

**HEBER CITY CORPORATION
75 North Main Street
Heber City, UT 84032**

May 17, 2022

**4:00 p.m. Work Meeting
6:00 p.m. Regular Meeting**

**TIME AND ORDER OF ITEMS ARE APPROXIMATE AND MAY BE CHANGED AS
TIME PERMITS**

I. WORK MEETING-4:00 P.M.

1. Presentation Regarding Smart Water Meter's Features (Kennard) – 10 min
2. Discuss Possible Development Agreement for 191 W 100 S (Baron) – 20 min
3. Presentation of Utah's Certified Tax Rate System by Matthew Hurst with the State of Utah Property Tax Division and Finalization of 2022-2023 Fiscal Year Budget (Brower, Bingham) – 30 min

II. CLOSED EXECUTIVE SESSION-5:00 P.M.

1. Legal

III. REGULAR MEETING-6:00 P.M.

1. Call to Order
2. Pledge of Allegiance (Council Member Kahler)
3. Prayer/Thought by Invitation (Default: Council Member Stack)

IV. CONFLICT OF INTEREST DISCLOSURE:

V. PUBLIC COMMENTS:

VI. ACTION ITEMS:

1. Consider Approval of Utah Broadband Franchise Agreement (Smedley) - 10 min
2. Consider Approval of the Revised Cultural Heritage Ordinance 2022-14 (Searle) - 15 min
3. Consider Approval of Ordinance 2022-10 Permitting a Zone Change for 67 East 200 North from R-3 Residential to C-3 Commercial (Baron) – 20 min

4. Consider Adoption of Ordinance 2022-06 Approving the DMJ Annexation and MDA (Master Development Agreement) Terms (Kohler) – 30 min
5. Presentation and Discussion Regarding the North Village Area (Kohler) – 30 min
6. Consider Approval of Ordinance 2022-09 to Amend Commercial Fence Regulations (Baron) - 10 min
7. Consider Approval of Traffic Study for the 1200 South 500 East Intersection (Funk) - 5 min
8. Consider Request to Amend the City’s Financial Planning Policies to Include Regular Reviews of Truth in Taxation (Stack) - 10 min

VII. COMMUNICATION:

VIII. CLOSED EXECUTIVE SESSION:

1. Personnel

IX. ADJOURNMENT

Ordinance 2006-05 allows Heber City Council Members to participate in meetings via telecommunications media.

In accordance with the Americans with Disabilities Act, those needing special accommodations during this meeting or who are non-English speaking should contact Trina Cooke at the Heber City Offices 435.657.7886 at least eight hours prior to the meeting.

Posted on May 17, 2022, in the Heber City Municipal Building located at 75 North Main, the Heber City Website at www.heberut.gov, and on the Utah Public Notice Website at <http://pnn.utah.gov>. Notice provided to the Wasatch Wave.

WORK MEETING

TAB 2

191 W 100 S

POTENTIAL DEVELOPMENT AGREEMENT

Policy Questions...

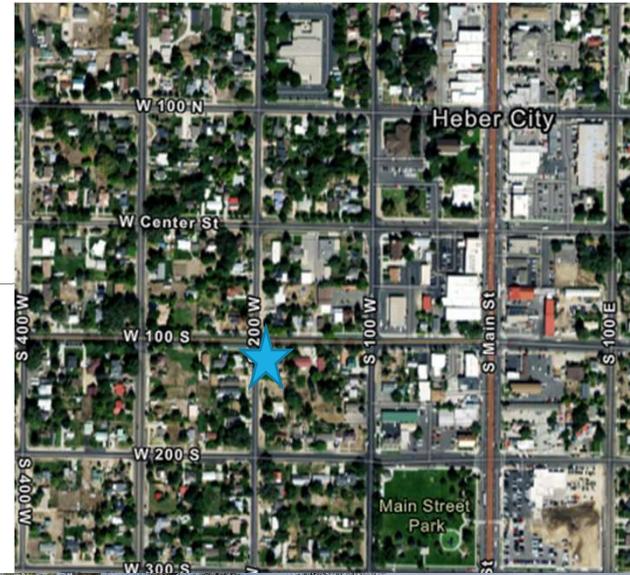
Should the City enter into a Development Agreement to allow for a mixed use building at 191 W 100 S?

What conditions does the Council want to see in a Development Agreement?

Background

191 W 100 S

- Unsafe Structure
- Timing of down town zoning



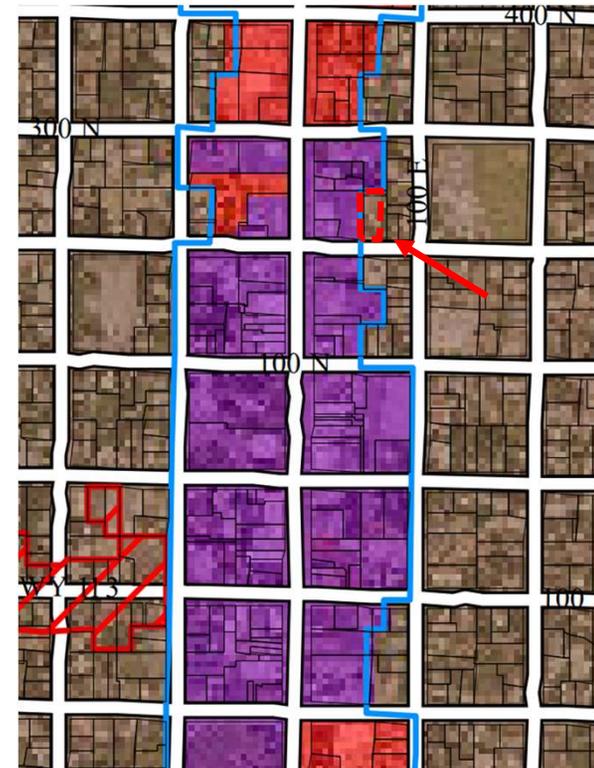
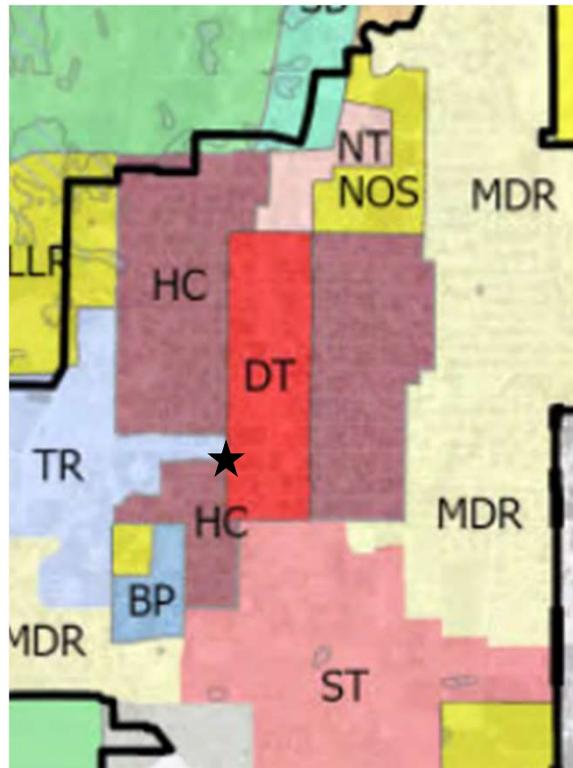
General Plan

Downtown

- 200 W to 200 E
- Mixed Use
- 14-30 u/a

Tourism

- Mixed Use
- 4-20 u/a



Policy Questions...

Should the City enter into a Development Agreement to allow for a mixed use building at 191 W 100 S?

What conditions does the Council want to see in a Development Agreement?

Discussion

& Next Steps



City Council Staff Report

MEETING DATE: May 17, 2022
SUBJECT: 191 W 100 S Development Agreement
RESPONSIBLE: Jamie Baron
DEPARTMENT: Planning Department
STRATEGIC RELEVANCE: Community and Economic Development



SUMMARY

Mike and Jami Hewlett is requesting an MDA process to move forward with the renovation of their property at 191 W 100 S into a commercial mixed-use building.

The policy questions include the following:

1. Should the City enter into a Development Agreement to allow for a mixed use building at 191 W 100 S?
2. What conditions does the Council want to see in a Development Agreement?

RECOMMENDATION

Staff and the applicant are seeking input from the Council on whether the Council is willing to entertain the request for the Development Agreement process.

BACKGROUND

Mr. and Mrs. Hewlett purchased the property at 191 W 100 S about 1-2 years ago. They purchased the home with the intent to move their insurance business into the property under the Residential Commercial Overlay. A building permit was granted for the remodel.

During the remodel, the Hewlett's discovered many issues with the structure, including scorched timbers around the old fireplace that were no longer safe. Staff has met with the Hewlett's multiple times to discuss options under the existing code, as well at general plan. The Hewlett's were hoping the Down Town Overlay Zone would allow them to move forward with a better development of the property.

Recently, the building department has issued a notice of an unsafe building as the building is gutted and not sealed up and is structurally not safe.

DISCUSSION

GENERAL PLAN

This property is on the boarder of the Envision Heber 2050 General Plan areas of the Down Town and Tourism/Recreation Center. The districts are outlined as follows:

District Type	Uses	Density Range/Scale	Key Characteristics
Downtown (600 South to 500 North, 200 East to 200 West) (DT)	A mixed use town center with historical architecture and active open spaces	14 to 30 units per acre Up to 4 story heights (interior block locations encouraged) Consider 2 story minimum height	Small business storefronts with historic architectural elements on first floors along Main Street. Interior block commercial/office uses blending with higher density residential. East/west streets to include diagonal parking and bike accommodations.
Tourism/Recreation Center (TR)	A hospitality/commercial mixed use center	4 to 20 units max per acre 2-3 story height, except hospitality, which may reach 4 stories	Recreation and tourism-oriented uses with an old west flavor. Includes the 100 South corridor. Transitional corridor uses including expanded home occupations, small scale retail, bed and breakfast, small cafes.

PROPOSAL

The applicant want to do a mixed-use building with commercial on the main floor, and some residential on the upper or basement. They building is proposed to be brought forward to allow for more parking in the rear and provide a more pedestrian friendly feel, that is consistent with Main Street. The current code would not allow for the smaller setbacks. The current zoning would also only allow up to 1,500 sqft of commercial and a single residence. However, the current zoning does allow for bed and breakfasts and boarding houses.

FISCAL IMPACT

N/A

CONCLUSION

Mike and Jami Hewlett are seeking input from the council as whether the City would be willing to work on a development agreement to develop the property at 191 W 100 S as the home is in such a state of disrepair and the down town code has not yet been adopted.

ALTERNATIVES

Not an action item.

POTENTIAL MOTIONS

Not an action item.

