



PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Agenda

5:30 PM, Tuesday, February 18, 2020

Room 200, Municipal Council Chambers

351 W. Center Street, Provo, UT 84601

Decorum

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

Opening Ceremony

Roll Call

Prayer

Pledge of Allegiance

Presentations, Proclamations, and Awards

1. Introduction of the new Grandview South Neighborhood Chair. (20-041)
2. A presentation on the Timpview Trail Neighborhood Matching Grant Project in the Indian Hills Neighborhood. (20-042)

Public Comment

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

Please state your name and city of residence into the microphone.

Please limit your comments to two minutes.

State Law prohibits the Council from acting on items that do not appear on the agenda.

Action Agenda

3. A resolution consenting to the appointment of individuals to various boards and commissions. (20-003)
4. A resolution appropriating \$15,000 in the General Fund for a public bike rack expansion project. (20-040)
5. A resolution transferring \$200,000 from the Community and Neighborhood Services Department to the Development Services Department. (20-039)

6. A resolution appropriating \$26,819.85 in the General Fund for a reimbursement to satisfy the Participation and Reimbursement Agreement with Parkway Village Provo Holdings, LLC. (20-038)
7. A resolution appropriating \$3,638,455 in grant funds and sale proceeds for the design and construction of a new roadway, utilities, and infrastructure at the Mountain Vista Business Center. (20-035)
8. A joint resolution of the Provo City Mayor and Municipal Council urging support for educating consumers about where Tier 3 gasoline is sold. (20-031)
9. ***CONTINUED*** An ordinance amending Provo City Code relating to floor area ratio, setback, and buffer yard requirements in the Research and Business Park (R&BP) Zone. Citywide Application. (PLOT20190425)
10. An ordinance amending Provo City Code to allow restaurants with ancillary microbrewing as a permitted use in certain zones. (PLOT20190378)

Adjournment

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

Materials and Agenda: agendas.provo.org

Council meetings are broadcast live and available later on demand at youtube.com/user/ProvoCityCouncil

To send comments to the Council or weigh in on current issues, visit OpenCityHall.provo.org.

The next scheduled Council Meeting will be held on 3/10/2020 5:30:00 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.

Notice of Compliance with Public Noticing Regulations

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

Network for public internet access: *Provo Guest*, password: *provoguest*

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: KTAPAHE
Department: Council
Requested Meeting Date: 02-18-2020

SUBJECT: Introduction of the new Grandview South Neighborhood Chair. (20-041)

RECOMMENDATION: Presentation only.

BACKGROUND: The Grandview South Neighborhood recently elected a new Neighborhood Chair (Mindy Jeppesen) and Vice Chairs (Arien Adams, Melanie Epling, and Mel Smith).

FISCAL IMPACT: None

PRESENTER'S NAME: Karen Tapahe, Community Relations Coordinator

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES: In Provo City Code 2.29.030 (1)(a) says, "Newly elected Neighborhood Chairs shall be formally recognized at an ensuing Municipal Council meeting."

CITYVIEW OR ISSUE FILE NUMBER: 20-041

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: MANAGER
Department: Council
Requested Meeting Date: 02-18-2020

SUBJECT: A presentation on the Timpview Trail Neighborhood Matching Grant Project in the Indian Hills Neighborhood. (20-042)

RECOMMENDATION: Presentation only.

BACKGROUND: Joshua Killpack, a local Boy Scout, organized his Eagle Scout project in collaboration with the Indian Hills Neighborhood and utilized matching grant funds to complete the project. He will share with the Council an update and the results of his completed project.

The Council budgets funds each year for the Neighborhood Matching Grant program, which neighborhoods can use to complete a beautification project in their area. The City's funds are matched with volunteer labor or donated goods and services from neighborhood residents (typically a combination of the two) and sometimes additional fundraising. The Indian Hills Neighborhood worked with Joshua Killpack on this project. Joshua also worked with the Parks and Recreation Department to assess the trail area and find the best solution to repair the trail.

FISCAL IMPACT: None

PRESENTER'S NAME: Joshua Killpack

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-042

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: EVANDERWERKEN
Department: Council
Requested Meeting Date: 02-18-2020

SUBJECT: A resolution consenting to the appointment of individuals to various boards and commissions. (20-003)

RECOMMENDATION: Appoint board members as recommended by Mayor Kaufusi.

BACKGROUND: Mayor Kaufusi has recommended several individuals to be appointed to various City boards and commissions. The Council has reviewed the recommendations, met the tentative-appointees, and will now consider a resolution to appoint those individuals to the respective boards and commissions.

FISCAL IMPACT: None

PRESENTER'S NAME: TBD

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-003

1 RESOLUTION 2020-

2
3 A RESOLUTION CONSENTING TO THE APPOINTMENT OF INDIVIDUALS
4 TO VARIOUS BOARDS AND COMMISSIONS. (20-003)
5

6 WHEREAS, the Mayor, acting pursuant to her statutory authority, has recommended that
7 individuals be appointed to serve on various boards and commissions as detailed below; and,
8

9 WHEREAS, on February 18, 2020, the Municipal Council met to ascertain the facts
10 regarding this matter and receive public comment, which facts and comments are found in the
11 public record of the Council’s consideration; and
12

13 WHEREAS, after considering the Mayor's recommendation and facts presented to the
14 Municipal Council, the Council (i) consents to the board appointments set forth below and (ii)
15 finds such appointments will reasonably further the health, safety and general welfare of the
16 citizens of Provo City.
17

18 NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah, as
19 follows:
20

21 PART I:
22

23 Pursuant to Provo City Code Section 2.20.020, the Municipal Council consents to the
24 appointment of the individuals listed below to serve on the listed board or commission for the
25 prescribed term:
26

<u>Appointee's Name</u>	<u>Board</u>	<u>Term Expiration Date</u>
Zach Atherton	Arts Council	June 30, 2023
Thomas Taylor	Arts Council	June 30, 2023
Daren Smith	Arts Council	June 30, 2023
David Shipley	Library Board	December 31, 2023

32
33 PART II:
34

35 Pursuant to Utah Code Section 35A-8-404, the Municipal Council consents to the
36 appointment of the individuals listed below to serve on the listed board or commission for the
37 prescribed term:
38

<u>Appointee's Name</u>	<u>Board</u>	<u>Term Expiration Date</u>
Beth Alligood	Housing Authority	June 30, 2020

41
42 PART III:
43

44 This resolution and the board and commission appointments indicated herein shall take
45 effect immediately.
46

47 END OF RESOLUTION.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: DMORTENSEN
Department: Finance
Requested Meeting Date: 02-18-2020

SUBJECT: A resolution appropriating \$15,000 in the General Fund for a public bike rack expansion project. (20-040)

RECOMMENDATION: Approve the resolution.

BACKGROUND: In Provo's contract with Zagster for the scooter program, they were to pay the City a fee amounting to \$25,000. It was anticipated that the City would use some of that money for bike racks to support bikes in general and the bike sharing program that Zagster is working on in particular. The City has now received that funding and staff have requested an appropriation of \$15,000 for bike racks as outlined in the attached Public Bike Rack Expansion Project Powerpoint.

FISCAL IMPACT: \$15,000 from General Fund Balance

PRESENTER'S NAME: David Mortensen, Budget Officer

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-040

1 RESOLUTION 2020-.

2
3 A RESOLUTION APPROPRIATING \$15,000 IN THE GENERAL FUND FOR
4 A PUBLIC BIKE RACK EXPANSION PROJECT. (20-040)

5
6 WHEREAS, the Provo City Municipal Council has received a recommendation from the
7 Provo City Community and Neighborhood Services Department that \$15,000 be appropriated in
8 the General Fund for a public bike rack expansion project; and

9
10 WHEREAS, on February 18, 2020, the Municipal Council met to ascertain the facts
11 regarding this matter and receive public comment, which facts and comments are found in the
12 public record of the Council's consideration; and

13
14 WHEREAS, all persons for and against the proposed appropriation were given an
15 opportunity to be heard; and

16
17 WHEREAS, after considering the Mayor's recommendation, and facts and comments
18 presented to the Municipal Council, the Municipal Council finds the proposed appropriation
19 reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

20
21 NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah as
22 follows:

23
24 PART I:

25
26 The Mayor is hereby authorized to appropriate \$15,000 in the General Fund for a public
27 bike rack expansion project, applying to the fiscal year ending June 30, 2020.

28
29 PART II:

30
31 This resolution shall take effect immediately.

32
33 END OF RESOLUTION.

PUBLIC BIKE RACK EXPANSION

Austin Taylor

Provo Parking and Sustainability



NEED

LACK OF BIKE PARKING

Residential and Commercial

	Long-term Spaces	Design	Short-term Spaces	Design
Target on Cougar Blvd	0	N/A	0	N/A
Startup Crossing	0	N/A	10	Uncovered wavy rack
63 East	0	N/A	11	Six u-racks, one wheel-cradle
County and State Buildings	0	N/A	8	Wheel-cradle rack
Juice and Java	0	N/A	0	N/A

COMMUNITY DESIRE

Provo Bike Parking

To add bike rack photos, & to be ENTERED to win bike swag, visit <http://www.bikeprovo.org/bike-parking/>
4,101 views
[SHARE](#)

- Racks that can be improved**
 - Utah County Historic Courthouse
 - Seven Peaks
 - Bike Corral, 50 E Center St
 - Downtown artistic bike rack, 15 E Center...
 - ... 106 more
- Ideal Bike Racks**
 - Hospital Rack
 - BYU Information Technology Building
 - LDS Church building 1625 S. Slate Cany...
 - Blickenstaffs Riverwoods
 - ... 109 more
- Places where racks should be added**
 - ConnexionPoint
 - Memorial Park
 - 2445 N 600 E
 - On north side of County/state offices
 - ... 50 more
- Lockers, Maintenance, Etc.**
 - Provo Station Self-Serve Bike Fix-it Station

Map data ©2019 [Terms](#) 2,000 ft

PROJECT GUIDELINES

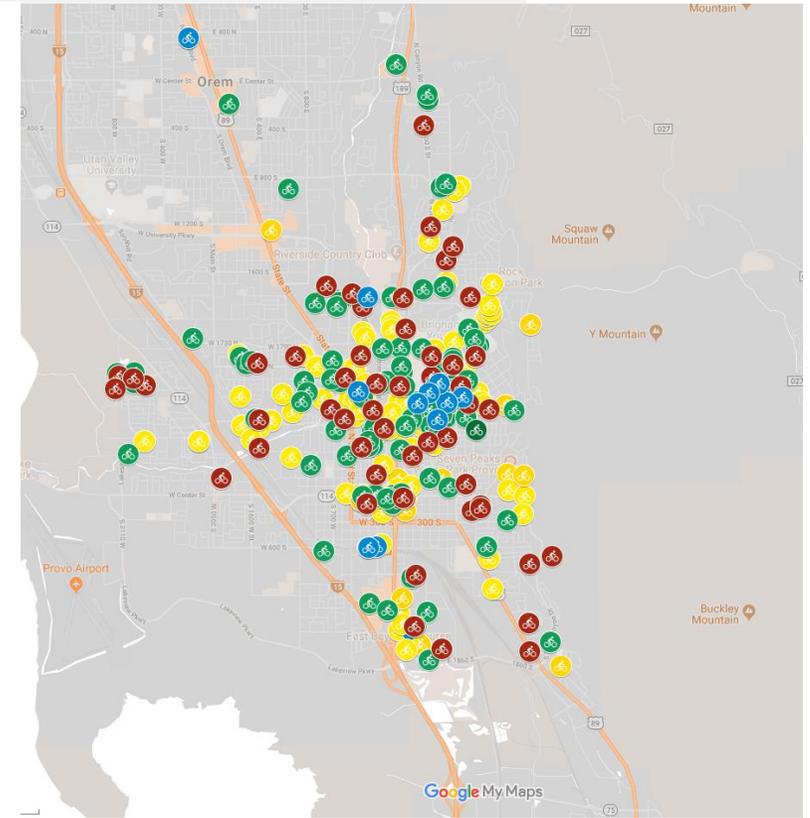
INSTALLATION

- Must be installed on public property and for public use
- Must comply with ADA rules
- Will primarily be installed in pre-existing concrete slabs
- Must be installed at least 2' from a fixed object and 16" from the curb



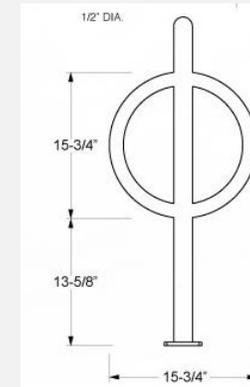
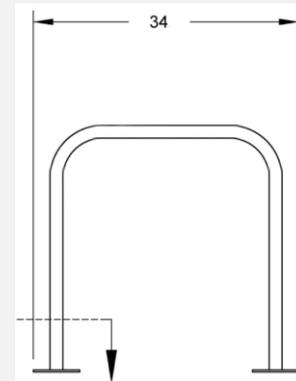
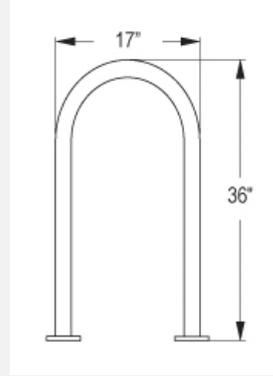
INSTALLATION LOCATIONS

- Downtown will receive highest priority
- Install elsewhere based on requests.
- Use BikeWalk Provo parking map as guide

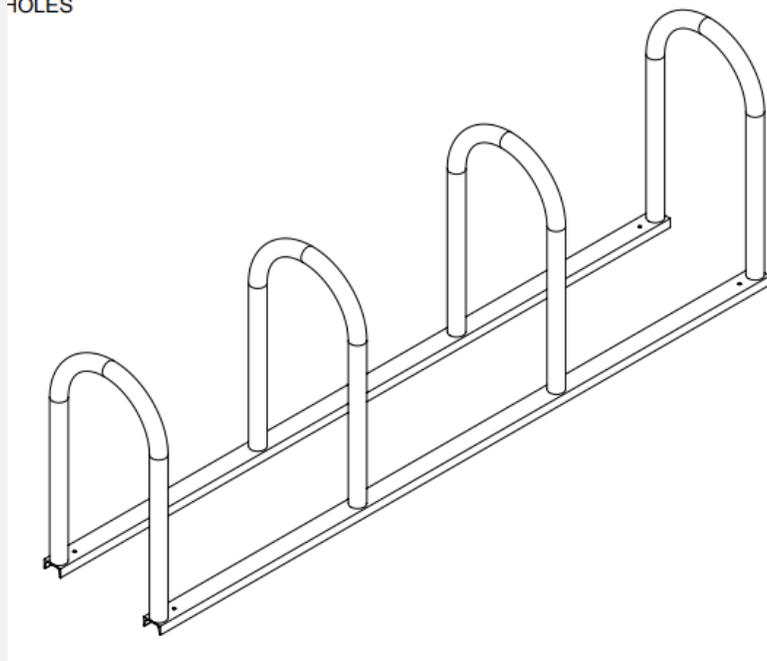


RACK TYPES

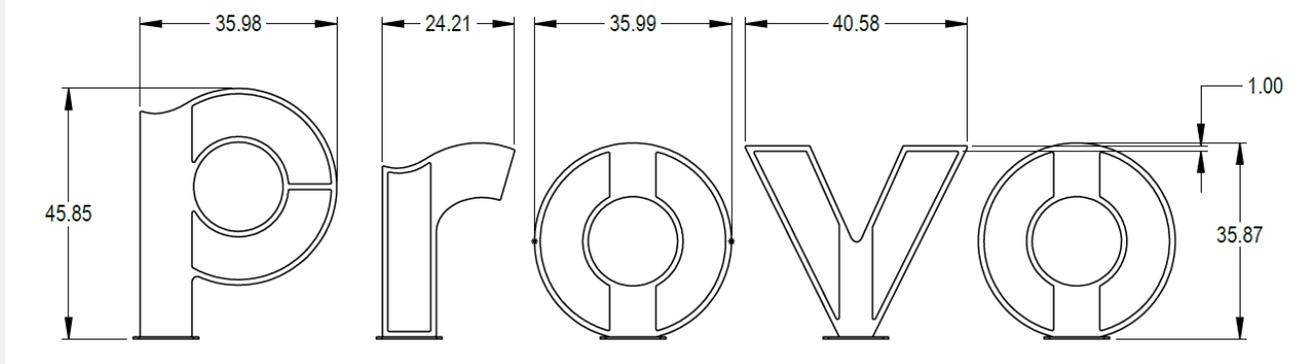
All racks must support the bicycle in two places and be securely mounted to the ground.



TOLES



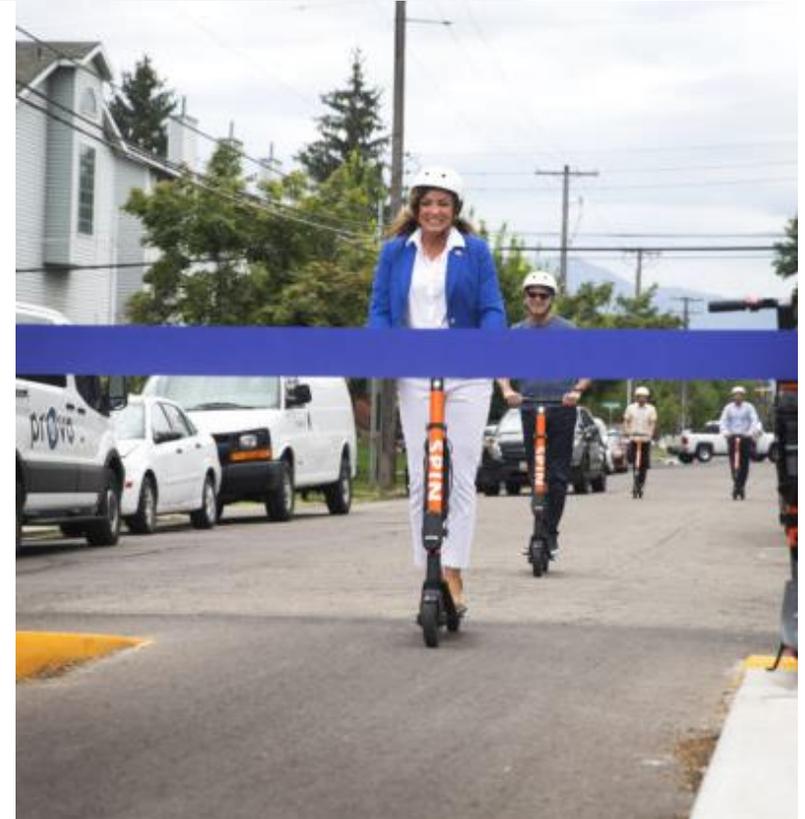
ONE CUSTOM PUBLIC ART RACK



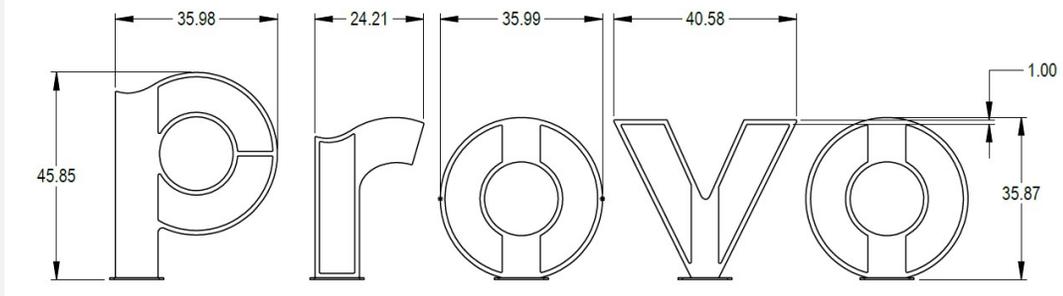
FUNDING

FUNDING

- Scooter fees brought in \$25k. Reinvest in active transportation, especially to prepare for bike share in early 2020.
- \$15k project request
 - \$10k for ~80 standard bike racks and installation supplies
 - \$5k for custom bike rack



ONE CUSTOM PUBLIC ART RACK



David Mortensen

From: Gary McGinn
Sent: Wednesday, October 23, 2019 1:32 PM
To: John Borget; David Mortensen
Cc: Michelle Kaufusi; Wayne Parker; Austin Taylor
Subject: Zagster Scooters- invoice
Attachments: Custom Bike Rack.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

John & David,

As you may remember, we contracted with Zagster allowing them to deploy the spin scooters you see around town. Zagster is to pay us a onetime \$50 fee for each scooter/ bike that it deploys in Provo. We recently sent Zagster an invoice for \$25,000 and should be getting the money soon.

Our contract anticipates that we will use some of that money to install additional bike racks around town to invest in active transportation and to prepare for Zagster's bike share launch in early 2020. We are working on a plan where we will install 80 bike racks around town and possibly one custom bike rack that would also double as Provo Branded public art in the downtown area. I'm attaching a PDF of a concept for the custom bike rack/ public art.

The estimate for this project is \$15,000. We don't have this budgeted as we were anticipating using the Zagster funds when they became available. How would you like us to proceed to get the \$15,000 into our budget?



GARY MCGINN
COMMUNITY DEVELOPMENT
DIRECTOR
TEL 801-852-6401
FAX 801-852-7411

David Mortensen

From: Gary McGinn
Sent: Thursday, January 30, 2020 12:28 PM
To: John Borget
Cc: Wayne Parker; Robert Mills; Austin Taylor; David Mortensen
Subject: FW: City of Provo
Attachments: Public Bike Rack Expansion Project.pptx

Follow Up Flag: Follow up
Flag Status: Flagged

John,

In our contract with Zagster for the scooter program, they were to pay us a fee amounting to \$25,000. It was anticipated that we would use some of that money for bike racks to support bikes in general and the bike sharing program that Zagster is working on in particular. We didn't want to go to the Council for an appropriation until we got the money.

We have now received that \$25,000. Now that the money is here we would like to go to the Council for an appropriation of \$15,000 for bike racks as outlined in the attached Public Bike Rack Expansion Project.

Let me know what you need us to do next.

Thanks,

Gary

From: Austin Taylor <ataylor@provo.org>
Sent: Thursday, January 30, 2020 12:06 PM
To: Gary McGinn <GMcGinn@provo.org>
Subject: FW: City of Provo

The \$25k from Zagster finally came through.

Did we get the okay to spend \$15k of that on bike racks?

From: Kristal Howarth
Sent: Tuesday, January 28, 2020 5:18 PM
To: Austin Taylor <ataylor@provo.org>
Subject: RE: City of Provo

She said the check was received!

From: Kristal Howarth
Sent: Tuesday, January 28, 2020 3:15 PM
To: Austin Taylor <ataylor@provo.org>
Subject: RE: City of Provo

Andrea sent me the attached email on 1/7. It's a notification that it was on its way but she never said if it ever actually got here (similar to what you have). I will email and ask her. Thanks!

From: Austin Taylor <ataylor@provo.org>
Sent: Tuesday, January 28, 2020 2:57 PM
To: Kristal Howarth <KHowarth@provo.utah.gov>
Subject: FW: City of Provo

Do you know if this was received?

From: Adam Greenstein [<mailto:agreenstein@zagster.com>]
Sent: Monday, January 6, 2020 11:05 AM
To: Austin Taylor <ataylor@provo.org>
Subject: Fwd: City of Provo

Hey Austin,

Please see confirmation of payment attached. The check is scheduled to arrive on 1/13. I'm so sorry for this delay.

Adam

----- Forwarded message -----

From: **Zagster Billing** <billing@zagster.com>
Date: Mon, Jan 6, 2020 at 1:03 PM
Subject: City of Provo
To: Adam Greenstein <agreenstein@zagster.com>

SCHEDULED PAYMENTS
Funds will be withdrawn from your account on the process date. Done

USD 25,000.00 Check	PAID TO: City of Provo	INVOICE #: 4037	CONFIRMATION #: P20012601 - 8921432	Make a copy
PAYOR ACCOUNT: SI-Vy-Bk-S****3734	PROCESS DATE: 01/07/20	EST ARRIVAL: 01/13/20	REMITTANCE SENT TO: twright@provo.org	PHONE: 801-403-7
ADDRESS: Checks will be mailed here: 351 W Center St, Provo, UT, 84601				



ZAGSTER BILLING
at Zagster
E billing_old@zagster.com
109 Kingston Street
5th Floor
Boston, MA 02111

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ADAM GREENSTEIN

Micro-Mobility Director at Zagster

P 617-402-3069 | **E** agreenstein@zagster.com
109 Kingston Street
5th Floor
Boston, MA 02111

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: DMORTENSEN
Department: Finance
Requested Meeting Date: 02-18-2020

SUBJECT: A resolution transferring \$200,000 from the Community and Neighborhood Services Department to the Development Services Department. (20-039)

RECOMMENDATION: Approve the resolution.

BACKGROUND: In fiscal year 2020 (the current fiscal year), the former Community Development Department was split into two separate departments, Community and Neighborhood Services and Development Services. At the time of the fiscal year 2020 budget preparation, it was still unclear exactly which functions and employees would be going to each department. Now that the dust has settled somewhat from the change, the City has a better idea of what the fiscal year 2020 personnel budgets should be for each department. Using the analysis attached in the supporting documents, staff determined that Community and Neighborhood Services was budgeted about \$200,000 more than they need, and Development Services was budgeted about \$200,000 less than they need. The proposed transfer of personnel budget would move \$200,000 of budget from Community and Neighborhood Services to Development Services.

FISCAL IMPACT: None

PRESENTER'S NAME: David Mortensen, Budget Officer

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-039

1 RESOLUTION 2020-.

2
3 A RESOLUTION TRANSFERRING \$200,000 FROM THE COMMUNITY
4 AND NEIGHBORHOOD SERVICES DEPARTMENT TO THE
5 DEVELOPMENT SERVICES DEPARTMENT. (20-039)
6

7 WHEREAS, the Provo City Municipal Council has received a recommendation from the
8 Provo City Finance Division that personnel budget of \$200,000 be transferred from the
9 Community and Neighborhood Services Department in the General Fund to the Development
10 Services Department in the General Fund; and
11

12 WHEREAS, on February 18, 2020, the Municipal Council met to ascertain the facts
13 regarding this matter and receive public comment, which facts and comments are found in the
14 public record of the Council's consideration; and
15

16 WHEREAS, all persons for and against the proposed transfer were given an opportunity
17 to be heard; and
18

19 WHEREAS, after considering the Mayor's recommendation, and facts and comments
20 presented to the Municipal Council, the Municipal Council finds the proposed transfer
21 reasonably furthers the health, safety, and general welfare of the citizens of Provo City.
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 Mayor is hereby authorized to transfer personnel budget of \$200,000 from the
29 Community and Neighborhood Services Department in the General Fund to the Development
30 Services Department in the General Fund, applying to the fiscal year ending June 30, 2020.
31

32 PART II:
33

34 This resolution shall take effect immediately.
35

36 END OF RESOLUTION.

Community and Neighborhood Services

		Current FY20 Budget	Proposed FY20 Budget	Difference	14/26 of Proposed Budget	Actual (14 PP)	FY20 Personnel Savings So Far	Total Excess/(Shortfall)
110	701	502,428	331,921	170,507	178,727	201,781	(23,054)	
110	702	339,655	256,666	82,989	138,205	248,988	(110,783)	
110	704	474,900	520,111	(45,211)	280,060	122,293	157,766	
110	706	111,221	111,221	0	59,888	61,190	(1,302)	
110	707	98,078	98,078	0	52,811	51,754	1,057	
	Totals	1,526,282	1,317,997	208,285	709,691	686,007	23,684	231,969
273	5001	460,579	410,538	50,041	221,059	181,892	39,167	
	Totals	460,579	410,538	50,041	221,059	181,892	39,167	
	Total CNS	1,986,861	1,728,535	258,326	930,750	867,898	62,851	

Development Services

		Current FY20 Budget	Proposed FY20 Budget	Difference	14/26 Proposed Budget	Actual (14 PP)	FY20 Personnel Savings So Far	Total Excess/(Shortfall)
110	901	271,487	329,590	(58,103)	177,472	101,174	76,298	
110	902	292,128	440,472	(148,344)	237,177	250,078	(12,901)	
110	903	612,870	701,490	(88,620)	377,725	372,963	4,762	
110	2101	115,920	115,920	0	62,418	104,991	(42,573)	
110	2102	101,357	101,357	0	54,577	0	54,577	
110	2103	88,907	88,907	0	47,873	0	47,873	
	Totals	1,482,669	1,777,736	(295,067)	957,242	829,206	128,036	(167,031)
274	6901	163,324	163,324	0	87,944	91,900	(3,956)	
	Totals	163,324	163,324	0	87,944	91,900	(3,956)	
279	7001	8,570	8,570	0	4,615	99	4,516	
	Totals	8,570	8,570	0	4,615	99	4,516	
	Total DS	1,654,563	1,949,630	(295,067)	1,049,801	921,205	128,596	
	CNS & DS 110 Combined	3,008,951	3,095,733	(86,782)			151,721	64,939

Based on Position Moving from 273 to 110 mid-year (Jan 1)

Propose transfer of budget from CNS to DS of \$200,000.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: DIXONH
Department: Recorder
Requested Meeting Date: 02-18-2020

SUBJECT: A resolution appropriating \$26,819.85 in the General Fund for a reimbursement to satisfy the Participation and Reimbursement Agreement with Parkway Village Provo Holdings, LLC. (20-038)

RECOMMENDATION: Approve the resolution.

