



PROVO MUNICIPAL COUNCIL

Work Meeting

2:30 PM, Tuesday, July 23, 2019

Room 310, City Conference Room

351 W. Center Street, Provo, UT 84601

Agenda

Roll Call

Prayer

Approval of Minutes

April 23, 2019 Work Meeting

July 9, 2019 Work Meeting

Business

1. A discussion regarding the creation of a Downtown Parking Committee. (19-002)
2. A discussion of proposed amendments to Provo City Code Section 15.03.035 (Grading) to clarify and change requirements related to grading and grading permits. (19-002)
3. A discussion of possible legislative efforts to be undertaken by the Foothills Committee of the Municipal Council. (19-002)
4. A discussion regarding a proposed Permit Parking Plan ordinance amendment. (19-002)
5. A discussion regarding a resolution authorizing the Mayor to sign a water carriage agreement with Central Utah Water and the US Department of the Interior. (19-083)

Policy Items Referred from the Planning Commission

6. A discussion regarding a resolution authorizing the Chief Executive Officer to enter into an Owner Participation Agreement with Mill Race Development, LLC for a project located between 500 S and 600 S, 100 W and University Avenue. (19-084)
7. An ordinance to amend Provo City Code regarding design standards in various Higher Density Residential and Campus Mixed Use zones. City-wide impact. (PLOTA20190025)

Closed Meeting

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

Adjournment

Informal discussion may be held in the Council Conference Room between 4:30 PM and 5:30 PM.

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

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The next scheduled Council Meeting will be held on 8/6/2019 12:00:00 PM at 8/6/2019 12:00:00 PM in the Council Chambers, 351 West Center Street, Provo, unless otherwise noticed. The Work Meeting start time is to be determined (typically between 12:00 and 4:00 PM) and will be noticed at least 24 hours prior to the meeting.

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

In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative 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 evanderwerken@provo.org 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. Council meetings are broadcast live and available for on demand viewing at youtube.com/user/ProvoCityCouncil.

Notice of Telephonic Communications

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

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Pending minutes – awaiting approval



PROVO MUNICIPAL COUNCIL

Work Meeting Minutes

1:00 PM, Tuesday, April 23, 2019
Room 310, Provo City Conference Room
351 W. Center Street, Provo, UT 84601

Agenda (0:00:00)

Roll Call

The following elected officials were present:

Council Chair David Harding, conducting
Council Vice-Chair Kay Van Buren
Councilor Gary Winterton
Councilor David Sewell
Councilor David Knecht
Councilor George Stewart
Councilor George Handley
Mayor Michelle Kaufusi, arrived 1:11 PM

Prayer

The prayer was given by Bryce Mumford, Policy Analyst.

Approval of Minutes

January 8, 2019 Work Meeting - *Approved by unanimous consent.*

Business

1. A presentation regarding proposed changes to the Parking Enforcement Fee Structure. (19-046) (0:09:43)

Karen Larsen, Customer Service Director, presented. Ms. Larsen explained that Parking Enforcement was a function of the Customer Service Department and introduced several staff members: Laramie Gonzales, Business Analyst; and Sandy Bussio, Parking Enforcement Supervisor. Ms. Larsen explained how the operation has changed in recent years; increased staffing has allowed them to more consistently service different parking areas throughout the City.

Ms. Bussio outlined parking enforcement operations, including an overview of calls and concerns they respond to regularly. Mr. Gonzales outlined details of recent legislation passed at the State level and the impetus for proposing a new fee schedule. These changes also respond to concerns from the business community as growth in the downtown and elsewhere continues.

Austin Taylor, Parking and Sustainability Coordinator, explained that the Parking Management Strategic Plan contains a recommendation regarding a simple or increased/stepped parking fine.

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Mr. Taylor explained how this related more broadly to other elements of the plan. He explained that BYU and other places use a stepped fine; for instance, at BYU a first violation is \$60 and a seventh violation is \$200; this structure can discourage repeat offenses. Mr. Taylor also explained how it allows a degree of flexibility and discretion; during the summer when there are many events or tourists in town, officers can simply give a warning or they may have the discretion to change a citation to a warning after the fact. Staff responded to questions from Councilors about the details of the proposal and explained the goals of the new rate structure:

- Provide incentive to pay fine on time
- Follow the new state law eliminating the old late fee assessment
- Increase revenue by 25% to meet needs of parking enforcement efforts over next 3-5 years (staffing, vehicle maintenance, and purchase of additional license plate readers)

Staff outlined several different increase scenarios and examples of how those scenarios would play out in terms of the final fine paid. Brian Jones, Council Attorney, offered additional clarification on civil fines. Councilor Gary Winterton asked whether there were many outstanding tickets that the City has not collected on; Ms. Bussio indicated that Shawntae Jones, Customer Service Accounting Technician, has been pursuing collection efforts. Several Councilors commented, expressing support for the \$15 discount, which seemed to them a reasonable option that would also help fund the purchase of an additional license plate reader. Use of a license plate reader (with photographic capabilities) also protected the City against potential issues surrounding the chalking of tires, which was under review in federal court as a potentially unconstitutional practice. *Presentation only.*

2. A discussion about the review of the Urban Deer Program. (19-047) (0:39:51)

Camille Williams, Assistant City Attorney, presented. Ms. Williams outlined background details on the urban deer program and Hannah Salzl, Council Policy Analyst, offered additional insight into elements of their analysis. Ms. Williams felt that Ms. Salzl had used an appropriate amount of caution in her assessment of the results and impacts of the urban deer program; there were many contributing factors and it was difficult to establish causation. Ms. Williams shared additional data.

Councilors asked questions and shared comments throughout the discussion. Councilor George Handley hoped to better define the problem this program would address, its sustainability into the future, and what was considered the threshold between a manageable and an unmanageable urban deer population. Jayson Swenson, Provo Police Animal Control Officer, and Brian Cook, Humphries Archery, offered additional insight on the procedures involved in the program as well as directives from the Division of Wildlife Resources. Mr. Cook noted that there are so many factors and conditions which impact the deer populations and programs, but ultimately the Council could commission a broader study by the DWR; at the time of implementing the program, this was the result of the evaluation on existing resources and how best Provo could utilize them. Mr. Cook also noted that adding a trap and euthanize element to the program would enhance the safety for residents and others involved in the operation of the program.

Ms. Williams noted that renewing the program would require two public hearings. Councilors shared comments and feedback on the direction of the program, including:

- Councilor David Knecht favored renewing the program adding the trap and euthanize aspect.

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- Councilor David Sewell felt it was important to continue the momentum of the existing program. He also felt that adding the trap and euthanize element would be helpful.
- Councilor David Harding felt that there was compelling evidence for continuing the program and to add the trap and euthanize portion of the program. He asked why the program could not be operated during the summer and Mr. Cook indicated that the temperature was critical to proper and safe meat handling, for venison distributed to needy families after trapping. Mr. Harding suggested that further evaluation of the new pricing structure may illuminate other options for how to structure the program going forward.

Dustin Grabau, Budget Officer, indicated that funds had already been appropriated to cover the program through the end of June 2019, coinciding with the City's fiscal year. Mayor Kaufusi had not incorporated the urban deer program into her budget; knowing where the Council was on the issue would be critical as she allocated funds to various supplemental requests across the city. Mr. Grabau also suggested that if the program were going to be perpetually ongoing, it should be built into the budget, rather than a supplemental request. Staff shared details on the pricing structure and how the updated pricing allowed the City more flexibility and granularity in administering the program. Councilors discussed the possible direction of the program; most wished for specific proposals to examine with funding needs identified. Brian Jones, Council Attorney, suggested that the Council could proceed with the required public hearings, while further details could be finalized for the needed funding sources. This may require an appropriation after the budget had already been approved, but it would allow the Council more time to study the issue and possible options.

Motion: David Knecht moved to schedule the public hearings for the permit renewal process.
Seconded by David Sewell.

Vote: Approved 7:0.

3. A discussion about amending Ordinance 2019-01, previously approved on Jan. 22, 2019, with regard to the development agreement required in order for a zone change at 2300 N. University Parkway to become effective. Carterville Neighborhood. (PLRZ201800406) ([1:22:11](#))

Dixon Holmes, Economic Development Director, presented. He explained that the development agreement approved in January had included elements of affordable housing. Market changes have necessitated some restructuring of the development. Some office space has been removed in favor of added housing and hospitality uses. The SC3 zone allowed up to 20% of the land area of the project to be housing, though it did not specify density. The applicant had requested up to 33% of the area for housing, but the Planning Commission did not feel this was consistent with the SC3 zone and recommended ITOD as an alternative. With this recommendation, the developer has proposed retaining the SC3 zoning on 14 acres in the front section of the property, with the remaining 14 acres to be rezoned to ITOD. Though there was not a density specification, the density of the housing units would be moderated by the amenity and public spaces, as well as parking requirements for the site and uses located there. The developer proposed a total of 500 housing units, a net increase of about 200 units from the 283 originally proposed under the SC3 zoning.

With these changes in mind, the developer had wanted to revisit the development agreement. Mr. Holmes hoped to keep the project moving forward, as delays had negative impacts on the project

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itself, as well as the surrounding businesses. The developer had worked through delays on the project and hoped to continue moving forward with the updates.

Councilor David Sewell was supportive of the developer's rationale for revising the proposed development agreement. Mr. Sewell asked for clarification on the developer's proffer—it seemed that the developer was offering two options. Mr. Holmes indicated that the developer did have an expressed preference and was present to respond to more specific questions.

Brian Jones, Council Attorney, indicated that he had drafted two versions of amendments to the previously approved development agreement. He was involved in discussions with only a couple of Councilors, so he emphasized that he was uncertain whether these revisions had actually been proffered by the developer. Mr. Jones outlined elements of the various versions and revisions:

- There had previously been a version 2 in January, so the new versions are numbered 3.
- Draft 3A included paragraph C, a provision for 10% income-restricted units, applying only to the increased housing units (about 200 units added in the ITOD section). This version also adjusted the payment-in-lieu to \$18,500 per unit (previously \$5750).
- Draft 3B does not include paragraph C; it removed the affordability provision entirely.
- Mr. Jones also drafted 3A version 2 and 3B version 2, which versions handle paragraph C identically as 3A and 3B, but which both include a paragraph D addressing concerns with the sewer infrastructure. Mr. Jones understood that some concerns had been raised by the developer regarding paragraph D and the language had only recently been distributed to Public Works staff for their review as part of the development agreement.
- The language from paragraph D was not necessarily part of the developer's proffer.

Mr. Jones clarified that development agreements must be the result of a developer's proffer. It was certainly possible that a developer had not seen the draft language until the day of the Council Meeting, but any draft should have been the result of their proffer. Mr. Jones understood that the developer and Community Development staff had discussed at length the Council's historic concerns for housing affordability and how those concerns may impact Council decisions related to rezoning property in the City. What had been presented to the Council in January was a proffer from the developer outlining an acceptable development agreement that would address the Council's concerns and encourage the Council to approve the zone change.

Mr. Jones clarified what decision point was before the Council in the Work and Council Meetings. The ordinance for the rezone as approved in January was contingent on a development agreement which had not yet been executed; as such, the current zone was still in place. The rezone would become effective only if the development agreement were executed within a year of the approval, at which point the rezone would go into effect. The Council was being asked to amend the January ordinance such that the ordinance would remain in effect, but refer to a different exhibit/development agreement. No motion was needed, as the item was already placed on the Council Meeting with an implied motion. However, the Council would need to decide before proceeding with a vote what exhibit was attached to the implied motion.

Cameron Bassett, Sentinel Development, explained that other ITOD projects did not typically have a proffer, so they felt it made sense to eliminate that element entirely. The first proffer with no housing component was their preference, but the second option for an \$18,500 payment-in-lieu per

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unit on the 200 units above the baseline units was another option that they could discuss.

Councilors shared comments and feedback throughout the discussion, including:

- Councilor David Harding summarized the history of the proposal as it had been approved initially and as it was before the Council for consideration now. He highlighted what he felt were important policy considerations as the Council reviewed this updated proposal.
- Councilor George Handley felt that the updated development agreements were not consistent with what he initially supported with the original rezone. He felt unsettled about whether a cash-in-lieu payment provision was sufficient. Mr. Handley asked for additional clarification from Mr. Bassett on the logic of only using the payment-in-lieu on only the 20 units (10% of the 200 units). Mr. Handley felt that this was a categorically different proffer than the original development agreement.
- Councilor David Sewell expressed that his understanding was that the Council had to choose from among what is being proffered. He hoped to see the project move forward as quickly as possible. The issues with the sewer needed to be sorted out as quickly as possible. As he saw it, there were three options forward:
 - Remain with the original option, which he saw as a lose-lose solution
 - Option 3B, which would move the project forward but offer no help for affordable housing
 - Option 3A, which would move the project forward with help for affordable housing
- Councilor Gary Winterton was concerned about the proposed \$18,500 payment-in-lieu because Provo did not have a current policy in place.

Gary Calder, Water Resources Division Director, expressed concerns that Public Works has not had a chance to review the implications of the sewer infrastructure. There were major problems with the sewer line that they were trying to work out with the developer, but as there were still many unknown factors, he was concerned about trying to protect the interests of the City.

Mr. Bassett provided additional insight on the original proffer, which had been calculated as a percentage of the total costs of construction per unit. They had assessed the difference between building an affordable unit versus a market rate unit at a cost of about \$18,500. The difference between the two construction costs is what they were comfortable proffering and was consistent with what they have seen in other markets. Mark Isaac, Westport Capital Partners, shared comments on the discussion. In his experience, other cities in Utah have a pro forma programmed in their ordinance for affordable housing, rather than hitting the developer with it later in the process. He felt that the affordability provision and the sewer complications left them at an impasse. He needed the Council to assist them in moving forward and to show progress to the owners of the project. He hoped they could make progress and reach solutions with the assistance of the City and the Council.

Regarding the sewer capacity issue, Mr. Bassett expressed that they had sewer capacity on an existing asset that was currently unknown. They felt that in order to move forward, the baseline sewer capacity should be set to what the property and the prior design had had afforded to it; they understood that they were responsible for any sewer impacts beyond that original figure. Mr. Isaac echoed these sentiments; there was sewer capacity for the original square footage that was at the project; at present, they were told that they had no sewer capacity whatsoever, which was very

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problematic. Mr. Calder and Dave Decker, Public Works Director, explained that the baseline at the time of the project approval had not been properly quantified because a sewer metering study had been underway; the baseline figure was substantially less than what was anticipated.

Motion: George Stewart moved to place as the exhibit the version 4B without paragraph C and paragraph D being contingent on approval from Public Works (decide on sewer later). *No second was made. Mr. Stewart withdrew the motion.*

Brian Jones, Council Attorney, explained that his understanding was that none of the versions put forward were acceptable to the developer; the development agreement had not been proffered by the developer because the sewer provisions were not agreeable to the developer.

Motion: David Sewell moved to make every effort to come up with language on section D [regarding sewer improvements] before the Council Meeting on April 23, 2019, if at all possible, that was acceptable to the developer. Seconded by George Stewart.

Vote: Approved 6:1, with Kay Van Buren opposed.

This item was already scheduled for the Council Meeting on April 23, 2019.

4. A discussion regarding the policies and direction of the Foothills Protection Committee. (19-002) ([2:22:06](#))

Councilor George Handley, chair of the Foothills Protection Committee, introduced the discussion. The committee wished to review several policy considerations to gauge the Council's support, after which they planned to draft legislation to review in more detail at a future date. Mr. Handley outlined the policy issues which the committee had discussed:

- Required project proposal for any grading permit requests that include cutting
- Increased bonding requirements for grading permits
- Required landscape plan as part of the project proposal

The intent is for these requirements to generate better oversight over grading projects; the approval process would involve engineering and planning staff in the initial stages, which will discourage some of the previous issues experienced with these operations. Bonding and project proposals with a landscape plan will ensure that the City knows what the project will look like at its completion and will create a project-specific standard to which the applicant must commit. At this stage, the committee wished to gauge the Council's support or concerns, after which they would invite staff to review the proposed changes. Councilors shared comments and questions, but were generally supportive of the concepts as outlined. Councilor Kay Van Buren asked for more details about the standards expected in a landscaping plan. This would be better defined as a proposal was drafted and brought back to the Council for review. ***Presentation only.***

Budget Committee

5. A presentation on the Community Development Department and potential budget requests. (19-004) ([2:57:11](#))

Gary McGinn, Community Development Director, presented. Mr. McGinn shared statistics from

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the past nine months regarding zoning enforcement and some of the results they have seen from the rental zoning disclosure, including:

- Almost 3000 active rental dwelling licenses, many of which include multiple properties
- Staff continue to contact other rental properties
- 450 inspections conducted in the last 9 months; per City code, they can conduct an inspection every 3 years or whenever they receive a complaint
- Plans for continuing outreach
- In 2017, 1042 code enforcement cases were opened; 170 of these related to occupancy.
- In 2018, 822 code enforcement cases were opened; 134 related to occupancy.

Mr. McGinn shared additional updates on the other divisions and functions of the Community Development Department, including:

- As the building inspection division remains busy with many new construction projects, there is also a lot of related activity in the planning and zoning divisions.
- Updates on historic preservation and the pending sale of Amanda Knight Hall
- Property management and ombudsman updates
- Parking and wayfinding, including an online data map for City parking facilities, completing the wayfinding project, improved signage at parking garages and lots
- Long-range parking plans (including shared parking, parking meters, graduated parking fines, and permit areas)
- Sustainability initiatives (new city center, citizen and employee committees, sustainability report, Sustainability Coordinator position)

Mr. McGinn explained that as the population and demographics of Provo continue to shift, there are needs for more townhomes or garden apartments that attract groups other than single students or traditional nuclear families; he felt that the City had significant opportunities to examine these issues and related redevelopment and infrastructure issues. Regarding needs or supplemental requests, Mr. McGinn anticipated that the zoning division would need continued support in staffing (secretarial help and enforcement officers), and that there may be supplemental requests related to wayfinding, property management, and parking enforcement. Mr. Harding noted that parking and zoning enforcement were two Council priorities. *Presentation only.*

6. A presentation on the Public Works Department and potential budget requests. (19-004) ([2:34:01](#))

Dave Decker, Public Works Director, presented. Mr. Decker briefly addressed several objectives in the General Plan with which Public Works was involved. Mr. Decker also highlighted several underfunded or unfunded needs which, given more resources, could use better support: pedestrian and bicycle facilities, transportation, and sewer infrastructure. Mr. Decker outlined transportation projects with active transportation elements, noting whether bicycle or pedestrian facilities or another mode of transportation was identified on the project. Mr. Decker also provided an update on supplement requests from the previous year. He highlighted several anticipated supplement requests for the coming year, including additional airport personnel to meet expanding needs of airport growth. A major accomplishment in the last year was the completion of work on 820 North east of 900 East. Mr. Decker thanked residents for their cooperation and patience through the process.

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Mr. Decker highlighted major upcoming projects in Public Works and updated the Council on various rate and fee increases. They expected a small increase for the daily airport parking rate. This coming year would be the final year of the five-year plan of recommended utility increases. Anticipated increases for utilities included a 5% recommended increase for water, 15% for wastewater, 8% for stormwater, and 10% for sanitation. Mr. Decker wished to review at a future presentation additional details of the sanitation rates and the opt-in programs for the recycling and green cans. Mr. Decker highlighted comparisons of each of Provo's utility rates to those of other cities. Mr. Decker explained the many funds that operate in Public Works with these many different operations and utilities. *Presentation only.*

Policy Items Referred from the Planning Commission

- 7. A discussion about two ordinances amending the Zone Map Classification of approximately four acres from 500 S to 600 S and from 100 W to University Avenue. Downtown Neighborhood. (PLOT20190046 and PLRZ20190047) ([3:27:05](#))**

Aaron Ardmore, Planner, presented. The Mill Race project has been proposed between 500 South and 600 South and 100 West and University Avenue. Mr. Ardmore explained that compared to the ITOD zone, the proposed PRO zone allowed a higher building height and a lower minimum average unit size. Mr. Ardmore expressed that this was the kind of mixed use project contemplated in the Downtown Master Plan and that Community Development staff were excited to see a proposal of this nature and caliber. Mr. Ardmore indicated that elements of the proposed project included: a 14-story building with office and parking, condominiums, amenity space, apartments, and a potential church meetinghouse in the office tower.

Brian Jones, Council Attorney, provided some guidance on how the Council may wish to proceed with these related items at the evening Council Meeting. He explained that David Walter, Redevelopment Agency Director, had been working on a development agreement and owner participation agreement with the RDA with provisions for affordable housing. Mr. Jones suggested that the ordinance amendment to create the zone could happen regardless of the direction with a development agreement, but he suggested that if the Council wished to pursue the proffer of a development agreement, then it may be better to hold off on applying the rezone to the property.

Councilor David Sewell asked about height restrictions in the zone, which were nearly twice what the limit was elsewhere. Mr. Ardmore explained that when the DT1 and DT2 zones were put in the City code, there was not demand for more than about a six-story building. Prior to the DT zones, there was no height limitation in place; since that time, the downtown is growing and changing in that direction. Gary McGinn, Community Development Director, gave additional background information on the history of building height restrictions in the downtown area. The DT2 zone permitted a building height of 180 feet and DT1 permitted 100 feet. Mr. McGinn explained that at the time, the restrictions put in code were consistent with the economic climate and the trends of the next several years. As the economy has shifted since that time, staff anticipated continuing to see higher buildings proposed in downtown. At present, the new 4th District Court building is taller than 100 feet, as State buildings are not restricted to the height limit in code. Mr. Sewell asked whether the height limits would change in other downtown areas,

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or would this change grant the developer a special privilege over others. Mr. McGinn indicated that it would likely be advantageous to revisit the height limitations in DT1 and DT2.

Neighboring business owners had shared concerns about the proximity of 195-foot building on the west side of the block; Mr. Walter met with the Taylors, owners of the Startup Building, to hear their concerns. The developer was fine with a mechanism that the city was comfortable with that would keep the height on the University Avenue side of the block. This was also the first project approval to come through for approval since the minimum unit size ordinance was passed; this project asks to waive that requirement entirely. ***Presentation only. These items were already scheduled for the Council Meeting on April 23, 2019.***

8. A discussion regarding an ordinance amending the Zone Map Classification of approx. 3.724 acres of property generally located 2400 N 650 E in the R1.10 Zone PD Performance to allow a Development Overlay Zone. Rock Canyon Neighborhood. (PLRZ20190029) ([3:39:14](#))

Brian Maxfield, Planning Administrator, presented. Mr. Maxfield explained that the PD zone overlay would allow for single-family homes to be clustered. He noted that the density would still be far lower than the concentration found in a Low-Density Residential zone. Mr. Maxfield explained how this rezone could aid the City in meeting the housing needs of a diverse population, as housing needs change throughout the City. Mr. Maxfield responded to a question from several Councilors relating to the expected trip counts generated by the projected density. Provo City uses a standard of about 17 for a single-family detached home; City engineers calculated 10 to 12 as the trip count for this configuration. ***Presentation only. This item was already scheduled for the Council Meeting on April 23, 2019.***

9. A discussion regarding amendments to the Provo City Code regarding the Board of Adjustment to comply with State Code. City-wide application. (PLOTA20190097) ([3:45:30](#))

Mr. Maxfield reviewed this item as well, which was a minor adjustment in City code to bring the Board of Adjustment provisions in line with State statute. ***Presentation only. This item was already scheduled for the Council Meeting on April 23, 2019.***

Closed Meeting

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

Motion: George Handley moved to close the meeting. Seconded by Kay Van Buren.

Vote: Approved 7:0.

Adjournment

Adjourned by unanimous consent.

Pending minutes – awaiting approval



PROVO MUNICIPAL COUNCIL Work Meeting Minutes

3:00 PM, Tuesday, July 09, 2019
Room 310, Provo City Conference Room
351 W. Center Street, Provo, UT 84601

Agenda (0:00:00)

Roll Call

The following elected officials were present:

Council Vice-Chair Kay Van Buren, conducting
Councilor Gary Winterton
Councilor David Knecht
Councilor George Stewart
Councilor George Handley
Mayor Michelle Kaufusi

Council Chair David Harding participated in the meeting electronically.

Excused: Councilor David Sewell

Prayer

The prayer was offered by Councilor David Knecht.

Approval of Minutes

- April 9, 2019 Work Meeting
- April 23, 2019 Joint Meeting with Transportation and Mobility Advisory Committee
Approved by unanimous consent.

Business

- 1. A discussion regarding a proposed Permit Parking Plan ordinance amendment. (19-002) (0:05:43)**

Brian Jones, Council Attorney, explained the background of this issue. The Policy Governance Committee examined at length the process by which parking permit plans are adopted. Mr. Jones highlighted elements which had been updated, including several changes to the designation process and the addition of an application fee. The proposed changes affected Title 9 of Provo City Code, which would not require Planning Commission approval; however, one of the proposed changes would require that a proposed parking permit program go to the Planning Commission for a recommendation prior to coming to the Council for approval. Several Councilors wished to receive feedback and comments from the Planning Commission on their proposed involvement in the approval process.

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Motion: Gary Winterton moved to bring this item to the July 23, 2019 Council Meeting, with a request that Gary McGinn relay any comments from the Planning Commission. Seconded by George Handley.

Vote: Approved 6:0, with David Sewell excused.

2. A discussion regarding a resolution of support for the recommendation from the Utah County Good Governance Board regarding the Utah County structure of government. (19-060) ([0:18:31](#))

Cliff Strachan, Council Executive Director, presented. Mr. Strachan highlighted background information regarding the recommendations of the Good Governance Advisory Board (GGAB) for a change to the form of government for Utah County. These results were presented several weeks ago to the County. This morning, County Commissioner Bill Lee and four associates filed another petition to put the question of a five commissioner form of government on the ballot. This has been characterized as a filibuster to the process initiated by the GGAB. The Commission adjourned their meeting today without moving anything forward and are currently seeking legal advice as to the process forward.

If the Council were supportive of this resolution, they would have the opportunity to vote at the evening Council Meeting and express support for the recommendations prepared by the GGAB. Councilors discussed the proposed resolution and the impetus for supporting the change. Mayor Kaufusi also shared comments regarding her experience as a member of the GGAB. Comments and observations included:

- Councilor George Handley expressed that the actions of Commissioner Lee seemed compelling evidence for the need of a change to the form of government.
- Mayor Kaufusi indicated that the GGAB had been composed of 15 members with backgrounds in academia, media, and politics. Their task was to come up with recommendations after they had studied and deliberated on the issue and heard from the public. The Commission had voted unanimously to form the committee to prepare these recommendations and many committee members felt as though the rug had been pulled from under them this morning. Cameron Martin, Vice President for University Relations at UVU, chaired the GGAB and was concerned about the actions of this morning. Mr. Martin would be present at the Council Meeting that evening to speak to the Council and answer any questions they had. Mayor Kaufusi recommended that any questions the Council had could be addressed to Mr. Martin that evening so his response and explanation would all be part of the public record of the proceedings.
- Councilor George Stewart felt that it was critical to pass the resolution and that a change to the form of government was a critical change.
- Mr. Handley felt that Commissioner Lee was incorrect in stating that there was not enough public input; the process was very transparent and public and he wanted the public to have a correct understanding of what has occurred.
- Mr. Strachan suggested that if city councils and mayors across Utah County were to stand up and argue against the move, it may put political pressure on Commissioner Lee and his associates to withdraw his petition. County Commissioner Tanner Ainge had characterized Commissioner Lee's actions as a filibuster.
- Council Vice-Chair Kay Van Buren asked whether any changes to the resolution were

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needed and Councilors discussed whether any revision was warranted or desired.

- Councilor Gary Winterton asked whether there were any material cost differences between the different forms of government recommended. Mayor Kaufusi shared that they had spent an entire meeting exploring and vetting associated costs; there was not a large variation between the different forms and State legislators had advised that the GGAB not make a recommendation or decision based on the financial impact; it was more important to make a sound decision on the other merits of the proposals.

Discussion only. This item was already scheduled for the Council Meeting on July 9, 2019.

3. A discussion regarding the proposed Urban Deer Control Plan. (19-047) (0:36:12)

Camille Williams, Assistant City Attorney, presented. Ms. Williams outlined several differences in methods, results, and risks between the urban deer program as operated in 2016-2019 versus the projected future of the program through 2022. Ms. Williams explained that in response to concerns expressed by the Council and Police Department, the program may shift to address more traffic and public safety concerns, whereas in the past has been largely complaint-driven. Ms. Williams noted that many differences between past and forthcoming operation of the program were largely speculative; during 2016-2019, 193 animals were removed (lethally and nonlethally, combined). Officials estimated that the current city deer population was about 565 animals fewer because of the program's success from 2016-2019; the number of animals taken out are not the only impact, as current population of deer impacts future populations.

Ms. Williams outlined elements of the proposed plan:

- Archery element and the trap and euthanize element (allows specialists with shorter training needs to respond to trap calls, reduces safety risk in densely populated areas)
- Humphries Archery has a \$2500 flat fee per site and a flat fee of \$75 per animal
- Some coordination is involved with the Police Department and Division of Wildlife Resources, however there are fewer demands on Provo's animal control officers
- Potential focus on roadway safety (surveying of deer movement patterns near high killed-in-traffic areas), including in commercial areas.
- The updated plan removes references to a nonlethal component, which is discontinued.

Councilors discussed the text of the resolution and the future of the program. Councilor George Handley expressed concern about the characterization of the program as described in the resolution; he felt that the program was operated to address public safety concerns, rather than the inconveniences of finding deer scat in a mountainside backyard. Mr. Handley suggested that the language in Exhibit A was better suited to describe the scope and impetus of the program.

Motion: George Handley moved to modify the resolution to include the language in [the second paragraph of] Exhibit A in lieu of the language which began on line 9 of the resolution. Seconded by Gary Winterton.

Council Vice-Chair Kay Van Buren invited Council discussion on the motion. Councilor David Harding shared comments electronically reflecting his desire to distinguish between urban deer and mountain deer. There was some discussion on this point and Brian Jones, Council Attorney, suggested that if Mr. Harding felt strongly about the distinction, that a substitute motion would

Pending minutes – awaiting approval

be needed. Ultimately Mr. Harding was fine with the wording as constituted and suggested in Mr. Handley's original motion. Several additional minor adjustments were made for clarity.

Vote: Approved 6:0, with David Sewell excused.

Motion: David Knecht moved to change the language in the resolution to read "up to \$15,000" for the appropriation. Seconded by George Stewart.

Vote: Approved 6:0, with David Sewell excused.

4. A discussion regarding proposed amendments to Personnel Policies in Title 4. (19-082) (1:04:14)

Wayne Parker, CAO, introduced the discussion and outlined the background and context for the discussion. The Administration has been reviewing personnel policies in conjunction with several elements of the recently approved budget, and in doing so, realized that some clarity and updates were needed to better align the city code and administrative policies in parameter and practice. Mr. Parker emphasized the need to balance the Council's role in practicing oversight with the needs of the Administration to be flexible in their organization and to set policies by administrative order. The Administration has explored the possibility of achieving transparency by addressing City policies publicly on the internet, versus on the internal intranet, however, they did not want to take items away which were important to have in the code. Mr. Parker noted that elements such as the pay grades, steps, and pay tables should be in the city code.

Today the Administration hoped to have a more philosophical discussion regarding the spectrum covered in the code versus as administrative policy. Daniel Softley, Human Resources Division Director, reviewed a number of specific changes that the Administration and HR wished to pursue to address inconsistencies, but he echoed the desire to have a broader conversation about what the Council saw as the most effective place to draw the lines. Mr. Softley highlighted specific sections of the code and questions raised during the review, outlining several of the proposed approaches to updating the code language in various sections. Throughout, Councilors shared comments and feedback on the broader discussion and some specifics. Comments included:

- Councilor George Stewart felt that anything with significant fiscal impact should be contained in the City code. Mr. Stewart felt that the Mayor should not be able to win popularity with city employees when there was an impact to the budget.
- Councilor Kay Van Buren noted that even if something were administrative policy, it still needed to come out of a budget; it would likely just impact a budget category.
- Mr. Parker noted that the new leave policies were very presented as part of the budget review process and the Mayor's budget, which were part of a very public process. Mr. Parker also noted that the budgets must be balanced, so any proposed changes would need to be sustainable and part of the larger budget plan.
- Councilor David Knecht asked whether there was any model of a standard setup from the State. Mr. Parker indicated that they could examine the personnel policies and code in other cities with Provo's form of government.
- Mr. Stewart expressed confidence that Mr. Softley and the Administration could review the pertinent sections of code and bring draft language back to the Council.
- Council Executive Director Cliff Strachan suggested that the end result would be more

Pending minutes – awaiting approval

general language in City code that outlined the purposes and parameters in authorizing the Administration to set their personnel policies. Policies would be lengthier to cover multiple different scenarios, rather than have repetitive content in the city code.

Presentation only. This item will return to the Council at a future date following preparation of draft language by the Administration.

Policy Items Referred from the Planning Commission

- 5. A discussion regarding a proposed amendment to Provo City Code 14.50(30) to amend the title, purpose, and objectives to the 50 East Project Redevelopment Option Zone. Spring Creek Neighborhood. (PLOT20190170) ([1:35:20](#))**

Robert Mills, Planner, presented. Mr. Mills explained that PRO zones were typically site- and project-specific zones. The parameters of an existing PRO zone applied well to this project and the applicant has proposed making several adjustments to the title, purpose, and objectives to better align and communicate the intent of the project zoning. The proposed changes could be very easily applicable to future projects of a similar nature, which would allow other projects to utilize this zone as well. Councilors shared comments on the approach and discussed several policy considerations. Mr. Mills indicated that the development agreement process could be used as a tool to further define a site-specific criteria. Mr. Mills felt that PRO zones offered different advantages and disadvantages; overall, this proposal presented an opportunity to make the City's zoning code easier for the public to understand and easier to administer.

Council Attorney Brian Jones explained that at the last meeting, the Council had approved a rezone for a property using this zone, which had not yet been adopted. Mr. Jones outlined the potential movement forward in the process and Mr. Van Buren invited any indication from Councilors about whether or not they were prepared to pass the ordinance text amendment that evening. Most felt comfortable approving it at the meeting that evening. ***Presentation only. This item was already scheduled for the Council Meeting on July 9, 2019.***

Closed Meeting

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

Brian Jones, Council Attorney, outlined the statutory basis for the closed session. The items requested for discussion related to the potential sale of property and the character and competency of recommended appointments to city boards and commissions.

Motion: George Stewart moved to close the meeting. Seconded by George Handley.
Vote: Approved 5:0.

Adjournment

Adjourned by unanimous consent.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: HSALZL
Department: Council
Requested Meeting Date: 07-23-2019

SUBJECT: A discussion regarding the creation of a Downtown Parking Committee.
(19-002)

RECOMMENDATION: Information only.

BACKGROUND: Discussions about parking downtown have come up frequently in Council and committee discussions. The anticipated business and population growth as well as the relocation of the City Center building have made the need for a proactive approach to parking downtown more pressing. One option to address this need is to create a Downtown Parking Committee.

FISCAL IMPACT: NA

PRESENTER'S NAME: Councilor David Harding

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-002

Provo Strategic Parking Mgmt Plan

Key Outcomes

Establishing policy outcomes is the prerogative of the Provo City Council. These outcome statements guide the administrative work of Provo Parking Services. All planning and programs should be aimed at achieving the goals as set forth in the following statements.

The Provo City Parking Services Division should deliver the following key outcomes:

1. Organizational Planning and Leadership

1.1 A sense of purpose and direction relative to parking and transportation policy – the adoption of these key outcome statements provides that missing element.

1.2. Continue to be led by a strong and capable program leader that will deliver these stated program outcomes. The Provo Parking Services Division will be developed into a vertically integrated city division with responsibility for managing on-street parking, city-owned off-street parking, collaborative management of privately owned off-street parking, consistent and equitable parking enforcement / citation management and adjudication, parking planning and development, and transportation demand management.

1.3. Provo Parking Services will have an ongoing and collaborative coordination and relationship with the Provo City Neighborhood Program, BYU, other local colleges and universities, Downtown Provo, Inc., UTA, the Utah Valley Convention and Visitors Bureau, all other Provo City departments and divisions, and other stakeholders.

Primary Action Item #1.1: Adopt new program Vision and Mission Statements and Recommended Parking Program Key Outcomes. Hire a parking management professional and implement parking management best practices.

Primary Action Item # 1.2: Coordinate and work collaboratively with identified stakeholder groups to maximize the mission of the Parking Services Division.

2. Program and Facility Planning

2.1. The Provo Parking Services Division shall have an active, forward-thinking, and comprehensive planning and development function that is pursued on multiple levels, anticipating and planning for the current and future needs of parkers, including residents, visitors, employees, employers, and property owners through active planning,

engagement of market forces that implements best practices for a “best-in-class” approach.

2.2. Establish parking management programs that provides a positive perception and experience of highly parking-impacted neighborhoods and downtown.

2.3. Parking Services will work closely with the Community Development Department to address zoning parking requirements and coordinate a response to parking facility planning for current development proposals.

Primary Action Item # 2.1: Leverage parking as a community and economic development strategy and develop a comprehensive parking planning function.

Primary Action Item # 2.2: Work collaboratively with BYU and neighborhood associations to better define residential neighborhood parking issues and enhance residential permit programs.

3. Program Management

3.1. Consistent and equitable parking enforcement / citation management and adjudication is a hallmark of the Parking Services Division.

3.2 Current and future residential parking permit programs should be enhanced to improve neighborhood parking enforcement operations.]

3.3. Special events that could have a parking impact Downtown and in other highly impacted areas should be managed to maximize the ability of patrons to park in underutilized facilities and minimize impact on adjacent residential neighborhoods and businesses. This includes developing plans and coordinating parking management policies with event organizers. A close working relationship between Downtown Provo, Inc., the Utah Valley Convention Center, the LDS Church, local event venues, the library and other even private sector groups that host large events will exist.

3.4. ADA parking placard abuse will be targeted as part of parking enforcement operations.

Primary Action Item # 3.1: Critically assess the current parking enforcement program using the tools provided.

Primary Action Item # 3.2: Improve neighborhood permit enforcement (through LPR technology and increased staffing) and to identify and rectify documented safety issues such as intersection line of sight issues, speeding and related problems.

Primary Action Item # 3.3: Address abuse of accessible parking placards to improve parking availability for those who are truly disabled.

4. Technology Planning and Management

4.1. Leverage new technology to provide:

- a. Enhanced customer friendly programs and services.
- b. Improved operational efficiency.
- c. Enhanced system financial performance.
- d. Improved system management.

Primary Action Item # 4.1: Begin a process to evaluate investment in new on-street and off-street parking technology.

Primary Action Item # 4.2: Invest in mobile license plate recognition (LPR) technology.

