parcels to the east are primarily residential development. The parcels to the west are a mix of uses, although these parcels have been considered likely candidates for possible future development.

The anticipated project area development activity in the Project Area will focus on middle block, with efforts to attract desirable commercial, residential, and/or mixed use development to what is now just surface parking.

Layout of Principal Streets

The Project Area is part of an early Provo City plat with streets laid out in a traditional grid system. Freedom Boulevard (200 West) is an arterial street, one of increasing importance as growing traffic spills over from other north-south arterials. The cross streets--100 North, 200 North, and 400 North are collector streets. Finally, 100 West is a local street designed primarily to provide access to adjoining parcels. These street classifications will not change with the proposed community development activity.

New development in the Project Area may include replacement of improvements (e.g., sidewalks, curb & gutter, etc.) in the right of way. However, streets will likely continue in the current grid pattern.

The only residential development in the Project Area is a townhome complex located on the east side of 100 West, between 200 North and 300 North. The Agency estimates that between 50 and 100 residents live in these townhomes. Existing population density, typically expressed in number of residents per acre, in the range of 3-5 persons per acre in this Project Area as a whole.

Development activity in this Project Area will likely include new office and residential

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development. The Agency anticipates that potential development in the Project Area could include approximately 170 apartment units and 240,000 square feet of new office space. This anticipated development will utilize the parking structure that has already been constructed.

Building Intensities

The southernmost of the three blocks contains a Hyatt Place hotel, the Provo campus of Mountainland Technical college, and an office building and connected parking structure. This block has been developed to a desirable level of density for the Provo downtown area and represents and efficient use of real property and a desirable concentration of taxable value. The northernmost block is occupied by a Smith's grocery store and accompanying parking. While the density on this block is arguably lower than desired for Provo's city center area, the Smith's grocery store is well established and is an important resource for Provo residents and visitors. Further development around this block may lead to enough demand—and corresponding increases in property values—that some sort of structured parking could be viable in the future, thus freeing up additional property to be used for vertical development rather than being dedicated to surface parking. The middle block is the former location of a large RC Willey furniture store, which has been demolished and removed; this block is now used primarily for surface parking. This block is ripe for redevelopment and the Agency expects that building densities on this block will increase dramatically with future development. The parcels in the Project Area to the west of 100 West include a high-quality townhome development and a parking area for a nearby church. The parcels included in the Project Area to the west of 200 West are a mix of low-density office and retail uses.

STANDARDS TO GUIDE THE COMMUNITY DEVELOPMENT

The standards and goals described below are intended to guide development within the Project Area; however, nothing in this Project Area plan should be interpreted to override Provo City's land use decisions and goals for the area.

1. General Character

The project will be situated in the central business district of a mid-size city, the county seat and traditional center of the Provo-Orem Metropolitan Area. In this context, the project appropriately will be characterized by mostly mid-rise construction. Primary uses will range from lodging to retail to office to residential.

2. Building Orientation and Facades

Buildings fronting on all four sides of blocks should be built close to the right of way line, i.e., generally no more than 10-12 feet back from the public sidewalk, except for a drive-up/plaza area at the main entrance to the hotel. Breaks in the building facade along all four streets should be kept to a minimum - essentially just those breaks needed to gain vehicle access to parking behind the buildings, and pedestrian access at some points. Building facades and parking structure facades along streets should integrate with historic downtown Provo buildings with regard to massing, window and door proportions and placement, and exterior materials.

3. Parking

Most parking for new development will be located in common parking garages. Small areas of surface parking, also hidden from the street, may be acceptable to serve residences. Where

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parking, or access to the parking, must occupy short sections of street frontage, special attention should be given to hiding it or improving its appearance through landscaping, thoughtful selection of building materials, and design solutions.

Where practical, the parking structure(s) and adjacent new buildings should be designed to provide for direct pedestrian access to above-and below-grade levels of the buildings.

4. Pedestrian Issues

In order to enhance the pedestrian experience and bring downtown workers and patrons to the street for a thriving street environment, street-level zones of building facades should be distinctive from upper levels in terms of materials, scaling, and architectural detailing. In addition, site design should give careful attention to layout of space around buildings - not just in front along the streets, but also between and behind the buildings -- as well as to landscape and hardscape elements including paving, trees, shrubs, and other plant materials, landscape containers, topsoil, soil preparation, automatic irrigation,
street furniture, and landscape and pedestrian lighting.

5. Sustainability

All new development in the Project should be sustainable in the sense that it makes efficient use of resources - whether these resources be scarce downtown land, water, energy, infrastructure investment, building materials, or other resources - so that the useful life of the development and the resources assembled to undertake and operate it may continue long into the future.

