PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Agenda

5:30 PM, Tuesday, November 01, 2016
Room 200, Municipal Council Chambers
351 West Center

Decorum

The Council requests that citizens help maintain the decorum of the meeting by turning off electronic devices, being respectful to the Council and others, and refraining from applauding during the proceedings of the meeting.

Opening Ceremony

Roll Call

Invocation and Pledge

Approval of Minutes

- October 4, 2016 Council Meeting Mintues

Public Comment

Fifteen minutes have been set aside for any person to express ideas, concerns, comments, or issues that are not on the agenda:

Please state your name and city of residence into the microphone.
Please limit your comments to two minutes.
State Law prohibits the Council from acting on items that do not appear on the agenda.

Mayor's Items and Reports

1. An ordinance amending Provo City Code and the Consolidated Fee Schedule with regard to license administration and fees charged for Business Licensing. (16-114)

2. An ordinance granting First Digital a non-exclusive franchise in order for it to operate a telecommunications network in Provo City, Utah. (16-117)

Policy Items Referred from the Planning Commission

3. An ordinance amending the Zone Map Classification of approximately 0.31 acres of real property, generally located at 245 North 500 West, from Residential Conservation (RC) to General Downtown (DT-1). Dixon Neighborhood. (16-0010R)

4. An ordinance amending Provo City Code to alter the number of Planning Commission members, their terms of office, and other details relating to Planning Commission rules. City-Wide Impact. (16-0019OA)

If you have a comment regarding items on the agenda, please email or write to Council Members. Their contact information is listed on the Provo website at: http://provo.org/government/city-council/meet-the-council

Adjournment

Materials and Agenda: http://publicdocuments.provo.org/sirepub/meet.aspx
Council Blog: http://provocitycouncil.blogspot.com/

The next scheduled Regular Council Meeting will be held on 11/15/2016 at 5:30 PM in the Council Chambers, 351 West Center Street, Provo, unless otherwise noticed. The Work Session meeting start times is to be determined and will be noticed at least 24 hours prior to the meeting time, but typically begins between 1:00 and 4:00pm.

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

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aides and services) during this meeting are invited to notify the Provo Council Office at 351 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email ljorgensen@provo.utah.gov at least three working days prior to the meeting. The meeting room in Provo City Center is fully accessible via the south parking garage access to the elevator. The Council Meeting is also broadcast live Provo Channel 17 at https://www.youtube.com/user/ProvoChannel17. For access to past Work and Council Meetings, go to playlists on https://www.youtube.com/user/ProvoChannel17.

Notice of Compliance with Public Noticing Regulations

This meeting was noticed in compliance with Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at council.provo.gov. Council Meeting agendas are available through the Utah Public Meeting Notice website at pmn.utah.gov. Email subscriptions to the Utah Public Meeting Notice are available through their website.

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.

Network for public access is "Provo Guest", password "provoguest".

PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, October 04, 2016
Room 200, Municipal Council Chambers
351 West Center

Opening Ceremony

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Council Member Kim Santiago
Council Member Vernon K. Van Buren
Council Member David Harding
Council Member George Stewart
Council Attorney Brian Jones
Council Executive Director Clifford Strachan
Council Member Gary Winterton
Council Member David Sewell
Council Member David Knecht
Mayor John R. Curtis
CAO Wayne Parker

Conducting: Council Chair Kim Santiago

Opening Ceremony

Roll Call

Invocation – Chuck Hugo

The Pledge of Allegiance – Provided by Scout Troop 1845

Neighborhood Spotlight- Presented by Michael Merz, South Franklin Chair

Mr. Merz reported that the South Franklin Neighborhood was in transition with a lot of construction. Since much of the housing in the area was rentals they did not have a lot of permanent residents. He had been a resident for five years and had seen a lot of improvement during that time. Mr. Merz gave a presentation showing pictures of the neighborhood and some of the improvements and construction taking place in the area. The Boulders Apartments were being completely renovated during the next year to provide upgrades to the kitchens and living areas. The South Franklin Community Center was opened two years ago and it had become a focal point for area residents. A new city park would be completed within the next few months. Mr. Merz said the South Franklin Neighborhood was a super area with a lot of growth and positive things happening.

Approval of Minutes – September 20, 2016

Motion: Council Member Gary Winterton moved to approve the minutes of September 20, 2016. The motion was seconded by Council Member David Harding.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Public Comment

Margaret Vanleuven and Charles Cox both wanted to comment on the solar power issue. They were advised that public comment would be allowed during the council discussion on that item.

There were no public comments made at this time.

Mayor's Items and Reports

1. Resolution 2016-44 consenting to the Mayor's appointment of James Miguel as the Chief of the Fire Department for the City of Provo. (16-107)

Wayne Parker, Provo City CAO, presented. Mr. Parker announced that James Miguel had been appointed to serve as the new Fire Chief. Mr. Miguel had been involved in the fire service for more than 30 years. He had been the fire chief in Modesto, California and the Livermore and Pleasanton, California Joint Fire Department. The administration went through a very rigorous process with excellent candidates applying. Chief Miguel rose to the top very quickly. He asked that the council approve the resolution consenting to the appointment.

Chief Miguel was invited to comment. He said he was honored to be invited to serve as Provo City Fire Chief. His wife Susan was born and raised in Utah County so they had deep roots here. He said that Provo City was one of the best run and most patriotic cities he had ever seen. The fire departments reputation preceded it and provided a wonderful service. He thanked members of the fire department for being there to support him and he looked forward to supporting the men and women of the fire department.

Motion: Council Member George Stewart moved to approve **Resolution 2016-44** consenting to the Mayor's appointment of James Miguel as the Chief of the Fire Department for the City of Provo. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Council Items and Reports

2. Ordinance 2016-26 enacting Provo City Code Chapter 6.11 (Trampoline Gyms) to regulate the licensing of Trampoline Gyms in Provo. (16-105)

Chair Santiago presented this item. In March of 2016 she was contacted by Mr. Spencer Merrill, whose son had been injured in an accident at a trampoline gym. He and Dr. Craig Cook raised

concerns about the severity and number of injuries occurring at trampoline gyms. To deal with injury concerns she worked with trampoline gym owners at Lowe's Extreme Air Sports, Interim Fire Chief Augustus, Mr. Merrill, Dr, Cook, and Brian Jones (council attorney) to draft basic regulations for trampoline gyms in Provo. She found that most states did not have regulations for gyms and felt that basic regulations would be helpful to achieve a certain level of safety.

Chair Santiago said the process went very well, especially with participants coming from different viewpoints. The Utah County Health Department had already drafted some regulations but decided not to put them in place. Those regulations were used as the basis for the discussions.

Chair Santiago invited Dr. Cook, the Trauma Medical Director at Utah Valley Hospital, to comment. In 2011 they started seeing some unusual injuries coming from the community, more like military type injuries or from high speed motor vehicle crashes, but they were coming from trampoline parks. Over the next few years the numbers and severity of injuries increased, including a number of injuries to youth that were debilitating and life altering. They began to educate the public with regards to this issue.

Dr. Cook stated they saw a peak of those injuries in the 2013 to 2014 time frame. After that there was a little decrease. While they took the matter to the Utah County Health Department and had some good discussion, it ultimately ended up with the city trying to make a difference in this issue. The proposed ordinance was the beginning of a lot of discussions between many different individuals and entities. He applauded all the entities; especially Lowe's who had really been engaged in this discussion.

Dr. Cook stated he was not representing Intermountain Health Care; he was representing himself as a concerned resident of the community. The proposed ordinance addressed the major concerns he had and that the trauma service had. If this ordinance had been in place five or six years ago we could have avoided a lot of undue injury and morbidity. He would like to see this as a foundation for progress in the future in cities and states throughout the country.

Chair Santiago noted that Lowe's Extreme Sports had already put into place the regulations even though they had not been passed yet. She also thanked Spencer Merrill for getting the ball rolling. His son was injured in an accident and had been a driving force behind this legislation.

Mr. Winterton appreciated the collaboration between the businesses and community working together to help prevent injuries.

Mr. Sewell expressed appreciation to Chair Santiago for all the time and effort she put into this issue. Mr. Knecht agreed saying it was not on the council radar at the beginning of the year and she was able to bring it forward and make it happen.

Mr. Jones said there had only been one change to the document since it was posted to the public website. That change included a sentence that talked about trampoline gyms keeping an injury log and having the log available for inspection by city staff and potential customers. Earlier in work session, the council voted to take out the language allowing customers to view the injury log. It made its way into the document based on discussion but was not advocated by the council or committee. All parties agreed to take the language out.

Motion: Council Member David Sewell moved to approve **Ordinance 2016-26** as written and displayed before them. The motion was seconded by Council Member George Stewart.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Mayor's Items and Reports

3. Ordinance 2016-27 amending Energy Rates on the Provo City Consolidated Fee Schedule. (16-093)

Travis Ball, Provo City Energy Director, presented. Mr. Ball reported that the proposed energy rate was a recommendation from the Provo City Energy Board after reviewing the cost of service study completed by Mr. Dave Berg. The proposed increase would include a charge of $3 per kW of the capacity of solar installations. They recommended this rate because it would be easy to implement and it would cover the fixed distribution costs of the system. He noted that all other UMPA cities (Spanish Fork, Levan, Nephi, Manti, and Salem) would be implementing this new rate. Mr. Ball stated that net metering customers can avoid paying some of the fixed costs for the grid. If solar customers did not pay those costs other customers had to make up the difference. In order for solar to work the grid had to be in operation. Even with the proposed fee the city would still be subsidizing solar. Solar customers also receive federal and state tax credits.

Mr. Berg was invited to comment. He stated that the $3 per kW charge only addressed a portion of the subsidy relative to the fixed costs of the local distribution system. This did not address the subsidy that existed in the customer charge or in the wholesale power bill from UMPA. If the city went to a full demand and energy rate customer for solar customers it would eliminate the subsidy completely. The proposed rate would provide some incentive to use solar while addressing a portion of the subsidy. Mr. Berg was working with a number of other cities in Utah, such as Murray and Lehi, who were also considering a similar concept. He felt this was a fair and middle of the road charge to address the issues and recommended the council adopt the new rate.

In response to questions from council members, Mr. Berg explained that solar customers purchase very little energy from the utility but they still need to use the grid. Some utilities are calling this a grid access fee. Solar customers could over generate when the sun was shining so they export that energy to the grid and at night they used power from the grid. Mr. Berg said that Provo City had inverted rates in order to promote conservation. Customers using less energy pay a lower rate with the rate going up as they use more energy. This is an additional incentive for solar customers because the first energy they save is the most expensive.

Mr. Sewell stated that the net metering program, initiated in 2009, provided an incentive for roof top solar customers. Would this proposal dial back that incentive? Mr. Berg replied that when net metering was initiated the price of solar was many times higher so very few people could afford to install solar. Since that time the price for solar installations had come down dramatically. The argument that full retail was needed to provide the incentive started to

dissipate. Ultimately, solar needed to stand on its own with utilities because there were still a lot of tax subsidies that existed.

Mr. Stewart clarified that the city bought power back from solar customers at the retail rate. However, the city could purchase power at a much cheaper rate so that was where another subsidy existed.

Mr. Knecht stated that the city had extremely low base rates - $6.50 per month. The city had chosen to pay for the grid and the entire infrastructure out of the profit from the sales. When someone didn't purchase power they did not support the system. The proposed $3 solar rate would help pay for the grid that had to be there when solar customers needed it.

Chair Santiago asked Mr. Berg to explain why the city should not just increase the base rates for all users. Mr. Berg replied that it was a policy decision to keep the fixed cost as low as possible for low energy users that tend to be elderly or low income. Very few residential fixed customer charges were as high as the cost of service would be so the energy charges are higher in order to generate the revenue. If it were a true cost of service rate, the base rate would be higher and the energy rates would be lower.

In response to a question from a citizen, Mr. Bernell Stone, Mr. Berg explained that when Provo City purchased wholesale power from UMPA there were two components to the monthly bill. The first component was the energy charge associated with the total energy used during the month. The second component was the demand charge based on the city's maximum demand during the month. In most months this occurred after 5:00 p.m. and was driven by the residential use. Part of the struggle with solar was that after 5 p.m., even in the summer time, roof top solar was at a low percentage of its maximum capability (which was around 2 p.m.). With solar, there was a savings because they were not buying the energy, but the city still had to pay the demand piece.

Mr. Winterton stated that the $3 per kW charge did not have anything to do with the UMPA bill, it was only to help maintain the city's infrastructure (substations, primary lines, transformers, service drops, etc.).

Chair Santiago invited public comment.

Don Jarvis, chair of the Mayor's Sustainability Committee and also a solar owner, said there were fixed costs that Provo City had to cover. He noted that there was a $6 million transfer from Provo City Power to the general fund which reduced the taxes the citizens had to pay. This was a hidden tax that solar owners were not paying. The $3 per kW charge was not the worst way to cover that tax but it was fairer to those that had smaller systems. He felt the public needed to be more involved. He recommended educating the public and discussing this issue more thoroughly before making a decision. At minimum they should consider grandfathering, excusing the first two kW's of installed solar, and creating a road map of how to handle future solar installations.

Jonathon Hill, resident of west Provo, stated they were looking into purchasing solar. He just heard about his issue yesterday. He felt the city should look at the policy and not the fiscal analysis and continue the full subsidy of solar. He stated that this year was setting up to be the hottest year on record. Over the past summer Provo City only had ¼ inch of rain, algae blooms

in Utah Lake, and other environmental impacts. On the national level there was a lawsuit that said the federal government was negligent because they had not done more to address climate change. Last winter Utah ranked at the bottom for air quality. He quoted statistics that stated bad air quality reduced the life expectancy of residents. Solar power provided a benefit to the community by reducing the carbon footprint. He estimated that the benefit he would obtain by installing solar would be $10 over the next 12 years. It would be negative if the fee was approved.

Marcus Daley, Provo resident, commented. He stated he was the CTO for a Fortune 500 Company in New York City with 1600 employees and managed a budget much larger than Provo City's. He worried that the solar fee was not friendly to technology and it would not encourage him to open an office in Provo. He submitted and reviewed an alternative proposal to the council (attached to the permanent minutes). He emphasized that this was a future vision for how to implement solar power in Provo. He proposed establishing an average customer use and, if the solar customer dropped below use, they incur the access charge. He also addressed the load factor in the cost of service study. It required smart metering and was technology friendly. The smart meter would identify which solar customers were contributing to the peak and impose a tariff for that impact.

Justin Miller, PhD student at BYU, recently purchased solar for his home. They looked at purchasing batteries and disconnecting from the grid but it was not cost effective. If the council approved the ordinance it would be more cost effective to purchase the battery and go completely off the grid. If they went off the grid they would not be contributing energy through net metering and would not be paying the $12 fees for the infrastructure. The city would still need to maintain the system so they would have to find another way to pay for it.

Fred Cook, Orem resident but with family in Provo, stated he was an independent contractor for a solar company. The $3 per kW charge on the average system would cost a family $250 per year. He felt that was an unfair way to solve the problem. If Provo City wanted to continue to be progressive they needed to find ways to encourage solar rather than penalizing those with solar. It was unfair to penalize those citizens that were trying to better their lives. The $250 per year would go a long way to paying other family expenses.

Ty Largerberg, Provo, indicated he was a solar owner. He installed a 15 kW system and, with only two people in the home, he contributes power to the grid. He asked the council to consider how they felt about clean and renewable energy. He was investing in clean energy but the charges were coming back to penalize him. He did not complain about the $1,000 it took to connect to the system when he installed solar. He felt there were other options the council needed to look into before approving the fee.

Nancy Evans, Provo resident since 1970, stated the quality of her voice was a matter of the respiratory issues during the past few years. As a solar customer she considered herself a partner with the city. She invested $20,000 in solar which helped provide green power and clean air for all citizens of Provo. She was moving to Oregon because she was on the cusp of a real crisis due to the bad air in Provo. If the city did not get ahead of the crises they were going to lose more people.

Bart Robbins, resident and business owner in Provo, said there were a couple of issues that were not addressed in the report. The council was only discussing one issue – the $3 per kW charge. There were four other solutions proposed that were not being discussed. In some other areas, if he provided more solar power than he used he would be paid back. That was not the case in Provo. He provided energy to the system that should pay for the fixed costs. It Provo implemented the $3 charge per kW they should reimburse customers for their excess power at the end of the year.

Trina Miller, Provo, read a written statement into the record. She also submitted a written statement from her husband who was unable to attend. Copies of both statements are attached to the permanent minutes.

Mike Roan, Provo, was not a solar customer and, since he lived in an HOA, he would never be one. He said it was important to look at this charge from a different perspective. He submitted a handout to the council showing the Provo customers paid slightly less for power than Rocky Mountain Power customers. With the inclusion of the solar charges that advantage would disappear. He did not feel the citizens should pay for the cost of the Energy Department doing business in Provo. Economic and political stability resulted from the citizen's ability to rely on laws and ordinances. Net metering was implemented in 2009 and any new charges for solar should not be applied retroactively. The city needed to change the paradigm so that citizens were reimbursed for the excess power they were contributing to the grid.

Bernell Stone, Provo, moved to Windsor Drive to get out of the pollution in the Riverbottoms. He said that Provo Power was making a profit of about $10 million. A large part of that profit was for the fixed costs. Solar users were paying fixed costs so they were already contributing to the system. Did they need to pay an additional amount because they were using less power. He was preparing testimony for the legislative hearing on the 19th on this issue. Rocky Mountain Power had a two tier rate with a spread of more than five cents. If the peak load was included in the rates Provo City was paying, then solar users, who were reducing total demand, were saving charges across the system. The cost of service study only looked at the distribution costs and not all end costs. We should be encouraging solar customers to have storage because it would smooth the city's total costs. He felt the council needed to take a step back and look at long term planning.

Daren Hansen, Provo, endorsed the proposal that Dr. Waters made in work session earlier in the day. As an engineer, Mr. Berg was not wrong, but he was selling them a 20th century public energy system. Provo City had a reputation for innovation and forward looking policies, let's not fall down on this one. He made an investment in solar three years ago. He invited the city to invest in the future of sustainable energy and vote no on this ordinance.

Ryan Peterson, Provo, stated that BYU had just agreed to a deal to put solar on their campus. BYU was Provo's biggest customer. After four years at BYU he went to Arizona and worked for a solar customer. He said a monopoly utility company forced them out of business. He currently worked for a solar company in the area and planned on putting down roots there. He said he represented the working youth looking for good jobs in Provo. He felt that policies like this, not just solar, but any policies that were predatory for any industry, did not motivate the youth to say in Provo. He wanted Provo to remain a forward looking community.

Melissa Kendall, Provo solar customer, stated that Provo City was not just subsidizing solar users but they were subsidizing low energy users also. The fee schedule was set up to depend upon usage to recover costs for the grid. They should rethink that policy and make it equitable across the board. At least grandfather those in that have made the investment based on rules at the time. They should take the time to develop a plan that would be forward looking and would not undermine the industry. She agreed with a small rate increase across the board to recover costs. They had time on their side to develop a plan because there were only 160 solar users out of 37,000 customers.

Bonnie Morrow, Provo, said she talked to her neighbors and they were pro solar. She was on the Vision 2030 Committee and one of the goals was to encourage solar power and bicycling. Based on that vision she had a dream of installing solar on their home and driving a Prius. She now had both. In Provo, net metering was required so solar customers could not go off the grid. A big disadvantage to solar was that Provo Power seized the excess energy they produced and did not pay them for it. Provo City officials were very helpful in getting them set up the connections for solar power. She believed in the future of Provo and in clean air. She said that solar did stand on its own in Provo. If this ordinance was passed it would affect the resale value of homes with solar in Provo because you would have to disclose that the rates were fluid. She did not think people would want to buy homes with solar panels already installed under those circumstances.