ACCOUNTABILITY

Department: Planning Department
Staff Member: Jamie Baron

EXHIBITS

1. Area Map
2. Zoning Map
3. General Plan
4. Applicant Letter

Exhibit 1



Exhibit 2

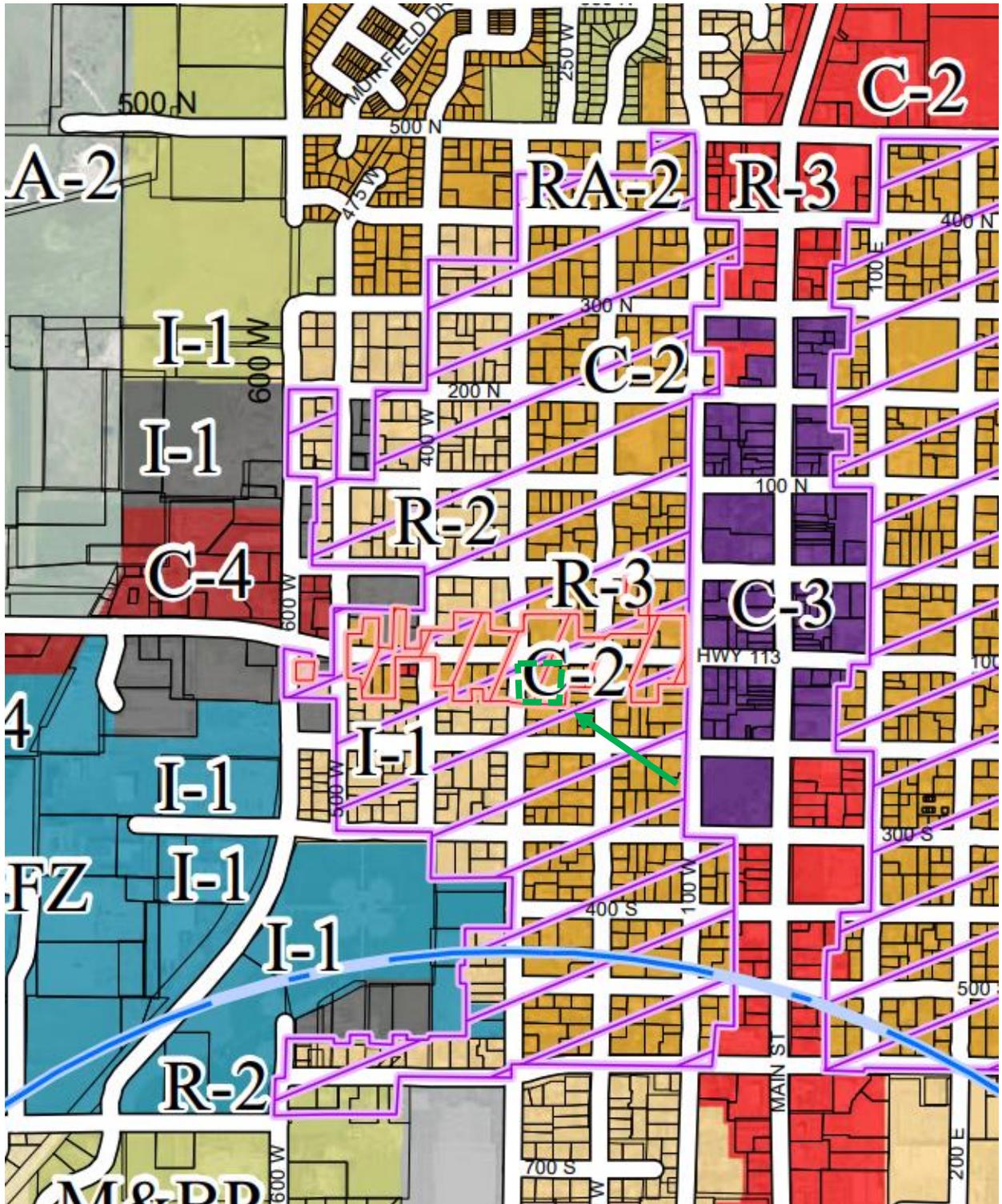


Exhibit 3

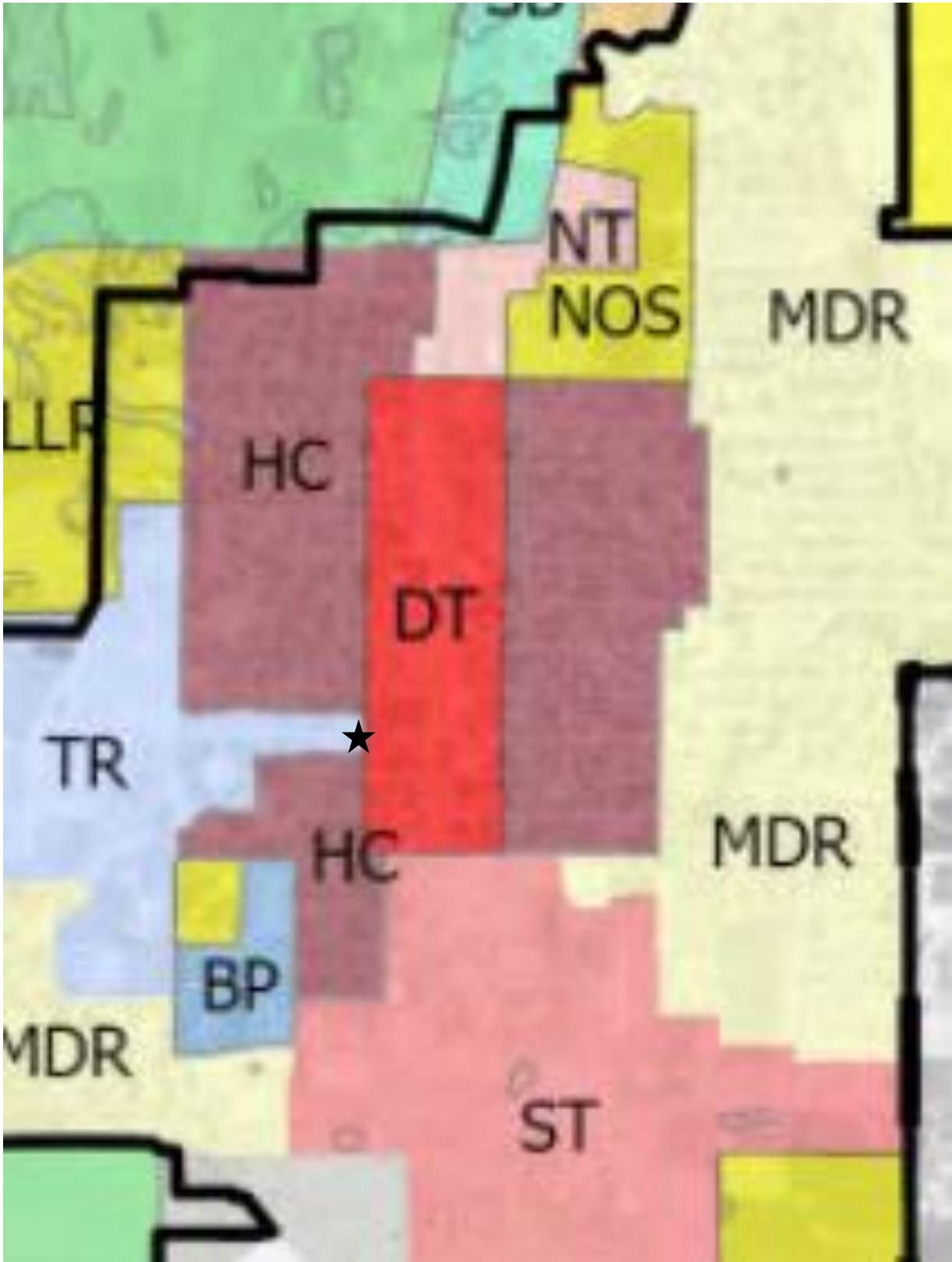


Exhibit 4

To whom it may concern,

We have lived in downtown Heber for most of our lives. Our ancestry to downtown dates back to the 1800's. We have loved living downtown and having a business downtown. When we grew out of our existing commercial space last year, there wasn't a big selection of places to rent.

We purchased this home, located at 191 W 100 S, to restore and use for our office. Unfortunately, after tens of thousands of dollars and hundreds of man hours, it became clear that the original structure was too far beyond repair and would require a complete rebuild. We then began to explore our options to build a new structure.

We love downtown Heber and we want to see it thrive. We have a strong desire to make downtown an area where local families will want to gather, tourists will want to visit and a place where our own children can shop, and as they become parents, bring their families to visit.

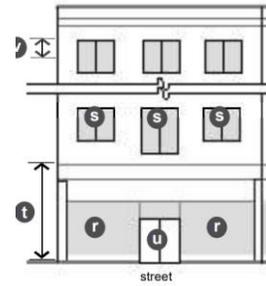
As we have studied the NVOZ we have realized that this is exactly what we want our space to be - local businesses and shops combined with living space. We believe that our project is in alignment with what the Heber City Council will find to be in the best interest of our town. We are asking you to consider our proposal to build something that will meet our needs in addition to contributing to the future of our growing community.

We have every intention of continuing to put in the time, hard work and cost to bring our dream to life. We are committed to working together with the city to bring a highly functional and very aesthetically pleasing building that will not only service commercial tenants but also some residential as well. Growing up here, we are excited to have the opportunity to contribute to the beautification of our town and keep the spirit of the small town we grew up in.

Attached are some examples from the NVOZ and also from some of the most beautiful Main Street's in the United States that we would like to emulate.

Thank you for your consideration.

Mike and Jami Hewlett



100 South

TAB 3

PowerPoint Presentation:

Part 4

ADJUSTMENTS OF FEES & COUNCIL FOLLOW-UP

BUDGET WORKSHOP #2 5/17/2022



Planning and Zoning Fee Adjustments

FY 20-21 Planning Total Development Costs: \$ 194,620

FY 20-21 Planning Development Revenues: \$ 177,478

Total Difference: (\$ 17,143)

FY 20-21 Revenue 20% increase in fee: \$ 212,973

New Revenue generated: \$ 35,495

New Difference: \$ 18,353

See attached revised fee schedule

*See attached Planning Fee
Recommendation Sheet

Engineering Fee Adjustments

FY 20-21 Engineering Development Total Costs: \$275,567

Yearly Horrocks Development Costs: \$963,621

Administrative Fee Percentage	Additional Revenue	Net Costs
10%	\$ 96,362	\$ (179,205)
15%	\$ 144,504	\$ (131,063)
20%	\$ 192,724	\$ (82,843)
25%	\$ 240,905	\$ (34,662)
28.6%	\$ 275,596	\$ 29

Building Fee Adjustments

Plan Review Fees

- With each permit that is issued a plan review is charged. The fee was increased in 2021 when the City outsourced the service to WC3.

	Revenue	Expenditures	Percentage
2021	\$ 77,251.74	\$ 92,237.04	119.40%
2022	\$ 80,503.20	\$ 90,853.23	112.86%
	\$ 157,754.94	\$ 183,090.27	116%
	Current Rate	25%	40%

*Proposed increase to 30% plan review fee for all residential and commercial to remain at 40%. Will generate an additional \$25,000 in revenue.

Public Safety Impact Fee

Single Family Residential Impact Fee (Per Unit): \$203.79

Multi-Family Residential Impact Fee (Per Unit): \$171.55

Non-Residential Impact Fee (Per Square Foot): \$0.49

(Non-Residential Example: 20,000 sq. ft. = \$11,760)

Latest 12 month Single Family Revenue: \$ 62,971.11

Latest 12 month Multi-Family Revenue: \$ 34,653.10

Latest 12 month Non-Residential Revenue: \$ 85,518.72

Total 12 month Revenue: \$ 183,142.93

- All Revenue can be applied to Debt Service Payment
- New Fund to be created to budget and account for Public Safety Fees

Current Budget – Updated Personnel Costs

	Total Cost	General Fund	Airport Special Revenue	Culinary Water	Storm Water	Sewer	Pressurized Irrigation
4% COLA & 3% MERIT(Currently)	\$479,973	\$387,230	\$7,347	\$33,605	\$14,355	\$30,212	\$7,195
Current Use of Surplus	\$1,115,119	\$317,871	\$1,135	(\$18,688)	\$157,398	\$166,406	\$490,997
End of Year Reserve Balance	\$4,412,023	\$4,312,023	\$292,242	\$1,084,076	\$214,794	\$578,167	\$195,361
Percentage Reserve		32.18%	49.64%	38.62%	31.53%	25.73%	27.26%

What would a 6% COLA or 8% COLA do to the total cost and use of surplus in each fund?

COLA and Merit Costs & Scenarios

	Total Cost	General Fund	Airport Special Revenue	Culinary Water	Storm Water	Sewer	Pressurized Irrigation
4% COLA & 3% MERIT(Currently)	\$479,973	\$387,230	\$7,347	\$33,605	\$14,355	\$30,212	\$7,195
6% COLA (2% Additonal COLA)	\$654,468	\$528,041	\$10,018	\$45,825	\$19,574	\$41,198	\$9,812
8% COLA (2% Additonal COLA)	\$828,991	\$668,851	\$12,689	\$58,045	\$24,794	\$52,184	\$12,428
Current Use of Surplus	\$1,115,119	\$317,871	\$1,135	(\$18,688)	\$157,398	\$166,406	\$490,997
Surplus After 6% COLA	\$1,426,774	\$458,682	\$3,806	(\$6,468)	\$162,617	\$177,392	\$493,614
Surplus After 8% COLA	\$1,601,297	\$599,492	\$6,477	\$5,752	\$167,837	\$188,378	\$496,230
Transfer for Central Heber Project				\$358,272	\$200,000	\$730,000	\$1,306,471
						*Transfer Less Debt	

* Should we consider any changes and if so what?

Q & A Follow up

Engineering Budget

	Budget Year			Inc/Dec %
	2022	2023		
Salaries	\$ 573,543.00	\$425,000.00	\$ (148,543.00)	25.90%
Overtime	-	1,000.00	\$ 1,000.00	0.00%
Benefits	229,707.00	196,000.00	\$ (33,707.00)	14.67%
Books, Subscriptions, etc	2,500.00	3,100.00	\$ 600.00	-24.00%
Travel	15,880.00	5,050.00	\$ (10,830.00)	68.20%
Office Supplies	1,700.00	2,300.00	\$ 600.00	-35.29%
Equip. Supplies & Maint.	23,500.00	1,000.00	\$ (22,500.00)	95.74%
Telephone	4,120.00	3,400.00	\$ (720.00)	17.48%
Professional Fees	71,100.00	77,300.00	\$ 6,200.00	-8.72%
Training	3,600.00	5,400.00	\$ 1,800.00	-50.00%
Insurance	650.00	-	\$ (650.00)	100.00%
Equipment	-	5,585.00	\$ 5,585.00	0.00%
Equipment Charge	3,200.00	436.00	\$ (2,764.00)	86.38%
	\$ 929,500.00	\$725,571.00	\$ (203,929.00)	21.94%

Question #1:

Reference of Highway Tax & Town Tax on Electric Bill

Answer:

The Town tax and the Highway tax are a sales tax based on retail sales

Question #2:

How many franchisees does the City of Heber receive revenues from?

- Heber Light & Power
- Century Link
- Dominion Energy
- Allwest Communications
- Comcast

Discussion

& Next Steps



Certified Tax Rate

- Means a tax rate that will provide the same ad valorem property revenues for a taxing entity as were budgeted by that taxing entity for the prior year.

Tax Rate Formula

$$\frac{\text{Revenue}}{\text{Taxable Property Values}} = \text{Tax Rate}$$

Certified Tax Rate Formula

**Previous Year's
Budgeted Revenues**

Prior Year's approved tax rate times
prior year's **adjusted values**.

**Current Year's
Adjusted Taxable
Value Less New
Growth**

=

Current year's locally assessed real +
prior year end personal property +
centrally assessed values, minus RDA,
adjusted for the 3 year BOE adjustment,
adjusted by the 5 year collection ratio,
minus new growth

For the purpose of keeping this simple, we will assume in the following calculations that RDA, BOE, Collections, and New Growth are already factored in.

The taxable value shown for a home is .55% of fair market value

**Why is it a tax increase if we
are adopting the same rate as
last year?**



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$360,000

A typical Entity

Each primary residential property has a **taxable value** of \$198,000.

Each business has a **taxable value** of \$360,000.

Total Value in the entity is \$2,340,000

(10 homes at \$198,000, 1 business at \$360,000)

The City's budget is: \$5,000

Tax Rate

$$\frac{\$5,000 \text{ entity's budget}}{2,340,000 \text{ entity's value}} = 0.002137 \text{ tax rate}$$



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$198,000



\$360,000

Each home pays $\$198,000 \times .002137 = \$423.13 \times 10 = \$4231.30$

Business pays $\$360,000 \times .002137 = \769.32

$\$4231.30 + \$769.32 = \$5000.62 = \text{entity's budget}$



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$400,000

The following year each home is reappraised and has a **taxable value** of \$2,200,000.

The business is reappraised at \$400,000

Entity's new value is 2,600,000.

The tax rate decreases
because values have increased.

$$\frac{\$5,000 \text{ entity's budget}}{2,600,000 \text{ entity's value}} = 0.001923 \text{ tax rate}$$

Each home pays $\$220,000 \times .001923 = \423.06

Business pays $\$400,000 \times .001923 = \769.20

If the entity chooses to take the previous year's tax rate of .002137

Each home owner will pay:

$$220,000 \times .002137 = \$470.14$$

as compared to \$423.06 from the certified rate as shown on the previous slide. This is an increase of \$47.08.

Each business will pay:

$$\$400,000 \times .002137 = \$854.80$$

as compared to \$769.20 from the certified rate as shown on the previous slide. This is an increase of \$85.60.

This is a budgeted revenue increase.

Instead of getting \$5,000 budgeted revenue, they would receive \$5,556.20 and this requires completion of the Truth-in-taxation process.

**How does new growth
factor in?**



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$220,000



\$400,000



\$250,000



\$250,000

Two new homes are built.
 They have a taxable value of \$250,000

Total value for entity =
2,200,000 for existing homes,
Total value for business = 400,000
and
500,000 for new homes

Total value of 3,100,000

*The first year, the new growth
is subtracted out of the calculation
so the entity gets the additional
new revenue.*

Tax Rate

$$\frac{\$5,000 \text{ entity's budget}}{(3,100,000 - 500,000_{\text{new growth}})} = 0.001923 \text{ rate}$$

10 homes pay $220,000 \times .001923 = 423.06 \times 10 = \4230.60

Plus

1 business pays $400,000 \times .001923 = \769.20

Plus

2 new homes pay $250,000 \times .001923 = \$480.75 \times 2 = \$961.50$ (Entity gets additional \$961.50 new revenue from the new growth)

Total revenue for entity is \$5961.30

Note: New growth is a net number so if businesses go away (or decrease in value) the new growth amount may not reflect what is shown in this simple example.