5. Asset Management

5.1. The Provo Parking Services Division will manage on-street parking, city-owned off-street parking, collaborative management of privately owned off-street parking as well as capital acquisition and ongoing maintenance and management costs.

5.2. Parking facilities (public and private, on- and off-street) are managed as a capital facility asset necessary for the efficient operation of the transportation system. Capital facility planning and budgets will prepare public assets to maximize their use toward the achieving of city-wide outcome policies and objectives. Development of a strong parking maintenance program with regularly scheduled facility condition appraisals, the creation of parking facility maintenance reserves and a prioritized facility restoration and maintenance schedule.

Primary Action Item # 6: Develop a proactive facility maintenance program including regular facility condition appraisals, prioritized facility rehabilitation plans.

6. Communications, Education, and Customer Service

6.1. Develop the Provo Parking Services Division into a superior, customer-oriented parking system.

6.2. An established communications plan based on best practices as outlined in the Strategic Master Plan will help realize desired outcomes. Frequent and positive dialogue with primary and secondary audiences will be a hallmark of the program. Establish a strong customer service orientation which is infused into staff training, and is integrated into facilities maintenance and investments in new technologies.

6.3. The parking management system will promote the City as a desirable destination for residents, workers, businesses, shopping, dining, and recreation by making parking a positive element of the overall community experience.

6.4. Parking management programs and facilities will be developed to function as a positive education and marketable asset for the City. A comprehensive branding, education, and marketing function will enhance program effectiveness.

Primary Action Item #6.1: Develop a new parking program brand and marketing program including significant on-going community outreach strategies.

7. Mobility and Transportation Demand Mgmt

7.1. Over time, Provo Parking Services will expand the parking program's mission to adopt a broader more "mobility and transportation demand management" oriented perspective. The Provo parking management system will support a "park once" philosophy and a foster a balance of travel modes – including vehicular, transit, bicycle, and pedestrian – to meet community-wide access goals. Parking should support linkages to other forms of transportation.

Primary Action Item # 7.1: Expand the scope of the parking program over time to be more supportive of alternative modes of transportation and embrace more of a "mobility management philosophy".

8. Budget and Training

8.1. Establish parking as a separate "enterprise fund" and dedicate all parking related revenue streams to support the enterprise fund. The parking management system will strive, over time, to be financially self-supporting and accountable to stakeholders. This includes developing, adapting, and managing annual and program budgets, as well as capital acquisition and ongoing maintenance and management costs.

8.2. Develop a management team that has a mastery on the fundamentals of parking management. Staff is regularly trained to gain an in-depth understanding of the many complex and challenging aspects that are somewhat unique to parking.

Primary Action Item # 8.1: Establish the parking program as a separate enterprise fund and combine all parking related revenue streams into this fund.

Primary Action Item # 8.2: Plan for and create parking facility maintenance reserves.

Primary Action Item # 8.3: Invest in training and staff development with a goal of mastering the fundamentals of parking system management and operations.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: HSALZL
Department: Council
Requested Meeting Date: 07-09-2019

SUBJECT: A discussion of proposed amendments to Provo City Code 15.03.035 (Grading) to clarify and change requirements related to grading and grading permits. (19-002)

RECOMMENDATION: Information only. The Foothills Protection Committee is requesting this item be sent to Planning Commission for analysis and review.

BACKGROUND: The Foothills Protection Committee has met for the last several months to discuss areas they can assist in the preservation and protection of the Provo City Foothills. This particular ordinance amendment stems from the discussion that Council had during the April 23, 2019 Work Meeting. This is the proposed legislation relating to the initial step that was discussed by the Committee to prevent grading issues in the future. The three things which are being discussed are:

(1) Require a Project Plan Proposal with each grading permit

Currently, Provo City Code Section 15.03.035 (Grading) indicates that grading permits can be “obtained at the office of the Provo City Engineer after completion of an application for permit complying with any and all permit requirements.” There are 12 requirements in PCC § 15.03.035(2) for developers to fulfill. However, if developers were required to provide a plan to fulfill these requirements at the project proposal stage, they will be less likely to abandon grading projects. The additional effort on the part of those seeking a grading permit gives additional information to Engineering in order to help them as they review projects.

(2) Increase bonding requirements for grading permit projects

The grading permit requirements found in PCC § 15.03.035(4) currently require that:

- the work is completed by a licensed qualified contractor,
- payment of all required permit fees and bonds are received prior to commencement of any work, and
- the project complies with any special conditions required by the City Engineer.

The Foothills Protection Committee believes that the bonding requirements for grading permits should be increased. Any permit which requires cutting should be given special scrutiny to ensure that the projects are completed to the expected standards.

(3) Require a landscaping plan as part of the project proposal

If each project has a landscaping plan, this would show the City the contractor intends to beautify the project upon completion and leave the project in better condition than when they began. This would also provide the Engineering Division additional information on how the contractor intends to beautify the area upon completion of the project. The landscaping component of the project proposal would also likely result in an increase of the bonding requirement.

FISCAL IMPACT: No

PRESENTER'S NAME: George Handley

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-002

15.03.035

Grading.

(1) For the purposes of this Section, grading shall be defined as any work including filling, cutting, excavation or relocation of material which affects the contour, slope, elevation or drainage features of a parcel of property, or which involves more than fifty (50) yards of material. Landscape modifications to an individual property involving less than fifty (50) cubic yards of material and which do not affect the contour or slope of a property shall be exempt from the requirements of this Section. No grading, cutting, filling, or excavation as previously defined shall be accomplished without first having obtained a grading permit from the City Engineer pursuant to the provisions of this Section. A grading permit may be obtained at the office of the Provo City Engineer after completion of an application for permit complying with any and all permit requirements.

(2) No grading, cutting, filling, or excavation of any kind shall be accomplished without first having obtained a grading permit from the City Engineer pursuant to the provisions of this Section. A grading permit may be obtained at the office of the Provo City Engineer after completion of an application for permit complying with any and all permit requirements.

(a) Any grading operation exceeding ten (10) months shall require a new grading permit. If a new grading permit is not granted, all of the conditions of the original grading permit shall be completed no later than twelve (12) months from the original date of issue.

(b) Applicants for grading permits that involve cutting, other than permits related to the development of a detached one-family dwelling, must meet the following requirements in addition to any others required by this Section:

(i) the applicant shall submit a project plan comporting with the requirements of Provo City Code Section 15.03.310;

(ii) the applicant shall submit a revegetation/mitigation plan, which shall show the landscaping necessary to return the property to an undeveloped or improved state if the grading is begun, but then project proposed in the project plan is not completed;

(iii) the applicant shall post a cash bond, which shall be equal to the greater of:

(A) (A) the amount required under Provo City Code 15.03.280; and

(B) (B) an amount reasonably determined by the Department of Development Services to be adequate to cover the costs of the landscaping described in Subsection (2)(b)(ii) of this Section;

(iv) issuance of the grading permit is subject to the review and approval of the project plan and the revegetation/mitigation plan and the posting of the required cash bond.

(c) All grading permits which involve over twenty-five thousand (25,000) cubic yards of material or are not associated with an approved project plan will be required to submit a request for an administrative hearing review, which must be held in accordance with Provo City Code Section 3.06.010, prior to consideration or issuance of a grading permit.

(ed) All approved development projects, which produce excess excavated material that is to be removed from the project site, shall provide a grading plan for the property where the material will be placed, if said property is within the Provo City limits. An acknowledgment letter from the owner of record of the recipient property shall be required with the grading permit.

(de) All materials processed upon the project site for reuse shall be subject to the provisions of this Section and shall require approval through the development review process.

(ef) All preliminary street and site grading shall be completed prior to the installation of utilities.

(fg) Fills in areas intended as structural foundations, including roadways, shall be compacted to at least ninety-five percent (95%) of AASHTO (American Association of State Highway Transportation Officials) T180 density. All other fills shall be compacted to at least ninety percent (90%) of AASHTO T180 density. Compaction test reports verifying compliance with this provision shall be submitted to the City Engineer.

(gh) Material processing not associated with an approved development plan or capital project will not be issued a grading permit. An applicant may appeal the decision of the City Engineer through a request for administrative review.

(hi) All cut and fill slopes, and other areas as determined by the City Engineer, shall be reseeded and/or planted with vegetation. A guarantee bond for this work shall be submitted and remain in place until all work has been completed and final inspection made.

(ij) No person shall be permitted to grade, cut, excavate, fill, or to erect any structure on slopes or undisturbed areas that exceed a slope greater than thirty percent (30%) as determined by the City Engineer.

(jk) Cleanup of the grading site shall be the responsibility of the party to whom the permit is issued. Measures shall be in place to prevent tracking of material onto adjacent public and private streets or neighboring properties. Any materials which are tracked outside of the project site shall be immediately cleaned up. If the cleanup is not satisfactorily completed, the City may have this work done by City crews or private contractor and the cost for the work be billed to the party to whom the permit was issued.

(kl) Cut and fill slopes shall be constructed to eliminate sharp angles of intersection with the existing terrain and shall be rounded and contoured as necessary to blend with adjacent property to the maximum extent possible. Where a cut or fill slope occurs between two (2) lots, the slope shall normally be made a part of the lot with the lowest elevation.

(~~h~~m) Sections of the International Building Code regulating excavation and grading shall be complied with, except that decisions described therein to be made by the “building official” may also be made by the City Engineer.

(3) *Engineered Fill.*

(a) A permit may be obtained from the City Engineer to use solid waste or other material as “fill” by doing the following:

(i) By submitting to the City Engineer a grading plan showing the area to be filled and a description of the material which will be used as fill; and

(ii) By using only “engineered fill” as defined herein.

(b) For the purposes of this Section, “engineered fill” means:

(i) Soil and rocks and related materials which are substantially free from asphalt, wood, roots, bark, tree limbs, grass clippings or any other material which decomposes or compresses; and

(ii) Material having such characteristics of composition, size and shape that it will compact readily to a firm, stable base (broken concrete in a size of less than twelve (12) inches square may be considered engineered fill); and

(iii) Material which is nontoxic and not hazardous waste.

(c) It shall be unlawful to do any of the following:

(i) To make a false statement to obtain a permit pursuant to this Section.

(ii) To obtain a permit pursuant to the provisions of this Section and thereafter fill (or cause the filling of) any place in a location or manner not described in the grading plan.

(iii) To use (or cause the use of) materials as fill which are not described in the grading plan.

(4) *Permit Requirements.*

(a) All grading permits shall be subject to any and all conditions of the permit required by the City Engineer including the following:

(i) The work shall be completed by a licensed qualified contractor.

(ii) Payment of all required permit fees and bonds prior to the commencement of any work.

(iii) Compliance with other special conditions required by the City Engineer.

- (b) Permit fees are included in the Provo City [Consolidated Fee Schedule](#).
- (c) Failure to comply with the terms of the permit will constitute a default of the permit and the permit will be considered null and void upon written notification from the City Engineer.

(Enacted 2011-09, Am 2014-32)

The Provo City Code is current through Ordinance 2019-13, passed March 19, 2019.

Disclaimer: The city recorder has the official version of the Provo City Code. Users should contact the city recorder for ordinances passed subsequent to the ordinance cited above.

[City Website: www.provo.org](http://www.provo.org)

City Telephone: (801) 852-6000

[Code Publishing Company](#)

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: HSALZL
Department: Council
Requested Meeting Date: 07-23-2019

SUBJECT: A discussion of possible legislative efforts to be undertaken by the Foothills Committee of the Municipal Council. (19-002)

RECOMMENDATION: Information only.

BACKGROUND: Councilor Handley will review Provo City's current hillside code and the Salt Lake County ordinance on foothill protection to highlight what gaps the Foothills Protection Committee might address next.

FISCAL IMPACT: N/A

PRESENTER'S NAME: Councilor George Handley

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-002

Chapter 19.72 - FOOTHILLS AND CANYONS OVERLAY ZONE (FCOZ)

19.72.010 - Purpose.

The general purpose of the foothills and canyons overlay zone is to promote safe, environmentally sensitive development that strikes a reasonable balance between the rights and long-term interests of property owners and those of the general public. Specifically, these standards are intended to:

- A. Preserve the visual and aesthetic qualities of the foothills, canyons, and prominent ridgelines as defined herein, contributing to the general attractiveness and, where appropriate, the commercial viability of these areas.
- B. Protect public health and safety by adopting standards designed to reduce risks associated with natural and man-made hazards.
- C. Provide efficient, environmentally sensitive, and safe vehicular and pedestrian circulation.
- D. Encourage development that conforms to the natural contours of the land and minimizes the scarring and erosion effects of cutting, filling and grading on hillsides, ridgelines, and steep slopes.
- E. Balance private and commercial needs against the risk of destabilizing fragile soils, defacing steep slopes and degrading water quality.
- F. Minimize disturbance to existing trees and vegetation, conserve wildlife habitat, protect aquifer recharge areas, and otherwise preserve environmentally sensitive natural areas by encouraging clustering, the transfer of development rights, or other design techniques to preserve the natural terrain.
- G. Reduce flooding by protecting streams, drainage channels, absorption areas, and floodplains.
- H. Protect property rights and commercial interests, and encourage economic development.
- I. Recognize the link between environmental protection and economic prosperity in the canyons.

(Ord. No. 1808, § 1, 3-14-2017)

19.72.020 - Applicability.

- A. Geographic Area of Application. Maps delineating the boundaries of the foothills and canyons overlay zone are on file with the planning and development services division. Such maps, as amended, are incorporated into this chapter as if fully described and detailed herein.
- B. Development Activities Covered. The standards and regulations of the foothills and canyons overlay zone apply to all development that occurs within the mapped foothills and canyons overlay zone. Development includes all land disturbance activities such as grading, clearing, and excavation.
- C. Jurisdictional Exemptions. These provisions do not apply to properties owned by the state or the government of the United States, except as specifically authorized by state or federal statute or regulation, intergovernmental agreement, or other form of cooperative agreement.
- D. Recognition of Salt Lake City Extraterritorial Jurisdiction. Salt Lake County recognizes that Salt Lake City has extraterritorial jurisdiction for protection of its watershed located in the canyons east of Salt Lake City from City Creek Canyon south to Little Cottonwood Canyon. All development in the county impacting surface water, wells, storage facilities, or aquifers located within Salt Lake City watershed areas shall be referred to Salt Lake City to confirm compliance with applicable ordinances and watershed protection standards. If confirmation is not received within the time prescribed by county ordinance for processing applications, the planning

commission or director may approve the application subject to confirmation being received prior to a building permit being issued. The county shall notify other water providers of which the county is aware that have protected watersheds in the canyons and may have authority over the proposed development within those areas. Notification shall include a copy of the application, any public hearing dates for the application, and contact information for the county planning and development services division.

- E. Mountain Resort Zone. Due to the unique and specialized uses of mountain resort properties, including recreational and mixed residential and commercial uses, mountain resorts may apply for specialized mountain resort ("MRZ") zoning. Should a resort choose not to apply for MRZ zoning, it shall be subject to all of the requirements of the underlying zone and this chapter.

(Ord. No. 1808, § I, 3-14-2017)

19.72.030 - FCOZ Development approval procedures.

- A. Purpose. The purpose of this section is to outline the site plan application and approval process required for all development or construction activity, including tree/vegetation removal and grading, or subdivision of land, in the foothills and canyons overlay zone.
- B. Joint Applications. Where a process is already established by ordinance or agreement for review and approval of a land use application in the foothills and canyons (such as a subdivision, conditional use or permitted use site plan, development agreement, or variance process), applicable FCOZ standards shall be applied concurrently with the related application. If there is no related land use application under review, the applicant shall be subject to the following process.
- C. Application Process.
1. Pre-Application Meeting.
 - a. Purpose. An informal pre-application meeting with the director is required prior to submitting a site development plan application. The purposes of the pre-application meeting are to provide an opportunity for the parties to discuss:
 - i. The application submittal, review and approval process.
 - ii. The proposed development of the site and its relationship to site conditions and area characteristics, including geologic, hydrologic, and environmental issues.
 - b. Scheduling of Pre-Application Meeting. To request a pre-application meeting, the applicant shall submit a pre-application meeting request on a form provided by the county, together with any required fees and materials. Upon submittal of a complete application, the development proposal shall be scheduled for discussion at a pre-application meeting.
 - c. Attendance. In addition to the director, other county participants in the pre-application meeting may include representatives from the health department, county engineer's office, fire department, Salt Lake City department of public utilities, and any other person or entity the county deems appropriate
 2. Site Development Plan.
 - a. Application.
 - i. Upon conclusion of the pre-application meeting process, an applicant seeking approval of a development plan shall submit an application form, together with required maps, plans, reports, special requests, and fees, to the director. All submitted materials shall be available for public review.

planning review fee schedule on file with township services.

- F. Appeals. Pursuant to Section 19.92.050 of this title, any person adversely affected by a final decision of the zoning authority may appeal that decision to the land use hearing officer.

(Ord. No. 1808, § I, 3-14-2017)

19.72.040 - Underlying zoning district.

- A. Conflicts. Unless specifically exempted or modified by the underlying zone, such as a mountain resort zone, all development shall comply with the standards of this chapter.
- B. Division of Consolidated Lots. Previously platted lots consolidated into one taxable parcel may not be re-divided into lots smaller than the minimum area required in the underlying zone.
- C. Setbacks. Setbacks from property lines are established by the underlying zone. If no setbacks are stated, an applicant wishing to locate a building closer than ten feet to the property line shall demonstrate that the structure will not place additional burden on neighboring properties by addressing the following factors: snow load, drainage, access, fire protection, and building code.

(Ord. No. 1808, § I, 3-14-2017)

19.72.050 - Cluster development.

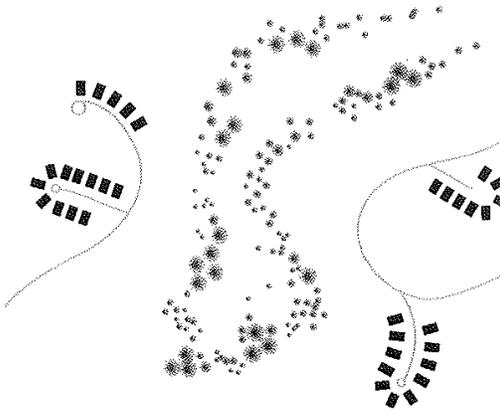
- A. General Requirements. Cluster development is the grouping of residential properties on lots smaller than allowed in the underlying zone to reduce infrastructure costs and environmental impacts and to reserve otherwise developable land for open space or recreation. Whether proposed by an applicant or required by the planning commission, cluster development may only be approved upon satisfaction of the following conditions:
1. The clustering proposal meets all other applicable requirements set forth in the foothills and canyons overlay zone or in other applicable ordinances or regulations.
 2. The clustering proposal, compared with a more traditional site plan, better attains the policies and objectives of the foothills and canyons overlay zone, such as providing more natural open space, preserving existing trees and vegetation coverage, and preserving sensitive environmental areas such as stream corridors, slide areas, prominent ridgelines, wetlands, and steep slopes.
 3. The clustering proposal shall have minimal adverse impact on adjacent properties or development, or, if such impacts may result, the applicant has agreed to implement appropriate mitigation measures such as landscape, screening, illumination standards, and other design features as recommended by the director to buffer and protect adjacent properties from the proposed clustered development.
 4. The architecture, height, building materials, building colors, and other design features of the development blend with the surrounding natural landscape and are compatible with adjacent properties or development.
- B. Density Bonus for Cluster Development.
1. A cluster density bonus of up to twenty-five percent over the base density permitted in the underlying zone may be available for cluster developments that satisfy the above standards while taking into account the bonus density.
 2. The allowable density bonus for a cluster development is equal to twenty-five percent of the "net developable acreage," and must be rounded to the nearest whole number, but in no case less than one.
 3. The density bonus for clustering allowed pursuant to subsection B.1 is not allowed in the MRZ.

C. Cluster Development Design.

1. The undeveloped area of the development site shall be preserved as active or passive natural open space. Natural open space areas shall conform with any adopted county open space and/or trail plans, provide contiguity with adjacent natural open space and/or conservation areas, protect unique natural, historic, or cultural site features and resources, and avoid fragmentation of conservation areas within the site
2. The maximum number of lots allowed in a single cluster is twenty lots. Each cluster shall be separated from other residential clusters by a minimum of one-hundred feet.
3. The layout of a cluster development shall protect significant natural resources on or adjacent to the site. Natural resources include riparian areas, wetlands, ecological resources, steep slopes and ridgelines, and wildlife habitat and corridors. The overall site design shall employ the site's natural topography to hide multiple residential clusters from the sight of adjacent clusters.
4. A cluster development shall preserve the open sky backdrop above any ridgelines and, where possible, significant views of the natural landscape as viewed from adjacent streets.

D. Illustration of Cluster Development. Figure 19.72.1: Cluster Development illustrates recommended cluster development.

FIGURE 19.72.1: CLUSTER DEVELOPMENT



(Ord. No. 1808, § I, 3-14-2017)

19.72.060 - Slope protection.

A. Slope Protection Standards.

1. Unless otherwise allowed in this Title, no development activities, including clearing, excavation, grading, and construction, are allowed on slopes greater than thirty percent.
2. Structures shall be set back from ascending or descending slopes greater than thirty percent in accordance with the requirements of the current adopted building code.

B. Development on Ridgelines.

1. Unless otherwise allowed in this title, no development may break the horizon line, defined as the point where the ridge visibly meets the sky as viewed from public rights of way or trails.
2. Unless otherwise allowed in this title, no development may be located within one-hundred feet (map distance) from either side of the crest of a protected ridgeline designated as such in an adopted county master plan or incorporated by other ordinance.
3. Figure 19.72.2: Ridgeline Development illustrates recommended ridgeline development.

FIGURE 19.72.2: RIDGELINE DEVELOPMENT

- C. Natural Open Space within Steep Slopes. Unless expressly allowed in this title, all areas with slope greater than thirty percent must remain in natural private or public open space, free of any development activities.
- D. Waiver of Slope Protection Standards for Lots of Record.
1. The planning commission may only waive or modify the following slope protection standards as applied to development on lots of record and in subdivisions that were approved prior to the effective date of this chapter:
 - a. Slope protection standards prohibiting development on slopes greater than thirty percent or in ridge line protection areas, as set forth above.
 - b. Limitations on the crossing of slopes greater than thirty percent by any street, road, private access road or other vehicular route, as addressed in Subsection 19.72.080.
 2. The planning commission may only waive these standards upon satisfaction of the following criteria:
 - a. Strict compliance with the above slope protection standards.
 - i. Renders the site undevelopable, or
 - ii. Results in substantial economic hardship not created by the applicant or otherwise self-imposed, or
 - iii. Results in a building location that requires excessive grading, vegetation removal, or driveway distances in conflict with the purposes of this chapter; and
 - b. The development substantially conforms to all other development, site design, and environmental standards of this chapter and in all other applicable ordinances and codes.
 3. In granting a waiver from slope and ridge line protection standards, the planning commission may impose reasonable conditions to mitigate the impacts, if any, that the planning commission determines the proposed development has on adjacent properties and the surrounding environment.
 4. Notwithstanding its discretion to grant waivers for lots of record from the slope protection standards set forth in this chapter, in no case shall the planning commission permit development other than roads on slopes greater than forty percent.
 5. In the interest of protecting the public health, safety, and welfare, the county may pursue negotiations with a property owner to purchase their property as open space as an alternative to granting a waiver. These negotiations, as long as they are performed in good faith, shall not delay the county's processing of any land use application.

(Ord. No. 1808, § I, 3-14-2017)

19.72.070 - Grading standards.

- A. Prior to issuance of a building permit in accordance with a grading and excavation plan and report for the site approved by the development services engineer; no grading, excavation, or tree/vegetation removal is permitted, whether to prepare a building site, for on-site utilities or services, or for any roads or driveways.
- B. Figure 19.72.3: Cutting and Grading illustrates recommended development that minimizes cuts.

FIGURE 19.72.3: CUTTING AND GRADING

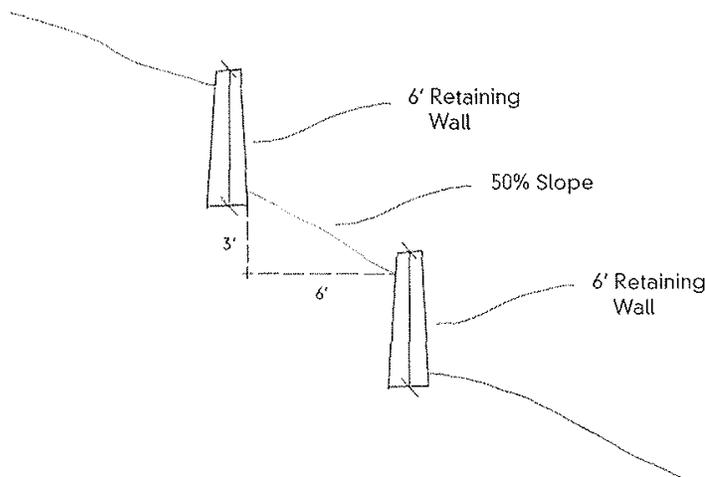
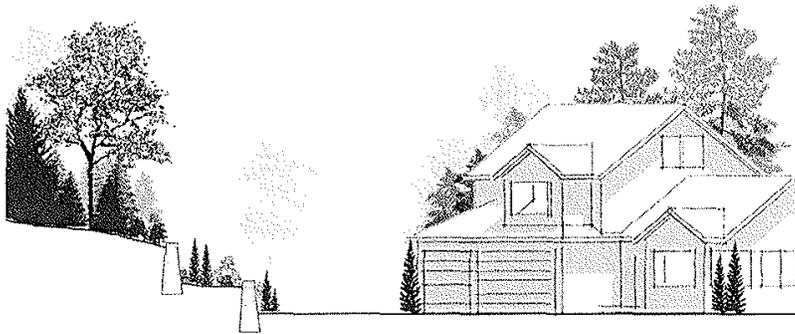


- C. The original, natural grade of a lot may not be raised or lowered more than four feet at any point for construction of any structure or improvement, except:
 1. The site's original grade may be raised or lowered eight feet if a retaining wall is used to reduce the steepness of man-made slopes, provided that the retaining wall complies with the requirements of subsection I. below.
 2. The site's original grade may be raised or lowered more than eight feet with terracing, as specified in subsection I. below.
- D. Separate building pads for accessory buildings other than private garages, (such as barns, or recreational structures such as tennis courts, swimming pools, and similar facilities) are prohibited except where the natural slope is twenty percent or less.
- E. The following limits apply to graded or filled man-made slopes:
 1. Slopes of twenty-five percent or less are encouraged wherever possible.
 2. Graded or filled man-made slopes may not exceed a slope of fifty percent.
 3. Cut man-made surfaces or slopes may not exceed a slope of fifty percent unless it is substantiated, on the basis of a site investigation and submittal of a soils engineering or geotechnical report prepared and certified by a qualified professional, that a cut at a steeper slope will be stable and will not create a hazard to public or private property.
 4. All cut, filled, and graded slopes shall be re-contoured to the natural, varied contour of the surrounding terrain.
- F. Any slope exposed or created in new development shall be landscaped or re-vegetated pursuant to the standards and provisions of this chapter.
- G. Excavation for footings and foundations shall be minimized to lessen site disturbance and ensure compatibility with hillside and sloped terrain. Intended excavation must be supported by detailed engineering plans submitted as part of the application for site plan approval.
- H. Use of retaining walls is encouraged to reduce the steepness of man-made slopes and to provide planting pockets conducive to re-vegetation.
 1. If a single retaining wall is used, one vertical retaining wall up to eight feet in height is permitted to reduce excavation and embankment.
 2. Terracing is limited to two walls with a maximum vertical height of six feet each. The width of a terrace shall be a minimum of a one-to-one ratio with the height of the wall. Terraces are measured from the back of the lower wall to the face of the upper wall. Terraces created between retaining walls shall be

permanently landscaped or re-vegetated as required by this chapter.

3. Figure 19.72.4: Terracing and Retaining Walls illustrates recommended terracing.

FIGURE 19.72.4: TERRACING & RETAINING WALLS



4. Retaining walls shall be faced with stone or earth-colored materials similar to the surrounding natural landscape, as required by the design standards of foothills and canyons overlay zone.
5. All retaining walls shall comply with the minimum standards of the International Building Code.
- I. Except for restoration and maintenance activities authorized by the state engineer and county flood control division, filling or dredging of water courses, wetlands, gullies, stream beds, or stormwater runoff channels is prohibited. Bridge construction is allowed pursuant to the standards set forth of this section.
- J. Where detention basins and other storm and erosion control facilities are required, any negative visual and aesthetic impacts on the natural landscape and topography shall be minimized. See Figure 19.72.5: Recommended Detention Basin Treatment which illustrates recommended treatment.
1. Detention basins shall be free form, following the natural landforms. If such forms do not exist, the basin shall be shaped to emulate a naturally formed depression.
 2. Redistributing soils from basin construction to natural side slopes around the perimeter of the basin is encouraged. Side slopes are limited to a maximum slope of three-to-one. These slopes are created to filter, redirect or soften views of the basin. Total screening of basins is not required. Side slopes shall be varied to replicate natural conditions.
 3. Naturalized planting themes are required for basins. Trees and shrubs may be grouped in informal

patterns to emulate the natural environment but may not reduce the volume of the basin.

4. The ground surface of the basin and surrounding disturbed areas shall be covered with native grass mixture or other appropriate groundcover. It is the intent to provide a natural cover that does not require regular mowing or fertilization.
5. Appropriate erosion control measures are required on all slopes.

FIGURE 19.72.5: RECOMMENDED DETENTION BASIN TREATMENT



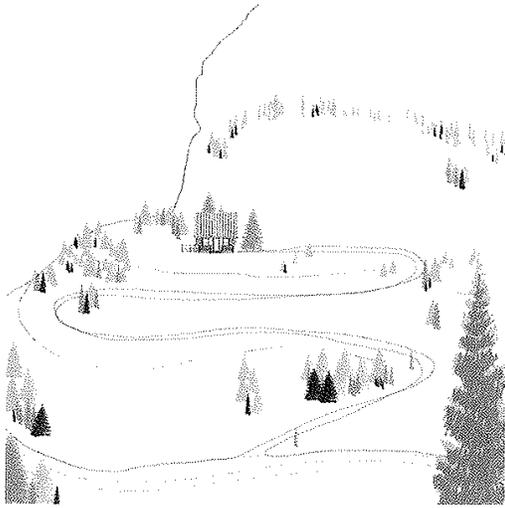
(Ord. No. 1808, § I, 3-14-2017)

19.72.080 - Site access.

- A. Motor vehicle access to a building or development site shall be by road (including private access road), street, alley, or driveway. Any road, street, alley, or driveway constructed after the enactment of this chapter shall comply with the applicable requirements of this section.
- B. Streets, roads, alleys, or driveways shall comply with the Salt Lake County highway ordinance and fire authority regulations.
- C. Streets, roads, alleys, or driveways may not cross slopes averaging (in any fifty foot interval) between thirty percent and fifty percent unless specifically authorized by the Planning Commission, upon the favorable recommendation of the director and public works engineer, after finding that all of the following conditions and constraints are met:
 1. No alternate location for access is feasible or available.
 2. No individual segment or increment of the street, road, alley, or driveway in excess of one hundred feet in length may cross slopes averaging between thirty percent and fifty percent.
 3. The cumulative length of individual segments or increments that cross slopes averaging between thirty percent and fifty percent may not exceed ten percent of the total length of the street, road, alley, or driveway.
 4. All crossings shall be designed and constructed to eliminate significant adverse environmental or safety impacts.
- D. Under no circumstances shall any segment of a street, road, alley, or driveway cross slopes averaging greater than fifty percent.
- E. Streets, roads, alleys, or driveways shall follow natural contour lines where possible. If the natural contour lines do not reasonably facilitate access to the development site, a private access road or driveway may be

designed and submitted for approval with a slope not to exceed the requirements set forth in Title 14 of the county Code. Figure 19.72.6: Recommended Access Route Configuration illustrates the access route following natural contours.

FIGURE 19.72.6: RECOMMENDED ACCESS ROUTE CONFIGURATION



- F. Grading for streets, roads, alleys, or driveways is limited to the paved portion of the right-of-way, plus up to an additional ten feet on either side of the pavement as approved. However, when developing access on slopes in excess of twenty-five percent, only the paved portion of the right-of-way used for vehicular travel, plus the minimum area required for any additional improvements, such as curb, gutter or sidewalk, may be graded. The remainder of the access right-of-way must be left undisturbed.
- G. Streets or roads may be required to provide access or maintain existing access to adjacent lands for vehicles, pedestrians, emergency services, and essential service and maintenance equipment.
- H. Private access roads and driveways shall ensure safe, convenient and adequate access to individual buildings. Driveway access to a development must be consistent with Salt Lake County general plans. In addition, provision of private access road and driveway access is subject to the following requirements:
1. All private access roads and driveways shall comply with the Salt Lake County highway ordinances and fire authority regulations.
 2. Private access roads and driveways greater than one hundred fifty feet in length shall meet the following requirements:
 - a. Provide a turnaround that meets the county's road/street and fire authority standards.
 - b. Provide an adequate number of spaced turn-outs along the length of the private access road or driveway, as determined by the public works engineer in consultation with the fire authority.
 3. If variation from the above standards is sought, the applicant shall apply for a written Code Modification Approval from the fire authority that specifies any additional requirements that must be completed prior to construction.
 4. Shared private roads and driveways are encouraged between adjacent lots.
 5. Private access roads and driveways to a building site shall have direct access to a public street or to a private right-of-way previously approved by the planning commission.
 6. Finished grades shall comply with the following:
 - a. Finished private access roads and driveways are limited to a maximum grade of twelve percent, or as determined by the public works engineer on a case-by-case basis based on health and safety

concerns and the need for adequate access for county service providers. In no case, however, may the public works engineer approve a maximum grade greater than fifteen percent.

- b. Private access road and driveway grades within twenty feet of the roadway are limited to ten percent slope.
7. The director has discretion to administratively offer relief of the driveway access standards by a maximum of twenty-five percent where applicable upon satisfaction of the following criteria:
 - a. The modification is designed to yield:
 - i. More effective preservation of existing mature trees, vegetation, riparian areas, rock outcrops, or other significant natural features of the site;
 - ii. Less visual impact on the property or on the surrounding area; or
 - iii. Better protection of wildlife habitat; or,
 - b. Strict application of the standard(s) would render a site undevelopable.

(Ord. No. 1808, § I, 3-14-2017)

19.72.090 - Trails.

- A. All proposed development in the foothills and canyons overlay zone shall be platted consistent with county general plans regarding trails, including those portions of the adopted Salt Lake County parks and recreation master plan that address trails and trail access locations. A dedication of private land may be required for public trails if the required dedication complies with the exaction requirements set forth in Utah Code Section 17-27a-507(1).
- B. All land offered for dedication for trails or public access to trails must be verified on the ground by the director before approval of the site plan. The county has the option of rejecting the applicant's offered land dedication if the proposed dedication does not comply with the exaction requirements set forth in Utah Code Section 17-27a-507(1), or the requirements set forth in subsection (C) below; the county may suggest more suitable land for the applicant's consideration that does comply with each of these requirements.
- C. Land offered for dedication for trails must be located so that:
 1. Proposed trail construction and maintenance is feasible.
 2. Side slopes do not exceed seventy percent.
 3. Rock cliffs and other insurmountable physical obstructions are avoided.
- D. At the county's sole option, dedications for trails or public access may be of a fee or less-than-fee interest to either the county, another unit of government, or non-profit land conservation organization approved by the county.
- E. The County may allow a density bonus up to twenty-five percent of the maximum allowable density attributable to areas of the site with greater than thirty percent slope to be transferred to the developable areas of the site where the applicant demonstrates that the offered dedication is beyond what would be roughly proportional to the demand for such trails or trail access generated by the proposed development. The county may reduce the applicable minimum lot area requirement within the site's developable area if necessary to accommodate the transferred density.

(Ord. No. 1808, § I, 3-14-2017)

19.72.100 - Fences.

- A. No fence may be constructed or installed unless shown on an approved site plan.
- B. No fence in excess of forty-two inches in height may be constructed or installed outside the designated limits of disturbance on a site, unless required by the county, such as fenced corrals for horses or other animals. Fences are subject to the intersecting streets and clear visibility restrictions of this title.
- C. Fences in front yards and along roadways may not exceed forty-two inches in height.
- D. Fences in identified wildlife corridors are strongly discouraged, but in no case may exceed forty-two inches in height.
- E. Fences shall conform to the design standards of this section.

(Ord. No. 1808, § I, 3-14-2017)

19.72.110 - Tree and vegetation protection.

- A. Purpose. Protection of existing tree and vegetation cover is intended to:
 - 1. Preserve the visual and aesthetic qualities of the county's foothills and canyons.
 - 2. Encourage site design techniques that preserve the natural environment and enhance the developed environment.
 - 3. Control erosion, slippage, and sediment run-off into streams and waterways.
 - 4. Increase slope stability.
 - 5. Protect wildlife habitat and migration corridors.
 - 6. Conserve energy, in proximity to structures, by reducing building heating and cooling costs.
- B. Applicability. These provisions apply to all development in the foothills and canyons overlay zone, with the following exceptions:
 - 1. The removal of dead or naturally fallen trees or vegetation to protect public health, safety, and welfare.
 - 2. The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections, to perform authorized field survey work, or to protect structures from fire consistent with the Utah Wildland-Urban Interface Code.
 - 3. The removal of trees or vegetation on land zoned or lawfully used for agricultural and forestry activities, including tree farms, or pursuant to approved forest management programs. In the event a site is substantially cleared of trees pursuant to such legitimate activities, no development or site plan applications for other types of development may be accepted by the county within thirty-six months from the date of the clearing.
 - 4. The director has discretion to administratively offer relief of the standards in this section by up to twenty-five percent if either of the following circumstances applies:
 - a. The modification is designed to yield:
 - i. More effective preservation of existing mature trees, vegetation, riparian areas, rock outcrops, or other significant natural features of the site;
 - ii. Less visual impact on the property or on the surrounding area; or
 - iii. Better protection of wildlife habitat; or,
 - b. Strict application of the standard(s) would render a site undevelopable.
- C. Tree/Vegetation Removal.
 - 1. Outside the Limits of Disturbance. No trees or vegetation may be removed outside the approved limits of disturbance unless specifically exempted by this section.