Brian Morrow, Provo, said it was not beneficial to put solar on their new home because it would take 15 to 20 years to recoup the investment. He was against it and did not see any advantage other than the environmental aspect. They oversized their installation and produced more power than they used. In March they had a credit of $250 which the city got for free. He was also an industrial business owner in Provo. When he built a new building he kept getting demand charges. Provo City told him his business was putting a demand on the grid which was based on the maximum peak. When asked how he could reduce his demand he was told to run his business at night or evening because the rate was cheaper and the demand was less. He felt that by putting in solar power he was decreasing the demand for the city. Mr. Morrow asked the council to remember that they represent the people, not the power company. For the past hour citizens of Provo that want to have solar have been addressing the council. This was a representation of how the people of Provo felt about solar power. There had not been anyone that opposed solar power make any comments. There were indirect benefits of solar power that they could not quantify.

Galen Smith, Provo, installed solar panels a number of years ago when it was very expensive and, in reality, would never pay for itself. He installed solar because he wanted to clean the air in Provo and reduce the huge utility bills he had each summer. He said his panels do not quit at 5 p.m. they keep working as along as the sun was out. Even though he has given power to the city the whole time he still has a few utility bills during the winter. He did not see why he should have to pay to contribute energy to the city.

Chris Collard, Provo solar customer and solar business owner, stated that last year the average system size in Provo was just over 10 kW's. At the proposed fee that would be an additional $30 per month for those customers. He had heard that, with net metering, Provo was going to cap their solar customers at one percent of all power customers, which hasn't happened yet. When they reach their cap it would only be $3,600 revenue per month which was not a lot of money compared to the budget. If all citizens had solar power it might be a problem but that would not

happen. He was concerned that this fee would set a bad precedent. He said there were other options the city could look into, such as letting BYU students purchase the excess solar credits from solar customers.

Beth Alligood, Provo, felt it all came down to money. How much money did the city get to pay for the infrastructure? She said they were picking at solar customers because they were the low hanging fruit where they could change the rates on right now. That would not solve the underlying problem. When the city had a $2.5 million deficit in residential power picking on solar customers would not eliminate that deficit. She said that solar customers were not subsidized by other customers. Commercial and retail subsidized all residential customers. If they wanted to be fair they should take the 24 percent that were not paying their infrastructure fees and they raise the base rates. If the city was worried about the poor or those on fixed incomes the city could put a system in place where they would have to prove their status and they would get the subsidy. During work session earlier Mr. Berg stated the demand was not going up, it was the cost of infrastructure that was going up. Even if the city changed the energy rates the demand was not going up. Solar customers were not trying to avoid paying for infrastructure costs; they were just trying to provide a stable environment for their families.

Ryan Evans, President of the Utah Solar Association, stated it was easy to throw the word subsidy around when they had spent many hours looking at the cost of solar on the system. He wondered what it would look like if they spent as much time looking at the benefits of solar. He had heard that the $3 surcharge was the easy solution to implement and that five other UMPA cities were doing it. He said those five other cities had different needs. He did not think public policy was meant to be easy and it would be difficult to make broad changes to the rates of all users. Earlier it was said that the solar charge was a halfway point and that it would not hurt solar in the city. He said that not one of the eight solar owners he spoke with said they would continue to have their business in Provo. By not seeking more public input and more discussion on this issue the council would not have the opportunity to hear other proposals.

Dave Rasmussen, Provo resident and representing Vision Solar, had operations in four different states. He had a lot of experience dealing with different municipalities. He had business in Nevada and, when the decision was made to cap the net metering and eliminate the grandfathering for solar customers in Nevada, they had to close down their business in Nevada. This proposal mirrored the one in Nevada with no grandfathering and adding an additional charge without considering the consequences. He encouraged the council to consider grandfathering for those that had already installed solar. They chose to locate their business in Provo by taking over the lease for the Border's building in the Riverwoods. They loved Provo because it was business friendly and wanted Provo to stay that way.

Chad Rasmussen indicated he was a proud member of the solar community. He said there were hundreds, if not thousands, of Provo based employees of solar companies. They loved working with the utilities but said the current proposal might not be the best one. He encouraged the council to find the right solution. The average cost for a solar installation was $20,000 to $30,000. Most customers did not have the capital to purchase it outright so they had to finance the installation. An increase of 18 to 20 percent could impact those on a fixed monthly budget. In Utah it could take up to 20 years before customers break even on their purchase. With the additional fee it might be difficult to justify installing solar.

Charles Cox, Provo, said the fee would increase his bill by $500 per year. In March, the power company took $500 worth of credit that he had earned. This action would cost him $1,000 per year. He was generating enough extra power to help four homes. All he wanted to do was cut the carbon footprint. He does not use a wood stove and he used solar to run the home. He was happy to save money but he was also pleased that he did not have to smell the wood burning stove anymore. He encouraged the council to be proactive and be the first city not to propose a solar fee. The city was generating more than $10 million extra every year to give to the general fund. It would be fairer if they increased the property tax to pay for city services such as parks.

Chris Bailey, Provo, just installed an 11 kW system. They took more than three years to discuss the pros and cons of going solar. They took out a loan of $35,000 to install solar so they were paying more each month than if they did not have solar. This solar fee would add an additional $30 to $40 dollars to their existing costs. If they had known this up front it would have added another thing to consider when making their decision to install solar. There was an environmental value in solar so he encouraged the council to consider the benefits when they made their decision.

Erica Dahl, Director of Government Affairs for Vivint Solar, had been meeting with Provo City officials for the past several months. She appreciated that all the solar businesses were coming together to address these issues. Vivant Solar was based in Utah County with 1,200 out of 4,000 employees living and working in Utah. Vivint Solar was the second largest residential solar installer in the U.S. She said they had been working with Mayor Curtis, Mr. Ball, and Don Jarvis since February 2016. Their key concern was that the report by Mr. Berg was a cost of service study which simply looked at the cost of solar and did not address the benefits of solar. She asked the council to take into account the value of solar before they rushed into a proposal that the industry felt was one-sided.

Margaret Vanleuven, Provo, stated she and her husband raised their children in Provo. They were retired school teachers. She would not live to reap the benefits of their solar installation because the cost would outlive her. As a school teacher, there were days when her students could not go outside for recess because of the inversion. That was what drove them to install solar.

There were no more public comments.

Chair Santiago invited council discussion. In response to questions from Mr. Knecht, Mr. Jarvis replied that very little of the air pollution in Utah County was created by energy generation. Most of the pollution was caused by automobiles or buildings.

Mr. Ball said that the when the city went to an inclining rate a few years ago the base rate did not change. They initiated the inclining rate to encourage conservation. As for determining how much solar users reduced the peak demand, Mr. Ball said he was sure it was a small portion but we would not have good data on that information until the smart meters were installed. By next September the entire city would have smart meters and we would have better data to work with. It also helped if homes had west facing solar panels.

In response to a question from Mr. Winterton, Mr. Ball explained that when solar generated more power than was being used it was put back on the system. In March/April of each year any

credit still showing on an account was wiped out. They chose March/April because solar generated less power in the winter so their credit would be smaller. He said that for those customers generating enough power to have a credit, they were not paying anything. For any energy that is over generated the city was paying a rate between nine and 12 cents per kWh. The city paid less than five cents per kWh from a community solar program with a five mW system.

Mr. Stewart pointed out that the credit was based on the city paying 10 to 12 cents per kWh and yet they could go out on the market and purchase power for five cents per kWh. The difference of seven cents would probably wipe out any credit the solar customers had. He responded to a few comments made by the citizens.

- Take time to get it right – other alternatives were presented to the Energy Board and council and they felt this was the fairest way and less expensive than several other alternatives. They had been studying this issue for several months.
- Solar reduced the carbon footprint in Utah County – Provo City's electricity was not generated in Provo so it would not reduce the carbon footprint in Utah County. It might reduce the carbon footprint elsewhere in the state, but not in Provo.
- The council needed to represent the citizens of the city – Mr. Stewart said he represented all residents of the city, including the 29,800 citizens that were not on solar and that were subsidizing the solar users. The free market economy would not sustain solar power if it wasn't for the local, state, and national subsidies. Solar providers were sure to be against what the council was trying to do. He felt this proposal was fair for all citizens.

Mr. Van Buren noted that several citizens stated that this policy was not forward looking. He asked Mr. Ball to respond to that concern. Mr. Ball said they did not want to make the solar charge burdensome for the solar customers. They wanted to recover some of the distribution grid costs but there were several other costs that were not included. He said they looked at other cities to see how they address solar power. St. George had a higher base rate but they were still charging a solar fee on top of their base rate. So the solar customer would pay more in St. George than in Provo. St. George had not seen a decrease in solar installations, even with the additional fees. Mr. Ball said there was value in solar. The city was looking into a community solar program so that all citizens could buy into a solar project. The city would be paying about half the cost for power than they were paying roof top solar customers.

Mr. Knecht noted that the $6 per month base charge that all customers paid could be almost $27 per month if the customers paid the actual cost to provide that service. The energy charge would be reduced to compensate for the increased base fee charges. The net effect of that action would change the payback model for solar. The base rate per month would be increased and their credit would be reduced because of the lower energy charge. As for grandfathering, if someone installed solar and expected their energy charges would not change that would mean their $6 per month base charge would also be grandfathered. Were solar users expecting to be exempt from that increase because it would also affect their financing model.

Mr. Harding said the question was asked about air quality in the valley and Mr. Evans expressed a dissenting opinion from Mr. Jarvis and Mr. Ball. He asked if Mr. Evans could respond to the question of whether solar generation had little impact on the air shed in Utah Valley.

Mr. Evans did not disagree with that statement but said it did not paint the whole picture. He was an employee of the Salt Lake Chamber for 13 years and led all of their public policy and

engagement programs for air quality; he sat on the governor's Clean Air Action Team, and was a board member for the Utah Clean Air Partnership, so he understood air quality in Utah. From that perspective, not a lot of Provo's pollution came from locally generated emissions. However, roughly 52 percent of Utah Valley's pollution came from vehicle emissions and 37 percent came from area homes and businesses. As they cut back on the amount of fossil fuel consumption, in homes and businesses, it would bring down that number. Because of technology, vehicle emissions were coming down dramatically and area source pollution was going up. Although there were no easy answers, it was generally agreed that every little step possible helped provide better air quality in the future.

Mr. Harding stated that one of the main comments made by citizens was regarding the air quality and talking about the inversions. He wanted the citizens to understand that the local air quality was not diminished by the use of rooftop solar. If people really wanted to improve the air quality in the valley they would install solar hot water assist rather than photovoltaic (PV). Mr. Evans said he would not oversell the environment qualities with a PV system. However, if the citizens had a PV system and an electric car that they charged with that system, and then purchased batteries to store the energy, it would have an effect on the emission in the valley.

In response to Mr. Harding's comment, Mr. Jarvis said he was surprised there was not more discussion around solar heating. Solar water heating was very popular around the world. Electrical generation did not affect the air shed in Utah Valley but coal fired plants put out a lot of pollution. It was not just the carbon issue, it included mercury emissions also.

Mr. Knecht stated that we heat our homes and water with natural gas. Even if solar customers did not use electricity in their homes, they were still contributing to the air shed through their natural gas usage. Heating our homes and water with electricity would be something worth promoting.

Mr. Sewell pointed out that several goals in the Vision 2030 plan and the Vision 2050 draft talked about improving clean air through businesses and industry, improving energy efficiency in Provo, promoting public and private generation of renewable energy resources, and reducing Provo's dependency on fossil fuels. They also state that we need to seek opportunities to diversify energy resources and seek opportunities for consumer alternatives to purchase energy from renewable resources. These goals were part of our city's vision and we should be encouraging renewable energy both publicly and privately. He felt this action would be a defacto rewrite of those goals.

Mr. Sewell gave the following four principles on which this decision should be based. He substituted "solar" with "renewable energy" in the last three.

1. The Council's intent to protect Provo City Power's financial stability must be publicized.
2. We need to prepare for the future when 50 percent of Provo's residential customers would use renewable energy.
3. We want to be supportive of residential use of renewable energy.
4. A rate structure roadmap should be developed and publicized so that renewable energy companies and customers can reasonably plan for their respective activities and investments.

He expressed concern about the way this proposal came about. He had a great respect for the energy board and the power department who had been very forward thinking in a lot of things. But he did not understand how they could have this solar discussion go through the power

department, energy board, and UMPA without even considering grandfathering in residents who were helping the city achieve the city's vision and policy objectives. He felt the partnership between business and community was missing. This proposal was thrown at them without a lot of notice. He did not support the solar surcharge but, if the council moved forward with it, he hoped they would grandfather current solar customers over the course of their investment which could be up to 20 years.

Mr. Sewell noted that those residents using a lot of power subsidize those that use less. They were adding another unfair structure on top of one that might already exist. Would the surcharge apply to other types of renewable energy? He researched this on the internet and found an example of a municipality that had a surcharge on three different types of renewable energy – solar, hydro, and bio gas. He had sent an email to his constituent list about this issue and he received 27 responses. Only one of the 27 expressed concern about subsidizing solar customers.

Mr. Sewell said there were some structural rate deficiencies and options to address the rate deficiencies were discussed in work meeting. The solar surcharge would raise $45,000 to $50,000 the first year. By increasing our base rate by 13 cents it would raise the same amount of money. He agreed that the cost of service study was all about the dollars and cents and did not look at the value of solar power. He suggested not approving the surcharge, if short term revenues were a concern they could increase the base rate by 13 cents, and form a council committee to get all the players together to determine what the city's vision should be.

Mr. Stewart read an email he had received from a citizen in Provo who felt it was wrong for solar customers to use the grid at reduced cost from all other taxpayers. Solar owners should not expect a subsidy from non-solar owners for a shared utility.

Mr. Harding said he agreed with several of Mr. Sewell's comments and there were some he disagreed with. For a long time he felt solar was an all-around good thing. But after he started diving into the details of electrical generation, transmission, costs, peak demand, and load factor he realized that solar was not a win-win for everyone. The surcharge had never been about raising revenues off solar customers, it was about fixing a structural deficiency. Solar power was not considered when the rates were set up. It was a loophole that needed to be fixed for the future. He felt that current solar customers should be grandfathered in because it was the current policy and rate when their solar was installed. Was it ethical or moral to change the rates for solar customers after they had signed a net metering contract defining the rates?

He did not agree that the surcharge was picking on solar customers. The council should have a separate conversation about base rates. A 300 kWh net user had a very different infrastructure demand than a 300 kWh gross user – someone that did not pull and push solar. There was some rational behind treating solar customers that net 300 kWh's different than other customers with 300 kWh's. Other renewable energy sources, such as wind, water, etc., should be treated the same way. The surcharge did not cover the entire subsidy; it moved it to the middle of the road.

He felt that solar had a value to the community and in the wider world. They needed to have a serious conversation about whether it was the city's place to incentivize solar. If we find it was, he would still argue that the net metering method was not the right way to do it. We should have a system similar to the federal and state incentives. One of the citizens indicated he had just installed solar over the summer and was surprised that the city was going to change the rules on

him. Mr. Harding preferred to hold off making the decision, discuss the option more, get the most money for the incentives, and make some long range decisions going forward. They could put a moratorium on new net metering contracts to send a strong signal it was under discussion and they had not made a decision.

Mr. Knecht said there were conflicting, overriding concerns. One of the council's intent statements was to protect Provo City's power financial stability and prepare for a future when 50 percent of our customers had renewable energy. It would have real ramifications to our financial model if that occurred. Provo Power was a big co-op, it belonged to all residents of Provo. One of those overriding principles in that policy was that people should pay for what they get. A recent review of Energy fees determined that the basic service charge on energy was $78 per year when the real cost was more like $347 per year. Occasionally the city determined that charging the full price was not in the best interest of the public and it would be better to find the funds elsewhere.

Mr. Knecht stated that a portion of his electric bill, as much as $200 per year, went to the general fund in a variety of ways. If he wanted to take his house off the grid he would still expect to pay his fair share. He might have to add $200 to his property tax. Everyone had to pay their fair share and we needed to be clear about where the City was going and what it was doing to all aspects of our budget.

In response to a question from Mr. Stewart, Mr. Sewell stated that a previous council had voted to adopt the Vision 2030 plan which had several renewable energy statements. They included:

- Work with UMPA to continue to seek long-term electrical resources which provide for stable and generally lower cost of electricity.
- Seek opportunities to diversify energy resources in a cost effective manner including increasing energy percentages from renewable and alternate sources.
- Seek opportunities for consumer alternatives to purchase energy from renewable resources.

Mr. Stewart felt these statements contradicted each other and were not cost effective for the average rate payer in Provo that would be subsidizing solar.

Mr. Winterton was not convinced that solar power benefited our community and would impact the air quality in Provo. He asked how many of our citizens concerned about the environment signed up for Renew Choice through the Energy Department. Renew Choice was probably more effective than solar. The city studied all five issues associated with solar for more than a year and this was the least offensive for the solar community. There was still a subsidy for the solar community, it was just asking them to contribute a little to the grid.

Mr. Harding said he would support a moratorium on new net metering contracts for 90 days. They could use the time to discuss the issues and hope to have an answer on how they want to move forward by the end of that period. He felt it would protect potential customers by putting in the moratorium and creating a road map so they would know what to expect.

Mr. Sewell stated that UMPA and Provo Power had been looking at this issue for more than a year but, before it went to the work session on September 6, 2016, hardly anyone in the solar community knew about this. The chair of the Sustainability Committee had not heard about this proposal. How did they know it was fair if the solar community did not have any input? He did

not agree with a moratorium because there were less than one-half percent of utility customers using solar. Also, it would not be fair to business owners to cut off their sales.

Mr. Stewart felt it was important to take care of this as soon as possible because more and more customers would be affected by not taking action. It would hurt those citizens considering solar. It would also affect the solar business because they could not sell in Provo for 90 days.

Mr. Harding said his primary duty and responsibility was to the public and residents that owned our power utility and that was why he recommended a moratorium.

Mr. Sewell presented two alternatives to the moratorium idea. He felt the five percent cap on customers using solar was a moratorium. If that was too far in the future, they could cap the number of solar customers by taking the currently installed kW's and doubling that. It would give solar companies time to adjust their investments and where they were putting their efforts. Hopefully the discussion on solar rates could be completed before that cap was met.

Mr. Knecht noted that, years ago, we owned a geothermal plant in Cedar Fort. UMPA bought the plant because it would diversify our energy portfolio and provide a source of renewable energy. We were going in the hole nearly $1 million per year so we had to cut our losses, sell the plant, and do the right thing for our rate payers. It was sold to a private company that could make it work because they qualified for federal subsidizes that we were not eligible for.

Chair Santiago said they did try to include some of the other players when they asked Mr. Sewell to meet with Dr. Larry Walters, a solar customer and Mr. Ball to get some discussion going. However, she felt there needed to be more. Dr. Walter's made a proposal during the work session earlier in the day that had not been considered. There had also been proposals by citizens that night that might be worth looking into. There were divergent views on the council and she did not feel ready to make a decision about this issue that night. She proposed getting all the players together including Dr. Walters, Mr. Evans (representing the solar industry), Mr. Sewell and Mr. Stewart who had opposing opinions and Mr. Ball. They could work through some of the proposals and issues. She was not comfortable with a moratorium because she did not know what it would do to the solar industry.

Mr. Stewart said they had hashed it out and he did not see anyone changing their views. This would just delay the decision, which was typical of councils. He felt they needed to make a decision so he made the following motion:

Motion: Council Member George Stewart moved to approve **Ordinance 2016-27** amending Energy rates on the Provo City Consolidated Fee Schedule. The motion was seconded by Council Member Dave Knecht.