STATUTORY PURPOSES OF TITLE 17C - LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES – COMMUNITY REINVESTMENT AGENCY ACT

Title 17C of the Utah Code contains no explicit statement of purpose, although it contains the following definition of "project area development" in § 17C-1-102 (48):

"Project area development" means activity within a project area that, as determined by the board, encourages, promotes, or provides development or redevelopment for the purpose of implementing a project area plan, including:

(a) promoting, creating, or retaining public or private jobs within the state or a community;
(b) providing office, manufacturing, warehousing, distribution, parking, or other facilities or improvements;
(c) planning, designing, demolishing, clearing, constructing, rehabilitating, or remediating environmental issues;
(d) providing residential, commercial, industrial, public, or other structures or spaces, including recreational and other facilities incidental or appurtenant to the structures or spaces;
(e) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating existing structures;
(f) providing open space, including streets or other public grounds or space around buildings;

(g) providing public or private buildings, infrastructure, structures, or improvements;
(h) relocating a business;
(i) improving public or private recreation areas or other public grounds;
(j) eliminating a development impediment or the causes of a development impediment;
(k) redevelopment as defined under the law in effect before May 1, 2006; or
(l) any activity described in this Subsection (48) outside of a project area that the board determines to be a benefit to the project area.

By enabling localities to establish community reinvestment agencies and community development project areas, Title 17C grants localities one of their chief tools for fostering quality community development. The Freedom Plaza Community Development Project furthers the attainment of the purposes of Title 17C by addressing four main objectives:

- To enhance employment & income opportunities for community residents
- To improve access to goods and services for residents
- To increase and diversify the tax base, thus increasing the resources available for performing governmental services while minimizing tax rates
- To provide for a wide range of housing opportunities, and to cultivate the market for downtown goods and services by adding residents and desirable development in close proximity to downtown.

1. <u>Enhanced Employment</u>

By bringing about the construction of new buildings and other improvements in downtown Provo, in the short term the project creates construction employment opportunities in the Provo labor market which would not be there otherwise. More importantly, by adding office, lodging, and other business facilities in the downtown, and by fostering commercial opportunities on neighboring blocks through improved parking, the project creates venues for the conduct of business, particularly employee-intensive types of businesses, which otherwise would be lacking in downtown Provo. To the extent that these businesses, and the jobs they bring, could just as well locate elsewhere if the physical facilities are unavailable in Provo, the community development project directly contributes to the viability of downtown Provo as a robust job market. Furthermore, the entire Utah Valley market is enhanced by preserving and growing its traditional center for those employers who seek a city center location.

In a memorandum to Provo City dated November 30, 2006, Economics Research Associates (ERA), a nationally-recognized consultant in the area of community development, states:

As part of the (Provo) City's economic development function, the downtown needs to be actively marketed as a logical location for office development, both for larger corporations who may occupy whole buildings and smaller users in multi-tenant buildings...

Downtown is also a logical location for a wide variety of office based professional services, such as lawyers (serving both court functions as well as private individual needs), tax accountants, architects, dentists, chiropractors, physical therapists, and other medical practitioners...

(In connection with the development of a new downtown conference center), consider legislation

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to encourage, or force, the next few hotel developments to also locate downtown in proximity to the new shared meeting facility.

Regardless of whether Provo takes steps to coerce new hotels to locate downtown, the point is made that the conference center introduces new opportunities for hotel development and attendant new jobs downtown.

The project will help the downtown to fulfill its important role as an employment center.

2. Access to Goods and Services

One of the advantages of living in a community is convenient access to a wide range of goods and services. The Provo central business district is no longer the retail center of the Utah Valley region, but it can continue to be an important shopping destination for people living in the surrounding neighborhoods, particularly for specialized classes of goods and for a range of services. It has been estimated that as of 2006, 32,000 people live within a one-mile radius of Center St. and University Ave. This is a considerably higher concentration of people than live in the centers of such communities as Albuquerque, NM, Palo Alto, CA, Boulder, CO, and Ogden, UT (Economics Research Associates, *Downtown Real Estate Market Analysis* for the City of Provo, November 30, 2006, pp. II- 17, 18). The project area presents some new opportunities for purchasing goods in ground floor retail business and greatly expanded opportunities to acquire office-based services.

3. Improved Tax Base

Cities, school districts, counties, and other units of government are expected to provide services to their residents and visitors, but they are constrained in what they can do by the availability of revenues. Tax revenues, the product of a tax rate and the base on which a tax is levied, are key sources of local government revenue. Tax revenues grow by either increasing the tax base or increasing the tax rate. Taxpayers uniformly prefer to see the base increase.

The specific development project currently proposed for the Project Area increases the property tax base in the Project Area many times over. For the small area of Provo in question, this is a tremendous enhancement of the status quo tax base. This is particularly good news for Provo City and Provo City Schools, both of which would likely lose this tax base growth to other locations if the Project Area did not exist.

4. Housing Opportunities

Increased supply and variety of housing opportunities is a crucial component of a thriving downtown. New residents help to make downtown an active place at all hours of the day and all days of the week. More particularly, they help to solidify the demand for goods and services in the downtown area, which Provo seeks to enhance. Specific to downtown Provo, the November 30, 2006, ERA memo states:

ERA's market research suggests there is a market for relatively affluent rental apartments in Provo, and the downtown should be a good place to develop one or more such projects...

ERA's research also indicates there is an active market for new condominiums in Provo, and again the downtown should be a good location for some of these.