2. Within the Limits of Disturbance. Significant trees removed from within the limits of disturbance shall be replaced as set forth in this section.
 3. Wildfire Hazards and Tree/Vegetation Removal. Defensible space is defined as the required space between a structure and wildland area that, under normal conditions, creates a sufficient buffer to slow or halt the spread of wildfire to a structure. Appropriate defensible space surrounding a structure is established in Utah Wildland-Urban Interface Code incorporated in UFA Wildland-Urban Interface Site Plan/Development Review Guide. A copy of the approved fire protection plan shall be submitted to the zoning administrator for incorporation into the final approval documents.
 4. Tree/Vegetation Removal for Views Prohibited. No trees or vegetation may be removed solely for the purpose of providing open views to or from structures on a site.
- D. Replacement of Significant Trees.
1. When a significant tree is removed from inside the established limits of disturbance, which removal is not required by wildland-urban interface standards referenced in C.3. above, the applicant or developer shall replace such tree(s) on the lot, according to the following schedule and requirements:
 - a. A significant tree that is removed shall be replaced by two trees with a minimum size of one inch caliper for deciduous trees and a minimum height of four feet for coniferous trees in locations on the lot that are appropriate, feasible, and practical, and that comply with fire requirements and standards, as determined by the zoning administrator.
 - b. Replacement trees shall be maintained through an establishment period of at least two years. The applicant shall post a bond in the amount of ten percent of the value of all replacement trees guaranteeing their health and survival during the first year of the establishment period.
 2. If the remainder of the lot outside the permitted limits of disturbance is heavily wooded, defined as areas of trees with canopies that cover eighty percent of the area, and is not suitable to the planting of replacement trees, the requirement to plant replacement trees requirement may be waived by the zoning administrator.
 3. Planting replacement trees may be allowed by the zoning administrator on parcels within the subdivision or adjoining open space or forest service land upon the written consent of the property owner or representative of the property owner of the parcel(s) where the trees are being planted. In order to minimize disturbance of public land, saplings may be used in lieu of the larger trees listed in subsection 1.(a) above at the rate of ten saplings per required replacement tree, for trees planted on publicly owned land.
- E. Revegetation and Land Reclamation Plan.
1. On a parcel of land that has been or will be altered from its natural condition by man-made activities, a revegetation and land reclamation plan prepared and certified by a qualified professional may be required for review and approval by the director. The plan shall incorporate the elements of the fire protection plan, and shall indicate a timeframe for revegetation that is acceptable to the county and that takes into account optimal seasonal growing conditions.
 2. The revegetation and land reclamation plan shall depict the type, size, number, and location of any vegetation and trees to be planted and illustrate how the site will be recontoured with sufficient topsoil to ensure that vegetation is successful. All new trees shown on the plan shall:
 - a. Comply with the Vegetation Clearance Guidelines of the Wildland-Urban Interface Code;
 - b. Be spaced no closer than twenty feet on center; and,

- c. Be on the Utah Fire Resistive Species list in the Wildland-Urban Interface Code.
 3. Any slope exposed or created in new development shall be landscaped or revegetated with native or adapted trees and plant material. New vegetation shall be equivalent to or exceed the amount and erosion-control characteristics of the original vegetation cover in order to mitigate adverse environmental and visual effects.
 4. On man-made slopes of twenty-five percent or greater, plant materials with deep rooting characteristics shall be selected to minimize erosion and reduce surface runoff. The planting basin shall be kept level with a raised berm around the base of the plant to help retain moisture.
 5. Topsoil that is removed during construction may be conserved for later use on areas requiring revegetation or landscaping, such as cut-and-fill slopes.
 6. The land reclamation plan may not include landscaping or other elements that conflict with the approved fire protection plan.
- F. Tree/Vegetation Protection During Construction and Grading Activities.
1. Limits of disturbance, as established in Section 19.72.160, shall be shown on the final plans for development and shall be clearly delineated on site with fencing or other separation methods approved by the director prior to the commencement of excavation, grading, or construction activities on the site.
 2. Within the limits of disturbance, fencing, at a minimum, shall be placed around each significant tree that will not be removed and around stands of twelve or more smaller trees. Such fencing shall be placed at the edge of the individual or outermost tree's drip zone. No construction, grading, equipment or material storage, or any other activity is allowed within the drip zone, and the fencing must remain in place until all land alteration, construction, and development activities are completed.
 3. If it is necessary to fill over the root zone, compacted soils shall be avoided by sandwiching fabric, rocks, and more fabric under the area to be filled.
 4. If fill creates a tree well or depression around a tree or shrubs, such area shall be filled in or drained so that the vegetation is not drowned by the pooling of rainfall or irrigation.
 5. If a significant tree that will not be removed has roots that are cut, the branches shall be trimmed by an amount equal to the percent of roots that were lost. Cutting more than thirty percent is prohibited. Roots shall be pruned cleanly prior to digging and not ripped off by heavy equipment. If the tree whose roots have been cut dies within a two year period, the replacement provision in section D above applies.
 6. Utility trenches near trees shall be avoided. If a line must be near a tree, tunneling, auguring, or other mitigation measures shall be used.
- G. Tree Removal not Authorized by this Section.
1. If a significant tree(s) is removed contrary to any provision in this section, the person(s) responsible for the removal shall pay to the county the value of the tree(s).
 - a. The value of the tree(s) shall be determined by a tree appraiser who is an ISA (International Society of Arboriculture) certified arborist with at least five years of experience appraising trees using the appraisal methods outlined in the current edition of "The Guide for Plant Appraisal," authored by the Council of Tree and Landscape Appraisers (CTLA). The appraiser shall prepare an appraisal report using these methods, and adding to the value from these methods an analysis of the tree(s) contributory value, i.e., the value that the tree(s) contributed to the overall value of the property on which they were located.
 - b. The appraiser shall be chosen by the person(s) responsible for the removal and the county.

- c. The person(s) responsible for the removal shall pay the cost of the appraisal.
2. If a significant tree(s) is removed contrary to this section, all development and county permitting and processing of the land use application shall be put on hold for up to sixty days from the date of county's discovery of removal. During that time, the county will inventory the significant tree(s) that were removed, and the process of valuing the tree(s) that were removed shall commence, pursuant to paragraph 1 above.
3. The person(s) responsible for removing the significant tree(s) shall pay for the cost of site restoration, including the removal of the stump(s). The stump(s) may not be removed until an appraisal is completed pursuant to paragraph 1. above.
4. The person(s) responsible for removing the significant tree(s) shall also replace the tree(s) in accordance with the provisions in this section. The bond referenced in subsection (D)(1)(b) of this section shall be a surety bond for those that unlawfully remove trees.

In addition to the civil penalties provided in paragraphs 1—4 of this subsection (G), the person(s) responsible for removing the significant tree(s) may also be subject to criminal prosecution as a Class B misdemeanor for each significant tree unlawfully removed.

(Ord. No. 1808, § I, 3-14-2017)

19.72.120 - Natural hazards.

A natural hazards report, together with geotechnical, slope, soils, and grading reports, may be required as provided in 19.75,030 "Geological Hazards" and Chapter 19.74 "Floodplain Hazards." The county shall review all natural hazards reports and recommendations in the report and may require, consistent with the above ordinances, that preliminary conditions be satisfied prior to final approval of the site plan.

(Ord. No. 1808, § I, 3-14-2017)

19.72.130 - Stream corridor and wetlands protection.

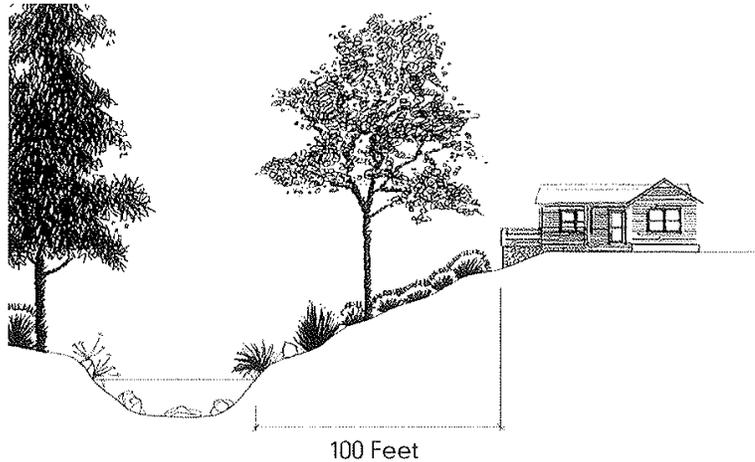
- A. Purpose. The following requirements and standards are intended to promote, preserve, and enhance the important hydrologic, biological, ecological, aesthetic, recreational, and educational functions of stream corridors, associated riparian areas, and wetlands.
- B. Applicability. Unless previously delineated by Salt Lake County, boundaries for stream corridors and wetland areas are delineated according to the following standards:
 1. Stream corridor and wetland area delineation shall be performed by a qualified engineer or other qualified professional with demonstrated experience and expertise to conduct the required site analysis. Delineations are subject to the approval of the director.
 2. Stream corridors shall be delineated at the ordinary high-water mark. Stream corridors do not include irrigation ditches that do not contribute to the preservation and enhancement of fisheries or wildlife.
 3. Boundary delineation of wetlands are established using the current Federal Manual for Identifying and Delineating Jurisdictional Wetlands jointly published by the U.S. Environmental Protection Agency, the Fish and Wildlife Service, the Army Corps of Engineers, and the Soil Conservation Service.
- C. Prohibited Activities. No development activity may be conducted that disturbs, removes, fills, dredges, clears, destroys, or alters, stream corridors or wetlands, including vegetation, except for restoration and maintenance activities allowed in this title as approved by Salt Lake County flood control, the state engineer's office, and

other applicable authorities.

D. Setbacks.

1. Perennial Stream Corridors. All buildings, accessory structures, parking lots, and all on-site wastewater disposal systems shall be set back at least one-hundred feet horizontally from the ordinary high-water mark of perennial stream corridors. (See Figure 19.72.7: Setback from Stream Corridor)

FIGURE 19.72.7: SETBACK FROM STREAM CORRIDOR



2. Wetlands. All buildings, accessory structures, and parking lots shall be set back at least fifty feet, and all on-site wastewater disposal systems shall be set back at least one hundred feet horizontally from the delineated edge of a wetland.
 3. Ephemeral Streams. Leach fields shall be set back one hundred feet from the channel of an ephemeral stream. All buildings, accessory structures, and parking areas or parking lots shall be set back at least fifty feet from the channel of an ephemeral stream. The zoning administrator may recommend to the land use authority modifications to this prohibition upon finding that the modification is likely to cause minimal adverse environmental impact or that such impact may be substantially mitigated. For properties located within the Salt Lake City watershed, the zoning administrator shall consult with Salt Lake City public utilities prior to making a recommendation.
 4. Natural Open Space/Landscape Credit for Setback Areas. All setback areas are credited toward any relevant private natural open space or landscape requirements, but are not credited toward trail access dedication requirements.
- E. Preservation of Vegetation. All existing vegetation within the stream corridor or wetland setback area shall be preserved to provide adequate screening or to repair damaged riparian areas, supplemented where necessary with additional native or adapted planting and landscaping.
- F. Bridges. Any bridge over a stream corridor and within the stream setback area may be approved provided the director affirms that the bridge is planned and constructed in such a manner as to minimize impacts on the stream corridor.
- G. Modification of Setbacks.
1. The director has discretion to administratively reduce the perennial stream corridor and wetlands setbacks by a maximum of twenty-five percent where applicable upon satisfaction of the following criteria:
 - a. The modification is designed to yield:
 - i. More effective preservation of existing mature trees, vegetation, riparian areas, rock outcrops,

or other significant natural features of the site;

- ii. Less visual impact on the property or on the surrounding area; or
- iii. Better protection of wildlife habitat; or,

b. Strict application of the standard(s) would render a site undevelopable.

H. Perennial Stream Corridor and Wetland Setback Requirements for Lots of Record.

1. Existing Legally-Established Structures. A structure legally existing on the effective date of this chapter that is within fifty feet of a perennial stream corridor or wetland may be renovated, altered, or expanded or reconstructed if damaged or destroyed by fire, flood, or act of nature as follows:
 - a. Renovations or alterations or reconstruction of a damaged or destroyed structure that will not increase the gross floor area of the original, existing structure are permitted.
 - b. Renovations, alterations, or expansions that will increase the gross floor area of the original, existing structure are limited to a cumulative total expansion of no more than two hundred fifty square feet of gross floor area located closer than fifty feet to a perennial stream corridor or wetland.
 - c. Renovations, alterations, expansions, or reconstruction of a damaged or destroyed structure that increase the gross floor area of the original, existing structure but which are no closer than fifty feet to a perennial stream corridor or wetland are permitted, subject to compliance with all other applicable regulations and standards.
2. New Structures. For new developments, the director may authorize construction to no closer than fifty feet from a perennial stream corridor or to no closer than twenty-five feet from a wetland subject to the following criteria:
 - a. Denial of an encroachment of more than the twenty-five percent into the stream or wetlands setback area allowed by Section 19.72.130(G) would render the site undevelopable.
 - b. No alternative location for the development further away from the stream or wetland is feasible or available.
 - c. Creative architectural or environmental solutions have been incorporated into the development proposal in order to ensure that the purposes of stream corridor protection, as set forth in Subsection 19.72.130 are achieved.
 - d. No federal or state laws, or other county ordinances or regulations are violated.
3. Limitation. In allowing for the preceding improvements, the director may not:
 - a. Increase the maximum limits of disturbance set forth in Subsection 19.72.160.
 - b. Authorize the encroachment of more than five-hundred square feet of gross floor area of structural improvements (cumulative total) within the land area between seventy-five feet and fifty feet from perennial stream corridor or within the land area between fifty and twenty-five feet of a wetland.
4. In the interest of protecting the public health, safety, and welfare, the county may pursue negotiations with a property owner to purchase their property as open space as an alternative to granting a waiver. These negotiations, as long as they are performed in good faith, shall not delay the county's processing of any land use application.

(Ord. No. 1808, § I, 3-14-2017)

- A. Purpose. Salt Lake County finds that its foothills and canyon areas provide important wildlife habitat for a wide variety of animal and bird species. In combination with the tree/vegetation and stream corridor/wetlands protection standards, the following requirements have been developed to promote and preserve valuable wildlife habitats and to protect them from adverse effects and potentially irreversible impacts.
- B. Development Limitations in Areas of Critical Habitat. All development subject to these provisions shall incorporate the following principles in establishing the limits of disturbance and siting buildings, structures, roads, trails, and other similar facilities:
1. Facilitate wildlife movement across areas dominated by human activities by:
 - a. Maintaining connections between adjacent natural open space parcels and areas, and between natural open space parcels and areas in close proximity.
 - b. Prohibiting fencing types that inhibit the movement of wildlife species.
 2. Mimic features of the local natural landscape by:
 - a. Minimizing disturbance to trees, the understory, and other structural landscape features during construction.
 - b. Providing selective plantings on the property that enhance the habitat value for the endemic wildlife population.

(Ord. No. 1808, § I, 3-14-2017)

19.72.150 - Traffic studies.

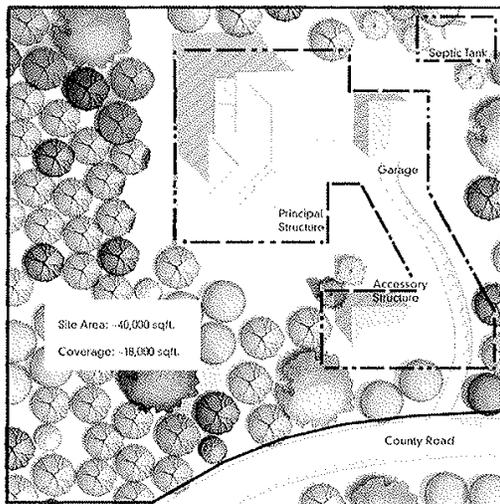
- A. Traffic and Parking Impact Study Required. A traffic and parking impact study is required as part of the site plan application for the following developments in the foothills and canyons overlay zone:
1. All residential development that creates a projected increase in traffic volumes equal to or greater than ten percent of current road/street capacity as determined by the public works engineer.
 2. All non-residential development that creates a projected increase in traffic volumes equal to or greater than fifty trip-ends per peak hour.
 3. All development that affects a roadway identified by the county transportation engineering manager as having an unacceptable level of service (LOS) based on AASHTO guidelines and the Highway Capacity Manual.
- B. Required Submittals. A traffic and parking impact study must address, at a minimum, the items specified in the "Submittal Requirements for Development Proposals in the Foothills and Canyons Overlay Zone," which is incorporated by reference.
- C. Review and Improvements. All development subject to this section must demonstrate that the peak hour levels of service on adjacent roadways and at impacted intersections after development will comply with current Salt Lake County transportation and impact mitigation policies and recommendations.
- D. Circulation and Access Plan. All development required by this subsection to submit a traffic and parking impact study is also required to provide a circulation and access plan to ensure free-flowing access to the site and avoid congestion and unsafe conditions on adjacent public roads and streets. The circulation and access plan may be combined with the required traffic and parking impact study.

(Ord. No. 1808, § I, 3-14-2017)

19.72.160 - Limits of disturbance.

- A. Scope and General Requirements. "Limits of disturbance" must be established on the site plan, indicating the space of a site where construction and development activity must be contained. (See Figure 19.72.8).

FIGURE 19.72.8: ILLUSTRATION OF LIMITS OF DISTURBANCE



- B. Purpose for Limits of Disturbance. Limits of disturbance are established for the following purposes:
1. Minimizing visual impacts from the development including, but not limited to: screening from adjacent and downhill properties, ridgeline area protection, and protection of scenic views.
 2. Erosion prevention and control including, but not limited to, protection of steep slopes and natural drainage channels.
 3. Fire prevention and safety including, but not limited to, location of trees and vegetation near structures.
 4. Preservation of tree cover, vegetation, and the site's natural topography.
 5. Conservation of water including, but not limited to, preservation of existing native vegetation, reduction in amounts of irrigated areas, and similar considerations.
 6. Wildlife habitat protection including, but not limited to, preservation of critical wildlife habitat and migration corridors and routes.
 7. Stream corridor and wetland protection and buffering.
- C. Limits of Disturbance May Be Noncontiguous. Limits of disturbance necessary to accommodate proposed development may be noncontiguous in order to best achieve the above purposes.
- D. Maximum Limits of Disturbance.
1. For single family residential uses on lots or parcels less than one acre in size, the limits of disturbance are limited to twenty thousand square feet.
 2. For single family residential uses on lots or parcels one acre in size or greater, the limits of disturbance are limited to twenty thousand square feet plus an additional square footage of twenty percent of the acreage over one acre.
 3. For all other uses, the maximum limits of disturbance shall be determined by the director on a case by case basis in harmony with the purposes of FCOZ stated in 19.72.010 to accomplish the purposes set forth in subsection B of this section.
- E. Modification of Limits of Disturbance.
1. The director has discretion to administratively increase the limits of disturbance by a maximum of twenty-five percent where applicable upon satisfaction of the criteria set forth below:

- a. The modification is designed to yield:
 - i. More effective preservation of existing mature trees, vegetation, riparian areas, rock outcrops, or other significant natural features of the site;
 - ii. Less visual impact on the property or on the surrounding area; or
 - iii. Better protection of wildlife habitat; or,
- b. Strict application of the standard(s) would render a site undevelopable.

(Ord. No. 1808, § 1, 3-14-2017)

19.72.170 - FCOZ design standards.

- A. Purpose. As stated in 19.72.010, the general purpose of design standards is to promote development that balances the rights of the landowner with protection of the foothill and canyon environment. These standards are intentionally broad to allow flexibility in design, compatibility with varying features of the natural landscape, and consistency with the following purposes:
 1. Preserve and enhance the beauty of the landscape by encouraging the retention of natural topographic features, such as drainage swales, streams, slopes, ridge lines, rock outcroppings, vistas, natural plant formations, trees, and similar features.
 2. Encourage planning and design of development and building sites that balances safety, recreational opportunity, economic development, and enjoyment of property rights, while adapting development to, and preserving natural terrain.
 3. Establish a foundation for development in sensitive lands to insure a more harmonious relationship between man-made structures and the natural setting.
 4. Direct new development in the canyons and foothills toward areas meeting suitability criteria, as outlined in the Wasatch Canyons general plan and other applicable general or community plans.
- B. Advisory or Mandatory Design Standards. The development and design standards set forth in this chapter fall into two categories: "advisory" standards and "mandatory" standards. Design standards that are advisory encourage voluntary adaptation. Development within the foothills and canyons overlay zone is to comply with all of the mandatory standards unless alternative design is approved by the planning commission upon a finding that the alternative design is in harmony with the purposes of FCOZ as stated in Section 19.72.010. The design standards and categories are summarized below in Table 19.72.1: FCOZ Design Standards.

SALT LAKE COUNTY, UTAH		
TABLE 19.72.1: FCOZ DESIGN STANDARDS		
DESIGN STANDARDS		
Mandatory	Advisory	A. Select an appropriate site
X		A site must be suitable for the type of building or use being planned without major alterations to the site.

X		Buildings or uses shall comply with this chapter and all applicable state and federal laws, recognizing the natural or man-made restraints on particular sites such as slope, soil instability, landslides, avalanche, or flooding. (See, for example, <u>Section 19.72.120</u> (Natural Hazards) and <u>Chapter 19.74</u> (Floodplain Hazard Regulations).)
Mandatory	Advisory	B. Site buildings in a manner that preserves existing land forms See Figure 19.72.9
	X	Each building should be located so that it does not dominate the landscape. The best way to decrease visual impacts is to locate the project as far away from prominent viewing locations as possible.
X		Visually prominent areas of the site shall be left in their natural condition with the exception of areas necessary for access. Structures shall be screened using existing land forms and vegetation. (See Subsection <u>19.72.110</u> (Tree and Vegetation Protection).)
	X	Where practical, buildings should be placed in the following locations on a site: <ol style="list-style-type: none"> 1. Within tree masses to screen buildings 2. At the edge of trees or land masses overlooking natural open space 3. In open areas where they are not visible from roads, trails, or other public lands.

FIGURE 19.72.9: PRESERVE EXISTING LAND FORMS



<p>Mandatory</p>	<p>Advisory</p>	<p>C. Site buildings so they do not protrude into significant viewscapes. See Figure 19.72.10</p>
	<p>X</p>	<p>Buildings should be designed to fit their sites and to leave natural massing and features of the landscape intact. Each building should be designed as an integral part of the site rather than an isolated object at odds with its surroundings.</p>
	<p>X</p>	<p>Where feasible, views should be maintained both to the site and to features beyond, as seen from public rights-of-way, trails, and other public lands. Projects should not be located on prominent topographic features where they dominate views or unnecessarily obscure the views of others.</p>
<p>FIGURE 19.72.10: PRESERVE SIGNIFICANT VIEWS</p> 		
<p>Mandatory</p>	<p>Advisory</p>	<p>D. Site buildings so their form does not break prominent skylines See Figure 19.72.11</p>
<p>X</p>		<p>Buildings shall be sited at less visible places and designed so they are not obtrusive, do not loom over the hillside, and do not break prominent skylines from key vantage points. Skylines are ridges or hilltops on the horizon line that do not have backdrops behind them as viewed from key vantage points. Heavily traveled public roads located below skylines or hilltops are key vantage points.</p>

FIGURE 19.72.11: RIDGELINE DEVELOPMENT



Mandatory	Advisory	<p>E. Site buildings to preserve significant trees and vegetation. See Figure 19.72.12</p>
X		<p>Buildings shall be sited to keep removal of significant trees and vegetation to a minimum. (See <u>section 19.72.160</u> (Limits of disturbance), <u>19.72.110</u> (Tree and vegetation protection).)</p>

FIGURE 19.72.12: PRESERVE SIGNIFICANT VEGETATION



Mandatory	Advisory	<p>F. Cluster buildings and parking, and coordinate neighboring developments. See Figure 19.72.1</p>
	X	<p>Clustering is encouraged to reduce land disturbance and the cost of providing services, road and parking area maintenance, snow removal, etc. (See <u>Section 19.72.080</u> (Site Access).)</p>
	X	<p>Cooperative, coordinated development and the sharing of services, infrastructure, facilities, and parking among adjoining landowners is encouraged.</p>

Mandatory	Advisory	<p>G. Locate parking facilities to minimize their visual impact. See Figure 19.72.13</p>
X		<p>When visible from publicly used roads, parking facilities shall be screened to blend into the natural environment. Parking lot design that requires backing onto a public street is prohibited. (See <u>Section 19.72.080</u> (Site Access))</p>
X		<p>Parking facilities should be located to the rear or side of main buildings if possible when a site has a lot width of one hundred feet or more.</p>
X		<p>Parking facilities shall be designed consistent with the existing topography.</p>
X		<p>Parking facilities shall provide adequate snow storage areas.</p>

FIGURE 19.72.13: PARKING LOCATION



Mandatory	Advisory	<p>H. Place utility lines underground</p>
X		<p>When possible, utilities shall be placed underground and within existing roadways or in established shoulders to minimize the impact to existing natural features, such as natural vegetative patterns and land forms.</p>
X		<p>Tree cutting for utility corridors shall be minimized to reduce visual impacts. All disturbed areas shall be re-vegetated. (See <u>Section 19.72.110</u> (Tree and Vegetation Protection).)</p>
Mandatory	Advisory	<p>I. Design buildings to solidly meet the ground plane. See Figure 19.72.14</p>

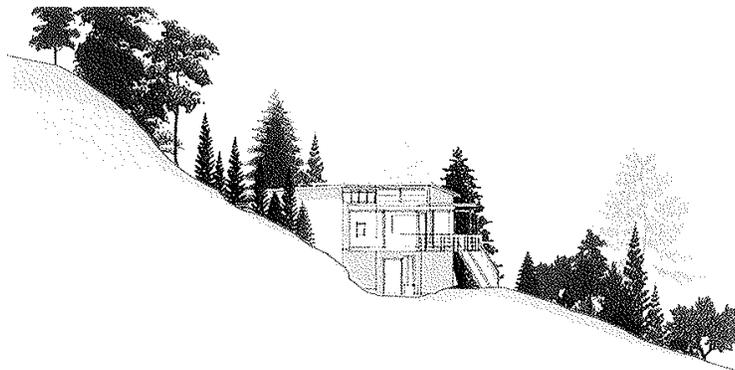
X		Building designs that require a strong structural statement, such as extensive cantilevers or cuts and fills, are prohibited on sensitive hillsides with slopes greater than thirty percent, wetlands, streams, or hillsides with soil instability consistent with this chapter.
X		Buildings shall firmly meet the ground. Placing buildings on piers such that exterior walls do not continue down to the ground is prohibited, with the exception of piers that support decks.

FIGURE 19.72.14: STRUCTURES MEET THE GROUND PLANE



Mandatory	Advisory	J. Design buildings on hillsides to follow the natural terrain. See Figure 19.72.15
X		Buildings shall be located to minimize earth work and land disturbance.
X		Buildings shall be designed to follow natural contours rather than modifying the land to accept a building design not tailored to the site. (See <u>Section 19.72.070</u> (Grading))

FIGURE 19.72.15



Mandatory	Advisory	K. Design buildings to minimize mass and scale See Figure 19.72.16
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X		Building designs shall incorporate changes in the planes of walls and changes in the slope and height of roof lines to add variety, create visual interest, and minimize scale.
X		The massing of buildings shall be scaled to harmonize and achieve balance with the natural features of the specific site.
X		Roof lines and building mass shall echo the angles and shapes repeated in the natural landscape.
X		Building mass and wall lines shall be broken up to complement natural canyon settings and slopes.
<p>FIGURE 19.72.16: MASS AND SCALE</p> 		
Mandatory	Advisory	L. Select appropriate building materials and colors
X		Predominant tones on exterior walls shall tend toward neutral colors, replicating natural textures—for example, warm earthy hues; dark green of forests; whites, greys, and grey-brown of the mountains; the tan of grasses; and similar colors. Bright, harshly contrasting color combinations are prohibited. Paint finishes shall have low levels of reflectivity.
	X	The use of self-weathering metals is encouraged. Chemically treating wood so that it can be allowed to self-weather is also encouraged.
Mandatory	Advisory	M. Use fire-resistant roof surfacing materials that blend with the colors of the adjacent landscape.
X		The color of roof surfacing materials shall blend with the surrounding landscape such as brown, tan, dark green, grey, etc.

X		Flammable wood roofing shingles are prohibited in the canyons or foothills.
Mandatory	Advisory	N. Preserve existing trees and vegetation
X		Significant trees and vegetation shall be preserved as provided in <u>Section 19.72.110</u> .
	X	When landscaping within the thirty-foot fire-break area, the use of fire-resistant plants is strongly encouraged.
X		Dryland species of plants shall be selected for slope re-vegetation.
Mandatory	Advisory	O. Landscape in order to retain the original character and harmony among the various elements of a site.
X		Landscaping shall incorporate natural features such as trees, significant vegetative patterns, interesting land forms, rocks, water, views, and orientation.
	X	Landscaped areas should be an integral part of the development project, and not simply located in left-over space on the site. New planting should blend in with the existing landscape.
X		All disturbed areas shall be re-vegetated using native or adapted plant species and materials characteristic of the area.
	X	Use of fire-resistant plants is encouraged.
Mandatory	Advisory	P. Limit site grading for buildings to preserve existing land forms. See Figure 19.72.17
X		Building designs that require extensive cut and fills are prohibited. See <u>Section 19.72.070</u> .
	X	Modification of the natural terrain should be minimized.
X		Slopes steeper than thirty percent shall not be disturbed except as allowed by this chapter.

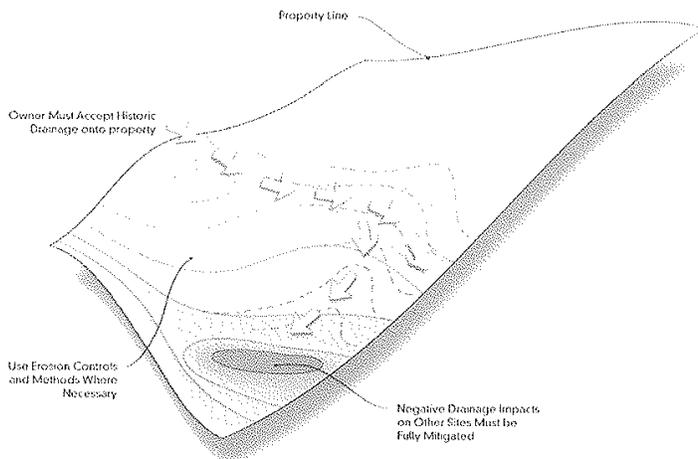
X		Buildings, driveways, and roads shall follow the natural contours of the site as feasible, and comply with county excavation, grading, and erosion control standards.
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FIGURE 19.72.17: BUILDINGS DESIGNED TO LIMIT GRADING



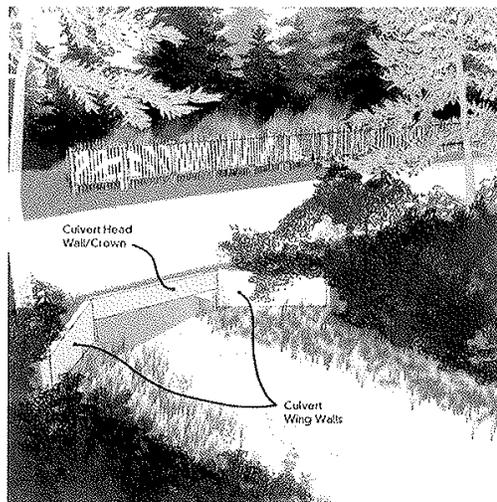
Mandatory Standard	Advisory Standard	Q. Preserve natural drainage patterns in site design. See Figure 19.72.18
X		All final excavation, grading, and drainage plans shall conform to applicable county excavation, grading, and erosion control standards.
X		Development shall preserve the natural surface drainage pattern unique to each site. Grading plans shall ensure that drainage flows away from structures, especially structures that are cut into hillsides.
X		Development must prevent negative or adverse drainage impacts on adjacent and surrounding sites.
X		Standard erosion control methods are required during construction to protect water quality, control drainage, and reduce soil erosion. Sediment traps, small dams, or barriers of straw bales are generally required to slow the velocity of runoff.

FIGURE 19.72.18: PRESERVE NATURAL DRAINAGE PATTERNS



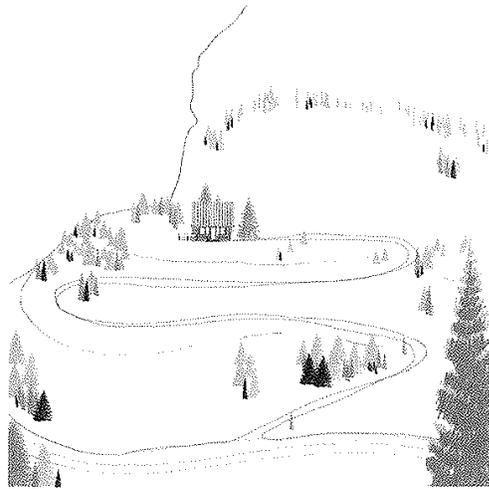
Mandatory	Advisory	R. Locate buildings outside stream corridor buffer zones
X		Permanent structures shall be located a minimum of one hundred feet horizontally (plan view) from the ordinary high-water mark of stream corridors or other bodies of water. At the discretion of the Director and based on site-specific soils, water, or vegetation studies, setback distances may be reduced as provided in <u>Section 19.72.130</u> (Stream Corridor and Wetlands Protection).
X		Where feasible, developments shall not alter natural waterways.
Mandatory	Advisory	S. Construct bridges for stream crossings. See Figure 19.72.19
X		Culverts may only be installed on small side drainages, across swales, and on ephemeral or intermittent streams. (See <u>Section 19.72.130</u> , (Stream Corridor and Wetlands Protection)). Culverts are prohibited to cross perennial streams; bridges to cross perennial streams are permitted.
X		Bridges and culverts shall be sized to withstand one hundred year storm events. Concrete or stone head walls and side walls are required to maintain the integrity of the bridge structure. (See <u>Chapter 19.74</u> (Floodplain Hazards)).

FIGURE 19.72.19: CULVERTS



Mandatory	Advisory	<p>T. Design traffic circulation to respect existing topography, achieve acceptable slopes, and adhere to minimum width and turning standards. See Figure 19.72.20</p>
X		<p>Vehicular access shall be safe and have adequate width to allow for snowplowing and snow storage.</p>
X		<p>Access roads shall avoid steep grades and sharp turning radii that can make access, especially in the winter, difficult.</p>

FIGURE 19.72.20: DRIVEWAY DESIGN



Mandatory	Advisory	<p>U. Provide safe, adequate off-street parking with year-round access</p>
X		<p>New development shall comply with off-street parking requirements provided in this chapter.</p>
	X	<p>Shared driveways and shared parking areas with adjoining owners are encouraged.</p>
X		<p>Off-street parking areas shall be large enough to avoid vehicles having to back out onto a public street.</p>
Mandatory	Advisory	<p>V. Design new roads and driveways to reduce their visual impact</p>
	X	<p>Roads and driveways should be screened using existing land forms and vegetation. Long tangents, including on side roads intersecting with arterial roads or highways, should be avoided in favor of curvilinear alignments reflecting topography.</p>

X		Cuts and fills shall be re-graded to reflect adjacent land forms and re-vegetated with native plants. See <u>Section 19.72.070</u> .
Mandatory	Advisory	<p>W. Respect existing land forms, contours, and natural settings in the placement of fences.</p> <p>See Figures 19.72.21 and 19.72.22</p>
X		Fences may be erected to screen service and outdoor areas or provide a safety barrier. (See <u>Section 19.72.070</u> (Grading Standards—Retaining Walls))
X		<p>Fencing used to screen patios, other outdoor areas, and service areas may be composed of the following fencing materials:</p> <ul style="list-style-type: none"> a. Natural or stained wood b. Brick c. Rock d. Stone e. Pre-cast fences or walls textured and colored to imitate any of the above materials f. Wrought iron
X		<p>The following fencing materials are prohibited:</p> <ul style="list-style-type: none"> a. Solid board b. Concrete or concrete block c. Chain link, except around telecommunications facilities, public utility compounds, and other related or similar facilities where security concerns and terrain make this type of fencing practical, as approved by the Planning Commission for fences around conditional uses and approved by the Zoning Administrator for fences around permitted uses. Where a chain link fence is used, a powder or dull coating of the fence is required. d. Plywood e. Painted materials f. Vinyl, except rail fences for containment of horses
X		Rail fences and low rock walls are permitted along arterial roads and highways, and at other locations to delineate property lines.

X		Fences located along property lines and arterial roads or highways are limited to a maximum height of forty-two inches, except where necessary for security, safety, protection of public health, wildlife, private property, livestock, etc.
	X	Solid barrier fences located along arterial roads or highways or placed directly on a site's front property line are discouraged.
X		Walls and fences are to be reviewed on a site-by-site basis, and require a building permit.

FIGURE 19.72.21: OPAQUE FENCE FOR SCREENING

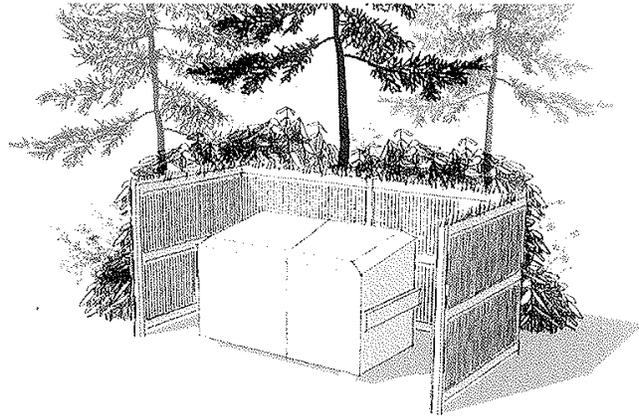
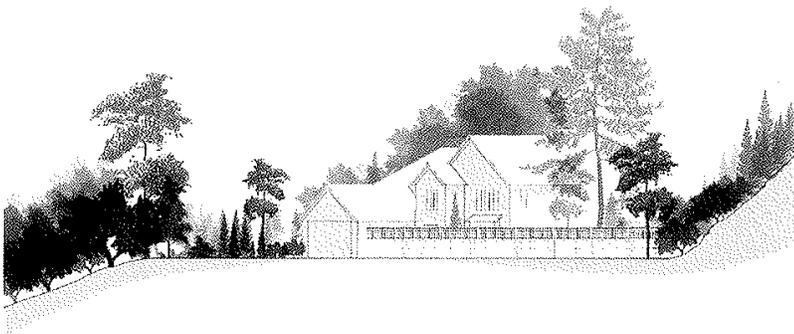


FIGURE 19.72.22: FENCES RESPECT EXISTING LAND FORMS



Mandatory	Advisory	<p>X. Select and locate lighting fixtures only where needed to provide for the safe movement of people on the site. See Figure 19.72.23</p>
X		<p>Light poles for public outdoor recreational facilities are limited to sixty feet in height. Light poles for outdoor recreational facilities on private residential property are limited to eighteen feet in height. Both require site plan review which may require restrictions on locations and hours of illumination based upon impacts on adjoining properties.</p>

X		With the exception of light poles for outdoor recreational facilities, lights poles, and building-mounted fixtures shall be designed with fully shielded luminaires directed downward.
<p>FIGURE 19.72.23: SHIELDED LIGHTING</p> 		
		

(Ord. No. 1808, § I, 3-14-2017)

19.72.180 - Exceptions for minor ski resort improvements.