BACKGROUND: On November 15, 2016 the Council approved a resolution authorizing the Mayor to execute an agreement between Provo City and Parkway Village LLC, the ownership group of the Parkway Village shopping center located at 2255 North University Parkway. At the meeting, the Council was presented with a request to reimburse the ownership group for certain extra-ordinary demolition, development, and construction costs associated with the removal of an existing occupied retail pad; participation of the installation of a new traffic signal; and the construction of a replacement retail pad.

The reimbursement would be funded through retail sales tax increment above the established predetermined sales tax revenue actually generated by the the retail center as of a certain date. The baseline revenue was established at \$136,476, which represents one half of one percent of total sales generated at the center, or that portion of sales tax revenue recieved by Provo City from the retail center, as provided by the State of Utah. In this agreement, Provo City will continue to receive the baseline amount of \$136,476. The developer/owner will receive, on an annual basis, a reimbursement against their actual out of pocket expenses; that is, any additional sales tax revenue above and beyond the baseline amount of \$136,476.

The terms of the agreement runs for ten years. In that time the developer/owner will be able to be reimbursed up to half the out of pocket costs for the expenses described above. The target reimbursement amount as per the agreement is \$1,053,395.86. Further, if the shopping center performs extraordinarily well, and if the owner/developer has earned reimbursement equal to the targeted reimbursement amount, and if there is still time left within the ten-year agreement, the owner/developer will be intitled to half of the tax increment above the base line. However, at no point will the developer/owner be entitled to more than the out of pocket expenses. That total out of pocket expenses are \$2,106791.72.

As this is the first payment in the ten year agreement, that is \$26,819.85, which represents that amount over the baseline of \$136,476, it is not likely that full reimbursement amount will be achieved. However, the agreement does provide for the opportunity to do so, and the City is obligated to reimburse as per the agreement.

FISCAL IMPACT: \$26,819.85

PRESENTER'S NAME: Dixon Holmes, Assistant Chief Administrative Officer

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES: As a part fo the resolution approved by the Municipal Council on November 15, 2016, it was determined that in this specific instance a reimbursement agreement of this nature was appropriate and consistent with economic development initiatives to encourage investment and bring more retail oppotunities and sales tax revenue to Provo City

CITYVIEW OR ISSUE FILE NUMBER: 20-038

1 RESOLUTION 2020-.

2
3 A RESOLUTION APPROPRIATING \$26,819.85 IN THE GENERAL FUND
4 FOR A REIMBURSEMENT TO SATISFY THE PARTICIPATION AND
5 REIMBURSEMENT AGREEMENT WITH PARKWAY VILLAGE PROVO
6 HOLDINGS, LLC. (20-038)

7
8 WHEREAS, the Provo City Municipal Council has received a recommendation from the
9 Provo City Economic Development Division that \$26,819.85 be appropriated in the General
10 Fund for a reimbursement payment under the terms of the Participation and Reimbursement
11 Agreement between Provo City and Parkway Village Provo Holdings, LLC; and

12
13 WHEREAS, on November 15, 2016, the Municipal Council authorized the Mayor to sign
14 the Participation and Reimbursement Agreement; and

15
16 WHEREAS, on February 18, 2020, the Municipal Council met to ascertain the facts
17 regarding the reimbursement payment and receive public comment, which facts and comments
18 are found in the public record of the Council's consideration; and

19
20 WHEREAS, all persons for and against the proposed appropriation were given an
21 opportunity to be heard; and

22
23 WHEREAS, after considering the Mayor's recommendation, and facts and comments
24 presented to the Municipal Council, the Municipal Council finds the proposed appropriation
25 reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

26
27 NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah as
28 follows:

29
30 PART I:

31
32 The Mayor is hereby authorized to appropriate \$26,819.85 in the General Fund for a
33 reimbursement payment to Parkway Village Provo Holdings, LLC according to the terms of the
34 Participation and Reimbursement Agreement described herein, applying to the fiscal year ending
35 June 30, 2020.

36
37 PART II:

38
39 This resolution shall take effect immediately.

40
41 END OF RESOLUTION.

PARTICIPATION AND REIMBURSEMENT AGREEMENT

Parkway Village Shopping Center
2255 N. University Parkway, Provo, Utah 84064

THIS PARTICIPATION AND REIMBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into as of the 1st day of January, 2017 (“**Effective Date**”), between the City of Provo (“**City**”), Parkway Village Provo Holdings, LLC, a Delaware limited liability company (“**PVPH**”), Parkway Village Provo Holdings 2, LLC, a Delaware limited liability company (“**PVPH 2**”), and Nearon Enterprises, LLC, a California limited liability company (“**Nearon**”). PVPH and PVPH 2 are referred to herein individually as an “**Owner**”, and collectively, as the “**Owners**”. City, PVPH, PVPH 2, and Nearon are referred to herein individually as a “**Party**”, and collectively, as the “**Parties**”.

RECITALS

A. This Agreement concerns certain portions of a retail shopping center, commonly known as Parkway Village, located generally at 2255 North University Parkway, Provo, Utah (“**Shopping Center**”).

B. The portions of the Shopping Center which are subject to this Agreement are commonly known as Lots 1, 2, 3, 4, 5, 6A and 6B, and the Lots 1-6 Common Areas (collectively, the “**Subject Lots**”). The Subject Lots are more particularly described collectively in **Exhibit A-1** to this Agreement.

C. The Subject Lots are among the lots in the Shopping Center, which Shopping Center lots are shown on that certain subdivision plat, titled Parkway Village Shopping Center Planned Unit Development, which was recorded in the official records of Utah County, Utah, on April 10, 2014, as Entry No. 23576:2014 and Map No. 14198 (“**Subdivision Plat**”), attached as **Exhibit B** to this Agreement.

D. As of the Effective Date, PVPH is the fee owner of Lot 3 and the Lots 1-6 Common Area (collectively, the “**PVPH Lots**”). The PVPH Lots are more particularly described in **Exhibit A-2** to this Agreement.

E. As of the Effective Date, PVPH 2 is the fee owner of Lots 1, 2, 4, 5, 6A and 6B (collectively, the “**PVPH 2 Lots**”). The PVPH 2 Lots are more particularly described in **Exhibit A-3** to this Agreement.

F. Nearon holds a controlling membership interest in, and is the designated manager of, both PVPH and PVPH 2, pursuant to PVPH and PVPH 2’s respective organizational documents.

G. PVPH and PVPH 2, as the fee owners of the Subject Lots, have entered into a separate agreement or agreements with the Utah Transit Authority (“**UTA**”) related to the Provo-Orem Transportation Improvement Project, which will include, among other improvements, installation of roadway improvements along University Parkway fronting the Subject Lots, and a

new signalized intersection providing vehicular access to and from the Subject Lots and University Parkway.

H. In connection with the roadway and signalized intersection improvements described in **Recital G**, PVPH and PVPH 2 have incurred costs, and will incur additional costs (collectively, the “**Owner’s Costs**”), related to the following items, which are referred to in this Agreement collectively as the “**Project**”: (i) early termination of a lease with an operating business, (ii) demolition of the building where such operating tenant was located, (iii) construction of certain driveway improvements to connect the Subject Lots to the new intersection and University Parkway, (iv) contributions to UTA’s costs of designing and constructing the roadway, intersection, and traffic signal improvements, and (v) construction of a new building on Lot 2. A breakdown of the Owner’s Costs, estimated as of the Effective Date, is set forth on **Exhibit C** to this Agreement. As of the Effective Date, the Owner’s Costs are estimated to be approximately One Million Two Hundred Sixty Thousand Dollars (\$1,260,000) (“**Owner’s Estimated Costs**”).

I. Nearon, on behalf of, and as agent for PVPH and PVPH 2, has requested that City provide reimbursement for a portion of the Owner’s Actual Costs (defined in **Section 1.5**).

J. City has determined that the requested financial assistance will benefit City because the improvements improve traffic flow and increase safety, which promotes the welfare of the public using University Parkway in the City. In addition, such assistance is consistent with the guidelines for City’s available programs, because it advances the goals of the Provo-Orem Transportation Improvement Project, promotes retention of existing businesses within the Subject Lots and other portions of the Shopping Center, and encourages commercial re-development and revitalization of the University Parkway corridor.

K. City has determined that the requested reimbursements are necessary to offset the costs of the Project, demonstrate local support for the completion of the upgrades, and to recognize the positive impact that this investment will have on assessed values in the Shopping Center and nearby properties.

L. City has determined that the Project advances the purposes of City by providing improvements to, and modernization of, public infrastructure and promoting public safety and convenience in a major entrance to City.

M. City is willing to commit to assist with the Project by reimbursing PVPH and PVPH 2 with a portion of the sales tax increment generated from the Subject Lots to pay for a portion of the Owner’s Actual Costs, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, PVPH and PVPH 2’s agreements with UTA, and the terms and conditions hereby agreed to, and other good and valuable consideration, the Parties hereby agree as follows:

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

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

1.2 “**Base Sales Tax Amount**” means the Annual Sales Tax received by the City for the twelve (12) month period ending September 30, 2016, which totaled One Hundred Thirty-Six Thousand Four Hundred Seventy-Six Dollars (\$136,476).

1.3 “**City Approval Fees**” means all fees paid by PVPH, PVPH 2, and/or any entity controlled by Nearon (collectively, including without limitation, PVPH, PVPH 2, and Nearon, “**Nearon Affiliates**”), to City in connection with any City approval, entitlement or permit, or application or submittal for any City approval, entitlement or permit, with respect to the Project and/or the new or replacement building on Lot 2, during the twenty-four (24) month period commencing on the Effective Date. If construction of the new or replacement building on Lot 2 is delayed, the twenty-four (24) months may be extended for an additional twelve (12) months upon request to Provo City, approval of which will not be unreasonably withheld. Nearon Affiliates shall pay any City Approval Fees to the City up-front.

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

1.4 “**Commencement Date**” shall mean the first (1st) day of the first (1st) full calendar month following the date on which the Project, as defined in **Recital H** above, is completed. For purposes of determining the Commencement Date, the Project shall be deemed to be completed on the date when the new intersection, new vehicular entrance to the Subject Lots from University Parkway, and the new traffic signals controlling access to and from the Subject Lots and University Parkway over and across the new entrance, are open and fully operational.

1.5 “**Owner’s Actual Costs**” means, collectively, the actual amount of Owner’s Costs, to be determined after the Commencement Date, plus any City Approval Fees paid by Nearon Affiliates.

Within a reasonable period following the Commencement Date, City, PVPH, PVPH 2, and Nearon shall enter into an agreement, substantially in the form attached **Exhibit D** to this Agreement (“**Owner’s Actual Costs Confirmation Agreement**”), to confirm the amount of the Owner’s Actual Costs, including without limitation, the amount of the City Approval Fees paid through the Commencement Date.

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

1.7 “Reimbursement Payment” means, with respect to each Tax Year during the Reimbursement Term, a payment to Nearon, as agent for PVPH and PVPH 2 or any Nearon Affiliate, equal to the Sales Tax Increment (defined below) for the applicable Tax Year, until such Nearon Affiliates have collectively become entitled to total Reimbursement Payments during the Reimbursement Term up to the Target Reimbursement Amount (defined in **Section 1.9**).

Notwithstanding the foregoing, once Nearon Affiliates have collectively become entitled to Reimbursement Payments up to the Target Reimbursement Amount, Nearon, as agent for the Nearon Affiliates, shall thereafter be entitled to Additional Incentive Payments (defined in **Section 3.1**) in accordance with **Section 3**, until such Nearon Affiliates have collectively become entitled to Reimbursement Payments and Additional Incentive Payments up to the amount of Owner’s Actual Costs.

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

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

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

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

2. ANNUAL REIMBURSEMENT PAYMENTS.

2.1 Address for Payments. For the period commencing on the Commencement Date and continuing through the expiration of the Reimbursement Term, City shall make annual Reimbursement Payments to Nearon, as agent for PVPH, PVPH 2, and any Nearon Affiliates, at the address for Reimbursement Payments to Nearon set forth in **Section 8.1**, or such other address as Nearon may designate from time to time in accordance with **Section 8.1**; provided however, that the total amount of the Reimbursement Payments shall not exceed the Target Reimbursement Amount.

2.2 Timing of Payments & Supporting Documentation. Reimbursement Payments pursuant to this Agreement shall be made by City within one hundred-twenty (120) days after the end of each Tax Year and after: (i) Annual Sales Taxes for the Subject Lots for the applicable Tax Year are received by City; and (ii) documentation is received by City from the Utah State Tax Commission providing support for the Annual Sales Taxes received for the Subject Lots for the applicable Tax Year. City shall contemporaneously provide Nearon with a written accounting by month, in the aggregate, of the annual Reimbursement Payment, demonstrating the City's determination of the amount of the Annual Sales Taxes (based on Point of Sale) for the Subject Lots for the applicable Tax Year and the amount of such Reimbursement Payment. City shall be required to provide the amount of the total Annual Sales Taxes for the Subject Lots in the aggregate only, and shall have no obligation to provide any information concerning Annual Sales Taxes paid by any particular business or businesses on the Subject Lots.

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

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

3. ADDITIONAL INCENTIVE PAYMENTS.

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

The following examples of how the Reimbursement Payments and Additional Incentive Payments would be calculated are set forth below for purposes of illustration only. For each of the following examples, assume that the Owner's Actual Costs, without including any City Approval Fees, are the same as the Owner's Estimated Costs (\$1,260,000):

Example #1: Assume that during the Reimbursement Term, the total Sales Tax Increment is Six Hundred Fifty Thousand Dollars (\$650,000), and Nearon Affiliates have paid City Approval Fees totaling One Hundred Thousand Dollars (\$100,000).

In this Example #1, (i) fifty percent (50%) of such City Approval Fees (\$50,000), would be included in the Target Reimbursement Amount, resulting in a Target Reimbursement Amount of Six Hundred Eighty Thousand Dollars (\$680,000), (ii) Nearon would be entitled to Reimbursement Payments during the Reimbursement Term equal to the Sales Tax Increment, or \$650,000, and (iii) the Reimbursement Payments that Nearon would be entitled to (\$650,000) would be less than the adjusted Target Reimbursement Amount.

In this Example #1, Nearon would not be entitled to any Additional Incentive Payments.

Example #2: Assume that during the Reimbursement Term, the total Sales Tax Increment is Six Hundred Fifty Thousand Dollars (\$650,000), and Nearon Affiliates have paid no City Approval Fees during the Reimbursement Term.

In this Example #2, (i) the Target Reimbursement Amount would remain Six Hundred Thirty Thousand Dollars (\$630,000), (b) the total Reimbursement Payments that Nearon would be entitled to during the Reimbursement Term (\$650,000) would exceed the Target Reimbursement Amount (\$630,000), by Twenty Thousand Dollars (\$20,000).

Under this Example #2, Nearon's total Reimbursement Payments would be capped at the Target Reimbursement Amount (\$630,000), and Nearon would be entitled to an Additional Incentive Payment equal to fifty percent (50%) of the difference between such Sales Tax Increment (\$650,000) and such Reimbursement Payments (\$630,000), or Ten Thousand Dollars (\$10,000).

Example #3: Assume that during the Reimbursement Term, the total Sales Tax Increment is Two Million Two Hundred Thousand Dollars (\$2,200,000), and Nearon Affiliates have paid City Approval Fees during the Reimbursement Term totaling One Hundred Thousand Dollars (\$100,000).

In this Example #3, (i) fifty percent (50%) of such City Approval Fees (\$50,000) would be included in the Target Reimbursement

Amount, resulting in a Target Reimbursement Amount equal to \$680,000, (ii) the total Reimbursement Payments that Nearon would be entitled to would be capped at the Target Reimbursement Amount of \$680,000, (iii) fifty percent (50%) of the Sales Tax Increment above the Target Reimbursement Amount (\$680,000) would be Seven Hundred Sixty Thousand Dollars (\$760,000), (iv) the Additional Incentive Payments that Nearon would be entitled to during the Reimbursement Term (\$760,000), plus the total Reimbursement Payments (\$680,000) would exceed the Target Reimbursement Amount (\$680,000) by Seven Hundred Sixty Thousand Dollars (\$760,000), and (d) the total Reimbursement Payments and Additional Incentive Payments that Nearon would be entitled to during the Reimbursement Term (\$1,440,000) would exceed the Owner's Actual Costs (1,360,000) by Eighty Thousand Dollars (\$80,000).

Under this Example #3, Nearon would be entitled to Reimbursement Payments totaling \$680,000, plus Additional Incentive Payments equal to Six Hundred Eighty Thousand Dollars (\$680,000), because the total amount of the Reimbursement Payments and Additional Incentive Payments (\$1,440,000) would be capped at the amount of the Owner's Actual Costs (\$1,360,000).

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

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

3.4 Acknowledgment of the Parties' Intent – Owner Incentive. The Parties acknowledge that the intent of this Agreement, including without limitation this **Section 3**, is intended to incentivize Nearon Affiliates to invest in the Subject Lots and to cause the Subject Lots to be improved, managed, and operated so as to generate increased Annual Sales Taxes. Accordingly, if Annual Sales Taxes are sufficient to result in a Sales Tax Increment exceeding

the Target Reimbursement Amount pursuant to **Section 1.9**, then the Parties intend for City and Nearon Affiliates to share equally in the Sales Tax Increment during the Reimbursement Term above the Target Reimbursement Amount.

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

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

This Agreement shall also automatically terminate if construction of the Project has not commenced on or before December 31, 2017.

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

5. APPOINTMENT OF NEARON AS AGENT. PVPH and PVPH 2, on behalf of themselves and on behalf of any Nearon Affiliates which may become a successor-in-interest to PVPH and/or PVPH 2 as an owner of any of the Subject Lots, each hereby appoint Nearon as their authorized agent for collection of Reimbursement Payments and any Additional Incentive Payments from City. Nearon shall allocate and distribute the Reimbursement Payments and any Additional Incentive Payments to PVPH, PVPH 2 and/or any successor Nearon Affiliates. PVPH and PVPH 2, as the current Owners of the Subject Lots, hereby grant Nearon all rights and authorizations which may be necessary or desirable in order for Nearon to carry out Nearon's rights and duties pursuant to this **Section 5**.

6. ASSIGNMENT OF AGREEMENT OR PAYMENTS.

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

6.2 Assignment. Nearon shall not have any right to assign this Agreement, in whole or in part, or the right to any Reimbursement Payments or any Additional Incentive Payments, except to PVPH and/or PVPH 2, or a successor to PVPH and/or PVPH 2 as a fee owner of a Subject Lot or Subject Lots. A conveyance of a fee ownership interest in a Subject Lot or Subject Lots shall not by itself constitute or result in an assignment of this Agreement or the right to any Reimbursement Payment or any Additional Incentive Payments, and neither this Agreement nor the right to payment of any Reimbursement Payment or any Additional Incentive Payments shall run with the land.

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

7. FUTURE RE-PARCELIZATION OF THE SUBJECT LOTS. City acknowledges that from time to time from the Effective Date through the Expiration Date: (i) the Subject Lots may be combined or further subdivided, and/or the existing parcel lines on the Subject Lots may be relocated; (ii) the existing improvements on the Subject Lots may be modified, altered, re-configured, expanded, replaced, or demolished; and (iii) new improvements may be constructed on the Subject Lots.

8. NOTICES.

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

Notices to Nearon:

Nearon Enterprises
101 Ygnacio Valley Road, Suite 450
Walnut Creek, CA 94596
Attn.: President and CFO

Reimbursement Payments & Additional Incentive Payment:	Nearon Enterprises 101 Ygnacio Valley Road, Suite 450 Walnut Creek, CA 94596
Notices to PVPH:	Parkway Village Provo Holdings, LLC c/o Nearon Enterprises 101 Ygnacio Valley Road, Suite 450 Walnut Creek, CA 94596 Attn.: President and CFO
Notices to PVPH 2:	Parkway Village Provo Holdings 2, LLC c/o Nearon Enterprises 101 Ygnacio Valley Road, Suite 450 Walnut Creek, CA 94596 Attn.: President and CFO
Notices to City:	City of Provo 351 West Center Street Provo, UT 84601 Attn.: Dixon Holmes

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

9. MISCELLANEOUS.

9.1 Attorneys’ Fees. If any Party to this Agreement commences a dispute resolution proceeding, whether litigation, arbitration, or otherwise, respecting any question between the Parties to this Agreement arising out of or relating to this Agreement or the breach thereof, the prevailing Party in such dispute resolution proceeding shall be entitled to the recovery of a reasonable attorneys’ fee and all other reasonably incurred costs and expenses of the successful prosecution or defense of such proceeding. The term “dispute resolution proceeding” as used above shall be deemed to include appeals from a lower court judgment or arbitration award and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. For purposes of proceedings in the Federal Bankruptcy Court, the term “prevailing Party” as used above shall be deemed to mean

the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt Party which are reasonably necessary to protect its rights.

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

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

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

9.5 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed, and delivered by the Parties, the Parties agree to perform, execute, and deliver or cause to be performed, executed, and delivered any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby.

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

9.7 Non-liability of City Officials and Employees. No member, official, or employee of City shall be personally liable to Nearon, PVPH, PVPH 2, or any of their successors in interest, in the event of any default or breach by City, or for any amount which may become due to Nearon or its successor, or on any obligation under the terms of this Agreement.

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

9.9 No Relationship of Principal and Agent. Nothing contained in this Agreement, nor any acts of the Parties or the City, the City planning director, the Planning Commission (or its designee), shall be deemed or construed to create the relationship of principal and agent, or of limited or general partnership, or of joint venture or of any other similar association between City and Nearon, PVPH, and/or PVPH 2.

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

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

9.12 Non-Disclosure. The Parties agree that the terms of this Agreement are confidential and constitute proprietary information of the respective Parties (collectively, the “**Information**”). Each of the Parties agrees that such Party, and its respective partners, members, managers, officers, directors, employees, advisors, consultants and attorneys, shall not disclose the Information to any other person without the prior written consent of the other Parties except pursuant to an order of a court of competent jurisdiction, or to the extent required as part of any statutory public approval process required for this Agreement and/or any Reimbursement Payments; provided, however, that any Party may disclose the Information to its lenders or prospective lenders or the accountants who audit its financial statements or prepare its tax returns, to its constituent members, partners, shareholders, to its attorneys and consultants, to any prospective transferee of all or any portions of the Subject Lots, to any governmental entity, agency or person to whom disclosure is required by applicable law, regulation or duty of diligent inquiry and in connection with any action brought to enforce the terms of this Agreement, on account of the breach or alleged breach hereof or to seek a judicial determination of the rights or obligations of the parties under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the term, “Information”, shall not include information which, at the time it is disclosed and through no fault of any Party, is in the public domain or is available or becomes available to the general public. Notwithstanding anything to the contrary contained in this Agreement, City will release information required by Utah Code 63G-2-101 et seq, Government Records and Access Management Act.

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

[this space intentionally left blank]

Signature Page of City of Provo to
Participation and Reimbursement Agreement

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

CITY OF PROVO

By: _____

Name: John R. Curtis

Its: Mayor

“CITY”

attest: Janene Weiss
Janene Weiss
City Recorder

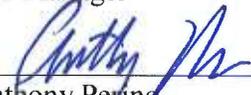


Signature Page of Parkway Village Provo Holdings, LLC to
Participation and Reimbursement Agreement

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

PARKWAY VILLAGE PROVO HOLDINGS, LLC,
a Delaware limited liability corporation

By: Nearon Enterprises,
a California corporation
Its: Designated Manager

By: 
Name: Anthony Perino
Title: President

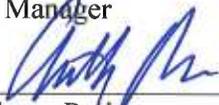
“PVPH”

Signature Page of Parkway Village Provo Holdings 2, LLC to
Participation and Reimbursement Agreement

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

PARKWAY VILLAGE PROVO HOLDINGS 2, LLC,
a Delaware limited liability corporation

By: Nearon Enterprises,
a California corporation
Its: Designated Manager

By: 
Name: Anthony Perino
Title: President

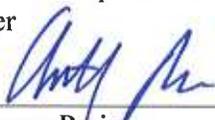
“PVPH 2”

Signature Page of Nearon Enterprises to
Participation and Reimbursement Agreement

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

NEARON ENTERPRISES, LLC,
a California limited liability company

By: Nearon Enterprises,
a California corporation
Its: Manager

By: 
Name: Anthony Perino
Title: President

“NEARON”

EXHIBIT A-1

Legal Description of the Subject Lots

ALL OF LOTS 1, 2, 3, 4, 5, 6A, AND 6B, PARKWAY VILLAGE SHOPPING CENTER PLANNED UNIT DEVELOPMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND RECORDED APRIL 10, 2014 AS ENTRY NO. 23576:2014 AS MAP NO. 14198 IN THE OFFICE OF THE UTAH COUNTY RECORDER, STATE OF UTAH.

APN: 49-767-0001; 49-767-0002; 49-767-0003; 49-767-0004; 49-767-0005; 49-767-0006; and 49-767-0010.

TOGETHER WITH THE APPURTENANT OWNERSHIP IN THE COMMON AREA AS SET FORTH UNDER SAID OFFICIAL PLAT AND MAP, AND FURTHER DEFINED BY THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS RECORDED APRIL 10, 2014 AS ENTRY NO. 23577:2014 OF OFFICIAL RECORDS (AS SAID MAP AND DECLARATION MAY HERETOFORE BE AMENDED AND/OR SUPPLEMENTED THERETO).

APN: 49-767-0011

EXHIBIT A-2

Legal Description of the PVPH Lots

ALL OF LOT 3, PARKWAY VILLAGE SHOPPING CENTER PLANNED UNIT DEVELOPMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND RECORDED APRIL 10, 2014 AS ENTRY NO. 23576:2014 AS MAP NO. 14198 IN THE OFFICE OF THE UTAH COUNTY RECORDER, STATE OF UTAH.