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CONSISTENCY AND CONFORMITY TO THE CITY'S GENERAL PLAN

The Project Area Plan is consistent with and conforms to - and in fact, is designed to help carry out - the Provo City General Plan. Below are some of the key provisions of the General Plan, 2004 Comprehensive Update, which this Project Area Plan carries out.

Excerpts from Chapter 11 - Rehabilitation, Redevelopment, and Conservation

In the Central Business District, redevelopment is used to strengthen downtown economic conditions while preserving the historic qualities of central Provo. The specific goals for the Central Business District development project area are to:

1. Maintain and enhance the Central Business District as the business and financial center;
2. Maintain the Central Business District as a government center by encouraging the centralization of city, county, state, federal, and judicial activities in the Central Business District;
3. Encourage the continued viability of retail and service businesses, including specialty types of retail that may be unique to downtown;
4. ***Encourage the promotion and development of the conference center and facilities in downtown Provo in an effort to attract conferences and serve the traveling public*** (italics added); and
5. Maintain and enhance the dining, entertainment and cultural opportunities of the Central Business District.

Additional parking opportunities need to be developed in the Central Business District, in part to serve the parking needs of existing buildings, but also to meet the requirements of future, often higher-density downtown buildings.

With downtown Provo continuing to evolve as the preeminent business, financial, and government center of Utah County, the need for office space will also grow. Adaptive reuse of existing buildings will help to meet the demand, but construction of additional new office space will also be central to the downtown redevelopment strategy. New "Class A" downtown office space is particularly lacking and deserves attention.

The Redevelopment Agency's role in recent years has tended toward providing downtown parking structures to serve office and other development, and this is expected to continue (italics added).

The retail, service, and restaurant sectors will also continue to be a key part of the downtown character, particularly as they cater to people living, working, and seeking educational, cultural, and entertainment opportunities in and near downtown. In large measure, this will occur as a natural outgrowth of drawing people downtown for these other activities.

Excerpts from Chapter 12 -- Economic Development

<u>Current Economic Development Policies</u>

- ***Business retention and expansion:*** Keep existing businesses in Provo and help them

expand their operations facilities, and markets.

- ***Attract new retail business to Provo:*** Provide a broad range of goods and services within Provo to keep tax dollars local.
- ***Encourage Downtown development:*** Focus on new development that increases the number of people that work and live downtown, with related services.

Excerpts from Chapter 13 -- Implementation

13.11.9 Maintain and enhance the position of the Central Business District (CBD) as the business, retail, government, entertainment, and conference center for the City. Do so through promotion and marketing, economic restructuring, management and organizational strength, provision of adequate parking, and continuing efforts to enhance the appearance of the core area.

13.11.10 Promote efficient utilization of building space by encouraging a mix of uses in the Central Business District (CBD), including retail, office, service, and high density residential occupancies.

SPECIFIC PROJECT THAT IS THE OBJECT OF THE PROPOSED COMMUNITY DEVELOPMENT

The proposed development in the Project Area includes a new midrise hotel, a midrise office building, single-story retail, and midrise multifamily housing. A new parking structure to serve the new development is also anticipated. There will also be surface parking between some of the buildings. At the time of the boundary amendment, the development anticipated for the southernmost block in the Project Area has already been completed, with a new hotel, office building, and parking structure already constructed and in use. The middle block of the Project Area is ripe for development, which will likely include office and residential space.

PRIVATE DEVELOPERS CURRENTLY INVOLVED IN THE COMMUNITY DEVELOPMENT PROCESS; SELECTION OF OTHER PRIVATE DEVELOPERS

The project described in the preceding section has been proposed by PEG Development, a local development company based in Utah. PEG completed the development on the southern block of the Project Area and the Agency has confidence that PEG has the resources and experience to complete the proposed development.

The Redevelopment Agency owns some of the real property in the Project Area. Some or all of this property may eventually be sold to private developers to allow for the proposed development in the Project Area.

REASONS FOR SELECTION OF THE PROJECT AREA

This community development is being initiated at this time in response to a development proposal from developers who have gained control of property in the Project Area. Other contributing

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reasons for selecting this Project Area and for setting the Project Area boundaries as they are currently configured include the following:

- In preliminary conversations between representatives of the Redevelopment Agency and of some of the entities that levy property taxes in the Project Area, the taxing entities have indicated that they consider it in their interest and the interest of their constituents to foster community development activity in the Project Area. They recognize that the Project Area is failing to achieve its potential in many respects, and they find that the development proposal before them will further their objectives and the purposes of Title 17C as described previously in this Plan.

- The chief underlying reason for establishing this Project Area is to utilize tax increment financing in the construction of a new parking structure. This parking structure will serve development in the Project Area and will also provide parking for nearby the Utah Valley Convention Center.

- Interest on the part of taxing entities in participating with tax increment financing is very project-oriented. Consequently, a Project Area with no immediate community development proposals at some locations would not be supported by taxing entities.

EXISTING PHYSICAL, SOCIAL, AND ECONOMIC CONDITIONS

The Project Area is one block north of Center Street and one block west of University Avenue, two of Provo's most important streets. Over many years it has been home to several of Downtown Provo's anchor businesses.