Minor ski resort improvements are permitted the following exceptions, subject to approval of the site plan application for FCOZ:

- A. Development on slopes greater than thirty percent.
- B. Development on designated ridge lines or ridgeline protection area.
- C. No Limitations on terracing.
- D. Permissions for streets, roads, private access roads, and other vehicular routes to cross slopes over fifty percent, including limitations on driveway length.
- E. Removal of trees and vegetation, therefore no requirements for tree replacement.

(Ord. No. 1808, § I, 3-14-2017)

19.72.190 - Waivers for mountain resort improvements that are not within a mountain resort zone, public uses and mineral extraction and processing.

- A. Authority to Grant Waivers. The topographic conditions, soil characteristics, hydrologic patterns, climatic constraints, susceptibility to natural hazards, vegetation, wildlife habitat concerns, and aesthetic considerations of foothill and canyon areas often create circumstances in which strict compliance with adopted standards is not only difficult but sometimes impossible to achieve. As these challenges are frequently created by the very nature and operational characteristics of mountain resorts, mineral extraction and processing operations, and many public uses, and are therefore most commonly imposed, other avenues of administrative relief are sometimes necessary and appropriate. Accordingly, the land use authority may waive or modify the development standards for these uses.
- B. Waiver Request Procedures.
1. A petition or request for a waiver or modification of an FCOZ development standard may be submitted in writing by the owner or authorized agent of the subject property. A mountain resort may only submit such a petition or request on property that is not within a mountain resort zone, which it owned prior to the effective date of the 2017 modifications to FCOZ. The petition or request shall be made concurrent with the related land use permit application—for example, conditional use application. The petition or written request shall clearly explain:
 - a. Those aspects or elements of the development proposal that are strictly prohibited.
 - b. All FCOZ regulations requested to be waived or modified in order for the development to reasonably proceed.
 - c. The basis, justification or grounds for granting the waiver or modification.
 - d. Why other common designs or improvements that may be less impactful on the environment and adjacent properties are not being considered.
 2. Each proposed waiver or modification is to be referred for decision to the relevant land use authority under the ordinance. The waiver or modification petition is to be accompanied by a written staff report with recommendations.
 3. When a public hearing is required, the notice shall be given fourteen days in advance of the hearing and shall specify the waivers or modifications requested, the relevant ordinance provisions from which the waivers or modifications are sought, and the general nature of the development that is proposed if the requested waivers or modifications are granted.
- C. Approval Standards. In deciding whether to grant waivers or modifications to the development standards of the foothills and canyons overlay zone, the land use authority shall consider the following standards as deemed applicable by the land use authority:
1. The proposed waiver and improvements contribute to the overall use, operation, and maintenance of the property, and whether reasonable alternative means exist to reduce or mitigate adverse impacts.
 2. Strict compliance with these regulations may result in substantial economic hardship or practical difficulties for the owner of the property.
 3. Strict or literal interpretation and enforcement of the specified regulation may result in a development approach inconsistent with the intent and objectives of this chapter.
 4. The waivers or modifications may result in a development proposal that better preserves area views, reduces adverse impacts on existing trees and vegetation, reduces the overall degree of disturbance to steep slopes, protects wildlife habitat, or reflects a greater degree of sensitivity to stream corridors, wetlands, rock outcrops, and other sensitive environmental features in the vicinity of the proposed improvements.
 5. The granting of the waiver or modification may have neutral or beneficial impact to the public health,

safety, or welfare, or to properties or improvements in the vicinity.

6. The proposed development, as modified by the request, is consistent with the goals, objectives, and policies of the adopted community general plan applicable
 7. Creative architectural or environmental solutions may be applied to alternatively achieve the purposes of this chapter.
 8. The development in all other respects conforms to the site design, development, and environmental standards set forth in the foothills and canyons overlay zone and in all other applicable ordinances and codes.
 9. The waivers or modifications requested do not violate other applicable federal, state, and local laws.
- D. Waivers. Slope waivers are not required for facilities or uses with slopes of thirty percent or less. Slope waivers are required for eligible development activities associated with such land uses according to Table 19.16.2.

TABLE 19.16.2: PERMISSIBLE SLOPE RANGES FOR ELIGIBLE DEVELOPMENT ACTIVITIES

Authority to Grant Waivers

Slope Range	Eligible Development Activities
Thirty percent or less	<ul style="list-style-type: none"> • No slope waiver required
Greater than thirty percent up to forty percent	<ul style="list-style-type: none"> • All development activities associated with allowed uses
Greater than forty percent up to fifty percent	<ul style="list-style-type: none"> • Pedestrian trails • Non-motorized vehicle trails • Motorized vehicle roads and trails for emergency or maintenance purposes • Ski runs, ski lifts and supporting appurtenances and other mountain resort accessory activities
Greater than fifty percent	<ul style="list-style-type: none"> • Pedestrian trails • Non-motorized vehicle trails • Ski runs, ski lifts and supporting appurtenances and other mountain resort accessory activities

E. Action on Waiver Requests.

1. The waiver or modification request may be approved as proposed, denied, or approved with conditions.
2. The decision on the request shall include the reasons for approval or denial.
3. In granting a waiver from or modification of development standards, conditions may be imposed to

mitigate the impacts of the proposed development on adjacent properties and the area. These may include, for example, measures to:

- a. protect scenic vistas, especially views from public rights-of-way and public lands,
 - b. protect natural settings in the vicinity of site improvements, and
 - c. enhance the relationship to and compatibility with other structures and open spaces in the vicinity of the proposed improvements.
4. All development shall comply with approved plans. Any proposed revisions or changes to plans requires a resubmittal and request for final action.

(Ord. No. 1808, § 1, 3-14-2017)

19.72.200 - Definitions.

For the purposes of this Chapter, the following terms shall have the following meanings:

"Alteration." Any change or rearrangement in the supporting members of an existing structure, such as bearing walls, columns, beams, girders, or interior partitions, or any change in the dimensions or configurations of the roof or exterior walls.

"Building site." A space of ground occupied or to be occupied by a building or group of buildings.

"Caliper." A standard for trunk measurement of nursery stock, determined by measuring the diameter of the trunk six inches above the ground for up to and including five-inch caliper size, and twelve inches above the ground for larger trees.

"Clustering." A development or subdivision design technique that concentrates buildings or lots on a part of the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally sensitive areas.

"Driveway." A private area used for ingress and egress of vehicles, which allows access from a street or road to a building, structure, or parking spaces.

"Engineering geologist." A geologist who, through education, training and experience, is able to conduct field investigations and interpret geologic conditions to assure that geologic factors affecting engineered works are recognized, adequately interpreted, and presented for use in engineering practice and for the protection of the public.

"Expansion." An increase in the size of an existing structure or use, including physical size of the property, building, parking, and other improvements.

"Fence." A structure erected to provide privacy or security, which defines a private space or is used to constrain domestic animals.

"Geotechnical engineer." A professional engineer licensed in the state of Utah, whose education, training, and experience is in the field of geotechnical engineering.

"Grading." Any change of existing surface conditions by excavating, placing of any soils or rocks, or stripping of vegetation.

"Landscape architect." A person who is licensed to practice landscape architecture by the state of Utah.

"Limits of disturbance." The area(s) in which construction and development activity are to be contained, including development and construction of the principal building, accessory structures, recreation areas, utilities, services, driveways, septic tank drain fields and related system requirements, storm drainage, and other similar services or improvements. The following need not be included in limits of disturbance:

- A. Up to ten feet of paved or unpaved shoulders for driveways.
- B. Areas consisting of natural ponds, streams, trees, and other vegetation where no grading work is done.

"Lot of Record." A lot or parcel of land established in compliance with all laws applicable at the time of its creation and recorded in the office of the county recorder either as part of a recorded subdivision or as described on a deed, having frontage upon a street, a right-of-way approved by the Land use hearing officer, or a right-of-way not less than twenty feet wide.

"Minor ski resort improvements." Construction activities associated with the ongoing operation and maintenance of previously approved facilities, ski runs, ski trails, ski lifts and related resort appurtenances, equipment, recreational access corridors, pedestrian or non-motorized trails, non-snow related activities and accessory uses, or vehicular maintenance roads constructed or used in connection with the construction, operation, or maintenance of a resort.

"Mountain resort or Ski resort."

- A. Any publicly or privately developed recreational use permitted by relevant local, state, and federal authorities, for snow-related activities, accessory year-round or non-snow related activities, and associated facilities and improvements.
- B. Such uses, activities, and facilities may be conducted on a commercial or membership basis, whether solely on privately-owned property or on privately-owned lots or parcels interspersed with public land under a special use permit from the U.S. Forest Service or other public agency, primarily for the use of persons who do not reside on the same lot or parcel as that on which the recreational use is located.
 - 1. Snow related activities include but are not limited to: downhill skiing, cross-country skiing, snowboarding, snow shoeing, snowmobiling, or other snow related activities.
 - 2. Accessory year-round and non-snow related activities include but are not limited to: alpine recreational activities; cultural events and festivals; and conference events.
 - 3. Associated facilities and improvements include, but are not limited to: lodging; food, retail, and support services; recreational and fitness facilities; parking accommodations; and other uses of a similar nature specifically authorized in conjunction with the operation of a year-round resort.

"Natural open space." Land in a predominantly open and undeveloped condition that is suitable for any of the following: natural areas; wildlife and native plant habitat; important wetlands or watershed lands; stream corridors; passive, low-impact activities; little or no land disturbance; or trails for non-motorized activities.

"Net developable acreage" is defined as land with all of the following:

- a. An average slope less than thirty percent.
- b. Soils of a suitable depth and type based on soil exploration and percolation tests in accordance with the regulations of the Utah Department of Environmental Quality in order to ensure against adverse impacts on surface and groundwater quality.
- c. Minimum distance from any stream corridor as defined in this Chapter.
- d. Free from any identified natural hazards such as flood, avalanche, landslide, high water table and similar

features. (See Chapter 19.74 (Floodplain Hazard Regulations) and Section 19.72.120 (Natural Hazards).

"Open Space." Any area of a lot that is completely free and unobstructed from any man-made structure or parking areas.

"Ordinary high water mark."

- A. The line on the bank to which the high water of a stream ordinarily rises annually in seasons, as indicated by changes in the characteristics of soil, vegetation, or other appropriate means, taking into consideration the characteristics of the surrounding areas.
- B. Where the ordinary high water mark cannot be found, the top of the channel bank shall be substituted.
- C. In braided channels, the ordinary high water mark shall be measured to include the entire stream feature.

"Overlay zone." A zoning district that encompasses one or more underlying zones and that imposes additional or alternative requirements to that required by the underlying zone.

"Qualified professional." A professionally trained person with the requisite academic degree, experience, and professional certification or license in the field(s) relating to the subject matter being studied or analyzed.

"Retaining wall." A wall designed and constructed to resist the lateral displacement and erosion of soils or other materials.

"Ridgeline protection area." An area consisting of a prominent ridgeline that is highly visible from public right-of-ways or trails, and that includes the crest of any such designated prominent hill or slope, plus the land located within one hundred feet horizontally (map distance) on either side of the crest.

"Significant trees." Live trees of six-inch caliper or greater, groves of five or more smaller live trees, or clumps of live oak or maple covering an area of fifty square feet to the drip line perimeter.

"Site plan." An accurately scaled plan that illustrates the existing conditions on a land parcel and the details of a proposed development, including but not limited to: topography; vegetation; drainage; flood plains; wetlands; waterways; landscaping and open space; walkways; means of ingress and egress; circulation; utility easements and services; structures and buildings; lighting; berms, buffers and screening devices; development on adjacent property; and any other information that may be required to make an informed decision.

"Slope." The level of inclination from the horizontal, determined by dividing, in fifty foot intervals, the average horizontal run of the slope into the average vertical rise of the same slope and converting the resulting figure into a percentage value.

"Stream, Ephemeral." Those channels, swales, gullies, or low areas that do not have flow year-round or are not shown on United States Geological Services (U.S.G.S.) topographic maps as perennial streams. These are generally channels that are tributary to perennial streams, other ephemeral streams, terminal low areas, ponds, or lakes. They are typically dry except during periods of snowmelt runoff or intense rainfall. (Contrast with "Stream, Perennial.")

"Stream, Perennial." Those streams, excluding ephemeral streams, or ditches and canals constructed for irrigation and drainage purposes, which flow year-round during years of normal rainfall, and that are identified on the appropriate United States Geological Services (U.S.G.S.) topographic maps as perennial streams. (Contrast with "Stream, Ephemeral.")

"Stream corridor." The corridor defined by a perennial stream's ordinary high water mark.

"Substantial economic hardship." A denial of all reasonable economic use of a property.

"Trails." A type of natural open space that is a system of public recreational pathways located within the unincorporated county for use by the public for walking, biking, and/or horseback riding as designated.

"Undevelopable" means strict application of this title prevents the minimum development necessary to establish a permitted or conditional use in the underlying zone on the property.

"Vegetation." Living plant material, including but not limited to trees, shrubs, flowers, grass, herbs, and ground cover.

"Waiver." Permission to depart from the requirements of an Ordinance with respect to the application of a specific regulation.

(Ord. No. 1808, § I, 3-14-2017)



Provo City Municipal Council

Staff Memorandum

Analysis of Sensitive Lands Ordinance in Provo City Code

Bryce Mumford, Lead Analyst

The Foothills Protection Committee has been seeking alternatives that would offer additional protections to the Provo City Foothills. Recently, the Committee met with, and discussed, the organizers of the Foothills and Canyons Overlay Zone (FCOZ) which was implemented by Salt Lake County in 2017. Council staff analyzed Provo City Code Chapter 15.05 (Sensitive Lands) against the Salt Lake County Code Chapter 19.72 (Foothills and Canyons Overlay Zone). The difference between these chapters is stark, and highlighted in the upfront Sections as shown in the table below:

SLCC 19.72 (Foothills and Canyons Overlay Zone)	PCC 15.05 (Sensitive Lands)
19.72.010--Purpose	15.05.010—Legislative Intent
A. Preserve the visual and aesthetic qualities of the foothills, canyons, and prominent ridgelines as defined herein, contributing to the general attractiveness and, where appropriate, the commercial viability of these areas	(a) Place the liability and expense of evaluating the condition of potentially unstable land, and determining restrictions which should be placed on its development, upon geologists or engineers employed by the landowner
B. Protect public health and safety by adopting standards designed to reduce risk associate with natural and man-made hazards	(b) Implement the Provo City General Plan by restricting the use of land to those uses which do not present unreasonable risks...because of geological and natural hazards or geotechnical limitations
C. Provide efficient, environmentally sensitive, and safe vehicular and pedestrian circulation	(c) Prevent fraud in land sales relating to the geologic or other condition of real property
D. Encourage development that conforms to the natural contours of the land and minimizes scarring and erosion effects of cutting, filling and grading on hillsides, ridgelines, and steep slopes	(d) Authorize a governmental function of regulation within the Utah Governmental Immunity Act
E. Balance private and commercial needs...	
F. Minimize disturbance to existing trees and vegetation, conserve wildlife habitat, protect aquifer recharge area... by encouraging clustering, the transfer of development rights, or other design techniques to preserve the natural terrain	
G. Reduce flooding by protecting streams,	

drainage channels, absorption areas, and floodplains	
H. Protect property rights and commercial interests , and encourage economic development.	
I. Recognize the link between environmental protection and economic prosperity in the canyons	

A summary review of both the Salt Lake Code Chapter 19.72 (Foothills and Canyons Overlay Zone) and Provo City Code Chapter 15.05 (Sensitive Lands) gives the general feeling that the FCOZ does a good job of protecting elements within the foothills than the Provo Chapter. The FCOZ specifies and defines its desired aesthetic as well as respect for ecological integrity. In Section 19.72.010 the code lays out the purpose for this section and indicates this section isn't designed to prohibit development, rather the section lays out that they desire to "preserve the visual and aesthetic qualities" while also "encourag[ing] development that conforms to the natural contours of the land" and "protect[ing] property rights and commercial interests."

Additionally, the FCOZ allows for a number of items that serve to guide development in a manner that protects their foothills, such as: Cluster Development, Ridgeline Development, recommended Detention Basin Treatment, Terracing and Retaining Walls, approved Site Access, Wildlife Habitat protection, and clarifies design standards for trails, fences, natural hazards, and stream corridors. It would appear there has been a lot of thought and effort put into considering the potential consequences associated with development in the foothills and canyons within Salt Lake County. Council staff believes it wise to put similar thought into the protection of similar areas within Provo City. Taking an approach similar to the FCOZ would be advisable and helpful in communicating what developers need to do to develop in Provo City foothills.

Provo City Code Section 15.05.010 indicates the Legislative Intent and 15.05.020 indicates the General Provisions. The intent and provisions do not seem to put much restriction on development as long as a landowner can justify development. The code clearly indicates the enactment of the Chapter would "place the liability and expense of evaluating the condition of potentially unstable land, and determining restrictions which should be placed on its development, **upon geologists or engineers employed by the landowner.**" So, the rest of the Chapter goes on to explain the requirements for application, the steps which must be followed and the special rules which must be followed if a landowner wishes to develop on hillsides, on high water tables, and wetlands.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: BMUMFORD
Department: Council
Requested Meeting Date: 07-09-2019

SUBJECT: A discussion regarding a proposed Permit Parking Plan ordinance amendment. (19-002)

RECOMMENDATION: Information only. Item is scheduled to be heard at the July 9, 2019 Council Meeting. If the Council desires to see changes to the proposed ordinance amendment, a motion may be necessary.

BACKGROUND: In mid- to late-2018, the Policy Governance Committee began discussions to clean up and make amendments to certain elements of the Permit Parking code (see Provo City Code Chapter 9.80). The Permit Parking Areas currently in code have been subject to certain code language that has been outdated since the Parking Enforcement has gone 21st Century. There is no longer a need for actual permits due to the electronic system that Parking Enforcement has put in place. Then there were some procedural elements that the Policy Governance Committee chose to amend certain elements to tighten up the process and add a step for the Planning Commission to review the Permit Parking Area plans. This step is thought to help the Council obtain a land use perspective on these Permit Parking Area plans. Also, there is a fee added to the Consolidated Fee Schedule.

FISCAL IMPACT: Potentially added revenue

PRESENTER'S NAME: Brian Jones

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-002

ORDINANCE 2019-

AN ORDINANCE AMENDING PROVO CITY CODE CHAPTER 9.80 TO UPDATE LANGUAGE AND AMEND PROCEDURES REGARDING PERMIT PARKING AREAS. (19-002)

WHEREAS, on July 09, 2019, the Policy Governance Committee recommended amendments to Provo City Code with regard to permit parking areas in order to modernize language and add perspective to the process, as set forth in Exhibit A; and

WHEREAS, on July 23, 2019, the Provo Municipal Council the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council’s consideration; and

WHEREAS, after considering the facts presented to the Municipal Council, the Council finds: (i) that Provo City Code Chapter 9.80 (Permit Parking Areas) should be amended as proposed, 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:

Provo City Code Chapter 9.80 (Permit Parking Areas) is hereby amended as set forth in Exhibit A.

PART II:

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

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44 END OF ORDINANCE.

EXHIBIT A

Chapter 9.80 PERMIT PARKING AREAS

Sections:

9.80.10 Purpose.

9.80.020 Legislative Findings.

9.80.030 Scope.

9.80.040 Definitions.

9.80.050 Designation of Permit Parking Areas - Parking Restrictions.

9.80.060 Designation Criteria.

9.80.070 Designation Process.

9.80.080 Modification or Removal of Permit Parking Area Designation.

9.80.090 Posting of Permit Parking Area.

9.80.100 Permit Fees.

9.80.110 Penalty Provisions.

9.80.120 Revocation of Permit.

9.80.130 Limit on Available Number of Permits.

9.80.140 Permit Eligibility - Issuance and Display.

9.80.150 Nontransferability.

9.80.160 Temporary Permits.

9.80.170 Expiration.

9.80.180 Handicapped Parking.

9.80.190 Other Parking Regulations.

9.80.010. Purpose

This Chapter is enacted to establish a regulatory framework to address serious adverse effects caused in certain areas of the City by motor vehicle congestion, particularly the parking of motor vehicles on the streets where on- and off-site parking is inadequate to meet the demand for parking. As set forth in more specific detail in Section 9.80.020 of this Chapter, parking by nonresidents of such areas threatens the health, safety, and welfare of all the residents of the City. In order to protect and promote the integrity of these areas, parking regulations are needed to restrict unlimited parking therein by nonresidents, while also providing the opportunity for residents to park near their homes. For the reasons set forth in this Chapter, a system of preferential resident parking is enacted.

9.80.020. Legislative Findings.

(1) The Municipal Council finds that continued vitality of the City depends on the preservation of safe and attractive neighborhoods. Demand for parking in certain areas of the City regularly exceeds available on- and off-street parking spaces and undermines neighborhood viability. A system allowing preferential resident on-street parking in various areas of the City will promote the stability of such neighborhoods and thus promote the general public welfare.

(2) The following specific legislative findings of the Municipal Council in support of preferential resident on-street parking are set forth as illustrations of the need for the enactment

of such parking regulations. They are intended as illustrations only and do not provide the sole basis supporting their adoption.

- (a) The safety, health and welfare of the residents of the City can be greatly enhanced by maintenance of the attractiveness and livability of its neighborhoods and other areas.
- (b) A majority of City residents possess automobiles and as a result are daily faced with the need to store these automobiles at or near their residences.
- (c) Certain neighborhoods in the City are often burdened by the presence of motor vehicles owned by nonresidents which compete for on-street parking spaces, congest City streets, and detract from neighborhood values. The presence of nonresident vehicle parking often disrupts the delivery of basic essential services, such as trash collection and mail delivery, by blocking access.
- (d) There further exist certain parking “attractors” within the City, i.e., hospitals, schools, industrial and educational facilities, employment centers, [UTA transit](#) stops and stations, and locations convenient for commuter parking, which further aggravate resident parking problems.
- (e) Unnecessary vehicle miles, noise, pollution, and strains on relationships between residents and nonresidents caused by the conditions set forth herein work unacceptable hardships on residents of these neighborhoods by causing the deterioration of air quality, safety, tranquility, aesthetics and other values normally available in a residential environment.
- (f) If allowed to continue unchecked, the adverse effects of excessive parking demand on [specific](#) City residents will contribute to a further decline of living conditions, a reduction in the attractiveness of residing in such areas, and consequent injury to the general public welfare.
- (g) A system of preferential on-street parking as provided in this Chapter will increase pedestrian and traffic safety by reducing traffic congestion; improve traffic circulation, promote the health and welfare of all City residents by reducing unnecessary motor vehicle travel, noise and pollution; promote improvements in air quality, the convenience and attractiveness of residential areas, and the increased use of public mass transit facilities available now and in the future; and encourage the use of car pools. The public welfare will also be served by insuring a more stable and valuable property tax base in order to generate revenues necessary to provide essential public services.

9.80.030. Scope.

The provisions of this Chapter shall apply to any permit parking area established under the authority of this Chapter. The provisions of this Chapter are not intended to regulate parking on private property. If a provision of this Chapter conflicts with a provision of a chapter enacting a specific permit parking area, such as [Provo City Code](#) Chapters [9.83](#) and 9.88, [Provo City Code](#), the provision of the specific enacting chapter shall control within that permit parking area.

9.080.040. Definitions.

In the construction of this Chapter, and any chapter enacted under the authority of this Chapter to create a specific permit parking area, the following words and phrases shall be defined as set forth in this section:

“Authorized vehicle” means a motor vehicle which:

(a) ~~displays~~ **has been issued** a valid parking permit ~~issued~~ pursuant to the requirements of this Chapter, and any chapter adopted under the authority of this Chapter, for the specific permit parking area where the vehicle is parked, or

(b) is authorized by the regulations of a permit parking area to park within such area without a permit.

“Dwelling” ~~shall have the same meaning as in Chapter 14.06, except as specified otherwise in the ordinance establishing a specific permit parking area~~ ~~means a building or portion thereof designed and used for residential occupancy, including one-family, two-family, multi-family, and apartment buildings; but shall not include boarding, rooming, or lodging houses, tents, trailers, mobile home parks, motels, motor courts, motor lodges, cottage camps, or similar structures designed or used primarily for transient residential uses.~~

“Motor vehicle” means an automobile, truck, motorcycle or other motor driven or self-propelled form of transportation intended primarily for use and operation on a public street.

“Parking permit” means a permit issued by the City ~~affixed to or displayed by a~~ ~~that, through the reading of vehicle license plates, shows a~~ qualifying motor vehicle ~~is authorized~~ pursuant to the requirements of this Chapter, and any chapter adopted under the authority of this Chapter, for the specific permit parking area where the permit is used.

“Permit parking area” means a contiguous or nearly contiguous area where the Municipal Council has imposed parking limitations as provided in this Chapter, and any chapter adopted under the authority of this Chapter, for a specific permit parking area.

“Unauthorized vehicle” means a motor vehicle which:

(a) ~~does not display~~ **has not been issued** a valid parking permit ~~issued~~ pursuant to the requirements of this Chapter, and any chapter adopted under the authority of this Chapter, for the specific permit parking area where the vehicle is parked, or

(b) is not authorized by the regulations of a permit parking area to park within such an area without a permit. (Enacted 2002-45, Am 2007-39, Am 2007-40, Am 2017-08)

9.80.050. Designation of Permit Parking Areas – Parking Restrictions.

(1) The Municipal Council in its discretion may by ordinance:

(a) designate permit parking areas pursuant to the requirements of this Chapter; and

(b) prohibit or restrict parking on any public street as the Council may deem necessary to address parking problems, protect public safety and promote public welfare.

(2) The boundaries of any permit parking area shall be shown on an Official Permit Parking Area Map adopted by the Municipal Council.

9.80.060. Designation Criteria.

(1) An area shall be eligible for permit parking if an investigation establishes the area is impacted by:

(a) nonresident vehicles for any extended period during the day or night, on weekends, or during holidays; or

(b) continuous use of on-street parking due to inadequate on-site parking.

(2) In determining whether to designate a permit parking area, the Planning Commission and Municipal Council shall consider:

(a) the desire and need of residents for permit parking and their willingness to bear administrative costs in connection therewith;

(b) the extent to which:

(i) legal on-street parking spaces are occupied by motor vehicles during the period proposed for parking restriction;

(ii) during the period proposed for parking restriction, motor vehicles within the permit parking in the area during the period proposed for parking restriction are nonresident vehicles rather than resident vehicles; and

(iii) motor vehicles registered to persons residing in the residential area cannot be accommodated by the number of available off-street parking spaces; and

(c) any other factor which contributes to the need for a permit parking area.

9.80.070. Designation Process.

(1) Each permit parking area shall be established by ordinance consistent with the provisions of this Chapter.

(2) A proposal to designate a permit parking area, or amend an area, may be initiated by a Municipal Council member, the Mayor, or a resident of the area where a permit parking program is proposed any Provo City resident who resides in the area specified in the application and shall include at least the following information.

~~(a) a brief description of the current parking circumstances in the area; and~~

~~(b) a conceptual description of the proposed permit program which includes at least the following information:~~

~~(i) a map identifying the boundaries of the permit parking area, which shall be logical in configuration and be in increments of block faces;~~

~~(ii) desired parking time restrictions;~~

~~(iii) time restriction exemptions, if any; and~~

~~(iv) any other aspect the initiator wishes to propose; and~~

~~(c) if proposed by a resident, a petition which shows the names of residents in the proposed permit parking area who favor the proposal. The petition shall be on a form approved by the City Permit Parking Coordinator and shall include at least the following information:~~

~~(i) a statement at the top of each page summarizing the proposal; and~~

~~(ii) the name and address of each person signing the petition.~~

(3) Any person initiating such a proposal shall submit a Provo City Code amendment request, which shall include an application on the approved form identifying the intended boundaries for the proposed permit parking program, or amendment, and shall include at least the following:

(a) a statement of the reason(s) and justification(s) for the implementation, or amendment, of a permit parking program;

(b) a statement setting forth the manner in which the proposed permit parking program would further promote the objectives set forth in this chapter;

(4) If the process is initiated by a Provo City resident, other than elected officials of the City, they shall also submit the following before the application shall be considered complete:

(a) a petition on a form approved by the City Parking Coordinator that includes at least the following information:

(i) a map clearly identifying the property addresses within the proposed permit parking area;

(ii) a separate list containing the name, address, and signature of each resident within the proposed permit parking area boundaries who is in support of the proposal;

(iii) a statement at the top of the first page summarizing the proposal;

(iv) the desired parking time restrictions and restriction exemptions, if any;

(v) any other aspect the applicant wishes to propose; and

(b) The filing fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council, or a fee waiver as set forth in Provo City Code 2.29.060.

(35) Following receipt of a complete application for a proposed permit parking program, the Municipal Council shall hold a public ~~hearing~~meeting, which may be a Work Session, to ~~determine~~consider the level of public interest in the proposed program and may thereafter vote to direct that a study of the proposed permit parking area be undertaken and managed by the City Parking Coordinator. The application filing fee shall be refunded if the Council does not direct that a study be undertaken.

(46) Within one hundred twenty (120) days after directing that a study of the proposed permit parking area be undertaken, the City Parking Coordinator shall review the application and submit a report to the Planning Commission, Mayor, and Municipal Council which:

- (a) verifies and quantifies petition signatures, if applicable;
- (b) ~~analyzes~~provides analysis on the proposed permit parking area in light of designation criteria set forth in Provo City Code Section 9.80.060, ~~Provo City Code~~; and
- (c) at a minimum, makes recommendations regarding the following:
 - (i) permit parking area boundaries,
 - (ii) parking time restrictions on public streets,
 - (iii) time restriction exemptions, if any,
 - (iv) permit cost (based on the total cost to administer program, and including a detail sheet showing number of residences and cost per vehicle in the proposed permit parking area),
 - (v) permit design/type,
 - (vi) planned enforcement method, and
 - (vii) timeline for implementing the program.

(57) Within ninety (90) days after receiving such report, the Planning Commission shall consider the proposal and make a recommendation to the Municipal Council, unless the Municipal Council by motion indicates that the proposal has been denied and will not be considered further. After receiving any recommendation from the Planning Commission, the Municipal Council shall hold a public hearing to consider a resolution of intent to create a permit parking area. The Municipal Council may adopt, reject, or adopt with modifications the terms and conditions of the proposed permit parking area. If the Municipal Council adopts a resolution of intent which sets forth the details of the program to be considered, the Parking Coordinator shall mail a copy of the resolution ~~shall thereafter be mailed~~ to:

- (a) each address of record within the proposed permit parking area through a mailing sent to “postal patron”; and
- (b) each property owner of record within the area as shown in Utah County land records.

(68) Within ninety (90) days after adopting a resolution of intent, the Municipal Council shall conduct a public hearing on the proposal. The City Recorder, in cooperation with Council staff, shall cause notice of such hearing or hearings to be published twice in a newspaper of general circulation in the City. The first publication shall be not less than ten (10) days prior to the date of such hearing. The notice of the public hearing shall be conspicuously posted in the proposed permit parking area. The notice shall clearly state:

(a) the purpose of the hearing,

(b) the location and boundaries proposed as a permit parking area,

(c) the proposed parking time restrictions and exemptions, and any prohibition or time limitation under which permit parking will be exempt therefrom and, if applicable,

(d) the permit fee to be charged ~~therefor. During such hearing or hearings, any interested person shall be entitled to appear and be heard, subject to ordinary rules of order.~~

(79) Following the public hearing, the Municipal Council may enact an ordinance which establishes the permit fee, the boundaries of a permit parking area, and any time or other restrictions imposed on the area. In order to establish a permit parking area, the Council shall find that the designation will contribute to the health, safety, and general welfare of persons residing in the area designated. In making such finding, the Council shall consider resident support for permit parking, existing parking conditions, expected effectiveness of a permit parking area in improving parking conditions, fee considerations, and the location and size of the permit parking area.

(810) A permit parking program shall balance affected interests, as determined by the Municipal Council, including public safety, neighborhood concerns, and the welfare of the general public. A particular permit parking program shall specify the permit area and the duration of parking restrictions applicable within the permit parking area. Such restrictions may be different than those in a request to establish a permit parking area.

(911) Following adoption of an ordinance establishing a permit parking area, a summary of the ordinance and its effective date shall be mailed by the City Parking Coordinator to:

(a) each address of record within the proposed permit parking area through a mailing sent to "postal patron"; and

(b) each property owner of record within the areas as shown in Utah County land records.

9.80.080. Modification or Removal of Permit Parking Area Designation.

After holding a public hearing the Municipal Council may by ordinance modify or remove a designated permit parking area or any associated program requirement in any manner consistent with this Chapter.

9.80.090. Posting of Permit Parking Area.

Upon the adoption by the Municipal Council of an ordinance designating a permit parking area, the Mayor shall cause appropriate signs to be erected in the area indicating prominently thereon the area prohibition or time limitation, period of the day for its application, and conditions, if any, when permit parking rules apply.

9.80.100. Permit Fees.

Fees will be assessed for (1) each application to designate, or amend, a permit parking area and (2) each vehicle permit issued within the designated permit parking area. Permit fees shall be charged as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

9.80.110. Penalty Provisions.

- (1) No person may park a motor vehicle in violation of a permit parking area ordinance.
- (2) It shall be unlawful for a person to falsely claim eligibility for a parking permit or to furnish false information in an application under this Chaptertherefor.
- (3) ~~It shall be unlawful for a person holding a valid parking area permit to allow the use or display of such permit on a motor vehicle in a manner not permitted by this Chapter or any ordinance adopted under the authority of this Chapter for the specific permit parking area where the permit is used. Such conduct shall constitute an unlawful act and violation of this Chapter both by the person holding the parking permit and the person who so uses or displays the permit on an unauthorized vehicle.~~
- (4) ~~It shall be unlawful and a violation of this Chapter for a person to copy, produce, or otherwise bring into existence a facsimile or counterfeit parking permit or permits. It shall further be unlawful and a violation of this Chapter for a person to transfer the beneficial ownership of or a continuous right to use a visitor parking permit or to knowingly use or display a facsimile or counterfeit parking permit in order to evade area prohibitions or time limitations on parking applicable in a permit parking area.~~
- (5) ~~Violation of a parking area permit requirement shall be a civil infraction and shall be enforced as provided in Provo City Code Chapter 9.17, Provo City Code.~~

9.80.120. Revocation of Permit.

- (1) The Mayor or the Mayor's designee is authorized to revoke a parking permit of any person found to be in violation of this Chapter or any provision of an ordinance which establishes a specific permit parking area, and upon written notification thereof, the person shall surrender such permit to the Police Chief or the Chief's designee. Failure to surrender a parking permit so revoked shall constitute a violation of law and of this Chapter.
- (2) A permit holder found to violate the terms of this Chapter may have parking privileges revoked and the permit holder may be prohibited from obtaining a parking permit for one (1) year from the date of the violation.

9.80.130. Limit on Available Number of Permits.

~~There shall be no limit on the total number of parking permits issued within an entire permit parking area governed by this Chapter. However, n~~No more than two (2) parking permits

shall be issued in total for each qualifying dwelling unit, unless specifically provided otherwise in the provisions governing a specific permit parking area.

9.80.140. Permit Eligibility – Issuance ~~and Display~~.

(1) The Provo City Parking Coordinator shall issue parking permits that comply with the requirements set forth in this Section. Permits are issued on a per vehicle basis.

(2) ~~(a)~~ Annual application for one (1) or more parking permits authorized under this Chapter shall be made on a form approved and provided by the City Parking ~~Permit~~ Coordinator which includes at least the following information:

~~(i)~~ applicant's name, address, and e-mail address;

~~(ii)~~ proof of eligibility for the permit; ~~and~~

~~(iii)~~ the license plate number for ~~each~~ vehicle to be permitted for that applicant, including proof that the vehicle is currently registered with the Utah Division of Motor Vehicles; and

~~(b)~~ A additional information ~~may be required~~ that will aid the enforcement of the provisions of this Chapter as determined by the City Parking Coordinator.

(3) A parking permit shall be issued for a motor vehicle only upon compliance with each of the following requirements:

(a) The permit applicant shall be a person who:

(i) owns a dwelling located within the designated permit parking area; or

(ii) is an occupant of a qualifying rental dwelling unit within the designated permit parking area for which a valid rental dwelling license has been issued.

(b) No permit shall be issued to a person who resides in a rental dwelling that does not comply with the requirements of Provo City Code Chapter 6.26, ~~Provo City Code~~, at the time the permit is issued.

(c) Applicable fees, as set forth in the Consolidated Fee Schedule adopted by the Municipal Council, have been paid.

~~(4) A person who is issued a parking permit shall be deemed the permit holder.~~

~~(45)~~ The issuance of a parking permit does not guarantee or reserve to the permit holder a particular parking space within a permit parking area governed by this Chapter, but only authorizes a motor vehicle to be parked on a public street in a legally available parking space.

~~(56)~~ A parking permit issued to a resident who moves out of the residence in the permit parking area to which the parking permit is assigned will be revoked by Provo City. A

permit holder shall notify the City at the time the permit holder moves out of the residence to which the parking permit is assigned.

~~(67)~~ Owners of vehicles parking in the permit parking area ~~must display~~ are responsible to ensure that a current rear license plate is visible ~~or current temporary registration certificate for that vehicle~~. Plates must be kept ~~visible and~~ free of snow, mud, or other obstructions. In the event of a snow storm that results in the plate being obstructed, the plate must be cleared within a ~~reasonable time frame~~ 72 hour period. A permit holder shall not be penalized for a violation of this Subsection ~~(67)~~ if the permit holder can prove that a valid permit was held ~~and displayed in the vehicle~~ as required by this Chapter at the time of the violation.

9.80.150. Nontransferability.

~~The holder of a A~~ parking permit for a permit parking area governed by this Chapter ~~may display the parking permit~~ is valid only ~~in~~for the vehicle for which the permit is issued.

9.80.160. Temporary Permits.

During ~~each~~ calendar year, residents of a qualifying permit parking area may request, online or by calling Provo City Customer Service (311), the issuance of up to eighteen (18) temporary one (1) day permits and one (1) seven (7) day permit. Temporary permits must be issued in advance of their use~~may be issued to residents of a qualifying dwelling unit within a permit parking area governed by this Chapter.~~

9.80.170. Expiration.

Each parking permit issued for a permit parking area governed by this Chapter shall expire annually after the issuance thereof.