APN: 49-767-0003

THE COMMON AREA AS SET FORTH UNDER THE PARKWAY VILLAGE SHOPPING CENTER PLANNED UNIT DEVELOPMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND RECORDED APRIL 10, 2014 AS ENTRY NO. 23576:2014 AS MAP NO. 14198 IN THE OFFICE OF THE UTAH COUNTY RECORDER, STATE OF UTAH, AND FURTHER DEFINED BY THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS RECORDED APRIL 10, 2014 AS ENTRY NO. 23577:2014 OF OFFICIAL RECORDS (AS SAID MAP AND DECLARATION MAY HERETOFORE BE AMENDED AND/OR SUPPLEMENTED THERETO).

APN: 49-767-0011

EXHIBIT A-3

Legal Description of the PVPH 2 Lots

ALL OF LOTS 1, 2, 4, 5, 6A, AND 6B PARKWAY VILLAGE SHOPPING CENTER
PLANNED UNIT DEVELOPMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF
ON FILE AND RECORDED APRIL 10, 2014 AS ENTRY NO. 23576:2014 AS MAP NO.
14198 IN THE OFFICE OF THE UTAH COUNTY RECORDER, STATE OF UTAH.

APN: 49-767-0001; 49-767-0002; 49-767-0004; 49-767-0005; 49-767-0006; 49-767-0010.

Exhibit A-3

EXHIBIT B

Subdivision Plat

[attached]

EXHIBIT C

Breakdown of Owner's Estimated Costs

Parkway Village Sales Tax Participation Plan
Demo of Pad C including: 6,240 SF
Updated 8/11/16

<u>Owner Contributions towards 4-way intersection:</u>		<u>Notes</u>
Projected Intersection Costs to be paid by Owner	\$208,154	Current cost from UTA/UDOT. Subject to cost increases. Includes \$20,965 Design Fee.
Building Value (rebuild cost @ \$150/SF)	\$936,000	Based on current estimated costs to rebuild.
Demo of Building	\$35,000	Estimate
Construction of Ramp to University Parkway	\$65,000	Estimate
Payment to Tenant (Nicolitalia) to Vacate	\$15,000	Lease Termination is executed
Total	\$1,259,154	
Rounded	\$1,260,000	

Exhibit C

EXHIBIT D

FORM OF OWNER'S ACTUAL COSTS CONFIRMATION AGREEMENT

OWNER'S ACTUAL COSTS CONFIRMATION AGREEMENT

This Owner's Actual Costs Confirmation Agreement ("**Confirmation Agreement**") is entered into as of _____, 20__ , by and between the City of Provo ("**City**"), Parkway Village Provo Holdings, LLC, a Delaware limited liability company ("**PVPH**"), Parkway Village Provo Holdings 2, LLC, a Delaware limited liability company ("**PVPH 2**"), and Nearon Enterprises, a California corporation ("**Nearon**"), pursuant to Section 1.5 of that certain Participation and Reimbursement Agreement, dated January 1, 2017 ("**Reimbursement Agreement**").

City, PVPH, PVPH 2, and Nearon hereby acknowledge and agree that the amount of the Owner's Actual Costs (as defined in Section 1.5 of the Reimbursement Agreement) is _____ and ___/100ths Dollars (\$ _____ . ____), including City Approval Fees (as defined in Section 1.3 of the Reimbursement Agreement) paid through the Commencement Date (defined in Section 1.4 of the Reimbursement Agreement) totaling _____ and ___/100ths Dollars (\$ _____ . ____).

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

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

Signature Page of City of Provo to
Owner's Actual Costs Confirmation Agreement

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

CITY OF PROVO

By: _____

Name: _____

Its: _____

“CITY”

Signature Page of Parkway Village Provo Holdings, LLC, to
Owner's Actual Costs Confirmation Agreement

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

PARKWAY VILLAGE PROVO HOLDINGS, LLC,
a Delaware limited liability corporation

By: Nearon Enterprises,
a California corporation
Its: Designated Manager

By: _____
Name: Anthony Perino
Title: President

“PVPH”

Signature Page of Parkway Village Provo Holdings 2, LLC, to
Owner's Actual Costs Confirmation Agreement

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

PARKWAY VILLAGE PROVO HOLDINGS 2, LLC,
a Delaware limited liability corporation

By: Nearon Enterprises,
a California corporation
Its: Designated Manager

By: _____
Name: Anthony Perino
Title: President

“PVPH 2”

Signature Page of Nearon Enterprises to
Owner's Actual Costs Confirmation Agreement

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

NEARON ENTERPRISES, LLC,
a California limited liability company

By: Nearon Enterprises,
a California corporation
Its: Manager

By: _____
Name: Anthony Perino
Title: President

“NEARON”

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: DIXONH
Department: Recorder
Requested Meeting Date: 02-18-2020

SUBJECT: A resolution appropriating \$3,638,455 in grant funds and sale proceeds for the design and construction of a new roadway, utilities, and infrastructure at the Mountain Vista Business Center. (20-035)

RECOMMENDATION: Approve the resolution.

BACKGROUND: On August 15, 2018 Provo City Economic Development Division was award a matching grant from the Economic Development Administration for the construction of a new road and utility improvement from the roundabout in Mountain Vista Parkway to State Route 75, also known as 1400 North in Springville. This new road will provide access to the southern end of the business park and more direct access to I-15 to the west. The road is being built in conjunction with property recently sold to Hall Property Holdings, LLC for the construction and development of the continuation of the business park in the form of new large warehouse, manufacturing, and office buildings.

FISCAL IMPACT: \$1,819,228

PRESENTER'S NAME: Dixon Holmes, Assistant Chief Administrative Officer

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

This request is consistent with and further promotes Provo and the Mountain Vista Business Center as a place to invest and create jobs, thereby improving quality of life and promoting economic development

CITYVIEW OR ISSUE FILE NUMBER: 20-035

1 RESOLUTION 2020-.

2
3 A RESOLUTION APPROPRIATING \$3,638,455 IN GRANT FUNDS AND
4 SALE PROCEEDS FOR THE DESIGN AND CONSTRUCTION OF A NEW
5 ROADWAY, UTILITIES, AND INFRASTRUCTURE AT THE MOUNTAIN
6 VISTA BUSINESS CENTER. (20-035)

7
8 WHEREAS, the Provo City Municipal Council has received a recommendation from the
9 Provo City Economic Development Division that \$3,638,455 be appropriated in the General
10 Fund for design and construction of a new roadway, utilities and infrastructure, to be funded by a
11 matching grant from the Economic Development Administration (EDA); and

12
13 WHEREAS, the matching grant provided by the EDA requires that Provo City provide a
14 50% match and the City obligation is \$1,819,228; and

15
16 WHEREAS, the City's match funds will come from the proceeds of a property transaction
17 for a large parcel of land recently completed by the Economic Development Division; and

18
19 WHEREAS, on February 18, 2020, the Municipal Council met to ascertain the facts
20 regarding this matter and receive public comment, which facts and comments are found in the
21 public record of the Council's consideration; and

22
23 WHEREAS, all persons for and against the proposed appropriation were given an
24 opportunity to be heard; and

25
26 WHEREAS, after considering the Mayor's recommendation, and facts and comments
27 presented to the Municipal Council, the Municipal Council finds the proposed appropriation
28 reasonably furthers the health, safety, and general welfare of the citizens of Provo City.

29
30 NOW, THEREFORE, be it resolved by the Municipal Council of Provo City, Utah as
31 follows:

32
33 PART I:

34
35 The Mayor is hereby authorized to appropriate \$3,638,455 in the General Fund, as
36 described herein, for the purpose of constructing a new roadway, utilities and infrastructure at the
37 Mountain Vista Business Center, applying to the fiscal year ending June 30, 2020.

38
39 PART II:

40
41 This resolution shall take effect immediately.

42
43 END OF RESOLUTION.

GRANT COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER
05-01-05894; URI:112132

RECIPIENT NAME
Provo City Corporation

PERIOD OF PERFORMANCE
August 15, 2018 - February 15, 2023

STREET ADDRESS
351 West Center Street

FEDERAL SHARE OF COST
\$ 1,819,227

CITY, STATE, ZIP CODE
Provo, Utah 84601

RECIPIENT SHARE OF COST
\$ 1,819,228

AUTHORITY
Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 5301-5305)

TOTAL ESTIMATED COST
\$ 3,638,455

CFDA NO. AND NAME
11.300, Public Works

PROJECT TITLE
Mountain Vista Business Park infrastructure improvements

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (31 March 2017)
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- SPECIAL AWARD CONDITIONS
- LINE ITEM BUDGET
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIAL AWARD CONDITION.
- OTHER(S): EDA Standard Terms and Conditions for Construction Projects (February 12, 2016)

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER
Angela B. Martinez, Regional Director *Angela B. Martinez*

DATE
08/15/18

PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL
Dixon Holmes, Division Director of Economic Development *Dixon Holmes*

DATE
Sept 4, 2018

SPECIAL AWARD CONDITIONS
 U.S. DEPARTMENT OF COMMERCE
 Economic Development Administration (EDA)

CONSTRUCTION PROJECTS: Public Works Program under Section 201 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. §3121 et seq.) (PWEDA)

Project Title: Mountain Vista Business Park Infrastructure Improvements	
Recipients Name: Provo City Corporation	Project Number: 05-01-05894

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project should be consistent with this *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Form CD-451.

The *Authorized Scope of Work* for this project consists of roadway with sidewalk, curb and gutter, waterline, storm drain improvements, and a sanitary sewer line in the Mountain Vista Business Center. The roadway will be approximately 1,850 linear feet in length. The road consists of 38-feet of asphalt pavement and road base, with curb, gutter, and a 6-foot wide sidewalk on both sides of the road for the entire length. The 12" water line will be approximately 1,200 linear feet. The 12" sanitary sewer line will be approximately 1,200 linear feet in length. The 18" storm sewer pipe will be approximately 1,500 linear feet in length. The project also includes entryway treatments at the south end where it intersects with State Highway 75 in Springville, Utah. The entryway treatments will be acceleration and deceleration lanes on the north side of Highway 75 and a left turn lane. The existing Highway 75 will be widening from 34-feet to 58-feet.

2. The Authorized Representative's name, title, address, and telephone number are:

Dixon Holmes Division Director of Economic Development 801-852-6166	Provo City Corporation 351 West Center Street Provo, Utah 84601
---	---

The Point of Contact's name, title, address, and telephone number are:

Cameron Christensen Business Development Coordinator 801-852-6175 cachristensen@gmail.com	Provo City Corporation 351 West Center Street Provo, Utah 84601
--	---

The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

Angela B. Martinez Regional Director Phone: 303-844-3909 Email: AMartinez@eda.gov	Economic Development Administration 1244 Speer Boulevard, Suite 431 Denver, Colorado 80204
---	--

The Federal Program Officer oversees the programmatic aspects of this Award. The Federal Program Officer is:

Cindy Edwards Area Director Phone: 303-844-5360 Email: cedwards@eda.gov	Economic Development Administration 1244 Speer Boulevard, Suite 431 Denver, Colorado 80204
--	--

The Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Veronica Jacobson Engineer Phone: 303-844-4703 Email: vjacobson@eda.gov	Economic Development Administration 1244 Speer Boulevard, Suite 431 Denver, Colorado 80204
---	--

3. ADDITIONAL INCLUDED DOCUMENTS:

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award form (Form CD-450) the following additional documents are included with and considered to be part of the Award's terms and conditions:

- A Recipient's final completed Application including subsequently submitted documents (this item not enclosed in this Award package);

Should there be a conflict between the above referenced documents and the Special Award Conditions (this document), the Special Award Conditions, including any attachments, shall prevail.

4. PROJECT DEVELOPMENT TIME SCHEDULE: The Recipient agrees to the following Project Development Time Schedule:

Date of AwardAugust 15, 2018
 Return of Executed Financial Assistance Award/Amendment...30 calendar days after receipt of Form CD-450/CD-451
 Start of Construction.....August 15, 2020 (24 Months from Date of Award)
 Construction Completed..... August 15, 2022 (48 Months from Date of Award)
 Authorized Award End Date.....February 15, 2023 (54 Months from Date of Award)

Project Closeout – All Project closeout documents, including any required program reports, shall be submitted to EDA not more than 90 calendar days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Recipient further acknowledges that failure to meet the Project Development Time Schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. §§ 200.338 through 200.342, as applicable.

5. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

A. **AWARD DISBURSEMENTS: Reimbursable basis only:** EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs. The “*Request for Reimbursement*” (Form SF-271) is used to request a disbursement, which shall be approved in writing by the Project Officer.

Please note that prior to the initial disbursement, Recipients must complete the attached Form SF-3881, “*ACH Vendor/Miscellaneous Payment Enrollment Form*” and submit it to NOAA's Accounting Office by FAX to 301-528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

B. REPORTS:

a. *Project Progress Reports:* The Recipient shall submit project progress reports to the Project Officer on a quarterly basis for the periods ending **December 31, March 31, June 30, and September 30**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted using the approved EDA template, which will be provided by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than 15 days following the end of the quarterly period.

b. *Financial Reports:* The Recipient shall submit a “*Federal Financial Report*” (Form SF-425) on a semi-annual basis for the periods ending **March 31 and September 30**, or any portion thereof, for the entire project period. Reports are due no later than 30 days following the end of the semiannual reporting period. Form SF-425 (and instructions for completing this form) is available at:

<https://www.gsa.gov/portal/forms/download/149786>.

A final Form SF-425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final Financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period, and that all matching and program income (if

applicable) is fully reported. Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Form SF-425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

6. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined at the conclusion of the award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including the applicable requirements set forth in 2 C.F.R. part 200, after Final Financial Documents are submitted.

Except as otherwise expressly provided for within these Special Award Conditions, the Investment Rate for the award (see 13 C.F.R. §§ 300.3 and 301.4) shall apply to allowable costs incurred by the Recipient in connection with the project. The Federal share in the allowable costs shall be based upon the Investment Rate (see 2 C.F.R. § 200.43). In the event of an underrun in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate established in the Form CD-450, or subsequently executed Form CD-451. The Federal Share of total allowable costs shall not exceed the dollar amount of the original Award and subsequent amendments, if any.

- A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Amount)	\$1,819,227
Non-Federal Matching Share	\$1,819,228
Total Project Cost	\$3,638,455

- B. Under the terms of this Award, the total approved **Line Item Budget** is:

COST CLASSIFICATION	Proposed	Approved
Administrative and legal expenses	\$0	\$0
Land, structures, rights-of-way, etc.	\$0	\$0
Relocation expenses and payments	\$0	\$100
Architectural and engineering fees	\$582,154	\$582,154
Other architectural and engineering fees	\$0	\$0
Project inspection fees	\$0	\$0
Site work	\$357,462	\$357,462
Demolition and removal	\$0	\$0
Construction	\$2,553,300	\$2,473,300
Equipment	\$0	\$0
Contingencies	\$145,539	\$225,439
Total Project Costs	\$3,638,455	\$3,638,455

7. **MATCHING SHARE:** The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. (See 13 C.F.R. § 300.3) The Recipient also certifies that, in accepting the Financial Assistance Award, the Recipient's Matching Share of the project costs is

committed and unencumbered, from authorized sources, and shall be available as needed for the project.

8. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** Treasury has given EDA two options for having payments deposited to EDA's account:

- i. The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office, AOD, EDA Grants
20020 Century Boulevard, Germantown, MD 20874

The accounting staff will scan the checks in to an encrypted file and transfer to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.
- EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of \$25.00, which will be collected by EFT.

9. **CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years from the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by this date and the Grants Officer determines, after consultation with the Grant Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the grant may be terminated. Extensions beyond the five-year project period are

exceedingly rare and can only be authorized by the Assistant Secretary. Nothing in this paragraph is intended to alter the Project Development Time Schedule set forth in provision 4 above.

10. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth in 41 C.F.R. § 60-4 establishes goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4. The goal for the participation of women in each trade area shall be as follows: From April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the "*Standard Federal Equal Employment Opportunity Construction Contract Specifications*" (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

11. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the regulations at 2 C.F.R. §§200.317 through 200.326, as applicable.
12. **ARCHITECT/ENGINEER AGREEMENT:** Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 2 C.F.R. part 200, as applicable. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.
13. **EVIDENCE OF GOOD TITLE:** Prior to the initial disbursement of funds by EDA, the Recipient shall provide opinion of counsel, satisfactory to EDA, that the Recipient has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, long term leases, easements, state or local government permits or other items necessary for the completion of the project in accordance with 13 C.F.R. § 314.7.
14. **USEFUL LIFE:** The Estimated Useful Life of the project is estimated to be 20 years from the date of award for all of the project components.
15. **ARCHEOLOGICAL AND HISTORICAL RESOURCES:** If during construction of the project, historical and archeological resources, including burial grounds and artifacts are discovered, the Recipient shall immediately stop construction in the area, contact the State

Historic Preservation Officer and EDA and follow the SHPO's instruction for the preservation of resources.

16. **ENVIRONMENTAL PERMITS:** Prior to EDA's approval of bid documents, the Recipient shall provide documentation satisfactory to EDA that the permits listed below have been obtained or that the bid documents include language requiring the contractor to obtain the permits prior to the start of construction. If the contractor obtains the permits, then prior to initial disbursement of any construction costs, the Recipient shall provide EDA with satisfactory documentation that the permits have been obtained.
- o State of Utah Storm Water General Permit for Construction Activities.
17. **NONRELOCATION:** In signing this award of financial assistance, the Recipient(s) attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award. (See 13 C.F.R. § 300.3) In the event that EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation and the recovery of the Federal share thereof.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA considers an employer to be a "primary beneficiary" if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA to make the Award. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more jobs permanent jobs so identified.

18. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage three (3), six (6), and nine (9) years after an EDA investment. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Recipients should ensure adequate and sufficient records are kept to support the methodology for computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA in the event of an audits or performance site visits.

19. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE:

A. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph B of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five year period; and
3. Is one of the following:

(a) A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;

(b) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(c) An administrative proceeding, as defined in paragraph E. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(d) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph B.3.(a), (b), or (c) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (a) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (b) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: JMAGNESS
Department: Council
Requested Meeting Date: 02-18-2020

SUBJECT: A discussion regarding Tier 3 gasoline and a proposed resolution calling for state action to educate consumers about where Tier 3 gasoline is sold. (20-031)

RECOMMENDATION: Approve the resolution.

BACKGROUND: The Mayor's Substantiality and Natural Recourses Committee presented their annual report to the Council in the Work Meeting on January 21, 2020 and asked for the Council to support a resolution regarding the Utah State government taking action to educate the public about which gas stations sell Tier 3 gasoline.

FISCAL IMPACT: None

PRESENTER'S NAME: John Magness, Council Policy Analyst

REQUESTED DURATION OF PRESENTATION: 15 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-031

1 RESOLUTION 2020- .

2
3 A JOINT RESOLUTION OF THE PROVO CITY MAYOR AND MUNICIPAL
4 COUNCIL URGING SUPPORT FOR EDUCATING CONSUMERS ABOUT
5 WHERE TIER 3 GASOLINE IS SOLD. (20-031)
6

7 WHEREAS, air pollution is one of the most serious problems of the populated areas of
8 Utah; and
9

10 WHEREAS, the term “Tier 3 gasoline” designates fuel with a maximum of 10 ppm sulfur
11 content, greatly reduced from Tier 2 gasoline, which has a maximum of 30 ppm; and
12

13 WHEREAS, the term “Tier 3 vehicles” designates lower-polluting vehicles mandated by
14 federal law to be phased in from 2017-2025; and
15

16 WHEREAS, Tier 3 gasoline is predicted to reduce vehicular pollution by 80% when used
17 in Tier 3 vehicles; and
18

19 WHEREAS, Tier 3 gasoline allows all vehicular catalytic converters to work more
20 effectively and thus substantially reduces pollution even in older, non-Tier 3 vehicles; and
21

22 WHEREAS, the Utah Legislature has sought to promote the production and distribution of
23 Tier 3 gasoline in the state through financial incentives (S.B. 197, 2017) and concurrent resolutions
24 (H.C.R. 13, 2019) in order to clean local air; and
25

26 WHEREAS, Tier 3 gasoline is now being distributed by several regional suppliers,
27 including Chevron, Marathon, Silver Eagle, and Sinclair; and
28

29 WHEREAS, Tier 3 gasoline is now being sold at many local name-brand filling stations
30 but not all; and
31

32 WHEREAS, Tier 3 gasoline is being mixed in inconsistent ratios and sold at some popular
33 filling stations; and
34

35 WHEREAS, many consumers are not informed of where Tier 3 gasoline is available and
36 which stations are selling an inconsistent mix of Tier 3 fuel; and
37

38 WHEREAS, many consumers are not informed of the importance of Tier 3 gasoline for air
39 quality;
40

41 NOW, THEREFORE, be it resolved that we, the members of the Provo City Municipal
42 Council and the Mayor of Provo City endorse cost-effective measures to improve air quality along
43 the Wasatch Front and urge the Utah State Legislature to support educating consumers about the
44 importance of Tier 3 gasoline and where it can be reliably and consistently purchased in order to
45 promote wide adoption. This might include publicity promoted by the non-profit Utah Clean Air
46 Partnership (UCAIR), advertising by gasoline stations themselves, labeling at gasoline pumps, or

47 other methods. We also encourage the Utah State Legislature to take appropriate measures to
48 further incentivize expedited refinery conversions to non-mixed Tier 3 gas.

49
50 BE IT FURTHER RESOLVED, that the City Recorder of Provo City transmit duly
51 authenticated copies of this resolution to: the President of the Utah Senate, the Speaker of the Utah
52 House of Representatives, the Clerk of the Legislature, and the news media of Utah.

53
54 END OF RESOLUTION.

PROVO MUNICIPAL COUNCIL STAFF MEMO



Submitter: JMAGNESS
Department: Council
Requested Meeting Date: 02-04-2020

RE; Resolution Supporting Tier Three Gasoline

The Environmental Protection Agency (EPA) Tier 3 program considers the vehicle and its fuel as an integrated system to reduce the impacts of motor vehicles on air quality and public health. The program sets new vehicle emissions standards and lowers the sulfur content of gasoline to a maximum of 10 ppm beginning in 2017. The vehicle standards will reduce both tailpipe and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. The gasoline sulfur standard will enable more stringent vehicle emissions standards and will make emissions control systems more effective. It will also reduce the emissions of the existing fleet of vehicles.

Sulfur is a natural component in crude oil that is present in gasoline and diesel unless removed. Sulfur in gasoline impairs the effectiveness of emission control systems and contributes to air pollution. Reducing the sulfur content in gasoline enables advanced emission controls and reduces air pollution.

The Tier 3 gasoline sulfur standard will make emission control systems more effective for both existing and new vehicles and will enable more stringent vehicle emissions standards. Removing sulfur allows the vehicle's catalyst to work more efficiently. Lower sulfur gasoline also facilitates the development of some lower-cost technologies to improve fuel economy and reduce green-house gas (GHG) emissions, which reduces gasoline consumption and saves consumers money.

The fuel sulfur standards include an averaging, banking, and trading (ABT) program that will allow refiners and importers to spread out their investments through an early credit program and rely on ongoing nationwide averaging to meet the sulfur standard. EPA is also allowing flexibilities such as the ability to carry over credits from Tier 2 to Tier 3 and hardship provisions for extenuating circumstances, as well as flexibility provisions for small businesses (small manufacturers of Tier 3 vehicles and small refiners), small volume manufacturers, and small volume refineries.

The vehicle emission standards combined with the reduction of gasoline sulfur content will significantly reduce motor vehicle emissions, including nitrogen oxides (NOX), volatile organic compounds (VOC), direct particulate matter (PM2.5), carbon monoxide (CO) and air toxics. Under the Tier 3 program, federal gasoline will not contain more than 10 parts per million (ppm) of sulfur on an annual average basis by January 1, 2017. EPA maintained the standards of 80 ppm at the refinery gate and 95 ppm downstream cap.

Starting January 1, 2017, large refineries had to meet the new Tier 3 Standards. The five refineries that operate in Utah meet the definition of small volume refineries. They did not need to meet the requirement until January 1, 2020. The requirement applies to the batch gasoline that the refinery produces, they need to average 10 ppm of sulfur over the year. If they are unable to meet this 10 ppm average, they need to go out into the ABT market and buy credits to get their average down to 10 ppm. Credits are used on a ppm per gallon. For example, if a refinery produces one gallon of gas at 7 ppm then they would generate 3 credits; the inverse of that is if the refinery produced one gallon of gas at 17 ppm then they would need to buy 7 credits to meet the standard.

Below is a table that shows how many gallons of gasoline that was either produced or imported and its sulfur content.

Table 1: Volume weighted sulfur averages (VWA) and gasoline volumes for refined and imported gasoline that was above, below or equal to the sulfur sta...

Year	Above Standard		Below Standard		Equal Standard	
	VWA	Gasoline Volume (gallons)	VWA	Gasoline Volume (gallons)	VWA	Gasoline Volume (gallons)
	2011	40.33	61,242,696,971	21.27	53,383,725,493	30.00
2012	40.76	57,070,791,246	20.85	57,959,176,896	30.00	15,538,992
2013	39.41	47,297,601,672	21.34	67,377,135,298	30.00	39,746,476
2014	38.13	47,841,073,575	18.52	68,286,873,728	30.00	9,958,357
2015	39.47	37,523,821,891	17.67	81,887,888,060	30.00	3,338,522
2016	40.01	23,558,852,069	20.00	98,707,335,706	30.00	4,767,256
2017	23.73	103,973,378,075	6.38	15,953,472,396	10.00	2,460,555,800
2018	23.20	102,692,241,275	6.80	19,915,239,750	10.00	3,769,204

*Tier 2 sulfur standard: 30 ppm, Tier 3 sulfur standard: 10 ppm

Currently, the cost of sulfur credits is between \$3,000 and \$4,000. Credits created prior to 2017 (Tier 2) have expired as of January 1, 2020. Looking at 2018 we see that 63.7 million sulfur credits were generated but 1.35 trillion credits were needed to meet the Tier 3 requirements. There is a shortage of credits so in order to meet Tier 3 requirements refineries have going to have to invest in new technology to remove the sulfur instead of relying on purchasing sulfur credits.

Three refineries have agreed to produce Tier 3 Gasoline at the average of 10 ppm annually. The other two refineries are still weighing their options, they can buy credits to meet the EPA's Tier 3 requirements. Due to the high cost of credits, and likelihood of more credits being generated is low, the last two refineries in Utah will have to come into Tier 3 compliance sooner rather than later. Downstream of the refineries, gasoline cannot contain more than 95 ppm at the BOB and cannot contain more than 80 ppm at the pump.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: NLA
Department: Development Services
Requested Meeting Date: 02-04-2020

SUBJECT: ***CONTINUED*** An ordinance amending Provo City Code relating to floor area ratio, setback, and buffer yard requirements in the Research and Business Park (R&BP) Zone. Citywide Application. (PLOTA20190425)

RECOMMENDATION: ***CONTINUED*** The Planning Commission has recommended approval (8:0).

BACKGROUND: ***CONTINUED*** This item was heard and continued in the Council Meeting on February 4, 2020.

The applicant has requested an amendment to Provo City Code 14.44.050 (Tract and Lot Area, Yard, Coverage, and Height Requirements). These requirements apply to the the Research and Business Park (R&BP) Zone. This zone is only located in the Riverbottoms Neighborhood at the Riverwoods Business Park. The proposed request would remove the maximum floor area ratio (FAR) requirement for a structure, which is currently 30%. The proposed amendment would add a provision to allow the Development Services Director the ability to modify setbacks and perimeter buffer yards in the zone if certain conditions are met.

Staff have reported that this request does not raise any concerns for them. Other requirements for building height, setbacks, and open space would still limit the building's footprint and preserve open space on the lot.