The **next year**, the new growth is included in the budgeted revenue and in the value base for the Certified Tax Rate .

$$\frac{\$5,961 \text{ entity's budget}}{3,100,000} = 0.001923 \text{ tax rate}$$

if values go up... rate goes down

$$\frac{\$5,961 \text{ entity's budget}}{3,500,000} = 0.001704 \text{ tax rate}$$

	Currently	
APPLICATION TYPE	ADMINISTRATIVE FEE	ESCROW*
Annexations	\$3,500	\$3,200
MDA Amendments	\$4,700	\$600
General Plan, Zoning Map Amendment, Zoning Test Amendment, General Plan Amendment, New Zone Adoption	\$1,500	\$2,300
Road Dedication or Vacation	\$400	\$400
Master Plan		
Concept (Commercial/Multi-Family)	\$1,600	\$1,600
Site Plan (Commercial/Multi-Family)	\$1,800	\$2,300
Subdivision Concept	\$900	\$2,100
Subdivision Preliminary , RV Park Preliminary	\$1,400	3700
Subdivision Final, RV Park Final	\$2,500	5000
Subdivision Final Plan Renewal	\$900	\$1,500
Small Subdivision	\$1,000	\$2,300
Multi-Family Dwelling	\$600	\$1,200
Conditional Use	\$500	\$800
Telecommunication	\$600	\$600
Plat Amendment	\$600	\$1,700
Lot Line Adjustment	\$300	\$500
Development Review Meeting (App will not vest a project)	\$450	
Pre-Application Meeting (App will not vest a project)		
Pre-Development Meeting (App will not vest a project)		
Zoning Certification of Administrative Interpretation	\$75	
Sign	\$65	
Board of Adjustment	\$200	\$400
Appeal to City Council	\$350	\$400
Other Applications	\$100 + Costs	

	Proposed	
	ADMINISTRATIVE FEE	ESCROW*
	\$7,000	\$3,200
	\$2,000	\$600
	\$3,000	\$2,300
	\$480	\$400
	\$1,500	\$2,000
	\$1,600	\$1,600
	\$2,160	\$4,000
	\$1,080	\$2,100
	\$1,680	\$6,000
	\$3,000	\$7,500
	\$1,080	\$1,500
	\$1,200	\$3,000
	\$600	\$10,000
	\$720	\$600
	\$600	\$1,500
	\$360	\$500
	\$1,000	
	\$150	
	\$75	
	\$90	
	\$78	
	\$240	\$400
	\$420	\$400
	\$100 + Costs	

REGULAR MEETING

TAB 1

City Council Staff Report



MEETING DATE: May 17, 2022
SUBJECT: Utah Broadband Franchise Agreement
RESPONSIBLE: J. Mark Smedley
DEPARTMENT: Legal
STRATEGIC RELEVANCE: Community & Economic Development

SUMMARY

Utah Broadband (UBB) is seeking the Council's approval of a franchise agreement that would allow UBB to lay fiber and provide internet throughout Heber City. UBB desires to be allowed to be a provider of internet service, anticipating that they can contribute to improve Heber City's ability to provide various customers for dependable and affordable internet service.

RECOMMENDATION

Introduce Utah Broadband to the City Council, allow representatives from UBB an opportunity to explain the reason for its interest in entering into a franchise agreement with the City, and to give approval to City Staff to continue negotiating a franchise agreement with Utah Broadband.

BACKGROUND

Within the past couple of years, especially since the arrival of the COVID-19 pandemic, many cities within Utah are being approached by their residents who are asking for cities' to help facilitate the improvement of internet services in their area. Utah Broadband would like to partner with the City to provide such a service, and maintains that UBB can do so in a competitive and affordable manner. It appears that there is an increased need for such internet services in Heber to contribute to a certain basic level of life style, especially in Heber City with its growth. There continues to be an increased use of technology for daily activities and the movement by numerous businesses and schools to operating remotely since and during the pandemic.

DISCUSSION

Utah Broadband (UBB) is a locally owned and operated internet service provider. Broadband has offered internet services in the Heber Valley for more than twenty (20) years. UBB maintains a high rating within IT and Internet Service provider companies, pursuant to Google Reviews. UBB would indicate that such Google Reviews is valuable as an objective rating systems. UBB purports to hold a 4.2- out of 5 star rating.

In discussions with UBB representatives, they indicate that many Heber City residents don't have consistent or dependable access to adequate internet service, or that there are a limited number of providers that offer competitive speeds in their specific area.

Main Purpose of Agreement: It is anticipated that the City will grant to UBB, (the Franchisee), its assigns and successors, subject to the terms and conditions of a proposed Franchise Agreement, the right and authority to utilize the City's public ways for construction and operation of the Franchisee's Communications System, and to acquire, construct, operate, maintain, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee's Communications System.

The specific proposed language provides that the Franchisee shall not be allowed to install any utilities in the streets, but shall be restricted to installation only within the Public Utilities Easements (PUEs) or areas outside of the street pavement, with the exception of street crossings. This is to minimize the repeat street cuttings. In the event there is no PUE location available, the Franchisee may be allowed to install utilities under the pavement, **only upon written approval from the City on the specific location**. In such circumstances, City approval shall not be unreasonably withheld. Additionally, the Franchisee shall not have authority to install new above ground communication lines or to install new or replacement communication lines on any existing poles or other above ground infrastructure without prior written approval from the City. *See Section 2.*

The Agreement will not grant or convey any right, title, or interest in the public ways of the City to the Franchisee.

Term: The first term of the proposed agreement would be for thirty (30) years, and continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days' prior notice before the end of the 30 year term, of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions may be negotiated upon terms and conditions deemed reasonable to both the City and the Franchisee.

Non-Exclusive Grant. The Franchise Agreement would not prevent the City from entering into other similar agreements or allowing other or further franchises to locate in the City's public ways. However, the City would not be allowed to permit any such future Franchisee to physically interfere with the UBB's Communication Facilities. In the event that such physical interference or disruption occurs, the City Engineer would assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this Franchise would not prevent or prohibit the City from using any of its public ways or affect its jurisdiction over them or any part of them, and the City would retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

Sections 8-10 address construction or repair work in the public right of way, restoration after construction and emergency work.

Section 11 addresses relocation of UBB's facilities. In the event that City elected to alter or change any street, alley, public utility easement, bridge, culvert or other public way requiring the relocation of Franchisee's Facilities, then Franchisee, upon reasonable notice by the City, would be required to remove, relay and relocate the same at its own expense; except that Franchisee would have the right, with approval from the City, to abandon its Facilities in place, in lieu of relocation. If public funds are available at the time for such relocation, and required by law to be offered to the Franchisee, Franchisee would not be required to pay the costs of such relocation. Additionally, if as a result of the Franchisee's workmanship the City determines that there is a need to clean up, relocate or otherwise improve the appearance of the Facilities from an aesthetic view, Franchisee would, upon reasonable notice by the City, remove, relocate, clean up or otherwise resolve the issue to the City's satisfaction, at the Franchisee's own cost. The City would not unreasonably make such requests.

Section 14 limits the liability of the City for acts of UBB. Franchisee will indemnify the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise.

The City will maintain the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee, and the Franchisee would promptly conform to all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.

FISCAL IMPACT

No direct fiscal liability or risk to Heber City would result from the creation of a franchise agreement with Utah Broadband.

CONCLUSION

Utah Broadband seeks approval of the Council to enter into a Franchise Agreement with the City.

ALTERNATIVES

None of relevance.

POTENTIAL MOTIONS

Staff Recommended Option –

Authorize the City entering into a franchise agreement with Utah Broadband.

Alternative 2 –

Authorize the City entering into a franchise agreement with Utah Broadband, with the following conditions.

Alternative 3 –

Do not authorize, or take no action.

Departments:
Staff Members:

EXHIBITS

Proposed Franchise Agreement.

**HEBER CITY, UTAH
FRANCHISE AGREEMENT WITH
AND FIF UTAH, LLC
(Utah Broadband)**

Heber City, a municipal corporation of the State of Utah and FIF Utah, LLC, a Delaware limited liability company, d/b/a Utah Broadband (“UBB”) hereby enter into an agreement granting to UBB and its affiliates a non-exclusive franchise to install, operate and maintain a communications system in, on, over, upon, along, and across the public rights of way of Heber City.

WHEREAS, UBB, has requested that the City grant it the right to install, operate, and maintain a communications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. For the purposes of this franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. “Affiliate” means the entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

B. “City” means Heber City, Utah.

C. “Communication(s) Service” shall mean any communications services, communications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other

person engaged in Communication Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable, copper cable, or wireless antennas. Communication Service shall also include wireless and non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the City.

D. “Communication System” or “Facilities” shall mean the Franchisee’s fiber optic and/or copper cable and/or wireless system constructed and operated within the City’s public ways and shall include all cables, wires, fibers, antennas, conduits, ducts, pedestals, and any associated converter, equipment, enclosures, or other facilities within the City’s public ways designed and constructed for the purpose of providing Communication Service.

E. “FCC” means the Federal Communications Commission or any successor governmental entity hereto.

F. “Franchise” shall mean the initial authorization, or renewal thereof granted by the City, through this Agreement or subsequently adopted agreement, which authorizes construction and operation of the Franchisee’s Communication System and associated Facilities for the purpose of offering Communications Service.

G. “Franchisee” means FIF Utah, LLC, a Delaware limited liability company, or the lawful successor, transferee, assignee, or affiliate thereof.

H. “Person” means an individual, partnership association, joint stock company, trust, corporation, or governmental entity.

I. “Public Way” shall mean the surface of and any space above or below any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way including, but not limited to, public utility easements, utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Communications System. Public way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way which within their proper use and meaning, entitle the City and the Franchisee the use thereof for the purposes of installing or transmitting the Franchisee’s Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System.

J. “Service Area” means the present municipal boundaries of the City and shall include any additions thereto by annexation or other legal means.

Section 2. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the City for construction and operation of the Franchisee’s Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee’s Communications System, and to provide Communications Service. Notwithstanding, the Franchisee shall not be allowed to install any utilities in the streets, but shall be restricted to installation only within the PUEs or areas outside of the street pavement, with the exception of street crossings. In the event there is no PUE location available, Franchisee may be allowed to install utilities under the pavement, only upon written approval from the City on the specific location. In such circumstances, City approval shall not be unreasonably withheld. Additionally, the Franchisee shall not have authority to install new above ground communication lines or to install new or replacement communication lines on any existing poles or other above ground infrastructure without prior written approval from the City.

Section 3. Construction Permits Required.

A. Prior to site specific location and installation of any portion of its Communications System within a public way, the Franchisee shall apply for and obtain a construction permit pursuant to the ordinances of the City presently existing or as amended from time to time.

B. Unless otherwise provided in said permit, the Franchisee shall give the City at least 48 hours’ notice of the Franchisee’s intent to commence work in the public ways. The Franchisee shall file plans or maps with the City showing the proposed location of its Communication Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The first term of this franchise shall be for a period of thirty (30) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred

twenty (120) days' of its intent to renegotiate the terms and conditions of this Franchise. At the end of said initial 30 year term, upon said notice, additional terms and extensions may be negotiated upon terms and conditions reasonable to both the City and the Franchisee. In the event that the Parties have defaulted to a year to year basis mentioned above, then upon a sixty (60) days written notice prior to the end of that year (12 months from the initiation of the year to year term), additional terms and extensions may be negotiated upon agreed to terms and conditions of the Parties. In the event either party gives said notices, and the Parties are not able to come to an agreement on terms for renegotiation, this Franchise Agreement shall terminate.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the City. However, the City shall not permit any such future Franchisee to physically interfere with the Franchisee's Communication Facilities. In the event that such physical interference or disruption occurs, the City Engineer may assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the City from using any of its public ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

Section 7. Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital copies in a format specified by the City Engineer.

Section 8. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Utah.

B. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the public ways of the City in coordinating construction activities and joint trenching projects. By June 1 of each calendar year, or such other date as the City and the Franchisee may agree upon from year to year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the public ways of the City. The Franchisee shall also meet with the City and other

grantees, franchisees, permittees, and other users of the public ways of the City annually or as determined by the City to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the City.

C. If either the City or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an excavation provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons or if their respective uses of the trench are incompatible. (4) in the event that the cost of the trenching or excavation work is to be paid for by the City for the purpose of communication infrastructure, the franchisee shall pay their proportionate share of the trenching or excavation work as a condition of sharing the trenching or excavation work.

Section 9. Restoration after Construction. The Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the public ways restore the surface of said public ways and any other City-owned property that may be disturbed by the work to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the construction permit issued by the City in accordance with the applicable ordinances of the City.

Section 10. Emergency Work Permit Waiver. In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any public way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City Hall is open for business.

Section 11. Relocation. In the event that at any time during the period of this franchise,

the City shall lawfully elect to alter or change any street, alley, public utility easement, bridge, culvert or other public way requiring the relocation of Franchisee's Facilities, then in such event, Franchisee, upon reasonable notice by the City, shall remove, relay and relocate the same at its own expense; except that Franchisee shall, in all cases, have the right, with approval from the City, to abandon its Facilities in place, in lieu of relocation. If public funds are available at the time for such relocation, and required by law to be offered to the Franchisee, Franchisee shall not be required to pay the costs of such relocation. Additionally, if as a result of the Franchisee's workmanship the City determines that there is a need to clean up, relocate or otherwise improve the appearance of the Facilities from an aesthetic view, Franchisee shall, upon reasonable notice by the City, remove, relocate, clean up or otherwise resolve the issue to the City's satisfaction, at the Franchisee's own cost. The City shall not unreasonably make such requests.

Franchisee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building, provided: (a) the expense of such temporary removal shall be paid by the person(s) requesting the same, and Franchisee shall have the authority to require payment in advance; and (b) the Franchisee is given not less than five (5) business days' advance notice to arrange for such temporary line changes.

Section 12. Trimming. Franchisee shall have the authority to trim trees upon and overhanging all streets, alleys, public utility easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming into contact with Franchisee's Facilities. Franchisee shall, when practical, provide notice to the City and to any property owner before commencing such work. Franchisee shall not be required to provide notice in advance of such work in emergency conditions. Nothing herein shall give the franchisee the right to trim trees not located within Public Rights-of-Way without permission from the private property owner. Franchisee shall assume all liability for, and indemnify the City from any damage caused by Franchisee as a result of trimming or managing such trees upon and overhanging all streets, alleys, public utility easements, sidewalks and public places of the City.