9.80.180. Handicapped Parking.

Nothing in this Chapter shall abrogate the scope of parking privileges granted to handicapped persons established by Provo City Code or other applicable law.

9.80.190. Other Parking Regulations.

The provisions of this Chapter shall not relieve any person from the duty to observe other and more restrictive provisions of the Provo City Code which prohibit or limit the stopping, standing, or parking of vehicles at specific times or places.

...

Provo City Consolidated Fee Schedule

...

COMMUNITY DEVELOPMENT

Map and Text Amendments*

General Plan (Map, Text, and Master Plan)	\$560.00
Local Street Plan	\$150.00
Ordinance Text Amendments (Titles 14 and 15)	\$1,100.00
Ordinance Text Amendments (Chapter 9.80 Permit Parking Area)	\$1,100.00
Rezoning	\$1,050.00
Agricultural Protection Area Proposal	\$500.00
Annexation (includes municipal disconnection)	\$1,050.00

*A project plan is required for all rezonings and general plan applications.
Project plan fees are assessed as per type of project.

...

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: JMCKNIGHT
Department: Public Works
Requested Meeting Date: 07-23-2019

SUBJECT: A discussion regarding a resolution authorizing the Mayor to sign a water carriage agreement with Central Utah Water and the US Department of the Interior. (19-083)

RECOMMENDATION: Recommending the City Council approve a resolution authorizing the Mayor to sign an agreement for the City to pay its portion of costs associated with shared water lines in Provo Canyon.

BACKGROUND: The City utilizes A shared water conveyance pipe with other agencies in Provo Canyon. This agreement formalizes how the City will pay for its portion of related costs.

FISCAL IMPACT: Yes

PRESENTER'S NAME: Dave Decker

REQUESTED DURATION OF PRESENTATION: 10 Minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 19-083

1 RESOLUTION 2019-.

2
3 A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A WATER
4 CARRIAGE AGREEMENT WITH CENTRAL UTAH WATER AND THE
5 UNITED STATES DEPARTMENT OF THE INTERIOR. (19-083)
6

7 WHEREAS, Provo City utilizes a shared water conveyance pipe with other agencies in
8 Provo Canyon; and
9

10 WHEREAS, the purpose of the agreement, attached hereto as Exhibit A, is to confirm
11 that Provo is authorized to convey certain water through non-City systems and to define the
12 terms for such conveyance; and
13

14 WHEREAS, on July 23, 2019, the Provo Municipal Council the Municipal Council met
15 to ascertain the facts regarding this matter and receive public comment, which facts and
16 comments are found in the public record of the Council's consideration; and
17

18 WHEREAS, after considering the facts presented to the Council, the Council finds (i) the
19 agreement attached hereto as Exhibit A should be approved; (ii) the Mayor, or her designee,
20 should be authorized to execute the agreement; and (iii) such agreement reasonably furthers the
21 health, safety, and general welfare of the citizens of Provo.
22

23 NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah, as
24 follows:
25

26 PART I:
27

28 The Agreement between Provo City and Central Utah Water and the United States
29 Department of the Interior, attached hereto as Exhibit A, is hereby approved, and the Mayor, or
30 her designee, is authorized to execute the agreement.
31

32 PART II:
33

34 This resolution shall take effect immediately.
35
36

37 END OF RESOLUTION.

AGREEMENT

**AMONG THE
CENTRAL UTAH WATER CONSERVANCY DISTRICT
PROVO CITY
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
FOR THE CARRIAGE OF NON-PROJECT WATER
THROUGH BONNEVILLE UNIT PROJECT FACILITIES**

THIS AGREEMENT, made this _____ day of _____, 2019, among the CENTRAL UTAH WATER CONSERVANCY DISTRICT, hereinafter referred to as the “District,” CITY OF PROVO, hereinafter referred to as “Provo” and the UNITED STATES DEPARTMENT OF THE INTERIOR (“Interior”) (collectively Parties). This Agreement is made pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or and supplementary thereto, particularly Section 301 of Public Law 103-434, as well as the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

WITNESSETH THAT:

EXPLANATORY RECITALS:

WHEREAS, the United States Bureau of Reclamation has constructed certain features, and the District and Interior are constructing the remaining features of the Bonneville Unit (“Project”) of the Central Utah Project (initial phase), a participating project of the Colorado River Storage Project. The purpose of the Project is to supply water for irrigation, municipal, domestic, industrial, and other purposes to the District for use by its petitioners and contract holders; and

WHEREAS, the District, by Contract No. 14-06-400-4286 dated December 28, 1965, as amended and supplemented, hereinafter referred to as the (“Repayment Contract,”) agreed, among other things, to repay the reimbursable Project costs to the United States and to operate and maintain the facilities constructed for the Project (“Project Works”); and

WHEREAS, the District has the right to market and allot the water developed by the Project (“Project Water”), the obligation to protect the Project Water Rights from interference, and to use Project Works to deliver such Project Water; and

WHEREAS, through an initial Determination of Taking dated July 11, 1987, the United States acquired the Olmsted Flowline from PacifiCorp Electric Operations (“PacifiCorp”) (formerly Utah Power and Light Company). The Olmsted Flowline was reconstructed by the

District and delivers water from the diversion dam and intake structure on the Provo River to the Olmsted Power Plant and is part of the Project Works.

WHEREAS, in 1990 the United States amended the Determination of Taking to acquire the Olmsted Power Plant, its appurtenant facilities, and the Olmsted Water Rights, together with the Olmsted Flowline (“Olmsted Facilities”), which are all part of the Project Works; and

WHEREAS, as part of the compensation for the purchase of the Olmsted Facilities, the United States, the District, and PacifiCorp, entered into the Olmsted Settlement Agreement agreeing, among other things, that the United States would hold title to the Olmsted Facilities, but PacifiCorp would continue overseeing operations of the Olmsted Power Plant and sell the energy produced until expiration of the Olmsted Settlement Agreement; and

WHEREAS, the Olmsted Settlement Agreement expired on September 21, 2015, and a new agreement is needed to allow Provo to interfere with power generation at the Olmsted Power Plant and to accommodate carriage of Provo’s Non-Project Water through the Project Works; and

WHEREAS, the District has reconstructed the Olmsted Power Plant under the terms of its Central Utah Project repayment contract with the United States and the District is now responsible for the operation, maintenance, repair and replacement (“OM&R”) of the Olmsted Power Plant and continues to be responsible for the OM&R of the remainder of the Project Works; and

WHEREAS, the United States constructed Alpine Aqueduct reaches 1, 2, 2A, 2B, and 3 (“Alpine Aqueduct System”) which are part of the Project Works and are used to deliver Project Water for municipal and industrial purpose; and

WHEREAS, the Alpine Aqueduct Raw Water Bypass Pipeline and the North Branch Aqueduct (“District Owned Facilities”) were constructed and are owned by the District. These District Owned Facilities are interconnected with the Project Works; and

WHEREAS, Orem City has a contractual right to convey a portion of its water in the Olmsted Flowline pursuant to an agreement that was in existence at the time the Olmsted Flowline was acquired by the United States; and

WHEREAS, the purpose of this Agreement is to confirm that Provo is authorized to convey its Non-Project Water through the Olmsted Flowline and Alpine Aqueduct System (“Olmsted-Alpine System”) for a fee (“Federal Carriage Charge”) and through District Owned Facilities for a separate fee (“District Carriage Charge”) when there is (1) space available (“Unused Capacity”) in the Olmsted Flowline that is not being utilized by Orem City under its

prior contractual right; (2) Unused Capacity in facilities utilized for Project Water; (3) for payment of a proportionate share of the operation, maintenance, and replacement (OM&R) costs, including capital repair and replacement reserves (“Capital Replacement Reserves”) costs, of the Project Works and District Owned facilities used to deliver Provo’s Non-Project Water; and (4) for payment of costs associated with loss of generation at the Olmsted Power Plant caused by conveyance of Provo’s Non-Project Water.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

DEFINITIONS

1. Additional terms used herein:

(a) “Alpine Aqueduct System” shall mean all of the following facilities:

(i) “Alpine Aqueduct Reach 1,” a feature of the Project Works, consisting of a 90-inch diameter underground pipeline and tunnel about 1.05 miles long pipe with a design capacity of 450 cfs. Alpine Aqueduct Reach 1 extends from the regulation reservoir on Olmsted Flowline to the beginning of Jordan Aqueduct and the Treatment Plant.

(ii) “Alpine Aqueduct Reach 2,” a feature of the Project Works, consisting of an underground pipeline about 4.7 miles long. The upper section of the pipeline is a 48-inch diameter pipe with a design capacity of 125 cfs. The lower section consists of 36-inch to 16-inch diameter pipe with an initial design capacity of 70 cfs. Alpine Aqueduct Reach 2 begins near the Treatment Plant and extends south through Orem to about 1300 South.

(iii) “Alpine Aqueduct Reach 2A,” a feature of the Project Works, consisting of a 36-inch diameter, 2,300 feet long underground pipeline pipe, with a design capacity of 70 cfs. Alpine Aqueduct Reach 2A begins at the 30-inch diameter turnout at station 6+19 on Alpine Aqueduct Reach 2 and extends to the original 60-inch diameter pipeline connected to the Treatment Plant.

(iv) “Alpine Aqueduct Reach 2B,” a feature of the Project Works, consisting of a 2.2 miles long underground 24-inch diameter pipeline, with a design capacity of 47 cfs. Alpine Aqueduct Reach 2B begins just downstream of the valve and flow meter at station 22+55 on Alpine Aqueduct Reach 2A and extends south-easterly where it connects to Provo’s municipal water system.

(v) “Alpine Aqueduct Reach 3,” a feature of the Project Works that is a 12.2 miles long underground pipeline. The pipeline is 60-inch to 48-inch-diameter pipe in the upper section

with an initial design capacity of 155 cfs. The lower section consists of 48-inch to 18-inch-diameter pipe with an initial design capacity of 87.5 cfs. Alpine Aqueduct Reach 3 extends from near the Treatment Plant north through northern Utah Valley to Highway 92 (Alpine Highway) near the Micron Plant.

(b) “Alpine Aqueduct Raw Water Bypass Pipeline,” a District Owned Facility interconnected with the Project Works that is a 2,030 feet long underground pipeline, consisting of a 60-inch to 48-inch-diameter pipe, connecting Alpine Aqueduct Reach 1 to Alpine Aqueduct Reach 3. The design capacity is 180 cfs from the Alpine Aqueduct Reach 1 connection to a Treatment Plant turnout and thereafter 87.5 cfs to the connection with Alpine Aqueduct Reach 3.

(c) “Capital Replacement Reserves” shall mean reserves charges set by the District’s Board of Trustees and are subject to change as per board policy.

(d) “Lost Revenue” shall mean loss of generation and OM&R revenue from the Olmsted Power Plant facilities caused by Power Interference.

(e) “Non-Project Water” shall mean water or water rights owned or controlled by Provo that is not Project Water.

(f) “North Branch Aqueduct,” a District owned facility that is an underground pipeline about 12,250 feet long consisting of 36-inch-diameter pipe with a design capacity of 18 cfs. North Branch Aqueduct begins at approximately 9675 North 4800 West in American Fork and extends to near 4380 West 11000 North in Highland.

(g) “Olmsted-Alpine System” shall mean the Olmsted Flowline and the Alpine Aqueduct System.

(h) “Olmsted Flowline,” a feature of the Project Works, shall mean the pipeline and diversion previously owned by PacifiCorp and reconstructed by the District including the diversion dam, intake structure, pipeline, tunnel, regulation reservoir and appurtenant facilities. Olmsted Flowline is about 4.5 miles long with a capacity of 450 cubic feet per second (cfs). Olmsted Flowline extends from the diversion dam and intake structure on the Provo River, which is about 6 miles below Deer Creek Reservoir, to and including the regulation reservoir at the mouth of Provo Canyon.

(i) “Olmsted Power Plant,” a feature of the Project Works, shall mean the power generation facility previously owned by PacifiCorp and reconstructed by the District under the Olmsted Hydroelectric Replacement Project.

(j) “Olmsted Power Plant Facilities” shall mean all of the power plant facilities generally below the 10 MG reservoir comprised of Olmsted Reach A, spillway, pipeline and penstock, Olmsted Power Plant, tailrace, and all appurtenant buildings, equipment and facilities.

(k) “Olmsted Water Rights” shall mean the water rights acquired by the United States, which water are authorized for use in generating power through the Olmsted Power Plant and used in the development of Project Water. The Olmsted Water Rights are currently decreed under the Provo River Decree, Civil No. 2888. The total quantity of water authorized for power generation under the Olmsted Water Rights is 429 cfs, which is comprised of two separate water rights: (i) a diligence right for 229 cfs with a priority of 1897, and (ii) an appropriated right for 200 cfs with a priority of 1917. The Olmsted Water Rights are non-consumptive and other water right holders historically had the right to make consumptive use of the water after the water passed through the Olmsted Power Plant.

(l) “OM&R costs” shall mean the operation, maintenance, repair costs including operation and maintenance reserves incurred annually, and Capital Replacement Reserves costs necessary to operate, maintain, and repair the Project Works in working order and replace the Project Works as necessary.

(m) “Power Interference” shall mean the reduction in power generation at the Olmsted Power Plant caused by Provo’s diversion or conveyance of Non-Project water in a manner that interferes with the ability to use the full Olmsted Water Right for power generation.

(n) “Treatment Plant” means the Don A. Christiansen Regional Water Treatment Plant located at the mouth of Provo Canyon and operated by the District to treat Project and Non-Project Water. The Treatment Plant has a capacity to treat 100 million gallons per day (mgd).

(o) “Unused Capacity” means the capacity of the Project Works not required either for conveyance of Project Water or Non-Project Water by Orem City pursuant to the agreements referenced in Section 7(d) that were in existence at the time the Olmsted Flowline was acquired by the United States. It can also mean capacity in the District Owned Facilities not required for conveyance of Project Water.

TERM OF AGREEMENT

2. The term of this Agreement shall begin on the date of execution and shall remain in effect for 40 years from said date. The Agreement may be extended additional 40-year periods by mutual written agreement of the Parties.

**PAYMENT OF CARRIAGE
OPERATION, MAINTENANCE, AND REPLACEMENT COSTS**

3. (a) Authority for carriage of Non-Project M&I Water in Central Utah Project facilities is provided by Public Law 103-434, an amendment to the Warren Act (36 Stat. 925). The Federal Carriage Charge paid by District under this Agreement will be credited by the United States in accordance with Section 5 of the Colorado River Storage Project Act of April 11, 1956.

(b) The District annually will report to the United States by February 15th of each year the amount of Non-Project Water carried in the Olmsted-Alpine System for Provo during the preceding water year period of November 1 through October 30 (“Water Year”). District shall pay to the United States the Federal Carriage Charge as calculated in Subsection 3(e) herein, for such Non-Project Water. District shall then bill Provo for reimbursement of the District for the Federal Carriage charge in accordance with Subsection 3(c) herein.

(c) The District also will notify Provo in writing by February 15 of each year regarding the quantity of Provo’s Non-Project Water conveyed through each of the features of the Olmsted-Alpine System and District Owned Facilities during the preceding Water Year. The written notice will include information regarding (i) the Federal Carriage Charges incurred by the District to the United States in carrying this Non-Project Water for Provo in the Olmsted-Alpine System, and (ii) the District Carriage Charges for the delivery of Provo’s Non-Project water through the District Owned Facilities.

(d) Included with the written notice provided pursuant to 3(c) herein, will be an invoice from the District to Provo for (i) reimbursement to District of the Federal Carriage Charge that the District paid to the United States for carriage of Provo’s Non-Project Water, and (ii) the separate District Carriage Charge. Provo will remit the payment to District by March 15 of each year.

(e) Additionally, through the same invoice Provo shall be billed and pay the District Provo’s proportionate share of Non-Project Water OM&R costs for the features of the Olmsted-Alpine System and District Owned Facilities used in the delivery of Provo’s Non-Project Water, which payment shall also be due by March 15 of each year. The District retains all funds collected for OM&R costs. The OM&R costs shall include a payment for Capital Replacement Reserves required to operate and maintain the Project Works and District Owned facilities.

(i) Provo’s proportionate share of OM&R costs shall be determined annually by adding the sum of Provo’s proportionate share of OM&R costs for each of the individual features of the Olmsted-Alpine System and District Owned Facilities used in the delivery of Provo’s Non-Project Water.

(ii) Provo’s proportionate share of OM&R costs for an individual feature is calculated by multiplying the total OM&R costs incurred during the preceding Water Year for that feature by the ratio of amount the Non-Project Water owned or controlled by Provo conveyed through the feature divided by the sum of the total Project Water and Non-Project Water conveyed to all users during the Water Year through the feature.

(iii) For Olmsted Flowline only, the total water conveyed to all users shall include water delivered to the Olmsted Power Plant. Capital Replacement Reserves charges are set by the District’s Board of Trustees and are subject to change as per board policy.

(f) The annual Federal Carriage Charges as shown in the following table shall be charged by the United States to the District and subsequently reimbursed to District by Provo for each acre-foot of Non-Project Water conveyed through said Project Works.

<u>United States Owned Facilities</u>	<u>Federal Carriage Charges per Acre-Foot</u>
Olmsted Flowline	\$2.08
Alpine Aqueduct Reach 1	\$0.52
Alpine Aqueduct Reach 2	
Upper Section	\$0.16
Lower Section	\$3.08
Alpine Aqueduct Reach 2A	\$0.21
Alpine Aqueduct Reach 2B	\$1.12
Alpine Aqueduct Reach 3	
Upper Section	\$0.08
Lower Section	\$3.56

(g) The annual District Carriage Charge as shown in the following table shall be charged by the District to Provo for each acre-foot of Non-Project Water conveyed through the District Owned Facilities:

<u>District Owned Facilities</u>	<u>District Carriage Charge per Acre-Foot</u>
Alpine Aqueduct Raw Water Bypass Pipeline	
Upper Section	\$0.22
Lower Section	\$0.38
North Branch Aqueduct	\$4.25

(h) The above annual charges per acre-foot shall be subject to review and modification when capital improvements are made to the Olmsted-Alpine System and District Owned Facilities and when the final allocation of Project costs is received from the United States.

COMPENSATION TO DISTRICT FOR LOST REVENUE

4. (a) Commencing upon startup of the Olmsted Power Plant, which occurred on July 19, 2018, the District shall bill, and Provo shall pay to the District, annually an amount necessary to compensate the District for Lost Revenue attributable to Provo’s diversion or conveyance of Non-Project Water causing Power Interference during the preceding Water Year.

(b) The Lost Revenue rates per acre-foot of Power Interference shall be as follows, based on the Water Year.

<u>Water Year</u>	<u>Amount</u>
2018	\$21.12
2019	\$21.54
2020	\$21.97
2021	\$22.41
2022	\$22.86
2023	\$23.32
2024	\$23.79

The rates subsequent to Water Year 2024, will be re-evaluated and provided to Provo by the District prior to November 1, 2023, for Water Years 2025 through 2030 and then every five years thereafter during the term of this Agreement so that Provo will have at least 18 months’ notice before a new rate table becomes effective. Rates are calculated by the District to account for Lost Revenue per acre-foot of Power Interference for the respective periods.

(c) District shall submit an invoice to Provo by February 15 of each year for (i) the amount of Lost Revenue due to the District, based on the Lost Revenue rates in subsection (b) above, resulting from Provo’s diversion of water causing Power Interference during the preceding Water Year. District shall collect all Lost Revenue and disburse, allocate or hold such sums in accordance with its contracts with the United States. Provo will remit the payment to District on these invoices by March 15 of each year.

NOTICE OF CHANGE IN COSTS

5. The District will give Provo written notice of any conditions such as new contracts, plans, or situations of which it is aware and which have the potential to increase Provo’s payments to the District as required herein by more than fifty percent (50%). Provo shall be given the opportunity to be heard and to express concerns regarding said conditions. This will give Provo an opportunity to protest such actions, if it deems appropriate, and to enable Provo to plan for potential future increases of its financial liabilities. This provision does not limit or restrict District's ability to proceed with its contracts or plans, provided that Provo has been given notice and an opportunity to be heard.

MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION

6. In consideration for the right to convey Non-Project Water through the Olmsted-Alpine System and District Owned Facilities, Provo shall:

(a) Suffer all evaporation, distribution, and administration losses relating to the diversion, conveyance, and delivery of the Non-Project Water.

(b) Make the necessary arrangements with the State of Utah and others needed for the diversion and carriage of Non-Project Water including filing and obtaining approval of any application relative thereto at no cost to the District or to the United States.

(c) Pay any charges made by the State of Utah for the distribution, handling, or administration of Provo's Non-Project Water.

(d) Indemnify and hold harmless the United States and District and all of their respective representatives from all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property using or receiving the Non-Project Water carried in the Olmsted-Alpine System and/or District Owned Facilities for Provo, as a result of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, of the Olmsted-Alpine System or District Owned Facilities, or other duties of the District or the United States regarding any of the Project Works and/or District Owned Facilities, without regard of who performs those duties.

CONDITIONS AFFECTING CARRIAGE OF NON-PROJECT WATER

7. (a) The parties acknowledge that the District intends to deliver only Provo River untreated raw water to the (Treatment Plant) where it will be treated to drinking water standards for delivery to Provo. Additionally, the parties agree that neither the District nor the United States warrants the quality of raw water delivered to the Treatment plant, and the United States does not warrant the quality of treated water delivered to Provo.

(b) Provo understands and agrees that neither the District nor the United States shall be liable for the failure of the District or the United States to convey any Non-Project Water as provided in this Agreement for any cause.

(c) The District and the United States, after notification to the Provo, reserve the right temporarily to cease deliveries of Non-Project Water without liability during periods reasonably required for inspection, maintenance, and other operating requirements.

(d) Provo understands that carriage of Non-Project Water for Provo is subject to the contractual obligations of the District and/or the United States under provisions of existing contracts including, but not limited to, the following:

(i) The contract dated February 17, 1958, in which Orem City and Utah Power and Light Company (“UP&L”) entered into an agreement that provided, among other things, for nine (9) cfs of Orem’s water to be conveyed through Olmsted Flowline.

(ii) The contract dated November 22, 1977, among UP&L, the Central Utah Water Conservancy District, and Orem City which provided, among other things, for the District to connect a 105 inch diameter pipeline (this is Alpine Aqueduct Reach 1, with actual diameter of 90 inches) onto the Olmsted Flowline and for Orem City to continue its right to utilize up to nine (9) cfs capacity in Olmsted Flowline, as provided in the contract dated February 17, 1958, and permit an increase of that right to fifteen (15) cfs. As consideration for this modification, Orem City relinquished its option to the District to purchase Olmsted Flowline from UP&L. The District in turn agreed to relinquish its option to the United States, provided that the Olmsted Flowline was acquired as a portion of the Bonneville Unit of the Central Utah Project.

FLOW RIGHTS

8. Provo understands and agrees that the flow capacity in the Project Works will first be used up to a limit of fifteen (15) cfs capacity to convey Non-Project Water to Orem City as provided for in the agreement referenced in paragraph 7.(d)(ii). Thereafter, the flow capacity in the Project Works will next be used to convey Project Water.

(a) Project Water petitioned for and allotted to Provo shall be delivered by the District in accordance with provisions of an executed petition and/or contract with Provo.

(b) This Agreement provides for the conveyance of Non-Project Water to Provo on a space available basis. It is understood that the Unused Capacity of facilities referenced herein is not sufficient to provide for all requests for the delivery of Non-Project Water in the Project Works. The District therefore agrees to involve all current and future Project Water petitioners in any future agreements that may be negotiated to provide for Non-Project Water deliveries in the Project Works.

(c) Requests to convey quantities of Non-Project water in excess of space available capacity will be dealt with and reduced by the District to the space available capacity of the Project Works. In limiting such requests, the District agrees to consult with all potentially affected Non-Project water users so as to limit the requests in the most fair and equitable manner reasonably possible.

PROJECT INSTREAM FLOWS

9. Provo's Non-Project Water shall not be relied on by the District or the United States to satisfy minimum in-stream flows or fisheries releases in the Utah Lake-Jordan River Drainage, including all tributaries thereto; provided, however that during such times as Non-Project Water is conveyed to Provo in the natural channel of the Provo River, this water may be non-consumptively used by the District and the United States to satisfy minimum stream flow requirements. Any such non-consumptive use shall not interfere with Provo's uses or rights to such water. This non-consumptive use of Provo's water shall be without charge to the District and the United States.

DELINQUENT PAYMENTS

10. In the event of non-payment of any payments required herein that are 30 days overdue, District shall give Provo ten-days (10) written notice of default. If Provo shall fail to cure the default within five-days (5) of its receipt of written notice of default, District may pursue all legal remedies available to it, including but not limited to, unauthorizing conveyance of Provo's Non-Project Water in the Project Works and District Facilities as well as requesting the State Engineer and Provo River Commissioner to cease delivery of the Provo's Non-Project Water causing Power Interference in order to restore power generation. The Parties agree, however, to attempt in good faith to resolve any payment disputes promptly as they may occur. Any such suspended or precluded water deliveries because of non-payment shall resume upon the payment-in-full of any outstanding and due amounts, together with accrued interest as provided in Section 10 of this Agreement.

CHARGES FOR DELINQUENT PAYMENTS

10. Every charge required by this Agreement to be paid by Provo, which shall remain unpaid after it has become due and payable, shall be subject to a penalty of eighteen percent interest (18%) per annum. Interest shall begin to accrue from the date of the delinquency until the outstanding delinquency together with all accrued interest has been paid in full. All money received shall first be applied to satisfy the accrued interest, and then to the Federal Carriage Charge reimbursement, then to the District Carriage Charge, then to the OM&R cost payment including Capital Replacement Reserves, and then to the Lost Revenue payment.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

11. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by the parties hereto and the United States.

OFFICIALS NOT TO BENEFIT

12. No member of or delegate to Congress, resident commissioner, or local official of Provo shall benefit from this Agreement other than as a water user or landowner in the same manner as other users or landowners.

INTEGRATION OF PRIOR AGREEMENTS

13. This Agreement shall supersede all prior written carriage agreements among the Parties hereto and may only be amended or superseded by a subsequent written agreement, signed by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first herein above written.

**CENTRAL UTAH WATER
CONSERVANCY DISTRICT**

By _____
N. Gawain Snow, President

Attest _____
Secretary, Gene Shawcroft

CITY OF PROVO

By _____
[Title]

Attest _____
Recorder *[if applicable]*

UNITED STATES

By _____
Reed R. Murray, Program Director
Department of the Interior

Approved for Legal Sufficiency
By _____
Intermountain Region
Office of the Solicitor

Provo City (*Redevelopment*)

Staff Memorandum

Mill Race Development Owner Participation Agreement

July 23, 2019

<p>Department Head David Walter 852-6167</p> <p>Presenter David Walter 852-6167</p> <p>Required Time for Presentation 30 minutes</p> <p>Is This Time Sensitive Yes</p>	<p>Purpose of Proposal</p> <ul style="list-style-type: none">• To effectuate the redevelopment of Block 1, the block where the former IFA store is located, by transferring Redevelopment Agency property to Mill Race Development LLC <p>Action Requested</p> <ul style="list-style-type: none">• Approve the attached Resolution authorizing the Chief Executive Officer of the Redevelopment Agency to sign the attached Owner Participation Agreement <p>Relevant City Policies</p> <ul style="list-style-type: none">• Pursue economic development initiatives• Eliminate blight• Provide Housing <p>Budget Impact</p> <ul style="list-style-type: none">• <p>Description of this item</p> <ul style="list-style-type: none">• The Community Redevelopment Agency of Provo City Corporation (Agency) purchased the property at 54 West 500 South in December of 2017 from Intermountain Farmer's Association (IFA). The Agency purchased the property in order to help IFA acquire their current location in the former OfficeMax building. However, the purchase also would allow the Agency to own approximately a quarter of a block in an area that has seen a great deal of activity recently and success with the Startup Building and other business newly opened in the area. This led to an opportunity to participate the redevelopment of the entire block and the Agency can now leverage their ownership of the existing IFA building into a larger development.
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	<ul style="list-style-type: none">● Agency staff began to meet with the remaining property owners on the block to gauge their interest in participating with the Agency in the redevelopment of the block. Unbeknownst to staff, Mr. Justin Earl had begun negotiations to acquire the largest piece of property on the block. Once the transaction was finished, we had the opportunity to meet with him and ascertain that he would be interested in the redevelopment of the entire block of property.● Mr. Earl met with his development team and presented a plan that will include an office tower, condominiums for sale and apartments for lease on the property. The development will also include meeting space and structured parking. Mr. Earl intends to offer some workforce housing as part of the office space. Should a firm lease space in the office tower, they would be able to contract for an apartment that would be available to their employees who make 60% the area median income.● Mr. Earl and his company have worked with the City's Community Development department to provide both a Development Agreement and PRO Zone for this block and are now looking to have the attached Owner Participation Agreement (OPA) approved in order to begin the construction process.● The OPA provides for the transfer of property to Mr. Earl's company with the requirement that the development could pay the Agency back after 10 years at the market value of \$1,600,000 or pay the Agency back at a later date by appraising the development and paying the Agency one-fourth of the land value of the project, one-fourth being the Agency's approximate holding in the block. The developer is also asking the Agency to consider providing tax increment to the project in exchange for public parking in the parking structure.● Staff recommends approving the attached resolution authorizing the Chief Executive Officer or designee to sign the attached OPA and make minor changes to the document, provided such changes do not substantially change the deal points.
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Attachments: Resolution

Owner Participation Agreement

Development Proposal

1 RESOLUTION 2019-.

2
3 A RESOLUTION APPROVING A LEASE AGREEMENT WITH BLUE SKY
4 DEVELOPMENT TO ALLOW THEM TO UTILIZE PARKING SPACES FOR
5 A PENDING MIXED-USE PROJECT AT 105 EAST CENTER STREET.
6 (19-070)
7

8 WHEREAS, Blue Sky Development has a pending mixed-use project for development at
9 105 East Center Street in Provo and is interested in leasing 55 of the stalls currently owned by
10 the Redevelopment Agency in the Wells Fargo Tower; and,
11

12 WHEREAS, the RDA and Blue Sky Development have negotiated a proposed lease
13 agreement; and,
14

15 WHEREAS, on June 18, 2019, July 9, 2019, and July 23, 2019, the Governing Body met
16 to ascertain the facts regarding this matter and receive public comment, which facts and
17 comments are found in the public record of the Council's consideration; and
18

19 WHEREAS, after considering the facts presented to the Governing Body of the RDA, the
20 Governing Body of the Redevelopment Agency finds (i) the RDA should enter into a lease
21 agreement for the parking stalls according to the terms described in Exhibit A, and (ii) the lease
22 of the stalls by Blue Sky Development reasonably furthers the health, safety and general welfare
23 of the citizens of Provo City.
24

25
26 NOW, THEREFORE, be it resolved by the Redevelopment Agency of Provo City Board
27 of Directors, as follows:
28

29 PART I:
30

- 31 1. The Chief Executive Officer is authorized to enter into a lease of parking stalls
32 to Blue Sky Development according to the terms in Exhibit A.
- 33 2. The Chief Executive Officer of the Agency or designee is authorized to sign
34 any paperwork necessary to effectuate the deal and to make minor changes to
35 the language and wording of the documents provided such changes do not
36 involve the structure of the deal.
37

38 PART II:
39

40 This resolution shall take effect immediately.
41

42 END OF RESOLUTION.

EXHIBIT A

PARTICIPATION AGREEMENT
by and between the
REDEVELOPMENT AGENCY OF PROVO CITY
and
MILL RACE PARTNERS

This PARTICIPATION AGREEMENT (“**Agreement**”) is made and entered into as of this _____ day of _____, 2019 (the “**Effective Date**”), by and between the REDEVELOPMENT AGENCY OF PROVO CITY (“**Agency**”), a political subdivision of the State of Utah existing and operating under the Utah Limited Purpose Local Government Entities - Community Reinvestment Agency Act, Utah Code § 17C-1-101 *et seq.*, and/or its predecessor statutes (“**Act**”), and Mill Race Partners , LLC (“**Participant**”), a Utah Limited Liability Corporation. Participant and the Agency may from time to time hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties.**” As authorized by the Act, the Agency and the Participant do hereby agree and covenant as follows:

1. SUBJECT OF AGREEMENT

1.1. Purpose of Agreement

The purpose of this Agreement is to further carry out in part the Project Area Plan for the South Downtown Community Development Project Area adopted July 1, 2014 (“**Plan**”) for the South Downtown Community Development Project Area (“**Project Area**”), by providing for property tax increment incentives to entice Participant to invest in and redevelop portions of the Project Area and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in the further development of the Project Area, which will benefit the Project Area, Provo City (“**City**”), Utah County and the State of Utah.

1.2. Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of the City, and the health, safety, and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

1.3. The Project Area

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

1.4. The Project Area Plan

This Agreement is subject to the provisions of the Plan. The Plan is attached hereto as **Exhibit A**.

1.5. Interlocal Agreements

Subject to the terms of the interlocal agreements with Provo City, the Provo City School District, Utah County, and the Central Utah Water Conservancy District (attached hereto as **Exhibits B, C, D, and E**, respectively) (the “**Interlocal Agreements**”), the Agency is entitled to receive, for a period of up to 12 years, a portion of the tax increment generated by the development on the Site (the “**Agency Share**”).

1.6. Description of the Site

The site of the development contemplated by this Agreement shall be located within the Project Area on multiple parcels totaling approximately 3.67 acres (the “**Site**”) that Participant intends to acquire. The Site is shown in detail on the site map, attached hereto as **Exhibit F**. The Site is only a portion of the Project Area.

1.7. Description of the Facility

Pursuant to the term of this Agreement, the Participant shall construct upon the Site a multi-use development as further described in **Exhibit G** (the “**Facility**”). The current conceptual development plan for the Facility is included in **Exhibit H**. The conceptual development plan depicted in **Exhibit H** is governed by that certain Development Agreement between the City and Participant dated _____, 2019 (the “**Development Agreement**”), which is attached hereto as **Exhibit I**. The development plans depicted and described in **Exhibit H** are subject to modification on the terms provided in the Development Agreement, and all references in this Agreement to **Exhibit I** shall refer to such development plans for the Site as such plans are modified from time-to-time in accordance with the Development Agreement.

1.8. Parties to the Agreement

1.8.1. The Agency

The Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency for purposes of this Agreement is:

Redevelopment Agency of Provo City
City Center Building
351 W Center St
Provo, UT 84601
Attn: Director

With a copy to:
Adam S. Long
Smith Hartvigsen PLLC
257 East 200 South, Suite 500
Salt Lake City, Utah 84111
along@shutah.law

1.8.2. Participant

Participant is Mill Race Partners, LLC, a Utah limited liability company. Participant's address for purposes of this Agreement is:

Mill Race Partners,
LLC Attn: Justin Earl and Greg Nelson
240 N East Promontory, Suite 200
Farmington, Utah 84025
801-971-7400

1.9. Prohibition against Certain Changes

1.9.1. Acknowledgement by Participant

Participant acknowledges the importance of the continued and further development of the Project Area, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the development of the Project Area possible, that a significant change in the identity of Participant may be considered, for practical purposes, a transfer or disposition of the Site, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

1.9.2. Transfer of Property Prohibited

Participant represents and agrees for itself, its successors, and assigns that, as of the Effective Date of this Agreement, and during the Term (as defined in Section 2.1.6), Participant has not made or created and shall not make or create any sale, conveyance, deed, transfer, assignment, or lease of the Site, or any portions thereof, during the Term except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

1.9.3. Assignment or Transfer of Agreement

Participant represents and agrees for itself, its successors, and assigns that, during the Term, Participant shall not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, except as explicitly allowed herein or as agreed to in writing by the Parties. In the event there is a transfer or assignment of this Agreement without the express written consent, which consent shall not be unreasonably withheld, of the Agency the Agency, in its sole discretion, may suspend any and all payments under this Agreement to the Participant and any assignee or transferee of the Participant until such time that the Agency is satisfied that the purposes of this Agreement and the Plan will continue to be fulfilled and that such payments will be made to the proper person or entity.

1.9.4. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any act or attempt by Participant, its successors, or assigns to transfer any of Participant's real or personal property within the Site to a tax-exempt organization to exempt any of the real or personal property within the Site from any *ad valorem* taxes without the prior written consent of the Agency, which consent will not be unreasonably withheld, will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to Participant, its successors, or assigns. Participant and Agency acknowledge that Participant has held prior discussions with a tax-exempt organization concerning the potential purchase of fifteen thousand (15,000) square feet of the office portion of the Project.

1.9.5. Continuing Obligations

In the absence of a specific written approval by the Agency, no assignment or transfer of this Agreement, in whole or in part, relieves Participant from any obligation under this Agreement. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant, its successors, and assigns until the expiration or termination of this Agreement.

1.9.6. Representation as to Development Intent

Participant represents and agrees that its acquisition and use of the Site, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of development of the Site and not for speculation in land holding.

2. OBLIGATIONS OF THE PARTIES

2.1. Payment of Incentive

2.1.1. Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant as an incentive eighty seven percent (87.0%) of the Agency Share actually paid to the Agency (the "**Incentive**"). Participant agrees to provide twenty (20) public parking stalls within the proposed parking structure during those times when the structure is not being utilized by the tenants of the Project.

The Agency expects to receive the Agency Share within the first quarter of 2022, which is the year following the tax year (i.e., 2021) the Agency triggers the payment of the Agency Share under the Interlocal Agreements. After the end of the tax year for which the Agency is receiving the Agency Share, the Agency shall pay the Incentive to Participant within thirty (30) days after the date on which all conditions precedent set forth in Section 2.3 have been met.

In the event that the Interlocal Agreements or the Act conflict in any way with this Agreement, this Agreement's conflicting term(s) are and shall be subordinate to the terms of the Interlocal Agreements and/or the Act. Nothing in this Agreement shall obligate the Agency to pay to Participant any amounts beyond those actually received by the Agency.

2.1.2. Collection of the Agency Share

The Agency shall have sole authority to begin, or "trigger," collection of the Agency Share from the Site according to the terms of the Interlocal Agreements. Unless requested otherwise by Participant, the Agency agrees to take actions necessary under the Interlocal Agreements to begin collecting the Agency Share from the Site for 2021.

2.2. Sole Source of Funding for Incentive

The entirety of the Incentive will be funded solely by the payments of the Agency Share received by the Agency pursuant to the Interlocal Agreements. Participant is not, and shall not be, entitled to any other funds collected by the Agency including other tax increment generated within the Project Area. The Incentive is expressly subject to and limited to the amounts available after the limitations and reductions described in this Agreement.