Physical Conditions

The Project Area includes three city blocks. The southernmost block has been developed into a hotel, an office building, and an adjacent parking structure. The middle block is vacant after the demolition of the RC Willey furniture store. The northernmost block is home to an existing Smith's grocery store. The immediate development in the Project Area will be concentrated on the middle block.

Social Conditions

As with the physical conditions, the social conditions in the Project Area are very different among the three blocks. The southern block is a hub of economic activity with a nice hotel and a new office building. Visitors to the area are able to utilize the parking garage, which is a benefit to all of the downtown area. The Smith's at the north end of the Project Area is an established local grocery store and is an important resource for residents in the area. The middle block is currently used only for surface parking.

Economic Conditions

Economic conditions in the middle block of the Project Area can perhaps best be summed up as under- achieving. A block at the heart of the downtown of a city of over 115,000 people and a county of over 475,000 should be much more intensively developed than this block is.

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PROPOSED TAX INCENTIVES TO PRIVATE ENTITIES

The Redevelopment Agency has approved a large cash contribution to the Project, generally to offset the cost of 200 stalls allocated in the parking structure for convention center patrons. In addition, the developer of the hotel, office building, housing, and other improvements planned on the site has provided information indicating that his development will cost significantly more to undertake at this downtown location than at a suburban greenfield site elsewhere in Utah County. This is due primarily to the cost of developing nearly 400 stalls of structured parking to serve the rest of the block (in addition to the convention center's 200 stalls). The estimated disparity is approximately $4,000,000.

ANTICIPATED PUBLIC BENEFIT

Beneficial Influences Upon Community Tax Base

In 2009, the property in the Project Area generated approximately $28,000 in property tax revenue, divided among the four taxing entities. It is estimated that the proposed new hotel and retail space would increase this to $202,000. Adding the property tax revenues from the proposed office and residential, estimated annual revenues would climb to $313,000- an eleven-fold increase from present revenues.

Retail is anticipated to be a relatively small portion of the Project- about 8,400 square feet. However, even this compares favorably with no retail actively operating in the Project Area now.

In addition, the hotel and attendant associated dining facilities in the proposed Project will generate new transient room tax and restaurant tax. These two taxes are expected to be the principal sources of revenue from which the bonds for the neighboring convention center will be repaid. Consequently, the new hotel and dining will contribute in a direct way to the feasibility of convention center.

Associated Business and Economic Activity Likely to Be Stimulated

Part of Provo's strategy in trying to create new downtown office, retail, lodging, and conference center space is to bring additional workers downtown during the day. These workers, in turn, will add to the demand for downtown dining and other retail and services. More downtown jobs will also help to make downtown a more attractive place for some people to live, thereby increasing the demand for new downtown housing. As success in all these downtown real estate sectors grows, demand for downtown development will spiral upward.

Additional lodging rooms concentrated downtown will strengthen the downtown market for purchases which visitors tend to make prepared food comes to mind first, but entertainment of various forms will also benefit, as will certain other kinds of shopping and services.

The proposed Project would include approximately 170 multifamily dwellings. These would be a significant boost to the downtown area in terms of demand for a full range of goods and services. Among the most important of these for the downtown economy will be purchases that people tend

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to make frequently and close to home, such as groceries and personal care services. However, having more people living in close proximity to the central business district will also reinforce the downtown as a center where people go to buy things they purchase somewhat less frequently and travel farther to buy -- clothing to housewares, for example.

One of Provo's objectives in downtown development is to see downtown property lease rates increase - not to price people out of the market, but to *make it possible to invest in new construction and restoration of historic buildings, with the expectation of recovering one's investment without tax increment and other incentives.* That will be perhaps the best measure that downtown Provo's revitalization has succeeded. Projects such as the Freedom Plaza Community Development Project are intended to catalyze this upward spiral of the downtown market.

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EXHIBIT A PROJECT AREA MAP (Original Boundaries)