Section 13. Dangerous Conditions. Whenever construction, installation or excavation of the Communication Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public street, utilities or City-owned property, the City Engineer may reasonably request the Franchisee to take action to protect the public, adjacent public places, City-owned property, streets, utilities and public ways. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways to

maintain the lateral support thereof or actions regarded as necessary safety precautions and the Franchisee shall be liable to the City for the reasonable costs thereof.

Section 14. Non-Liability of City for Acts of Franchisee. The City shall not at any time become liable or responsible to any person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise.

Section 15. Insurance. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its agents, representatives, or employees. The Franchisee shall provide to the City for its inspection an insurance certificate naming the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any facilities pursuant to this franchise. Such insurance certificate shall evidence:

A. Comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than (1) \$2,000,000.00 for bodily injury or death to each person; and (2) \$3,000,000 for property damages resulting from any one accident.

B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of \$300,000 for each person and \$500,000 for each accident.

C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 16. Abandonment and Removal of the Franchisee's Communication Facilities. Upon the expiration or termination of the rights granted under this franchise, the

Franchisee shall either, at Franchisee's sole option, remove all of its Communication Facilities from the public ways of the City within ninety (90) days or abandon the Facilities in place. Upon permanent abandonment and Franchisee's agreements to transfer ownership of the Communication Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such facilities which are not permitted to be abandoned in place which are not removed within one (1) year of receipt of said notice shall automatically become the property of the City.

Section 17. Municipal Telecommunications License Tax. For the Franchise granted herein, Franchisee shall pay to the City, in accordance with the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated, of three and a half percent (3.5%) of Franchisee's gross receipts from telecommunications services attributed to the City as set forth in the Municipal Telecommunications License Tax Act, less any business license fee or business license tax enacted by the City. All payments shall be made to the Utah State Tax Commission:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Section 18. Modification. The City and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon the written agreement of both parties to such alteration, amendment or modification.

Section 19. Forfeiture and Revocation.

A. This franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the City ordinances.

B. If the City has reason to believe that the Franchisee is in violation of this franchise or other provisions of the City ordinances, the following procedures shall be followed by the City:

(1) The City shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City or where unusual weather, natural consequences, extraordinary acts of third parties, or other circumstances which are reasonably

beyond the control of the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If said response is not satisfactory to the City, the City may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ten (10) business days after notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the City Council on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The City Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the City Council does not grant any additional period, the City Council may, by resolution, declare the franchise to be terminated.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this franchise.

C. Franchisee shall not be deemed to be in default failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

Section 20. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee and the Franchisee shall promptly conform with all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.

Section 21. Survival. All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may

have to the City at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 13 Dangerous Conditions; 14 Non-Liability of City for Acts of Franchisee; 15 Insurance; 16 Abandonment and Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the public ways, transfers ownership of said facilities to a third party, or abandons said system in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 22. Severability. If any section, sentence, clause or phrase of this franchise shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise.

Section 23. Assignment. This Agreement may not be assigned or transferred without prior written notice to the City except that the Franchisee may freely assign this franchise without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the City: (1) lease the facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its facilities to another, provided that Franchisee at all times retains exclusive control over such facilities and remains responsible for locating, servicing, repairing, relocating, or removing its facilities pursuant to the terms and conditions of this franchise.

Section 24. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

City:

Heber City
75 North Main Street
Heber City, Utah 84032

Franchisee:

FIF Utah, LLC
14015 S. Minuteman Drive
Draper, UT 84020

Notice shall be deemed given upon receipt in the case of personal delivery three (3) days after deposit in the U.S. mail in the case of regular mail, or next day in the case of overnight delivery.

Section 25. Entire Franchise. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this franchise. Provided further that the City and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the City nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this franchise.

Section 26. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees.

Section 27. Governing Law/Venue. This franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this franchise shall be with the Utah State Court in the county in which the City is located, or with respect to any federal question, with the United States District Court for the District of Utah in Salt Lake City, Utah.

Section 28. Effective Date. This Agreement takes effect on the date is signed by the last party to sign.

[signature pages to follow]

HEBER CITY

Name: _____
Title: _____
Date: _____

ATTEST:

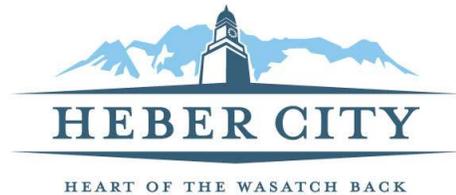
City Clerk
(SEAL)

FIF UTAH, LLC

Name: _____
Title: _____
Date: _____

TAB 2

City Council Staff Report



MEETING DATE: 5-17-2022
SUBJECT: Cultural Heritage
Ordinance 2022-14
RESPONSIBLE: Historic
Preservation Commission
Chairman Michael Moulton
Luke Searle & Matt Brower
DEPARTMENT: Administration
STRATEGIC RELEVANCE: Community Vibrancy

SUMMARY

Chapter 2.50 of Heber City Code was adopted several years ago to specifically organize a Certified Local Government (CLG) Commission (aka Historic Preservation Commission). Working with the State Historic Preservation Office (SHPO) and the Heber City CLG Commission for this past year as well as coming before the city council and making changes based on the council's recommendation, an update to this ordinance is proposed that will help preserve our Historic Buildings and sites in a designated Local Cultural Heritage District. The Historic Preservation Commission (Commission) feels this update imperative to influencing the building of structures that are not conducive to our Historic and Cultural Heritage in these Districts. The ordinance now states a specific purpose of the Historic Preservation Commission is to help and assist property owners as they build or rebuild their historic properties. The Commission's motto is, "What can we do to help?"

The policy question includes the following:

- Should Council adopt Ordinance 2022-14, amending Chapter 2.50 Historic Preservation Commission?

RECOMMENDATION

The City CLG Commission and Staff recommend approval of Ordinance 2022-14, amending Heber City Municipal Code, Section 2.50 Historic Preservation Commission.

BACKGROUND

Although a relatively new form of governmental regulations, historic preservation ordinances are well-grounded legally. In 1978, the U.S. Supreme Court in its landmark decision, Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978), recognized that preserving historic resources is "an entirely permissible governmental goal," and that New York City's historic preservation ordinance was an "appropriate means" to securing that goal. Some states

have also explicitly recognized historic preservation as a legitimate governmental function in their state constitutions. That being said, a local government's ability to regulate historic properties is dependent upon state law. Local governments are creatures of the state and, pursuant to the U.S. Constitution, the authority to regulate private property is reserved to the states. Thus, it is important to ensure that local preservation ordinances are consistent with the authority bestowed on local governments to protect historic resources. This authority may take the shape of a broad delegation of authority (commonly referred to as home rule authority) or special grants of authority that specify what types of properties may be designated, who may designate those properties, the composition of a preservation commission, actions subject to review, and so forth. All the Standards for Rehabilitation and Design Guidelines in the revision of Chapter 2.50 of Heber City Municipal Code come from the State History Preservation Office.

In the last presentation to city council there were concerns about requirements put on property owners and standards rather than guidelines. Those concerns have been addressed in this revision of the ordinance (See section I of 2.50.030 of the ordinance).

Under Utah law, historical districts with authority to impose architecture controls requires neighborhood petitions and a potential ballot measure. Because the intent and the scope of the work is not to function as a design review board, we are calling to create a cultural heritage district in which these guidelines serve as recommendations.

DISCUSSION

Pros to the proposed amendment include having an ordinance that has been adjusted to ensure there are guidelines, but not standards and that we are following state code when establishing a Cultural Heritage District. No identified Cons to adoption of the proposed amendment.

FISCAL IMPACT

Ordinance 2022-14, amending Chapter 2.50 of Heber City Code, does not have a financial impact to the City. Heber City already has an existing Chapter 2.50 that provides for CLG Commission duties; the amendment clarifies and brings the ordinance into compliance with best practices as recommended by the SHPO as well as addresses concerns about property rights. Since the creation of the CLG Commission, there has not been a specific budget appropriation for the Commission, other than providing money for matching state grants. The CLG Commission is an all-volunteer effort, but with all they are attempting to do and the initiatives they have planned, they will need funding from the City. One of the largest funding requirements will be to hire a consultant to formulate a Historic Preservation Master Plan, to guide the formation of a Cultural Heritage District, to build historic monuments and signage in the downtown area and to create an Interpretative or Living History Center.

CONCLUSION

With significant changes and new building construction already happening, adoption of Ordinance 2022-14, amending Chapter 2.50 of Heber City Municipal Code, is necessary before it is too late to do anything more about Historic Preservation.

ALTERNATIVES

- 1. Approve as proposed
 - 2. Approve as amended
 - 3. Continue
 - 4. Deny
-

POTENTIAL MOTIONS

Staff Recommended Option – Approval

I move to **approve** *Ordinance 2022-14* as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 – Continuance

I move to **continue** *Ordinance 2022-14* to another meeting on [DATE], with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 3 – DENIAL

I move to **deny** *Ordinance 2022-14* with the following findings.

ACCOUNTABILITY

Department: Administration Department
Staff Member: Luke Searle and Matt Brower

EXHIBITS

Exhibit 1: Ordinance 2022-14

Exhibit 2: Redline Strikeout Version of proposed Amendment to Chapter 2.50 of City Code

Exhibit 3: Proposed Map

Exhibit

1

ORDINANCE NO. 2022-14

AN ORDINANCE AMENDING HEBER CITY MUNICIPAL CODE, CHAPTER 2.50 HISTORIC PRESERVATION COMMISSION.

BE IT ORDAINED by the City Council of Heber City, Utah, Chapter 2.50 of Heber City Municipal Code, be amended to read as follows:

2.50 Historic Preservation Commission

2.50.010 Purpose

- A. Heber City recognizes that the historical and cultural heritage of the community is among its most valued and important assets. It is therefore the intent of Heber City to identify, preserve, protect, and enhance historic buildings, structures, sites, objects, and districts lying within the city limits of Heber City.
- B. Heber City recognizes we have very few historic buildings standing. We do have significant stories of those who have built this community, our founders and forefathers—our Heritage. The Preservation Commission will identify, protect, and enhance our heritage through in all ways possible making a “declaration of remembrance.”
- C. As our unprecedented growth occurs, we also want to protect and enhance the cultural foundations that makes our community such a desirable place to live for all who already reside here, and for all who are moving here.
- D. The Preservation Commission becomes a resource to Property Owners, not an obstacle to Property Rights, Preservation, and Improvement, with the Board’s mission, “What can we do to help?”

2.50.020 Created – Membership

- A. Historic Preservation Commission (Commission) is hereby established with the following provisions:
 - 1. Said Commission shall consist of at least five voting members, plus two non-voting alternates that vote in the event said alternates participate on the Commission in place of voting members, and a non-voting member of the City Council. Each member should have a demonstrated interest, competence, or knowledge in historic preservation, construction, facility management, administration and/or community service. Each member shall be appointed by the Mayor with advice and consent of the City Council.
 - 2. To the extent available in the community, two Commission members shall be professionals, as defined by National Park Service regulations, from the disciplines of history, and architecture, or architectural history, engineering or law.

3. The terms of office for the appointive members of such Commission shall be two, four, and six years. Two shall be appointed for two years, two shall be appointed for four years, and one shall be appointed for six years. The term of office for the alternate(s) shall be for two years. Thereafter, the terms of office for each appointive member, except for the alternate(s), shall be six years. Vacancies occurring otherwise than through the expiration of term shall be filled by appointment by the Mayor, with the consent of the City Council.
- B. The Commission will meet at least twice each year or more as needed, and conduct business in accordance with the Open Public Meeting laws of Utah. This includes public notification of meeting place, time, and agenda items.

2.50.030 Commission Duties

- A. Advise the City Council and other interested parties in the community on matters related to historic preservation and history.
- B. Coordinate with other City entities and community organizations related to the community's history and cultural affairs.
- C. Conduct surveys of local historic properties in compliance with standards set by the State Historic Preservation Office.
- D. Maintain an inventory of surveyed historic properties, including site forms and related support materials, in a publicly accessible location.
- E. Participate in planning and land-use processes undertaken by the City that have the potential to affect historic properties.
- F. Promote and conduct educational and interpretive programs related to the community's history and historic properties.
- G. Review and comment to the State Historic Preservation Office regarding all proposed National Register nominations of properties in the community.
- H. Apply for and administer grants and other financial aid for historic preservation and history related projects in the city.
- I. The Preservation Commission should be a resource and support to Property Owners. It is not the intent of the Commission to unduly burden or be an obstacle to Property Rights, Preservation, and Improvement.

2.50.040 Standards for Rehabilitation and Design

It is specifically not the intent of this Ordinance or Section to create a Historic District, nor that any provision herein be interpreted to do so, nor to violate State Code Section 10-9a-534, *Regulation of building design elements prohibit -- Exceptions*. In the event there is any conflict between State Code and this Ordinance, as to either creation of a Historic District, or prohibited regulation of building design elements, (specifically State Code Section 10-9a-534), this Ordinance and its above described intent shall govern and prevail.

The following suggested guidelines shall be used by the Historic Preservation Commission in advising the City Council and other parties on the appropriate treatment of historic properties.

Design Guidelines for Rehabilitation. It is anticipated that the following guidelines would be implemented as talking points for discussions associated with potential or anticipated rehabilitation of historic properties. These guidelines should apply to historic buildings of all periods, styles, types, materials, and sizes. They should apply to both the exterior and the interior of historic buildings. The guidelines also encompass related landscape features and the building's site and environment as well as attached, adjacent, or related new construction.

1. A property should be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property should be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property should be avoided.
3. Each property should be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, should not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right should be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property should be preserved.
6. Encouragement that deteriorated historic features should be repaired rather than replaced, where it is financially reasonable to do so. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features should be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials should not be used. The surface cleaning of structures, if appropriate, should be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project should be protected and preserved. If such resources must be disturbed, mitigation measures should be undertaken.
9. New additions, exterior alterations, or related new construction should not destroy historic materials that characterize the property. The new work should be differentiated from the old and should be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction should be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

This Ordinance shall take effect immediately upon passage.