Chair Santiago said that Mr. Stewart and Mr. Winterton had served on the Power Board and had much more discussion concerning this issue. She had not attended those meetings and had very spotty discussions on the issue so she did not have the comfort level that he had.

Mr. Sewell asked for clarification on the motion and which option he was proposing. The first would be to grandfather the existing users for up to 20 years from installation. The second

option would be to consider a compromise, suggested by Mr. Ball, which would implement a two kW credit for those with solar already installed.

Mr. Stewart stated his motion was based on Exhibit A which added a solar generation capacity charge of $3 per kW with no credit and no grandfathering.

Mr. Sewell said many of the solar customers were concerned about the environment and invested $20,000 to $30,000 based a former council resolution approving a Vision 2030 document that outlined the city's vision. That night he heard that they needed to hurry and make this change because it was only going to get harder as more solar customers signed up. If there were 1,800 customers instead of 180 the room would be overflowing. He did not think they would be talking about not grandfathering. Even if it was just one customer it was not fair.

Mr. Winterton had some concerns about grandfathering. He did not think the community ever intended to subsidize solar users. He did not understand the benefits of solar except for saving money on utility bills. No one said the rates would be the same forever – rates have never been locked in. The city did want renewable power so maybe they could give a credit for the first two kW's going forward. He still wanted solar as part of the community's vision and the technology would improve and get better.

In response to a question from Mr. Stewart, Mr. Winterton said the credit for the first two kW's would just be for the current customers.

Mr. Stewart said he could go along with a credit for the first two kW's and made an amended motion.

Motion: Council Member George Stewart made a motion to amend Exhibit A to give a two kW credit to current customers that had already installed solar. The $3 per kW charge would occur after the first two kW's (as shown on the screen). The motion was seconded by Council Member Dave Knecht.

Mr. Van Buren did not see how the city grandfathered for an extended period of 20 years. They did not do that with any rates so the two kW credit was a better solution.

Mr. Sewell felt this was different from other rate changes because citizens had invested tens of thousands of dollars to help the city achieve their vision and goals.

Mr. Harding said he would be shocked if, when the council created the net metering program in 2009, that they did not understand it would create a subsidy for solar customers. As for grandfathering, did that mean that for 20 years the rates would never change or did that mean we would not take net metering away. They would still be subject to rate changes but they would always have access to net metering.

Mr. Sewell would propose grandfathering solar customers for 20 years from installation date for the net metering. They would still be subject changes in the base rate.

Mr. Knecht stated he was not around when net metering was adopted by the council. He felt net metering was a way for someone to put energy back into the system and get credit for it. A subsidy was created when the city paid more for that energy than we pay to any other producer.

Mr. Harding felt the city was 18 months away from having smart meters installed everywhere, which would be a game changer for the billing system. The smart meters would allow rate structuring to align customer interests with the power company's interests. Any action taken at this time would be an interim solution. We do not want more citizens buying into solar and expecting things to stay the same for 20 years. The motion on the table would continue the subsidy at a lower rate. He would rather invest that money for the next 60 days to determine the best way to reach their vision and goals.

Mr. Stewart said 18 months from now they would be able to have a demand and energy charge with a new rate schedule. The $3 charge per kW would go away. That was why he could support it on a temporary basis. Solar customers would like it even less if they charged the true cost.

Mr. Winterton said we had 118 solar customers six months ago. We now have 213 customers and by the end of the year we were looking at 288 customers on solar that were already under contract. The numbers were getting higher so they needed to send a message that they were not comfortable with the current process. If people are going to sign up for solar they have to understand that things will probably change. He asked if the amended motion would include those customers that had already signed contracts.

Mr. Jones stated one option, to avoid postdated contracts, would be to consider whether a solar customer had already filed an application with the city.

Mr. Stewart said he would be fine with an amendment to the motion stating that the two kw credit applied to those customers that had already filed an application

Motion: Council Member George Stewart moved to amend Exhibit A which created a Solar Generation Capacity Charge of $3.00/kW per month with a footnote stating, "Any net metered residence that, as of October 4, 2016, has either (1) a completed net metering installation or (2) a completed net metering application filed with the City shall not be charged for the first two (2) kW-mo. of solar generation capacity." The motion was seconded by Council Member Vernon K. Van Buren.

Mr. Knecht felt the definition of words were important. There was a big difference between "shall" and "may" in the legal terms. "Shall" means you have to while "may" was optional. In the Vision 2030 document words referencing renewable energy included "promote, encourage, and offer opportunities." The document did not say we were going to subsidize renewable energy.

Mr. Sewell felt the subsidy was implied and the intent was to offer an incentive for those pursuing renewable energy.

Mr. Knecht said that net metering itself was an incentive. The question became at what rate do we buy the energy back.

Mr. Sewell said we did not have the capability to determine a rate and it had to be signaled years in advance. He was strongly opposed to what they were talking about and felt it sent a bad message to our current customers. It was also clear that, in 18 months, there might be another change the solar industry would like even less.

Mr. Stewart stated they were sending a signal that 29,800 customers were not going to continue completely subsidizing solar customers. There was still a subsidy, it just wouldn't be as much. It also gives the city 18 months to decide whether they want to consider any kind of subsidy for solar. It was a fair rate schedule for all residents.

Mr. Harding still felt a 90-day moratorium made a lot of sense. If there was not support for a moratorium he suggested sending the signal that current customers with an application already submitted would be grandfathered in. The contract could be changed so that future customers understood that rates would change. He said the number of people that had already submitted applications was small enough that the city could live up to, what he felt, was a commitment.

In response to a question from Chair Santiago, Mr. Jones stated the ordinance that day could say that something would last for 20 years. What they could not say was that a future would not delete that sentence two years from now. He said there was an ordinance that adopted an amended exhibit. He recommended they vote on what the exhibit should say before they actually vote on the ordinance. He clarified that the motion on the floor stated, "Any net metering customer that, as of October 4, 2016, has either 1) a completed net metering installation or 2) a completed net metering application filed with the city, shall not be charged for the first two kW per month of solar generation capacity."

Mr. Stewart did not want a 20-year expiration date associated with the motion because the rate would go away in 18 months when they adopt a new rate schedule. There was no guarantee the expiration date would not be changed. Grandfathering by the council was an unreasonable expectation for citizens because future council could change that.

Chair Santiago asked if they could grandfather the expiration date by having individual contracts between the power company and the solar customer. Mr. Jones said they could go that route if they wanted the 20-year expiration to be binding. He would recommend simply adding a footnote to the charge which stated that it was the council's intent that the charge would not apply to customers with a completed installation or application as of October 4, 2016. Six months from now, though, the council could go back and change that.

Mr. Jones said it was not uncommon for legislative bodies to make that intent clear in order to make it harder for future councils to change that.

Mr. Stewart confirmed he did not want the 20-year expiration date included in his motion.

Mr. Parker asked for clarification on the two kW credit. Did the credit apply to a customer that connected within that time frame or to a home/residence? The home could be sold and the new

owner would sign a new net metering agreement which would be after the effective date, thereby eliminating the credit.

Mr. Stewart said his intent would be for the credit to be applied to the home/residence and not the owner.

Mr. Sewell suggested making a substitute motion that would amend Exhibit A to state that existing customers, with a solar installation or a completed net metering application filed as of October 4, 2016, would have their net metering arrangement grandfathered in for 20 years from the date of installation. The grandfathering would not include base rates increases or retail rate increases. New net metering customers, after the October 4, 2016 date, would receive a two kW credit.

Mr. Stewart recommended voting on his motion to determine if it would get the four votes necessary to be approved before further discussion.

Mr. Harding wanted to layout a roadmap for the future and did not feel a $3 solar charge was part of the roadmap. A previous council adopted a vision and residents acted upon that vision and now the city wanted to change their commitment.

Mr. Winterton said he loved the citizens of Provo but did not feel all of them acted upon that vision, most were looking at the dollars and cents.

Mr. Sewell felt they would not have any credibility going forward if they approved this rate change.

Mr. Jones clarified that the motion by Mr. Stewart was to amend Exhibit A to state that solar customers, as of October 4, 2016, would receive a two kW credit before being assessed the $3 per kW capacity charge. A current customer included those with solar installations already installed and those that had completed a net metering application with the City as of October 4, 2016.

Chair Santiago called for a vote on Mr. Stewart's motion as shown on the screen.

Roll Call Vote: The motion passed 5:2 with Council Members Knecht, Sewell, Stewart, Van Buren, and Winterton in favor and Council Members Harding and Santiago opposed.

Chair Santiago explained that she did not vote for the amendment because the two kW credit had not been vetted with the solar companies to see if it would make a difference.

Mr. Jones stated that the council had an updated exhibit to attach to the proposed ordinance. There had not been a motion to approve the ordinance.

Chair Santiago invited Dr. Walters to give his thoughts on the amended exhibit to credit the two kW's. Mr. Walters replied that the average solar installation was somewhere between six and eight kW's. However, as they heard that night, there were a lot of much larger installations. On a six kW system it would be a 33 percent reduction on the charge. The bigger the installation the

smaller the percentage reduction. He did not think it addressed the fundamental issues discussed earlier.

In response to a comment by Mr. Winterton, Mr. Ball stated that, in the future, they would be able to implement a demand rate. The base rate could be adjusted at any time and would affect a lot of customers.

Mr. Jones noted they had not indicated the effective date of the rate change. As of this point the rate change would be the effective date of the ordinance as indicated in Part II. If the council wanted a specific effective date they would need to make a motion to amend that section.

Karen Larsen, Division Director –Customer Service, stated she preferred a minimum of 30 days to implement the rate change but would prefer longer. Each customer had to be set up individually in order to apply the two kW credit. If all current customers were grandfathered she would only need 30 days.

Mr. Larsen also told the council that the customer service reps had received several calls from solar customers concerned about their city bills. She said the bills were different from what the solar sales representative was telling them. She wanted to make sure that solar companies were clear with the customers about their bills and what to expect.

Motion: Council Member George Stewart moved to amend the effective date of the ordinance to January 1, 2017. The motion was seconded by Council Member David Knecht.

Mr. Strachan said the solar charge would bring in $48,000 per year in revenue, less $16,000 per year for the two kW credit. A delay of two or three months would not cost a lot in the revenue stream.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Mr. Harding made the following motion to amend Exhibit A.

Motion: Council Member David Harding moved to amend Exhibit A to state that any net metered residence that, as of October 4, 2016, has either (1) a completed net metering installation or (2) a completed net metering application filed with the City shall not be charged this solar generation capacity charge. The motion was seconded by Council Member David Sewell.

Mr. Harding clarified that his motion was to change the footnote on the Consolidate Fee Schedule to exempt the capacity charge for any solar customers that already have it installed or have submitted an application. He pleaded with the council members to grandfather those solar customers that were already in place. Any solar customer that came in tomorrow would not qualify for an exemption. They would pay a $3 per kW capacity charge.

Chair Santiago said she was still holding out for a meeting between the people she suggested. She did not feel it had been fully vetted.

Chair Santiago called for a vote on the motion to amend the exhibit to grandfather current solar customers.

Roll Call Vote: The motion passed 4:3 with Council Members Harding, Knecht, Santiago, and Sewell in favor and Council Members Stewart, Van Buren, and Winterton opposed.

Mr. Knecht stated he had trouble with grandfathering the current customers so he would be voting against the ordinance. Mr. Jones said that since he voted for the motion to include grandfathering, and was in the prevailing votes, a motion could be made to allow reconsideration of the motion.

Motion: Council Member David Harding made a motion to continue this item until they were ready to come back with it. The motion was seconded by Council Member David Sewell.

Chair Santiago stated that the document had been amended to include grandfathering current solar customers. There was a motion on the table to continue this item. She called for a vote on the motion.

Roll Call Vote: The motion failed 3:4 with Council Members Harding, Santiago, and Sewell in favor and Council Members Knecht, Stewart, Van Buren, and Winterton opposed.

Mr. Jones said they now had a draft ordinance on the table with an effective date of January 1, 2017, that added a $3 per kW solar capacity charge, and grandfathered all current solar customers. If the council made a motion to reject that ordinance, and it passed, there was nothing on the table.

In response to a question from Mr. Van Buren, Mr. Knecht stated he wanted the $3 per kW capacity charge for all solar customers with a two kW credit applied to current solar customers as of October 4, 2016. He made the following motion.

Motion: Council Member David Knecht moved to amend Exhibit A back to the form it was after Mr. Stewarts motion which added a $3 per kW capacity charge and exempted current installations from the first two kW. The motion was seconded by Council Member Vernon K. Van Buren.

Mr. Harding reminded the council they would be changing the rules on the current 200 customers. They could change it for everyone in the future but they should not change it for those customers that made a decision based on what a past council said was their policy and their intent.

Mr. Stewart was not sure very many people made their decision based on what the previous council said or didn't say. They made their decision based on what the salesman said.

Roll Call Vote: The motion passed 4:3 with Council Members Knecht, Stewart, Van Buren, and Winterton in favor and Council Members Harding, Santiago, and Sewell opposed.

Mr. Jones stated that the Exhibit had now been amended to include the two kW credit for current customers and now they needed a motion to approve the ordinance as amended.

Motion: Council Member George Stewart moved to approve **Ordinance 2016-27** as amended. The motion was seconded by Council Member Vernon K. Van Buren.

Chair Santiago called for a vote on the motion to adopt the ordinance as amended.

Roll Call Vote: The motion passed 4:3 with Council Members Knecht, Stewart, Van Buren, and Winterton in favor and Council Members Harding, Santiago, and Sewell opposed.

4. Resolution 2016-45 appropriating $260,000 in the General CIP Fund for purposes related to the Fleet Facility Project and applying to the fiscal year ending June 30, 2017. (16-110)

Dustin Grabau, Provo City Budget Officer, presented. During the end of the FY 2017 budgeting process there were changes made to the General Fund CIP for the fleet facility. The funding for this portion of the project, to be transferred from the Sanitation CIP had been omitted. This action would amend the oversight and appropriate the funds that were already dedicated for this project.

There was no response to the request for public comment.

Motion: Council Member David Harding moved to approve **Resolution 2016-45** as written. The motion was seconded by Council Member George Stewart.

Roll Call Vote: The motion passed 6:0 with Council Members Harding, Knecht, Santiago, Stewart, Van Buren, and Winterton in favor. Council Member Sewell was excused.

5. Resolution 2016-46 approving a Power Plant Property Lease Agreement between Provo City and Utah Municipal Power Agency. (16-024)

Travis Ball, Energy Department Director, presented. The Utah Municipal Power Agency (UMPA) would be building a power plant on the Energy Department site. After an appraisal was completed on the property it was determined the amount of the annual lease should range from $12,000 to $20,000 per year. There were very few uses for that property so the lease was approved at $12,000 per year with a one percent escalator going forward. UMPA was required

to upgrade the power plant to match the recreation center and the new utility building which increased the cost of their project by $350,000. Mr. Ball noted that the new plant would be built to current clean air standards and would improve the air quality in Provo City.

Motion: Council Member George Stewart moved to approve **Resolution 2016-46** as written. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 6:0 with Council Members Harding, Knecht, Santiago, Stewart, Van Buren, and Winterton in favor. Council Member Sewell was excused.

Policy Items Referred from the Planning Commission

6. An ordinance amending the Zone Map Classification of approximately 2.44 acres of real property, generally located at 1290 North Geneva Road, from Agricultural Zone (A1.5) to One-Family Residential (R1.10), Lakeview North Neighborhood. (14-0013R)

Mr. Parker stated that the applicant had requested this item be continued until the next meeting.

Motion: Council Member Vernon K. Van Buren moved to continue item No. 6 to the next council meeting. The motion was seconded by Council Member George Stewart.

Roll Call Vote: The motion passed 6:0 with Council Members Harding, Knecht, Santiago, Stewart, Van Buren, and Winterton in favor. Council Member Sewell was excused.

Adjourn

Motion: Council Member David Knecht moved to Adjourn at 10:25 p.m. The motion was seconded by Council Member Gary Winterton.

Roll Call Vote: The motion passed 6:0 with Council Members Harding, Knecht, Santiago, Stewart, Van Buren, and Winterton in favor. Council Member Sewell was excused.

Provo City *(Mayor's Office)*

Staff Memorandum

Provo 360 Code Changes for Business Licensing

November 1, 2016

Department Head Karen Larsen 801-852-6805 **Presenter** Karen Larsen 801-852-6805 **Required Time for Presentation** 30 minutes **Is This Time Sensitive** Yes **Case File # (if applicable)** XX-XXX	**Purpose of Proposal** • With the upcoming implementation of the CityView software, Customer Service will be changing business license and rental dwelling license renewals to an anniversary month renewal system. Because the current process is laid out in existing code, a change in process also requires various sections of the Provo City Code to be changed. **Action Requested** • Ordinance Changes **Relevant City Policies** • 6.01, 6.02, 6.14,6.16,6.26,6.30 **Budget Impact** • Revenue Neutral, and delay of revenue **Description of this item (at least 2 paragraphs)** This is to help Council Members to have a clear understanding of what your item is. Current practice, as set forth in the City code, is to renew all business licenses in December annually, and renew rental dwelling licenses in August annually. With the anniversary renewal system the origination month or anniversary month, is the month in which the license was first issued. Each license will be valid for one year, beginning on the first day of the anniversary month. Because licenses are prepaid, this means the payment is due prior to the beginning of the license period. For example, if a business

	or rental dwelling has an anniversary month of May, the renewal payment will be due by April 30th and the license will run from May 1, 2018 through April 30, 2019. In order to implement this change, various sections of Provo City Code must be changed. The proposed changes generally consist of small adjustments to remove references to December and August renewals and replace with anniversary renewal language. The most significant changes outside of renewal references are clarification of post-expiration procedures, and codifying existing policy not clearly set forth in the current code. One of the proposed changes establishes a renewal grace period following the end of the license year. During this grace period, the license will continue to be recognized as valid and the business owner has a time period in which to resolve issues with their account and pay the required renewal fee before the license is invalid. Existing policy which is clarified is sending delinquent accounts to the collections process, and penalties related to operating a business without a license. Two small changes in the consolidated fee schedule are also included. They are removal of fee proration for the first year of business, and changing the minimum number of employees from one to zero to better reflect self-employed individuals. Budgetary considerations are primarily focused on a shift in the revenue collection timetable rather than a change in total revenue. The CityView software is anticipated to come online in October 2017. With this in mind, the transitional phase will shift revenue normally collected in August and December 2017 to calendar year 2018. As a result, some of the revenue which would ordinarily be collected in FY2018 will instead come in FY2019, creating lower than usual revenue in FY2018 and higher than usual in FY2019. FY2017 should be relatively unchanged. Business license owners will renew as usual in December 2016. However, instead of licenses expiring on December

	31st 2017 as they normally would, these licenses will be valid for each business until the end of the new renewal month. With the exception of those with a December renewal, businesses will skip renewing in December 2017, and instead will renew when they reach their new renewal month as determined by the original month in which the license was first issued. Upon reaching the new renewal month, the license holder will be required to pay for the previous 2018 months as well as a regular renewal fee covering the upcoming license year. For example, a business with a July renewal month will pay for January-July 2018 as well as August 2018-July 2019. Please see the appendix material for a visual representation of the license renewal transition. Rental dwelling licenses will follow a similar procedure. Instead of paying in August according to current practice, rental dwelling license owners will delay their 2017 payment until they reach their new renewal date in 2018. For example, a rental dwelling owner with a July renewal month will skip the August 2017 payment and instead pay the regular renewal fee to cover August 2018-July 2019 plus the prorated amount for August 2017-June 2018, in July 2018.. As with business licenses, the rental dwelling licenses issued in 2016 will not expire on August 31, 2017, but instead each will be considered valid until the last day of the new renewal month. Again, please see the appendix material for a visual representation of the license renewal transition.