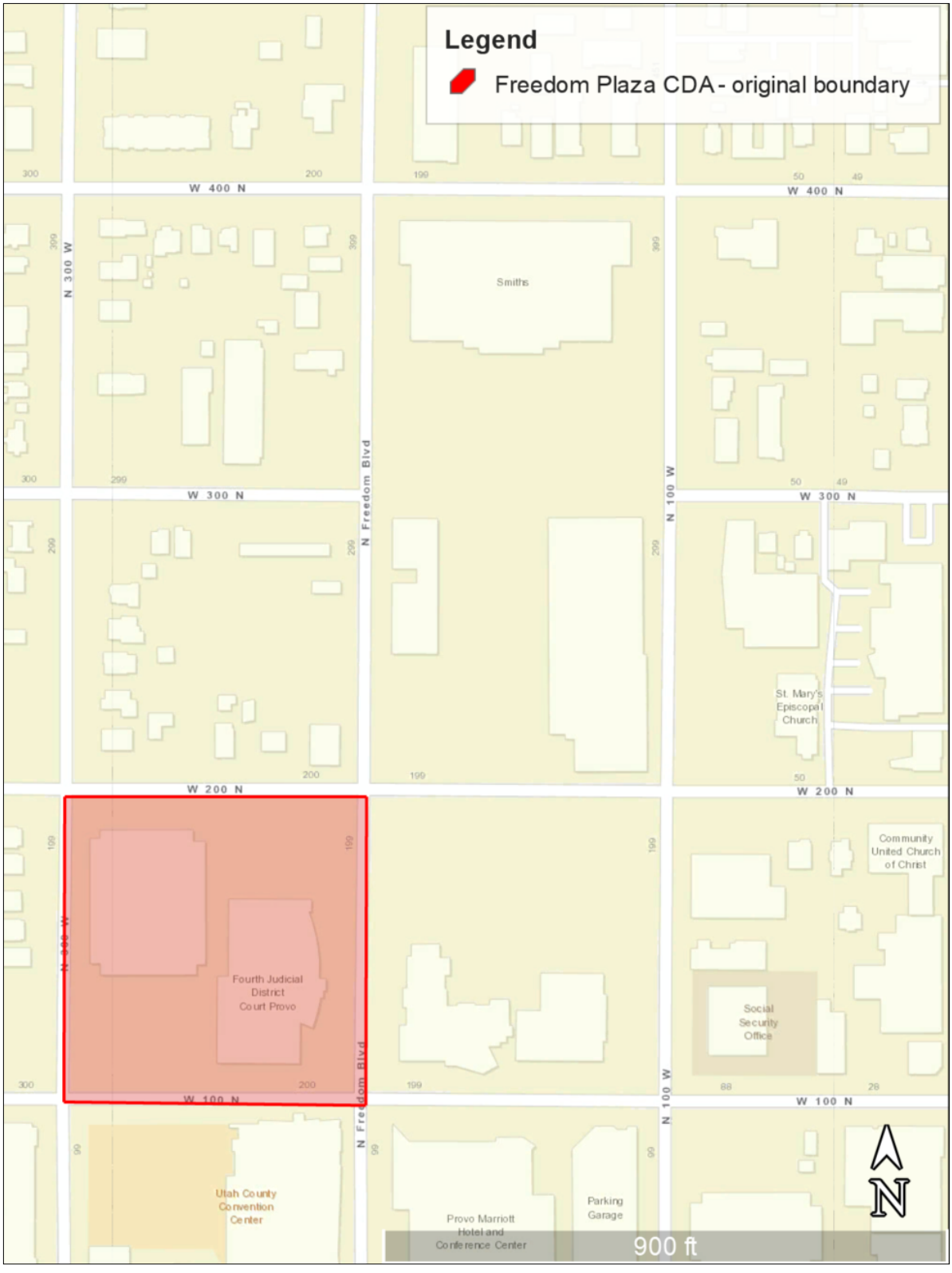
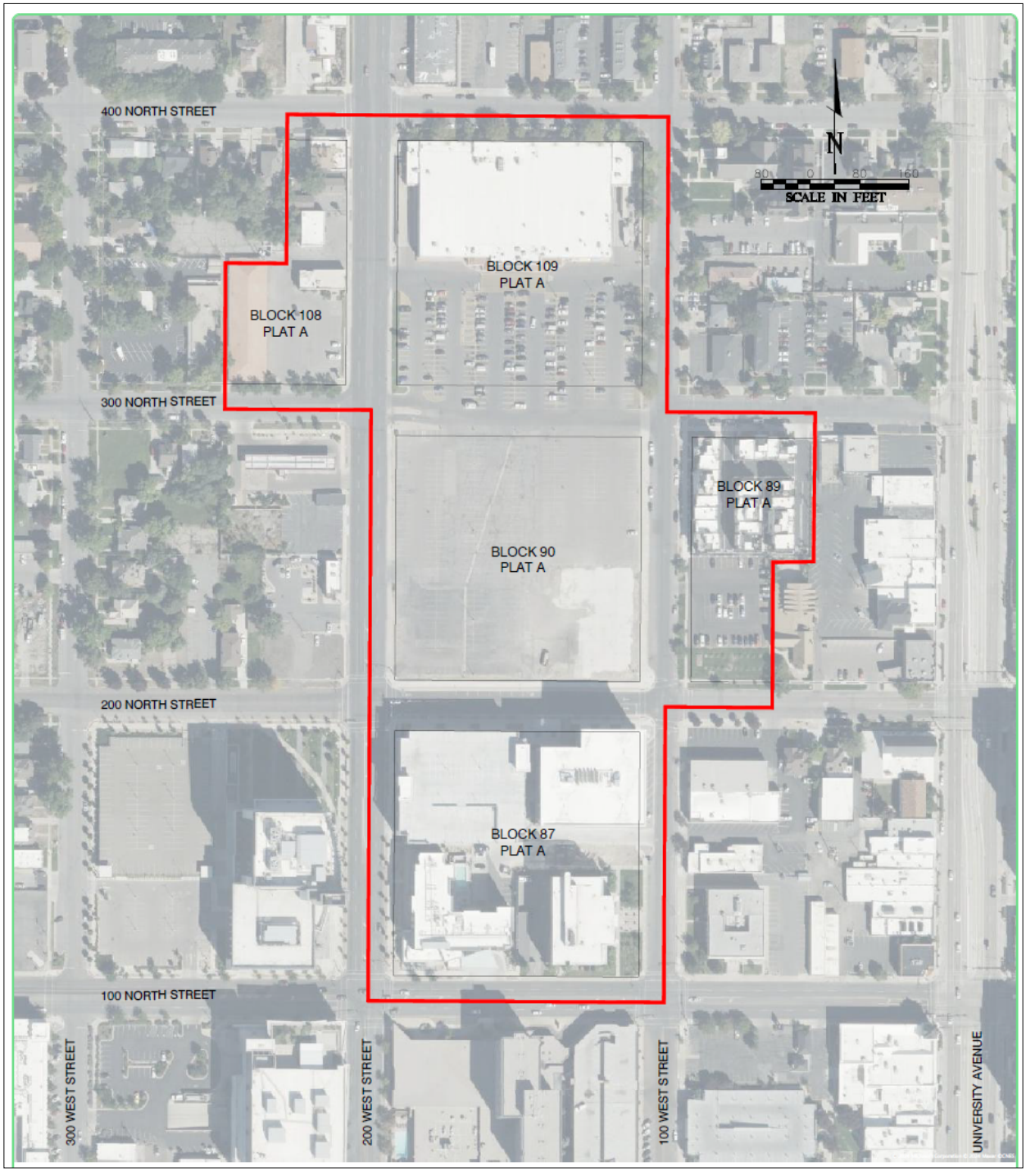