ADOPTED and PASSED by the City Council of Heber City, Utah this _____ day of _____, 2022, by the following vote:

AYE NAY

Council Member Rachel Kahler

Council Member Ryan Stack

Council Member Mike Johnston

Council Member Yvonne Barney

Council Member Scott Phillips

APPROVED:

Mayor Heidi Franco

ATTEST:

_____ Date: _____

RECORDER

Date of First Recording:

Exhibit

2

2.50 Historic Preservation Commission

2.50.010 Purpose

- A. Heber City recognizes that the historical and cultural heritage of the community is among its most valued and important assets. It is therefore the intent of Heber City to identify, preserve, protect, and enhance historic buildings, structures, sites, objects, and districts lying within the city limits of Heber City.
- B. Heber City recognizes we have very few historic buildings standing. We do have significant stories of those who have built this community, our founders and forefathers—our Heritage. The Preservation Commission will identify, protect, and enhance our heritage through in all ways possible making a “declaration of remembrance.”
- C. As our unprecedented growth occurs, we also want to protect and enhance the cultural foundations that makes our community such a desirable place to live for all who already reside here, and for all who are moving here.
- D. The Preservation Commission becomes a resource to Property Owners, not an obstacle to Property Rights, Preservation, and Improvement, with the Board’s mission, “What can we do to help?”

2.50.010 020 Created - Membership

- A. Historic Preservation Commission (Commission) is hereby established with the following provisions:
 - 1. Said Commission shall consist of at least five voting members, plus two non-voting alternates that vote in the event said alternates participate on the Commission in place of voting members, and a non-voting member of the City Council. Each member should have with a demonstrated interest, competence, or knowledge in historic preservation, construction, facility management, administration and/or community service. Each member shall be appointed by the Mayor with advice and consent of the City Council. ~~for terms of not less than two years, with three two-year terms, and two four-year terms.~~
 - 2. To the extent available in the community, two Commission members shall be professionals, as defined by National Park Service regulations, from the disciplines of history, and architecture, ~~or~~ architectural history, engineering or law.
 - 3. The terms of office for the appointive members of such Commission shall be two, four, and six years. Two shall be appointed for two years, two shall be appointed for four years, and one shall be appointed for six years. The term of office for the alternate(s) shall be for two years. Thereafter, the terms of office for each appointive member, except for the alternate(s), shall be six years. Vacancies occurring otherwise than through the expiration of term shall be filled by appointment by the Mayor, with the consent of the City Council.

- B. The Commission will meet at least twice each year or more as needed, and conduct business in accordance with the Open Public Meeting laws of Utah. This includes public notification of meeting place, time, and agenda items.

2.50.020 Meetings

- ~~A. The Commission will meet at least twice each year and conduct business in accordance with the Open Public Meeting laws of Utah. This includes public notification of meeting place, time, and agenda items.~~

2.50.030 Commission Duties

- ~~A. Survey and Inventory Community Historic Resources.~~

- ~~1. The Commission shall conduct or cause to be conducted a survey of the historic, architectural, and archaeological resources within the community. The survey shall be compatible with the Utah Inventory of Historic and Archaeological Sites. Survey and Inventory documents shall be maintained and open to the public. The survey will updated at least every ten years.~~

- ~~B. Review Proposed Nominations to the National Register of Historic Places.~~

- ~~1. The Commission shall review and comment to the State Historic Preservation Officer on all proposed National Register nominations for properties within the boundaries of the community. When the Commission considers a National Register nomination which is normally evaluated by professionals in a specific discipline and that discipline is not represented on the Commission, the Commission will seek expertise in this area before rendering its decision.~~

- ~~C. Provide advice and information.~~

- ~~1. The Commission shall act in an advisory role to other officials and departments of government regarding the identification and protection of local historic and archaeological resources.~~
- ~~2. The Commission shall work toward the continuing education of citizens regarding historic preservation and the community's history.~~

- ~~D. Enforcement of Local Historic Preservation Laws.~~

- ~~1. (Note – If Heber City has passed, or proposed to pass local laws for the review of alterations, proposed demolition, or new construction as it affects local historic resources, such legislation should be included here along with provisions for enforcement by the Historic Preservation Commission.)~~

- ~~E. Enforcement of State Historic Preservation Laws.~~

- ~~1. The Commission shall support the enforcement of all state laws relating to historic preservation and the protection of Utah antiquities; and such state laws regarding notification of the State Historic Preservation Office or any known proposed action which will destroy or affect a site, building, or object owned by the State of Utah and included on or eligible for the State or National Registers.~~
- A. Advise the City Council and other interested parties in the community on matters related to historic preservation and history.
- B. Coordinate with other City entities and community organizations related to the community's history and cultural affairs.
- C. Conduct surveys of local historic properties in compliance with standards set by the State Historic Preservation Office.
- D. Maintain an inventory of surveyed historic properties, including site forms and related support materials, in a publicly accessible location.
- E. Participate in planning and land-use processes undertaken by the City that have the potential to affect historic properties.
- F. Promote and conduct educational and interpretive programs related to the community's history and historic properties.
- G. Review and comment to the State Historic Preservation Office regarding all proposed National Register nominations of properties in the community
- H. Apply for and administer grants and other financial aid for historic preservation and history-related projects in the city.
- I. The Preservation Commission should become a resource to Property Owners. It is not the intent of the Commission to unduly burden or be an obstacle to Property Rights, Preservation, and Improvement.

2.50.040 Standards for Rehabilitation and Design Guidelines

It is specifically not the intent of this Ordinance or Section to create a Historic District, nor that any provision herein be interpreted to do so, nor to violate State Code Section 10-9a-534, Regulation of building design elements prohibit -- Exceptions. In the event there is any conflict between State Code and this Ordinance, as to either creation of a Historic District, or prohibited regulation of building design elements, (specifically State Code Section 10-9a-534), this Ordinance and its above described intent shall govern and prevail.

The following suggested guidelines shall be used by the Historic Preservation Commission

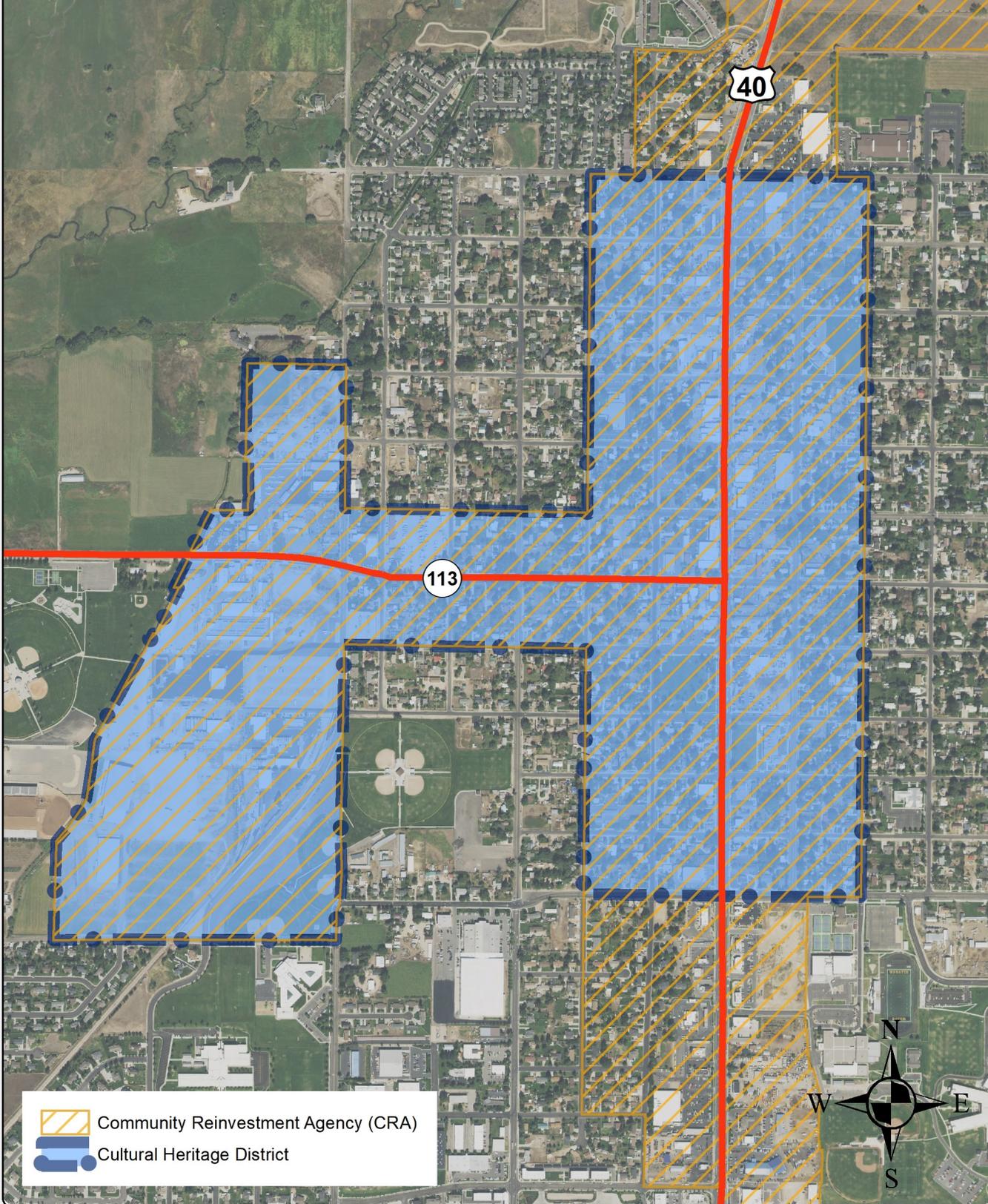
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It is anticipated that the following guidelines would be implemented as talking points for discussions associated with potential or anticipated rehabilitation of historic properties. These guidelines should apply to historic buildings of all periods, styles, types, materials, and sizes. They should apply to both the exterior and the interior of historic buildings. The guidelines also encompass related landscape features and the building's site and environment as well as attached, adjacent, or related new construction.

1. A property should be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property should be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property should be avoided.
3. Each property should be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, should not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right should be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property should be preserved.
6. Deteriorated historic features should be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features should be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials should not be used. The surface cleaning of structures, if appropriate, should be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project should be protected and preserved. If such resources must be disturbed, mitigation measures should be undertaken.
9. New additions, exterior alterations, or related new construction should not destroy historic materials that characterize the property. The new work should be differentiated from the old and should be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction should be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Exhibit

3



 Community Reinvestment Agency (CRA)
 Cultural Heritage District

TAB 3

City Council Staff Report



MEETING DATE: May 17, 2022
SUBJECT: 67 E 200 N Zone Change,
Ord 2022-10
RESPONSIBLE: Jamie Baron
DEPARTMENT: Planning Department
STRATEGIC RELEVANCE: Community and Economic
Development

SUMMARY

Jeremy Clark is requesting a zone change from R-3 Residential to C-3 Commercial for the property located at 67 E 200 N, containing 0.46 acres. The Council requested staff to amend the agreement and come back.

The policy questions include the following:

1. Should the City change the zoning of the property from R-3 Residential to C-3 Commercial?
2. What conditions does the Council want to see in a Zone Change Agreement?

RECOMMENDATION

The Planning Commission forwarded a positive recommendation on March 8, 2022. Staff is recommending approval of Ord. 2022-10 with the associated agreement.

BACKGROUND

During the May 3, 2022 meeting the Council discussed the request and provided the following comments.

- Desire to keep the home
- Limit the height to 2 stories
- Don't require any additional right of way
- 8' masonry wall where desired by the adjacent residential property

The applicant was at the meeting online, but got called away by the time the council discussed the item.

Staff has changed the agreement based on the comments of the Council, however during discussions with the applicant, there is not a consensus on the following issues.

- The home has to remain
- Limiting the height to 2 stories

DISCUSSION

HEIGHT

The applicant is concerned with the 2 story height limit. The applicant is requesting that the height requirement be the same as the other properties within the zone. Staff has outlined the current temporary ordinance limiting the height to 3 stories and 46 feet. The applicant is willing to consider that height.

FISCAL IMPACT

N/A

CONCLUSION

Jeremy Clark is requesting to change the zoning of the 0.46 acre parcel at 67 E 200 N from R-3 Residential to C-3 Commercial. The Planning Commission held a public hearing and forwarded a positive recommendation. Staff is recommending the Council approve the request with the following findings and conditions:

Findings

1. The Planning Commission held a public hearing on February 22, 2022.
2. The Planning Commission forwarded a positive recommendation on March 8, 2022.
3. The zone change is consistent with the General Plan.

Conditions

1. An agreement shall be entered into to incorporate all conditions of approval.
2. All aerial utilities on or that front the property shall be undergrounded.
3. An 8' masonry wall shall be built along all adjacent residential properties, at the request of the residential property owner.
4. A new sewer lateral connecting the building to the sewer main in 200 N shall be installed at the request of the City.
5. Any additional conditions of the City Council: _____.

ALTERNATIVES

Approve
Continue
Deny

POTENTIAL MOTIONS

Staff Recommendation – Approval

“I move to **approve** Ordinance 2022-10 and associated agreement with the findings and conditions in the conclusion of the staff report.”

ACCOUNTABILITY

Department: Planning Department
Staff Member: Jamie Baron

EXHIBITS

1. Updated agreement
2. May 3, 2022 Staff Report

Exhibit 1

ZONE CHANGE AGREEMENT
67 E 200 N

THIS AGREEMENT is entered into this _____ day of _____, 2022, by and between Heber City (the "City") and Jeremy Clark (the "Petitioner").

WHEREAS, Petitioner has submitted a petition to amend the Zoning Map to apply the C-3 Commercial Zone to the property identified in Exhibit 1, located at 67 East 200 North; and

WHEREAS, the City finds the rezoning of this Property is consistent with the General Plan; and

WHEREAS, specific conditions of the zone change request have been identified as requirements by the City;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Upon redevelopment of the property, all aerial utility lines located thereon, or on the frontage of the property, shall be placed underground.
- ~~2. An 8' masonry wall shall be provided along shared property lines with adjacent residential properties, at the request of the adjacent residential property owners, between and along shared property lines with adjacent residential properties to provide a barrier between Developer's commercial property, and said adjacent residential properties~~
- ~~3. Preference is given to the preservation of the existing home. In the case of redevelopment, the height shall be limited to a height of 2 stories.~~
- ~~2. .~~
- ~~3. Upon redevelopment, or upon request by the City, whichever shall first occur, Petitioner shall dedicate to the City, (at no cost to the City) through a Warranty Deed or by a Dedication Plat, an additional 4.75 ft. of frontage along 200 North needed for the 92 ft wide Historic Business Core roadway cross section, as shown in the Heber City Standard Drawings.~~
4. Upon redevelopment, or upon request by the City, whichever shall first occur; Petitioner shall install at its own expense, a new private sewer lateral line serving the 67 East 200 North Parcel, and connecting said lateral into the City's sewer main located in 200 North.
5. Once this Agreement is signed by the respective parties with the requisite authority to bind the City and the Petitioner, it shall be recorded with Wasatch County Recorder. Thereafter, the Zone Change Ordinance will be executed by Heber City and these obligations will become binding upon the Parties.
6. This Agreement and the attached Exhibits, contain the entire agreement between the parties and no statements, promises or inducements made by either Party shall be binding unless modified by a written document approved by both Parties.