Appendix Material

Renewal Schedule

2016	2017												2018											
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
January																									
February																									
March																									
April																									
May																									
June																									
July																									
August																									
September																									
October																									
November																									
December																									

Prorated Month
Payment Due
License Period
Rental Dwelling Prorated
City View Online

ORDINANCE 2016-.

AN ORDINANCE AMENDING PROVO CITY CODE AND THE CONSOLIDATED FEE SCHEDULE WITH REGARD TO LICENSE ADMINISTRATION AND FEES CHARGED FOR BUSINESS LICENSING (16-114)

WHEREAS, it is proposed that amendments be made to Provo City Code Title 6 to clarify language and provide necessary updates related to the anticipated changes necessary for prorating business licensing fees under the new anniversary renewal system, and other changes resulting from the Provo360 and CityView software changes in Customer Service; and

WHEREAS, it is proposed that definitions be added to clarify when licenses expire; and

WHEREAS, it is also proposed that Provo City Code Section 6.30.050 (License Fee) be deleted in an effort to consolidate renewal periods under the code; and

WHEREAS, it is proposed that the Consolidated Fee Schedule be amended to account for the fact that many home based and self-employed businesses have zero employees; and

WHEREAS, on November 1, 2016, the Municipal Council held duly noticed public meetings to ascertain the facts regarding this matter, which facts are found in the meeting records; and

WHEREAS, after considering the facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code Title 6 and the Consolidated Fee Schedule should be amended and (ii) this action, as set forth below, reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah as follows:

PART I:

The Consolidated Fee Schedule is hereby amended as follows. The Business Licensing Fees shown herein shall be as set forth below, except as may be later amended by the Municipal Council:

Provo City Consolidated Fee Schedule

. . .

BUSINESS LICENSING

General Business License

Number of Employees	Fee
~~01~~ – 5	$125
6 – 10	$175
11 – 25	$300
26 – 50	$425
51 – 75	$550
76 – 100	$675
101+	$800

~~First Year of Business~~ ~~Prorated~~

~~. . .~~

PART II:

Provo City Code Title 6 is hereby amended as shown in the attached Exhibit A.

PART III:

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

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

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

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

END OF ORDINANCE.

EXHIBIT A

Amendments to Provo City Code Title 6

. . .

6.01.020. License Required - Violations Prohibited.

It shall be unlawful:

(1) To engage in any activity regulated or licensed under the provisions of this Title without a license therefor;

(2) To engage in any activity regulated or licensed under the provisions of this Title if a license therefore has expired or been suspended or revoked; or

(3) To otherwise violate any provision of this Title.

6.01.030. License Assessment, Collection and Audits.

Provo City shall issue licenses and assess and collect license fees and may audit the records of applicants or licensees to ensure compliance with any licensing provision, and may refuse to issue a license or may suspend or revoke a license if the applicant or licensee, for any reason, fails or refuses to cooperate in such an audit.

. . .

6.01.060. Application for a License.

(1) Only the business owner may apply for a license in writing on a form approved by Provo City. The application shall show the following with respect to all business owners and persons (excluding shareholders or their equivalent) having a legal or equitable ownership interest in the subject business, trade, profession or other activity:

(a) Name, address, e-mail address, date of birth, and both home and business telephone numbers.

(b) Name, address, e-mail address, date of birth, and both home and business telephone number of the registered agent, if any.

(c) If the primary management is going to be performed by someone other than a person listed in Subsection (1)(a) of this Section, the name, address, date of birth and both home and business telephone numbers of the primary person in charge of the overall day to day management of the business, trade, profession, occupation or activity.

(d) A description of the business, trade, profession, occupation or activity for which a license is requested, including any assumed or fictitious names which may be used.

(e) The address of the property where the subject business, trade, profession, occupation or activity is to be carried on.

(f) The state tax number of the subject business, trade, profession, occupation or activity.

(g) A statement of all facts necessary to calculate applicable fees.

(h) Any other information required by the Provo City Code, by statute, or as reasonably required by Provo City.

(2) It shall be unlawful to incorrectly state any fact as part of applying for or retaining any license or in providing facts upon which the calculation of a fee will be based.

(3) The information required under this Section shall be kept current. Should any of the above information required in Subsection (1) of this Section change, the business owner(s) shall provide the City with the correct information within sixty (60) days from the date of the change.

. . .

6.01.090. Term of License - Renewal, Transfer Prohibited.

Unless otherwise expressly provided, the following shall apply to all licenses issued pursuant to this Title:

(1) All licenses shall be issued for one (1) year, commencing on the date the license is issued and ending on the last day of the twelfth month thereafter. ~~January 1 of any year and expiring December 31 of the same year.~~

(2) An expired license ~~current business license issued pursuant to Chapter 6.02, Provo City Code which would otherwise expire on December 31~~ shall remain in effect for the renewal grace period described in subsection (3).~~an additional thirty-one (31) days after expiration. Provided,~~

~~however, i~~If an expired ~~such a~~ license is renewed during the renewal grace period, the effective date of the renewed license shall be ~~January 1~~ the first day of the month following the original expiration date.

(3) An~~y~~ expired license may be renewed ~~within ninety (90) days of expiration,~~during the renewal grace period. The renewal grace period extends from the first day following license expiration to the end of business hours on the last business day of the month following expiration. During the grace period a license may be renewed without a new application, by payment of ~~the~~all required fees, including late fees, as shown on the Consolidated Fee Schedule adopted by the Municipal Council. After the renewal grace period, if business activity continues, the license will be considered delinquent under Provo City Code Section 6.01.150, and new application must be made and all associated fees must be paid to obtain a new license.

(4) Any license may be suspended or revoked at any time as described in Provo City Code Sections 6.01.160 and 6.01.170~~, Provo City Code~~.

(5) Licenses shall not be transferred.

6.01.100. License Fees.

License fees shall be paid annually in advance for the term of the license. ~~License fees may be prorated as necessary when a new application is made during the license term provided the Provo City Code or by other City ordinance.~~ License fees shall not be refunded because the business or activity for which the same was obtained has been for any reason discontinued, or for any other reason; provided, however, a license fee or a portion thereof may be refunded if the same was erroneously required or if the amount thereof was erroneously calculated or if the subject business was discontinued at the request or requirement of Provo City.

. . .

6.01.150. Delinquency.

In the event a fee, or any portion thereof, is not paid when due, a penalty shall be added as shown on the Consolidated Fee Schedule adopted by the Municipal Council. This provision shall not imply the right of a licensee to continue a licensed activity without the payment of required fees. In addition to any criminal action brought to enforce the provisions of this Title, Provo City may bring a civil action to collect the amount of any delinquent and unpaid fee or refer the matter to

collections. In the event legal action is filed to collect delinquent and unpaid fees, the debtor shall pay a reasonable attorney's fee and costs. If a civil action is to be brought, or the matter is to be referred to collections, Provo City will notify the licensee no less than three (3) days prior to filing of the action or referral to collections. Any person, group, or entity having a delinquent license will be prohibited from obtaining any new or additional licenses without first resolving debt owed to Provo City under this Title.

6.01.160. Suspension or Revocation - Grounds.

Provo City may suspend or revoke a license:

(1) because the license should not have been issued;

(2) because of failure or refusal to permit or cooperate with an audit or an inspection;

(3) for failure to timely pay a required fee;

(4) if continued operation of the licensed activity would constitute a nuisance, or present a danger to health, general welfare or morals of the community; or,

(5) because of a violation of this Title or any other applicable provision of law.

6.01.170. Suspension or Revocation-Procedure.

The following procedures apply to the suspension or revocation of any license issued under this Title:

(1) A license may be suspended without a hearing for a period not exceeding three (3) days based upon the reasonable belief that continued operation of the licensed activity will be in violation of the requirements of this Title. A written description of the reason for the suspension shall be delivered to the licensee, or an employee or agent of the licensee, with the order of suspension.

(2) A license may be suspended or revoked, for one (1) or more violations of this Title, after a hearing as to which the licensee is given not less than three (3) days' notice. The hearing shall be conducted pursuant to Provo City Code Chapter 3.06~~, Provo City Code~~.

(3) A license may be suspended or revoked without a hearing for failure to timely pay a required fee.

. . .

6.01.200. Compliance with Licensing Requirements.

Whenever in this ~~article~~Title a particular license is not required (for example, business licenses are not required of some persons under Provo City Code Sections 6.01.130 and 6.02.020~~, Provo City Code~~), such provisions shall not eliminate the obligation to conform to all other applicable licensing and regulatory requirements including those related to zoning, building, health and fire safety.

6.02.010. Definitions.

The following terms as used in this T~~t~~itle shall have the meanings indicated:

To **"Engage~~ing in business,~~"** "**operate,**" or **"conduct~~ of business~~"** a business, activity, operation, or service means:

(a) operating, keeping, conducting, or maintaining a rental dwelling, a short-term rental dwelling, a mobile home rental dwelling, or a mobile home park as defined in this section;

(b) sale of tangible personal property at retail or wholesale;

(c) manufacturing of goods; or,

(d) rendering of services to others for a consideration, and includes (as examples, and not by way of limitation): retail merchants; persons engaged in trades and crafts; professionals, including doctors, lawyers, accountants, and dentists; contractors; banks; savings and loan associations; and real estate agents. The act of employees rendering services to employers shall not be included in such terms unless otherwise specifically prescribed.

"**Expired license**" shall refer to a license, other than a temporary license, which has passed the assigned expiration or ending date. Unless otherwise stipulated, a license's expiration date is the last day of the twelfth month after issuance.

~~**"Gross receipts"** means all monies derived from:~~

~~(a) the sale of tangible personal property, or services, or both, without deduction or exclusion for the cost of goods or properties sold or the expense of carrying on any business, trade, profession, craft, occupation, or other activity, and~~

~~(b) the rental of a rental dwelling.~~

"Mobile home park" means a lot or parcel of land, or two (2) or more adjacent lots or parcels of land under single ownership or control, where spaces for two (2) or more manufactured homes or mobile homes, or any combination thereof, may be rented or leased to accommodate the placement and occupancy of such homes.

"Mobile home rental dwelling" means a mobile home or manufactured home used or designated for use as a residence by one (1) or more persons that~~and~~ is:

(a) available to be rented, loaned, leased, or hired out for a period of one (1) month or longer; or

(b) arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one (1) month or longer.

"Person(s)" means any individual or natural person, receiver, assignee, trustee in bankruptcy, trust, firm, partnership, joint venture, corporation, club, company, business trust, corporation, association, society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise. Separate licenses shall not be required for persons who engage in business with others as a partnership or corporation. No "person" as defined herein shall claim or qualify in any status (e.g., a natural person, a partnership or corporation) inconsistent with the status claimed on the federal income tax return of that "person."

"Rental dwelling" means, except as provided in subsection (c), a building or portion of a building used or designated for use as a residence by one (1) or more persons that~~and~~ is:

(a) available to be rented, loaned, leased, or hired out for a period of one (1) month or longer; or

(b) arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one (1) month or longer.

(c) An accessory apartment in an owner-occupied one family dwelling shall not be deemed a rental dwelling.

"Short-term rental dwelling" means a building or portion of a building, or a mobile or a manufactured home, used, ~~or~~ designated, or designed for use as a residence by one (1) or more persons that~~and~~ is:

(a) available to be rented, loaned, leased, or hired out for a period of less than one (1) month; or

(b) arranged, designed, or built to be rented, loaned, leased, or hired out for a period of less than one (1) month.

6.02.020. Business License and Fees; Registration.

(1) Except as otherwise provided in this Chapter, every person engaged in business in Provo City shall obtain a business license and pay an annual license fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

(2) Any person violating any of the provisions of any chapter of this Title shall be guilty of a Class B misdemeanor. ~~The business license fee shall be paid in advance on the basis of a calendar year, and shall be delinquent if not paid before the thirty-first (31st) day of January for the year for which it is due.~~

(3) A fee for a location change and for a name change shall be paid as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

. . .

6.14.130. ~~Terms and Conditions~~Display of License and Fee Refunds.

~~All beer licenses shall be for the term of one (1) year, from the first day to the last day of June, unless sooner revoked. Licenses issued under this Chapter shall not be transferable. A beer license may be revoked for any violation of this Chapter demonstrated at an administrative hearing conforming to the provisions of Chapter 3.06, Provo City Code.~~ A license issued pursuant to this Chapter shall be displayed at all times on the licensed premises in a place readily visible to the public. License fees shall not be refunded, except in the event the State of Utah denies a State license to sell beer. In such event and upon request by the applicant, any license

fee paid shall be refunded except for the non-refundable fee required by Provo City Code Section 6.14.070(1)~~, Provo City Code~~.

. . .

6.16.050. License Fee - Annual Renewal.

The license fee payable at the time of submission of application shall be as shown on the Consolidated Fee Schedule adopted by the Municipal Council.~~, each license to be good for the calendar year for which it is issued, and will become effective on the date issued. The license fee may be prorated when a new application is made during the calendar year as provided in Section 6.01.100, Provo City Code.~~ In addition to the requirements of Provo City Code Section 6.01.090, ~~Annual~~ renewal~~s~~ of the license requires~~shall be made upon~~ filing of a written statement by the applicant as to any changes in the original application.~~ and by payment of the annual fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.~~

. . .

6.26.050. License Fee

(1) The fee for a rental dwelling business license shall be as on the Consolidated Fee Schedule adopted by the Municipal Council.

(2) There shall be no fee reduction for the first year in which a person engages in the business of operating, keeping, conducting, or maintaining a rental dwelling.

(3) ~~The business license fee shall be paid in advance for one (1) year and shall be due and payable on August 1 of each year. A license shall be delinquent if not paid before August 31 of the year for which it is due~~ A rental dwelling license may be suspended or revoked at any time as provided in Provo City Code Section 6.26.080.

. . .

~~**6.30.050. License Fee.**~~

~~(1) The fee for a mobile home rental dwelling business license shall be as shown in the Consolidated Fee Schedule Adopted by the Municipal Council.~~

~~(2) There shall be no fee reduction for the first year in which a person engages in the business of operating, keeping, conducting, or maintaining a mobile home rental dwelling.~~

~~(3) The business license fee shall be paid in advance for one (1) year and shall be due and payable on August 1 of each year. A license shall be delinquent if not paid before August 31 of the year for which it is due.~~

ORDINANCE 2016-

AN ORDINANCE GRANTING FIRST DIGITAL A NONEXCLUSIVE FRANCHISE IN ORDER FOR IT TO OPERATE A TELECOMMUNICATIONS NETWORK IN PROVO CITY, UTAH. (16-117)

WHEREAS, First Digital desires a nonexclusive franchise granting to First Digital the right and privilege to operate a telecommunications network ("Network") in Provo, Utah; and

WHEREAS, Provo City and First Digital have negotiated a nonexclusive franchise agreement ("Franchise Agreement") setting forth First Digital's rights and duties with respect to its operation of a Network in Provo, Utah, as set forth in the attached Exhibit A; and

WHEREAS, on November 1, 2016, the Provo Municipal Council held a duly noticed public meeting to ascertain the facts regarding this matter, which facts are found in the meeting record; and

WHEREAS, after considering the facts presented to the Municipal Council, the Council finds: (i) the attached Franchise Agreement should be approved, thereby granting to First Digital a franchise to operate a Network in Provo, Utah, on the terms set forth in the Franchise Agreement; and (ii) such action furthers the health, safety, and welfare, and the best interests of the citizens of Provo.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The attached Franchise Agreement between Provo City and First Digital is hereby approved and First Digital is hereby granted a franchise to operate a Network in Provo, Utah, pursuant to the Franchise Agreement. The Mayor is hereby authorized to execute the Franchise Agreement, as set forth in the attached Exhibit A; provided, however, that the Mayor is also hereby authorized to amend the Franchise Agreement as may be needed to meet the requirements of applicable law.

The franchise granted herein shall be effective upon the date on which all parties have signed the Franchise Agreement. If the Franchise Agreement has not been fully executed within sixty (60) days after the passage of this ordinance by the City, this ordinance and the rights granted herein shall be null and void.

PART II:

A. If a provision of this Ordinance conflicts with a provision of a previously adopted ordinance concerning the same franchising act described herein, the provision in this Ordinance shall prevail.

B. This ordinance and its various sections, clauses, and paragraphs are hereby declared to be severable. If any part, sentence, clause, or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that this Ordinance remain uncodified.

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

END OF ORDINANCE.

PROVO CITY AND FIRSTDIGITAL TELECOM, LLC
TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into on _____, 2016 by and between the City of Provo, Utah, (hereinafter "City") and FirstDigital Telecom, LLC, a Utah Limited Liability Company, (hereinafter "Company").

WITNESSETH:

WHEREAS, Provo City Code Chapter 6.24 “Telecommunications Rights-of-Way” provides for the use of the City’s Rights-of-Way for the installation, construction, and maintenance of systems in the City’s Rights-of-Way,

WHEREAS, the Company desires to provide certain telecommunication services within the City and in connection therewith to establish a telecommunications network in, under, along, over, and across present and future streets, alleys, easements, and Rights-of-Way of the City, consisting of telecommunication lines, cables, and all necessary appurtenances; and

WHEREAS, the City, in exercise of its ownership rights over and in the public streets, alleys, easements, and Rights-of-Way, believes that it is in the best interest of the public to provide to the Company and its successors a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company have negotiated an arrangement whereby the Company may provide its services within the City, pursuant to the terms and conditions outlined in this Agreement and in Provo City Code Chapter 6.24, and subject to the further reasonable regulation under its police and other regulatory power;

NOW, THEREFORE, in consideration of the mutual convents and agreements of the parties contained herein, and other good and valuable consideration, City and Company agree as follows:

ARTICLE I

FRANCHISE AGREEMENT AND ORDINANCE

1.1 **Agreement**. Upon approval by the City Municipal Council, this Franchise Agreement shall be deemed to constitute a contract by and between City and Company.

1.2 **Ordinance.** Previously, the City adopted Chapter 6.24 “Telecommunications Rights-of-Way” (the "Ordinance"), and such Ordinance is incorporated herein by reference and made an integral part hereof.

1.3 **Grant of Franchise.** The City hereby grants to Company and its successors and assigns the non-exclusive right, privilege, and franchise (the "Franchise") to construct, maintain, and operate a telecommunications network (hereinafter "Network") in, under, along, over, and across the present and future streets, alleys, easements and Rights-of-Way of the City. The Franchise does not grant to the Company the right, privilege or authority to engage in the community antenna (or cable) television business although nothing contained herein shall preclude the Company from (1) permitting those lawfully engaged in such business to utilize Company's facilities within the City for such purposes, or (2) from providing such service if an appropriate Franchise is obtained and all other legal requirements have been satisfied. If state or federal law permits Company to operate an open video system without obtaining a separate franchise from City to provide video services, Company nevertheless acknowledges that Chapter 6.22 of the Provo City Code regulates and governs the provisions of multichannel video services, and in providing video services to Customers within City, Company shall be subject to the customer service and consumer protection provisions of that Chapter.

1.4 **Financial Capability.** Company warrants that it has the financial capability to construct, maintain, and operate a telecommunications network and to otherwise comply with the provisions of this Agreement.

1.5 **Relationship; Joint Facilities Agreement.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with the other. The Franchise does not grant Company the right to use City poles, conduit, or other facilities. The use of such facilities shall be governed by a separate Pole Attachment and Conduit Occupancy Agreement.

1.6 **Records Inspection.** The records of the Company pertaining to the reports, plans, designs, and payments required by this Franchise, including, but not limited to, any records deemed necessary or useful by the City to calculate or confirm Gross Revenues, as defined herein, shall be open for inspection by the City and its duly authorized representatives at all reasonable business hours of the Company, provided Company is given reasonable notice. Such records may be copied by the City and the copies may be removed from the premises, provided that reasonable arrangements are made to protect the confidentiality of such records.