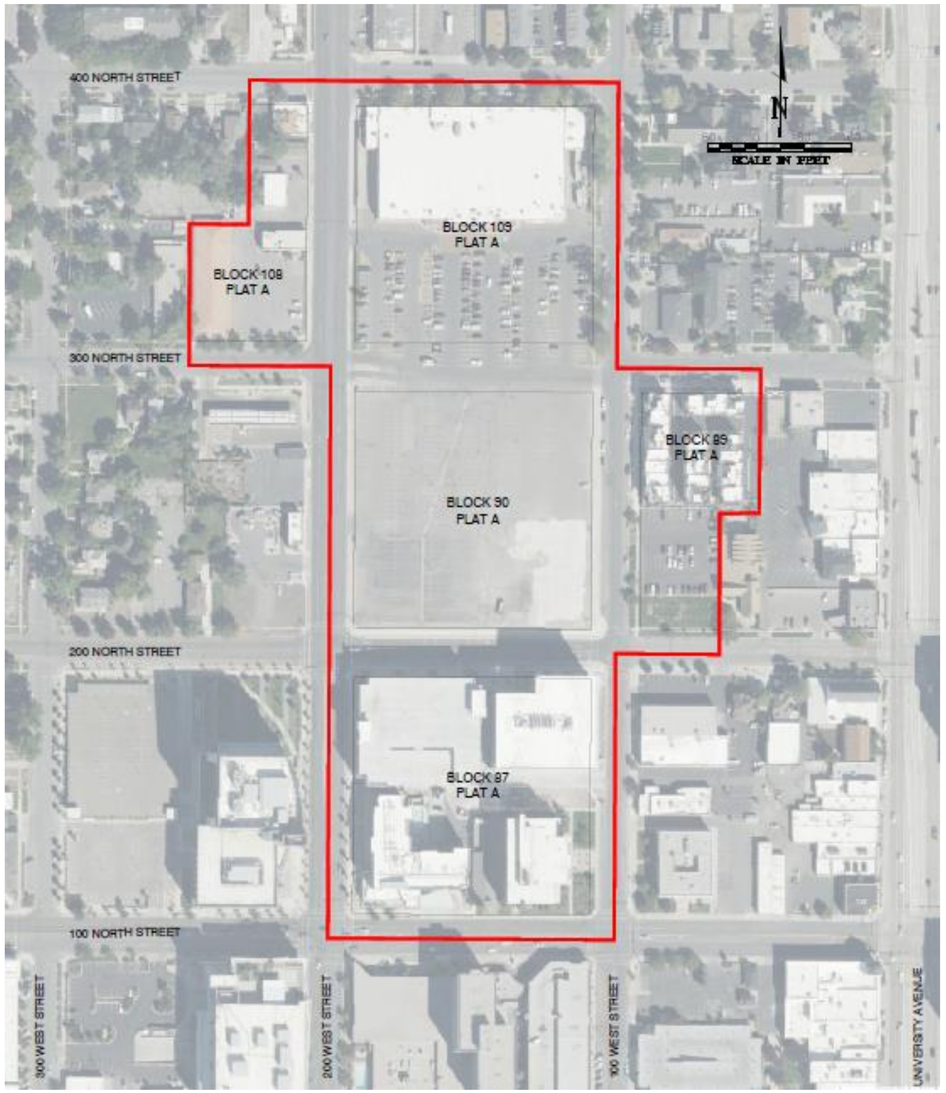