Formatted: List Paragraph, No bullets or numbering

7. This Agreement shall be a covenant running with the land and shall be binding upon the Parties and their assigns and successors in interest.
8. In the event there is a failure to perform any of the obligations of this Agreement and it becomes necessary for either party to employ the services of an attorney, whether such attorney is inside counsel or private counsel, either with or without litigation, on appeal or otherwise, the prevailing party in the controversy shall be entitled to recover its reasonable attorney's fees and any costs and expenses incurred to enforce this agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands the day and year first above written.

HEBER CITY:

By: _____
Heidi Franco, Mayor

ATTEST:

Heber City Recorder

Petitioner:

By: _____
Jeremy Clark

STATE OF UTAH)
 : Ss.
COUNTY OF WASATCH)

On this _____ day of _____, 2022, personally appeared before me the above named authorized representative of Petitioner, who duly acknowledged to me that Petitioner is the owner in fee of the land described herein and executed the same as such.

NOTARY PUBLIC

EXHIBIT 1: LEGAL DISCRIPTION

Parcel ID: 00-0005-3715

Exhibit 2

City Council Staff Report



MEETING DATE: May 3, 2022
SUBJECT: 67 E 200 N Zone Change,
Ord 2022-10
RESPONSIBLE: Jamie Baron
DEPARTMENT: Planning Department
STRATEGIC RELEVANCE: Community and Economic
Development

SUMMARY

Jeremy Clark is requesting a zone change from R-3 Residential to C-3 Commercial for the property located at 67 E 200 N, containing 0.46 acres. The Planning Commission has forwarded a positive recommendation of the request.

The policy questions include the following:

1. Should the City change the zoning of the property from R-3 Residential to C-3 Commercial?
2. What conditions does the Council want to see in a Zone Change Agreement?

RECOMMENDATION

The Planning Commission forwarded a positive recommendation on March 8, 2022. Staff is recommending approval of Ord. 2022-10 with the associated agreement.

BACKGROUND

The property at 67 E 200 N is currently a residential property containing an old sand stone house and is located half a block off main street, behind the Jimmy Johns and Spin Café. The property is not listed on the historic registry. The applicant seeks to covert the property to C-3 Commercial.

The applicant has not provided any conceptual development plans at this time.



The City Council was introduced to this request during the April 5, 2022 Council Work Meeting. The Council indicated that the request should be brought forward to a future meeting for consideration. Staff has worked with the applicant on a zone change agreement.

DISCUSSION

GENERAL PLAN

The Envision Heber 2050 General Plan identifies this property as part of the Down Town, which extends to 200 E on the map. The Down Town is identified as the following:

District Type	Uses	Density Range/Scale	Key Characteristics
Downtown (600 South to 500 North, 200 East to 200 West) (DT)	A mixed use town center with historical architecture and active open spaces	14 to 30 units per acre Up to 4 story heights (interior block locations encouraged) Consider 2 story minimum height	Small business storefronts with historic architectural elements on first floors along Main Street. Interior block commercial/office uses blending with higher density residential. East/west streets to include diagonal parking and bike accommodations.

PUBLIC HEARING

The Planning Commission held a public hearing on February 22, 2022 and received the following comments:

Against the Zone Change (4-5 residents)

- The property is an old historic home.
- Concern on the impact of the increasing commercial onto the existing residents.
- Preserve the current nature of the area.

For the Zone Change (1 resident)

- The property is half a block off of Main Street, the change is welcomed.
- Supports the down town area and Main Street.

The item was continued until the March 8, 2022 meeting so the Planning Commission had time to reflect on the Public Comment.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission heavily debated the request, with the debate centered around whether the zone change request should be denied and let the potential new Down Town Zone establish the future of the property, or if the request should be approved prior to the completion of that process. The vote was split 5-1, with the Planning Commission forwarding a positive recommendation the City Council to approve the zone change, along with a zone change agreement.

The key points of the debate were (summarized):

- The down town zoning will determine what this property could become and the zone change should wait.
- The City has been trying to get investment in the down town for years, why delay it? The C-3 zoning is adequate until the new zoning is established.
- Our current zoning already has residential mitigation requirements built into it.

AGREEMENT

The attached agreement contains the following conditions of the zone change.

- Undergrounding of all aerial utilities upon redevelopment.
- 8 foot tall masonry wall along shared property lines with residential properties.
- Right of Way dedication for an additional 4.75 feet to meet the new 92 foot cross section for the historic down town area. This is to promote 45 degree angle parking on the street between the 100's and Main Street.
- Install a new sewer lateral for the property at 67 E 200 N, that would connect into the sewer main in 200 N. As part of the downtown water and sewer project, the City is trying to eliminate sewer laterals that cross properties. The sewer of this property crosses other properties.

FISCAL IMPACT

N/A

CONCLUSION

Jeremy Clark is requesting to change the zoning of the 0.46 acre parcel at 67 E 200 N from R-3 Residential to C-3 Commercial. The Planning Commission held a public hearing and forwarded a positive recommendation. Staff is recommending the Council approve the request with the following findings and conditions:

Findings

1. The Planning Commission held a public hearing on February 22, 2022.
2. The Planning Commission forwarded a positive recommendation on March 8, 2022.
3. The zone change is consistent with the General Plan.

Conditions

1. An agreement shall be entered into to incorporate all conditions of approval.
2. All aerial utilities on or that front the property shall be undergrounded.
3. An 8' masonry wall shall be built along all adjacent residential properties.
4. 4.75' of additional right of way shall be dedicated to the City.
5. A new sewer lateral connecting the building to the sewer main in 200 N shall be installed at the request of the City.
6. Any additional conditions of the City Council: _____.

ALTERNATIVES

Approve
Continue
Deny

POTENTIAL MOTIONS

Staff Recommendation – Approval

“I move to **approve** Ordinance 2022-10 and associated agreement with the findings and conditions in the conclusion of the staff report.”

ACCOUNTABILITY

Department: Planning Department
Staff Member: Jamie Baron

EXHIBITS

1. Area Map
2. Zoning Map
3. General Plan
4. Ordinance 2022-10
5. Agreement

Exhibit 1



Exhibit 2

Exhibit 3

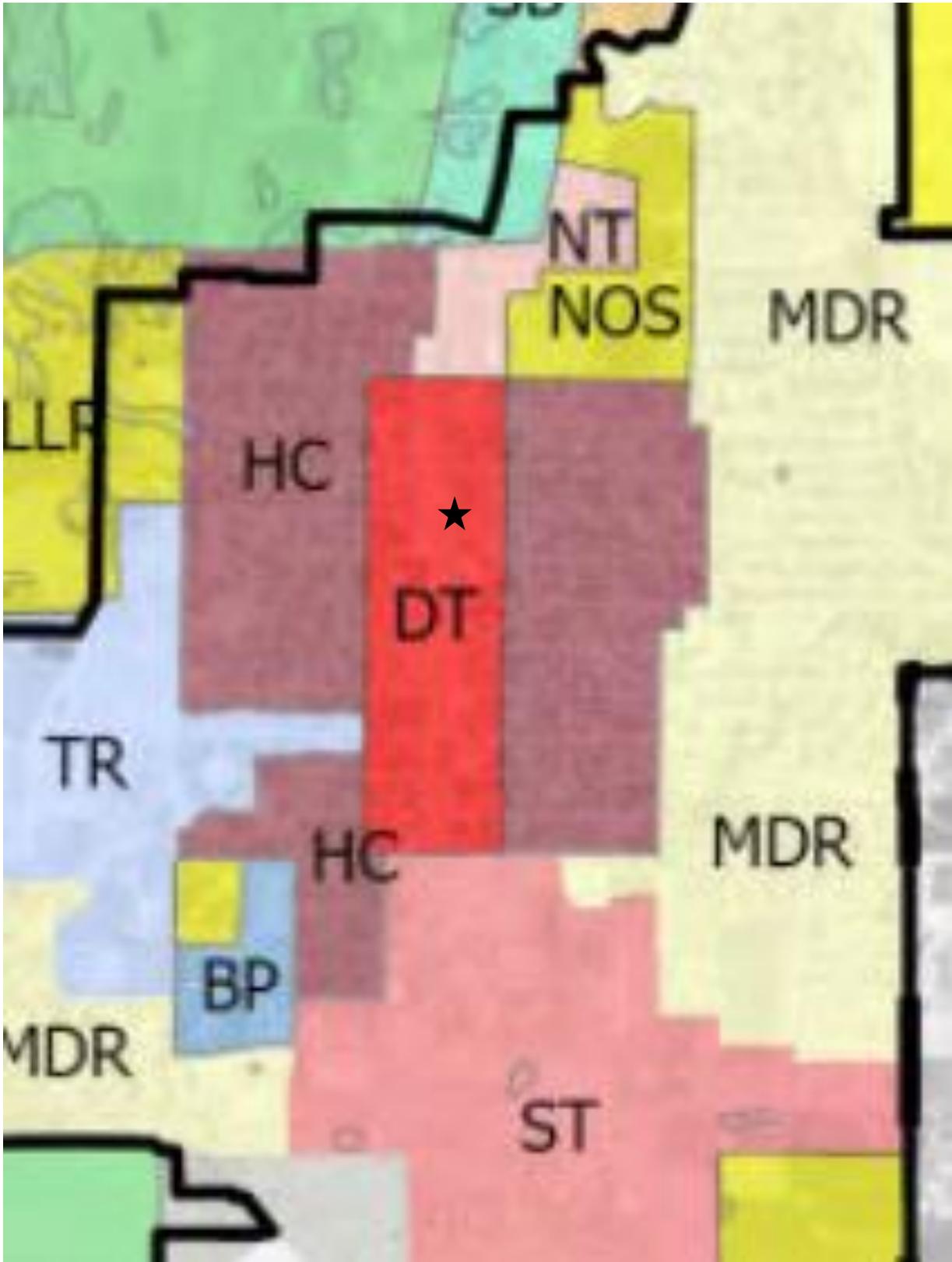


Exhibit 4

ORDINANCE NO. 2022-10

AN ORDINANCE AMENDING THE ZONE MAP FROM R-3 RESIDENTIAL TO C-3 COMMERCIAL FOR PARCEL 00-0005-3715.

BE IT ORDAINED by the City Council of Heber City, Utah that the Zoning Map is **AMENDED** to apply the C-3 Commercial Zone to the property described in Exhibit 1.

This Ordinance shall take effect immediately upon passage.

ADOPTED and PASSED by the City Council of Heber City, Utah this ____ day of _____, 2022, by the following vote:

	AYE	NAY
Council Member Rachel Kahler	_____	_____
Council Member Mike Johnston	_____	_____
Council Member Ryan Stack	_____	_____
Council Member Scott Phillips	_____	_____
Council Member Yvonne Barney	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

_____ Date: _____

RECORDER

Date of First Recording: _____

EXHIBIT 1: GENERAL PLAN AND ZONE CHANGE LEGAL DISCRPTION

Parcel ID: 00-0005-3715

Exhibit 5

ZONE CHANGE AGREEMENT
67 E 200 N

THIS AGREEMENT is entered into this _____ day of _____, 2022, by and between Heber City (the “City”) and Jeremy Clark (the “Petitioner”).

WHEREAS, Petitioner has submitted a petition to amend the Zoning Map to apply the C-3 Commercial Zone to the property identified in Exhibit 1, located at 67 East 200 North; and

WHEREAS, the City finds the rezoning of this Property is consistent with the General Plan; and

WHEREAS, specific conditions of the zone change request have been identified as requirements by the City;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Upon redevelopment of the property, all aerial utility lines located thereon, or on the frontage of the property, shall be placed underground.
2. An 8’ masonry wall between and along shared property lines with adjacent residential properties to provide a barrier between Developer’s commercial property, and said adjacent residential properties.
3. Upon redevelopment, or upon request by the City, whichever shall first occur; Petitioner shall dedicate to the City, (at no cost to the City) through a Warranty Deed or by a Dedication Plat, an additional 4.75 ft. of frontage along 200 North needed for the 92 ft wide Historic Business Core roadway cross section, as shown in the Heber City Standard Drawings.
4. Upon redevelopment, or upon request by the City, whichever shall first occur; Petitioner shall install at its own expense, a new private sewer lateral line serving the 67 East 200 North Parcel, and connecting said lateral into the City’s sewer main located in 200 North.
5. Once this Agreement is signed by the respective parties with the requisite authority to bind the City and the Petitioner, it shall be recorded with Wasatch County Recorder. Thereafter, the Zone Change Ordinance will be executed by Heber City and these obligations will become binding upon the Parties.
6. This Agreement and the attached Exhibits, contain the entire agreement between the parties and no statements, promises or inducements made by either Party shall be binding unless modified by a written document approved by both Parties.
7. This Agreement shall be a covenant running with the land and shall be binding upon the Parties and their assigns and successors in interest.
8. In the event there is a failure to perform any of the obligations of this Agreement and it becomes necessary for either party to employ the services of an attorney, whether such attorney

is inside counsel or private counsel, either with or without litigation, on appeal or otherwise, the prevailing party in the controversy shall be entitled to recover its reasonable attorney's fees and any costs and expenses incurred to enforce this agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands the day and year first above written.

HEBER CITY:

By: _____
Heidi Franco, Mayor

ATTEST:

Heber City Recorder

Petitioner:

By: _____
Jeremy Clark

STATE OF UTAH)
 : Ss.
COUNTY OF WASATCH)

On this _____ day of _____, 2022, personally appeared before me the above named authorized representative of Petitioner, who duly acknowledged to me that Petitioner is the owner in fee of the land described herein and executed the same as such.

NOTARY PUBLIC

EXHIBIT 1: LEGAL DISCRPTION

Parcel ID: 00-0005-3715

TAB 4

City Council Staff Report

MEETING DATE: May 17, 2022
SUBJECT: Ordinance 2022-06
Approving DMJ Annexation
RESPONSIBLE: Anthony L. Kohler,
Planning Director
DEPARTMENT: Planning Department
STRATEGIC RELEVANCE: Community Development



SUMMARY

The DMJ Annexation was previewed by Council on January 4, March 1, April 19, 2022 and May 3. The next step involves finalizing the Master Development Agreement (MDA) and approving the annexation.

The policy questions include the following:

- Should Council adopt Ordinance 2022-06, approving the DMJ Annexation and accompanying MDA?