FISCAL IMPACT: None

PRESENTER'S NAME: Dustin Wright (801) 852-6414

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: PLOTA20190425



**Planning Commission Staff Report
Hearing Date: January 22, 2020**

*ITEM #1 Joe Brown requests an Ordinance Text Amendment to Section 14.44.050 to eliminate the Floor Area Ratio restrictions for office park development in the Research and Business Park Zone. Riverbottoms Neighborhood. Dustin Wright (801) 852-6414 dwright@provo.org PLOTA20190425

Applicant: Joe Brown
Staff Coordinator: Dustin Wright
Parcel ID#: N/A
***Council Action Required:** Yes
Related Application(s): N/A

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is February 12, 2020 at 6:00 p.m.*
2. **Recommend Denial** of the proposed ordinance amendment. *This would be a change from the Staff recommendation; the Planning Commission should state new findings.*

Relevant History: The ordinance was enacted in 1990.

Neighborhood Issues: No issues have been made know to staff.

Summary of Key Issues: Removal of the floor area ratio restrictions in the zone. Adding a provision to allow the Development Services Director the ability to modify the setback or buffer yards of the zone.

Staff Recommendation: Move to forward a positive recommendation to the City Council for the proposed Ordinance Text Amendment with the version from staff in Attachment 2.

OVERVIEW

The applicant has requested an amendment to Provo City Code 14.44.050, Tract and Lot Area, Yard, Coverage, and Height Requirements, found in the R&BP Research and Business Park Zone. This zone is only located in the Riverbottoms Neighborhood at the Riverwoods Business Park. The proposed request would remove the requirements related to maximum floor area ratio (FAR) for a structure. The proposed amendment would add a provision to allow the Development Services Director the ability to modify setbacks and perimeter buffer yards in the zone if certain conditions are met.

FINDINGS OF FACT

- The R&BP zone is only located within the Riverbottoms Neighborhood.
- The current FAR in the R&BP zone is 0.30. (14.44.050(7)).
- Perimeter Buffer Yards and setback required in 14.44.050(3-6).

ANALYSIS

The request to eliminate the floor area ratio requirement does not cause much of a concern to staff. There are provisions for building height and setbacks as well as open space requirements in the zone that would help limit the overall size of the structure and the amount of open space on the lot.

The second part of the amendment provides a means to have the Director modify the setback and buffer yard requirements if conditions are met. The Attorney's Office pointed out that with 14.44.050(14a) there is potential for this to be arbitrary. Staff has provided a version in Attachment 2 that removes subparagraph (a). This is the version that staff would recommend sending on to Council.

CONCLUSIONS

Staff finds that with the proposed amendment, there are still sufficient regulations in the zone to control the size and location of a structure in that zone. Staff finds that the proposed ordinance text amendment should be modified to strike the proposed 14.44.050(14a) as it has potential to be challenged.

RECOMMENDATION

Move to forward a positive recommendation to the City Council for the proposed Ordinance Text Amendment with the version from staff in Attachment 2.

ATTACHMENTS

1. Applicant's proposed text amendment.
2. Staff's modified version of the proposed text amendment.

Attachment 1 - Applicant's proposed text amendment

14.44.050 Tract and Lot Area, Yard, Coverage, and Height Requirements.

(1) *Tract Area.* The minimum size of any tract zoned and developed for a Research and Business Park shall be twenty (20) acres.

(2) *Lot Area.* The minimum size of any lot shall be two (2) acres.

(3) *Perimeter Buffer Yards* facing an existing or dedicated exterior access road shall be not less than fifty (50) feet in depth.

(a) Screening in this buffer yard shall be accomplished with a landscaped berm at least six (6) feet in height.

(4) *Perimeter Buffer Yards* adjoining a residential zone boundary shall be not less than twenty-five (25) feet deep if screened with a decorative masonry wall at least six (6) feet high; and if not screened with a decorative wall, such yards shall be not less than one hundred (100) feet deep with landscaped berms at least six (6) feet in height.

(a) In yards where a screening wall is used, there shall be at least ten (10) feet of landscaping on the residential zone side, and at least fifteen (15) feet of landscaping on the business park side. Both areas of landscaping shall be maintained by the Business Park.

(5) *Buffer Yard Along Provo River.* A landscaped buffer yard one hundred (100) feet wide (measured back from the high water mark of each bank) shall be provided and maintained along the banks of the Provo River. This buffer area, if wooded, shall remain wooded, and if open, shall be planted with a mix of trees, grass, and shrubs to allow for adequate screening of view, noise and other activities.

(6) *Building Setbacks.* Buildings on all lots shall be set back a minimum of forty (40) feet from any dedicated street right-of-way line and twenty (20) feet from any other property line (except one hundred (100) feet when abutting a residential zone boundary).

~~(7) *Floor Area Ratio.* Maximum development within the R&BP zone shall not exceed thirteen thousand (13,000) square feet of gross floor space per net acre (excluding streets). This equates to a floor area ratio of 0.30. However, the developer may request up to an additional three thousand (3,000) square feet of floor space per acre if at least fifty percent (50%) of the off-street parking is placed within a parking structure. This would equate to a floor area ratio of 0.37. In addition, the floor area ratio does not include basements, provided that this area is used for mechanical and/or dead storage only. If the basement is used for anything other than the above mentioned uses, then it will be included in the floor area ratio. A deed restriction shall be recorded on the property stipulating the intended use of the basement. This document must be recorded prior to final occupancy of the building. This area may also be~~

~~excluded from the parking calculations if the area is less than one half (1/2) the building foot print.~~

~~(8)~~ (7) Required Open Space. All building and parking areas on any lot shall not occupy more than sixty percent (60%) of the total area of the lot. The remaining portion of the lot, not to be less than forty percent (40%), shall be landscaped.

~~(9)~~ (8) Height. No building shall be constructed to a height exceeding three (3) stories with a maximum height of sixty (60) feet. Buildings which are constructed on parcels adjacent to a residential zone shall be constructed to a height not exceeding two (2) stories with a maximum height of thirty-five (35) feet, unless, pursuant to the issuance of a conditional use permit, upon findings for good cause, the Planning Commission finds that a taller building would not adversely affect the character, views, value, and peaceful enjoyment of surrounding properties in and outside the park. Such may be the case when a park is located next to an existing residential area with more permissive height limitations.

~~(10)~~ (9) Lot Width. Minimum lot width shall be one hundred (100) feet.

~~(11)~~ (10) Minimum Lot Frontage. Each lot or parcel of land in the R&BP zone shall abut a public street for a minimum distance of fifty (50) feet; however, lots or parcels with lesser frontage, or no frontage, on a public street may be created as part of an approved and recorded Record of Survey Plat which meets the standards and requirements of this Chapter.

~~(12)~~ (11) Minimum Perimeter Street Frontage. The R&BP tract shall have a minimum of one hundred (100) foot frontage on a public arterial street.

~~(13)~~ (12) Buildings Per Lot. More than one (1) main building may be placed on a lot.

~~(14)~~ (13) Building Separation. A separation of at least twenty (20) feet shall be maintained between buildings.

(14) The Development Services Director, or designee, may modify the setbacks and perimeter buffer yards of this zone subject to finding that all of the following conditions exist:

(a) The proposed setback or perimeter buffer yard change is visually compatible with neighboring development and does not cause an undue burden or harm to the adjacent property;

(b) The proposed setback or perimeter buffer yard change does not violate an existing or needed utility easement; and

(c) The proposed setback or perimeter buffer yard change does not cause a violation of the International Building Code or the Fire Code.

Attachment 2 - Staff's modified version of the proposed text amendment

14.44.050 Tract and Lot Area, Yard, Coverage, and Height Requirements.

(1) *Tract Area.* The minimum size of any tract zoned and developed for a Research and Business Park shall be twenty (20) acres.

(2) *Lot Area.* The minimum size of any lot shall be two (2) acres.

(3) *Perimeter Buffer Yards* facing an existing or dedicated exterior access road shall be not less than fifty (50) feet in depth.

(a) Screening in this buffer yard shall be accomplished with a landscaped berm at least six (6) feet in height.

(4) *Perimeter Buffer Yards* adjoining a residential zone boundary shall be not less than twenty-five (25) feet deep if screened with a decorative masonry wall at least six (6) feet high; and if not screened with a decorative wall, such yards shall be not less than one hundred (100) feet deep with landscaped berms at least six (6) feet in height.

(a) In yards where a screening wall is used, there shall be at least ten (10) feet of landscaping on the residential zone side, and at least fifteen (15) feet of landscaping on the business park side. Both areas of landscaping shall be maintained by the Business Park.

(5) *Buffer Yard Along Provo River.* A landscaped buffer yard one hundred (100) feet wide (measured back from the high water mark of each bank) shall be provided and maintained along the banks of the Provo River. This buffer area, if wooded, shall remain wooded, and if open, shall be planted with a mix of trees, grass, and shrubs to allow for adequate screening of view, noise and other activities.

(6) *Building Setbacks.* Buildings on all lots shall be set back a minimum of forty (40) feet from any dedicated street right-of-way line and twenty (20) feet from any other property line (except one hundred (100) feet when abutting a residential zone boundary).

~~(7) *Floor Area Ratio.* Maximum development within the R&BP zone shall not exceed thirteen thousand (13,000) square feet of gross floor space per net acre (excluding streets). This equates to a floor area ratio of 0.30. However, the developer may request up to an additional three thousand (3,000) square feet of floor space per acre if at least fifty percent (50%) of the off-street parking is placed within a parking structure. This would equate to a floor area ratio of 0.37. In addition, the floor area ratio does not include basements, provided that this area is used for mechanical and/or dead storage only. If the basement is used for anything other than the above mentioned uses, then it will be included in the floor area ratio. A deed restriction shall be recorded on the property stipulating the intended use of the basement. This document must be recorded prior to final occupancy of the building. This area may also be~~

~~excluded from the parking calculations if the area is less than one-half (1/2) the building foot print.~~

~~(8)~~ (7) Required Open Space. All building and parking areas on any lot shall not occupy more than sixty percent (60%) of the total area of the lot. The remaining portion of the lot, not to be less than forty percent (40%), shall be landscaped.

~~(9)~~ (8) Height. No building shall be constructed to a height exceeding three (3) stories with a maximum height of sixty (60) feet. Buildings which are constructed on parcels adjacent to a residential zone shall be constructed to a height not exceeding two (2) stories with a maximum height of thirty-five (35) feet, unless, pursuant to the issuance of a conditional use permit, upon findings for good cause, the Planning Commission finds that a taller building would not adversely affect the character, views, value, and peaceful enjoyment of surrounding properties in and outside the park. Such may be the case when a park is located next to an existing residential area with more permissive height limitations.

~~(10)~~ (9) Lot Width. Minimum lot width shall be one hundred (100) feet.

~~(11)~~ (10) Minimum Lot Frontage. Each lot or parcel of land in the R&BP zone shall abut a public street for a minimum distance of fifty (50) feet; however, lots or parcels with lesser frontage, or no frontage, on a public street may be created as part of an approved and recorded Record of Survey Plat which meets the standards and requirements of this Chapter.

~~(12)~~ (11) Minimum Perimeter Street Frontage. The R&BP tract shall have a minimum of one hundred (100) foot frontage on a public arterial street.

~~(13)~~ (12) Buildings Per Lot. More than one (1) main building may be placed on a lot.

~~(14)~~ (13) Building Separation. A separation of at least twenty (20) feet shall be maintained between buildings.

(14) The Development Services Director, or designee, may modify the setbacks and perimeter buffer yards of this zone subject to finding that all of the following conditions exist:

~~(a) The proposed setback or perimeter buffer yard change is visually compatible with neighboring development and does not cause an undue burden or harm to the adjacent property;~~

~~(b)~~ (a) The proposed setback or perimeter buffer yard change does not violate an existing or needed utility easement; and

~~(c)~~ (b) The proposed setback or perimeter buffer yard change does not cause a violation of the International Building Code or the Fire Code.

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ORDINANCE 2020-

AN ORDINANCE AMENDING PROVO CITY CODE RELATING TO FLOOR AREA RATIO, SETBACK, AND BUFFER YARD REQUIREMENTS IN THE RESEARCH AND BUSINESS PARK (R&BP) ZONE. CITYWIDE APPLICATION. (PLOTA20190425)

WHEREAS, it is proposed that Provo City Code Section 14.44.050 (Tract and Lot Area, Yard, Coverage, and Height Requirements) be amended to eliminate the floor area ratio and amend the setback and buffer yard requirements for development in the Research and Business Park (R&BP) Zone;

WHEREAS, on January 22, 2020, the Planning Commission held a duly noticed public hearing to consider the proposed amendment, and after such meeting, the Planning Commission recommended approval to the Municipal Council by a vote of 6:0; and

WHEREAS, on February 4, 2020 and February 18, 2020, 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 Planning Commission's recommendation and facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code should be amended as described herein and (ii) the proposed amendment reasonably furthers the health, safety and general welfare of the citizens of Provo City.

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

PART I:

Provo City Code Section 14.44.050 is hereby amended as set forth in Exhibit A.

PART II:

- A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.
- B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.
- C. The Municipal Council hereby directs that the official copy of the Provo City Code be updated to reflect the provisions enacted by this ordinance.

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

49
50 END OF ORDINANCE.

Exhibit A

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14.44.050 Tract and Lot Area, Yard, Coverage, and Height Requirements.

...

(5) Buffer Yard Along Provo River. A landscaped buffer yard one hundred (100) feet wide (measured back from the high water mark of each bank) shall be provided and maintained along the banks of the Provo River. This buffer area, if wooded, shall remain wooded, and if open, shall be planted with a mix of trees, grass, and shrubs to allow for adequate screening of view, noise, [erosion control](#), and other activities.

(6) Building Setbacks. Buildings on all lots shall be set back a minimum of forty (40) feet from any dedicated street right-of-way line and twenty (20) feet from any other property line (except one hundred (100) feet when abutting a residential zone boundary).

~~(7) Floor Area Ratio. Maximum development within the R&BP zone shall not exceed thirteen thousand (13,000) square feet of gross floor space per net acre (excluding streets). This equates to a floor area ratio of 0.30. However, the developer may request up to an additional three thousand (3,000) square feet of floor space per acre if at least fifty percent (50%) of the off-street parking is placed within a parking structure. This would equate to a floor area ratio of 0.37. In addition, the floor area ratio does not include basements, provided that this area is used for mechanical and/or dead storage only. If the basement is used for anything other than the above mentioned uses, then it will be included in the floor area ratio. A deed restriction shall be recorded on the property stipulating the intended use of the basement. This document must be recorded prior to final occupancy of the building. This area may also be excluded from the parking calculations if the area is less than one-half (1/2) the building foot print.~~

~~(8)~~ (7) Required Open Space. All building and parking areas on any lot shall not occupy more than sixty percent (60%) of the total area of the lot. The remaining portion of the lot, not to be less than forty percent (40%), shall be landscaped.

81 ~~(9)~~ (8) Height. No building shall be constructed to a height exceeding three (3) stories with a
82 maximum height of sixty (60) feet. Buildings which are constructed on parcels adjacent to a
83 residential zone shall be constructed to a height not exceeding two (2) stories with a
84 maximum height of thirty-five (35) feet, unless, pursuant to the issuance of a conditional use
85 permit, upon findings for good cause, the Planning Commission finds that a taller building
86 would not adversely affect the character, views, value, and peaceful enjoyment of
87 surrounding properties in and outside the park. Such may be the case when a park is located
88 next to an existing residential area with more permissive height limitations.

89 ~~(10)~~ (9) Lot Width. Minimum lot width shall be one hundred (100) feet.

90 ~~(11)~~ (10) Minimum Lot Frontage. Each lot or parcel of land in the R&BP zone shall abut a
91 public street for a minimum distance of fifty (50) feet; however, lots or parcels with lesser
92 frontage, or no frontage, on a public street may be created as part of an approved and
93 recorded Record of Survey Plat which meets the standards and requirements of this Chapter.

94 ~~(12)~~ (11) Minimum Perimeter Street Frontage. The R&BP tract shall have a minimum of one
95 hundred (100) foot frontage on a public arterial street.

96 ~~(13)~~ (12) Buildings Per Lot. More than one (1) main building may be placed on a lot.

97 ~~(14)~~ (13) Building Separation. A separation of at least twenty (20) feet shall be maintained
98 between buildings.

99 (14) The Development Services Director, or designee, may modify the setbacks and
100 perimeter buffer yards of this zone subject to finding that all of the following conditions
101 exist:

102 (a) The proposed setback or perimeter buffer yard change does not violate an existing
103 or needed utility easement; and

104 (b) The proposed setback or perimeter buffer yard change does not cause a violation
105 of the International Building Code or the Fire Code.



Provo City Planning Commission

Report of Action

January 22, 2020

- *Item 1 Joe Brown requests an Ordinance Text Amendment to Section 14.44.050 to eliminate the Floor Area Ratio restrictions for office park development in the Research and Business Park Zone. Riverbottoms Neighborhood. Dustin Wright (801) 852-6414. PLOTA20190425
-

The following action was taken by the Planning Commission on the above described item at its regular meeting of January 22, 2020:

RECOMMENDATION FOR APPROVAL

On a vote of 8:0, the Planning Commission recommended that the Municipal Council approve the above noted application with the following conditions:

Conditions of Approval:

1. That the text amendment version in Attachment #2 in the Staff Report is sent to Council;
2. That "Erosion Control" is added to the last sentence of 14.44.050(5).

Motion By: Andrew Howard

Second By: Robert Knudsen

Votes in Favor of Motion: Andrew Howard, Robert Knudsen, Maria Winden, Dave Anderson, Deborah Jensen, Russ Philips, Laurie Urquiaga, Lisa Jensen

Deborah Jensen was present as Chair.

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

PLANNING COMMISSION RECOMMENDED TEXT AMENDMENT

14.44.050 Tract and Lot Area, Yard, Coverage, and Height Requirements.

...

(5) Buffer Yard Along Provo River. A landscaped buffer yard one hundred (100) feet wide (measured back from the high water mark of each bank) shall be provided and maintained along the banks of the Provo River. This buffer area, if wooded, shall remain wooded, and if open, shall be planted with a mix of trees, grass, and shrubs to allow for adequate screening of view, noise, **erosion control**, and other activities.

(6) Building Setbacks. Buildings on all lots shall be set back a minimum of forty (40) feet from any dedicated street right-of-way line and twenty (20) feet from any other property line (except one hundred (100) feet when abutting a residential zone boundary).

~~(7) Floor Area Ratio. Maximum development within the R&BP zone shall not exceed thirteen thousand (13,000) square feet of gross floor space per net acre (excluding streets). This equates to a floor area ratio of 0.30. However, the developer may request up to an additional three thousand (3,000) square feet of floor space per acre if at least fifty percent (50%) of the off-street parking is placed within a parking structure. This would equate to a floor area ratio of 0.37. In addition, the floor area ratio does not include basements, provided that this area is used for mechanical and/or dead storage only. If the basement is used for anything other than the above mentioned uses, then it will be included in the floor area ratio. A deed restriction shall be recorded on the property stipulating the intended use of the basement. This document must be recorded prior to final occupancy of the building. This area may also be excluded from the parking calculations if the area is less than one-half (1/2) the building foot print.~~

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~~(10)~~ (9) Lot Width. Minimum lot width shall be one hundred (100) feet.

~~(11)~~ (10) Minimum Lot Frontage. Each lot or parcel of land in the R&BP zone shall abut a public street for a minimum distance of fifty (50) feet; however, lots or parcels with lesser frontage, or no frontage, on a public street may be created as part of an approved and recorded Record of Survey Plat which meets the standards and requirements of this Chapter.

~~(12)~~ (11) Minimum Perimeter Street Frontage. The R&BP tract shall have a minimum of one hundred (100) foot frontage on a public arterial street.

~~(13)~~ (12) Buildings Per Lot. More than one (1) main building may be placed on a lot.

~~(14)~~ (13) Building Separation. A separation of at least twenty (20) feet shall be maintained between buildings.

(14) The Development Services Director, or designee, may modify the setbacks and perimeter buffer yards of this zone subject to finding that all of the following conditions exist:

(a) The proposed setback or perimeter buffer yard change does not violate an existing or needed utility easement; and

(b) The proposed setback or perimeter buffer yard change does not cause a violation of the International Building Code or the Fire Code.

STAFF PRESENTATION

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

CITY DEPARTMENTAL ISSUES

- CRC has approved the application.

NEIGHBORHOOD MEETING DATE

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

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was not present or did not address the Planning Commission during the hearing.
- This item was City-wide or affected multiple neighborhoods.

CONCERNS RAISED BY PUBLIC

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

- No one from the public addressed the Planning Commission on this item.

APPLICANT RESPONSE

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

- The main goal with this request is to help be able to attract more business to the area.
- The zone provides other measures that would control building form and open space in the area.
- Future plans to develop the site are hindered by the current ratio in the zone.

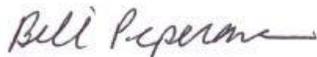
PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- With the other elements in the code that control location and size of the structures, the floor area ratio (FAR) is redundant.
- There is only one other zone in the City that uses FAR to regulate building size, there are other ways to accomplish similar results already in the zone.
- It would be good to add "erosion control" to this section of the code that regulates "buffer yards along the Provo River".



Planning Commission Chair



Director of Development Services

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

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

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Development Services Department, 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

ITEM 1*

Joe Brown requests an Ordinance Text Amendment to Section 14.44.050 to eliminate the Floor Area Ratio restrictions for office park development in the Research and Business Park Zone.

Riverbottoms Neighborhood

PLOTA20190425

Attachment 1 - Applicant's proposed text amendment

14.44.050 Tract and Lot Area, Yard, Coverage, and Height Requirements.

(1) *Tract Area.* The minimum size of any tract zoned and developed for a Research and Business Park shall be twenty (20) acres.

(2) *Lot Area.* The minimum size of any lot shall be two (2) acres.

(3) *Perimeter Buffer Yards* facing an existing or dedicated exterior access road shall be not less than fifty (50) feet in depth.

(a) Screening in this buffer yard shall be accomplished with a landscaped berm at least six (6) feet in height.

(4) *Perimeter Buffer Yards* adjoining a residential zone boundary shall be not less than twenty-five (25) feet deep if screened with a decorative masonry wall at least six (6) feet high; and if not screened with a decorative wall, such yards shall be not less than one hundred (100) feet deep with landscaped berms at least six (6) feet in height.

(a) In yards where a screening wall is used, there shall be at least ten (10) feet of landscaping on the residential zone side, and at least fifteen (15) feet of landscaping on the business park side. Both areas of landscaping shall be maintained by the Business Park.

(5) *Buffer Yard Along Provo River.* A landscaped buffer yard one hundred (100) feet wide (measured back from the high water mark of each bank) shall be provided and maintained along the banks of the Provo River. This buffer area, if wooded, shall remain wooded, and if open, shall be planted with a mix of trees, grass, and shrubs to allow for adequate screening of view, noise and other activities.

(6) *Building Setbacks.* Buildings on all lots shall be set back a minimum of forty (40) feet from any dedicated street right-of-way line and twenty (20) feet from any other property line (except one hundred (100) feet when abutting a residential zone boundary).

~~(7) *Floor Area Ratio.* Maximum development within the R&BP zone shall not exceed thirteen thousand (13,000) square feet of gross floor space per net acre (excluding streets). This equates to a floor area ratio of 0.30. However, the developer may request up to an additional three thousand (3,000) square feet of floor space per acre if at least fifty percent (50%) of the off-street parking is placed within a parking structure. This would equate to a floor area ratio of 0.37. In addition, the floor area ratio does not include basements, provided that this area is used for mechanical and/or dead storage only. If the basement is used for anything other than the above mentioned uses, then it will be included in the floor area ratio. A deed restriction shall be recorded on the property stipulating the intended use of the basement. This document must be recorded prior to final occupancy of the building. This area may also be~~

~~excluded from the parking calculations if the area is less than one-half (1/2) the building foot print.~~

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~~(9) (8) Height.~~ No building shall be constructed to a height exceeding three (3) stories with a maximum height of sixty (60) feet. Buildings which are constructed on parcels adjacent to a residential zone shall be constructed to a height not exceeding two (2) stories with a maximum height of thirty-five (35) feet, unless, pursuant to the issuance of a conditional use permit, upon findings for good cause, the Planning Commission finds that a taller building would not adversely affect the character, views, value, and peaceful enjoyment of surrounding properties in and outside the park. Such may be the case when a park is located next to an existing residential area with more permissive height limitations.

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~~(14) (13) Building Separation.~~ A separation of at least twenty (20) feet shall be maintained between buildings.

~~(14) The Development Services Director, or designee, may modify the setbacks and perimeter buffer yards of this zone subject to finding that all of the following conditions exist:~~

~~(a) The proposed setback or perimeter buffer yard change is visually compatible with neighboring development and does not cause an undue burden or harm to the adjacent property;~~

~~(b) The proposed setback or perimeter buffer yard change does not violate an existing or needed utility easement; and~~

~~(c) The proposed setback or perimeter buffer yard change does not cause a violation of the International Building Code or the Fire Code.~~

Attachment 2 - Staff's modified version of the proposed text amendment

14.44.050 Tract and Lot Area, Yard, Coverage, and Height Requirements.

(1) *Tract Area.* The minimum size of any tract zoned and developed for a Research and Business Park shall be twenty (20) acres.

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(3) *Perimeter Buffer Yards* facing an existing or dedicated exterior access road shall be not less than fifty (50) feet in depth.