EXHIBIT B PROJECT AREA MAP (Amended Boundaries)




400 N
300 N
200 N
100 N
300 W
FREEDOM BLVD
100 W
UNIVERSITY AVE


400 NORTH STREET
300 NORTH STREET
200 NORTH STREET
100 NORTH STREET
BLOCK 108
PLAT A
BLOCK 109
PLAT A
BLOCK 90
PLAT A
BLOCK 89
PLAT A
BLOCK 97
PLAT A
300 WEST STREET
200 WEST STREET
100 WEST STREET
UNIVERSITY AVENUE
N
SCALE IN FEET

RESOLUTION NO. 2024-RDA-_____

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF PROVO CITY APPROVING AND ADOPTING THE AMENDED PROJECT AREA PLAN FOR THE FREEDOM PLAZA COMMUNITY DEVELOPMENT PROJECT AREA. (24-078)

RECITALS:

Pursuant to the provisions of the Utah Limited Purpose Local Government Entities - Community Reinvestment Agency Act (the "Act"), specifically Utah Code Annotated ("UCA") § 17C-4, the Redevelopment Agency of Provo City (the "Agency") previously adopted a community development project area plan (the "Original Plan") for the Freedom Plaza Community Development Project Area (the "Project Area") by Resolution 7-1-1-10 on July 6, 2010;

The Agency has determined that it is in the best interests of the Agency and Provo City and its residents to now amend and expand the area included within the Project Area;

The Agency has prepared an amendment to the Original Plan reflecting increased proposed development within the new boundaries of the Project Area;

The draft Amended Project Area Plan (the "Amended Plan"), having been prepared for the Project Area pursuant to UCA §§ 17C-4-103 and -106, the Agency held, on September 17, 2024, a duly noticed public hearing pursuant to UCA § 17C-4-102 to allow public comment on the Amended Plan and whether it should be revised, approved, or rejected; and to receive all written and hear all oral objections to the Amended Plan;

Having received and heard all commentary on and objections, orally and in writing, to the Amended Plan submitted for its consideration, the Agency has passed upon such objections as it has received and has made such modifications, amendments, and/or emendations to the Amended Plan as it deems appropriate, if any; and

The Agency has made relevant findings concerning the amount of opposition to the Amended Plan by owners of real property within the Project Area.

THEREFORE, the governing board of the Redevelopment Agency of Provo City resolves as follows:

PART I:

1. Legal Description.

The boundaries of the Project Area are described in the Amended Plan, attached hereto as Exhibit A.

2. The Agency's Purposes and Intent with Respect to the Project Area.

The purposes and intent of the Agency with respect to the Project Area are as follows:

2.1. to satisfy the purposes of the Act, as defined therein, by promoting, creating, and/or retaining jobs through the planning, design, development, construction, rehabilitation, or business relocation within the Project Area, as well as the provision of office, industrial, manufacturing, warehousing, distribution, parking, public, housing, or other facilities, or other improvements that benefit the state or a community;

2.2. to increase the City's tax base as well as its supply of residential and/or commercial space so as to improve both opportunity and quality of life for all of its citizens;

2.3. to promote, encourage, and bring to fruition, the development within the Project Area of development projects that are desirable to the City;

2.4. to stimulate the economy within the Project Area and in the surrounding area;

2.5. to provide for the installation of needed infrastructure, if and as necessary, for development within the Project Area; and

2.6. to take any or all additional steps which may be appropriate or necessary to promote or further the aim of improving the Project Area (and, indirectly, of surrounding areas).

3. Designation, Adoption, and Incorporation of the Plan.

The Amended Plan for the Freedom Plaza Community Development Project Area (attached as Exhibit A) is hereby designated the *Official Plan for The Freedom Plaza Community Development Project Area* (the "Official Plan") and is incorporated herein by this reference.

The Agency officially approves and adopts the Official Plan for the Freedom Plaza Community Development Project Area.

4. Required Findings.

4.1. A need exists to effectuate a public purpose; to wit, the exercise of the statutorily enacted community development mechanism for the benefit of the citizens of the City of Provo.

4.2. Benefit to the public will accrue from the execution of the Official Plan, as each project undertaken thereunder will be subject to the analysis described in Utah Code § 17C-4-103(11).

4.3. The adoption and carrying out of the Official Plan is economically sound and feasible.

4.4. The Official Plan conforms to the City's General Plan.

4.5. Carrying out the Official Plan will promote the public peace, health, safety, and welfare of the City of Provo and its residents.

5. Submission of the Official Plan to the Provo City Council for Adoption by Ordinance.

5.1. Pursuant to Utah Code §§ 17C-4-102 & -105, the Agency Board submits the Official Plan to the Provo City Council for review and adoption.