1.7 **Definitions.** The words, terms, and phrases which are used herein and in the Ordinance shall have their ordinary plain meaning unless the word, term, or phrase is expressly defined herein. Words, terms, and phrases which are not specifically defined herein, but are defined in 47 U.S.C. § 153, or its successor, shall have the technical meaning provided by that section as of the date of this agreement. The following words, terms, and phrases when used herein shall have the following meanings:

"City Council" means the Provo City Municipal Council.

"Customer" means a person or user of the Company's telecommunications Network who lawfully receives telecommunications services or other services therefrom with the Company's authorized permission, including, but not limited to, other companies utilizing Company's Network to provide services to customers of those companies.

"Gross Revenues" means any and all revenues of the Company derived from the sale of telecommunications services to its Customers within the City, without regard to the billing address of the Customer; and to the extent such services utilize the herein-referenced fiber-optic, copper, or other cable; except that the term "Gross Revenue" shall not include revenue from sources excluded by law, or revenue derived by the Company from services provided to its parent, subsidiaries of its parent, or affiliated companies of the Company.

"Network" means a Network of telecommunications lines and cables (including without limitation fiber-optic and copper lines and cables), together with necessary and desirable appurtenances (including underground and above-ground conduits and structures, poles, towers, wire, and cable) for its own use for the purpose of providing telecommunications services to the City, the inhabitants thereof, and persons and corporations beyond the limits thereof.

"Public Improvement" means any existing or contemplated public facility, building, or capital improvement project, including without limitation streets, alleys, sidewalks, sewer, water drainage, Right-of-Way improvements, poles, lines, wires, conduits, and Public Projects.

"Public Project" means any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

"Rights-of-Way" includes present and future City streets, alleys, rights-of-way, and public easements, including easements dedicated in plats of the City.

ARTICLE II

TERM AND RENEWAL

2.1 **Term and Renewal.** The Franchise granted to Company shall be for a period of five (5) years commencing on the date this Agreement is executed, unless this Franchise be sooner terminated as herein provided. At the end of the initial five (5) year term the Franchise may be renewed by Company upon the same terms and conditions as contained in this Agreement, so long as Company is in compliance with the provisions of this Agreement, for an additional five (5) year term, by providing to the City's representative, not less than ninety (90) calendar days before the expiration of the initial franchise term, written notice of Company's intent to renew. If the statutory limit imposed on the Franchise Fee by Utah Code § 11-26-1 et seq., or any successor provision, is changed, the parties shall amend, upon its renewal, this Agreement to conform to the new statutory limit.

2.2 **Rights of Company Upon Expiration or Revocation.** Upon expiration of the Franchise, whether by lapse of time, by agreement between Company and the City, or by revocation or forfeiture thereof, the Company shall have the right to remove any and all of its facilities, but in such event, it shall be the duty of the Company, immediately upon such removal, to restore the streets, avenues, alleys, and other public ways and grounds from which such facilities are removed to as good condition as the same were before the removal was effected.

2.3 **Rights of City Upon Expiration or Revocation.** Upon expiration of the term of this Franchise, forfeiture, or lawful revocation of this Franchise, and if no renewal or extension thereof is agreed upon, Company may, at the discretion of the City Council, be required, in part or entirely, to remove all its wires, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Franchise. Alternatively, the removal, or sale of such facilities and equipment may be directed, limited, or conditioned by the City by agreement or through means of other lawful municipal power or right. The City may continue to invoke any or all provisions of this Franchise against Company or any successor entity enjoying de facto franchise privileges after expiration or revocation. The City and the Company will work together to take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interest of the City or its inhabitants and the Company.

ARTICLE III

CONSIDERATION AND PAYMENT

3.1 **Franchise Fee.** For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Company of the City's Rights-of-Way, the

Company agrees:

a. To pay to the City an annual franchise fee (the "Franchise Fee"), in an amount equal to, and consisting of, the municipal telecommunications license tax (the "Municipal Telecommunications Tax") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended, and imposed and levied pursuant to Provo City Code, Chapter 5.07, (collectively the "Municipal Telecommunications Tax Laws"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Laws, and shall be paid by the Company to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder. Compliance by the Company with the terms and provisions of the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Agreement with respect to the calculation and payment of the Franchise Fee.

b. Notwithstanding the provisions of Section 3.1(a) above, the Franchise Fee shall be calculated and payable as described therein only so long as the Company and the services provided within the City by the Company by means of the Company Facilities are subject to the Municipal Telecommunications Tax. In the event all or any portion of the Company Facilities ceases to be used by the Company to provide services subject to the Municipal Telecommunications Tax, the Company shall pay, in lieu of the Franchise Fee, a charge with respect to such portion of the Company Facilities, payable from and after the (i) the date Company ceases to provide such services, or (ii) the date the Municipal Telecommunications Tax ceases to apply to the services provided by the Company, which shall be calculated in the same manner as the charge then imposed by the City on other Companies occupying the Right-of-Way with similar facilities, and which do not provide telecommunication services subject to the Municipal Telecommunications Act. The City and the Company agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate a change in the Municipal Telecommunications Tax Laws, including payment provisions; provided such new or changed provisions shall conform substantially with the provisions contained in any permits held by other similarly situated companies.

Equal Treatment. City agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the City will either impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the City, or reduce the amount owed pursuant to this agreement to the same amount charged to the competing service.

3.2 Reconciliation. Within 30 calendar days after the filing of any report or the making of any payment, or within such reasonable additional time as the City may request, the City shall examine such report or payment, determine the accuracy thereof, and, if the City finds any errors, report such errors to the Company for correction. If the Franchise Fee as paid shall be found deficient, the Company shall promptly remit the difference, and if the Franchise Fee as paid shall be found excessive, the City shall promptly refund the difference. In the event of a disagreement, the Company shall make payment under protest pending the resolution of the dispute between the parties or through the courts. Neither payment of the Franchise Fee nor failure to make such investigation shall be deemed to estop the City or the Company in any way or prevent subsequent investigation by either and collection or return of any amount properly due. No acceptance of any payment by the City shall be construed as a release of, or an accord or satisfaction of, any claim the City might have for further or additional sums payable under the terms of this Agreement for the performance of any other obligation of the Company hereunder.

3.3 Extensions Not Statute of Limitation or Repose. The aforesaid 30-day notice period is not intended and shall not act as a statute of limitation or repose, which limitation periods shall be governed by Utah Law.

3.4 Delinquency. Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10%) of the payment. Failure to make any payment and penalty charges within thirty (30) calendar days of the applicable payment date shall constitute breach of the terms of the this Agreement and constitute just cause for termination, and such unpaid amount shall bear interest until paid at the rate of an additional ten percent (10%) per annum until paid. Timely payment of the Franchise Fee to the Utah State Tax Commission pursuant to Utah Code Annotated § 10-1-401 et seq., as amended, shall not be considered delinquent by reason of the Commission's failure to forward those funds timely to the City.

3.5 Revenue Report Following Termination. In the event this Agreement or the Franchise should be terminated, forfeited, or determined to be void or invalid by any order or decree by a court of competent jurisdiction, the Company, not later than thirty (30) calendar days following such termination, forfeiture, or determination, shall submit to the City a report prepared as before required, showing the Gross Revenues of the Company for the time elapsed since the last period for which the Company has paid the Franchise

Fee. Coincidental with the submission of the report, the Company shall pay to the City the Franchise Fee due and owing to the City for such period.

3.6 **Audits.** For the purpose of verifying the correct amount of the franchise fee, the books and records of Company pertaining thereto shall be open to inspection or audit by duly authorized representatives of Provo City at all reasonable times, but not more than once a year, upon giving reasonable notice of the intention to inspect or audit said books and records. The Company agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Company has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Company herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

ARTICLE IV

USE AND RELOCATION OF FACILITIES IN THE PUBLIC RIGHT-OF-WAY

4.1 **Franchise Rights to Use the Public Right-of-Way.** The Company shall have the right to use the public Rights-of-Way within the City to construct and maintain its Network subject to the conditions set forth in this Agreement, including the provisions of Chapters 6.24 and 15.11 of the Provo City Code, which are hereby incorporated by reference; provided, however, that the Company shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, or within any Right-of-Way, City park, pleasure ground, or other recreational area currently existing or developed in the future without a permit from the City Representative. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose. In addition, Company shall have the right to utilize any easements across private property granted to the City for utility purposes, provided the City's written permission is obtained in each case and the documents granting such easements to the City authorize such use. Company specifically understands and acknowledges that certain City easements and Rights-of-Way may be prescriptive in nature, and that nothing in this Franchise extends permission to use the easement or Right-of-Way beyond the extent that the City may have acquired, and such easements and Rights-of-Way may be subject to third party prior or after-acquired interests. Company is cautioned to examine each individual easement and Right-of-Way and the legal arrangement between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or Right-of-Way and Company remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or Right-of-Way.

4.2 **Company Duty to Relocate; Subordination to City Use.** Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, Rights-of-Way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not less than thirty (30) calendar days, to remove and relocate or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Company shall be at no cost to the City; provided, however, that the Company and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Company to install or relocate its lines underground shall be subject to the provisions of paragraph 5.3 below. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by Company pursuant to this paragraph shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights the City may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement. In the event the City has required the Company to relocate its facilities to accommodate a private third party, the City shall use good faith to require such third party to pay the costs of relocation. Notwithstanding anything to the contrary herein, the Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The City and Company shall coordinate the placement of their respective facilities and improvements in a manner which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.

4.3 **Duty to Obtain Approval to Move Company Property; Emergency.** Except as otherwise provided herein, the City, without the prior written approval of the Company, shall not intentionally alter, remove, relocate, or otherwise interfere with any Company facilities. However, if it becomes necessary (in the judgment of the Mayor, City Council, City Engineer, Fire Chief, Police Chief, Energy Director, or their designees) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of the Company, and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. Should the City take actions pursuant to this section, the Company shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Company's property and/or (b) interruptions of telecommunications services provided by the use of or through the Company's property (including telecommunications services provided by the Company to the Company's Customers), whether such claims, demands, liens, or liability arise from or are brought by the Company, its insurers, the Company's Customers, or third parties. If, however, the City

requests emergency funding reimbursement from federal, state or other governmental sources, the City shall include in its request the costs incurred by the Company to repair facilities damaged by the City in responding to the emergency. Any funds received by the City on behalf of Company shall be paid to the Company within thirty (30) business days.

4.4 Dedication of Facilities. In consideration of this Agreement, the Company shall, during the term of this Agreement, provide City with the exclusive use of four (4) strands of single mode fiber (dark fiber) in its fiber optic cables, only if requested otherwise the strands of fiber assets will be consider FirstDigital property, which are located within the City, excluding drop cables to individual buildings or customer premises. The strands of fiber provided can only be used or leased by the city and no other 3rd party providers or entities that compete against FirstDigital Telecom. If the term of this agreement expire, the use of the strands of fiber will be terminated as well.

ARTICLE V

PLAN, DESIGN, CONSTRUCTION, INSTALLATION OF COMPANY FACILITIES

5.1 Coordination of Construction and Joint Use. On or before February 28, May 31, August 31, and November 30 of each calendar year, or such other date the Company and City may agree upon from year to year, the Company's and the City's representatives will meet (the "Quarterly Coordination Meeting") for the purpose of exchanging information and documents regarding future construction of Company's facilities within the City, with a view toward coordinating their respective activities. Documents and information to be exchanged shall include, without limitation, engineering drawings or other detailed maps of the proposed locations of construction or installation of telecommunication facilities. The Company, and the City Energy Director shall thereafter in good faith exchange other information and documents regarding the proposed construction for the purpose of coordinating the joint and respective activities within the City. Any significant construction or installation of new facilities by the Company or other franchised telecommunication companies not presented at the Quarterly Coordination Meeting shall only be commenced upon approval of the City Energy Director. Upon request, information regarding future capital improvements involving land acquisition or construction or installation of telecommunication facilities shall be treated with confidentiality as governed, and to the extent authorized, by City ordinance and the Government Records Access and Management Act.

5.2 Conditions of Public Utility Easement, Right-of-Way and Street Occupancy.

a. Except as provided below, the Company shall not erect, authorize, or permit others to erect any poles within the streets of the City for the operation of Company's Network, but shall use the existing poles and facilities of the City

Energy Department and other telecommunication providers under such terms as the Company negotiates with City and these other entities in separate "joint facilities" agreements. City shall cooperate with Company in its negotiating with other telecommunication providers.

b. The Company may request, in writing, that it be authorized to erect poles or place conduit or other facilities within the streets of the City for the operation of its Network. Such consent shall be entirely discretionary with the City and shall be given upon such terms and conditions as the City Council, in its sole discretion, may prescribe, which shall include a requirement that the Company perform, at its sole expense, all tree trimming required as a result of the Company's presence to maintain the line or facilities clear of obstructions. With respect to any poles or wire-holding structures that the Company is authorized to construct and install within the City, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or facility by the Company, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Company's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed between the parties. Such authorization shall include the condition that the public utility district pay to the Company any and all actual and necessary costs incurred by the Company in permitting such use, and shall indemnify the Company and City from and against any claims or causes of action brought about due to such use.

c. No cables, equipment, or wires for construction, maintenance, and operation of the Network shall be installed or the installation thereof commence on any existing pole within the City until the proposed location, specifications, and manner of installation of such cables, equipment, and wires are set forth upon an engineering drawing, plot, or map showing the existing poles, streets, alleys, or highways where such installations are proposed. The drawing, plot, or map shall be submitted to the City Engineer and the City Energy Director and reviewed for approval or disapproval within a reasonable time in writing. Such approval shall not be unreasonably withheld. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits.

d. If, in the conduct of its business, the Company is required to locate facilities in the streets of the City, other than facilities that may be attached to utility poles, the nature of such facilities shall be disclosed to the City for prior review and approval as to the need thereof and as to the location within the street. The installation shall be made under such conditions as the City Engineer shall prescribe.

e. The Company, at its own expense, may, and is solely responsible to, trim trees overhanging the public Rights-of-Way of the City to prevent the branches of such trees from coming in contact with the Company's wires and cable. Prior to the Company attempting to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City, the Company shall obtain approval from, and be under the supervision of, the City official to whom such duties have been or may be delegated in accordance with the applicable provisions of the municipal code of the City. Company shall immediately remove the trimmings and restore the area to its previous condition.

f. The Company, on the request of any person holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company may require such payment in advance. The City agrees to provide prior written notice of the necessity to move the wires as far in advance as possible; provided in no event shall the City give less than forty-eight (48) hours advance notice. In the event of a disagreement between the Company and the holder of a permit, such disagreement shall be resolved by the City.

5.3 Duty to Underground. The Company shall be required to comply with the rules and regulations of the Public Service Commission in regard to the installation of underground lines. In addition, the Company shall comply with rules and regulations adopted by the City for the placement of newly constructed Network lines underground; provided, however, Company shall only be required to place newly constructed Network lines underground to the extent that underground placement is also required of all other existing and newly constructed lines of other telecommunication companies at that location with the City. If all other electric utilities or telephone utilities are located or relocated underground in any place within the City after the Company has installed its facilities, the Company shall thereafter remove and relocate its facilities underground in such places. Where utilities are underground, the Company may locate certain equipment above ground upon a showing of necessity and with the written approval from the City.

5.4 Company Duty to Comply with Rules and Regulations. Facilities located on, upon, over, and under property in which the City has an ownership interest shall be constructed, installed, maintained, cleared of vegetation, renovated, or replaced in accordance with such rules and regulations as the City may issue. The Company shall acquire permits in accordance with such rules and regulations and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. It is understood that this work involves the health, safety, and welfare of the community, and from time to time, must be done under circumstances that may make prior acquisition of a permit infeasible.

5.5 **Compliance with Pollution Laws.** Company shall ensure that its facilities within the City meet the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company shall provide the City with a status report of such measures.

5.6 **Compliance with Applicable Laws.** All telecommunications lines, poles, towers, pipes, conduits, equipment, property, and other structures or assets installed, used, maintained, relocated, or dismantled under color of this Agreement shall be so installed, used, operated, tested, maintained, relocated, or dismantled in accordance with applicable present and future federal, state, and City law and regulations, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and the Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Agreement may be additional to or stricter than such minimum standards.

5.7 **Location to Minimize Interference.** All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Company shall be located so as to minimize interference with the use of streets, alleys, Rights-of-Way, and public property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, Rights-of-Way, or public property.

5.8 **Repair of Damage.** If during the course of work on its facilities, the Company causes damage to or alters any street, alley, Rights-of-Way, sidewalk, utility, Public Improvement, or other public property, the Company (at its own cost and expense and in a manner approved by the City) shall promptly and completely restore such street, alley, Rights-of-Way, sidewalk, utility, Public Improvement or other public property to its previous condition, in accordance with applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in case of emergency, the Company, prior to commencing work in the public way, street, or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Such permit shall not be unreasonably withheld. The Company shall abide by all reasonable regulations and requirements of the City for such work.

5.9 **Guarantee of Repairs.** For a period of one year following the completion of the repair work performed pursuant to Section 5.8, the Company shall maintain, repair, and keep in good condition those portions of said streets, alleys, Rights-of-Way, or public property restored, repaired, or replaced to the satisfaction of the City.

5.10 **Safety Standards.** The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations, or standards imposed by law

including, but not limited to, signing in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

5.11 Supervision by the City.

a. The Company shall construct, operate, and maintain the Network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Company.

b. The Company's Network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to the Company.

5.12 Company's Duty to Remove Its Network.

a. The Company shall promptly remove, at its own cost and expense, from any public property within the City, all or any part of the Network when one or more of the following conditions occur:

(1) The Company ceases to operate the Network for a continuous period of twelve months, and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such cessation, except when the cessation of service is a direct result of a natural or man-made disaster;

(2) The Company fails to construct said Network as herein provided and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such failure;

(3) The Franchise is terminated or revoked pursuant to notice as provided herein; or

(4) The Franchise expires pursuant to this Agreement.

b. The Company’s removal of any or all of the Network that requires trenching or other opening of the City's streets shall be done only after the Company obtains prior written notice and approval from the City.

c. The Company shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 5.12(a) above and shall have ninety (90) calendar days from the date upon which said notice is received to remove or abandon such facilities.

5.13 Notice of Closure of Streets. Except in cases of emergency, the Company shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency, as reasonably determined by the Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Section 5.10, above.

ARTICLE VI

POLICE POWER

6.1 Reservation of Police Power. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

6.2 Other Regulatory Approval. The Company and the City shall at all times during the life of this Franchise, comply with all federal, state, and City laws and regulations and with such reasonable and lawful regulation as the City now or hereafter shall provide, including all lawful and reasonable rules, regulations, policies, resolutions and ordinances now or hereafter promulgated by the City relating to permits and fees, sidewalk and pavement cuts, attachment to poles, utility location, construction coordination, beautification, and other requirements on the use of the Right-of-Way. The terms of this Franchise shall apply to all the Company's facilities used, in whole or part, in the provision of telecommunications services in newly annexed areas upon the effective date of such annexation. Company shall provide no service regulated by the Federal Communications Commission (FCC) or Utah Public Service Commission (PSC) until it has received all necessary approvals and permits from said commissions. Nothing in this Agreement shall constitute a waiver of either party’s right to challenge any portion of this Agreement which is not in accordance with applicable federal, state and local laws.