RECOMMENDATION

Staff recommends Council discuss potential changes to the MDA and adopt Ordinance 2022-06, approving the DMJ Annexation and accompanying MDA.

BACKGROUND

The DMJ Annexation process has included the following reviews.

- May 5, 2020: Council accepted petition for further study
- June 15: Petition Certified
- July 15, 2020: End of Protest Period
- August 11, 2020: Planning Commission review
- August 25, 2020: Planning Commission review and recommendation
- September 15, 2020: Council Public Hearing
- January 4, 2022: Council Work Meeting Review
- March 1, 2022: Council Work Meeting Review
- April 19, 2022: Council Work Meeting Review
- May 3, 2022: Council Work Meeting Review

- May 17, 2022: Council Work Meeting Review and Potential Adoption

The DMJ Annexation has completed all steps necessary for annexation and may be approved by Council by vote on Ordinance 2022-06. Following Council approval, there are several steps in finalizing the annexation, including County Surveyor signature, City Plat and Ordinance signatures, State Lt. Governor's Office approval and finally, recording the final plat, Ordinance and MDA at the County Recorder's Office.

DISCUSSION

The following changes have been made to simplify the MDA, based on Council feedback at the last meeting:

- 3.31: Make it clear there is not a TDR mechanism for potential extra ERUs; clarify that the City is neutral on the issue of excess JSSD ERUs; remove restriction on square footage for dwellings; remove reference to 1.6 acre parking lot gift and associated impact fee offsets.
- 3.4: Remove parcel sales.
- 3.4: Remove Moderate Income Housing.
- 4.1: Add requirement for developer to meet future storm water plans.
- 4.3 thru 4.5: Remove Vested Rights section that vests development under all of city's current laws. This has the impact of requiring development to meet any future altered City laws.
- 4.3: Term of Agreement, add reference that agreement expires either at final certificate of occupancy or 5 years, whichever comes first.
- 4.7: Remove Moratorium.
- 5.2 thru 6: Remove mediation, arbitration, development processing and future City laws.
- 7.2 thru 7.4: Remove reference to trailhead parking and open space dedication processes.
- 8.7.1: Clarify Infrastructure Plan includes Civil Drawings.
- 8.9: Remove Public Infrastructure District.
- 12.3: Development will meet future stormwater requirements.
- 14.3: Remove references to deleted sections relating to arbitration/mediation.
- Changes to Section number references to match above changes.
- All Industrial references deleted
- Page 1: Replaced date with underline
- Deleted craftsman word page 12
- Page 12, 6.1: requires developer to build a trail along the Timpanogos Canal if applicable entities such as canal owner, the City and adjoining property owners can agree to the trail.
- Page 18 deleted mass grading term

FISCAL IMPACT

The proposed development will create jobs, and provide commercial property tax and sales tax, resulting in a positive impact to the City's budget.

CONCLUSION

1. The proposed DMJ Annexation is consistent with the:
 - a) Heber City Annexation Policy Plan;
 - b) Heber City General Plan; and
 - c) The North Village Overlay Zone (NVOZ).

2. The proposed DMJ MDA benefits the City in the following ways:
 - a) Limits the development to include only non-residential development;
 - b) Creates the seed money to begin the purchase of development rights in the North Fields;
 - c) Ensures the MDA can be amended by the City and master developer if need be without a sub-developer subverting those efforts; and
 - d) Ensures the development will comply with the City's future Storm Water and Transportation Master Plans.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Staff Recommended Option – Approve

I move to **ADOPT Ordinance 2022-06**, approving the DMJ Annexation and associated MDA as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 – Approve as Amended

I move to **ADOPT Ordinance 2022-06**, approving the DMJ Annexation and associated MDA with the findings and conditions as presented in the conclusion above, with the following changes:

Alternative 3 – Continue

I move to **CONTINUE Ordinance 2022-06** to another meeting on [DATE], with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 – Deny

I move to **DENY Ordinance 2022-06** with the following findings.

ACCOUNTABILITY

Department: Planning Department, Planning Director
Staff Member: Anthony L. Kohler

EXHIBITS

Exhibit 1: Ordinance 2022-06 and Accompanying MDA
Exhibit 2: PowerPoint Presentation

Exhibit 1

ORDINANCE NO. 2022-06

AN ORDINANCE APPROVING THE DMJ ANNEXATION LOCATED AT THE NORTH WEST CORNER OF THE INTERSECTION OF HIGHWAY 32 AND OLD HIGHWAY 40.

BE IT ORDAINED by the City Council of Heber City, Utah, the properties described in Exhibit A, as illustrated in Exhibit B, are hereby annexed into the City of Heber City, Utah, and the properties contained therein shall initially have the zoning designation of North Village Overlay Zone (NVOZ).

This Ordinance shall take effect immediately upon passage, but not prior to the execution of the Master Development Agreement illustrated in Exhibit C.

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this _____ day of _____ 2022.

	AYE	NAY	ABSENT	ABSTAIN
Rachel Kahler	_____	_____	_____	_____
Michael Johnston	_____	_____	_____	_____
Ryan Stack	_____	_____	_____	_____
Scott Phillips	_____	_____	_____	_____
Yvonne Barney	_____	_____	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

RECORDER

Date: _____

Exhibit A: Legal Description

THE RLP FUND, LC ENTRY NO. 354261

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 0°15'09" EAST 852.56 FEET ALONG THE NORTH-SOUTH CENTER OF SECTION LINE (BASIS OF BEARINGS) TO THE NORTHERLY RIGHT OF WAY LINE OF PROJECT NO SP-1776, SAID POINT BEING NORTH 62°38'22" WEST 28.34 FEET FROM A 1989 BRASS CAP RIGHT OF WAY MARKER AT STATION 19+05.5 ON THE WEST LINE OF SAID PROECT; THENCE NORTH 62°38'22" WEST 144.30 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO THE EAST RIGHT OF WAY LINE OF THE OLD US 40 PROJECT NO. F-019-1(1); THENCE NORTH 13°14'33" WEST 814.81 FEET ALONG SAID EAST RIGHT OF WAY LINE TO THE NORTH LINE OF SAID SECTION 18; THENCE SOUTH 88°43'38" EAST 311.13 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

SPV FUNDING LLC ENTRY NO. 363459

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 18 (BASIS OF BEARING BEING 89°41'45" EAST 2647.680 FEET BETWEEN SAID NORTH QUARTER CORNER AND THE NORTHEAST CORNER OF SECTION 18); AND RUNNING THENCE NORTH 89°41'45" EAST ALONG THE NORTH LINE OF SAID SECTION 18 FOR 435.09 FEET TO THE INTERSECTION OF SAID NORTH LINE AND THE WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) CALLS: SOUTH 24°33'42" WEST FOR 805.05 FEET; THENCE SOUTH 27°47'41" WEST FOR 153.37 FEET; THENCE NORTH 62°38'22" WEST FOR 28.34 FEET TO A POINT ON THE QUARTER SECTION LINE OF SAID SECTION 18; THENCE NORTH 00°15'09" WEST ALONG SAID QUARTER SECTION LINE FOR 852.56 FEET TO THE POINT OF BEGINNING.

Parcels

00-0007-7532

00-0020-7956

Exhibit C: Master Development Agreement

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.:

(Space above for Recorder's use only.)

**DEVELOPMENT AGREEMENT
FOR THE
DMJ MIXED USE COMMERCIAL DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT FOR THE DMJ MIXED USE COMMERCIAL DEVELOPMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 2022, by and between HEBER CITY, a political subdivision of the State of Utah (the "**City**"), and DMJ Jordanelle, LLC, a Utah limited liability company ("**DMJ**"). Each of DMJ and the City are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

- A. The capitalized terms used in these Recitals are defined in Section 1.2, below.
- B. DMJ is the owner of approximately 8.717 acres of undeveloped real property situated on the North East corner of Old Highway 40 and State Route 32 in Wasatch County, State of Utah, as more specifically described in **Exhibit A** attached hereto (the "**Property**"). This Agreement and the Site Plan meets the intent of and is guided by the Envision 2050 Heber General Plan.
- C. On _____, 2022, the City approved and adopted, a Site Plan for the Project, subject to the Parties entering into this Agreement and the agreeing to annexation of the Property into the City. Said Site Plan for the Property shall allow for mixed-use development, including commercial uses on the ground floor(s) and support uses on the upper floor, and recreational and open space uses. All such uses, including but not limited to all commercial uses, shall be consistent with the permitted uses in the NVOZ.
- D. Provision of infrastructure to the Property is vital to its development in accordance with the Site Plan and this Agreement, and, consistent with the foregoing, DMJ will prepare an Infrastructure Plan (aka Civil Drawings).
- E. DMJ may not be the developer of the entire Property, but may sell or otherwise convey some or all the Property to one or more Persons who will undertake the actual development work (each a "**Developer**" and together, the "**Developers**"). Notwithstanding that there may be

sub-developers, transferees, purchasers or assignees from the original Developer or Developers, only those parties that DMJ specifically designates in a written agreement as their “Successor”, or “Successor’s in Interest”, shall retain the right and standing to oppose, or seek amendment of this Agreement, or any other subsequent amendment thereto. Any third party not so specifically designated, that may purchase or receive portions, phases, lots or parts of this Development/Project, shall have no standing to oppose or seek amendment of any part of this Agreement, nor have any part in any negotiations to alter, change or amend. Additionally, notwithstanding the foregoing, once all backbone improvements are laid down, implemented and approved by the City, any subsequent Developer, Assignee, Successor, or Successor in Interest obtaining any portion, or part, or phase of this Development/Project by sale, transfer or assignment shall have no standing to oppose or seek to amend any portions of this Development/Project.

F. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of DMJ and its successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a commercial project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

G. The City Council has reviewed this Agreement and determined that it is consistent with the Act, the Zoning Ordinance and the Heber City General Plan, and that it provides for and promotes the health, safety, welfare, convenience, aesthetics, and general good of the community as a whole. The Agreement does not contradict, and specifically complies with, and is governed by Utah Code Ann Section 10-9a. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered into pursuant to the terms of, the Act.

H. DMJ and the City have cooperated in the preparation of this Agreement.

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

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1 **Incorporation.** The foregoing Recitals and **Exhibits A** through **E** are hereby incorporated into this Agreement.

1.2 **Definitions.** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§10-9a-101, *et seq.* (2008).

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any public owned area or public park identified on the Site Plan that is intended to provide services to the community at large, such that it would be considered to be a System Improvement.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Assessment Area** means an area or areas created by the Special Service District pursuant to Utah Code Ann. § 11-42-101, *et seq.* (2008), or other applicable State Law, with the approval of DMJ and other Property Owners, if required, to fund the construction of some or all of the Backbone Improvements.

1.2.8 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular Subdivision or Commercial Site Plan. Backbone Improvements are generally considered to be in the nature of “System Improvements,” as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2008).

1.2.9 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.10 **CC&R’s** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.11 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.12 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.13 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.14 **City Updated North Village Street Master Plan** shall mean the City's Street Master Plan and Street Capital Facilities Plan.

1.2.15 **City Updated North Village Stormwater Master Plan** shall have the meaning provided in Paragraph 12.3.

1.2.16 **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.17 **City's Vested Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date.

1.2.18 **Commercial Site Plan** means a plan submitted to the City for the approval of the development of a portion of the Project that may include, multiple commercial buildings that are not intended to be on individual subdivision lots, are allowed under the applicable Zone.

1.2.19 **Council** means the elected City Council of the City.

1.2.20 **Default** shall have the meaning provided in Paragraph 14.

1.2.21 **Design Guidelines** means the design guidelines referenced in the North Village Over Lay Zone.

1.2.22 **Developer** shall have the meaning provided in Recital E.

1.2.23 **Development Application** means an application to the City for development of a portion of the Project, a Commercial Site Plan, a Building

Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.24 **Development Property** shall have the meaning provided in Section 23.1.

1.2.25 **Development Report** means a report containing the information specified in Section 3.3 submitted to the City by DMJ or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from DMJ.

1.2.26 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.27 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. §10-2-425.

1.2.28 **Eligible Improvements** shall have the meaning provided in Section 8.9.

1.2.29 **Development Entitlements** shall have the meaning provided in Section 3.1 of this Agreement.

1.2.30 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws. For purposes of clarity, the Parties agree that no ERUs shall be allocated to schools and churches.

1.2.31 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. §10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.32 **Highway 40** means a "state highway" type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40.

1.2.33 **Homeowners' Association(s)** means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.34 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.*, (2008).

1.2.35 **Improved Open Space** means open space, including but not limited to that which has been improved with one or more of the following, as selected by the City Manager or his or her designee: first and foremost those amenities listed in the City's Park's Site Plan, churches, schools and associated lands, playgrounds, tennis courts, club houses, swimming pools, trail systems, trail heads, skate parks, volleyball courts, Public Gathering Areas or parks, sports fields, bathrooms, irrigated landscaping, associated paved parking for improved open space, pavilions, playgrounds, trailheads, drinking fountains, natural areas integrated with open spaces and park areas, or other improvements.

1.2.36 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.37 **Intended Uses** means the use of all or portions of the Project for commercial uses, open spaces, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.38 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan is a conceptual/illustrative depiction of the presently anticipated development plan for the Property, which Site Plan may be modified from time-to-time by DMJ to respond to market, engineering and other development objectives.

1.2.39 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.40 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.41 **Mortgagee** means any holder of a lender's beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.42 **Neighborhood Park** means a park that is planned and designed as an amenity to serve and necessary for the use and convenience of a particular Subdivision or Commercial Site Plan (or a group of related Subdivisions or Commercial Site Plans). Neighborhood Parks are not System Improvements and shall be maintained by the applicable Homeowners' Association.

1.2.43 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.44 **North Fields** means that certain real property located generally west of the Property and generally depicted on **Exhibit C** attached hereto.

1.2.45 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.46 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.47 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.48 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development.

1.2.49 **Open Space** means the following: the Town Center Plaza, all parks (regardless of size or type); pedestrian, bicycle, and equestrian trails and pathways; passive open spaces, water features, and natural habitat areas; parkways and commonly maintained natural or landscaped areas; sidewalks, street tree plantings and medians; ballfields and recreational spaces (including, without limitation, any such facilities provided by or upon a school or church site, excepting areas within building footprints other than community gardens); drains and detention basins and swells, canals, protected slope areas, and any other quasi-public area that the City determines to be Open Space as a part of the approval of a Development

Application. Open Space includes, but is not limited to, those areas identified as Open Space in the Site Plan.

1.2.50 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.51 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.52 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.53 **Phase** means the development of a portion of the Project.