The Agency shall pay the Incentive to Participant only to the extent that tax increment for the Agency Share is actually generated from the Site and that the Agency Share is actually paid to the Agency pursuant to the Interlocal Agreements. The Agency Share is the only funding source available or obligated under this Agreement. Participant acknowledges and agrees that the Agency has no funds or revenue to make payments under this Agreement other than the Agency Share that the Agency receives under the Interlocal Agreements.

2.3. Conditions Precedent to the Payment of the Incentive to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Incentive unless and until all of the following conditions precedent are satisfied:

2.3.1. Agency is Entitled to Receive the Agency Share

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Agency Share pursuant to the Interlocal Agreements.

2.3.2. Agency has Actually Received the Agency Share

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Agency Share from Utah County for the particular calendar year.

2.3.3. Continued Ownership and Operation of Participant's Facility

The Agency is not obligated to pay Participant any Incentive unless Participant (or its permitted assigns) has continuously owned and operated, as defined in Section 2.14, the Facility within the Project Area for the entire year for which Participant seeks payment of the Incentive.

2.3.4. Payment of Taxes

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation from Participant showing that Participant has paid all Taxes attributable to the Site as and when such Taxes are actually due. Notwithstanding the foregoing, Participant may at its cost and expense petition to have the assessed valuation of the Site reduced or may

initiate proceedings to contest Taxes assessed on the Project Area. Participant acknowledges that any reduction in the assessed value of the Site will result in a corresponding reduction in the Incentive. Upon the final determination of any proceeding or contest, Participant shall immediately pay the Taxes due, together with all costs, charges, interest, and penalties incidental to the proceedings. If Participant does not pay the Taxes when due and contests such taxes, Participant shall not be in Default (as defined in Section 5.1) under this Agreement for nonpayment of such taxes if Participant deposits funds sufficient to pay the contested taxes with the Agency or in an interest-bearing account reasonably acceptable to the Agency. The amount of such deposit shall be sufficient to pay the Taxes plus a reasonable estimate of the interest, costs, charges, and penalties which may accrue if Participant's action is unsuccessful. The deposit will be applied to the Taxes due, as determined at such proceedings. The real property taxes shall be paid under protest from such deposit if such payment under protest is necessary to prevent the Site from being sold under a "tax sale" or similar enforcement proceeding. At the conclusion of such protest or action, the Agency shall refund any remaining portion of such deposit to Participant.

2.3.5. Request for Payment by Participant

The Agency is not obligated to pay the Incentive to Participant unless Participant has made a request for payment in writing pursuant to Section 2.2.1 for the year for which Participant seeks payment of the Incentive.

2.3.6. Capital Investment and Improvements to Project Area

The Agency is only obligated to pay to Participant the Incentive to the extent that Participant has met the requirements under Section 2.13.

2.3.7. Affordable Housing

The Agency is only obligated to pay to Participant the Incentive to the extent that Participant has provided affordable housing as described in Section 2.20.

2.4. Effect of Failure to Meet Conditions Precedent

In the event that the conditions precedent as described in Section 2.3 are not met for any given calendar year during the Term: (a) Participant shall not be entitled to receive the Incentive attributable to that calendar year; and (b) Participant shall forfeit the Incentive for that particular year.

Notwithstanding the foregoing, in the event that the conditions precedent as described in Section 2.3 are not met for any given calendar year during the Term, Participant shall not be considered to be in Default under this Agreement.

2.5. Limitations on the Incentive

Pursuant to the Interlocal Agreements and the conditions set forth in this Agreement, the Agency shall pay the Incentive to Participant for the period of January 1, 2021 until December 31, 2036 (“**Term**”). The Term shall not exceed fifteen (15) years.

Participant acknowledges that the Incentive is limited by the Term and the amount of tax increment actually generated by development of the Site and received by the Agency. Participant further acknowledges that the Agency does not guarantee that Participant will receive a minimum dollar amount during the Term. The amount of tax increment generated by the Site is determined by the assessed value of the Site as determined by the Utah County Assessor. The Agency does not guarantee a particular assessed value of the Site nor does the Agency control or influence the assessed value of the Site.

Notwithstanding all other provisions in this Agreement, the Agency is not obligated to pay to Participant in any one calendar year more than the Incentive attributable to the immediately preceding tax year. The Term and the Incentive shall not be increased by any future extension of or modification to the Interlocal Agreements. For purposes of clarification, if the Agency were to amend the Interlocal Agreements at some point in the future so that the Agency receives a greater percentage of tax increment from the Site or for a longer period of time, the Agency shall not be obligated to pay to Participant any amount greater than what Participant would have received under the terms of this Agreement and the Interlocal Agreements as effective as of the date of this Agreement

2.6. Request for Incentive

Participant shall submit in writing a request for payment to the Agency by March 31st of the year following the calendar year for which payment of the Incentive is sought. The first request for Payment is anticipated to be made on or before March 31, 2022 for the 2021 tax year. Participant shall include in the request proof of payment of all Taxes subject to and described in Section 2.2.2 (“**Request for Payment**”). Unless the Agency sends written notice to Participant of deficiency in the Request for Payment within thirty (30) days of receipt of a Request for Payment, such Request for Payment shall be deemed complete. Participant shall have a reasonable time not to exceed thirty (30) days in which to rectify any deficiencies specified in a notice, and the Request for Payment shall be deemed timely delivered in the event any such deficiencies are rectified within that period.

2.7. Payment of Taxes

During the Term and to the extent applicable, Participant and any of its successors-in-interest in any portion of the Site agree to pay, prior to delinquency, all undisputed Taxes assessed against any portion of the Site to the extent owned by Participant or any of its successors-in-interest; provided, however, Participant expressly retains any and all rights to: (a) challenge, object to, or

appeal any Taxes; and (b) petition for the reduction thereof, as set forth in Section 2.3 of this Agreement. Participant shall, however, notify the Agency in writing within fifteen (15) calendar days of the Participant's filing of any protest or appeal of such assessment determination or taxes and provide a copy to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, Participant shall give to the Agency written notice at least fifteen (15) calendar days prior to the time and date of such protest or appeal is to be heard, if known. The Agency shall have the right, without objection by Participant, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of, or objection to the amount of assessment or taxes which should or should not be assessed against the real or personal property within the Site. If Participant files any protest or appeal, Participant shall not have any claim to the Incentive for such year or years until the protest period ends or a final, non-appealable assessment has been determined. In the event the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the Ad Valorem Taxes against the property within the Site adjusts the assessed value of such property through an audit, the Incentive shall be proportionately increased or decreased, which may result in a refund from Participant to the Agency, or an increased Incentive from the Agency to Participant. At the Agency's sole discretion, the Agency may withhold the Incentive for the final year of the Term until final and unappealable values for property within the Site have been determined, whether through the passage of time or through an appeal by Participant as to the taxable value of such property.

2.8. Removal or Satisfaction of Levies or Attachments

Participant shall remove, or shall have removed, any levy or attachment made on the Project Area (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to any sale or Event of Default.

2.9. Reduction or Elimination of the Incentive

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Agency Share to the Agency or the Incentive to Participant as contemplated in and by this Agreement. If the provisions of Utah law that govern the payment of the Agency Share or Incentive are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreements, the Agency's obligation to annually pay the Incentive to Participant, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Further, Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, and the Interlocal Agreements were properly approved, adopted, and made effective. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of the Agency Share to the Agency and/or the Incentive to Participant, and nothing

herein shall be construed as an estoppel, waiver, or consent to reduce or eliminate payment of the Agency Share to the Agency and/or the Incentive to Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of the Agency Share to the Agency and/or the Incentive to Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

2.10. Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction seeking to invalidate the Project Area, Interlocal Agreements, or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Agency Share to the Agency, the Agency shall provide written notice of such legal action to Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the payment of the Agency Share to the Agency. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Agency Share to the Agency and/or the Incentive to Participant, and nothing herein shall be construed as an estoppel, waiver, or consent to reduce or eliminate payment of the Agency Share to the Agency and/or the Incentive to Participant. In the event that the court declares that the Agency cannot receive the Agency Share, invalidates the Project Area, Interlocal Agreements or this Agreement, or takes any other action which eliminates or reduces the amount of Agency Share paid to the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to annually pay the Incentive to Participant in accordance with this Agreement will be reduced or eliminated to the extent that the Agency Share is not received by the Agency.

2.11. Dispute over Receipt of Payment of the Incentive

If not due to the act, error, or omission of the Agency, in the event a dispute arises as to the person or entity entitled to receive all or a portion of the Incentive due to a claimed assignment or claimed successor-in-interest to all or a portion of the Incentive or otherwise, the Agency may withhold payment of the Incentive and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Incentive any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute.

2.12. Nature of Participant's Obligations and Limitation

To qualify to receive the Incentive as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement.

2.13. Improvements to the Site; development of the Facility

Participant shall improve the Site pursuant to the Schedule of Performance, attached hereto as **Exhibit J**, *subject to* any extensions of such timeframes allowed under the Development Agreement, Developer shall have the right to request an extension of such period of time for twenty-four months by providing the City a market report from a reputable appraiser indicating that such final phase is not economically viable or recommended given the then current market conditions. Agency shall not unreasonably deny such a request. As detailed in the Schedule of Performance, Participant must develop the Site in a particular manner and on the specified timeframe. In the event that Participant fails to comply with the milestones and deadlines as set forth on the Schedule of Improvements, Participant shall not receive the Incentive until all development milestones have been met. For purposes of requirements in the Schedule of Performance pertaining to square feet, such square footage shall be counted toward the benchmarks as described on the Schedule of Performance if the City has issued certificate(s) of occupancy for such spaces. Agency and Developer agree that changes to the Schedule of Performance shall be accepted when both sides have agreed in writing to such changes.

2.14. Operation and Maintenance

Participant shall operate and maintain the Site in a commercially reasonable manner and in accordance with industry standards and in compliance with all applicable federal, state and municipal laws and regulations. For purposes of this Agreement, the Facility shall be considered to be "operating" or "in operation" if at least eight-five of the space for which certificates of occupancy have been issued is (a) in the case of condominiums, already sold to an unrelated third party or is available for immediate sale and (b) in the case of commercial, office, or residential space for which title will not be transferred, occupied or available for immediate leasing and occupancy.

2.15. Continuity

Participant agrees, for itself and any successors in interest, that its operation of the Facility, either by Participant or a successor in interest substantially equivalent to that of Participant in terms of type of use and square footage, shall continue during the Term, without cessation for any continuous period of more than 15 days or more than 75 total days throughout the Term.

2.16. Funding Responsibility

The Parties understand and agree that funding for the development of the Project Area comes entirely from Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

2.17. Audits, Appeals, and Reassessments

As noted in Section 2.3 Participant may object to, challenge, or appeal any Taxes that may be owed by Participant for property within the Site. However, in the event that such an action is pursued by Participant and is eventually successful in reducing the taxable valuation of Participant's property in the Site, Participant shall immediately pay to the Agency the portion of the Incentive for that year proportionate to the reduction in taxable value. In the event that Participant does not timely make such payment to the Agency, the Agency may correspondingly reduce the Incentive paid to Participant for the next year of the Term. The Agency, at its sole discretion, may withhold payment of the Incentive for the final year of the Term until such date as Participant can no longer appeal or contest the assessed value of Participant's property within the Project Area.

Likewise, if an audit, reassessment, or similar action by the Utah County Assessor or the Utah State Tax Commission results in an increased valuation of Participant's property within the Site, the Agency shall pay additional Incentive for that year in proportion to the increase in taxable value of Participant's property within the Project Area, subject to compliance with the terms of this Agreement.

2.18. Hazardous, Toxic, and/or Contaminating Materials

Participant agrees to defend and hold the Agency, the Agency's directors, officers, agents, employees and consultants, harmless from any and all claims, liability, loss, costs, fines, penalties, charges, and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic, and/or contaminating materials within the Site.

2.19. Agency-owned Parcel

The Agency has transferred a parcel of real property to Participant in exchange for promises by Participant to develop the Facility and to make investments within the Project Area as described in this Agreement. The parcel that is transferred to Participant is shown on **Exhibit K** (the "**Agency Parcel**"). The parties agree that the fair market value of the Agency Parcel is \$1,600,000. Notwithstanding any other terms of this Agreement, in the event that Participant fails to comply with the terms of this Agreement, including but not limited to the performance benchmarks as described in Section 2.13, the Agency may, at its sole discretion, withhold the payment of the Incentive to Participant until the Agency has collected and retained an amount

equal to the fair market value of the Agency Parcel as described in this paragraph. Alternately and at the Agency's sole discretion, if Participant has not made the Phase 1 improvements to the Agency Parcel as contemplated by this Agreement in the Schedule of Performance by the date that is five years from the effective date of this Agreement, Participant shall (i) pay to the Agency in cash or other immediately available funds the full amount of the fair market value of the Agency Parcel established in this Section 2.19 consistent with the next sentence of this Section 2.19, or (ii) if Participant does not pay such amount by such five year anniversary of this Agreement, then upon written request from the Agency, Participant shall immediately transfer title to the Agency Parcel and any improvements thereon back to the Agency. Agency and Participant agree that for the first ten years following the issuance of a Certificate of Occupancy on the first phase of the development, Participant shall have the option, at its choosing, of paying the fair market value of the Property as stated above to Agency. In subsequent years, when Participant sells the Project, Participant and Agency shall obtain an appraisal of the Property (the "Appraisal") as provided in this Section 2.19. The parties shall mutually agree upon a licensed appraiser holding MAI designation from the Appraisal Institute. In the event that the parties are unable to agree on an appraiser, each party shall select an appraiser having the same qualifications, and those two appraisers shall mutually agree on a third appraiser having the same qualifications, who shall perform the Appraisal. The Appraisal shall establish the land value of the Project, of which amount twenty-five percent (25%) shall be conveyed to the Agency as fair market value of the Agency Parcel.

2.20. Affordable Housing

Affordable housing shall be provided as required in the Mill Race PRO Zone Ordinance adopted by the Provo City Council April 23, 2019, incorporated herein and made a part by this reference.

3. ADDITIONAL TERMS

3.1. City Land Use Authority

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City's authority over land use, zoning, and permitting within the City.

3.2. Restriction Against Parcel Splitting

If applicable, during the Term, Participant shall not, without the prior written approval of the Agency, (a) convey its interest in the Site or any portion thereof, if any, in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install any building or structure within the Project Area in such a way that any portion thereof would extend outside of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside

of the Project Area in such a way that Utah County could no longer identify the periphery of the Project Area by distinct parcels.

3.3. Disconnection

Participant agrees that it will not cooperate with any person, group, or municipality in any effort to disconnect, de-annex, or remove the Project Area or any portion thereof from the City during the Term. In the event that the Site or a portion thereof is disconnected, de-annexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Incentive for that portion of the Site outside of the City shall immediately cease.

3.4. Indemnification

Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any negligent acts done or any negligent errors or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors on the Site.

3.5. Limits on Liability

In no event shall one Party be liable to the other for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability, or otherwise, and regardless of whether the Parties have been advised of the possibility of such damages at the time of contracting or otherwise.

3.6. Local, State, and Federal Laws

Participant shall construct and operate the Site and development on the Site in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

3.7. Discrimination

Participant agrees that it will not unlawfully discriminate against any employee or applicant for employment, or any contractor or any bidder on any contract.

3.8. Rights of Access

The Agency's representatives shall have the right of reasonable access to the Site for purposes of inspection, with reasonable and prior written notice, and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant. Such representatives of the Agency and other visitors to the Project Area shall observe any reasonable rules adopted by Participant for purposes of maintaining safety and security in the Project Area, including requirements that such representatives or visitors be escorted by any designated agent of Participant.

3.9. Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

3.10. Non-waiver of Governmental Immunity

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code § 63G-7-101, *et seq.*, as may be amended from time to time.

3.11. Consent to Recording

The Parties hereby consent that this Agreement, or any abstract thereof, may be recorded against the Site.

4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors-in-interest for the benefit of each of the respective Parties, their successors, and assigns during the Term, which shall terminate upon the later of: (a) the final payment of the Incentive during or upon the expiration of the Term; or (b) upon the written agreement signed by the Parties.

5. DEFAULTS, REMEDIES, AND TERMINATION

5.1. Default

If either the Agency or Participant fails to perform or delays performance of any material obligation under this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement (“**Default**”). The Party in Default must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the time period provided in Section 5.3.

5.2. Notice

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice (“**Default Notice**”) of the Default to the defaulting Party specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

5.3. Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless (a) the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto or (b) where the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same if the Default is of a nature that cannot be cured within such thirty (30) day period. The Parties understand and agree that a Default which can be cured by the payment of money is a type of default that can be cured within thirty (30) days. If a Default is not cured or commenced to be cured if such default is of a nature that cannot be cured within thirty (30) days by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an “**Event of Default**,” and the non-defaulting Party, at its option, may institute an action for specific performance of the terms of this Agreement or pursue such other rights and remedies as it may have at law and/or equity.

5.4. Rights and Remedies

Upon the occurrence of an Event of Default, and subject to Section 6.11, the non-defaulting Party shall have all rights and remedies against the defaulting party as may be available (a) in this Agreement; (b) at law or in equity to cure, correct, or remedy any Default; (c) to terminate this Agreement; (d) to obtain specific performance; (e) to recover damages for any Default; and/or (f) to obtain any other remedy consistent with the purposes of this Agreement. Such

remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default by the defaulting party.

5.5. Legal Actions

5.5.1. Venue

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Fourth District Court for the State of Utah located in Utah County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah. Each Party hereby waives any objection based on *forum nonconveniens* or any objection to venue of any such action.

5.5.2. Service of Process

Service of process on the Agency shall be made by personal service upon the chairman or executive director of the Agency or in such other manner as may be provided by law. Service of process on Participant shall be by personal service upon its registered agent(s), or in such other manner as may be provided by law, whether made within or without the State of Utah.

5.5.3. Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

6. GENERAL PROVISIONS

6.1. Authority

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards the representing and warranting Party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; and (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

6.2. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered or (2) dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Section 1.5.1 and 1.5.2. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may

from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

6.3. Severability

In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

6.4. Nonliability of Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, for any Default, Event of Default, or breach of a Party or for any amount which may become due to a Party or to its successor, or on any obligations under the terms of this Agreement.

6.5. Enforced Delay; Extension of Time and Performance

In addition to the specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency's executive director or its governing board or on the part of Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

6.6. Approvals

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

6.7. Time of the Essence

Time is and shall be of the essence in each Party's performance of their obligations and covenants under this Agreement.

6.8. Attorney Fees

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

6.9. Interpretation

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party shall be construed as creating the relationship of principal and agent, partnership, joint venture, or an enterprise between the Parties.

6.10. No Third-Party Beneficiaries

The Parties understand and agree that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

6.11. Mediation

In the event a dispute arises between the Parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the Parties, the Parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the Parties. The Parties must mediate in good faith to resolve the dispute in a timely manner. Each Party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Provo, Utah.

6.12. Headings

Article and section titles, headings, or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

6.13. Contra Proferentum

This is an arm's-length agreement. The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

6.14. Further Assurances

The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

6.15. Incorporation of Recitals and Exhibits

All Exhibits hereto are incorporated into this Agreement as if fully set forth herein.

6.16. Governmental Records and Management Act

The Agency acknowledges that the information provided by the Participant to the Agency in connection with this Agreement designated as confidential shall be protected to the extent possible pursuant to GRAMA under a claim of "business confidentiality" so long as Participant complies with the applicable requirements in making a claim of business confidentiality under Utah Code § 63G-2-309(1)(a)(i)(A) & (B).

7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

7.1. Duplicate Originals

This Agreement may be executed in duplicate originals, each of which shall be deemed an original. Electronic pdf signatures shall be considered original signatures.

7.2. Integration

This Agreement (including its Exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements, except the First Participation Agreement, between the Parties with respect to the subject matter thereof.

7.3. Waivers and Amendments

All waivers of any provision of this Agreement must be in a writing signed by the Parties. This Agreement and any provisions hereof may be amended only by mutual, signed written agreement between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

[remainder of page intentionally left blank; signature page follows]

[signature page]

**REDEVELOPMENT AGENCY OF PROVO
CITY**

By: _____

Name: _____

Title: Chair

Attest:

Secretary

[PARTICIPANT]

By: _____

Name: _____

Title: _____

8. LIST OF EXHIBITS

EXHIBIT A - *Project Area Plan*

EXHIBIT B - *City Interlocal Agreement*

EXHIBIT C - *County Interlocal Agreement*

EXHIBIT D - *School District Interlocal Agreement*

EXHIBIT E - *CUWCD Interlocal Agreement*

EXHIBIT F - *Site Map*

EXHIBIT G - *Conceptual Development Plans*

EXHIBIT I - *Development Agreement*

EXHIBIT J - *Schedule of Performance*

EXHIBIT K - *Agency Parcel*

EXHIBIT A
Project Area Plan

EXHIBIT B
City Interlocal Agreement

EXHIBIT C
County Interlocal Agreement

EXHIBIT D

School District Interlocal Agreement

EXHIBIT E
CUWCD Interlocal Agreement

EXHIBIT F
Site Map

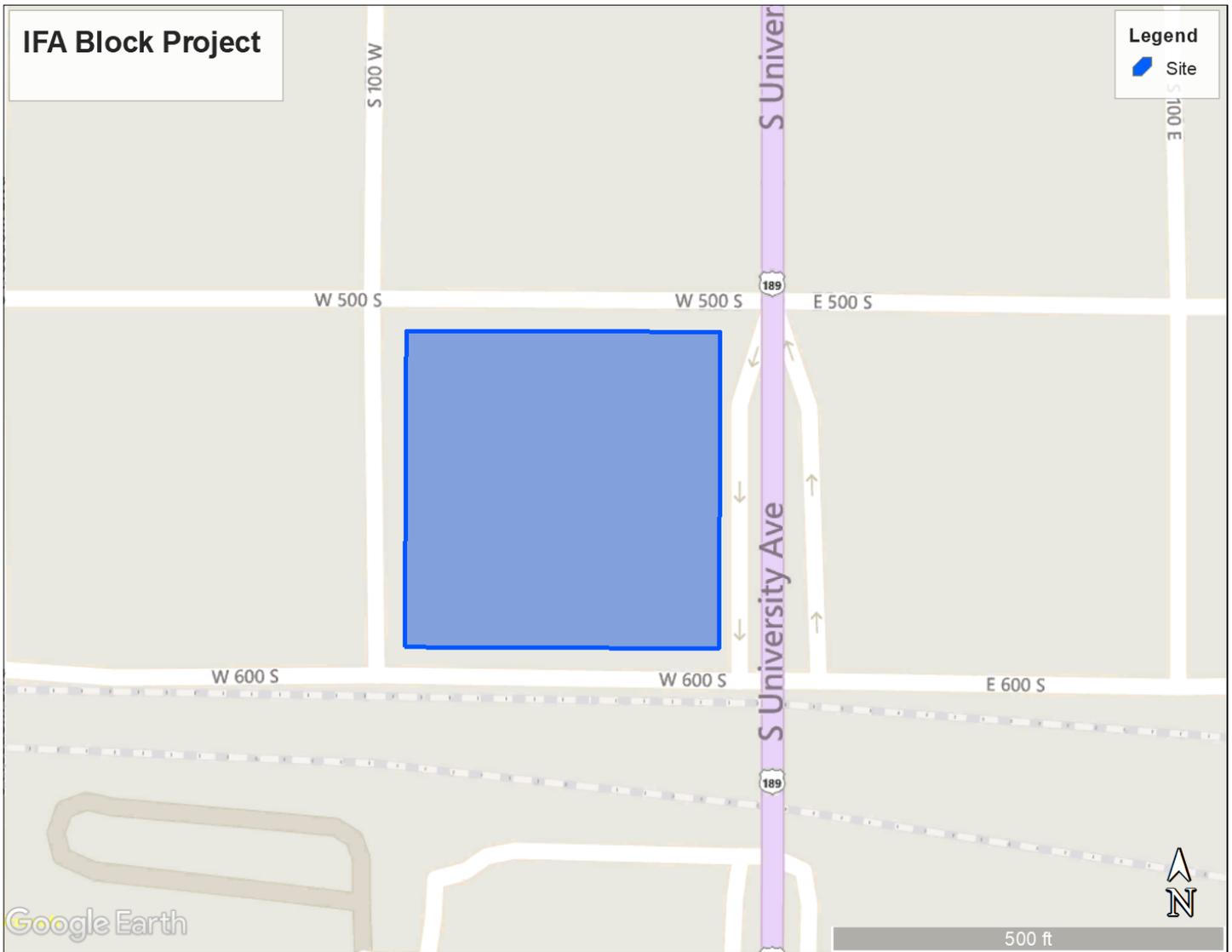


EXHIBIT G
Conceptual Development Plans

EXHIBIT I
Development Agreement

DEVELOPMENT AGREEMENT FOR MILL RACE AT PROVO STATION

(510 South University Avenue)

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the _____ day of _____, 2019 (the “Effective Date”), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as “City,” and Mill Race Partners, LLC, hereinafter referred to as “Developer.” The City and Developer are hereinafter collectively referred to as “Parties.”

RECITALS

A. Developer intends to acquire approximately 3.7 acres of land located within the City of Provo, as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the “Property”).

B. On _____, the City Council approved Ordinance _____, vesting zoning (the “Vesting Ordinance”), based on the Site Plan set forth on EXHIBIT B (“Site Plan”), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the “Project”).

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

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

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

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

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

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

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

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

AGREEMENT

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.
2. Zoning. The Property shall be developed in accordance with (i) the requirements of the Mill Race PRO Zone, (ii) all other features as generally shown on the Final Plat, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Final Plat as permitted by the aforementioned zoning designations for the Property.
3. Governing Standards. The Final Plat, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Final Plat, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Final Plat, the Vesting Ordinance and this Agreement. Non-material variations to the Final Plat, as defined and approved by the City’s Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.
4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:
 - a. Building Height. The maximum allowable building height in the Mill Race PRO Zone shall only be applied to those buildings to be built along University Avenue. Buildings that are not along University Avenue shall be limited to 100 feet in height, or 6 stories (not including subterranean parking), whichever is shorter.

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- b. Ground Floor Commercial. Pursuant to a separate Memorandum of Understanding between the Developers and certain neighbors across 100 West from the Project, Developer is committed to vetting viable commercial options for ground level occupancy along 100 West. Further, to provide maximum flexibility in the future, the building(s) along 100 West shall be built to an average ceiling height of 12-feet on the ground floor, which would allow a commercial use to occupy the space as determined by Developer.

- c. Phasing. The Project is going to be built in multiple phases with commencement on the final phase starting no later than 10 years from the issuance of the Certificate of Occupancy for the condo tower, provided that if commencement of such final phase has not started within such 10

year period, Developer shall have the right to request an extension of such period of time for twenty-four months by providing the City a market report from a reputable appraiser indicating that such final phase is not economically viable or recommended given the then current market conditions. City shall not unreasonably deny such a request. The final, fully built Project shall comply with the Downtown Design Standards and City streetscape standards as shown on approved project plans.

d. Pedestrian Bridge. UTA, Mountainlands Association of Governments, and Provo City have secured federal funding to build a pedestrian bridge that is to land at the Frontrunner Provo Station and go over the railroad tracks to the north, landing on the south side of 600 South. To facilitate the complete extension of the pedestrian bridge so that it lands on the north side of 600 South, the Developer shall contribute a landing spot in the form of a perpetual easement on the Property as shown on the Site Plan, attached as Exhibit B, for the construction, public access, operations, maintenance, etc. of the bridge. The Project shall be permitted direct connection between the Project buildings and the pedestrian bridge providing access controlled connections between the Project and the Pedestrian Bridge.

e. Condominiums. Developer has expressed its intention to sell condominiums as a part of the Project. Prior to the City issuing a Certificate of Occupancy on the final phase of the project, Developer shall demonstrate their commitment to selling condominiums through (i) the actual sale of condominiums, (ii) documented marketing efforts to sell such condominiums, or (iii) providing written evidence of Developer's good faith attempt to obtain reasonable debt financing of such condominiums and corresponding written evidence that Developer has been unable to obtain debt financing for such condominiums on commercially reasonable and/or viable terms.

f. University Avenue. Upon University Avenue bridge reconstruction and widening, Developer shall be permitted to improve land owned by Provo City pursuant to, and only to the extent shown on, the Site Plan (attached hereto as Exhibit B) and Final Plats for the final, fully built Project.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City

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Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

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

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

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

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

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

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

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

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

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

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

the default within that 60-day period and diligently continues such cure in good faith until complete.

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

1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney's fees.
2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.
3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.

The rights and remedies set forth herein shall be cumulative.

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

To the Developer: Mill Race Partners, LLC Attn: Justin Earl and Greg Nelson 240 N East Promontory, Suite 200 Farmington, Utah 84025 801-971-7400

To the City: City of Provo Attention: City Attorney 351 W Center Street Provo, UT 84601
Phone: (801) 852-6140

9. General Term and Conditions.

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

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

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

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other

persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

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

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

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

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

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

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

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

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

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within fifteen (15) years from the date of this Agreement (the "Term"), or upon the occurrence of an event

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of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (i.e., the Developer). The Term may be extended by mutual agreement of the Parties.

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

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

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

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

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

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

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

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

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

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

15. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

10

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

CITY:

CITY OF PROVO

ATTEST:

By: _____ By: _____
City Recorder Mayor Michelle Kaufusi

DEVELOPER:

Mill Race Partners, LLC

By: Title:

STATE OF UTAH) :ss COUNTY OF UTAH)

On the ____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn, did say that they are the owners of said property and have proper authority and duly acknowledged to me that they executed the same.

Notary Public Residing at:

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Exhibit A

Legal Description of the Property

ALL OF BLOCK 1, PLAT "A", PROVO CITY SURVEY OF BUILDING LOTS

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EXHIBIT J

Schedule of Performance

For purposes of this Exhibit J, the phases of the development of the Facility are defined as follows:

Phase 1a (middle and wrap)

Completion deadline: 5-years from mutual execution this Agreement

Minimum total square footage: 150,000

Minimum residential rental square footage: 125,000

Minimum commercial square footage: 0

Minimum condominium square footage: 0

Minimum office square footage: 0

Minimum number of parking stalls: 200

Phase 1b (condo)

Completion deadline: no more than 2-years after completion of the middle and wrap building in Phase 1a

Minimum total square footage: 90,000

Minimum residential rental square footage: 0

Minimum commercial square footage: 0

Minimum condominium square footage: 70,000

Minimum office square footage: 0

Minimum number of parking stalls: 125

Phase 2 (office tower)

Completion deadline: shall be the same as for the west residential building in Phase 3 as set forth in the Development Agreement between Participant and Provo City

Minimum total square footage: 100,000

Minimum residential rental square footage: 0

Minimum commercial square footage: 0

Minimum condominium square footage: 0

Minimum office square footage: 100,000

Minimum number of parking stalls: 300

Phase 3 (west residential)

Completion deadline: as set forth in the Development Agreement between Participant and Provo City

Minimum total square footage: 115,000

Minimum residential rental square footage: 100,000

Minimum commercial square footage: 0

Minimum condominium square footage: 0

Minimum office square footage: 0

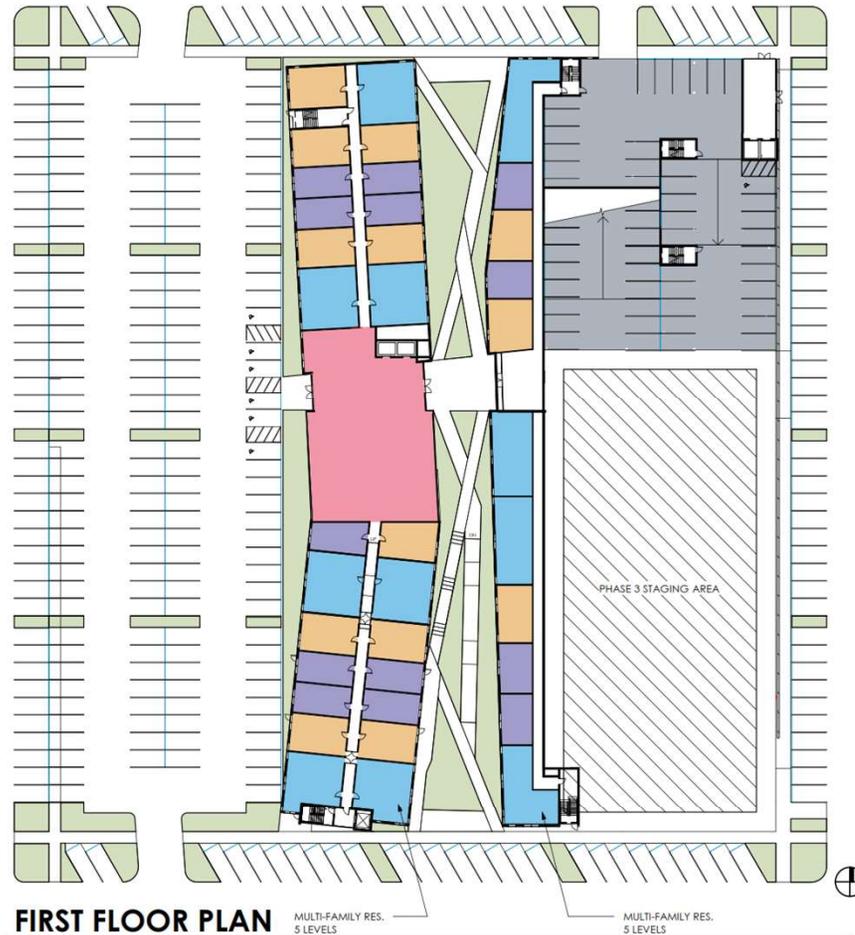
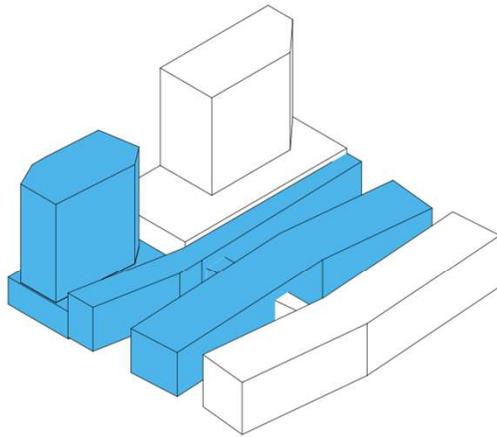
Minimum number of parking stalls: 55

Mill Race at Provo Station

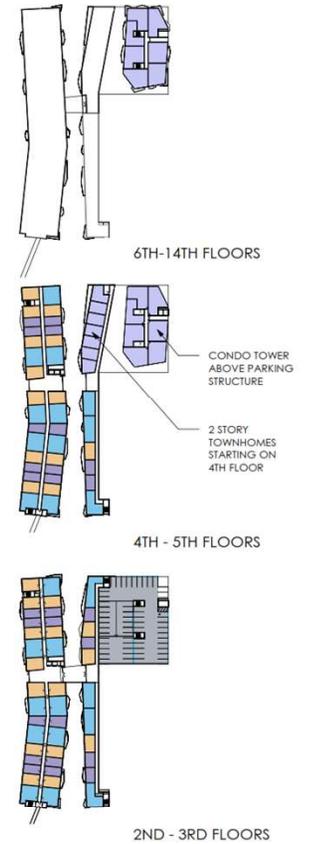


Confidential. Do not duplicate, distribute, display, or disclose without prior written consent.