ARTICLE VII

CITY REPRESENTATIVES

7.1 Mayor's Duties and Responsibilities. The Mayor is hereby designated as the "City Representative" with full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said

provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The Mayor may delegate to others, including but not limited to, the City Attorney, City Engineer, City Finance Director, and City Energy Director, the various duties and responsibilities of City Representative. The failure or omission of the Mayor or the Mayor's designee(s) as City Representative to act shall not constitute any waiver or estoppel.

7.2 **Company Duty to Cooperate.** In order to facilitate such duties of the City Representative, the Company agrees to allow the City Representative reasonable access to any part of the Company's Network within the City's public Rights-of-Way.

7.3 **City Financial Review.** With regard to financially related matters, the Mayor or the Mayor's designee, as City Representative may undertake a financial review of Company's payment of its Franchise fees and other fees and obligations under this agreement. The failure or omission to conduct a financial review shall not constitute any waiver or estoppel.

7.4 **No Waiver or Estoppel.** Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any of such terms and conditions.

ARTICLE VIII

TRANSFER OF FRANCHISE

8.1 **Written Approval Required.** The Company shall not transfer or assign the Franchise or any rights under this Agreement to another entity, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld or delayed. Any attempted assignment or transfer without such prior written consent shall constitute a Default of the Franchise. In the event of such a Default, City shall proceed according to the procedure set forth in this Agreement, and any applicable state or federal law.

8.2 **Procedure for Obtaining Approval for Transfer.** At least ninety (90) calendar days before a proposed assignment or transfer of Company's Franchise is scheduled to become effective, Company shall petition in writing for the City Council's written consent for such a proposed assignment or transfer. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Council may consider any or all of the following:

(a) experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);

(b) qualifications of proposed assignee or transferee;
(c) legal integrity of proposed assignee or transferee;
(d) financial ability and stability of the proposed assignee or transferee;
(e) the corporate connection, if any, between the Company, and proposed assignee or transferee; and
(f) any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of a telecommunications network.

8.3 Certification of Assignee. Before an assignment or transfer is approved by the City Council, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by the applicable Franchise Agreement and all applicable laws, rules, and regulations.

8.4 Effect of Approval. In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of Company, except an assignment or transfer shall not relieve the Company of its liabilities under the Franchise Agreement until the assignment actually takes place, unless specifically relieved by federal, or state law, or unless specifically relieved by the City Council at the time an assignment or transfer is approved.

8.5 Transfer Upon Revocation by City. Company and City agree that in the case of a lawful revocation of the Franchise, at Company's request, which shall be made in its sole discretion, Company shall be given a reasonable opportunity to effectuate a transfer of its Network to a qualified third party. City further agrees that during such a period of time, it shall authorize the company to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period greater than six (6) months from the effective date of such revocation. If at the end of that time, Company is unsuccessful in procuring a qualified transferee or assignee of its Network which is reasonably acceptable to the City, Company and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Company's continued operation of its Network during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment, of any rights of either the City or the Company. Notwithstanding anything to the contrary set forth herein, neither City nor Company shall be required to violate federal or state law.

8.6 Abandonment of Facilities by Company. The Company, with the written consent of the City, may abandon any underground facilities in place, subject to the requirements of the City. In such an event, after receiving the written consent of the City, the abandoned Network shall become the property of the City, and the Company shall have no further responsibilities or obligations concerning those facilities.

ARTICLE IX

ACCEPTANCE BY THE COMPANY OF FRANCHISE

Company Duty to Approve Franchise Agreement. If the Company has not duly executed this Agreement prior to the City Council's adoption of the corresponding ordinance, then within sixty (60) calendar days after the effective date of the City Council's adoption of the ordinance, the Company shall execute this Agreement and file an unqualified acceptance of the ordinance in writing with the City Recorder of the City in a form approved by the City Attorney; otherwise, this Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

ARTICLE X

EXTENSION OF CITY LIMITS

Annexations. Upon the annexation of any territory to the City, all rights hereby granted and the Franchise shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof.

ARTICLE XI

EARLY TERMINATION OR REVOCATION OF FRANCHISE

11.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

a. The Company fails to make timely payments of the Franchise Fee as required under Article III of this Agreement and does not correct such failure within thirty (30) business days after written notice by the City of such failure;

b. The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and, thereupon, after written notice giving the Company notice of such determination, the Company, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such ninety-day period and failure to correct such conditions, the City may declare the Franchise forfeited, and, thereupon, the Company shall have no further rights or authority hereunder; provided, however,

that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and, provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the ninety-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the non-compliance was not the intentional or negligent act or omission of the Company;

c. The Company becomes insolvent, unable, or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) calendar days; or

d. In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

11.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

ARTICLE XII

INSURANCE AND INDEMNIFICATION

12.1 No City Liability. Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or other business loss (whether direct, indirect, or consequential), or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder, except to the extent of the City's negligence or willful misconduct.

12.2 Company Indemnification of City. The Company shall indemnify, and at the City's option defend, and hold the City, and the officers, agents and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of, or arising from, the exercise by the Company of the rights related to this Agreement, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Said indemnification shall include, but not be limited to, the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement, including construction, operation, and maintenance of telecommunications lines and appurtenances,

whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by this Agreement.

12.3 Notice of Indemnification. The Company shall give prompt written notice to the City of any claim, demand, or lien that may result in a lawsuit against the City. City shall give written notice to Company promptly after City learns of the existence of Claim for which City seeks indemnification; provided, however, the failure to give such notice shall not affect the rights of City, except and only to the extent the Company is prejudiced by such failure. The Company shall have the right to employ counsel reasonably acceptable to the City to defend against any such Claim. If such counsel will represent both the Company and City, there may be no conflict with such counsel's representation of both. Company must acknowledge in writing its obligation to indemnify the City for the entire amount of any Loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the City other than for money damages. If Company fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the City (or such shorter time specified in the notice as the circumstances of the matter may dictate), the City shall be free to dispose of the matter, at the expense of Company (but only if indemnification is adjudged to be proper), in any way in which the City deems to be in its best interest. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with a breach by the City of any obligation under this Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its officers or employees or agents.

12.4 Insurance. Company shall file a certificate of insurance with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies which have one of the three highest or best ratings from the Alfred M. Best Company of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as additional insured the City, and in their capacity as such, its officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars ($2,000,000) per occurrence. The insurer or insurers shall be authorized to write the required insurance in the State of Utah. The policy or policies of insurance shall be maintained by the Company in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Company or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City, and that such notice shall be transmitted postage prepaid.

12.5 City's Right to Intervene. In any suit in which the City is named as a party and seeks indemnification from the Company, and in which the City in its own reasonable discretion believes that a conflict of interest with Company exists, the City shall have the right to provide its own defense in connection with the same. In such event, in addition

to being reimbursed for any such judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Company shall reimburse the City for all reasonable attorney's fees, including those employed by the City in such case or cases, as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City.

12.6 No Creation of a Private Cause of Action. The provisions set forth herein are not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City. In the event any claim is made against the City that falls under these indemnity provisions and a Court of competent jurisdiction should adjudge, by final decree, that the City is liable therefore, the Company shall indemnify and hold the City harmless of and from any such judgment or liability, including any court costs, expenses, and attorney fees incurred by the City in defense thereof. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Company from its duty of defense against liability or paying any judgment entered against such party.

12.7 Performance Bonds and Other Surety. To ensure completion of the Company's performance of its obligations hereunder, Company shall furnish to the City a performance bond, that is substantially similar in form to the surety guarantee bond that is attached hereto as Exhibit 1, from an insurer or guarantor that is acceptable to the City.

ARTICLE XIII

REMEDIES

13.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.

13.2 Remedies at Law. In the event the Company or the City fail to fulfill any of their respective obligations under this Agreement the City or the Company, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

13.3 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Company. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed

in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

13.4 Force Majeure. The Company shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control, but the Company shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise contract by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.

ARTICLE XIV

NOTICES

City and Company Designees and Addresses. Unless otherwise specified herein, all notices between the City and the Company pursuant to or concerning this Agreement or the Franchise shall be delivered to (or to such other offices as the City or Company may designate by written notice to the other Party):

City:

Provo City Corporation
351 West Center Street
Provo, UT 84601
Attention: Finance Department

Company:

FirstDigital Telecom, LLC
90 South 400 West Suite M100
Salt Lake City, UT 84101
Attention: Wesley McDougal

With copies to (which shall not constitute notice):

Provo City Attorney's Office
PO Box 1849
Provo, UT 84603
Attention: City Attorney

AND

Provo City Energy Department
PO Box 658
Provo, UT 84603

With a copy to (which copy will not constitute notice):

FirstDigital Telecom, Brandon Balmforth
90 South 400 West Suite M100
Salt Lake City, UT 84101

Attention: Energy Department Director

ARTICLE XV

CHANGING CONDITIONS

Meet to Confer. The Company and the City recognize that many aspects of the telecommunications business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

ARTICLE XVI

AMENDMENT AND GENERAL PROVISIONS

16.1 Duty to Negotiate. At any time during the term of this Agreement, the City, through the City Council, or the Company may propose amendments to this Agreement by giving thirty (30) calendar days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall negotiate, within a reasonable time, in good faith in an effort to agree upon mutually satisfactory amendment(s).

16.2 Written Approval to Amend Agreement Required. No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company, and an ordinance or resolution approving such amendments is approved by the City Council.

16.3 Entire Agreement. This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only by the written agreement of the parties, including the formal approval of the City Council.

16.4 Governing Law. This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.

16.5 Joint Drafting. The Parties acknowledge that this Agreement has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

ARTICLE XVII

SEVERABILITY

17.1 Conditions. If any section, sentence, paragraph, term, or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof or thereof, all of which shall remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof, except for Article III hereof. The parties do not waive their right to assert that the obligations contained herein, including those obligations contained in Article III arise as a matter of contract and are not otherwise conditioned.

17.2 Conflicts. In the event of a conflict between any provision of this Agreement and the Ordinance, the provisions of the Ordinance in effect at the time the Agreement is entered into shall control.

17.3 Fee Article Non-Severable. Article III hereof is essential to the adoption of this Agreement, and should it be challenged by the Company or determined to be illegal, invalid, unconstitutional, or superseded, in whole or in part, the entire Agreement and the Franchise shall be voided and terminated, subject to the following provisions of this Article. In the event of a judicial, regulatory, or administrative determination that Article III is illegal, invalid, unconstitutional, or superseded, such termination shall be effective as of the date of a final appealable order, unless otherwise agreed upon by the City and the Company. In the event of any legislative action that renders Article III unconstitutional, illegal, invalid, or superseded, such termination shall be effective as of the effective date of such legislative action.

17.4 Waiver of Non-Severability. Notwithstanding the foregoing, if the City stipulates in writing to judicial, administrative, or regulatory action that seeks a determination that Article III is invalid, illegal, superseded, or unconstitutional, then a determination that Article III is invalid, illegal, unconstitutional, or superseded shall have no effect on the validity or effectiveness of any other section, sentence, paragraph, term, or provision of this Agreement, which shall remain in full force and effect.

17.5 Lease Terms Upon Termination. In the event this Agreement is terminated pursuant to Section 17.3 hereof, the City grants to the Company a lease according to the same terms and conditions as set forth in this Agreement. Accordingly, the Company shall pay, as fair market rental value, the same amounts, at the same times, required for the payment of the Franchise Fee pursuant to Article III hereof and be bound by all other terms and conditions contained herein; provided, however, that in no event shall the Company be obligated to pay a higher percentage of Gross Revenues derived from the sale of telecommunications services within the City than is paid by other telecommunication companies serving within the City.

IN WITNESS WHEREOF, this Franchise Agreement is executed in duplicate originals as of the date first set forth above, to become effective on that date.

Provo City Corporation

By: _____
John R. Curtis, Mayor

ATTEST:

_____
Janene Weiss, City Recorder

_____, ___

By: _____
_____, Chief Executive Officer

ATTEST:

_____
Secretary

APPROVED AS TO FINANCES:

_____
Chief Financial Officer

APPROVED AS TO FORM:

_____
General Counsel

STATE OF UTAH)
)ss.
COUNTY OF UTAH)

On the _____ day of _____, 2013, personally appeared before me _____, _____, _____, and _____, who being by me duly sworn did each respectively say that he/she is the Chief Executive Officer, Secretary, Chief Financial Officer, and General Counsel of _____, and that the foregoing instrument was signed in behalf of said Company by authority of a resolution of its [board of directors[/[Managers]; and he/she each acknowledged to me that said Company executed the same.

_____
Notary Public

EXHIBIT 1

SURETY GUARANTEE

WHEREAS, the City of Provo, Utah (hereinafter "City") under the Franchise Agreement dated the ____ day of _____, 20__, has granted a franchise to FirstDigital Telecom, LLC (hereinafter "Company") to own, operate, and maintain a telecommunications network (hereinafter "Franchise"); and

WHEREAS, the Franchise Agreement requires the Company, as Principal, to furnish a surety guarantee issued to cover the faithful performance of the Company's obligations under the Franchise; and

WHEREAS, _____ (hereinafter "Guarantor") is willing to act as guarantor and insurer of Company's performance under the Franchise Agreement; and

NOW THEREFORE, Guarantor hereby unconditionally guarantees the due and punctual performance of any and all obligations of company contained in the Franchise.

This Guaranty shall, unless terminated, substituted, or canceled as hereinafter provided, remain in full force and effect for the term of the Franchise Agreement and any extensions approved pursuant to the Franchise Agreement, provided that, upon substitution of another Guarantor reasonably satisfactory to the City, this Guaranty may be terminated, substituted, or canceled upon thirty (30) calendar days prior written notice from Guarantor to the City and Company. Any such notice to be given hereunder shall be addressed to _____ and to the Provo City Attorney, 351 West Center Street, Provo, Utah 84603.

Such terminations shall not affect liability incurred or accrued under this Guaranty prior to the effective date of such termination or cancellation. No claim, suit or action under this Guaranty by reason of any default of the Company shall be brought against Guarantor unless asserted or commenced within six (6) months after the effective date of such termination or cancellation of the Guaranty.

IN WITNESS WHEREOF, the Company and Guarantor have hereunto signed this surety guaranty on the _____ day of _____, 20___.

ORDINANCE 2016-

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY 0.31 ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 245 NORTH 500 WEST, FROM RESIDENTIAL CONSERVATION (RC) TO GENERAL DOWNTOWN (DT-1). DIXON NEIGHBORHOOD. (16-0010R)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 0.31 acres of real property, generally located at 245 North 500 West (as described in the attached Exhibit A), be amended from Residential Conservation (RC) to General Downtown (DT-1); and

WHEREAS, on September 14, 2016, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended to the Municipal Council that the zoning of the property be changed as proposed; and

WHEREAS, on October 18, 2016 and November 1, 2016, the Municipal Council held duly noticed public meetings to ascertain the facts regarding this matter, which facts and comments are found in the meeting records; and

WHEREAS, after considering the Planning Commission's recommendation, and facts and comments presented to the Municipal Council, the Council finds (i) the Zone Map of Provo, Utah should be amended as described herein; and (ii) the proposed zone map classification amendment for the real property described in the attached Exhibit A reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The classification on the Zone Map of Provo, Utah is hereby amended from the Residential Conservation (RC) Zone to the General Downtown (DT-1) Zone for approximately 0.31 acres of real property, generally located at 245 North 500 West as described in the attached Exhibit A.

<u>PART II:</u>

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

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Zone Map of Provo City, Utah be updated and codified to reflect the provisions enacted by this ordinance.

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

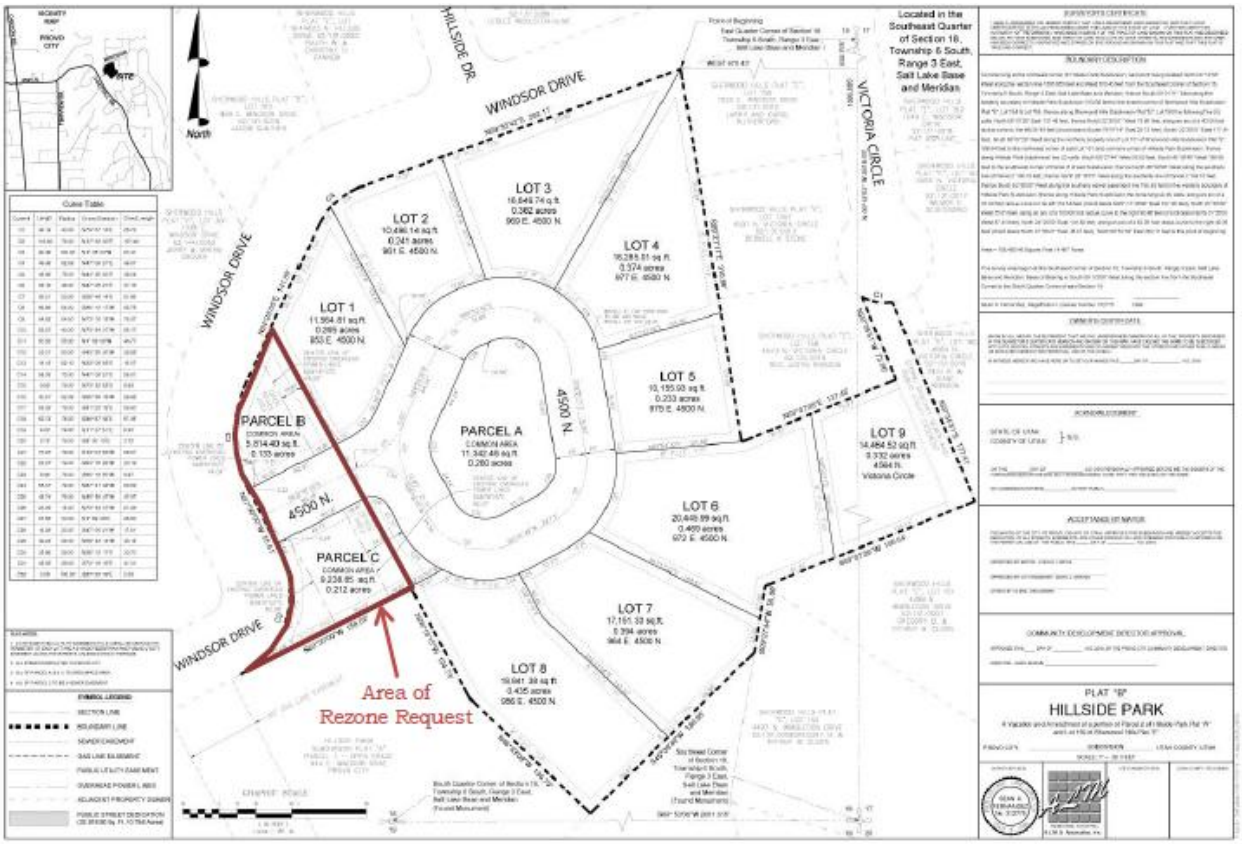
END OF ORDINANCE.

Exhibit A

Portion of Parcel 1 of Hillside Park Plat "A" to Hillside Park Plat "B" Overall:

Commencing at the northwest corner of Parcel 1 of Hillside Park Subdivision Plat "A", said point also being North 00°12'53" West along the section line 1673.15 feet and West 1009.31 feet from the Southeast Corner of Section 18, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence South 28°18'15" East along the boundary
line between Parcel 1 and Parcel 2 of said subdivision 240.93 feet; thence South 62°30'00" West along an easement line of said subdivision 156.62 feet to the southerly right of way of Windsor Drive; thence along the southerly and westerly right of way of Windsor Drive the following four (4) calls: along an arc of a 76.00 foot radius curve to
the left 119.38 feet (chord bears North 17°29'56" East 107.48 feet), North 27°30'00" West 55.61 feet, along an arc of a 100 foot radius curve to the right 90.46 feet (chord bears North 01°35'00" West 87.41 feet), North 24°20'00" East 49.65 feet to the point of beginning.