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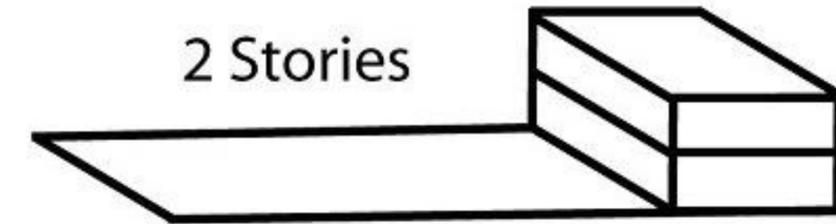
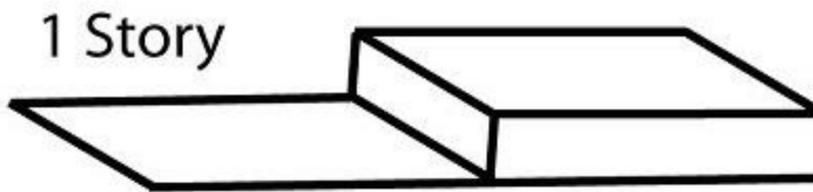
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(b) (a) The proposed setback or perimeter buffer yard change does not violate an existing or needed utility easement; and

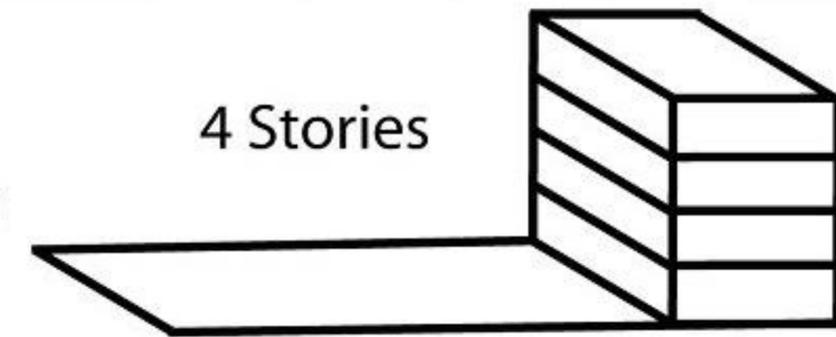
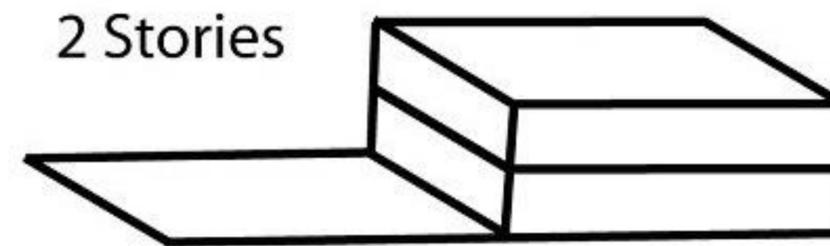
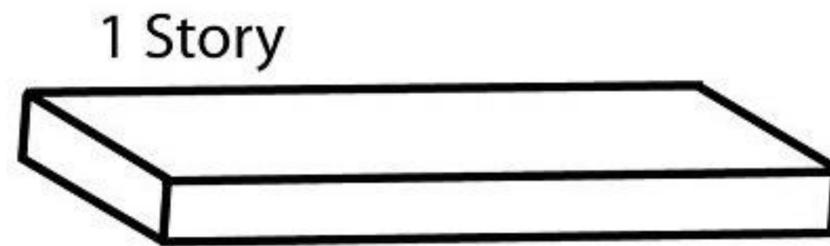
~~(c) (b) The proposed setback or perimeter buffer yard change does not cause a violation of the International Building Code or the Fire Code.~~

Floor Area Ratio

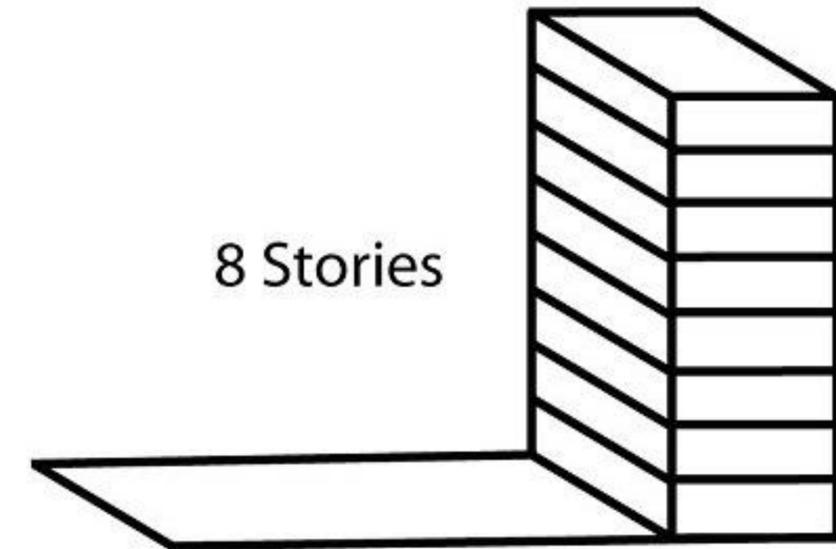
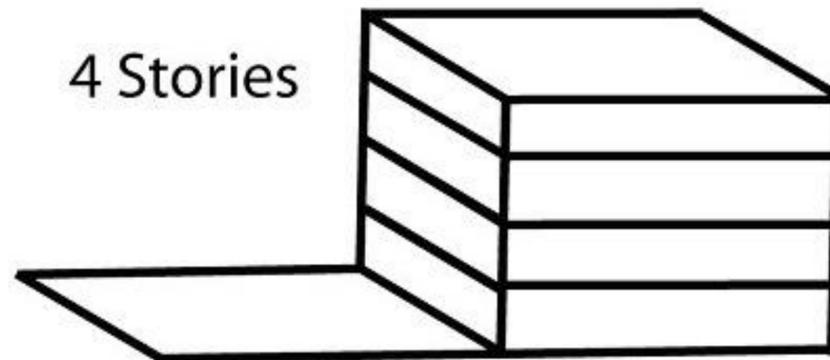
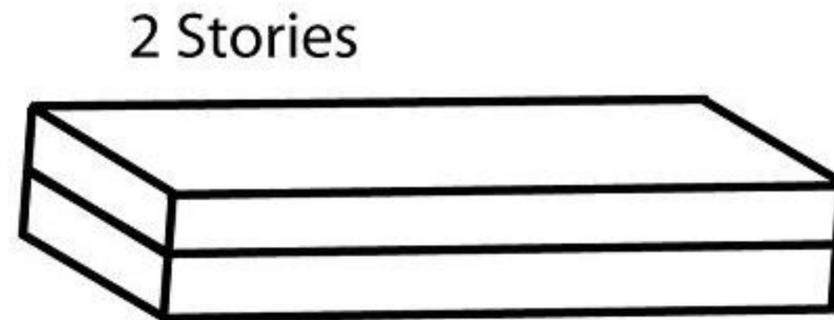
0.5 FAR



1.0 FAR



2.0 FAR



Entire Lot Area

Half Lot Area

Quarter Lot Area

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: RBREEN
Department: Development Services
Requested Meeting Date: 02-18-2020

SUBJECT: An ordinance amending Provo City Code to allow restaurants with ancillary microbrewing as a permitted use in certain zones. (PLOTA20190378)

RECOMMENDATION: The Planning Commission has recommended approval (6:0).

BACKGROUND: This item was heard and continued in the Council Meeting on January 21, 2020.

Quinn Peterson, acting as the Downtown Neighborhood Chair, is requesting an ordinance text amendment to the permitted uses within the Downtown Core (DT2), General Downtown (DT1), and Regional Shopping Center (SC3) zones to allow restaurants with ancillary breweries. The specific language being proposed adds microbreweries as a permitted use in the above zones only when attached and ancillary to a restaurant. Restaurants in these areas are currently permitted to sell and serve alcohol based on their business license. This amendment would allow current and future restaurants to brew and sell on site as part of their business.

Restaurants with ancillary breweries (also known as brewpubs) would be required to meet the same standards as any restaurant that serves alcohol as set by the Department of Alcoholic Beverage Control (DABC) or risk fines and/or the loss of their licenses. Those standards include:

would be required to meet the same standards as any restaurant that serves alcohol as set by the Department of Alcoholic Beverage Control (DABC), including:

- making at least 70% of their sales from food; and
- using an “approved electronic age verification device to verify proof of age of persons who appear to be 35 years of age or younger;” and
- not permitting patrons to leave with open containers of alcohol; and
- not selling alcohol to a patron who is not also purchasing “food that is prepared, sold and served at the restaurant”; and
- not being located within 300 feet measured by ordinary pedestrian level or 200 feet measured in a straight line” of churches, schools, parks, playground, or libraries.

The DABC requires licencees to reapply annually and conducts random audits.

The Council has the opportunity to discuss additional licensing requirements at a city level.

FISCAL IMPACT:

PRESENTER'S NAME: Aaron Ardmore 801-852-6404

REQUESTED DURATION OF PRESENTATION: 10 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: PLOTA20190378



**Planning Commission Staff Report
Ordinance Amendment
Hearing Date: January 8, 2020**

***ITEM #1** Quinn Peterson, Downtown Neighborhood Chair, requests an ordinance amendment to allow approval of restaurants with ancillary microbrewing as a permitted use in the SC3, DT1, and DT2 zones. Citywide application. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20190378

<p>Applicant: Quinn Peterson</p> <p>Staff Coordinator: Aaron Ardmore</p> <p>*Council Action Required: Yes</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>1. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is January 22, at 6:00 p.m.</i></p> <p>2. Recommend Denial of the proposed ordinance amendment. <i>This would be <u>a change from the Staff recommendation</u>; the Planning Commission should state new findings.</i></p>	<p>Relevant History: The applicant has had inquiries as the Downtown Neighborhood Chair, about establishing restaurants with microbreweries as part of their business model. The applicant worked with staff to create an amendment to accomplish this goal.</p> <p>Neighborhood Issues: This is a city-wide application; staff is unaware of any neighborhood issues at the time of this report.</p> <p>Summary of Key Issues:</p> <ul style="list-style-type: none"> • There is a demand for restaurants with a microbrewery in Provo. • The applicant has limited his request to three specific zones; the Regional Shopping Center zone, the General Downtown zone, and the Downtown Core zone. <p>Staff Recommendation: That the Planning Commission recommend approval of the proposed text amendment to the Municipal Council.</p>
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OVERVIEW

Quinn Peterson, acting as the Downtown Neighborhood Chair, is requesting an ordinance text amendment to the permitted uses within the Downtown Core (DT2), General Downtown (DT1), and Regional Shopping Center (SC3) zones to allow restaurants with ancillary breweries.

The specific language being proposed adds as a permitted use, microbreweries in the above zones only when attached to and ancillary to a restaurant. Restaurants in these areas are currently permitted to sell and serve alcohol based on their business license.

This amendment would allow current and future restaurants to brew and sell on site as part of their business. In this case, ancillary to a restaurant means that 60% of the sales would need to be from food. This is the definition of a Class B liquor license.

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: (responses in bold)

- (a) *Public purpose for the amendment in question. **The public purpose for the proposed amendment is to attract and retain business in the commercial cores of Provo City, increasing the commercial tax base. Staff sees no distinction between a restaurant with a microbrewery and any other restaurant with a Class B liquor license.***
- (b) *Confirmation that the public purpose is best served by the amendment in question. **Allowing for more options in restaurants should help to attract a greater variety of establishments and therefore provide more commercial tax base.***
- (c) *Compatibility of the proposed amendment with General Plan policies, goals, and objectives. **The proposed amendment helps to achieve the goals of the General Plans Economic Development chapter; specifically, goal 7.4.16, to “promote the central business district” and its accompanying objectives.***
- (d) *Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated. **There are no timing and sequencing provisions related to this request.***

- (e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies. **The proposed amendment should only help to reach the goals and objectives of the General Plan.***
- (f) *Adverse impacts on adjacent land owners. **Adverse impacts on adjacent land owners would be limited to increased traffic if the amendment does, in fact, attract additional businesses into the City.***
- (g) *Verification of correctness in the original zoning or General Plan for the area in question. **The General Plan is verified to be correct.***
- (h) *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies. **No conflict exists.***

CONCLUSIONS

Staff has worked with the applicant to refine the proposed language, and feels like this minor addition will benefit the downtown and major commercial areas of the City. Restaurants can already sell and serve alcohol in these areas, this amendment will simply allow for business owners to produce more local goods, maintain a strong business, and have more opportunity for growth and profit; which in turn helps Provo City tax base and the community as a whole.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission recommend approval of the proposed text amendment to the Municipal Council.

ATTACHMENTS

1. Proposed Ordinance Amendment

ATTACHMENT 1 – PROPOSED ORDINANCE AMENDMENT

14.20.020

Permitted Uses.

- (1) Those uses or categories of uses as listed herein, and no others, are permitted in the SC3 zone.
- (2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four-digit number in which all digits are whole numbers. Classes or groupings of such uses permitted in the zone are identified by a four-digit number in which the last one (1) or two (2) digits are zeros.
- (3) All such categories listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the SC3 zone, subject to the limitations set forth herein.
- (4) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the SC3 zone.

Use No.	Use Classification
1113	One-family dwelling, attached to commercial (subject to Section 14.20.160, Provo City Code)
1130-50	Multi-family and apartment dwelling (subject to Section 14.20.160, Provo City Code)
1511	Hotels
1512	Motels and automobile travel courts
1513	Tourist courts
2181	Breweries (only when attached and ancillary to a restaurant)
4923	Travel agencies
5230	Paint, glass and wallpaper
5240	Electrical supplies
5251	Hardware
5255	Building maintenance
5256	Swimming pool supplies

Use No.	Use Classification
5311	Department stores (includes major and junior chain department stores)
5312	Discount department stores
5320	Mail and phone order houses
5330	Variety stores
5340	Merchandise vending machine operators
5390	Retail trade - general merchandise
5400	Food stores (groceries, meats and fish, fruits and vegetables, candy, nuts, dairy, bakeries, etc.)
5490	Miscellaneous retail food establishment
5511	Motor vehicles, automobiles - new car sales and used car sales which will be permitted only as an accessory use to new car sales
5515	Motor vehicles, trucks and buses - new vehicle sales and used vehicles sales permitted only as an accessory use to new truck and bus sales
5520	Automobile accessories (except tire recapping and vulcanizing)
5530	Gasoline service stations
5590	Automotive, marine crafts, aircrafts, and accessories (except mobile and manufactured homes)
5600	Apparel and accessories
5700	Furniture, home furnishings, and equipment (no combined warehousing)
5810	Eating places (restaurants)
5910	Drug and proprietary stores
5940	Books, stationery, art and hobby supplies
5950	Sporting goods, bicycles, and toys
5969	Garden supplies (entirely within a building only)
5970	Jewelry
5984	Ice dealers (automated machines or pick-up stations only)

Use No.	Use Classification
5990	Miscellaneous retail stores (includes florists, cigars, newspapers and magazines, photo supplies, pet stores, and other similar retail stores)
6100	Banks, insurance and real estate (office only)
6200	Personal services - including laundry, photography, beauty and barber services, clothing repair, etc. (except 6240 and 6299 wedding chapels and recreation centers only)
6297	Athletic clubs, body building studios, spas, aerobic centers, (no gymnasiums)
6330	Duplicating, mailing, stenographic and office services
6360	Employment services
6493	Watch, clock, jewelry repair, etc.
6496	Locksmiths and key shops
6497	Gunsmiths
6511	Physicians offices and services
6512	Dental offices and services
6520	Legal services
6530	Engineering, architectural, and planning services
6550	Data processing services
6590	Professional services
6710	Executive, legislative, and judicial functions
6720	Protective functions and related activities
6730	Postal services
6815	Day care center
6833	Beauty schools
6835	Dance studios and schools
7111	Libraries
7112	Museums
7212	Motion picture theaters (indoor – subject to the standards contained in the subsections to Section 14.34.370(3), Provo City Code)

Use No.	Use Classification
7398	Video rental shops

(5) *Permitted Accessory Uses.* Accessory uses are permitted in the SC3 zone provided they are incidental to, and do not substantially alter, the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

- (a) Accessory buildings such as garages, carports, equipment storage and supply storage buildings which are customarily used in conjunction with and incidental to a principal use or structure permitted in the SC3 zone; and
- (b) Storage of materials used for construction of a building, including a contractor's temporary office, provided that such use be located on the building site or immediately adjacent thereto, and provided further that such use shall be permitted only during the construction period and thirty (30) days thereafter.

(6) *Conditional Uses.* The following uses and structures are permitted in the SC3 zone only after a Conditional Use Permit has been issued, and subject to the terms and conditions thereof.

Use No.	Use Classification
5313	Surplus store
5594	Motorcycles, motor scooter parts, accessories, supplies
5920	Liquor, package
5931	Antiques (no outside display)
5983	Bottled gas
6241	Funeral parlors
6299	Personal services (wedding chapel and reception centers only)
6340	Dwelling and building services (not dwelling units)
6381	Auction houses
6394	Equipment rental (indoor only)
6397	Vehicle rental (passenger auto-mobiles only)
6399	Miscellaneous business services
6416-7	Auto washing and polishing
6420	Electrical appliance repair

Use No.	Use Classification
6494	Furniture repair
6498	Saw, knife, and tool sharpening
6499	Miscellaneous small item repair
6722	Police protection and related activities, branch (office only)
6942	Fraternal associations and lodges
7391	Coin-operated amusements or video center
7392	Miniature golf
7396	Dance halls, ballroom (subject to the standards of Section 14.34.370, Provo City Code)
7397	Billiard and pool halls
7414	Ice skating (subject to the standards of Section 14.34.370, Provo City Code)
7415	Roller skating and skate boarding (subject to the standards of Section 14.34.370, Provo City Code)
7417	Bowling alleys

14.21A.030

Permitted Uses.

- (1) Those uses or categories of uses as listed herein, and no others, are permitted in the DT1 zone.
- (2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four (4) digit number in which all digits are whole numbers. Classes or categories of such uses permitted within the zone are identified by a four (4) digit number in which the last one (1) or two (2) digits are zeros.
- (3) All such categories listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the DT1 zone, subject to the limitations set forth.
- (4) *First Floor Commercial.*

(a) Except as allowed under Subsection (4)(b) of this Section, nonresidential uses are required in the minimal habitable floor depth on the first story of all building frontage on University Avenue and Center Street within the zone.

(b) For buildings fronting University Avenue south of Center Street, or else fronting Center Street west of 500 West and east of 200 East Streets, the first floor areas shall be designed and the shell constructed to allow for nonresidential uses; however, residential use is permitted until the building owner determines the nonresidential use of the area to be economically viable.

(5) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the DT1 zone:

Use No.	Use Classification
1110	One-family dwelling, attached to commercial or other nonresidential use (detached only if existing as of July 7, 2009)
1120	Two-family dwelling, attached to commercial or other nonresidential use (detached only if existing as of July 7, 2009)
1130	Multiple-family dwelling (three (3) or four (4) dwelling units), attached to commercial or other nonresidential use
1140	Apartments (low rise)
1150	Apartment (high rise)
1211	Batching apartments (maximum of six (6) individuals per unit)
1220	Membership lodging
1241	Assisted living facility (subject to the locational and development standards as set forth in Section 14.34.470, Provo City Code)
1250	Religious quarters
1291	Residential facility for elderly persons (see Section 14.34.230, Provo City Code)
1292	Residential facility for persons with a disability (see Section 14.34.230, Provo City Code)
1511	Hotels
1512	Motels

Use No.	Use Classification
1516	Bed and breakfast
1590	Other transient lodgings, NEC
2181	Breweries (only when attached and ancillary to a restaurant)
4118	Railroad company office not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4218	Bus company offices not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4318	Airline company offices not located at terminal (office only, no storage of related vehicles is permitted)
4290	Motor vehicle transportation (indoors only)
4295	Parcel delivery and pickup service
4700	Communications (unless identified as a conditional use in Section 14.34.420, Provo City Code)
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4815	Electric utility company office (office only, no storage of related vehicles is permitted)
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4825	Gas company office
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4835	Irrigation distribution channels
4837	Water utilities or irrigation company office
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)

Use No.	Use Classification
4853	Refuse disposal company office
4862	Gas and electric utility company office
4863	Water and electric utility company office
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)
4923	Travel agencies
5220	Heating and plumbing equipment (no outside storage)
5230	Paint, glass, and wallpaper
5240	Electrical supplies
5251	Hardware
5254	Janitorial supplies
5255	Building maintenance supplies
5256	Swimming pool supplies
5311	Department stores (includes major and junior chain department stores)
5312	Discount department stores
5320	Mail and phone order houses
5330	Variety stores
5340	Merchandise vending machine operators
5350	Direct selling organization
5390	Retail trade - general merchandise
5400	Food stores (groceries, meats and fish, fruits and vegetables, candy, nuts, dairy products, bakeries, etc.)
5511	Automobile dealers, new and used cars
5512	Automobile dealers, used cars
5594	Motor scooters or motorcycles
5600	Apparel and accessories
5700	Furniture, home furnishings, and equipment

Use No.	Use Classification
5810	Eating places (restaurants)
5910	Drug and proprietary stores
5930	Antiques and secondhand merchandise (except 5935 Secondhand auto parts, 5938 Junk dealers and salvage, 5939 Secondhand stores)
5940	Books, stationery, art, and hobby supplies
5950	Sporting goods, bicycles, and toys
5969	Garden supplies
5970	Jewelry
5990	Miscellaneous retail stores (includes florists, newspapers and magazines, photo supplies, pet stores, and other similar retail stores) (except 5992 Cigars and cigarettes)
6100	Banks, insurance, and real estate (except 6123 Pawnbrokers, 6124 Bail bonds, and 6129 Other credit services)
6200	Personal services - including laundry, photography, beauty and barber services, clothing repair, etc. (except 6294 Escort services and 6295 Tattooing)
6300	Business services (office and retail sales only, including 6394 Equipment rentals and 6397 Automobile rentals (indoors only), except 6370 Warehousing and storage, 6382 Auction yards)
6420	Electrical appliance repair and service
6493	Watch and clock repair
6494	Reupholstering and furniture repair
6496	Locksmiths and key shops
6497	Gunsmiths
6498	Saw, knife, and tool sharpening
6499	Other repair services, NEC (except blacksmiths)
6500	Professional services (except 6515 Behavior, drug and alcohol treatment and 6518 Blood banks)
6600	Contract construction services (office only)

Use No.	Use Classification
6710	Executive, legislative, and judicial functions (no repair or maintenance facilities)
6720	Protective functions and related activities
6730	Postal services
6800	Educational services
6910	Religious activities
7100	Cultural activities (except 7124 Zoos)
7210	Entertainment and assembly including legitimate theater
7230	Public assembly
7391	Coin-operated amusements
7392	Miniature golf
7397	Billiards and pool halls
7398	Video rental shops
7399	Other amusements, NEC (Bike rentals only)
7414	Ice skating
7415	Roller skating and skate boarding
7417	Bowling alleys
7600	Park

(6) *Permitted Accessory Uses.* Accessory uses and structures are permitted in the DT1 zone provided they are incidental to, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

- (a) Swimming pools and incidental bath houses subject to the standards of 14.34.210 – Pools;
- (b) Storage of materials used for construction of a building, including the contractor’s temporary office, provided that such use be located on the building site or immediately adjacent thereto, and provided further that such use shall be permitted only during the construction period and thirty (30) days thereafter;
- (c) Vegetable and flower gardens;
- (d) Home occupations subject to the regulations of Chapter 14.41 – Home Occupations; and
- (e) Household pets, provided that no more than two dogs and two cats six months of age or older shall be kept at any residence or commercial establishment at any time. Nothing herein shall be construed as

authorizing the keeping of any animal capable of inflicting harm or discomfort or endangering the health and safety of any person or property.

(7) *Uses Within Buildings.* All uses established in the DT1 zone shall be conducted entirely within a fully-enclosed building except those uses deemed by the Planning Commission, through the granting of a conditional use permit, to be customarily and appropriately conducted in the open. Uses customarily deemed to be conducted in the open may include, but would not be limited to public assembly, live entertainment, etc. Open storage within view of a public street or space shall be prohibited.

(8) Sidewalk cafes shall be permitted per the requirements of Section 14.34.480, Provo City Code.

(9) Canopies and marquees shall be permitted per the requirements of Section 14.34.490, Provo City Code.

(10) *Conditional Uses.* The following uses and structures are permitted in the DT1 zone only after a conditional use permit has been issued, and subject to the terms and conditions thereof:

- 4600 Automobile parking (except 4603 Long term storage of autos, trucks, boats, vacation trailers, etc.) (Automobile parking lots fronting Center Street shall not be permitted)
- 4700 Communications (subject to Section 14.34.420, Provo City Code)
- 4814 Electricity regulating substations
- 4824 Gas pressure control stations
- 4834 Water storage as part of a utility system (covered including water storage standpipes)
- 4836 Water pressure control stations and pumping plants
- 4844 Sewage pumping stations
- 5920 Liquor, package
- 6515 Behavior, drug & alcohol treatment
- 6900 Miscellaneous service organizations
- 7396 Dance halls (subject to the standards of Section 14.34.370, Provo City Code)

14.21B.030

Permitted Uses.

- (1) Those uses or categories of uses as listed herein, and no others, are permitted in the DT2 zone.
- (2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four (4) digit number in which all digits are whole numbers. Classes or categories of such uses permitted within the zone are identified by a four (4) digit number in which the last one (1) or two (2) digits are zeros (0).
- (3) All such categories listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the DT2 zone, subject to the limitations set forth.
- (4) *First Floor Commercial.* Nonresidential uses are required in the minimum habitable floor depth on the first story of all building frontage on University Avenue and Center Street within the district.
- (5) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the DT2 zone:

Use No.	Use Classification
1110	One-family dwelling, attached to commercial or other nonresidential use – (detached only if existing as of July 7, 2009)
1120	Two-family dwelling, attached to commercial or other nonresidential use – (detached only if existing as of July 7, 2009)
1130	Multiple family dwelling (three (3) or four (4) dwelling units), attached to commercial or other nonresidential use
1140	Apartments (low rise)
1150	Apartment (high rise)
1211	Batching apartments (maximum of six (6) individuals per unit)
1220	Membership lodging
1241	Assisted living facility (subject to the locational and development standards as set forth in Section 14.34.470, Provo City Code)

Use No.	Use Classification
1250	Religious quarters
1291	Residential facility for elderly persons (see Section 14.34.230, Provo City Code)
1292	Residential facility for persons with a disability (see Section 14.34.230, Provo City Code)
1511	Hotels
1512	Motels
1516	Bed and breakfast
1590	Other transient lodgings, NEC
2181	Breweries (only when attached and ancillary to a restaurant)
4118	Railroad company office not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4218	Bus company offices not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4318	Airline company offices not located at terminal (office only, no storage of related vehicles is permitted)
4290	Motor vehicle transportation (indoors only)
4295	Parcel delivery and pickup service
4700	Communications (unless identified as a conditional use in Section 14.34.420)
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4815	Electric utility company office (office only, no storage of related vehicles is permitted)
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4825	Gas company office

Use No.	Use Classification
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4835	Irrigation distribution channels
4837	Water utilities or irrigation company office
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4853	Refuse disposal company office
4862	Gas and electric utility company office
4863	Water and electric utility company office
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)
4923	Travel agencies
5220	Heating and plumbing equipment (no outside storage)
5230	Paint, glass, and wallpaper
5240	Electrical supplies
5251	Hardware
5254	Janitorial supplies
5255	Building maintenance supplies
5256	Swimming pool supplies
5311	Department stores (includes major and junior chain department stores)
5312	Discount department stores
5320	Mail and phone order houses
5330	Variety stores
5340	Merchandise vending machine operators
5350	Direct selling organization
5390	Retail trade - general merchandise

Use No.	Use Classification
5400	Food stores (groceries, meats and fish, fruits and vegetables, candy, nuts, dairy products, bakeries, etc.)
5511	Automobile dealers, new and used cars
5512	Automobile dealers, used cars
5594	Motor scooters or motorcycles
5600	Apparel and accessories
5700	Furniture, home furnishings, and equipment
5810	Eating places (restaurants)
5910	Drug and proprietary stores
5930	Antiques and secondhand merchandise (except 5935 Secondhand auto parts, 5938 Junk dealers and salvage, 5939 Secondhand stores)
5940	Books, stationery, art, and hobby supplies
5950	Sporting goods, bicycles, and toys
5969	Garden supplies
5970	Jewelry
5990	Miscellaneous retail stores (includes florists, newspapers and magazines, photo supplies, pet stores, and other similar retail stores) (except 5992 Cigars and cigarettes)
6100	Banks, insurance, and real estate (except 6123 Pawnbrokers, 6124 Bail bonds, and 6129 Other credit services)
6200	Personal services - including laundry, photography, beauty and barber services, clothing repair, etc. (except 6294 Escort services and 6295 Tattooing)
6300	Business services (office and retail sales only, including 6394 Equipment rentals and 6397 Automobile rentals (indoors only), except 6370 Warehousing and Storage, 6382 Auction yards)
6420	Electrical appliance repair and service
6493	Watch and clock repair
6494	Reupholstering and furniture repair

Use No.	Use Classification
6496	Locksmiths and key shops
6497	Gunsmiths
6498	Saw, knife, and tool sharpening
6499	Other repair services, NEC (except blacksmiths)
6500	Professional services (except 6515 Behavior, drug and alcohol treatment and 6518 Blood banks)
6600	Contract construction services (office only)
6710	Executive, legislative, and judicial functions (no repair or maintenance facilities)
6720	Protective functions and related activities
6730	Postal services
6800	Educational services
6910	Religious activities
7100	Cultural activities (except 7124 Zoos)
7210	Entertainment and assembly including legitimate theater
7230	Public assembly
7391	Coin-operated amusements
7397	Billiards and pool halls
7398	Video rental shops
7399	Other amusements, NEC (bike rentals only)
7600	Park

(6) *Permitted Accessory Uses.* Accessory uses and structures are permitted in the DT2 zone provided they are incidental to, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

- (a) Swimming pools and incidental bath houses subject to the standards of 14.34.210 – Pools;
- (b) Storage of materials used for construction of a building, including the contractor's temporary office, provided that such use be located on the building site or immediately adjacent thereto, and provided further that such use shall be permitted only during the construction period and thirty (30) days thereafter;
- (c) Vegetable and flower gardens;

(d) Home occupations subject to the regulations of Chapter 14.41 – Home Occupations; and

(e) Household pets, provided that no more than two (2) dogs and two (2) cats six (6) months of age or older shall be kept at any residence or commercial establishment at any time. Nothing herein shall be construed as authorizing the keeping of any animal capable of inflicting harm or discomfort or endangering the health and safety of any person or property.