6. Recording and Transmittal.

6.1. Pursuant to Utah Code § 17C-4-107, Agency Staff are directed and authorized to take the following actions within 30 days after adoption of the Official Plan by the City Council:

a. to record with the Utah County Recorder a document containing a description of the land within the Project Area, a statement that the Official Plan for the Project Area has been adopted, and the date of its adoption by the City Council; and

b. to transmit a copy of the description of the land within the Project Area, a copy of the City Council ordinance adopting the Official Plan, and a map indicating the boundaries of the Project Area to each of entity described in Utah Code § 17C-4-107.

7. Execution of the Plan.

7.1. Following adoption of the Official Plan by the City Council, the Agency will proceed to carry out the Plan.

8. Directions to Agency Staff.

8.1. The Agency staff are directed and authorized to take all such actions as necessary to effectuate the purposes and aims of this resolution.

PART II:

This Resolution takes effect immediately.

END OF RESOLUTION.

EXHIBIT A

Freedom Plaza Community Development Project Area Plan

PROVO MUNICIPAL COUNCIL
STAFF REPORT

Submitter: Keith Morey
Department: Redevelopment Agency
Requested Meeting Date: September 17, 2024

SUBJECT: A resolution approving the appropriation of $214,600 in the tax increment affordable housing set aside fund received from redevelopment projects last fiscal year.

RECOMMENDATION: Approve the resolution.

BACKGROUND: It is proposed that $214,600 be appropriated in the Tax Increment Fund to help pay for affordable housing projects.

The funding source is a $214,600 payment a developer paid in-lieu-of building affordable housing units as outlined in a development agreement.

FISCAL IMPACT: $214,600

PRESENTER'S NAME: Keith Morey, Economic & Redevelopment Director - Development Services

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Support economic retail growth of locally owned and operated businesses, especially grocery stores.

CITYVIEW OR ISSUE FILE NUMBER:

RESOLUTION 2024-

A RESOLUTION APPROVING THE APPROPRIATION OF $214,600 IN THE TAX INCREMENT FUND FOR AFFORDABLE HOUSING PROJECTS. (24-046)

RECITALS:

It is proposed that $214,600 be appropriated in the Tax Increment fund to help pay for affordable housing projects; and

The funding source is a $214,600 payment a developer paid in-lieu-of building affordable housing units as outlined in a development agreement;

On, the Redevelopment Agency board met to consider the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the board's consideration; and

After considering the facts presented to the Redevelopment Agency board, the board finds that (i) the appropriation should be approved, and (ii) such action furthers the health, safety, and general welfare of the citizens of Provo City.

THEREFORE, the Redevelopment Agency of Provo City, Utah resolves as follows:

PART I:

The board is authorized to appropriate $214,600 in the Tax Increment fund pay for affordable housing projects.

PART II:

This resolution takes effect immediately.

PROVO MUNICIPAL COUNCIL
STAFF REPORT

Submitter: Keith Morey
Department: Redevelopment Agency
Requested Meeting Date: September 17, 2024

SUBJECT: A resolution of the Redevelopment Agency of Provo City designating a Survey Area for the proposed City Center Community Reinvestment Project Area.

RECOMMENDATION: Approve the resolution.

BACKGROUND: The Redevelopment Agency of Provo City seeks to designate a survey area and authorize related actions for the proposed City Center Community Reinvestment Project Area for the two city blocks from 300 West to 500 W and from Center Street to 100 South.

FISCAL IMPACT:

PRESENTER'S NAME: Keith Morey, Economic & Redevelopment Director - Development Services

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:
Support economic retail growth of locally owned and operated businesses, especially grocery stores.

CITYVIEW OR ISSUE FILE NUMBER:

RESOLUTION 2024-RDA-_____

A RESOLUTION OF THE PROVO CITY REDEVELOPMENT AGENCY DESIGNATING A SURVEY AREA FOR THE PROPOSED CITY CENTER COMMUNITY REINVESTMENT PROJECT AREA

Pursuant to the provisions of the Utah Limited Purpose Local Government Entities - Community Reinvestment Agency Act (the "Act"), specifically Utah Code Annotated ("UCA") § 17C-5, the Redevelopment Agency of Provo City (the "Agency") was created and continues to operate under the Act; and

The Agency is authorized to engage in project area development activities under the Act; and

The Agency, has conducted preliminary investigations, initial studies, and inquiries, now seeks to undertake project area development activities in all or a portion of the area depicted in Exhibit A (the "Survey Area"). The Agency anticipates that these efforts may result in the creation of a community reinvestment project area (the "Proposed Project Area"); and

On _____ , the Provo City Redevelopment Agency board met to consider the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Agency's consideration; and

After considering the facts presented to the Provo City Redevelopment Agency, the board finds that (i) the proposed project area be designed as a Survey Area as described herein, and (ii) such action furthers the health, safety, and general welfare of the citizens of Provo City.

THEREFORE, the governing board of the Redevelopment Agency of Provo City, resolves as follows:

PART I:

1. The geographic area as shown in Exhibit A is designated as a Survey Area.

2. The Survey Area requires study to determine whether project area development is feasible and desirable within some or all of the Survey Area, and whether the creation of the proposed City Center Community Reinvestment Project Area is advisable within the Survey Area.

PART II:

This Resolution shall take effect immediately.

EXHIBIT A

Survey Area Map