Area = 17,573.02 square feet / 0.403 acres



Provo City Planning Commission

Report of Action

September 14, 2016

ITEM 3* Kevin Fairbanks, representing Pie House LLC, requests a Zone Change of 0.31 acres from Residential Conservation to General Downtown (DT-1). The property is located at approximately 245 North 500 West. No changes to the property are proposed with this Zone Change request. ***Dixon Neighborhood.*** 16-0010R, Brian Maxfield, 801-852-6429

The following action was taken by the Planning Commission on the above described item at its regular meeting of September 14, 2016:

RECOMMEND APPROVAL

On a vote of 5:0, the Planning Commission recommended the Municipal Council approve the above noted application.

Motion By: Ross Flom
Second By: Deborah Jensen
Votes in Favor of Motion: Ross Flom; Deborah Jensen; Kermit McKinney; Maria Winden; Jamin Rowan
Jamin Rowan was present as Chair.

- The Motion includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination <u>is consistent</u> with the Staff analysis and determination.

<u>LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED</u>

- The property to be rezoned is indicated on the Map attached as Exhibit A.

<u>STAFF PRESENTATION</u>

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- The General Plan for the area.
- The owner's adjoining property to the south is already zoned DT1.
- The owner's desire to add a limited number of additional units to the existing multi-unit buildings.

<u>CITY DEPARTMENTAL ISSUES</u>

- None

<u>NEIGHBORHOOD MEETING DATE</u>

- A neighborhood meeting for the Dixon Neighborhood was held in August, 2016

<u>NEIGHBORHOOD AND PUBLIC COMMENT</u>

- The Neighborhood Vice-Chair, Cori Robertson, was present and addressed the Planning Commission during the public hearing. She stated that the neighborhood was generally in agreement, but did have some concerns regarding large scale future development under the DT1 zoning.

CONCERNS RAISED BY PUBLIC

- No concerns were received by staff, nor presented at the meeting.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Desire to unite his properties under one zoning designation.
- Desire to add one unit to each building.
- The existing improved parking area exceeds the amount of parking required for the current use as well as the proposed additional units.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Planning Staff responded to the Neighborhood's concern by stating the area would be within a transition area which would require a transition in building height next to the adjoining RC area.
- The effect of the secondary accesses to this site and the adjoining property to the north, which extend to the south though an RC area to 200 North.
- The Planning Commission complimented the applicant on the additional information handed out to them at the meeting.
- No additional issues were raised by the Planning Commission.

Planning Commission Chair

Director of Community Development

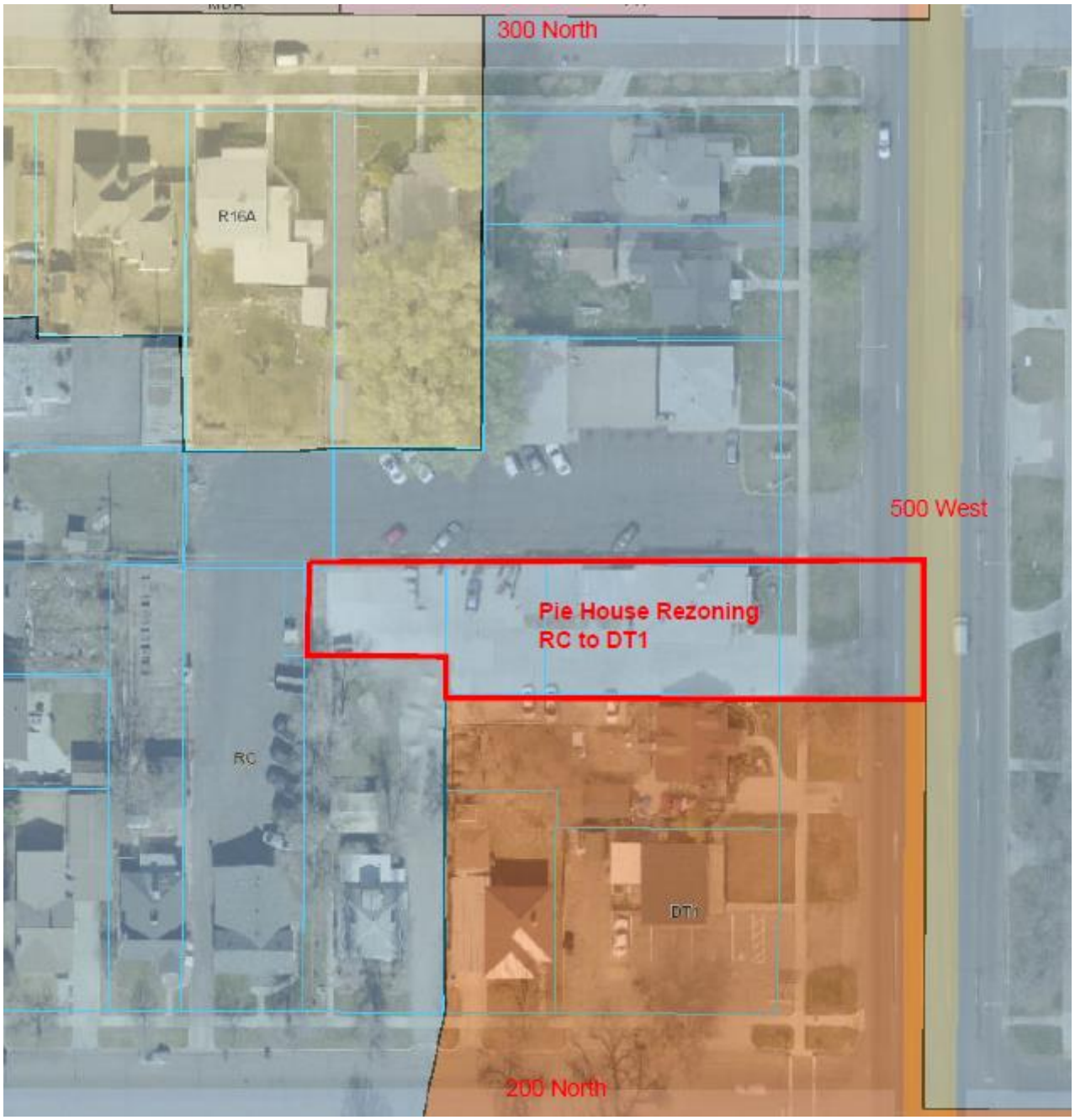
See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ 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 Community Development Department, 330 West 100 South, 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"


300 North
R16A
500 West
Pie House Rezoning
RC to DT1
RC
DT1
200 North

Planning Commission
Staff Report
Rezone
Hearing Date: September 14, 2016

ITEM 3* Kevin Fairbanks, representing Pie House LLC, requests a Zone Change of 0.31 acres from Residential Conservation to General Downtown (DT-1). The property is located at approximately 245 North 500 West. No changes to the property are proposed with this Zone Change request. ***Dixon Neighborhood.*** 16-0010R, Brian Maxfield, 801-852-6429

Applicant: Kevin Fairbanks

Staff Coordinator: Brian Maxfield

Property Owner: Pie House, LLC
Parcel ID#: 04:089:028
Current Zone: RC Residential Conservation
Proposed Zone: DT1 General Downtown
General Plan Des.: Commercial
Acreage: 0.26 acres
Number of Properties: One
Number of Lots: One

Council Action Required: Yes

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 28, 2016, 5:30 p.m.*

2. **Recommend Denial** of the proposed rezoning. *This would be a change from the Staff recommendation; the Planning Commission should state new findings*

Current Legal Use: Multi-Residential as permitted within the RC Residential Conservation Zone.

Relevant History: None

Neighborhood Issues: Mr. Fairbanks reports that he has met with the neighborhood, however, to date no comments have been received and no issues identified.

Summary of Key Issues:
Appropriateness of Rezoning

Staff Recommendation:
Recommend Approval of the proposed rezoning, as presented in the Staff Report. *This action would be consistent with the recommendation of the Staff Report. Any changes should be stated with the motion.*

OVERVIEW

This item is a request to rezone approximately 0.26 acres from the RC Residential Conservation Zone to the DT1 General Downtown Zone. Although no new buildings are being proposed with the rezoning, the zone change would facilitate the establishment of a limited number of additional residential units in existing structures. And, because the applicant also owns the 0.18 acre DT1 property to the south, all lot standards of the DT1 zone could be met with the rezoning and the combining of the two properties.

It should be noted that although the map indicates three separate parcels for this application, the previous divisions of the parcels was done some time ago, without meeting the minimum lot and frontage requirements, or with City approval. The parcels have since been consolidated by deed. With the addition of residential units within the existing buildings, the applicant will be required to file a subdivision plat, consolidating the included properties.

FINDINGS OF FACT

Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of zoning map amendments:

Upon receipt of a petition by the Planning Commission, the Commission shall hold a public hearing in accordance with the provisions of Section 14.02.010 of this Title and may approve, conditionally approve, or deny the preliminary project plan. 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.*
Approval of this request will bring properties into compliance with the General Plan. (See Staff Analysis and Conclusions for further analysis regarding the General Plan for this property).

(b) *Confirmation that the public purpose is best served by the amendment in question.*
The rezoning will allow the property owner to combine his properties fronting on 500 West, allowing for a more unified development. Although other zoning districts might allow the same residential densities, staff believes the most appropriate zone would be the DT1 Zone.

(c) *Compatibility of the proposed amendment with General Plan policies, goals, and objectives.*
Although the rezoning would not further the Central Area Neighborhood Council's nor the Dixon Neighborhood's Goals of increasing owner-occupancy, it does not affect the Dixon

Neighborhood's Key Land Use Policy #1, to: Protect viable, significant areas of one-family structures in areas designated as Residential (R).

(d) *Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.*
This rezoning does not impact the 'timing and sequencing' provisions of the General Plan.

(e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.*
It is not believed that the amendment will hinder or obstruct attainment of the articulated policies. As stated under (c) above, the rezoning would not affect the Dixon Neighborhood's Key Land Use Policy #1, to: Protect viable, significant areas of one-family structures in areas designated as Residential (R).

(f) *Adverse impacts on adjacent land owners.*
Because the buildings and use are existing, the only additional impact which might occur would be from parking spillage. However, in this case, all parking is internal to the site with ingress and egress only from 500 West, and not near any adjacent single-family areas.

(g) *Verification of correctness in the original zoning or General Plan for the area in question.*
The RC zone was adopted as a transition zone until such time as a more proper zone could be adopted. The rezoning supports the general nature of the General Plan designation for this area of 500 West.

(h) *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.*
No Policies conflict with the the General Plan Map in this location.

STAFF ANALYSIS and CONCLUSIONS

As indicated by the attached map showing the current General Plan Land Use Designations, the boundaries of the designations do not entirely match the requested rezoning. However, because the map is an advisory guide, staff believes certain changes can be considered as corrections or adjustments to the boundaries rather than actual re-designations of the intended land uses. A paragraph within Chapter 6 Land Use, within the Provo City General Plan states:

> General Plan land use map designations are, however, more general or more specific depending on areas of the city and the level of concern over specific parcels of property. These differences may be influenced by the density of the area, the special character of an area, a development aspect unique to a parcel, or some other concern that warrants a

> greater level of specificity in defining land use boundaries. For this reason, there may be times when the Council will use its discretion in determining that a parcel complies with the generalized boundary of a recommended land use designation, or with the overall guiding principles of the General Plan, and may make zoning decisions without the requirement for a General Plan amendment. *(emphasis added)*

In the instance of this requested rezoning, the western portion of the property is designated as "Residential" rather than "Downtown District" or "Commercial." In this case, staff believes it would be proper for the map to reflect a consistent designation for the entire property and its existing use. And, because of its existing use, as well as its frontage on 500 West, staff believes the entire property should be considered as either "Commercial" or "Downtown District" within the General Plan. Both designations list "CBD" (Central Business District) as a possible zoning designation, and in 2010, the DT1 and DT2 zones were adopted to replace the previous CDB zoning district. Because of the more intensive nature of the DT2 zone, staff believes the DT1 zone would be the more appropriate zone for this location. Additionally, Mr. Fairbanks property immediately to the south, was included in the original blanket rezoning to DT1 in 2010.

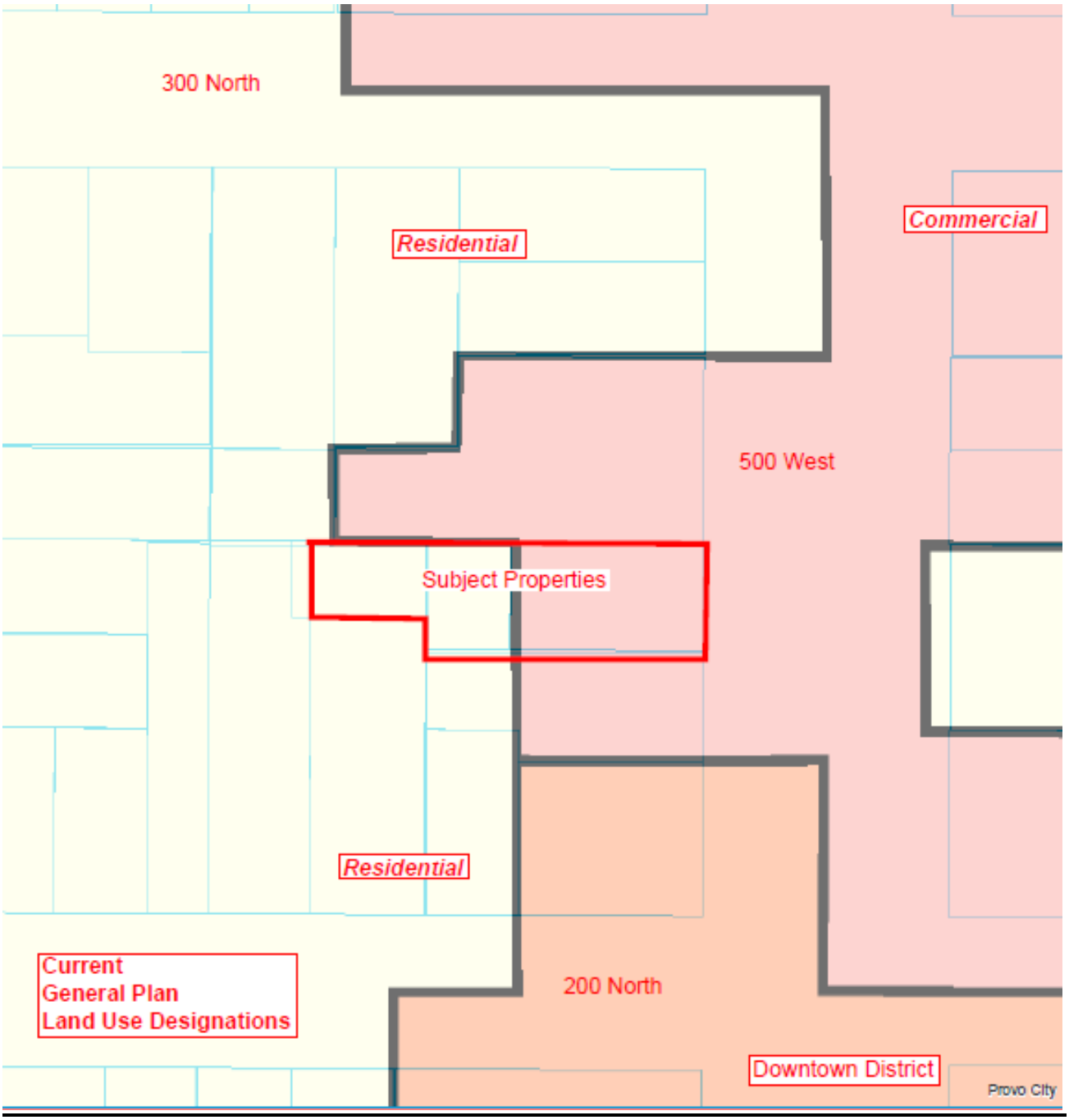
CONCLUSIONS

(1) The rezoning to DT1 would better address the existing residential use of the property as well as allow the reasonable expansion of the use.

(2) The rezoning to DT1 would allow the unification of properties under the same ownership in a manner which would not violate the intent of the zone.

STAFF RECOMMENDATION

Recommend Approval of the proposed rezoning from the RC "Residential Conservation" to the DT1 "General Downtown" zone, as presented in the Staff Report.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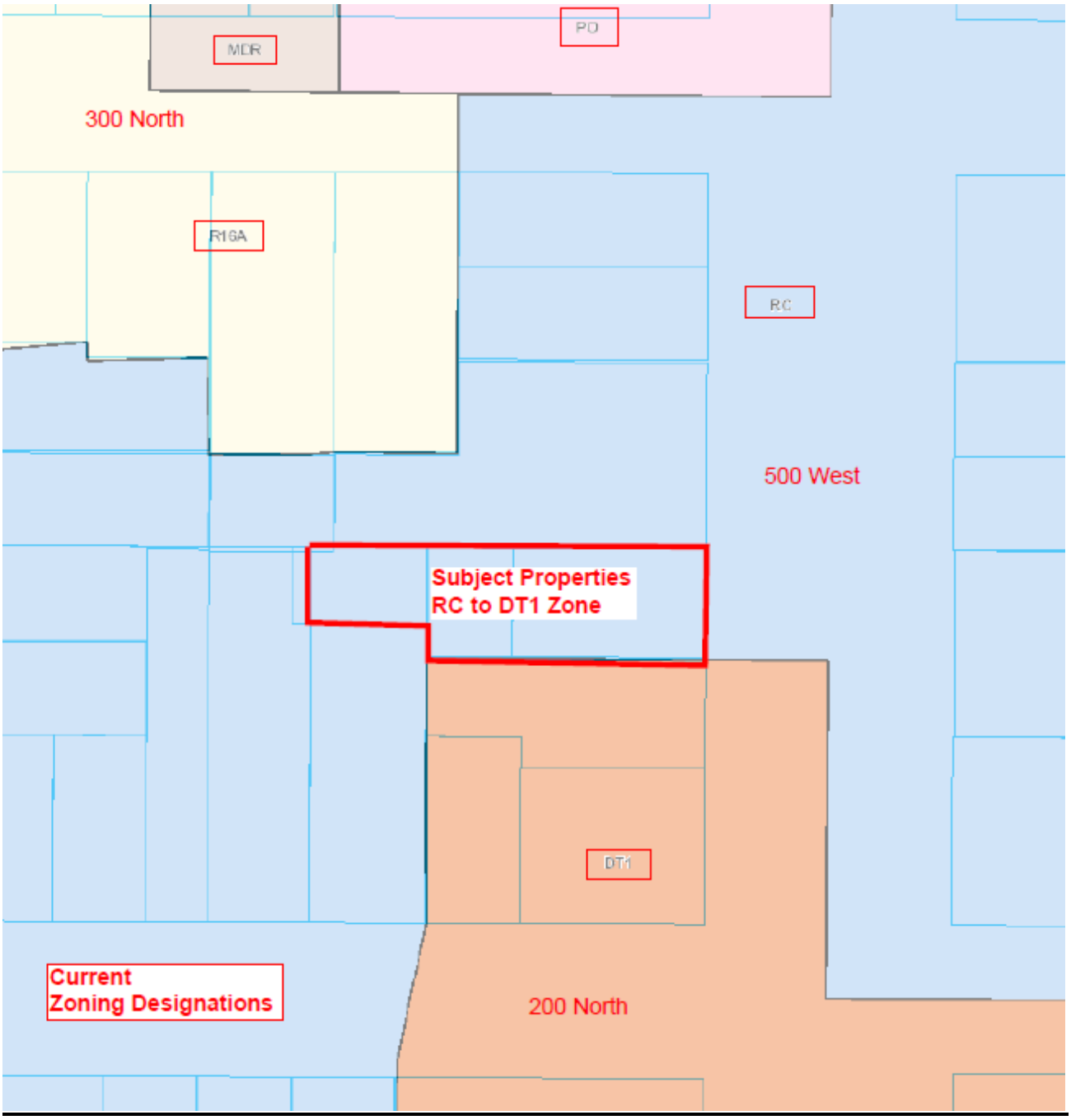
Residential
Commercial
500 West
Subject Properties
Residential
Current
General Plan
Land Use Designations
200 North
Downtown District
Provo City