(7) *Uses Within Buildings.* All uses established in the DT2 zone shall be conducted entirely within a fully-enclosed building except those uses deemed by the Planning Commission, through the granting of a conditional use permit, to be customarily and appropriately conducted in the open. Uses customarily deemed to be conducted in the open may include, but would not be limited to public assembly, live entertainment, etc. Open storage within view of a public street or space shall be prohibited.

(8) Sidewalk cafes shall be permitted per the requirements of Section 14.34.480.

(9) Canopies and marquees shall be permitted per the requirements of Section 14.34.490.

(10) *Conditional uses.* The following uses and structures are permitted in the DT2 zone only after a conditional use permit has been issued, and subject to the terms and conditions thereof:

4600	Automobile parking (except 4603 Long term storage of autos, trucks, boats, vacation trailers, etc.) (Automobile parking lots fronting Center Street shall not be permitted)
4700	Communications (Subject to 14.34.420)
4814	Electricity regulating substations
4824	Gas pressure control stations
4834	Water storage as part of a utility system (covered including water storage standpipes)
4836	Water pressure control stations and pumping plants
4844	Sewage pumping stations
5920	Liquor, package
6515	Behavior, drug & alcohol treatment
6900	Miscellaneous service organizations
7396	Dance halls (subject to the standards of Section 14.34.370, Provo City Code)

ORDINANCE 2020-

AN ORDINANCE AMENDING PROVO CITY CODE TO ALLOW RESTAURANTS WITH ANCILLARY MICROBREWING AS A PERMITTED USE IN CERTAIN ZONES. (PLOTA20190378)

WHEREAS, it is proposed that Provo City Code Sections 14.20.020, 14.21A.030, and 14.21B.030 be amended to allow Microbrewing as an ancillary use for restaurants in the Regional Shopping Center (SC3), General Downtown (DT1), and Downtown Core (DT2) Zones;

WHEREAS, on January 8, 2020, the Planning Commission held a duly noticed public hearing to consider the proposed amendment, and after such meeting, the Planning Commission recommended approval to the Municipal Council by a vote of 6:0; and

WHEREAS, on January 21, 2020 and February 18, 2020, 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 Planning Commission's recommendation and facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code should be amended as described herein and (ii) the proposed amendment reasonably furthers the health, safety and general welfare of the citizens of Provo City.

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

PART I:

Provo City Code Section 14.20.020 (Permitted Uses) is hereby amended as set forth in Exhibit A.

PART II:

Provo City Code Section 14.21A.030 (Permitted Uses) is hereby amended as set forth in Exhibit B.

PART III:

Provo City Code Section 14.21B.030 (Permitted Uses) is hereby amended as set forth in Exhibit C.

PART IV:

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

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

51
52 C. The Municipal Council hereby directs that the official copy of the Provo City
53 Code be updated to reflect the provisions enacted by this ordinance.

54
55 D. This ordinance shall take effect immediately after it has been posted or published
56 in accordance with Utah Code 10-3-711, presented to the Mayor in accordance
57 with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

58
59 END OF ORDINANCE.

Exhibit A

14.20.020

Permitted Uses.

- (1) Those uses or categories of uses as listed herein, and no others, are permitted in the SC3 zone.
- (2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four-digit number in which all digits are whole numbers. Classes or groupings of such uses permitted in the zone are identified by a four-digit number in which the last one (1) or two (2) digits are zeros.
- (3) All such categories listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the SC3 zone, subject to the limitations set forth herein.
- (4) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the SC3 zone.

Use No.	Use Classification
1113	One-family dwelling, attached to commercial (subject to Section 14.20.160 , Provo City Code)
1130-50	Multi-family and apartment dwelling (subject to Section 14.20.160 , Provo City Code)
1511	Hotels
1512	Motels and automobile travel courts
1513	Tourist courts
2181	Breweries (only when attached and ancillary to a restaurant)
4923	Travel agencies
5230	Paint, glass and wallpaper
5240	Electrical supplies
5251	Hardware
5255	Building maintenance
5256	Swimming pool supplies
5311	Department stores (includes major and junior chain department stores)
5312	Discount department stores

Use No.	Use Classification
5320	Mail and phone order houses
5330	Variety stores
5340	Merchandise vending machine operators
5390	Retail trade - general merchandise
5400	Food stores (groceries, meats and fish, fruits and vegetables, candy, nuts, dairy, bakeries, etc.)
5490	Miscellaneous retail food establishment
5511	Motor vehicles, automobiles - new car sales and used car sales which will be permitted only as an accessory use to new car sales
5515	Motor vehicles, trucks and buses - new vehicle sales and used vehicles sales permitted only as an accessory use to new truck and bus sales
5520	Automobile accessories (except tire recapping and vulcanizing)
5530	Gasoline service stations
5590	Automotive, marine crafts, aircrafts, and accessories (except mobile and manufactured homes)
5600	Apparel and accessories
5700	Furniture, home furnishings, and equipment (no combined warehousing)
5810	Eating places (restaurants)
5910	Drug and proprietary stores
5940	Books, stationery, art and hobby supplies
5950	Sporting goods, bicycles, and toys
5969	Garden supplies (entirely within a building only)
5970	Jewelry
5984	Ice dealers (automated machines or pick-up stations only)
5990	Miscellaneous retail stores (includes florists, cigars, newspapers and magazines, photo supplies, pet stores, and other similar retail stores)
6100	Banks, insurance and real estate (office only)
6200	Personal services - including laundry, photography, beauty and barber services, clothing repair, etc. (except 6240 and 6299)

Use No.	Use Classification
	wedding chapels and recreation centers only)
6297	Athletic clubs, body building studios, spas, aerobic centers, (no gymnasiums)
6330	Duplicating, mailing, stenographic and office services
6360	Employment services
6493	Watch, clock, jewelry repair, etc.
6496	Locksmiths and key shops
6497	Gunsmiths
6511	Physicians offices and services
6512	Dental offices and services
6520	Legal services
6530	Engineering, architectural, and planning services
6550	Data processing services
6590	Professional services
6710	Executive, legislative, and judicial functions
6720	Protective functions and related activities
6730	Postal services
6815	Day care center
6833	Beauty schools
6835	Dance studios and schools
7111	Libraries
7112	Museums
7212	Motion picture theaters (indoor – subject to the standards contained in the subsections to Section <u>14.34.370(3)</u> , Provo City Code)
7398	Video rental shops

(5) *Permitted Accessory Uses.* Accessory uses are permitted in the SC3 zone provided they are incidental to, and do not substantially alter, the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

- (a) Accessory buildings such as garages, carports, equipment storage and supply storage buildings which are customarily used in conjunction with and incidental to a principal use or structure permitted in the SC3 zone; and

(b) Storage of materials used for construction of a building, including a contractor's temporary office, provided that such use be located on the building site or immediately adjacent thereto, and provided further that such use shall be permitted only during the construction period and thirty (30) days thereafter.

(6) *Conditional Uses.* The following uses and structures are permitted in the SC3 zone only after a Conditional Use Permit has been issued, and subject to the terms and conditions thereof.

Use No.	Use Classification
5313	Surplus store
5594	Motorcycles, motor scooter parts, accessories, supplies
5920	Liquor, package
5931	Antiques (no outside display)
5983	Bottled gas
6241	Funeral parlors
6299	Personal services (wedding chapel and reception centers only)
6340	Dwelling and building services (not dwelling units)
6381	Auction houses
6394	Equipment rental (indoor only)
6397	Vehicle rental (passenger auto-mobiles only)
6399	Miscellaneous business services
6416-7	Auto washing and polishing
6420	Electrical appliance repair
6494	Furniture repair
6498	Saw, knife, and tool sharpening
6499	Miscellaneous small item repair
6722	Police protection and related activities, branch (office only)
6942	Fraternal associations and lodges
7391	Coin-operated amusements or video center
7392	Miniature golf
7396	Dance halls, ballroom (subject to the standards of Section <u>14.34.370</u> , Provo City Code)
7397	Billiard and pool halls
7414	Ice skating (subject to the standards of Section

Use No.	Use Classification
	<u>14.34.370</u> , Provo City Code)
7415	Roller skating and skate boarding (subject to the standards of Section <u>14.34.370</u> , Provo City Code)
7417	Bowling alleys

Exhibit B

14.21A.030

Permitted Uses.

- (1) Those uses or categories of uses as listed herein, and no others, are permitted in the DT1 zone.
- (2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four (4) digit number in which all digits are whole numbers. Classes or categories of such uses permitted within the zone are identified by a four (4) digit number in which the last one (1) or two (2) digits are zeros.
- (3) All such categories listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the DT1 zone, subject to the limitations set forth.
- (4) *First Floor Commercial.*
 - (a) Except as allowed under Subsection [\(4\)\(b\)](#) of this Section, nonresidential uses are required in the minimal habitable floor depth on the first story of all building frontage on University Avenue and Center Street within the zone.
 - (b) For buildings fronting University Avenue south of Center Street, or else fronting Center Street west of 500 West and east of 200 East Streets, the first floor areas shall be designed and the shell constructed to allow for nonresidential uses; however, residential use is permitted until the building owner determines the nonresidential use of the area to be economically viable.
- (5) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the DT1 zone:

Use No.	Use Classification
1110	One-family dwelling, attached to commercial or other nonresidential use (detached only if existing as of July 7, 2009)
1120	Two-family dwelling, attached to commercial or other nonresidential use (detached only if existing as of July 7, 2009)
1130	Multiple-family dwelling (three (3) or four (4) dwelling units), attached to commercial or other nonresidential use

Use No.	Use Classification
1140	Apartments (low rise)
1150	Apartment (high rise)
1211	Batching apartments (maximum of six (6) individuals per unit)
1220	Membership lodging
1241	Assisted living facility (subject to the locational and development standards as set forth in Section 14.34.470 , Provo City Code)
1250	Religious quarters
1291	Residential facility for elderly persons (see Section 14.34.230 , Provo City Code)
1292	Residential facility for persons with a disability (see Section 14.34.230 , Provo City Code)
1511	Hotels
1512	Motels
1516	Bed and breakfast
1590	Other transient lodgings, NEC
2181	Breweries (only when attached and ancillary to a restaurant)
4118	Railroad company office not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4218	Bus company offices not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4318	Airline company offices not located at terminal (office only, no storage of related vehicles is permitted)
4290	Motor vehicle transportation (indoors only)
4295	Parcel delivery and pickup service
4700	Communications (unless identified as a conditional use in Section 14.34.420 , Provo City Code)
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4815	Electric utility company office (office only, no storage of related vehicles is permitted)

Use No.	Use Classification
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4825	Gas company office
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4835	Irrigation distribution channels
4837	Water utilities or irrigation company office
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4853	Refuse disposal company office
4862	Gas and electric utility company office
4863	Water and electric utility company office
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)
4923	Travel agencies
5220	Heating and plumbing equipment (no outside storage)
5230	Paint, glass, and wallpaper
5240	Electrical supplies
5251	Hardware
5254	Janitorial supplies
5255	Building maintenance supplies
5256	Swimming pool supplies
5311	Department stores (includes major and junior chain department stores)
5312	Discount department stores
5320	Mail and phone order houses
5330	Variety stores
5340	Merchandise vending machine operators
5350	Direct selling organization
5390	Retail trade - general merchandise

Use No.	Use Classification
5400	Food stores (groceries, meats and fish, fruits and vegetables, candy, nuts, dairy products, bakeries, etc.)
5511	Automobile dealers, new and used cars
5512	Automobile dealers, used cars
5594	Motor scooters or motorcycles
5600	Apparel and accessories
5700	Furniture, home furnishings, and equipment
5810	Eating places (restaurants)
5910	Drug and proprietary stores
5930	Antiques and secondhand merchandise (except 5935 Secondhand auto parts, 5938 Junk dealers and salvage, 5939 Secondhand stores)
5940	Books, stationery, art, and hobby supplies
5950	Sporting goods, bicycles, and toys
5969	Garden supplies
5970	Jewelry
5990	Miscellaneous retail stores (includes florists, newspapers and magazines, photo supplies, pet stores, and other similar retail stores) (except 5992 Cigars and cigarettes)
6100	Banks, insurance, and real estate (except 6123 Pawnbrokers, 6124 Bail bonds, and 6129 Other credit services)
6200	Personal services - including laundry, photography, beauty and barber services, clothing repair, etc. (except 6294 Escort services and 6295 Tattooing)
6300	Business services (office and retail sales only, including 6394 Equipment rentals and 6397 Automobile rentals (indoors only), except 6370 Warehousing and storage, 6382 Auction yards)
6420	Electrical appliance repair and service
6493	Watch and clock repair
6494	Reupholstering and furniture repair
6496	Locksmiths and key shops
6497	Gunsmiths
6498	Saw, knife, and tool sharpening

Use No.	Use Classification
6499	Other repair services, NEC (except blacksmiths)
6500	Professional services (except 6515 Behavior, drug and alcohol treatment and 6518 Blood banks)
6600	Contract construction services (office only)
6710	Executive, legislative, and judicial functions (no repair or maintenance facilities)
6720	Protective functions and related activities
6730	Postal services
6800	Educational services
6910	Religious activities
7100	Cultural activities (except 7124 Zoos)
7210	Entertainment and assembly including legitimate theater
7230	Public assembly
7391	Coin-operated amusements
7392	Miniature golf
7397	Billiards and pool halls
7398	Video rental shops
7399	Other amusements, NEC (Bike rentals only)
7414	Ice skating
7415	Roller skating and skate boarding
7417	Bowling alleys
7600	Park

(6) *Permitted Accessory Uses.* Accessory uses and structures are permitted in the DT1 zone provided they are incidental to, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

- (a) Swimming pools and incidental bath houses subject to the standards of 14.34.210 – Pools;
- (b) Storage of materials used for construction of a building, including the contractor’s temporary office, provided that such use be located on the building site or immediately adjacent thereto, and provided further that such use shall be permitted only during the construction period and thirty (30) days thereafter;
- (c) Vegetable and flower gardens;
- (d) Home occupations subject to the regulations of Chapter 14.41 – Home Occupations; and

(e) Household pets, provided that no more than two dogs and two cats six months of age or older shall be kept at any residence or commercial establishment at any time. Nothing herein shall be construed as authorizing the keeping of any animal capable of inflicting harm or discomfort or endangering the health and safety of any person or property.

(7) *Uses Within Buildings.* All uses established in the DT1 zone shall be conducted entirely within a fully-enclosed building except those uses deemed by the Planning Commission, through the granting of a conditional use permit, to be customarily and appropriately conducted in the open. Uses customarily deemed to be conducted in the open may include, but would not be limited to public assembly, live entertainment, etc. Open storage within view of a public street or space shall be prohibited.

(8) Sidewalk cafes shall be permitted per the requirements of Section 14.34.480, Provo City Code.

(9) Canopies and marquees shall be permitted per the requirements of Section 14.34.490, Provo City Code.

(10) *Conditional Uses.* The following uses and structures are permitted in the DT1 zone only after a conditional use permit has been issued, and subject to the terms and conditions thereof:

- 4600 Automobile parking (except 4603 Long term storage of autos, trucks, boats, vacation trailers, etc.) (Automobile parking lots fronting Center Street shall not be permitted)
- 4700 Communications (subject to Section 14.34.420, Provo City Code)
- 4814 Electricity regulating substations
- 4824 Gas pressure control stations
- 4834 Water storage as part of a utility system (covered including water storage standpipes)
- 4836 Water pressure control stations and pumping plants
- 4844 Sewage pumping stations
- 5920 Liquor, package
- 6515 Behavior, drug & alcohol treatment
- 6900 Miscellaneous service organizations
- 7396 Dance halls (subject to the standards of Section 14.34.370, Provo City Code)

Exhibit C

14.21B.030

Permitted Uses.

- (1) Those uses or categories of uses as listed herein, and no others, are permitted in the DT2 zone.
- (2) All uses contained herein are listed by number as designated in the Standard Land Use Code published and maintained by the Planning Commission. Specific uses are identified by a four (4) digit number in which all digits are whole numbers. Classes or categories of such uses permitted within the zone are identified by a four (4) digit number in which the last one (1) or two (2) digits are zeros (0).
- (3) All such categories listed herein and all specific uses contained within them in the Standard Land Use Code will be permitted in the DT2 zone, subject to the limitations set forth.
- (4) *First Floor Commercial.* Nonresidential uses are required in the minimum habitable floor depth on the first story of all building frontage on University Avenue and Center Street within the district.
- (5) *Permitted Principal Uses.* The following principal uses and structures, and no others, are permitted in the DT2 zone:

Use No.	Use Classification
1110	One-family dwelling, attached to commercial or other nonresidential use – (detached only if existing as of July 7, 2009)
1120	Two-family dwelling, attached to commercial or other nonresidential use – (detached only if existing as of July 7, 2009)
1130	Multiple family dwelling (three (3) or four (4) dwelling units), attached to commercial or other nonresidential use
1140	Apartments (low rise)
1150	Apartment (high rise)
1211	Batching apartments (maximum of six (6) individuals per unit)
1220	Membership lodging
1241	Assisted living facility (subject to the locational and development standards as set forth in

Use No.	Use Classification
	Section 14.34.470 , Provo City Code)
1250	Religious quarters
1291	Residential facility for elderly persons (see Section 14.34.230 , Provo City Code)
1292	Residential facility for persons with a disability (see Section 14.34.230 , Provo City Code)
1511	Hotels
1512	Motels
1516	Bed and breakfast
1590	Other transient lodgings, NEC
2181	Breweries (only when attached and ancillary to a restaurant)
4118	Railroad company office not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4218	Bus company offices not located at terminal (office only, no storage of related vehicles or equipment is permitted)
4318	Airline company offices not located at terminal (office only, no storage of related vehicles is permitted)
4290	Motor vehicle transportation (indoors only)
4295	Parcel delivery and pickup service
4700	Communications (unless identified as a conditional use in Section 14.34.420)
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4815	Electric utility company office (office only, no storage of related vehicles is permitted)
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4825	Gas company office
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4835	Irrigation distribution channels

Use No.	Use Classification
4837	Water utilities or irrigation company office
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4853	Refuse disposal company office
4862	Gas and electric utility company office
4863	Water and electric utility company office
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)
4923	Travel agencies
5220	Heating and plumbing equipment (no outside storage)
5230	Paint, glass, and wallpaper
5240	Electrical supplies
5251	Hardware
5254	Janitorial supplies
5255	Building maintenance supplies
5256	Swimming pool supplies
5311	Department stores (includes major and junior chain department stores)
5312	Discount department stores
5320	Mail and phone order houses
5330	Variety stores
5340	Merchandise vending machine operators
5350	Direct selling organization
5390	Retail trade - general merchandise
5400	Food stores (groceries, meats and fish, fruits and vegetables, candy, nuts, dairy products, bakeries, etc.)
5511	Automobile dealers, new and used cars
5512	Automobile dealers, used cars
5594	Motor scooters or motorcycles
5600	Apparel and accessories

Use No.	Use Classification
5700	Furniture, home furnishings, and equipment
5810	Eating places (restaurants)
5910	Drug and proprietary stores
5930	Antiques and secondhand merchandise (except 5935 Secondhand auto parts, 5938 Junk dealers and salvage, 5939 Secondhand stores)
5940	Books, stationery, art, and hobby supplies
5950	Sporting goods, bicycles, and toys
5969	Garden supplies
5970	Jewelry
5990	Miscellaneous retail stores (includes florists, newspapers and magazines, photo supplies, pet stores, and other similar retail stores) (except 5992 Cigars and cigarettes)
6100	Banks, insurance, and real estate (except 6123 Pawnbrokers, 6124 Bail bonds, and 6129 Other credit services)
6200	Personal services - including laundry, photography, beauty and barber services, clothing repair, etc. (except 6294 Escort services and 6295 Tattooing)
6300	Business services (office and retail sales only, including 6394 Equipment rentals and 6397 Automobile rentals (indoors only), except 6370 Warehousing and Storage, 6382 Auction yards)
6420	Electrical appliance repair and service
6493	Watch and clock repair
6494	Reupholstering and furniture repair
6496	Locksmiths and key shops
6497	Gunsmiths
6498	Saw, knife, and tool sharpening
6499	Other repair services, NEC (except blacksmiths)
6500	Professional services (except 6515 Behavior, drug and alcohol treatment and 6518 Blood banks)
6600	Contract construction services (office only)
6710	Executive, legislative, and judicial functions (no repair or maintenance facilities)

Use No.	Use Classification
6720	Protective functions and related activities
6730	Postal services
6800	Educational services
6910	Religious activities
7100	Cultural activities (except 7124 Zoos)
7210	Entertainment and assembly including legitimate theater
7230	Public assembly
7391	Coin-operated amusements
7397	Billiards and pool halls
7398	Video rental shops
7399	Other amusements, NEC (bike rentals only)
7600	Park

(6) *Permitted Accessory Uses.* Accessory uses and structures are permitted in the DT2 zone provided they are incidental to, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

- (a) Swimming pools and incidental bath houses subject to the standards of 14.34.210 – Pools;
- (b) Storage of materials used for construction of a building, including the contractor’s temporary office, provided that such use be located on the building site or immediately adjacent thereto, and provided further that such use shall be permitted only during the construction period and thirty (30) days thereafter;
- (c) Vegetable and flower gardens;
- (d) Home occupations subject to the regulations of Chapter 14.41 – Home Occupations; and
- (e) Household pets, provided that no more than two (2) dogs and two (2) cats six (6) months of age or older shall be kept at any residence or commercial establishment at any time. Nothing herein shall be construed as authorizing the keeping of any animal capable of inflicting harm or discomfort or endangering the health and safety of any person or property.

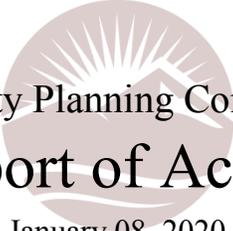
(7) *Uses Within Buildings.* All uses established in the DT2 zone shall be conducted entirely within a fully-enclosed building except those uses deemed by the Planning Commission, through the granting of a conditional use permit, to be customarily and appropriately conducted in the open. Uses customarily deemed to be conducted in the open may include, but would not be limited to public assembly, live entertainment, etc. Open storage within view of a public street or space shall be prohibited.

(8) Sidewalk cafes shall be permitted per the requirements of Section 14.34.480.

(9) Canopies and marquees shall be permitted per the requirements of Section 14.34.490.

(10) *Conditional uses*. The following uses and structures are permitted in the DT2 zone only after a conditional use permit has been issued, and subject to the terms and conditions thereof:

- 4600 Automobile parking (except 4603 Long term storage of autos, trucks, boats, vacation trailers, etc.) (Automobile parking lots fronting Center Street shall not be permitted)
- 4700 Communications (Subject to 14.34.420)
- 4814 Electricity regulating substations
- 4824 Gas pressure control stations
- 4834 Water storage as part of a utility system (covered including water storage standpipes)
- 4836 Water pressure control stations and pumping plants
- 4844 Sewage pumping stations
- 5920 Liquor, package
- 6515 Behavior, drug & alcohol treatment
- 6900 Miscellaneous service organizations
- 7396 Dance halls (subject to the standards of Section 14.34.370, Provo City Code)



Provo City Planning Commission

Report of Action

January 08, 2020

*ITEM 1 Quinn Peterson, Downtown Neighborhood Chair, requests an ordinance amendment to allow approval of restaurants with ancillary microbrewing as a permitted use in the SC3, DT1, and DT2 zones. Citywide application. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20190378

The following action was taken by the Planning Commission on the above described item at its regular meeting of January 08, 2020:

RECOMMEND APPROVAL

On a vote of 6:0, the Planning Commission recommended that the Municipal Council approve the above noted application.

Motion By: Andrew Howard

Second By: Laurie Urquiaga

Votes in Favor of Motion: Andrew Howard, Laurie Urquiaga, Lisa Jensen, Dave Anderson, Deborah Jensen, Robert Knudsen

Deborah Jensen was present as Chair.

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

PLANNING COMMISSION RECOMMENDED TEXT AMENDMENT

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

STAFF PRESENTATION

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

NEIGHBORHOOD MEETING DATE

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

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was present /addressed the Planning Commission during the public hearing.
- Rich Nelson stated he supports the amendment and hopes to see new establishment's downtown.
- Joel Raken stated support for the amendment and hopes it will boost tourism for Provo.
- Jordan, a restaurant owner, hopes the amendment will pass so he can look into new opportunities.
- The public discussed the heavy State regulations that will ensure clean, well-run establishments.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following: None.

APPLICANT RESPONSE

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

- Quinn Peterson stated that this amendment will help build the momentum of the downtown restaurant culture and attract new businesses that have had to be turned away in the past.
- Quinn stated that there are currently 15 restaurants that already can serve alcohol in Provo, and that the two bars are the only that the City can have due to City regulations.

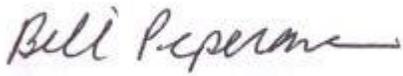
PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The Planning Commission discussed how the microbrewery restaurants will be regulated, and what the current rules are for restaurants that serve alcohol.



Planning Commission Chair



Director of Development Services

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

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

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the 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 BEGIN

ITEM 1*

Quinn Peterson, Downtown Neighborhood Chair, requests an ordinance amendment to allow approval of restaurants with ancillary microbrewing as a permitted use in the SC3, DT1, and DT2 zones.

Citywide application

PLOTA20190378

Summary

- New language to be added into permitted uses section of the DT1, DT2, and SC3 zones:
“breweries (only when attached and ancillary to a restaurant)”
- Alcohol sales already allowed in Provo Restaurants with a Class B liquor license.
- Alcohol sales can not account for more than 40% of total sales for the restaurant.
- This amendment will allow existing and new restaurants to craft their own beer with a Class B liquor license.
- Staff sees no difference between the current allowance of alcohol sales and what this amendment would allow, but that it can open up more opportunity for restaurants in key areas of Provo.

Testimonials from Event Planners Who Had Mentioned the lack of Nightlife and Alcohol in Provo

"As you are aware, our attendees come from all over the world. Most of our attendees enjoy networking with others over drinks, and we always have cash bars at our social events. The last time we were in Provo, we were lucky enough to have the Madison just across the street from the convention center. Unfortunately, the Madison has now closed and our options for meeting places that serve alcohol within walking distance has greatly decreased. We're excited to come back in 2021 because everyone was great to work with, but it would be fabulous if there were a brewpub or a nightclub close by the convention center to enhance our attendees' experience. Obviously, conferences of our size fit perfectly within the convention center and provide a great deal of revenue to local restaurants and bars.

Please keep me updated on new venues for our event next year. Thanks so much!"

Mary Price
Events Manager
Shingo Institute
Logan, Utah

"It is important to my clients to have a variety of options for their attendees when it comes to food and beverages and diversity in how they experience their food and drink. Learning how to pair craft beers with food is just one of the interesting and fun events I've personally attended. Just like wine, a craft beer can enhance the flavor of food.

The ability for adult attendees to choose to consume alcohol if they desire to, is something I consider as part of the site selection process. I wouldn't consider a location where responsible individuals of legal age could not consume an adult beverage.

I believe a brewpub will fit in well with the culture and the vibe of downtown Provo. In fact, I think it's an ideal location. Brewpubs do very well in older sections of urban environments such as Over the Rhine in downtown Cincinnati and South Slope in Asheville, NC.