Phase 1



1" = 60'-0"



PROJECT AXON

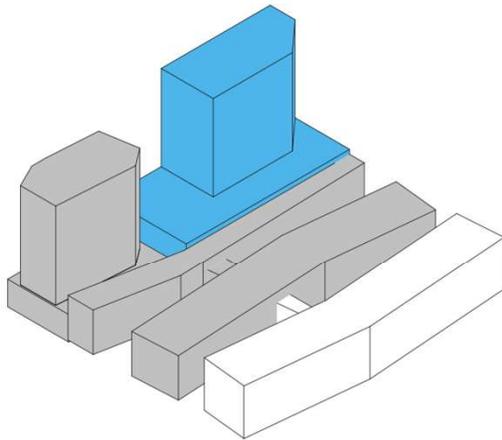
- | | | | |
|-----------|------------|--------------|--------------|
| Studio | Amenity | Condo Unit | Urban Church |
| 1 Bedroom | Landscape | Office Space | Parking |
| 2 Bedroom | Commercial | Entry | |



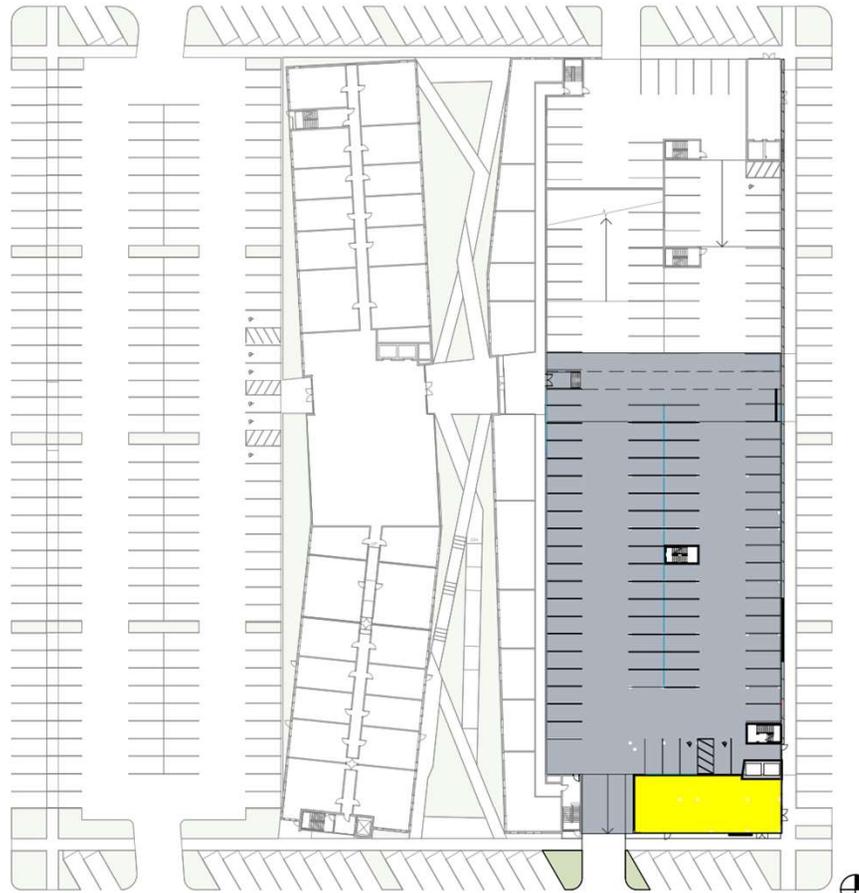
MILL RACE AT PROVO STATION

702.02
01.29.2019

Phase 2



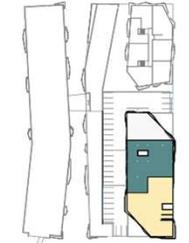
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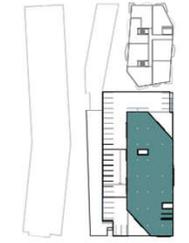
FIRST FLOOR PLAN

1" = 60'-0"

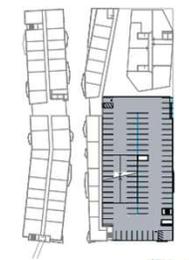
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|-----------|------------|--------------|--------------|
| Studio | Amenity | Condo Unit | Urban Church |
| 1 Bedroom | Landscape | Office Space | Parking |
| 2 Bedroom | Commercial | Entry | |



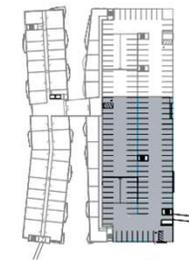
14TH FLOOR



7-13TH FLOORS



4TH - 6TH FLOORS

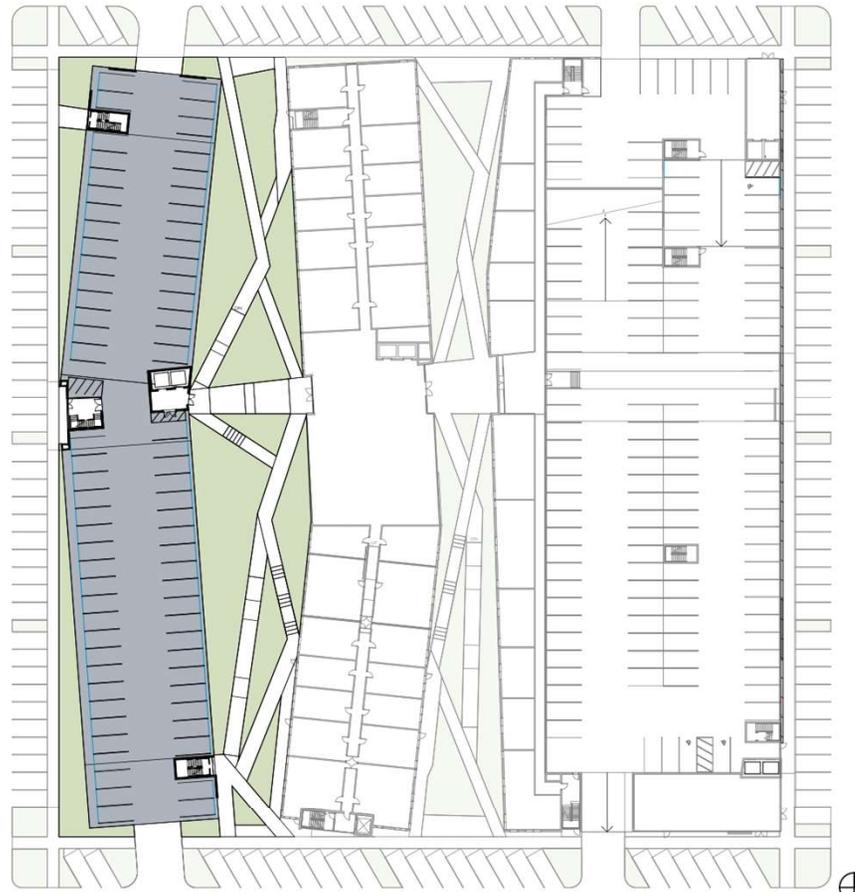
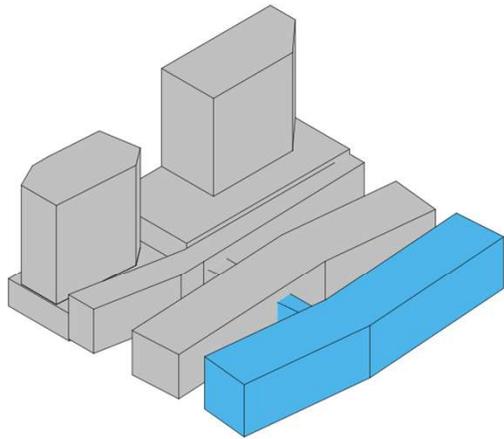


2ND - 3RD FLOORS

MILL RACE AT PROVO STATION

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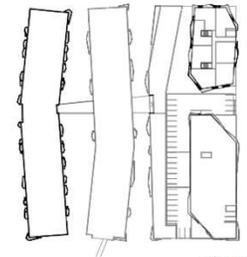
Phase 3



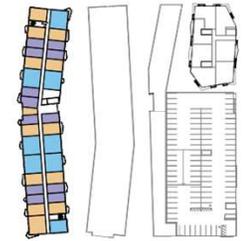
FIRST FLOOR PLAN

1" = 60'-0"

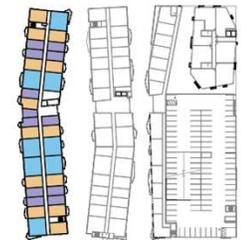
- | | | | |
|-----------|------------|--------------|--------------|
| Studio | Amenity | Condo Unit | Urban Church |
| 1 Bedroom | Landscape | Office Space | Parking |
| 2 Bedroom | Commercial | Entry | |



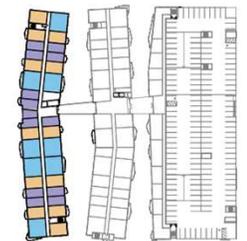
7TH FLOOR



6TH FLOOR



4TH - 5TH FLOORS



2ND - 3RD FLOORS

MILL RACE AT PROVO STATION

702.02
01.29.2019

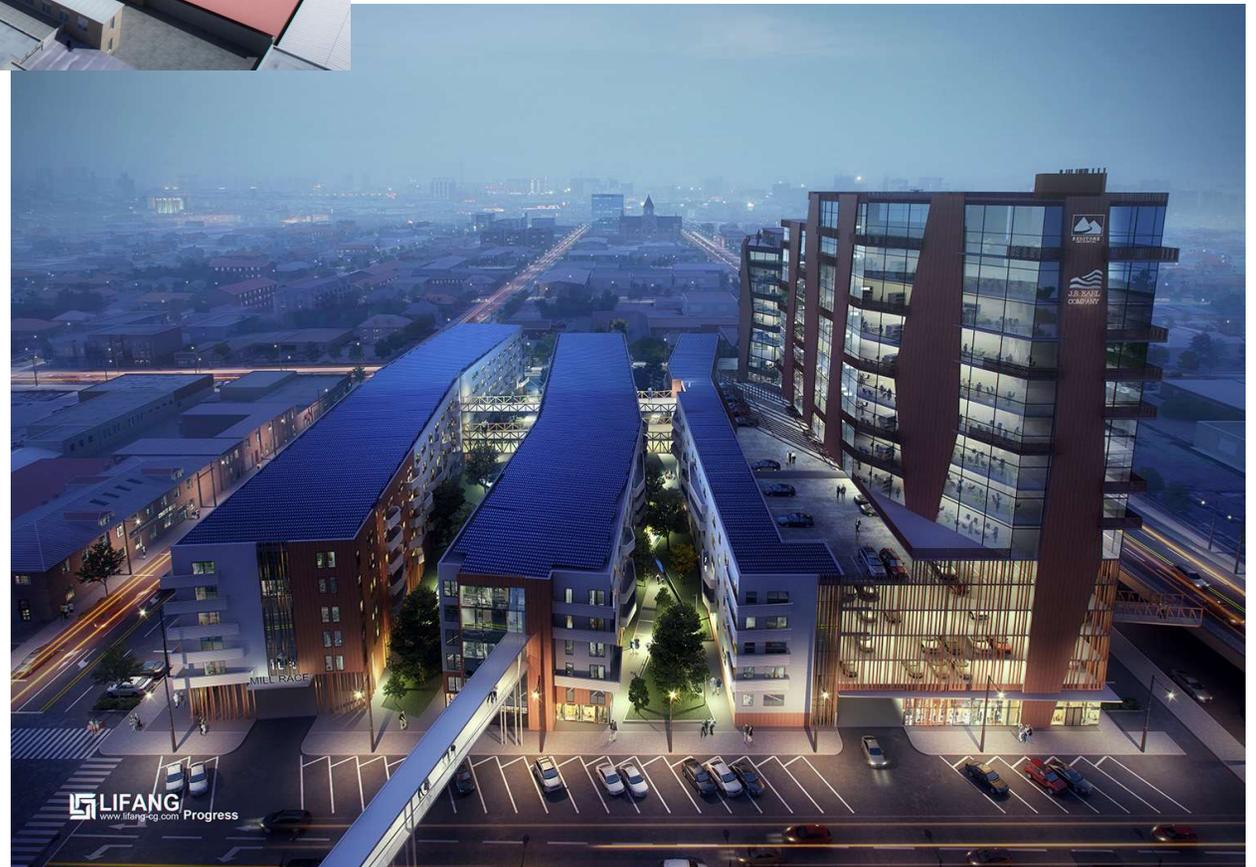
PROJECT AXON



Draft Renderings



Draft Renderings





**Planning Commission Staff Report
Ordinance Amendment
Hearing Date: July 10, 2019**

ITEM 3* The Provo City Community Development Department requests Code Amendments to Section 14.34.287 regarding the design standards for buildings in the Campus Mixed Use Zone. City-wide application. Josh Yost (801) 852-6408 PLOTA20190025

<p>Applicant: Provo Community Development Staff Coordinator: Josh Yost</p> <p>*Council Action Required: Yes</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>1. Recommend Continuance of the proposed ordinance amendment. <i>This would be <u>a change from the Staff recommendation; the Planning Commission should state new findings.</u></i></p> <p>2. Recommend Denial of the proposed ordinance amendment. <i>This would be <u>a change from the Staff recommendation; the Planning Commission should state new findings.</u></i></p>	<p>Relevant History: Community Development has identified deficiencies in the Campus Mixed Use Zone and other multi-family zones pertaining to design regulation. The zone currently only requires one door on each street frontage, has no habitable first floor requirement or any regulation of windows and visual permeability at the first floor. Staff is studying amendments to the zone to provide sufficient regulation of these design elements.</p> <p>Neighborhood Issues: None noted.</p> <p>Staff Recommendation: That the Planning Commission recommend to the Municipal Council approval of the proposed amendments to Section 14.34.287 of the Provo City Code.</p>
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OVERVIEW

Community Development has identified deficiencies in the Campus Mixed Use Zone pertaining to design regulation. The zone currently only requires one door on each street frontage, has no habitable first floor requirement or any regulation of windows and visual permeability at the first floor. Staff is studying amendments to the zone to provide sufficient regulation of these design elements. Staff has also integrated previously proposed amendments to the materials standards into these proposed amendments. The amendments under consideration include the following.

- A minimum habitable first floor depth as measured from the street facing façade. In the downtown this is 30’.
- A minimum number of pedestrian building entrances. For residential in the downtown an exterior entrance is required for each street facing unit.
- A minimum requirement for first floor windows and openings.

- Any commercial included in the site, whether required or voluntary, to be sited along a street frontage.
- Site design regulations to ensure parking is located interior to a building or site and that vehicle access is consolidated.
- Additional articulation of building material controls.

STAFF ANALYSIS

1. 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.*

The public purpose for the amendment is to ensure that development within the city's multi-family zones adds value to the city and the public realm through proper integration into the fabric of the city in terms of both spatial arrangement and building design. New development in these zones should not create isolated pockets of housing whether introverted groupings of townhomes, or apartment complexes. Housing should integrate with the city beyond the ephemeral boundaries of a project.

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

Staff has worked to develop the proposed amendments to accomplish the stated purpose effectively and efficiently by working with the framework of the existing Residential Design Standards. The amendments preserve the positive elements of the existing standards while reinforcing them to ensure the outcomes stated above.

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

Applicable Goals include the following

3.4.1.2 Maintain and encourage good quality, sustainable housing and infill developments.

3.4.1.7 Offer a range of housing types within neighborhoods that meets the changing needs of an aging population and facilitate long-term residency.

3.4.5 Provo City will encourage the development of various types of housing inventory to increase the health of existing neighborhoods while providing sufficient accommodations for people who want to work and live in Provo

3.4.5.2 Provo City will encourage infill developments and redevelopment of multifamily and denser housing inventory options in areas surrounding retail trade area to help increase demographic figures and provide a larger consumer base to current and future retailers.

3.4.5.7 Require moderate and high-density housing developments to be attractive, functional, desirable, and connected.

The General Plan offers many policies, goals, and objectives focused on creating diverse, high quality housing stock that will attract owners and other long term residents. The proposed amendments are compatible with and will hasten the attainment of these aims. Owners and other long term residents will be more likely to invest and reside for the long term if they live in places that are well integrated with their surroundings and provide high quality site and building design.

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

Not applicable.

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

Staff has found no potential for the proposed amendments to hinder or obstruct attainment of the articulated policies.

(f) *Adverse impacts on adjacent land owners.*

The proposed amendments reinforce the existing elements of the standards that require compatibility with surrounding development, especially in the LDR and MDR zones.

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

Not applicable.

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

Not applicable.

CONCLUSIONS

These types of regulations have ensured a base level of appropriate urban design in the development of new buildings in the downtown area and staff believes they will result in new projects in the CMU and other multi-family zones that properly interact with the public realm and that will increase the vibrancy of this key area.

STAFF RECOMMENDATION

That the Planning Commission recommend to the Municipal Council approval of the proposed amendments to Section 14.34.287 of the Provo City Code.

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2 | 3. ~~Yard~~Site Design Standards.

3 a. Front Yards.

- 4 i. There shall be a logical hard surface pedestrian connection between
5 the street and the front entry.
6 ii. The front yard shall be predominantly landscaped with a combination of turf
7 and plants. Hard surfaces for driveways and parking shall be minimized and shall
8 not exceed ordinance requirements.

9 | iii. Utility boxes shall not be located in the front or street side yards or park strips
10 unless the applicant demonstrates that there is no other practical location for
11 utility boxes on the site.

12 | iv. Mediate between public and private space on residential frontages. This
13 requirement may be met with the following strategies.

- 14 | 1. Use foundation plantings to provide separation between residential
15 units and the sidewalk.
16 | 2. Design porches, stoops and railings to provide intermediate semi-
17 private spaces.
18 | 3. Employ elevation changes to delineate the progression from public
19 space through semi-private space into interior private space.

20 b. Fences.

- 21 i. Fences shall complement the architectural character of the project.
22 ii. Chain link fences shall be prohibited in front yards.
23 iii. Fencing shall conform to Section 14.34.500, Provo City Code.

24 c. Building Location.

25 | i. New structures shall be sited consistently with the existing front setbacks of
26 adjoining properties to maintain neighborhood compatibility, with the
27 exception of projects that are zoned High Density Residential (HDR), Campus
28 High Density Residential (CHDR), or Campus Mixed Use (CMU), where
29 the zone permits lesser setbacks than the existing housing stock.

30 | ii. Frontage

- 31 | 1. A building's front elevation is the elevation whereon the primary or
32 common entrance is located.
33 | 2. Buildings shall front on a street, open space, or pedestrian way.
34 | 3. Buildings shall not front an interior property boundary or parking lot.
35 | ~~4.~~ In any development consisting of (5) or more townhomes each
36 townhome shall front a street, open space or pedestrian way.

37 | iii. The majority of new buildings in multifamily developments shall be sited along
38 the block face rather than the interior of the block.

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1. Interior lot development should comprise no more than twenty-five percent (25%) of a project's area.
- d. Buildings, including parking structures, shall be designed and located in a manner that allows planting and growth of mature trees in the front and side yards.
4. Building Facades.
 - a. Ground Floor Treatment
 - i. Commercial Ground Floors in the Campus Mixed Use Zone
 1. Design ground floor commercial space for retail or other active uses, orienting tenant spaces to the street and maximizing storefronts and entries along the sidewalks to sustain street level interest and promote pedestrian traffic
 2. Wall openings, such as storefronts, windows and doors, shall comprise at least 60% of a building's street level façade measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor.
 3. Open-wall storefronts are encouraged.
 - ii. Ground floors in all applicable zones.
 1. Excepting townhomes, a minimum habitable first floor depth of 30' as measured from the street facing façade is required.
 2. Residential units with individual entries shall include windows on the ground floor that look out onto the street, with wall openings comprising at least 30% of the street level façade, measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor..
 3. Clear glass for wall openings, i.e., doors and windows, shall be used along all street-level façades for maximum transparency. Tinted, mirrored or opaque glazing is not permitted for any required wall opening along street level façades
 4. Articulation and detailing of the ground floor with pedestrian entrances, quality materials and decorative details, shall be used to promote pedestrian-scaled architecture along the street.
 5. Electrical service, mechanical, or other equipment, enclosed stairs, storage spaces, blank walls, and other elements that are not pedestrian-oriented shall not be located along the ground floor street wall unless required by applicable code and no workable alternative location exists.
 - b. Pedestrian Building Entrances
 - i. Pedestrian building entrances shall
 1. meet the spatial requirements set forth in Table 14.34.295-1 Pedestrian Building Entrance (PBE) Requirements;
 2. contain a door providing direct pedestrian access into a building;

- 80 3. directly access an interior and enclosed commercial tenant
 81 space, public lobby, or residential unit;
 82 4. be directly accessible from and directly adjacent to the
 83 sidewalk; and
 84 5. prevent doors from swinging into the public right-of-way or
 85 beyond the front façade line of the building when opened.
 86 ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors
 87 to exterior courtyards shall not qualify as pedestrian building entrances.
 88 a. ~~All structures shall have at least one (1) primary unit entry that faces the street.~~
 89 ~~Multifamily residential uses on corner lots shall have at least one (1) primary entry along~~
 90 ~~each street frontage.~~
 91 b. ~~Additional entrances may be located on side or rear facades.~~
 92 i.iii. The primary entrance of a multifamily structure shall be clearly defined
 93 by use of a raised porch or other similar entry feature.
 94 1. The front porch or entry feature shall be oriented to the street.
 95 2. The minimum size of the front porch or entry feature shall be functional
 96 rather than merely decorative.
 97 3. The porch floor height shall not exceed thirty (30) inches above the
 98 elevation of the top of the street curb.
 99 c. Doors, windows and balconies of new housing should be located to respect the privacy
 100 of neighboring properties.

Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements

<u>Frontage Type</u>	<u>Commercial</u>	<u>Residential</u>
<u>PBE's Required for Each Street-facing Façade</u>	<u>1 per 25 feet (1 min.)</u>	<u>1 per street-fronting ground floor unit</u>
<u>Maximum Spacing</u>	<u>38 feet</u>	<u>38 feet</u>

- 101 5. Driveways and Parking.
 102 a. New developments shall provide the minimum amount of driveway access and width
 103 required by code as a means of preserving front yard space.
 104 i. Driveway placement ~~should~~ shall be toward the side property line to avoid
 105 dividing a building by a single, central driveway to subterranean parking.
 106 ii.ii. Driveways shall be consolidated where adjacent parcels or developments can be
 107 served by a single driveway. Cross access easements shall guarantee rights of
 108 access across the shared driveway for both parcels.
 109 ii.iii. Alley access for properties ~~should~~ shall be encouraged to reduce the impact of
 110 parking and traffic circulation on the front of the property.
 111 iii.iv. Parking and interior access ~~should~~ shall be designed to minimize the number of
 112 curb cuts.

- 113 | b. Parking shall not be placed in the front yard and should be minimized in the rear
114 | yard ~~side yard~~, with the exception of one- and two-family dwellings when the driveway
115 | leads to a garage or carport as defined in Chapter 14.37, Provo City Code.
- 116 | i. Parking shall not be allowed between a primary building and a public street.
 - 117 | ii. Surface parking areas in rear yards shall be screened from neighboring
118 | properties with appropriate plant materials and/or fencing.
 - 119 | ~~iii.~~ iii. Entrances to ~~underground~~ structured parking shall be provided from driveways
120 | along the sides of properties, not from a front-facing ~~underground~~ garage entry;
121 | ~~unless the applicant demonstrates that no alternative is feasible.~~
 - 122 | ~~iii.~~ iv. Parking shall be screened from any adjacent public way, street, open space or
123 | pedestrian way.
- 124 | c. Except for the minimum ground-level frontage required for access to parking and
125 | loading, no parking or loading shall be visible on the ground floor of any building façade
126 | that faces a public right-of-way. It is recognized that providing parking within the
127 | primary building may create a conflict with the desire for pedestrian connectivity
128 | at street level. An alternate design that includes parking on the main level of
129 | the building and on a façade that faces a public street may be approved by the Design
130 | Review Committee, subject to the following standards:
- 131 | i. ~~There shall be a significant, pedestrian entrance to the building at street level to~~
132 | ~~maintain a pedestrian connection to the street;~~
 - 133 | ii. ~~A minimum of thirty percent (30%) of the primary street level building façade~~
134 | ~~must be habitable floor space such as living space, rental office or amenity~~
135 | ~~space;~~
 - 136 | iii. ~~The parking structure shall be treated with materials, windows, building relief~~
137 | ~~and rhythm that mask the appearance of the parking structure. The~~
138 | ~~parking structure shall be appear to be part of the residential or~~
139 | ~~commercial building; and~~
 - 140 | iv. ~~The Design Review Committee should consider aesthetic transitions at façade~~
141 | ~~corners when a side elevation is viewable from a public street.~~
- 142 | 6. Landscape Design.
- 143 | a. Property owners shall comply with Section 15.20.030, Provo City Code, for the
144 | protection of existing vegetation.
 - 145 | b. New landscaping shall be complementary to existing neighborhood vegetation.
 - 146 | i. The species, size and placement of new landscaping shall be considered in the
147 | design review process.
 - 148 | c. Landscaping shall be used to reduce the impact of larger buildings on neighboring
149 | properties.
 - 150 | d. Buildings and driveway lighting should not extend beyond the boundaries of the subject
151 | property, as per Chapter 15.21, Provo City Code.
- 152 | 7. Building Form, Mass and Scale (LDR Zone Only).

- 153 i. Building form, mass and scale should be appropriate for the zone in which
154 the building is located and consistent with the established neighborhood
155 character.
- 156 ii. Architectural elements such as roof form, windows, doors, etc., should be
157 consistent with the form and character of the existing housing in the area.
- 158 iii. A porch or similar element, which defines the front entrance, shall be provided.
- 159 iv. An attached garage shall not be the dominant design feature of the front
160 elevation.
- 161 v. Sloping roofs such as gable or hip design should be used as the primary roof
162 form.
- 163 vi. Historic buildings are subject to Title 16, Provo City Code.
- 164 b. Building additions shall not strongly alter the character of an original building.
- 165 i. Windows, materials and doors should be compatible with those of the
166 original building.
- 167 ii. Roof forms shall be compatible with the existing structure.
- 168 8. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).
- 169 a. The facade of any multiple-family, or apartment, or mixed use structure shall have
170 sufficient relief and rhythm to give visual interest and appeal.
- 171 i. Be articulated in the horizontal plane to provide visual interest and enrich the
172 pedestrian experience, while contributing to the quality and definition of the
173 street wall.
- 174 ii. Be vertically articulated to differentiate the ground floor façade, and feature
175 high quality materials that add human scale, texture and variety at the
176 pedestrian level.
- 177 iii. Provide an identifiable break between the building's ground floors and upper
178 floors. This break may include a change in material, horizontal dividing element,
179 a change in fenestration pattern or similar means.
- 180 iv. Be vertically articulated at the street wall façade, establishing different
181 treatment for the building's base, middle and top. Use balconies, fenestration,
182 shading devices, or other elements to create an interesting pattern of
183 projections and recesses.
- 184 v. Avoid extensive blank walls that detract from the experience and appearance of
185 an active streetscape.
- 186 vi. Provide well-marked entrances to cue access and use. Enhance all public
187 entrances to a building or use through compatible architectural or graphic
188 treatment.
- 189 ~~i.~~
- 190 ~~b. One (1) continuous roof line shall be avoided. Variation in the roof line, or roof height, is~~
191 ~~encouraged.~~
- 192 b. Exterior stairways, corridors or landings shall not be located on the front or street side
193 elevation of the building

- 194 c. Structures located in the CHDR and CMU zones that are greater than ~~six-four~~
195 (64) stories in height shall step back fifteen (15) feet from the first floor elevation for
196 all stories above the fourth floor on all elevations that front a public street unless the
197 applicant can demonstrate that there is sufficient variation and articulation in
198 the building planes to give visual interest and appeal.
- 199 d. Building additions shall not strongly alter the character of the original building.
- 200 i. Windows, materials and doors shall be compatible with those of the
201 original building.
- 202 ii. Roof forms shall be compatible with the existing structure.

203
204 ...

205
206 10. Building Materials

- 207 a. ~~The primary exterior finish material of all structures shall not consist of vinyl, aluminum~~
208 ~~or metal siding (including sheet or corrugated metal), plywood, particle board, or other~~
209 ~~products not intended as an architectural finish product.~~
- 210 i. ~~Stucco may be considered when it is detailed with wood trim around windows~~
211 ~~and doors. A shadow line around windows should be created.~~
- 212 ii. ~~A range of secondary materials including trim may be used as long as they~~
213 ~~remain secondary.~~
- 214 iii. ~~Wood, slate, tiles and high-quality composition shingles and shakes shall be~~
215 ~~used for roofing materials.~~
- 216 a. Intent. The intent of the facade materials standards of this section is to:
- 217 iv. Provide minimum material standards to ensure use of well-tested, high quality,
218 durable surfaces, while permitting a wider range of materials for details;
- 219 v. Encourage a high level of detail from smaller scaled, less monolithic materials in
220 order to relate facades to pedestrians, especially at the ground level.
- 221 b. Major Materials. A minimum of eighty percent (80%) of each facade, not including
222 window and door areas, shall be composed of major materials, as specified in this
223 section.
- 224 i. Allowed Major Materials. The following are allowed major materials.
- 225 a. Stone.
- 226 b. Brick.
- 227 c. Wood.
- 228 d. Architectural metal panel systems.
- 229 e. Fiber Cement board.
- 230 f. Glass curtain wall.
- 231 g. Terra cotta decorative units, tiles or panels.
- 232 h. Architectural cast stone including glass fiber reinforced concrete.
- 233 ii. Prohibited Major Materials. The following materials are prohibited as major
234 materials, unless otherwise approved under the standards of this Section:

- 235 a. Face-sealed EIFS synthetic stucco assemblies and decorative
236 architectural elements.
- 237 b. Synthetic stucco or elastomeric finishes on stucco.
- 238 c. Unfinished or untreated wood.
- 239 d. Glass block.
- 240 e. Vinyl or aluminum siding.
- 241 f. Plastic, including high-density polyethylene, polyvinyl chloride (PVC),
242 and polycarbonate, panels.
- 243 g. Fiberglass and acrylic panels.
- 244 iii. Limited Use Major Materials. The following materials are prohibited as a
245 major material except consistent with the following:
- 246 a. Economy Bricks. Brick types larger than three inches in height are
247 allowed as major materials on rear, alley, and rail corridor facades. In
248 such instances, corner bricks shall be used to give the appearance of a
249 full brick façade.
- 250 c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent
251 areas that combine to twenty percent or less of the total surface of each facade.
- 252 i. Major Materials. All allowed major materials may serve as minor materials.
- 253 ii. Allowed Minor Materials. The following are allowed minor materials:
- 254 a. Metal for beams, lintels, trim, exposed structure, and other
255 ornamentation
- 256 b. Split-faced, burnished, glazed, or honed concrete masonry units or
257 block cast stone concrete elements.
- 258 c. Vinyl for window trim.
- 259 d. Cement-Based Stucco.
- 260 e. Face-sealed EIFS synthetic stucco assemblies and decorative
261 architectural elements.
- 262 f. Synthetic stucco.
- 263 d. Other Materials with Approval. Materials that are not listed in this section for its
264 proposed application as allowed major materials, limited use materials, or allowed
265 minor materials, may not be installed on any facade unless approved by the reviewing
266 authority pursuant to this subsection (d). The reviewing authority may approve facade
267 materials that are not listed in this section for its proposed application if the applicant
268 demonstrates the material in its proposed application meets the intent of the facade
269 material standards described in subsection (a) of this section. Samples and examples of
270 successful high quality local installation shall be provided by the applicant.
- 271

41 amendment reasonably furthers the health, safety, and general welfare of the citizens of Provo
42 City.

43

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

46

47 PART I:

48

49 Provo City Code Section 14.34.287 (Residential Design Standards) is hereby amended as
50 set forth in Exhibit A.

51

52 PART II:

53

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

56

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

61

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

64

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

68

69 END OF ORDINANCE.

EXHIBIT A

14.34.287 Residential Design Standards.

1 ...

2 2. Applicability. The design standards set forth in this Section shall apply to all new residential
3 buildings and uses located in the Low Density Residential, Medium Density Residential, High
4 Density Residential, Campus High Density Residential and Campus Mixed Use zones.

5 a. In approving a project plan, the approving authority may impose reasonable conditions
6 consistent with the purpose and intent of this Section. The requirements for this Section
7 shall apply in addition to other applicable requirements of this Title. This Section shall be
8 interpreted to supersede other requirements of the Provo City Code which may impose
9 more restrictive requirements.

10 b. All of the requirements of this Section shall apply, unless the Planning Commission
11 approves an alternative design arrangement equal to or better than the requirements set
12 forth in this section. The Planning Commission shall make specific findings justifying the
13 alternate design arrangement.

14 3. **Yard Site** Design Standards.

15 a. Front Yards.

16 i. There shall be a logical hard surface pedestrian connection between the street and
17 the front entry.

18 ii. The front yard shall be predominantly landscaped with a combination of turf and
19 plants. Hard surfaces for driveways and parking shall be minimized and shall not
20 exceed ordinance requirements.

21 iii. Utility boxes shall not be located in the front or street side yards or park strips
22 unless the applicant demonstrates that there is no other practical location for
23 utility boxes on the site.

24 iv. Front yards shall provide transitions between the public way and private space
25 on residential frontages. This requirement may be met with the following
26 strategies.

27 1. Use of foundation plantings to provide separation between residential
28 units and the sidewalk.

29 2. Use of porches, stoops and railings to provide intermediate semi-private
30 spaces.

31 3. Employment of elevation changes to delineate the progression from
32 public space through exterior semi-private space into interior private
33 space.

34 b. Fences.

35 i. Fences shall complement the architectural character of the project.

36 ii. Chain link fences shall be prohibited in front yards.

37 iii. Fencing shall conform to Section 14.34.500, Provo City Code.

38 4.c. Building Location.

39 a.i. New structures shall be sited consistently with the existing front setbacks of
40 adjoining properties to maintain neighborhood compatibility, with the exception
41 of projects that are zoned High Density Residential (HDR), Campus High
42 Density Residential (CHDR), or Campus Mixed Use (CMU), where
43 the zone permits lesser setbacks than the existing housing stock.

44 ii. Frontage

- 45 1. A building's front elevation is the elevation whereon the primary or
46 common entrance is located.
- 47 2. Buildings shall front on a street, open space, or pedestrian way.
- 48 3. Buildings shall not front an interior property boundary or parking lot.
- 49 4. In any development consisting of (6) or more townhomes, each
50 townhome shall front a street, open space or pedestrian way.

51 ~~b~~iii. The majority of new buildings in multifamily developments shall be sited along
52 the block face rather than the interior of the block.

53 ~~1. Interior lot development should comprise no more than twenty-five
54 percent (25%) of a project's area.~~

55 ed. Buildings, including parking structures, shall be designed and located in a manner that
56 allows planting and growth of mature trees in the front and side yards.

57 54. Building Facades.

58 a. Ground Floor Treatment

59 i. Commercial Ground Floors in the Campus Mixed Use Zone

- 60 1. Ground floor commercial space shall be designed for retail or other
61 active uses, orienting tenant spaces to the street and maximizing
62 storefronts and entries along the sidewalks to sustain street level interest
63 and promote pedestrian traffic
- 64 2. Wall openings, such as storefronts, windows and doors, shall comprise at
65 least 60% of a building's street level façade measured as a percentage of
66 façade area between the ground plane and the finished floor elevation of
67 the second floor.
- 68 3. Open-wall storefronts are encouraged.

69 ii. Ground floors in all applicable zones.

- 70 1. Excepting townhomes, a minimum habitable first floor depth of 30' as
71 measured from the street facing façade is required.
- 72 2. Residential units with individual entries shall include windows on the
73 ground floor that look out onto the street, with wall openings comprising
74 at least 30% of the street level façade, measured as a percentage of
75 façade area between the ground plane and the finished floor elevation of
76 the second floor.
- 77 3. Clear glass for wall openings, i.e., doors and windows, shall be used
78 along all street-level façades for maximum transparency. Tinted,
79 mirrored or opaque glazing is not permitted for any required wall
80 opening along street level façades.

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- 4. Articulation and detailing of the ground floor with pedestrian entrances, quality materials and decorative details, shall be used to promote pedestrian-scaled architecture along the street.
 - 5. Electrical service, mechanical, or other equipment, enclosed stairs, storage spaces, blank walls, and other elements that are not pedestrian-oriented shall not be located along the ground floor street wall unless required by applicable code and no workable alternative location exists.
- b. Pedestrian Building Entrances
- i. Pedestrian building entrances shall
 - 1. meet the spatial requirements set forth in Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements;
 - 2. contain a door providing direct pedestrian access into a building;
 - 3. directly access an interior and enclosed commercial tenant space, public lobby, or residential unit;
 - 4. be directly accessible from and directly adjacent to the sidewalk; and
 - 5. prevent doors from swinging into the public right-of-way or beyond the front façade line of the building when opened.
 - ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors to exterior courtyards shall not qualify as pedestrian building entrances.
- ~~a. All structures shall have at least one (1) primary unit entry that faces the street. Multifamily residential uses on corner lots shall have at least one (1) primary entry along each street frontage.~~
- ~~b. Additional entrances may be located on side or rear facades.~~
- c. The primary entrance of a multifamily structure shall be clearly defined by use of a raised porch or other similar entry feature.
- i. The front porch or entry feature shall be oriented to the street.
 - ii. The minimum size of the front porch or entry feature shall be functional rather than merely decorative.
 - iii. The porch floor height shall not exceed thirty (30) inches above the elevation of the top of the street curb.
- d. Doors, windows and balconies of new housing should be located to respect the privacy of neighboring properties.

Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements		
Frontage Type	Commercial	Residential
PBE's Required for Each Street-facing Façade	1 per 30 feet (1 min.)	1 per street-fronting ground floor unit
Maximum Spacing	40 feet	38 feet

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65. Driveways and Parking.

- 117 a. New developments shall provide the minimum amount of driveway access **and width**
118 required **by code** as a means of preserving front yard space.
- 119 i. Driveway placement ~~should~~ **shall** be toward the side property line to avoid
120 dividing a building by a single, central driveway to subterranean parking.
- 121 ii. **Driveways shall be consolidated where adjacent parcels or developments can be**
122 **served by a single driveway. Cross access easements shall guarantee rights of**
123 **access across the shared driveway for both parcels.**
- 124 ~~iii.~~ Alley access for properties ~~should~~ **shall** be encouraged to reduce the impact of
125 parking and traffic circulation on the front of the property.
- 126 ~~iiii.~~ Parking and interior access ~~should~~ **shall** be designed to minimize the number of
127 curb cuts.
- 128 b. Parking shall not be placed in the front yard and should be minimized in the ~~rear yard~~
129 **side yard**, with the exception of one- and two-family dwellings when the driveway leads
130 to a garage or carport as defined in Chapter 14.37, Provo City Code.
- 131 i. Parking shall not be allowed between a primary building and a public street.
- 132 ii. Surface parking areas in rear yards shall be screened from neighboring properties
133 with appropriate plant materials and/or fencing.
- 134 iii. Entrances to ~~underground~~ **structured** parking shall be provided from driveways
135 along the sides of properties, not from a front-facing ~~underground~~ garage entry;
136 ~~unless the applicant demonstrates that no alternative is feasible.~~
- 137 iv. **Parking shall be screened from any adjacent public way, street, open space, or**
138 **pedestrian way.**
- 139 ~~a. Except for the minimum ground-level frontage required for access to parking~~
140 ~~and loading, no parking or loading shall be visible on the ground floor of any~~
141 ~~building façade that faces a public right-of-way. It is recognized that~~
142 ~~providing parking within the primary building may create a conflict with the~~
143 ~~desire for pedestrian connectivity at street level. An alternate design that~~
144 ~~includes parking on the main level of the building and on a facade that faces~~
145 ~~a public street may be approved by the Design Review Committee, subject to~~
146 ~~the following standards:~~
- 147 ~~i. There shall be a significant, pedestrian entrance to the building at street level to~~
148 ~~maintain a pedestrian connection to the street;~~
- 149 ~~ii. A minimum of thirty percent (30%) of the primary street level building facade~~
150 ~~must be habitable floor space such as living space, rental office or amenity space;~~
- 151 ~~iii. The parking structure shall be treated with materials, windows, building relief and~~
152 ~~rhythm that mask the appearance of the parking structure. The~~
153 ~~parking structure shall be appear to be part of the residential or~~
154 ~~commercial building; and~~
- 155 ~~iv. The Design Review Committee should consider aesthetic transitions at facade~~
156 ~~corners when a side elevation is viewable from a public street.~~

157 **76. Landscape Design.**

- 158 a. Property owners shall comply with Section 15.20.030, Provo City Code, for the
159 protection of existing vegetation.
- 160 b. New landscaping shall be complementary to existing neighborhood vegetation.