MDR
PD
300 North
R1GA
RC
500 West
Subject Properties
RC to DT1 Zone
DT1
Current
Zoning Designations
200 North

provo

WELCOME HOME

PLANNING COMMISSION

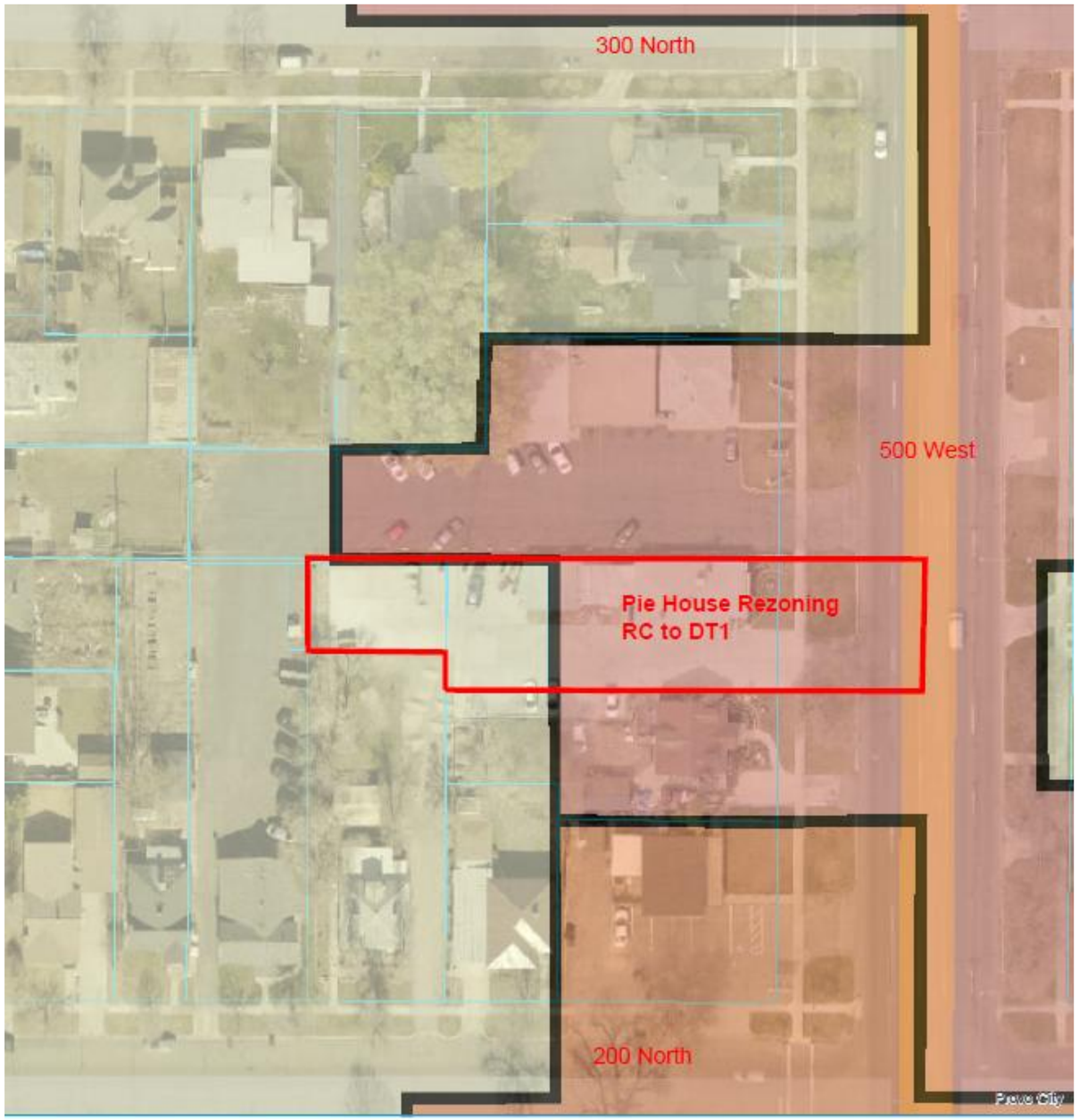
SEPTEMBER 14, 2016

ITEM 3*

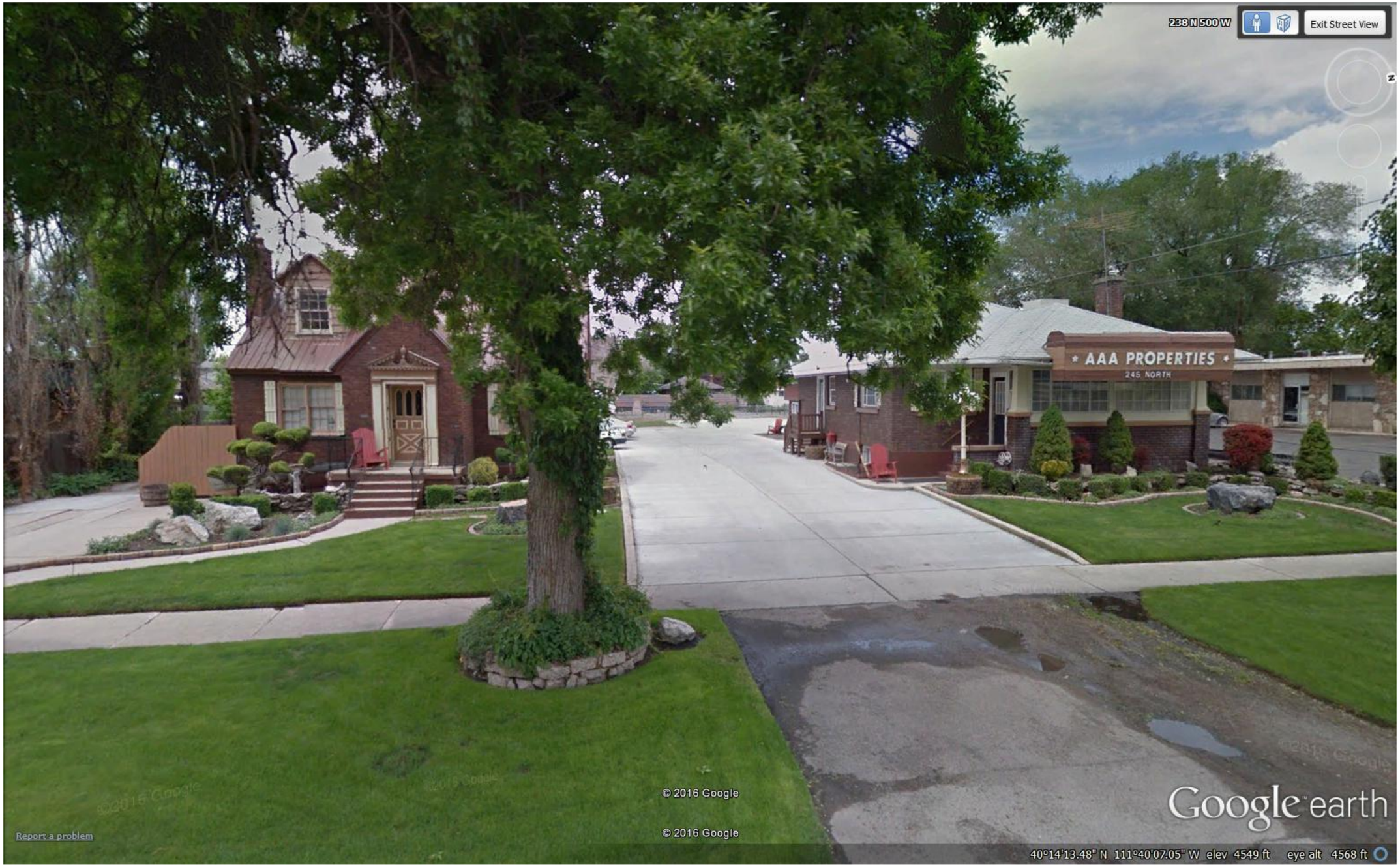
Kevin Fairbanks, representing Pie House LLC, requests a Zone Change of 0.31 acres from Residential Conservation to General Downtown (DT-1). The property is located at approximately 245 North 500 West. No changes to the property are proposed with this Zone Change request.

Dixon Neighborhood.

16-0010R


300 North
500 West
Pie House Rezoning
RC to DT1
200 North

MDR
PO
300 North
R16A
500 West
Pie House Rezoning
RC to DT1
RC
DT1
200 North


238 N 500 W
Exit Street View
AAA PROPERTIES
245 NORTH
© 2016 Google
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Report a problem
Google earth
40°14'13.48" N 111°40'07.05" W elev 4549 ft eye alt 4568 ft

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60005417 Provo City Corporation Order Nbr 79002

Publication	**Daily Herald**		
Contact	Provo City Corporation	PO Number	
Address 1	P.O. BOX 1849	Rate	Provo City
Address 2		Order Price	45.34
City St Zip	PROVO UT 84603	Amount Paid	0.00
Phone	8018526505	Amount Due	45.34
Fax			
Section	Legals	Start/End Dates	10/17/2016 - 10/17/2016
SubSection		Insertions	1
Category	999 Legal Notices	Size	31
Ad Key	79002-1	Salesperson(s)	CLASSIFIED DEFAULT
Keywords	79002-PROVO CITY CORPORATION	Taken By	Carlie Peterson
Notes			

Ad Proof

PROVO CITY CORPORATION
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November 1, 2016
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Legal Notice 79002 Published in The Daily Herald on October 17, 2016.

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ORDINANCE 2016-

AN ORDINANCE AMENDING PROVO CITY CODE TO ALTER THE NUMBER OF PLANNING COMMISSION MEMBERS, THEIR TERMS OF OFFICE, AND OTHER DETAILS RELATING TO PLANNING COMMISSION RULES. CITY-WIDE IMPACT. (16-0019OA)

WHEREAS, it is proposed that amendments be made to Provo City Code Section 14.04.010 (Planning Commission Created – Chairman - Rules) altering the number of Planning Commission members, their terms of office, and other details relating to Planning Commission rules; and

WHEREAS, this change would change the makeup of the Planning Commission from seven members to nine, allowing for a broader representation of citizens on the Planning Commission; and

WHEREAS, holding the number of members necessary for a quorum at four would lessen the possibility of not having a quorum present and delaying timely action on items; and

WHEREAS, on September 28, 2016, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended on a 4:0 vote that the Municipal Council approve the proposed amendment; and

WHEREAS, on October 18, 2016 and November 1, 2016, the Municipal Council held duly noticed public meetings to ascertain the facts regarding this matter, which facts are found in the meeting records; and

WHEREAS, after considering the Planning Commission's recommendation, and facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code Section 14.04.010 (Planning Commission Created – Chairman - Rules) should be amended and (ii) this action, as set forth below, reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

Provo City Code Section 14.04.010 is hereby amended as follows:

14.04.010. Planning Commission Created – Chairman – Rules.

(1) A Provo City Planning Commission is hereby created. Said Commission shall consist of ~~seven (7)~~ nine (9) members, each of whom shall be a resident of Provo City and each of whom shall be appointed by the Mayor with the advice and consent of the Municipal Council.

(2) The terms of office for all members of the Planning Commission shall be no more than three (3) years ~~and until their successors are appointed and qualified except where appointment to a shorter term is necessary to provide for staggered terms among Commission members~~. Terms shall be staggered to ensure that one-third of Commission Member appointments shall expire each year. Members may be removed with or without cause by a majority vote of the Municipal Council.

(3) Members shall be selected without respect to political affiliation and shall serve without compensation except for payment of reasonable expenses.

(4) The Planning Commission shall:

(a) elect from its membership a chair who shall serve a one (1) year term;

(b) pursuant to Section 14.04.040, Provo City Code, adopt reasonable policies and rules for the transaction of business, which shall not conflict with any of the provisions of this Chapter; and

(c) keep a public record of its proceedings.

(5) ~~The Mayor shall, with the advice and consent of the Municipal Council, appoint one (1) or two (2) alternate members of the Planning Commission, who shall serve in the absence of a member or members of the Planning Commission under rules established by the Planning Commission. Except as just provided, alternate members shall be appointed and serve as described in Subsection (1) of this Section.~~ A quorum of the Commission shall consist of four members, and at least four votes must be cast in order to render a decision of the Commission. All members present, including the chair, are encouraged to participate in discussion and vote, unless recusing themselves due to conflict of interest.

(6) When a regularly scheduled and noticed meeting of the Planning Commission does not occur because a quorum of the Commission is not present, all action items scheduled to be heard on that date shall be continued to the next regularly scheduled meeting of the Commission. Items originally scheduled to be heard at the meeting on the second Wednesday of the month shall be automatically continued to the meeting scheduled for the fourth Wednesday of the month. Items originally scheduled to be heard at the meeting on the fourth Wednesday of the month shall be automatically continued to the meeting scheduled for the second Wednesday of the following month.

. . .

PART II:

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

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

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

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

END OF ORDINANCE.

Provo City Planning Commission

Report of Action

September 28, 2016

ITEM 3* Provo City Community Development Department requests an amendment to Section 14.04.010 of the Zoning Ordinance, regarding proposed changes to the number of Planning Commission members, their terms of office, and other details relating to Planning Commission rules. ***City-Wide Impact.*** 16-0019OA, Brian Maxfield, 801-852-6429

The following action was taken by the Planning Commission on the above described item at its regular meeting of September 28, 2016:

RECOMMEND APPROVAL

On a vote of 4:0, the Planning Commission recommended the Municipal Council approve the above noted application.

Motion By: Kermit McKinney
Second By: Ed Jones
Votes in Favor of Motion: Kermit McKinney; Ed Jones; Brian Smith; Jamin Rowan.
Jamin Rowan was present as Chair.

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

PLANNING COMMISSION RECOMMENDED 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's outlined the proposed ordinance changes in their presentation to the Planning Commission. Clarification was made regarding a term of office being limited to no more than three years, however, that consecutive terms would still be possible.

CITY DEPARTMENTAL ISSUES

- None

NEIGHBORHOOD MEETING DATE

- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- No public comment was made regarding this item.

CONCERNS RAISED BY PUBLIC
None

PLANNING COMMISSION DISCUSSION
The Planning Commission included the following:

Planning Commission Chair

Director of Community Development

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 Community Development Department, 330 West 100 South, 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.).

EXHIBIT "A"

14.04.010. Planning Commission Created - Chairman - Rules.

(1) A Provo City Planning Commission is hereby created. Said Commission shall consist of ~~seven (7)~~ nine (9) members, each of whom shall be a resident of Provo City and each of whom shall be appointed by the Mayor with the advice and consent of the Municipal Council.

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(3) Members shall be selected without respect to political affiliation and shall serve without compensation except for payment of reasonable expenses.

(4) The Planning Commission shall:

(a) elect from its membership a chair who shall serve a one (1) year term;

(b) pursuant to Section 14.04.040, Provo City Code, adopt reasonable policies and rules for the transaction of business, which shall not conflict with any of the provisions of this Chapter; and

(c) keep a public record of its proceedings.

(5) ~~The Mayor shall, with the advice and consent of the Municipal Council, appoint one (1) or two (2) alternate members of the Planning Commission, who shall serve in the absence of a member or members of the Planning Commission under rules established by the Planning Commission. Except as just provided, alternate members shall be appointed and serve as described in Subsection (1) of this Section.~~ A quorum of the Commission shall consist of four members, and at least four votes must be cast in order to render a decision of the Commission. All members present, including the chair, are encouraged to participate in discussion and vote when not recused due to a conflict of interest.

(6) When a regularly scheduled and noticed meeting of the Planning Commission does not occur because a quorum of the Commission is not present, all action items scheduled to be heard on that date shall be continued to the next regularly scheduled meeting of the Commission. Items originally scheduled to be heard at the meeting on the second Wednesday of the month shall be automatically continued to the meeting scheduled for the fourth Wednesday of the month. Items originally scheduled to be heard at the meeting on the fourth Wednesday of the month shall be automatically continued to the meeting scheduled for the second Wednesday of the following month. (Am 1986-10, Am 1986-27, Am 1992-75, Am 2000-19, Am 2002-26)

END

Planning Commission
Staff Report
Ordinance Amendment
Hearing Date: September 28, 2016

ITEM 3* Provo City Community Development Department requests an amendment to Section 14.04.010 of the Zoning Ordinance, regarding proposed changes to the number of Planning Commission members, their terms of office, and other details relating to Planning Commission rules. ***City-Wide Impact.*** 16-0019OA, Brian Maxfield, 801-852-6429

Applicant: Community Development Department

Staff Coordinator: Brian Maxfield

Property Owner: N/A

Parcel ID#: N/A

Current General Plan Designation: N/A

Proposed General Plan Designation: N/A

Current Zone: N/A

Acreage: N/A

Number of Properties: N/A

*Council Action Required:

Related Application(s): Revisions to Planning Commission Bylaws

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is October 12, 2016, at 5:30 p.m.*
2. **Recommend Denial** of the proposed ordinance amendment. *This would be a change from the Staff recommendation; the Planning Commission should state new findings.*

Current Legal Use:
N/A

Relevant History:
None

Neighborhood Issues:
None Presented

Summary of Key Issues:
Appropriateness of amendments.

Staff Recommendation:

Recommend Approval of the proposed amendment to Section 14.04.010 which changes the number of Planning Commissioners from seven to nine; states the number of members necessary for a quorum; and other revises other details relating to the makeup and rules for the Planning Commission, as attached in the staff report.

This action would be consistent with the recommendation of the Staff Report

OVERVIEW

This item is a proposed amendment to Section 14.04.010 of the Zoning Ordinance which deals with the makeup of the Planning Commission. In essence, the proposed revisions change the makeup of the Planning Commission from 7 to 9 members; the number of members present to makeup a quorum, and other sundry changes relating to the makeup and rules for the Planning Commission.

FINDINGS OF FACT

- Chapter 14.04 of the Zoning Ordinance details the membership makeup of the Planning Commission, its duties, the organization of Planning Commission staff, Planning Commission Procedures, and Staff action of Planning Commission matters.
- The Planning Commission currently consists of seven members.

STAFF ANALYSIS

Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of ordinance text amendments:

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.
Allow a broader representation of citizens on the Planning Commission

(b) Confirmation that the public purpose is best served by the amendment in question.
Nine members would also lessen the possibility of a full quorum not being present for a meeting.

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

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

(e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.*
The proposed amendments would neither hinder nor obstruct attainment of the General Plan's articulated policies.

(f) *Adverse impacts on adjacent land owners.*
N/A

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

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

CONCLUSIONS

The proposed amendments are desirable for two principal reasons:

1) Nine members would allow a broader representation of citizens on the Planning Commission.

2) Holding the number of members necessary for a quorum at four would lessen the possibility of not having a quorum present and delaying timely action on items.

STAFF RECOMMENDATION

Recommend Approval of the proposed amendment to Section 14.04.010 which changes the number of Planning Commissioners from seven to nine; states the number of members necessary for a quorum; and other revises other details relating to the makeup and rules for the Planning Commission, as attached in the staff report. .

(Any changes to the proposed ordinance should be stated with the motion)

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END

provo

WELCOME HOME

PLANNING COMMISSION

SEPTEMBER 28, 2016

ITEM 3*

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City-Wide Impact.

16-0019OA

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