I LOVE Provo and definitely hope to bring a conference back in the future. But as a planner, I would like to see more dining and beverage options available for attendees."

Beth Rees
Owner
Resource Exhibit & Event Services
Cincinnati, Ohio

Testimonials from Event Planners Who Had Mentioned the lack of Nightlife and Alcohol in Provo

"I work with a variety of groups, with a variety of needs, one thing common to all of them is networking over a drink. While some groups have a structured night with a reception/dinner to promote this networking, almost all groups have a free night at least to allow for their members to go out explore the area and create their own networking opportunities. Having a vibrant night life helps keep a destination in the running during the site selection process. If a location does not have, ideally walkable, night life where members can have a beverage, chat with new friends and colleagues and build their network, a destination falls out of consideration fairly quickly."

Stephan J Gerhardt
Senior Director, Global Accounts
HelmsBriscoe (Third Party Meeting Planners)
Falls Church, Virginia

"The coaches of our athletes, especially the ones from other countries expect to have alcohol available in bars and restaurants when they travel to events around the country and world. If they have trouble having a drink after competition that will leave a bad impression of the city in their minds."

Jeff Smith
Managing Director of Events
USA Gymnastics
Indianapolis, Indiana

"The addition of quality restaurants and bars would definitely enhance the appeal of downtown Provo. In addition, food and beverage accolades would help ease the reservations of event planners that are not familiar with the destination. Groups are always looking for fun and unique options around food and alcohol. This is a no brainer."

George Yin
Owner
Yin Hospitality International
Las Vegas, Nevada

Testimonials from Event Planners Who Had Mentioned the lack of Nightlife and Alcohol in Provo

"I encourage the approval of a brew pub in downtown Provo. A big attraction for groups is the networking/ food and beverage options in the town's venues. When I recently proposed Provo to a client, they discussed with one of their Utah partners, thinking that they would embrace it. The partner didn't embrace Provo, saying, "No, because that networking element wouldn't happen in Provo." They suggested Colorado, instead."

Amy Carnes Norris
Director, Global Accounts
HelmsBriscoe (Third Party Meeting Planners)
Washington, DC

"Having recently joined a Provo/Explore Utah Valley familiarization trip, I couldn't agree more that a craft brewpub would be a welcome addition to Provo's downtown. Utah has adjusted its liquor laws throughout the state, to meet the demands of locals and tourists alike. However, when it comes to business travel, meetings and conferences, like it or not, many of the attendees consume alcohol. The options around town for fun and engaging venues (such as a brewpub or distillery) not only generate revenue for the city, but also make the destination stand out as being "fun and inviting." While having more ice cream stores per square foot is impressive, having a variety of entertainment options that include the production and/or consumption of alcohol will only help to show that Provo is a modern city with all of the amenities and charm of the regions you are in direct competition with. As a veteran meeting planner, I would strongly urge the city leaders to approve the Downtown Provo Alliance's request for a craft brewpub, as it will only help to make Provo a more appealing destination when sourcing meetings and events in Utah."

Paul Steinmetz
Director
American Meetings, Inc.
Fort Lauderdale, Florida

Downtown Redevelopment Services

PO Box 325 • Park City, UT • 84060



Provo City Council,

It is encouraging to hear that the Provo City Council is looking at potentially approving an “ancillary Brewing” establishment within the downtown district. While this may be a controversial topic for many people, it is a critical step for a community that desires to become a destination location. The topic of brewing establishments has had a long and often challenging history in the State of Utah, yet as the State continues to take their place among all other states in the union as the “shining beacon” for sustainable economic development, additional services or amenities must be considered to attract and retain a diverse population.

To this point, we would like to add some feedback or input about the proposed allowable use that is derived from working with over 200 downtown organizations across the country in the past five years. As a company Downtown Redevelopment Services helps communities, much like Provo, revitalize their downtowns in an effort to rebalance economic development and recreate a hub centric community that focuses around downtown. Personally, I have had experience in all 95% of these communities preparing downtown plans, strategic plans or downtown design guidelines. After all of this experience, there has been a clear and concise message that has been learned, specifically: “Amenities or services are what will make a downtown vibrant”. In over 75% of our communities, the introduction of a missing or “GAP” service has invigorated a downtown and serves as a catalyst for economic development and quality of life initiatives. Within the downtown corridors of Provo an individual can find almost anything they desire, with one exception; a good microbrewery or brew pub.

By taking the opportunity to implement the proposed “ancillary Brewing” establishment, your downtown will become a full service destination and regain its rightful place as the center of activity for all things that happen in Provo. While we understand the proposed change may still be contested, we want to provide some hard data that has been gathered from witnessed changes in our client communities that allowed a microbrewery or brew-pub:

- An increase in downtown attendance of 22%-26%
- Increased amount of time spent in downtown, averaging an additional 30 minutes per person
- Average point of sale tax capture of \$193,450 annually
- 32%-36% increase in identification as the downtown serving as the “destination” of a trip

While I hope that the Council will review my letter and give it merit, I wanted to provide the above statistics as hard data for the economic impact of a single brewery establishment. I am happy to answer any questions or provide further data as requested by the City Council.

Thank you,

A handwritten signature in blue ink, appearing to read "BSE", is written over a light blue rectangular background.

Ben Levenger
AICP, PLA, CECD
President
Downtown Redevelopment Services
801-410-0685

Architecture • Planning • Economic Development • Landscape Architecture



Provo City Municipal Council

Staff Memorandum

Restaurants with Ancillary Breweries

Hannah Salzl, Policy Analyst

What exactly is being proposed?

The proposal would permit the on-site production of beer only and would not extend to wineries or distilleries. Unless the Council proposes additional restrictions, restaurants with ancillary breweries (brewpubs) would be required to meet the same standards as any restaurant that serves alcohol as set by the Department of Alcoholic Beverage Control (DABC), including:

- making at least 70% of their sales from food¹; and
- using an “approved electronic age verification device to verify proof of age of persons who appear to be 35 years of age or younger;” and
- not permitting patrons to leave with open containers of alcohol; and
- not selling alcohol to a patron who is not also purchasing “food that is prepared, sold and served at the restaurant” (“[Licenses & Permits](#)”); and
- not being located within 300 feet measured by ordinary pedestrian level or 200 feet measured in a straight line” of churches, schools, parks, playground, or libraries (“[Licensee Handbook](#)”).

Locations

Brewpubs would be permitted in the General Downtown (DT1), Downtown Core (DT2), and Regional Shopping Center (SC3, the Riverwoods and the Provo Towne Centre) zones. Within those zones, legally permissible locations would still be limited by the state-mandated proximity requirements listed above.

Off-Site Sales

Brewpubs would be able to sell their beer only on site under the conditions for a Class B beer license ([Provo City Code 6.14.040](#), see Appendix A on page 5 for full text), which is required for any restaurant that serves beer. If an owner were to want to sell their beer off-site, they would have to propose another text amendment for Council approval. According to Quinn Peterson, Executive

¹ Although the DABC requires a minimum percentage of 70% of sales to come from food, [Provo City Code 6.14.040](#) requires a minimum of only 60%. In order to receive licenses from the state and city, brewpubs in Provo would have to comply with the higher of the two.

Director of Downtown Provo, Inc. and Chair of the Downtown Neighborhood. there are no plans to expand to off-site sales at this time.

However, brewing is expensive. In 2004, Salt Lake City amended their code to permit brewpubs to sell their products off site. Proponents' main argument was that it would allow brewpubs to become more financially competitive. However, brewpubs are still limited to 2,500 barrels annually, compared to the average of 10,000-14,000 barrels produced annually by independent microbreweries ([Snyder, 2004](#)).

What are the anticipated effects?

The amendment itself would not change how bars or restaurants that sell beer operate. A brewpub would function like a restaurant that serves beer with the exception that the alcohol would be produced in-house.

Culture and Sales

Due to the limited possible number of brewpub locations, City staff do not anticipate a major shift in the local drinking culture. "Staff sees no distinction between a restaurant with a microbrewery and any other restaurant with a Class B liquor license" ([Planning Commission Staff Report](#), page 2). Quinn Peterson explained that "This request has nothing to do with bars. We aren't trying to increase the number of drinking establishments or introduce more alcohol. ... Restaurant already qualifying for a license could produce their own."

It is not anticipated that any of the restaurants that currently serve alcohol will add a microbrewery, according to Quinn Peterson. The cost and space required would prohibit most established restaurants from doing so. Peterson anticipates that any brewpubs would open around the microbrewery, rather than adding one to an existing restaurant.

Of the 78 restaurants in the Downtown area, only 15 have Class B beer licenses to sell alcohol with food. In Peterson's experience, one of the most common reasons given by prospective clients for not booking the convention center is the lack of a nightlife. He argues that craft beer would fit well with the local artisan scene in the Downtown. Craft breweries have inarguably increased in popularity over the last several decades, from 8 in 1980, to 2,768 in 2013 (Moore, Michael S., et al., 2016), to over 7,000 in 2018 ([Pugmire, 2020](#)). Beer tourism has become a lucrative industry.

However, City staff and Downtown Provo, Inc. expect only a modest increase in sales simply because the limited amount of permissible land would limit the number of new brewpubs. Planning staff anticipate that "Adverse impacts on adjacent land owners would be limited to increased traffic if the amendment does, in fact, attract additional business into the City" ([Planning Commission Staff Report](#), page 2).

Sales Tax Revenue

Provo City would collect 0.5% of the sales tax from each beer sold. The sales tax rate in Utah County is 7.25%. The City also receives a small portion of alcohol sales tax back from the state, but the Finance Department was not able to track down this information on short notice.

Prices for draft beers from Strap Tank (Springville, Lehi) and Roosters Brewing (Layton, Ogden) are listed in the table below. Where two sizes are listed under “Menu Items,” the first is from Strap Tank, and the second is from Roosters Brewing. It is anticipated that prices in Provo would be comparable.

Menu Item	Strap Tank	Roosters Brewing	0.5% of Sales Tax (Average)
Pint of beer	\$5.00	\$5.00	\$0.002
22 or 24 oz. mug of beer	\$7.00	\$7.25	\$0.003
3.5 or 2 oz. sample	\$0.75	\$0.50	\$0.0002

Based on the 0.5% sales tax revenue allocated to the City, Provo would receive less than one cent per pint sold, not including the portion that comes back from the state.

Roosters Brewing also sells cans in their “beer store” (separate from the restaurant) for consumption off-site, which would not be permitted under Provo City Code. Prices for canned beer range from \$1.35-\$1.95 depending on the alcohol percentage.

Public Safety

Neither the Springville nor the Lehi Police Departments reported an increase in instances of driving under the influence or drunk and disorderly conduct after the openings of Strap Tank, which has locations in both cities. In off-the-record conversations, multiple Police Department staff in both cities added that they had never heard of any problems with Strap Tank. Comments include:

- “Our officers almost never get calls out to the restaurant.”
- “They are wonderful community partners. I don’t even drink. They’re just great to work with.”

Chief Craig Martinez of the Springville Police Department reported that officers had some concerns about the effect on public safety when Strap Tank opened, but “nothing happened.” He reported that Strap Tank has been a responsible community partner. “The key thing,” according to Chief Martinez, “is educating them on what the community expects of them and how they can promote safe, responsible drinking.” He added that although he does not drink, he has enjoyed the “business and social diversity” the brewpub brings to the city. “It’s like a mullet. It shows that we how to party, but we also know how to do business.”

How would this affect licensing requirements?

The Administration will propose an amendment to Provo City Code 6.14. They have identified two options:

1. amend the Class B beer license to include restaurants with ancillary breweries or
2. add a new Class F beer license specific to restaurants with ancillary breweries.

The Administration has not identified a preference for either option. If the Council were to approve the proposed text amendment as-is, option one would be the most straightforward and would continue to prohibit off-site sales. If the Council would like to add any new requirements, option two might be the better choice.

Any prospective brewery owner would also need to apply for a license from the Alcoholic Beverage Control Commission.²

Conclusion

Under the proposed amendment, there would be little difference between a brewpub and a restaurant that serves beer except that the beer was produced on site. Prospective brewpubs would also have to meet strict state requirements, including that 70% of their profits come from the sale of food and that alcohol may only be purchased in conjunction with food. City staff anticipate the effect on sales and drinking culture will be minimal, or comparable to the opening of another restaurant that served beer.

None of the police department staff in Lehi or Springville reported any problems with brewpubs in their cities. Police are rarely called to the restaurants. According to Chief Martinez, educating the restaurant and working with the restaurant as a community partner is the key to promoting a safe drinking culture.

Although the proposed amendment would not allow restaurants with ancillary breweries to sell their beer off site, the Council could likely expect a proposed amendment to permit off-site sales within the next few years.

City staff feel that this amendment will benefit Provo. They explained that “Restaurants can already sell and serve alcohol in [the three proposed zones]. This amendment will simply allow for business owners to produce more local goods, maintain a strong business, and have more opportunity for growth and profit” ([Planning Commission Staff Report](#), page 3).

² A list of the factors considered by the Commission can be found [here](#) (“Factors for Granting Licenses”).

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Appendix A

Full text of Provo City Code 6.14.040 “Class ‘B’ Beer License)

A Class “B” beer license shall entitle the licensee to sell beer for consumption on the premises of a restaurant described in the license. Only bona fide restaurants, where a variety of hot food is prepared and cooked and complete meals are served to the general public in connection with indoor dining accommodations, and at which food sales constitute at least sixty (60) percent of the gross money receipts of the licensee’s restaurant business, shall be entitled to a Class “B” license. Neither dancing, billiards nor bowling shall be permitted on premises for which a Class “B” license has been issued.



Provo City Municipal Council

Staff Memorandum

Restaurants with Ancillary Breweries: Economic Impact, Public Safety, and Licensing

Hannah Salzl, Policy Analyst

This report discusses the (1) potential economic impact of restaurants with ancillary microbreweries (brewpubs), (2) their effect on public safety, and (3) licensing options for the Council to consider as they debate the land use and licensing aspects of making brewpubs permitted uses in the General Downtown (DT1), Downtown Core (DT2), and Regional Shopping Center (SC3) zones. Additional questions received by staff will be addressed in the Appendix B (page 15).

Economic Impact

On a large scale, craft beers (from breweries and microbreweries) can have a large impact. Craft beer contributed \$55.7 billion to the U.S. economy in 2014 ([Thares, 2018](#)). One economic impact estimate from Michigan found that local craft beers contributed just under \$500 million annually to the total income generated in the state ([Miller, et. al., 2019](#)).

On a smaller scale, brewpubs and breweries have been shown to have a positive economic and social impact by providing community gathering places, though “this effect may be strongest in smaller communities” ([Thares, 2018](#)). Local craft beer is one example of a growing desire to connect with and support the local community and build a sense of place, a shift known as “neolocalism” ([Taylor and DiPietro, 2019](#)).

It is not possible to specifically estimate the economic impact brewpubs would have in Provo. Restaurants are high-risk businesses with high startup costs and small profit margins. This is especially true for brewpubs, which must also invest in brewing and bottling equipment, storage, and space for the brewing operation in addition to the restaurant. The economic impact on any brewpub would depend on the quality of the food, beer, marketing, atmosphere, location, and other unpredictable factors.

Although brewpubs could help to build community and place and make the Downtown more attractive to a wider variety of diners, the limited space and vibrant, competitive dining scene would likely prevent them from becoming a major economic development initiative for Provo.

Sales Tax Revenue

Provo City receives 0.5% in sales tax revenue and 0.1% for the RAP (Recreation, Arts, and Parks) tax for a total of 0.6% in tax revenue from each sale. The City also receives money from a beer tax, which the Utah State Tax Commission distributes to cities according to their population, number of DUI convictions, and number of DABC outlets (Clayton, 2020). Last year, Provo received approximately \$95,000 from the state for the beer tax, which is lower than the last few years (\$145,423.48 in FY 2019 and \$104,081.20 in FY 2018).

More sales in Provo will always have a positive impact, but brewpubs would not become a major source of revenue. For example, if a brewpub earned \$500,000 in one year, Provo would receive 0.6% (\$3,000) in tax revenue, and the beer tax distribution would likely not be affected.

Recapturing Sales

Currently, diners looking for a brewpub experience can go to Springville or Lehi. Provo could capture a portion of those sales by drawing brewpub diners to Provo instead. The novelty of the brewpub could provide an initial boost in revenue as it attracts new customers, but whether that increase would be sustained would depend on the brewpub itself and whether diners continue to seek it out.

Tourism

Brewpubs themselves likely will not generate new tourism in Provo, but current tourists might choose to go there instead of elsewhere (see “Recapturing Sales”).

Increased Appeal of the Convention Center

While the sales tax revenue from brewpubs themselves might be negligible or comparable to any other restaurant occupying the space, brewpubs would diversify the Downtown and SC3 zones. This diversity could bring more traffic to other businesses in this area. For example, a convention that comes to Provo brings hotel, restaurant, and retail business. The combined effect would have a much larger economic impact from

Representatives from the Utah Valley Convention Center have expressed that one of the most common reasons given by prospective clients for not booking the convention center is the lack of a nightlife. Quinn Peterson has claimed that a local brewpub serving craft beer could provide out-of-town visitors with more options and thus make the Convention Center more appealing (Peterson, 2020). Convention Center staff have gathered all the testimonials from event planners that mentioned night life or brewpubs. The full document will be sent with this report, and some notable excerpts are included below:

- It is important to my clients to have a variety of options for their attendees when it comes to food and beverages and diversity in how they experience their food and drink. ... I

wouldn't consider a location where responsible individuals of legal age could not consume an adult beverage.

- If a location does not have, ideally walkable, night life where members can have a beverage, chat with new friends and colleagues and build their network, a destination falls out of consideration fairly quickly.
- When I recently proposed Provo to a client, they discussed with one of their Utah partners, thinking that they would embrace it. The partner didn't embrace Provo, saying, "No, because that networking element wouldn't happen in Provo."

All seven respondents from across the country said that they support the diverse entertainment and networking opportunities a brewpub would provide for their clients in Provo.

Negative Economic Impacts

Although excessive alcohol consumption has been shown to have a negative economic impact ("[Excessive Drinking ...](#)", 2018), beer has relatively low alcohol content,¹ and brewpub pricing and drinking policies make it difficult for patrons to drink excessively.

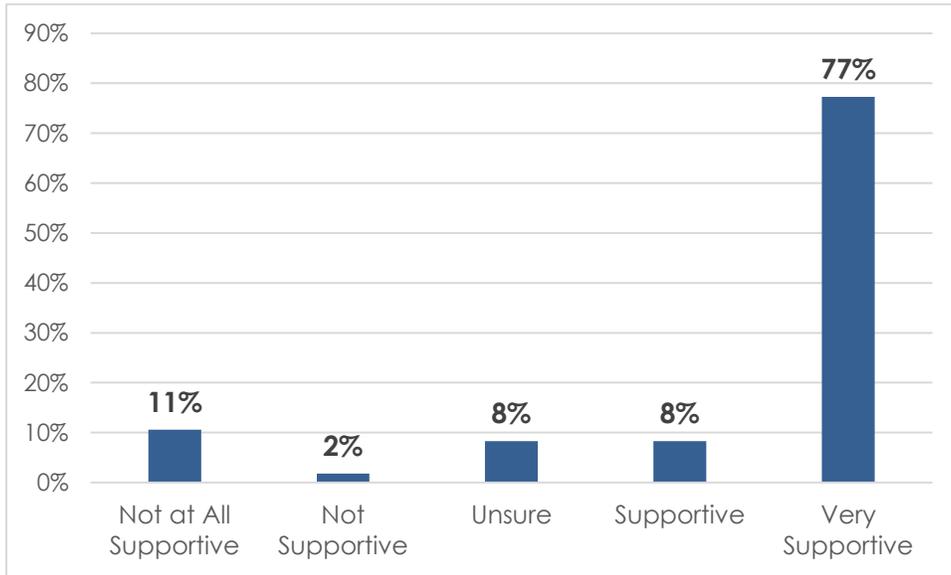
The cost of excessive alcohol consumption in the U.S. rose to approximately \$249 billion in 2010. The vast majority, 77%, of the cost could be attributed to binge drinking, which is defined as five or more drinks for men and four or more drinks for women. Although excessive or binge drinking is unlikely to occur in a brewpub, the Council could consider a drink limit per patron. However, any requirements for brewpubs that do not also apply to other locations that serve alcohol will require a rational reason why it should apply only to brewpubs (see "Legality" on page 8).

Public Safety Impact

Of the Open City Hall survey respondents (registered only) who reported that public safety was very important to them, the majority (77%) reported that they are also very supportive of brewpubs. A breakdown of responses is shown in Figure 1 on the next page.

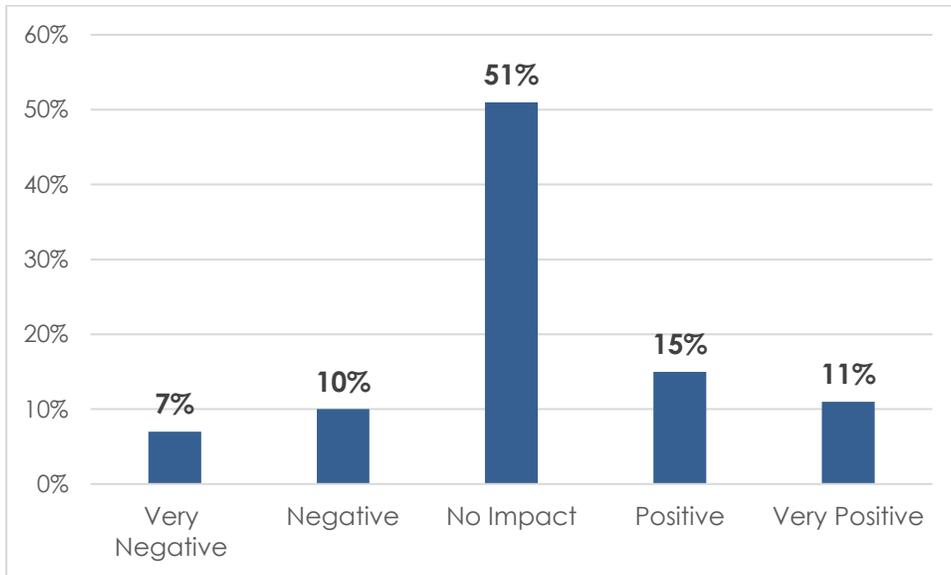
¹ The average alcohol by volume (ABV) for beer is 5%, compared to wine at 11% and hard liquor at 40% ("[Alcohol by Volume ...](#)"). Beer on tap at Strap Tank ranges from 4.2-4.9%.

Figure 1: Support for brewpubs in Provo among respondents who reported public safety was very important to them



Approximately half of survey respondents (registered only) also reported that they did not think brewpubs would have an effect on public safety, as shown in Figure 2 below.

Figure 2: Support for brewpubs in Provo among respondents



Combined, 26% thought that brewpubs would have a positive or very positive effect, while 17% thought that brewpubs would have a negative or very negative effect. The remaining 6% were unsure if brewpubs would have an effect on public safety.

Alcohol Consumption in Provo

With 66 restaurants and bars that sell alcohol citywide (not including gas stations and grocery stores), Provo has already exposed itself to alcohol consumption. Provo Police Chief Rich Ferguson has expressed that he does not have any concerns about the request for restaurants with ancillary breweries as proposed, since many restaurants in Provo already serve beer (Holmes, 2020).

Health and public safety risks come from irresponsible or excessive consumption, rather than from alcohol consumption per se (see “Negative Economic Impacts”). Excessive consumption is unlikely in a brewpub. Leah McGraw, a therapist who specializes in addiction, said “I can’t imagine any of my patients getting drunk at a brewpub. It’s too expensive at five, seven dollars per pint. They’ll get drunk at a bar, gas station, or grocery store.” She noted that this is especially true after Utah raised the permitted alcohol content in beers sold in grocery stores from 3.2% to 5% in 2019 ([S.B. 132](#)).

A growing population and changing demographics will increase the number of people in Provo who drink, but it is very unlikely that residents will begin drinking because a brewpub opened in Provo when they can already find two within a 30-minute drive. However, brewpubs in Provo could draw residents from Provo and neighboring cities. This would likely increase the overall number of people who have a drink in Provo, but it would be very unlikely to have an impact on the number of residents who drink alcohol.

Breweries and Alcohol Consumption

An undergraduate honors thesis from Appalachian State University found that in North Carolina between 2001-2014, “even when controlling for demographic and macroeconomic variables, the increase in craft breweries has a statistically significant effect on the amount of drunk driving throughout the state” ([McMakin, 2016](#)). However, it should be noted that North Carolina has become “a hub of brewing in the southeast” (Ibid.) and has offered incentives to attract craft breweries ([Thares, 2018](#)). If the Council has concerns about the proliferation of brewpubs in Provo, the number could be limited through various licensing requirements.

McMakin hypothesizes that one reason could be that craft beer can sometimes have a higher percentage of alcohol than mass-produced beer. Beer generally contains between 4-7% alcohol by volume (ABV), with the most common being 5% (“[Alcohol by Volume ...](#)”). The ABV in craft beers is determined by the brewer and often tends toward 6-7%. This can make it difficult for patrons to gauge their actual alcohol consumption.

However, [Provo City Code 6.14.010 \(Definitions\)](#) defines beer as not having more than 4% alcohol by volume. Given that Utah recently permitted stores to carry beer with an ABV of up to 5% ([S.B. 132](#)), the Council may wish to revisit the definition of beer, with the reservation that state law may restrict local authority in that area.

The Council also has the option to require locations that sell beer to list the ABV in a way that patrons could see.

Advertising and Alcohol Consumption

The effects of advertising on alcohol consumption are unclear, with some studies claiming it “increases the likelihood that adolescents will start to use alcohol, and to drink more if they are already using alcohol” ([Anderson et al., 2009](#)), the alcohol industry claiming that advertising affects only which brand consumers choose ([Petticrew, et al., 2017](#)), and others claiming the methods of researching the effects of alcohol advertisement so far have been incomplete (Ibid.). Essentially, “there is a lack of robust evidence for or against recommending the implementation of alcohol advertising restriction” ([Siegfried, et al., 2014](#)).

If the Council has concerns about the effect of advertising craft beers, it should be remembered that regulating the content of a message can infringe on First Amendment rights and would likely not be legal.

Regulation of advertising amounts to the regulation of speech. It must therefore be analyzed under First Amendment constitutional protections and must pass the “strict scrutiny” test. Regulations that are not content neutral (i.e., someone would have to know the content to determine whether the regulation applied) usually do not pass strict scrutiny.

As a recent example, Missouri state statute divided alcohol distributors into three distinct categories that did not permit a distributor in one category to be engaged in activities in another category (e.g., a producer could not act as a retailer). Missouri also enacted two advertising regulations:

1. Retailers were prohibited from advertising discounted prices for liquor.
2. Retailers were prohibited from advertising prices below the retailers’ actual cost outside of the retail establishment.

In January 2020 in *Missouri Broadcasters Association v. Schmitt*, the Eighth Circuit upheld the determination of a lower court that the statute and advertising regulations violated the First Amendment’s right to free speech by restricting speech based on content and speaker identity.

Governments are very limited in what they can regulate with regards to advertising.

Public Safety in Other Cities

The numbers in the tables below include drugs as well as alcohol, as police do not identify DUIs by substance.

Council staff reached out to other cities in addition to the four presented below, but did not receive responses.

Springville and Lehi

The Springville and Lehi City Police reported the following total DUI citations issued between 2014-2019 as shown in the tables below. Strap Tank opened in Springville in May 2016 and in Lehi in August 2019. These years are bolded in the cities' respective tables.