- 161 i. The species, size and placement of new landscaping shall be considered in the design
162 review process.
- 163 c. Landscaping shall be used to reduce the impact of larger buildings on neighboring
164 properties.
- 165 d. Buildings and driveway lighting should not extend beyond the boundaries of the subject
166 property, as per Chapter 15.21, Provo City Code.
- 167 **87. Building Form, Mass and Scale (LDR Zone Only).**
- 168 v. Building form, mass and scale should be appropriate for the zone in which the building is
169 located and consistent with the established neighborhood character.
- 170 i. Architectural elements such as roof form, windows, doors, etc., should be consistent
171 with the form and character of the existing housing in the area.
- 172 ii. A porch or similar element, which defines the front entrance, shall be provided.
- 173 iii. An attached garage shall not be the dominant design feature of the front elevation.
- 174 iv. Sloping roofs such as gable or hip design should be used as the primary roof form.
- 175 v. Historic buildings are subject to Title 16, Provo City Code.
- 176 b. Building additions shall not strongly alter the character of an original building.
- 177 i. Windows, materials and doors should be compatible with those of the
178 original building.
- 179 ii. Roof forms shall be compatible with the existing structure.
- 180 **98. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).**
- 181 a. The facade of any multiple-family, ~~or~~ apartment, or mixed use structure shall: ~~have~~
182 ~~sufficient relief and rhythm to give visual interest and appeal.~~
- 183 i. be articulated in the horizontal plane to provide visual interest and enrich the
184 pedestrian experience, while contributing to the quality and definition of the street
185 wall;
- 186 ii. be vertically articulated to differentiate the ground floor façade, and feature high
187 quality materials that add human scale, texture and variety at the pedestrian level;
- 188 iii. provide an identifiable break between the building's ground floors and upper floors.
189 This break may be accomplished by a change in material, a horizontal dividing
190 element, a change in fenestration pattern, or similar means;
- 191 iv. be vertically articulated at the street wall façade, establishing different treatment for
192 the building's base, middle and top. Balconies, fenestration, shading devices, or other
193 elements shall be used to create an interesting pattern of projections and recesses;
- 194 v. avoid extensive blank walls that detract from the experience and appearance of an
195 active streetscape; and
- 196 vi. provide well-marked entrances to cue access and use. All public entrances to a
197 building or use shall be enhanced through compatible architectural or graphic
198 treatment.
- 199 ~~b. One (1) continuous roof line shall be avoided. Variation in the roof line, or roof height, is~~
200 ~~encouraged.~~
- 201 b. Exterior stairways, corridors, or landings shall not be located on the front or street side
202 elevation of the building.
- 203 c. Structures located in the CHDR and CMU zones that are greater than ~~six~~
204 ~~four~~ (64) stories in height shall step back fifteen (15) feet from the first floor elevation for

205 all stories above the fourth floor on all elevations that front a public street unless the
206 applicant can demonstrate that there is sufficient variation and articulation in
207 the building planes to give visual interest and appeal.

- 208 d. Building additions shall not strongly alter the character of the original building.
209 i. Windows, materials and doors shall be compatible with those of the original building.
210 ii. Roof forms shall be compatible with the existing structure.

211 ~~109.~~ Building Materials

212 ~~a. The primary exterior finish material of all structures shall not consist of vinyl, aluminum~~
213 ~~or metal siding (including sheet or corrugated metal), plywood, particle board, or other~~
214 ~~products not intended as an architectural finish product.~~

215 ~~i. Stucco may be considered when it is detailed with wood trim around windows~~
216 ~~and doors. A shadow line around windows should be created.~~

217 ~~ii. A range of secondary materials including trim may be used as long as they~~
218 ~~remain secondary.~~

219 ~~iii. Wood, slate, tiles and high-quality composition shingles and shakes shall be used~~
220 ~~for roofing materials.~~

221 a. Intent. The intent of the facade materials standards of this section is to:

- 222 i. provide minimum material standards to ensure use of well-tested, high quality,
223 durable surfaces, while permitting a wider range of materials for details; and
224 ii. encourage a high level of detail from smaller scaled, less monolithic materials in
225 order to relate facades to pedestrians, especially at the ground level.

226 b. Major Materials. A minimum of eighty percent (80%) of each facade, not including
227 window and door areas, shall be composed of major materials, as specified in this
228 section.

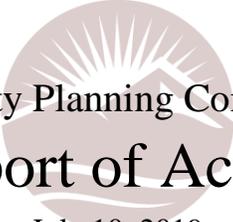
229 i. Allowed Major Materials. The following are allowed major materials:

- 230 1. Stone;
231 2. Brick;
232 3. Wood;
233 4. Architectural metal panel systems;
234 5. Fiber cement board;
235 6. Glass curtain wall;
236 7. Terra cotta decorative units, tiles or panels; and
237 8. Architectural cast stone, including glass fiber reinforced concrete.

238 ii. Prohibited Major Materials. The following materials are prohibited as major
239 materials, unless otherwise approved under the standards of this Section:

- 240 1. Face-sealed EIFS synthetic stucco assemblies and decorative
241 architectural elements;
242 2. Synthetic stucco or elastomeric finishes on stucco;
243 3. Unfinished or untreated wood;
244 4. Glass block;
245 5. Vinyl or aluminum siding;
246 6. Plastic panels, including high-density polyethylene, polyvinyl chloride
247 (PVC), and polycarbonate; and
248 7. Fiberglass and acrylic panels.

- 249 iii. Limited Use Major Materials. The following materials are prohibited as a
250 major material, except as specifically allowed in this subsection (iii):
251 1. Economy Bricks. Brick types larger than three inches in height are
252 allowed as major materials on rear, alley, and rail corridor facades. In
253 such instances, corner bricks shall be used to give the appearance of a
254 full brick façade.
- 255 c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent
256 areas that combined form twenty percent or less of the total surface of each facade.
- 257 i. Major Materials. All allowed major materials may serve as minor materials.
258 ii. Allowed Minor Materials. The following are allowed minor materials:
- 259 1. Metal for beams, lintels, trim, exposed structure, and other
260 ornamentation;
261 2. Split-faced, burnished, glazed, or honed concrete masonry units or
262 block cast stone concrete elements;
263 3. Vinyl for window trim;
264 4. Cement-Based Stucco;
265 5. Face-sealed EIFS synthetic stucco assemblies and decorative
266 architectural elements; and
267 6. Synthetic stucco.
- 268 d. Other Materials with Approval. Materials that are not listed in this Section for its
269 proposed application as allowed major materials, limited use materials, or allowed minor
270 materials may not be installed on any facade unless approved by the reviewing authority
271 pursuant to this subsection (d). The reviewing authority may approve facade materials
272 that are not listed in this section if the applicant demonstrates that the alternate material
273 meets the intent of the facade material standards described in subsection (9)(a) of this
274 Section. Samples and examples of successful high quality local installation shall be
275 provided by the applicant.



Provo City Planning Commission

Report of Action

July 10, 2019

*Item 3 The Provo City Community Development Department requests Code Amendments to Section 14.34.287 regarding the design standards for buildings in the Campus Mixed Use Zone. City-wide application. Josh Yost (801) 852-6408
PLOTA20190025

The following action was taken by the Planning Commission on the above described item at its regular meeting of July 10, 2019:

RECOMMEND APPROVAL WITH CONDITIONS

On a vote of 7:0, the Planning Commission approved the above noted application, with the following conditions:

Conditions of Approval:

1. Amend Table 14.34.287-1 to read “1 per 30 feet (1 min.)” under Commercial for PBE’s Required for Each Street-facing façade and “40 feet” under Commercial for Maximum Spacing.
2. Insert the following paragraph into 14.34.287 as (2)(a)

All of the following requirements shall apply, unless the Planning Commission approves an alternative design arrangement equal to or better than the requirements set forth in this section. The Planning Commission shall make specific findings justifying the alternate design arrangement.

Motion By: Jamin Rowan

Second By: Russ Phillips

Votes in Favor of Motion: Jamin Rowan, Deborah Jensen, Robert Knudsen, Maria Winden, Russ Phillips, David Andersen, Andrew Howard

Deborah Jensen was present as Chair.

- Additional Report of Action for June 27, 2019, Item 4 was continued by the Planning Commission to July 10, 2019.
- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED

Not applicable

RELATED ACTIONS

None

APPROVED/RECOMMENDED OCCUPANCY

Not applicable

APPROVED/RECOMMENDED PARKING

Not applicable

DEVELOPMENT AGREEMENT

Not applicable

PLANNING COMMISSION RECOMMENDED TEXT AMENDMENT

Recommended text amendment is attached to this staff report.

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

- The recommended amendments are to correct deficiencies or strengthen weaknesses that have been identified in the current ordinance.
- Staff sought input from the development community and from the Design Review Committee.

Over a year ago, the setbacks for this zone were amended. At that time, staff said that additional, more substantive amendments would be presented to the City Council at a future date.

NEIGHBORHOOD MEETING DATE

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

NEIGHBORHOOD AND PUBLIC COMMENT

- This item was City-wide or affected multiple neighborhoods. No public input was received.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The Design Review Committee felt the door spacing for commercial uses may need to be increased. Staff has increased this.
- The Design Review Committee also voiced a concern over the rigid nature of some of the standards so staff added a provision to allow the Planning Commission latitude to alter or vary standards if the Planning Commission feels the final product is equal to or better than the baseline code requirement.

FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION **delete section if same as Staff Report**

The Planning Commission identified the following findings as the basis of this decision or recommendation:



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

14.34.287 Residential Design Standards - Revisions

- 1 ...
- 2 2. Applicability. The design standards set forth in this Section shall apply to all new residential
3 buildings and uses located in the Low Density Residential, Medium Density Residential, High
4 Density Residential, Campus High Density Residential and Campus Mixed Use zones. In
5 approving a project plan, the approving authority may impose reasonable conditions consistent
6 with the purpose and intent of this Section. The requirements for this Section shall apply in
7 addition to other applicable requirements of this Title. This Section shall be interpreted to
8 supersede other requirements of the Provo City Code which may impose more restrictive
9 requirements.
- 10 a. All of the following requirements shall apply, unless the Planning Commission approves
11 an alternative design arrangement equal to or better than the requirements set forth in this
12 section. The Planning Commission shall make specific findings justifying the alternate
13 design arrangement.
- 14 3. ~~Yard~~ Site Design Standards.
- 15 a. Front Yards.
- 16 i. There shall be a logical hard surface pedestrian connection between the street and
17 the front entry.
- 18 ii. The front yard shall be predominantly landscaped with a combination of turf and
19 plants. Hard surfaces for driveways and parking shall be minimized and shall not
20 exceed ordinance requirements.
- 21 iii. Utility boxes shall not be located in the front or street side yards or park strips
22 unless the applicant demonstrates that there is no other practical location for
23 utility boxes on the site.
- 24 iv. Mediate between public and private space on residential frontages. This
25 requirement may be met with the following strategies.
- 26 1. Use foundation plantings to provide separation between residential units
27 and the sidewalk.
- 28 2. Design porches, stoops and railings to provide intermediate semi-private
29 spaces.
- 30 3. Employ elevation changes to delineate the progression from public space
31 through semi-private space into interior private space.
- 32 b. Fences.
- 33 i. Fences shall complement the architectural character of the project.
- 34 ii. Chain link fences shall be prohibited in front yards.
- 35 iii. Fencing shall conform to Section 14.34.500, Provo City Code.
- 36 4.c. Building Location.
- 37 a.i. New structures shall be sited consistently with the existing front setbacks of adjoining
38 properties to maintain neighborhood compatibility, with the exception of projects that
39 are zoned High Density Residential (HDR), Campus High Density Residential

(CHDR), or Campus Mixed Use (CMU), where the zone permits lesser setbacks than the existing housing stock.

ii. Frontage

1. A building's front elevation is the elevation whereon the primary or common entrance is located.
2. Buildings shall front on a street, open space, or pedestrian way.
3. Buildings shall not front an interior property boundary or parking lot.
4. In any development consisting of (5) or more townhomes each townhome shall front a street, open space or pedestrian way.

biii. The majority of new buildings in multifamily developments shall be sited along the block face rather than the interior of the block.

1. Interior lot development should comprise no more than twenty-five percent (25%) of a project's area.

ed. Buildings, including parking structures, shall be designed and located in a manner that allows planting and growth of mature trees in the front and side yards.

54. Building Facades.

a. Ground Floor Treatment

i. Commercial Ground Floors in the Campus Mixed Use Zone

1. Design ground floor commercial space for retail or other active uses, orienting tenant spaces to the street and maximizing storefronts and entries along the sidewalks to sustain street level interest and promote pedestrian traffic
2. Wall openings, such as storefronts, windows and doors, shall comprise at least 60% of a building's street level façade measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor.
3. Open-wall storefronts are encouraged.

ii. Ground floors in all applicable zones.

1. Excepting townhomes, a minimum habitable first floor depth of 30' as measured from the street facing façade is required.
2. Residential units with individual entries shall include windows on the ground floor that look out onto the street, with wall openings comprising at least 30% of the street level façade, measured as a percentage of façade area between the ground plan and the finished floor elevation of the second floor..
3. Clear glass for wall openings, i.e., doors and windows, shall be used along all street-level façades for maximum transparency. Tinted, mirrored or opaque glazing is not permitted for any required wall opening along street level façades
4. Articulation and detailing of the ground floor with pedestrian entrances, quality materials and decorative details, shall be used to promote pedestrian-scaled architecture along the street.
5. Electrical service, mechanical, or other equipment, enclosed stairs, storage spaces, blank walls, and other elements that are not pedestrian-

oriented shall not be located along the ground floor street wall unless required by applicable code and no workable alternative location exists.

b. Pedestrian Building Entrances

i. Pedestrian building entrances shall

1. meet the spatial requirements set forth in Table 14.34.295-1 Pedestrian Building Entrance (PBE) Requirements;
2. contain a door providing direct pedestrian access into a building;
3. directly access an interior and enclosed commercial tenant space, public lobby, or residential unit;
4. be directly accessible from and directly adjacent to the sidewalk; and
5. prevent doors from swinging into the public right-of-way or beyond the front façade line of the building when opened.

ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors to exterior courtyards shall not qualify as pedestrian building entrances.

~~a. All structures shall have at least one (1) primary unit entry that faces the street.~~

~~Multifamily residential uses on corner lots shall have at least one (1) primary entry along each street frontage.~~

~~b. Additional entrances may be located on side or rear facades.~~

c. The primary entrance of a multifamily structure shall be clearly defined by use of a raised porch or other similar entry feature.

i. The front porch or entry feature shall be oriented to the street.

ii. The minimum size of the front porch or entry feature shall be functional rather than merely decorative.

iii. The porch floor height shall not exceed thirty (30) inches above the elevation of the top of the street curb.

d. Doors, windows and balconies of new housing should be located to respect the privacy of neighboring properties.

Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements

Frontage Type	Commercial	Residential
PBE's Required for Each Street-facing Façade	1 per 30 feet (1 min.)	1 per street-fronting ground floor unit
Maximum Spacing	40 feet	38 feet

65. Driveways and Parking.

a. New developments shall provide the minimum amount of driveway access and width required by code as a means of preserving front yard space.

a. Driveway placement should shall be toward the side property line to avoid dividing a building by a single, central driveway to subterranean parking.

- 119 ii. Driveways shall be consolidated where adjacent parcels or developments can be
120 served by a single driveway. Cross access easements shall guarantee rights of
121 access across the shared driveway for both parcels.
- 122 ~~iii.~~ Alley access for properties ~~should~~ shall be encouraged to reduce the impact of
123 parking and traffic circulation on the front of the property.
- 124 ~~iii~~iv. Parking and interior access ~~should~~ shall be designed to minimize the number of
125 curb cuts.
- 126 b. Parking shall not be placed in the front yard and should be minimized in the ~~rear yard~~
127 side yard, with the exception of one- and two-family dwellings when the driveway leads
128 to a garage or carport as defined in Chapter 14.37, Provo City Code.
- 129 a. Parking shall not be allowed between a primary building and a public street.
- 130 b. Surface parking areas in rear yards shall be screened from neighboring properties
131 with appropriate plant materials and/or fencing.
- 132 c. Entrances to ~~underground~~ structured parking shall be provided from driveways
133 along the sides of properties, not from a front-facing ~~underground~~ garage entry;
134 ~~unless the applicant demonstrates that no alternative is feasible.~~
- 135 iv. Parking shall be screened from any adjacent public way, street, open space or
136 pedestrian way.
- 137 c. ~~Except for the minimum ground-level frontage required for access to parking and~~
138 ~~loading, no parking or loading shall be visible on the ground floor of any building façade~~
139 ~~that faces a public right-of-way. It is recognized that providing parking within the~~
140 ~~primary building may create a conflict with the desire for pedestrian connectivity~~
141 ~~at street level. An alternate design that includes parking on the main level of~~
142 ~~the building and on a facade that faces a public street may be approved by the Design~~
143 ~~Review Committee, subject to the following standards:~~
- 144 ~~a.—There shall be a significant, pedestrian entrance to the building at street level to~~
145 ~~maintain a pedestrian connection to the street;~~
- 146 ~~b.—A minimum of thirty percent (30%) of the primary street level building facade~~
147 ~~must be habitable floor space such as living space, rental office or amenity space;~~
- 148 ~~c.—The parking structure shall be treated with materials, windows, building relief and~~
149 ~~rhythm that mask the appearance of the parking structure. The~~
150 ~~parking structure shall be appear to be part of the residential or~~
151 ~~commercial building; and~~
- 152 ~~d. The Design Review Committee should consider aesthetic transitions at facade~~
153 ~~corners when a side elevation is viewable from a public street.~~

154 76. Landscape Design.

- 155 d. Property owners shall comply with Section 15.20.030, Provo City Code, for the
156 protection of existing vegetation.
- 157 e. New landscaping shall be complementary to existing neighborhood vegetation.
- 158 i. The species, size and placement of new landscaping shall be considered in the design
159 review process.
- 160 f. Landscaping shall be used to reduce the impact of larger buildings on neighboring
161 properties.

162 g. Buildings and driveway lighting should not extend beyond the boundaries of the subject
163 property, as per Chapter 15.21, Provo City Code.

164 **87. Building Form, Mass and Scale (LDR Zone Only).**

165 a. Building form, mass and scale should be appropriate for the zone in which the building is
166 located and consistent with the established neighborhood character.

167 i. Architectural elements such as roof form, windows, doors, etc., should be consistent
168 with the form and character of the existing housing in the area.

169 ii. A porch or similar element, which defines the front entrance, shall be provided.

170 iii. An attached garage shall not be the dominant design feature of the front elevation.

171 iv. Sloping roofs such as gable or hip design should be used as the primary roof form.

172 v. Historic buildings are subject to Title 16, Provo City Code.

173 b. Building additions shall not strongly alter the character of an original building.

174 i. Windows, materials and doors should be compatible with those of the
175 original building.

176 ii. Roof forms shall be compatible with the existing structure.

177 **98. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).**

178 a. The facade of any multiple-family, ~~or~~ apartment, ~~or mixed use~~ structure shall: ~~have~~
179 ~~sufficient relief and rhythm to give visual interest and appeal.~~

180 i. ~~Be articulated in the horizontal plane to provide visual interest and enrich the~~
181 ~~pedestrian experience, while contributing to the quality and definition of the street~~
182 ~~wall.~~

183 ii. ~~Be vertically articulated to differentiate the ground floor façade, and feature high~~
184 ~~quality materials that add human scale, texture and variety at the pedestrian level.~~

185 iii. ~~Provide an identifiable break between the building's ground floors and upper floors.~~

186 ~~This break may include a change in material, horizontal dividing element, a change in~~
187 ~~fenestration pattern or similar means.~~

188 iv. ~~Be vertically articulated at the street wall façade, establishing different treatment for~~
189 ~~the building's base, middle and top. Use balconies, fenestration, shading devices, or~~
190 ~~other elements to create an interesting pattern of projections and recesses.~~

191 v. ~~Avoid extensive blank walls that detract from the experience and appearance of an~~
192 ~~active streetscape.~~

193 vi. ~~Provide well-marked entrances to cue access and use. Enhance all public entrances to~~
194 ~~a building or use through compatible architectural or graphic treatment.~~

195 ~~b. One (1) continuous roof line shall be avoided. Variation in the roof line, or roof height, is~~
196 ~~encouraged.~~

197 b. ~~Exterior stairways, corridors or landings shall not be located on the front or street side~~
198 ~~elevation of the building.~~

199 c. Structures located in the CHDR and CMU zones that are greater than ~~six~~~~four~~
200 ~~(64)~~ stories in height shall step back fifteen (15) feet from the first floor elevation for
201 all stories above the fourth floor on all elevations that front a public street unless the
202 applicant can demonstrate that there is sufficient variation and articulation in
203 the building planes to give visual interest and appeal.

204 d. Building additions shall not strongly alter the character of the original building.

205 i. Windows, materials and doors shall be compatible with those of the original building.

206 ii. Roof forms shall be compatible with the existing structure.

207 ~~109.~~ Building Materials

208 ~~a. The primary exterior finish material of all structures shall not consist of vinyl, aluminum~~
209 ~~or metal siding (including sheet or corrugated metal), plywood, particle board, or other~~
210 ~~products not intended as an architectural finish product.~~

211 ~~i. Stucco may be considered when it is detailed with wood trim around windows~~
212 ~~and doors. A shadow line around windows should be created.~~

213 ~~ii. A range of secondary materials including trim may be used as long as they~~
214 ~~remain secondary.~~

215 ~~iii. Wood, slate, tiles and high quality composition shingles and shakes shall be used~~
216 ~~for roofing materials.~~

217 a. Intent. The intent of the facade materials standards of this section is to:

218 i. Provide minimum material standards to ensure use of well-tested, high quality,
219 durable surfaces, while permitting a wider range of materials for details;

220 ii. Encourage a high level of detail from smaller scaled, less monolithic materials in
221 order to relate facades to pedestrians, especially at the ground level.

222 b. Major Materials. A minimum of eighty percent (80%) of each facade, not including
223 window and door areas, shall be composed of major materials, as specified in this
224 section.

225 i. Allowed Major Materials. The following are allowed major materials.

226 a. Stone.

227 b. Brick.

228 c. Wood.

229 d. Architectural metal panel systems.

230 e. Fiber Cement board.

231 f. Glass curtain wall.

232 g. Terra cotta decorative units, tiles or panels.

233 h. Architectural cast stone including glass fiber reinforced concrete.

234 ii. Prohibited Major Materials. The following materials are prohibited as major
235 materials, unless otherwise approved under the standards of this Section:

236 a. Face-sealed EIFS synthetic stucco assemblies and decorative
237 architectural elements.

238 b. Synthetic stucco or elastomeric finishes on stucco.

239 c. Unfinished or untreated wood.

240 d. Glass block.

241 e. Vinyl or aluminum siding.

242 f. Plastic, including high-density polyethylene, polyvinyl chloride (PVC),
243 and polycarbonate, panels.

244 g. Fiberglass and acrylic panels.

245 iii. Limited Use Major Materials. The following materials are prohibited as a
246 major material except consistent with the following:

247 a. Economy Bricks. Brick types larger than three inches in height are
248 allowed as major materials on rear, alley, and rail corridor facades. In

- 249 such instances, corner bricks shall be used to give the appearance of a
250 full brick façade.
- 251 c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent
252 areas that combine to twenty percent or less of the total surface of each facade.
- 253 i. Major Materials. All allowed major materials may serve as minor materials.
254 ii. Allowed Minor Materials. The following are allowed minor materials:
- 255 a. Metal for beams, lintels, trim, exposed structure, and other
256 ornamentation
- 257 b. Split-faced, burnished, glazed, or honed concrete masonry units or
258 block cast stone concrete elements.
- 259 c. Vinyl for window trim.
260 d. Cement-Based Stucco.
261 e. Face-sealed EIFS synthetic stucco assemblies and decorative
262 architectural elements.
263 f. Synthetic stucco.
- 264 d. Other Materials with Approval. Materials that are not listed in this section for its
265 proposed application as allowed major materials, limited use materials, or allowed minor
266 materials, may not be installed on any facade unless approved by the reviewing authority
267 pursuant to this subsection (d). The reviewing authority may approve facade materials
268 that are not listed in this section for its proposed application if the applicant demonstrates
269 the material in its proposed application meets the intent of the facade material standards
270 described in subsection (a) of this section. Samples and examples of successful high
271 quality local installation shall be provided by the applicant.

ITEM 3*

The Provo City Community Development Department requests Code Amendments to Section 14.34.287 regarding the design standards for buildings in the Campus Mixed Use Zone.

City-wide application

PLOTA20190025

1 ...

2 3. Yard Site Design Standards.

3 a. Front Yards.

- 4 i. There shall be a logical hard surface pedestrian connection between
- 5 the street and the front entry.
- 6 ii. The front yard shall be predominantly landscaped with a combination of turf
- 7 and plants. Hard surfaces for driveways and parking shall be minimized and shall
- 8 not exceed ordinance requirements.

9 iii. Utility boxes shall not be located in the front or street side yards or park strips

10 unless the applicant demonstrates that there is no other practical location for

11 utility boxes on the site.

12 iv. Mediate between public and private space on residential frontages. This

13 requirement may be met with the following strategies.

- 14 1. Use foundation plantings to provide separation between residential
- 15 units and the sidewalk.
- 16 2. Design porches, stoops and railings to provide intermediate semi-
- 17 private spaces.
- 18 3. Employ elevation changes to delineate the progression from public
- 19 space through semi-private space into interior private space.

20 b. Fences.

- 21 i. Fences shall complement the architectural character of the project.
- 22 ii. Chain link fences shall be prohibited in front yards.
- 23 iii. Fencing shall conform to Section 14.34.500, Provo City Code.

24 c. Building Location.

25 i. New structures shall be sited consistently with the existing front setbacks of

26 adjoining properties to maintain neighborhood compatibility, with the

27 exception of projects that are zoned High Density Residential (HDR), Campus

28 High Density Residential (CHDR), or Campus Mixed Use (CMU), where

29 the zone permits lesser setbacks than the existing housing stock.

30 ii. Frontage

- 31 1. A building's front elevation is the elevation whereon the primary or
- 32 common entrance is located.
- 33 2. Buildings shall front on a street, open space, or pedestrian way.
- 34 3. Buildings shall not front an interior property boundary or parking lot.
- 35 1-4. In any development consisting of (5) or more townhomes each
- 36 townhome shall front a street, open space or pedestrian way.

37 ii-iii. The majority of new buildings in multifamily developments shall be sited along

38 the block face rather than the interior of the block.

39

- 1. Interior lot development should comprise no more than twenty-five
- 40 percent (25%) of a project's area.

41 d. Buildings, including parking structures, shall be designed and located in a manner that

42 allows planting and growth of mature trees in the front and side yards.

43 4. Building Facades.

44 a. Ground Floor Treatment

45 i. Commercial Ground Floors in the Campus Mixed Use Zone

- 46 1. Design ground floor commercial space for retail or other active uses,
- 47 orienting tenant spaces to the street and maximizing storefronts and
- 48 entries along the sidewalks to sustain street level interest and promote
- 49 pedestrian traffic
- 50 2. Wall openings, such as storefronts, windows and doors, shall comprise
- 51 at least 60% of a building's street level façade measured as a percentage
- 52 of façade area between the ground plan and the finished floor elevation
- 53 of the second floor.
- 54 3. Open-wall storefronts are encouraged.

55 ii. Ground floors in all applicable zones.

- 56 1. Excepting townhomes, a minimum habitable first floor depth of 30' as
- 57 measured from the street facing façade is required.
- 58 2. Residential units with individual entries shall include windows on the
- 59 ground floor that look out onto the street, with wall openings
- 60 comprising at least 30% of the street level façade, measured as a
- 61 percentage of façade area between the ground plan and the finished
- 62 floor elevation of the second floor..
- 63 3. Clear glass for wall openings, i.e., doors and windows, shall be used
- 64 along all street-level façades for maximum transparency. Tinted,
- 65 mirrored or opaque glazing is not permitted for any required wall
- 66 opening along street level façades
- 67 4. Articulation and detailing of the ground floor with pedestrian entrances,
- 68 quality materials and decorative details, shall be used to promote
- 69 pedestrian-scaled architecture along the street.
- 70 5. Electrical service, mechanical, or other equipment, enclosed stairs,
- 71 storage spaces, blank walls, and other elements that are not pedestrian-
- 72 oriented shall not be located along the ground floor street wall unless
- 73 required by applicable code and no workable alternative location exists.

74 b. Pedestrian Building Entrances

75 i. Pedestrian building entrances shall

- 76 1. meet the spatial requirements set forth in Table 14.34.295-1
- 77 Pedestrian Building Entrance (PBE) Requirements;
- 78 2. contain a door providing direct pedestrian access into a
- 79 building;

- 80 3. directly access an interior and enclosed commercial tenant
- 81 space, public lobby, or residential unit;
- 82 4. be directly accessible from and directly adjacent to the
- 83 sidewalk; and
- 84 5. prevent doors from swinging into the public right-of-way or
- 85 beyond the front façade line of the building when opened.
- 86 ii. Fire exit doors, doors to fire riser rooms or other mechanical spaces, and doors
- 87 to exterior courtyards shall not qualify as pedestrian building entrances.
- 88 ~~a.—All structures shall have at least one (1) primary unit entry that faces the street.~~
- 89 ~~Multifamily residential uses on corner lots shall have at least one (1) primary entry along~~
- 90 ~~each street frontage.~~
- 91 ~~b.—Additional entrances may be located on side or rear facades.~~
- 92 ~~i.iii. The primary entrance of a multifamily structure shall be clearly defined~~
- 93 ~~by use of a raised porch or other similar entry feature.~~
- 94 ~~1. The front porch or entry feature shall be oriented to the street.~~
- 95 ~~2. The minimum size of the front porch or entry feature shall be functional~~
- 96 ~~rather than merely decorative.~~
- 97 ~~3. The porch floor height shall not exceed thirty (30) inches above the~~
- 98 ~~elevation of the top of the street curb.~~
- 99 ~~c. Doors, windows and balconies of new housing should be located to respect the privacy~~
- 100 ~~of neighboring properties.~~

<u>Table 14.34.287-1 Pedestrian Building Entrance (PBE) Requirements</u>		
<u>Frontage Type</u>	<u>Commercial</u>	<u>Residential</u>
<u>PBE's Required for Each Street-facing Façade</u>	<u>1 per 25 feet (1 min.)</u>	<u>1 per street-fronting ground floor unit</u>
<u>Maximum Spacing</u>	<u>38 feet</u>	<u>38 feet</u>

- 101 5. Driveways and Parking.
- 102 a. New developments shall provide the minimum amount of driveway access and width
- 103 required by code as a means of preserving front yard space.
- 104 i. Driveway placement ~~should shall~~ be toward the side property line to avoid
- 105 dividing a building by a single, central driveway to subterranean parking.
- 106 i.ii. Driveways shall be consolidated where adjacent parcels or developments can be
- 107 served by a single driveway. Cross access easements shall guarantee rights of
- 108 access across the shared driveway for both parcels.
- 109 ii.iii. Alley access for properties ~~should shall~~ be encouraged to reduce the impact of
- 110 parking and traffic circulation on the front of the property.
- 111 iii.iv. Parking and interior access ~~should shall~~ be designed to minimize the number of
- 112 curb cuts.

- 113 b. Parking shall not be placed in the front yard and should be minimized in the ~~rear~~
- 114 ~~yardside yard~~, with the exception of one- and two-family dwellings when the driveway
- 115 leads to a garage or carport as defined in Chapter 14.37, Provo City Code.
- 116 i. Parking shall not be allowed between a primary building and a public street.
- 117 ii. Surface parking areas in rear yards shall be screened from neighboring
- 118 properties with appropriate plant materials and/or fencing.
- 119 iii. Entrances to ~~underground structured~~ parking shall be provided from driveways
- 120 along the sides of properties, not from a front-facing ~~underground~~ garage entry,
- 121 unless the applicant demonstrates that no alternative is feasible.
- 122 iii.iv. Parking shall be screened from any adjacent public way, street, open space or
- 123 pedestrian way.
- 124 c. Except for the minimum ground-level frontage required for access to parking and
- 125 loading, no parking or loading shall be visible on the ground floor of any building façade
- 126 that faces a public right-of-way. It is recognized that providing parking within the
- 127 primary building may create a conflict with the desire for pedestrian connectivity
- 128 at street level. An alternate design that includes parking on the main level of
- 129 the building and on a facade that faces a public street may be approved by the Design
- 130 Review Committee, subject to the following standards:
- 131 i.—There shall be a significant, pedestrian entrance to the building at street level to
- 132 maintain a pedestrian connection to the street;
- 133 ii.—A minimum of thirty percent (30%) of the primary street-level building facade
- 134 must be habitable floor space such as living space, rental office or amenity
- 135 space;
- 136 iii.—The parking structure shall be treated with materials, windows, building relief
- 137 and rhythm that mask the appearance of the parking structure. The
- 138 parking structure shall appear to be part of the residential or
- 139 commercial building; and
- 140 iv.—The Design Review Committee should consider aesthetic transitions at facade
- 141 corners when a side elevation is viewable from a public street.
- 142 6. Landscape Design.
- 143 a. Property owners shall comply with Section 15.20.030, Provo City Code, for the
- 144 protection of existing vegetation.
- 145 b. New landscaping shall be complementary to existing neighborhood vegetation.
- 146 i. The species, size and placement of new landscaping shall be considered in the
- 147 design review process.
- 148 c. Landscaping shall be used to reduce the impact of larger buildings on neighboring
- 149 properties.
- 150 d. Buildings and driveway lighting should not extend beyond the boundaries of the subject
- 151 property, as per Chapter 15.21, Provo City Code.
- 152 7. Building Form, Mass and Scale (LDR Zone Only).

153 i. Building form, mass and scale should be appropriate for the zone in which
154 the building is located and consistent with the established neighborhood
155 character.
156 ii. Architectural elements such as roof form, windows, doors, etc., should be
157 consistent with the form and character of the existing housing in the area.
158 iii. A porch or similar element, which defines the front entrance, shall be provided.
159 iv. An attached garage shall not be the dominant design feature of the front
160 elevation.
161 v. Sloping roofs such as gable or hip design should be used as the primary roof
162 form.
163 vi. Historic buildings are subject to Title 16, Provo City Code.
164 b. Building additions shall not strongly alter the character of an original building.
165 i. Windows, materials and doors should be compatible with those of the
166 original building.
167 ii. Roof forms shall be compatible with the existing structure.
168 8. Building Form, Mass and Scale (MDR, HDR, CHDR and CMU Zones).
169 a. ~~The facade of any multiple-family, or apartment, or mixed use structure shall have~~
170 ~~sufficient relief and rhythm to give visual interest and appeal.~~
171 i. Be articulated in the horizontal plane to provide visual interest and enrich the
172 pedestrian experience, while contributing to the quality and definition of the
173 street wall.
174 ii. Be vertically articulated to differentiate the ground floor façade, and feature
175 high quality materials that add human scale, texture and variety at the
176 pedestrian level.
177 iii. Provide an identifiable break between the building's ground floors and upper
178 floors. This break may include a change in material, horizontal dividing element,
179 a change in fenestration pattern or similar means.
180 iv. Be vertically articulated at the street wall façade, establishing different
181 treatment for the building's base, middle and top. Use balconies, fenestration,
182 shading devices, or other elements to create an interesting pattern of
183 projections and recesses.
184 v. Avoid extensive blank walls that detract from the experience and appearance of
185 an active streetscape.
186 vi. Provide well-marked entrances to cue access and use. Enhance all public
187 entrances to a building or use through compatible architectural or graphic
188 treatment.
189 i.—
190 b. ~~One (1) continuous roof line shall be avoided. Variation in the roof line, or roof height, is~~
191 ~~encouraged.~~
192 b. Exterior stairways, corridors or landings shall not be located on the front or street side
193 elevation of the building

194 c. Structures located in the CHDR and CMU zones that are greater than ~~six-four~~
195 ~~(64)~~ stories in height shall step back fifteen (15) feet from the first floor elevation for
196 all stories above the fourth floor on all elevations that front a public street unless the
197 applicant can demonstrate that there is sufficient variation and articulation in
198 the building planes to give visual interest and appeal.
199 d. Building additions shall not strongly alter the character of the original building.
200 i. Windows, materials and doors shall be compatible with those of the
201 original building.
202 ii. Roof forms shall be compatible with the existing structure.
203
204 ...
205
206 10. Building Materials
207 a. ~~The primary exterior finish material of all structures shall not consist of vinyl, aluminum~~
208 ~~or metal siding (including sheet or corrugated metal), plywood, particle board, or other~~
209 ~~products not intended as an architectural finish product.~~
210 i. ~~Stucco may be considered when it is detailed with wood trim around windows~~
211 ~~and doors. A shadow line around windows should be created.~~
212 ii. ~~A range of secondary materials including trim may be used as long as they~~
213 ~~remain secondary.~~
214 iii. ~~Wood, slate, tiles and high-quality composition shingles and shakes shall be~~
215 ~~used for roofing materials.~~
216 a. Intent. The intent of the facade materials standards of this section is to:
217 iv. Provide minimum material standards to ensure use of well-tested, high quality,
218 durable surfaces, while permitting a wider range of materials for details;
219 v. Encourage a high level of detail from smaller scaled, less monolithic materials in
220 order to relate facades to pedestrians, especially at the ground level.
221 b. Major Materials. A minimum of eighty percent (80%) of each facade, not including
222 window and door areas, shall be composed of major materials, as specified in this
223 section.
224 i. Allowed Major Materials. The following are allowed major materials.
225 a. Stone.
226 b. Brick.
227 c. Wood.
228 d. Architectural metal panel systems.
229 e. Fiber Cement board.
230 f. Glass curtain wall.
231 g. Terra cotta decorative units, tiles or panels.
232 h. Architectural cast stone including glass fiber reinforced concrete.
233 ii. Prohibited Major Materials. The following materials are prohibited as major
234 materials, unless otherwise approved under the standards of this Section:

- 235 a. Face-sealed EIFS synthetic stucco assemblies and decorative
236 architectural elements.
237 b. Synthetic stucco or elastomeric finishes on stucco.
238 c. Unfinished or untreated wood.
239 d. Glass block.
240 e. Vinyl or aluminum siding.
241 f. Plastic, including high-density polyethylene, polyvinyl chloride (PVC),
242 and polycarbonate, panels.
243 g. Fiberglass and acrylic panels.
244 iii. Limited Use Major Materials. The following materials are prohibited as a
245 major material except consistent with the following:
246 a. Economy Bricks. Brick types larger than three inches in height are
247 allowed as major materials on rear, alley, and rail corridor facades. In
248 such instances, corner bricks shall be used to give the appearance of a
249 full brick façade.
250 c. Minor Materials. Allowed minor materials are limited to trim, details, and other accent
251 areas that combine to twenty percent or less of the total surface of each facade.
252 i. Major Materials. All allowed major materials may serve as minor materials.
253 ii. Allowed Minor Materials. The following are allowed minor materials:
254 a. Metal for beams, lintels, trim, exposed structure, and other
255 ornamentation
256 b. Split-faced, burnished, glazed, or honed concrete masonry units or
257 block cast stone concrete elements.
258 c. Vinyl for window trim.
259 d. Cement-Based Stucco.
260 e. Face-sealed EIFS synthetic stucco assemblies and decorative
261 architectural elements.
262 f. Synthetic stucco.
263 d. Other Materials with Approval. Materials that are not listed in this section for its
264 proposed application as allowed major materials, limited use materials, or allowed
265 minor materials, may not be installed on any facade unless approved by the reviewing
266 authority pursuant to this subsection (d). The reviewing authority may approve facade
267 materials that are not listed in this section for its proposed application if the applicant
268 demonstrates the material in its proposed application meets the intent of the facade
269 material standards described in subsection (a) of this section. Samples and examples of
270 successful high quality local installation shall be provided by the applicant.
271