Table 1: Total DUI Citations Issued in Springville, 2014-2019

Year	Number of DUI Citations (Springville)	Population
2014	81	31,494
2015	66	32,259
2016	57	32,970
2017	73	33,223
2018	66	33,104
2019	126	not available

Lieutenant Warren Foster of the Springville Police explained the sharp increase in DUI citations in 2019, saying “We were awarded more State DUI shifts in 2019 thus the increase of DUIs in 2019” (Martinez, 2020). 2019 was also the first full year that the new 0.05 blood alcohol content limit was in force, which could also have contributed to a higher number of DUI citations.

Chief Martinez said that he is not aware of any DUIs in Springville that have been attributed to Strap Tank. Although the Springville City Council initially had the same concerns that have been voiced by the Provo Municipal Council, Springville has found Strap Tank to be a good community partner.

Table 2: Total DUI Citations Issued in Lehi, 2015-2019

Year	Number of DUI Citations (Lehi)	Population
2015	76	59,033
2016	51	61,675
2017	83	63,654
2018	112	66,037
2019	119	not available

According to Lieutenant Kenny Rose of the Lehi City Police, “The dramatic drop in 2016 was due to staffing and really morale issues that we were having a hard time addressing.” Strap Tank was only open for the last five months of 2019, making a full comparison difficult. However, Lt. Rose reported that they “have only responded to one Alcohol Offense at the business, and any other details, like Hit and Runs or other Calls for Service, have not increased from the previous six months of the year compared to the previous year.”

Nampa, Idaho

Nampa has a population of approximately 102,000 (compared to Provo's approximately 117,000) and is home to Northwest Nazarene University and to a campus of the College of Western Idaho. Nampa also has three microbreweries. Ken Keene, Police Analyst for the Nampa Police Department, reported that in 2019, Nampa Police received 15 Calls for Service at the brewpubs. "The calls were minor, from abandoned vehicle, a forgery, a vehicle burglary, and a traffic hazard. Calls for Service for the surrounding areas were typical for the area and not related to the brewpubs." Nampa Police also perform regular checks on bars and pubs to check for compliance and service problems and to provide a police presence.

Boise, Idaho

Boise has a population of 227,000, is also a college and university town, and has had several brewpubs for some time. Alcohol issues are handled by the Idaho State Police Department. Sergeant Rocky Gripton with the Idaho State Police Alcohol Beverage Control Division said that they interact very little with brewpubs and do not have many problems from them. He said, "We expected more problems associated with underage service, over-serving, those sorts of problems. We really didn't see that. Statewide, we have very little concern with regards to public safety."

Licensing

Although the request to list restaurants with ancillary breweries as a permitted use in certain zones is a land use question, most of the issues surrounding it have more to do with licensing. Many of those concern alcohol consumption. If alcohol consumption is a pressing concern, it would be best to address it citywide and not only as it relates to ancillary breweries.

Legality

Any licensing restrictions would have to apply equally to all locations that serve alcohol unless the City has an articulable, rational reason why the restriction should apply only to brewpubs. For example, if the City were to prohibit brewpubs from being open on a Sunday, the rule would have to apply to other restaurants that serve alcohol as well unless the Council had a clear reason why it should only affect brewpubs.

Type of License

If the Council decides to permit restaurants with ancillary breweries, the Administration requests an indication from the Council about whether to issue Class "B" beer licenses to prospective brewpub owners or to create a new Class "F" beer license with more tailored requirements. The Administration has not indicated a preference. Community and Neighborhood Services has expressed a slight preference for a new Class "F" license if the Council would like to add any

new requirements. However, again, any new requirements would also need to apply to non-brewpub restaurants or be based on articulable differences between the two.

Sunrise Clause

If the Council has concerns about licensing and would like more time to discuss this aspect of brewpubs while moving forward with the land use, they could add a sunrise clause to the proposed text amending permitted uses in DT1, DT2, and SC3.

A sunrise clause establishes a condition that must be met before a piece of legislation takes place. In this case, the Council could add a sunrise clause specifying that restaurants with ancillary breweries would become permitted uses only after a specific condition (or set of conditions) had been met. Staff have discussed two options:

1. a specific date

Restaurants with microbreweries would become permitted uses in the specified zones after July 1, 2020. Community and Neighborhood Services staff suggested the date and feel confident they can have the license structure by then.

2. the approval of the license

Restaurants with microbreweries would become permitted uses in the specified zones after the Class “B”/Class “F” beer license has been amended/created to accommodate brewpubs.

Community and Neighborhood Services staff prefer the date option, which gives City staff and prospective brewpub owners a more predictable timeline.

Current Alcohol License Restrictions

Provo City already has several restrictions for alcohol licenses. Violations are Class “B” misdemeanors unless otherwise stated ([6.14.160](#)) and carry increasing fines for subsequent violations ([6.14.170](#)).

- “No Class “A” or Class “B” beer license shall be issued to an applicant if within the previous twelve months the owner, manager or any employee has been convicted of, plead guilty or no contest to (including pleas held in abeyance by the court), or performed the acts constituting, any criminal offense” ([6.14.090\(1\)](#)).
- “Beer shall not be sold by or to any intoxicated person or any person less than twenty-one (21) years of age” ([6.14.140\(3\)](#)).
- An applicant may be required to get a Utah County Health Department permit certifying that the premises are sanitary, and all equipment complies with regulations. “... [O]n recommendation of the board of health any license issued may be revoked or suspended

when any reasonable order, rule or regulation of the board of health has not been complied with ([6.14.110](#)).

- “An applicant for a beer license shall file a cash or corporate bond in the amount of one thousand dollars guaranteeing faithful performance of the provisions of this Chapter in favor of Provo City. In the event a license is revoked for a violation of the provisions of this Chapter, the bond shall be forfeited (without any showing of damage or loss) to Provo City” ([6.14.120](#)).
- “Beer shall not be sold or dispensed from any drive-up window” ([6.14.140\(2\)](#)).
- “No employee, including a manager, at a licensed premise shall consume or be under the influence of alcohol while on duty (including ‘breaks’) as an employee” ([6.14.140\(7\)](#)).
- Class “A” license holders shall not sell beer between 1 AM and 7 AM. Class “B,” “C,” “D,” and “E” license holders shall not sell beer between 1 AM and 10 AM, but may remain open for one additional hour “during which time a patron of the tavern may finish consuming a single serving of beer not exceeding twenty-six ounces” ([6.14.140\(10\)](#)).
- “Licensed premises shall be kept brightly illuminated at all times while occupied or open for business; and no booth, blind or stall shall be maintained unless all tables, chairs and occupants, if any, therein are kept open to the full view from the main floor of such licensed premises” ([6.14.140\(11\)](#)).
- “All licensed premises shall be subject to inspection by any officer, agent or peace officer of Provo City; and every licensee shall at the request of the same furnish samples of beer which the licensee shall have for sale” ([6.14.140\(12\)](#)).
- New employees of a licensee shall obtain a beer handler’s permit ... within thirty days of hire. During this thirty day period, the employee may sell alcoholic beverages ... ([6.14.150\(2\)](#)).

License Requirement Options

Provo City could take inspiration from licensing requirements set by other cities. The list below includes potential options that could be combined as determined by the Council and Administration. It is not intended to be a full or exhaustive list.

- Do nothing

In policy analysis, there is usually an option to do nothing. In this case, the City would either not amend beer licensing to accommodate brewpubs specifically or simply issue qualifying applicants a Class “B” beer license ([6.14.040](#), see Appendix A on page 15 for full text).

- Limit by population

The City could similarly limit the number of restaurants that can sell alcohol to one per a certain number of people. For example, Springville City Code limits on-premise beer retail licenses to one per 15,000 people ([7-3-105\(1\)](#)).

- Limit by proximity

The City could decide that restaurants that serve alcohol cannot be located within so many feet of each other in order to prevent clustering.

- Safety signage and employee training

The City could require locations that serve alcohol to prominently display signage promoting public safety (e.g., discouraging driving under the influence, blood alcohol content levels by weight, etc.).

- Close time

Currently, [Provo City Code 6.14.140\(10\)](#) prohibits Class “A” license holders from selling beer between 1 AM and 7 AM, and all other license holders from doing so between 1 AM and 10 AM. The establishments may remain open for an additional hour after they stop serving beer (2 AM) to allow patrons to finish one drink. Most restaurants in Provo close around 10 PM.

In New Mexico, breweries must close by midnight. Chris Senutovitch, owner of Desert Valley Brewing Co., said “I think where people make a lot of the poor decisions is after midnight until 2:00 AM. That’s where people cross the line” ([Pohl and Scott, 2018](#)).

- Drink limit

A maximum number of drinks per patron could be required to prevent binge drinking, which is defined as five or more drinks for men and four or more drinks for women (“[Alcohol by Volume ...](#)”). Some brewpubs in New Mexico have established their own three-drink limit independent of any city or state requirements.

Legally, this requirement would need to apply to all restaurants that served alcohol unless the City had an articulable, rational reason why not. For example, if this requirement were applied only to restaurants and brewpubs and not to bars, a reason could be that minors are permitted in the former and not in the latter.

- List the alcohol by volume (ABV)

The City could require locations that serve alcohol to list the ABV for each alcoholic beverage in a way that guests would see it.

Conclusion

Brewpubs will not be a major economic development initiative, but they would bring in some tax revenue, boost tourism in the Downtown and shopping areas, and boost the appeal of the Convention Center and thus increase the number of people who visit Downtown and the SC3 zone. Brewpub prices and policies would likely prevent excessive alcohol consumption, greatly reducing the risk of negative economic impacts to Provo.

The majority of registered Open City Hall survey respondents who reported that public safety was very important to them also reported that they were very supportive of brewpubs (77%). About half of respondents (51%) thought that brewpubs would have no effect on public safety. Police in four cities, including Provo, have said they have no concerns about brewpubs having a negative effect on public safety. Limited research suggests that brewpubs increase incidents of drunk driving, but DUI citation numbers before and after brewpubs opened in Springville and Lehi show that DUIs did not increase due to the brewpubs.

Provo City Code has robust requirements for beer licenses. If the Council would like to introduce additional licensing requirements for brewpubs, they could direct staff to do so either by amending the Class “B” beer license or drafting a new Class “F” license specifically for brewpubs. A sunrise clause could help to separate the land use and licensing issues and give the Council time to adopt licensing changes before brewpubs become permitted uses, if the Council so chooses. It should be remembered that licensing requirements must be applied fairly to all locations that serve alcohol unless the City has an articulable, rational reason why they should apply only to brewpubs.

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Appendix A

Full text of [Provo City Code 6.14.040](#) (Class “B” Beer License)

A Class “B” beer license shall entitle the licensee to sell beer for consumption on the premises of a restaurant described in the license. Only bona fide restaurants, where a variety of hot food is prepared and cooked and complete meals are served to the general public in connection with indoor dining accommodations, and at which food sales constitute at least sixty (60) percent of the gross money receipts of the licensee’s restaurant business, shall be entitled to a Class “B” license. Neither dancing, billiards nor bowling shall be permitted on premises for which a Class “B” license has been issued.

Appendix B

Some of the additional questions staff have received from Council members that have not been addressed in this report.

1. What rate of proliferation of brewpubs has been experienced by comparable cities after they added their first brewpub to their local restaurant mix?
 - A. This very much depends on the city. Demographic differences make it difficult to generalize outside of Utah.
 - i. Local areas and other university towns: There are only two brewpubs in Utah County, each in different cities. There is only one in St. George and none in Logan. All three brewpubs have opened within the last four years.
 - ii. Salt Lake County: To quote a Salt Lake City employee, brewpubs have “basically always” been allowed in Salt Lake City, so it is difficult to show any proliferation after the first. They seem to cluster around commercial and tourism centers.

2. It would be helpful to get a more concrete sense of the state’s enforcement regime – can we count on an annual audit and inspection? Are they firm in their enforcement or are they lax or overly friendly to such establishments? Do we get a copy of the brewpub’s annual and any interim audit reports by the state and any complaints filed?
 - A. The DABC conducts annual and random audits. Any violation is reported to the committee. Audit information is protected under the Government Records Access and Management Act (GRAMA), and so would require either a subpoena or a formal record sharing agreement (Micklos, 2020).
3. What can we discover by way of “microbrewery creep” in other cities after restaurants are approved – i.e., not just the increase of such restaurants, but their subsequent demands for off-site breweries and off-site sales (both wholesale distribution and sales to individual customers)?
 - A. Since brewpubs are fairly recent in more comparable cities in Utah, and cities outside of Utah usually have different demographics and state regulations, the only example is Salt Lake City. They did not really experience this “creep” for wholesaling in any organized way until 2004. My first report included information on this with a link to an article from the time (<https://www.deseret.com/2004/9/8/19849418/salt-lake-pubs-get-ok-to-bottle-sell-beer>).

It is possible, and I would say even probable, that similar requests will come to the Council in the future. The Council will have the opportunity to address them at that time and amend city code or not as they choose.
4. Please ask the legal staff to prepare an ordinance amendment changing our 60%-40% formula to the state’s 70%-30% requirement.
 - A. I have already prepared a draft of this ordinance, and it is ready whether the Council decides to move forward with brewpubs or not.
5. What is the possibility of granting a conditional use permit under the existing zoning ordinance with very strict conditions and restrictions, and monitoring it closely for a year or two (as a one-time experiment) before we do a zoning change and a licensing ordinance?
 - A. It would be possible to amend code to make this a conditional use and not a permitted use (which is the current request), but it would be a little redundant. If it were done as a conditional use with no conditions except the license, there would not be any real difference from the current proposal. If it were done with conditions, then those should probably be part of the licensing requirements.
6. On Saturday, I walked into the Springville Strap Tank restaurant to check it out. I wanted to make sure we are not misleading our citizens in any way. That restaurant has a long

glass window-wall inside through which patrons can view the brewing process. It also has a large three-sided bar where people apparently can just get a drink (without a meal?). Those two features serve to make the restaurant both unique and, in its own way, attractive, which opens up the issue of analogizing these brewpubs to flavored vaping devices (the seductive and “slippery slope” concern voiced by several citizens). Also, in looking at their menu, they serve not only beer, but also wine, and, of greater concern, a variety of other alcoholic beverages (hard liquor). I was under the impression that brewpubs serve their specialty beers only. Am I wrong on that?

- A. Strap Tank has a commercial license and a beer-class C license, which permit them to serve more than just beer. Brewpubs are not limited in the alcohol they serve, except that at least one beer option is produced on-site. However, Provo could structure brewpub licensing to be as strict or loose as the Council would like (assuming legally defensibility).
 - B. If the Council is worried about a slippery slope, it should be noted that Red Robin in Provo also has a full bar including drinks with hard liquor. It also has a children’s menu. If the concern is more specifically that highlighting the brewing process will make the beer more appealing, that is understandable (and from a business standpoint, the whole idea behind showing the process). If that is a concern, licensing could include that the brewing process not be viewable from the main dining areas of the restaurant. However, brewpub owners would likely not take well to this, and it could present some legal challenges. For these reasons, this has not been included in the list of options.
7. Is attaching the Provo City name to beer what we really want for the City? We don’t need to make Provo cool just for the sake of being cool. What is best for Provo long term to enable it to be a viable and sustainable city? Long term is there more value to Provo’s reputation of being “stone sober” and wholesome, or more value to Provo potentially having a reputation for a great microbrewery and being accommodating to people with different values and lifestyles? That is an important consideration in my mind, but I’m not sure how we quantify that or even really qualify that.
- A. “Cool” and “wholesome” are relative, and it depends on who you ask. While it is possible that Provo could develop a reputation for its brewpubs if they were permitted, Provo will likely never compete with Park City and Salt Lake City. If this is a concern to the Council, limiting the total number (likely through a population criterion) could help deter that reputation.
- If the Council is concerned about the Provo name being attached to beer, it might help (or hurt) to know that Squatters in Salt Lake County already makes a beer called the “Provo Girl Pilsner.” Restaurants in Provo already serve beer and other alcoholic beverages, so Provo is already associated with alcohol for some.



Provo City Municipal Council

Staff Memorandum

Restaurants with Ancillary Breweries: Survey Data

John Magness, Policy Analyst

Background

The survey was conducted from January 30, 2020 until February 11, 2020. A total of 1,342 survey responses were submitted. Of those, 546 were from registered users of Open City Hall and 796 responses were from participants not registered or signed in. With our usual limit of two minutes per person of public comment at a Council meeting, the number of responses we received would be equivalent to 44.7 hours of public comment.

The questions were taken from statements made at the January 21, 2020 Council meeting where this issue was first heard, with additional input from Council during the drafting process. It was designed to gauge support for a land use decision using arguments made by those in attendance at the January 21, 2020 meeting. We pushed several statements and ideas to see if respondents would change their support at the end of the survey. The final questions were approved through the Council's regular policy for Open City Hall topics.

This survey topic had the most views and responses to date since our launch of the Open City Hall platform. The survey was hosted online (OpenCityHall.provo.org) and the invitation to participate was distributed through social media, local news media, neighborhoods, and registered users of Open City Hall. This was a big topic for many people and Council staff worked hard on outreach to invite more people to take the survey.

Outreach

Here is how the information on the survey was distributed:

- Notifications were emailed to 842 subscribers to our Open City Hall platform. These are people who requested to be notified when new topics are launched.
- Information was posted on the Council's blog. This received 84 views.
- Posted on Council Facebook page multiple times. The first post was shared 76 times (36 were ours – see below) and reached 10,865 people. Post 2 reached 156 people. Post 3 reached 291 people and was shared twice. Post 4 reached 367 people and was shared twice.

- Shared in local issues groups on Facebook – New Provo Developments, Provo Forward, Our Provo, Support Downtown Provo.
- Shared in the 32 Facebook groups for our neighborhoods (no groups for BYU/University and East Bay Neighborhoods).
- Posted on Council Twitter account at various times and on various days while the survey was open.
- Neighborhood Chairs sent out to their email lists in the neighborhoods.
- It was one of the topics in the Policy Matters newsletter (693 recipients), which was also shared on Facebook to the Council page and 35 groups (resulted in 202 clicks to see newsletter).
- Open City Hall was mentioned in the Mayor’s Citizen Connect communication project, which landed in mailboxes just when the survey opened and received coverage in the Daily Herald.
- News articles by Daily Herald, KUTV, KSL, Deseret News.

The Provo City Council chose the Open City Hall platform for online public engagement near the end of 2016, after researching multiple options. The intent for using the platform was to receive public input in an environment safe for users. More than 70 topics have been launched on this platform since 2016. Those topics have included open comments, plan and budget reviews, committee work, map exercises, and input on current issues.

Open Gov, the owner of the platform for Open City Hall, uses software and staff to monitor for civility and systematic fraud. When they detect a potential problem, they notify us as the client to determine next steps. Problem statements are moved to a separate web page and Open Gov notifies the statement’s author to inform them and invite them to reconcile the problem. Statements from unregistered users can’t be reconciled because, by definition, the user hasn’t provided a way to be contacted.

A disclaimer is provided on Open City Hall to clarify the platform’s intent. “Open City Hall is not a certified voting system or ballot box. As with any public comment process, participation in Open City Hall is voluntary. The statements in this record are not necessarily representative of the whole population, nor do they reflect the opinions of any government agency or elected officials.”

Questionnaire

The questionnaire started with an introduction outlining the issue before the Council, allowing restaurants with ancillary microbreweries in certain zones within Provo City, followed by a description of the state regulations it would be required to operate under. It also included a zoning map of where brewpubs would be allowed as well as a link to a staff report prepared for the Council. This was followed by a request to become a registered user of Open City Hall.

Where possible, we used a Likert Scale to gauge responses. The first three questions (Q1-Q3) on the questionnaire were demographic - connection to Provo, age, and gender. The next question

(Q4) asked the respondent the importance to them on specific issues. These issues were chosen because they have an intersection with brewpubs. Q5 was the first ballot, were we asked the respondent if they supported allowing restaurants with microbreweries. Q6-Q7 were to gauge what kind of interaction the respondent has had or will have with these types of restaurants. Q9 asked the respondent if allowing restaurants with microbreweries would influence certain issues, allowing an answer from having a very negative effect to a very positive effect. Q10 asked the respondents if they agreed or disagreed with certain opinion statements. Q11 asked the participants to respond to some facts about restaurants with microbreweries and if it would influence their decision. Q12 was our second ballot to see if the pushing had any effect on their opinion on allowing these types of restaurants in Provo. Q13 was an open-ended question to get respondents to add anything we might have missed in the survey.

Errors and Biases and Polling

This was not intended to be a scientific poll. We conducted this survey to gauge the public's reaction to a possible change in zoning that would allow restaurants with microbreweries in Provo.

Here are some other types of polls that are more scientifically done:

- Academic Polling
 - High standards for to ensure no biases
 - Must accurately represent population they are studying
- Political polling
 - Simple overnight polls
 - Ask a few simple questions
 - Represent most likely to vote
 - More detailed polling done before election day
 - Creates a baseline
 - Push polling on issues
 - Push polling on positive and negatives
- Marketing polling
 - Creates some baseline
 - Lots of push poll questions

Our survey is more akin to a marketing survey where we want to gauge the public's opinion about brewpubs. We wanted to see if people would use this type of restaurant, how they feel about them in general, and what they think the impacts on Provo would be if they were allowed.

There are always inherent problems with conducting polling. We worry about data corruption through bias, creating models that represent our populations, and surveys being done accurately. Bias is a problem because it can skew data and, left undetected, can lead to faulty conclusions.

Four main areas of bias are the survey instrument, how the poll is conducted, the model used to create the population, and personal bias of those designing and implementing the survey. Modeling can create its own data errors if the model doesn't does not truly reflect the population as a whole. A growing concern is that surveys are not being completed correctly. This is caused by different factors such as a poorly worded survey, respondent not understanding the issue being asked, or deceitful answers from the respondent. Another area where data is corrupted is in how the survey is implemented. Since most of the time we cannot survey the whole population, we use a representative portion chosen randomly. Although random in the beginning, as soon as we start creating this representative sample, we start making decisions that can lead to errors and or biases in the sample itself.

How does our survey stand up to the errors and biases? Let's start with the survey instrument itself:

1. Personal bias
 - Low - since many people were involved in the crafting of the questions.
2. Sequencing bias
 - Low - we only asked baseline questions before the first ballot.
3. Comprehension Bias
 - Low - the survey was short and did not include technical jargon.
4. Other biases
 - The introduction regarding state rules regulating restaurants alcohol sales did create a bias in the sample.
5. Open-ended question
 - When quantifying open-ended questions, it is usually done by several people to ensure personal bias does not creep into the quantification process. We only had one, but we kept the number of outcome categories low to help minimize bias. This does mean that not all open-ended answers are quantified.

Our survey instrument did what it was designed to do and elicited a response from those who are interested in the issue of allowing restaurants with microbrewing in Provo. In addition, the respondent's feelings on issues that intersect with these types of restaurants and the possible affects the restaurants could have on Provo if allowed.

There has been some concern about how the survey was conducted. We set it up on Open City Hall and allowed anyone to take it. In polling terms, this meant that the respondents are self-selected, not picked at random. This type of selection process does have the potential to create a bias in the data because those who are more interested in the issue will take the survey and those who are not interested will not take the survey. Also, it meant that to take the survey you had to know about it and have access to a computer. Both those issues could cause errors because we are excluding a part of the population. There was a possibility of spiking the survey since

nonregistered users could take the survey multiple time to skew the data the direction they wanted.

While all this is true, with the use of sophisticated software and statistical tools it can be controlled, and the data corrected to account for the errors and biases. Most polling has errors. That is why you always see plus or minus next to the numbers to indicate the margin of error. Our survey was never meant to be scientific. Instead, we wanted to reach those that had an opinion on the issue of restaurants with microbrewing, so using self-selecting respondents is not an issue. As to hosting it on Open City Hall and excluding those who don't have access to a computer or knew of the poll, with over 1,700 views and 1,300 respondents, I am confident we have enough respondents to get a picture of what the larger population interested in the issue might say to correct any errors this might have caused. As to spiking, there is some evidence to suggest this did happen in small amounts, but we have a way to measure the effect of spiking and it was not significant.

Data Analysis

The first thing we did was to create a subset using registered users first, because we know they are unique respondents, and then separated those who live in Provo from the rest. Using data from the United States Census Bureau on gender and age distribution we corrected our data to reflect the true population of Provo. Males were overrepresented by 4% compared to females. In the male category, the age group 21-29 was underrepresented, while the rest of the age groups were overrepresented. To correct for this, we had to weight the 21-29-year-olds and took a random sample from the age groups comparable to their percentage of the whole. The same was true for females. The 21-29 age group was underrepresented. In collapsing "very supportive" and "supportive" together along with collapsing "not supportive" and "not at all supportive," we came up with three categories "supportive," "unsure," and "not supportive." For the weighted sample population, we get all males being "supportive" at 76%, "unsure" at 3%, and "not supportive" at 20%. For all females, we get "supportive" at 86%, "unsure" at 3%, and "not supportive" at 10%. When we combine genders, we get "supportive" at 81%, "unsure" at 3%, and "not supportive" at 15%.

Next, we looked at the weighted versus the unweighted sample. Looking at the combined genders we have and unweighted responses across all age groups of "supportive" at 85%, "unsure" at 2%, and "not supportive" at 13%. For the weighted versus the unweighted, "supportive" goes up 4% for the unweighted. For the "unsure" it goes down 1% for the unweighted, and for "not supportive" the unweighted goes down 2%.

Next, we looked at the entire sample, both the registered and unregistered. What we see is that "supportive" at 88%, "unsure" at 2%, and "not supportive" at 11%. Looking at this data we see that "support" has increased by 7 points from the weighted sample and 3 points from the

unweighted sample. For “unsure,” it was 1 point off from both groups. For “not supportive” it was a 4-point decrease from the weighted sample and a 2-point decrease for the unweighted sample. That 7-point increase is a red flag because something is causing the data to move. This could be proof that the unregistered are spiking the sample in order to make it move to the support side.

We next look at those respondents that work in Provo to see how they measure up to the residents. What we find is that they are more supportive of the restaurants with microbrewing issue than the residents. For this group, “supportive” at 95%, “unsure” at 1%, and “not supportive” at 3%. This helps explain why the entire sample skews to “support.” Adding in those other respondents who don’t live or work in Provo accounts for the 7-point increase in support.

We were asked to look at age distribution and what the effect age had on the level of support for the brewpub. Our age groups are: 21-29, 30-39, 40-49, 50-59, and 60+

AGE	SUPPORTIVE	UNSURE	NOT SUPPORTIVE
21-29	87%	1%	12%
30-39	94%	2%	3%
40-49	88%	3%	10%
50-59	78%	0%	22%
60+	62%	0%	38%

Age does play a role in a person’s opinion, with the 30-39-year-old group being the most supportive. It then drops as we progress through the age groups, with 60+ age group having the least support of all the age groups at 62%. There is an issue with the 21-29-year-old group. The number of respondents in that age group, especially among males, was under sampled by a factor of three, so the data has a higher error margin.

Lastly, we were asked to look at the difference between the first ballot and the second ballot. Looking at the data for registered users that live in Provo, registered users that work in Provo, and all unregistered users, we find that there is 1 point or less difference between the first ballot and the second ballot. This means those who took the survey have strongly held opinions on the issue and the issues we pushed did not make a difference to them.

Conclusion

For not being a scientific survey, what can we take away from the data? There is a definite difference of opinion between the ages with the younger generation having a more positive opinion on restaurants with microbrewing than the older generation. There is overwhelming support for allowing these types of restaurants by those who took the survey. There is a marginal difference between female and male participants, with females being slightly more in favor than males, except for the 50+ age group where there is significantly more support by females than

males. People who reside outside of Provo, but come here to work or shop, are more supportive than Provo residents. We know that those who took the poll are intransigent in their opinions and that opposition to alcohol consumption and use plays into their opinions of nonsupport.