1.2.54 **(Intentionally Left Blank)**

1.2.55 **Planning Commission** means the City's Planning Commission.

1.2.56 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.57 **Project Park** means a park identified on the Site Plan that is intended to provide services to the community at large such that it would be considered to be a System Improvement.

1.2.58 **Property Owner or Property Owners** means DMJ Jordanelle, LLC and any other successor-in-interest to DMJ as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.59 **Site Plan** means the plan submitted to the City for the first stage of the approval of a Subdivision or Commercial Development in accordance with the City's Vested Laws.

1.2.60 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.61 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.62 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. §11-36a-102(21). For purposes of this Agreement, DMJ and the City agree that the expansion of the UVU Access Road and the installation of the NE Collector Road are System Improvements.

1.2.63 **Zone** means the City's North Village Overlay District Zone.

1.2.64 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement. The Parties acknowledge and agree that if there is a conflict with this Agreement and the City's current or future laws, then this Agreement shall supersede.

3. **Development of the Property in Compliance with the Site Plan.**

3.1 **Project Density.** Except as may be otherwise augmented hereinafter, Property Owners shall be entitled to and are vested with the right to develop and construct up to 60 ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "**Base Density Entitlements**"). The Base Density Entitlements represent the base density allocation per gross acre allowed by the City's Vested Laws and have been approved pursuant to the City's review of the Site Plan in accordance with the requirements of the North Village Overlay District Zone.

3.2 **Intended Uses by Parcel and Densities.** Intended Uses and Densities currently contemplated for each Parcel are shown on the Site Plan for the Property, which plan has been prepared in compliance with the requirements of the Heber City ordinances set forth in Chapter 18.21 of the City's Vested Laws. Uses on the property shall not include dwelling units on any ground floor.

3.3 **Use of Density.** Notwithstanding the maximum gross density permitted under the Zone, DMJ may allocate the Development Entitlements among any Subdivision or any Commercial Site Plan within the Project.

Accounting for Density for Parcels Sold to Sub-developers. In connection with the sale of any Parcel sold by DMJ to a Developer or Sub-developer, DMJ shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or

Sub-developer, DMJ shall provide the City Recorder with a development report (a “**Development Report**”) identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with DMJ and any material effects of the sale on the Site Plan.

3.3.1 Return of Unused Density. DMJ shall not be entitled to the return or transfer of any unused density. DMJ shall not be allowed to transfer any such ERUs, nor any other development rights to other phases, developments or areas within the Project, nor be given value, be allowed to bank, monetize, be given any credit in value, nor negotiated for any other value or any benefits whatsoever within the Project. Nor shall DMJ be allowed to transfer to any transferee, successor in interest of DMJ, or any other third party that may be affiliated in any manner with the Project.

3.3.2 The City shall not oppose and will remain neutral regarding DMJ’s ability or lack thereof to transfer potential surplus NVSSD ERU’s held by Jordanelle Special Service District (JSSD) to a third party.

3.3.3 Generally, Density approvals include the following:

- Approvals include 3 buildings, with up to 3 floors in each building, not to exceed a total of 125,325 net SF, with associated parking of approximately 211 spaces and in General Conformance with the Site Plan referred to above.
- Consistent with section 5.1 below, the developer is entitled to develop the project in Phases.
- All Ground level floors in the project are limited to commercial uses. A variety of Commercial Support uses are allowed on the top floor - such as Conference Rooms, Break Rooms, Lockers, Offices, and other uses as allowed by zoning; however, any Support Commercial residential uses will be exclusively restricted to individuals who work within the Project, (work force housing), and restricted to only the second or third floors.
- There shall be no more than one (1) dwelling unit for each condominium unit. No building permit for a residential dwelling unit shall be issued until the certificate of occupancy has been issued for the associated commercial space.
- Commercial Store Fronts on the ground floor(s) (respectively), with up to 14’ tall roll-up doors are allowed on all Ground floor sides of the building(s) (south and north sides). Vehicular storage, if desired, is allowed (for fleet vehicles, RVs, Speed Boats, Sprinter Vans, etc.) is allowed on any ground floor level.

- The Developer is allowed to develop and sell, at his option, either a “shell version” of each unit, a finished version or a hybrid partially finished version.
- The Developer intends to file and record Condominium Documentation. In their restrictive covenants (aka CCR’s), Developer will include notices and rules regarding the limitation of residences in the development, because of the unique commercial and residential sharing space of the project. Developer shall specifically provide in notices to residential dwellers that this project is primarily a commercial development, and as such, there is an expectation that there may be commercial type smells, odors, fumes, noises and elements present in and about such dwellings, not otherwise or normally associated or present in typical residential areas.
- Should any Buyer need additional Tenant Improvements, he shall be responsible to submit, process, permit and construct all such Tenant Improvement applications complete with all required Plans subject to the City’s current codes and requirements.
- Should any buyers need additional tenant improvements, such buyer shall be responsible to submit, process, acquire permits, and construct any such improvement, subject to all City approved plans, administrative processes, codes and requirements.
- In the event that there may be any conflicting or ambiguous terms in the NVOZ, the contents of this MDA shall be the prevailing/deciding document.

3.4 Moderate Income Housing Requirements (Intentionally Left Blank)

4. Zoning and Vested Rights.

4.1 **Compliance with City Requirements and Standards.** Except for the future policies, requirements, standards, and conditions within the City Updated North Village Stormwater Master Plan, referenced in Section 12.3, to which Developer and Owners anticipate, acknowledge and consent, Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances,

resolutions, policies and procedures of the City except as otherwise provided in this agreement.

4.2 **Current Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone. The North Village Overlay District Zone (Section 18.21.010 and Section 18.21.060 of the Heber City Code) was approved by the Council on March 16, 2021.

4.3 **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue either for a period of five (5) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs, (the “**Term**”), unless it is terminated in accordance with Section 26. The Term may, at DMJ’s option, be extended for one (1) additional five (5) year period, provided DMJ is not in material default of any provisions of this Agreement and after providing the City with written notice not less than six (6) months prior to the scheduled expiration date. Unless otherwise agreed between the Parties, DMJ vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by the Parties. Upon termination of this Agreement for any reason, the obligations of the Parties to each other created under this Agreement shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner, nor will any rights or obligations of Property Owners or the City intended to run with the land be terminated.

5. **Approval Processes for Development Applications.**

5.1 **Phasing.** The City acknowledges that DMJ, Developers, and Sub-developers who have purchased Parcels of the Property may submit multiple applications from time to time to develop and/or construct portions of the Project in phases.

6. **Open Space, Improved Public Parks, and Trails Requirements.**

6.1 **Development Timing: Open Space, Neighborhood Parks, and Trails.** Trails shall be constructed and developed concurrently with the respective development within which said trails are located. The City’s Park Master Plan shows a public trail along the Timpanogos Canal. DMJ will use a best efforts approach to help the City negotiate a version of the proposed trails that would be acceptable to all parties. Assuming the City and other thirds parties can reach an agreement regarding the canal trail, DMJ shall construct and dedicate the portion of the trail which lies within the developer’s property. The City shall not be obligated to finally accept and place into warranty any public improvements located within or constructed in conjunction with the development of a particular Phase

until the parks and trails located within such Phase have been constructed or the City has received an improvement completion assurance in the form of either a cash escrow deposit, a letter of credit or such other form of completion assurance as may then be accepted by the City with respect to such parks and trails meeting the requirements of Section 10-9a-604.5 of the Utah Municipal Land Use Development Management Act.

6.2 Dedication of Open Space or Trails. Dedication of Trails to the City shall be by plat recordation or by dedication by deed from the applicable Property Owner which shall be without any financial encumbrance or other encumbrance (including easements) which unreasonably interferes with the use of the property for Open Space and/or Trails; In the event trails are established solely for the internal use by Homeowners' Association, no public easement shall be granted by DMJ or any other Property Owner.

6.3 Maintenance of Open Space/or Trails. Except as otherwise specifically provided in this Agreement, upon acceptance by the City of Trails and after formal possession, the City shall be responsible for maintaining the Public Trail Areas after final inspection and acceptance of the applicable improvements included therein, if any. If the Trails are dedicated to an entity other than the City, the dedication shall provide for the maintenance of the applicable Trails.

6.4 Tax Benefits. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

6.5 North Fields Preservation. DMJ, for itself and with respect to each subsequent Owner of the Property, agrees that upon issuance of a building permit for a Development Unit, the Owner of such Development Unit shall pay to the City a fee equal to \$2,500 per ERU or partial ERU attributable to such Development Unit (the "**North Fields Preservation Fee**"). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including purchase of development rights. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Moderate Income Housing Units.

7. Public Improvements.

7.1 Utilities and On-Site Infrastructure. The City acknowledges that DMJ will prepare an Infrastructure Plan (aka Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and

adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure according to the Capital Facilities Plan that is necessary to support the development proposed within a specific Development Application. If any Property Owners elect to construct any On-Site Infrastructure or Off-Site Infrastructure required by the Capital Facilities Plan as a condition of approval of a Development Application, the Property Owner shall pay the cost thereof, subject to its reimbursement rights set forth in Section 7.2. The City shall comply with the statutory processes and all other applicable laws, rules, and regulations governing such work. Parties contemplate that each Phase will be served by sanitary sewer, culinary water and secondary irrigation systems provided by others.

7.2 Excess Improvements/Upsizing. Any infrastructure requested by the Developer or required by the Development shall be the responsibility of the Developer. The City and DMJ acknowledge and agree that, as a part of the Capital Facilities Plan, certain portions of the infrastructure improvements shown on the Capital Facilities Plan (including both On and Off-site Infrastructure) may need to be enlarged, increased or otherwise “upsized” or upgraded (collectively, the “**Excess Improvements**”) at the request of the City or other responsible Non-City Agency to serve, directly or indirectly, developments or future developments on land areas outside of the Project’s boundaries or owned by parties other than Property Owners (collectively, the “**Benefitted Property**”). In recognition of the foregoing, and as a material inducement to the execution of this Agreement by DMJ:

7.2.1 Reimbursements. The City agrees that it shall reimburse the applicable Property Owners for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by the applicable Property Owners in the construction of Excess Improvements. Subject to the City’s approval, Property Owners may, from time to time, oversize and/or install and construct portions of the infrastructure specified in the Infrastructure Plan that are System Improvements. The City shall ensure that Property Owners, as applicable, are reimbursed for actual costs from Impact Fees for oversizing. City shall also make available reimbursement/pioneering agreements to reimburse Property owners-for installing Off-site System Improvements to serve their property as required by State law.

7.2.2 Building Fee and Impact Fee Credits. To the extent that any reimbursements paid to a Property Owner pursuant to the Reimbursement Procedures do not fully reimburse Property Owners for the amounts expended or costs incurred by the Property Owner in the construction of the Excess Improvements, City shall credit the applicable Property Owner up

to the value of such deficiency against the Impact Fees applicable to the Project.

7.2.3 **Backbone Improvements.** Compensation to Property Owners for any “upsizing” of the Backbone Improvements that are not included in the approved Capital Facilities Plan shall be agreed to by Property Owners and the City as a part of the plan for financing the construction of such Backbone Improvements.

7.3 **Variations between Infrastructure Plan, Capital Facilities Plan and any City’s Future Capital Facilities Plan.** The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way limit or reduce the Development Entitlements authorized under this Agreement; change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. However, the Property Owners shall not be required to build any such Backbone Improvements pursuant to the Capital Facilities Plans that exceed the facilities shown on the Infrastructure Plans unless such facilities are inadequate to meet the development needs of the Project, per City Standards, and unless the City and the Property Owners have executed an agreement providing for the reimbursement to the applicable Property Owner for the oversizing costs to construct such excess facilities. If the Parties cannot reach agreement on the terms of a reimbursement agreement, the terms of such a reimbursement agreement shall be subject to the mediation and arbitration provisions of Section 14. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

7.4 **No Additional Off-Site Infrastructure Requirements.** Notwithstanding anything to the contrary in the City’s Vested Laws, the City shall not, directly or indirectly, charge Developers or Sub-developers, or any of their respective affiliates or successors, any development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for Off-Site Infrastructure not contemplated in the Capital Facilities Plan, or subsequent updates to said Plan. However, any and all such development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for On-Site Infrastructure, shall be borne by

Developers and Sub-developers, or any of their respective affiliates or successors, or residents, regardless of whether they are off-site or on-site, pursuant to the Capital Facilities Plan. In the event that Developer or Sub-developer is required to build Off-Site Infrastructure, and in the event pioneering agreements are used, the City would collect a pro-rata share from future, benefitting developers.

7.5 Modifications of Infrastructure Locations and the Boundaries of the Development Areas. The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

7.6 Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD). The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat being served before final approval for that particular plat is granted. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services.

7.7 Water Rights. Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers.

7.8 Streets. Street frontage shall be improved in compliance with the City's Standards and Specifications and the NVOZ.

Development shall obtain UDOT access approval for any accesses onto a state highway.

7.9 Off-Site Connectivity. All trails, canals, ditches and roads shall connect with existing trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8. **Cable/Fiber Optic Service.** Subject to all applicable federal and state laws, as well as the City's authorization and capacity to timely install in a reasonable manner all required infrastructure and provide such service, DMJ agrees that the City shall be the sole cable/fiber optic network provider for the Development. The City shall install or cause to be installed all underground conduits necessary to make available a minimum of one cable service/fiber optic communication provider, or other comparable information and communication service provider, within the Project. DMJ shall cooperate and reasonably accommodate the City's installation and development of said cable service/fiber optic network, (CFON). Notwithstanding the foregoing, Property Owners may contract with any cable TV/fiber optic and other communication provider of their own choice and grant an exclusive right of access and/or easement to such provider to furnish cable TV/fiber optic and other communication services for those dwelling units or other uses on such Property Owner's real property so long as the property is private and not dedicated to the public. The City may charge and collect all taxes and fees with respect to cable, fiber optic and other communication lines as allowed under an applicable City ordinance or state law.

9. **CC&Rs.** As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs and the Design Guidelines, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street maintenance. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. They shall be recorded both with the County and City Recorders. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs and Design Guidelines. The CC&Rs may be amended by the processes specified in the CC&Rs without any requirement of approval of such amendments by the City. If any provision of the Design Guidelines is inconsistent with a specific provision of this Agreement, the terms of this Agreement shall govern. Prior to the issuance of any building permits for residential, business, commercial or recreational use, but excluding On or Off-Site Infrastructure or other infrastructure proposed by Property Owners, the architectural control committee established by the CC&Rs shall certify that the proposed Development Application complies with the Design Guidelines. To facilitate uniform application and enforcement of the Design Guidelines, the Design Guidelines shall incorporate the design standards set forth in the Zone. Potential avenues of enforcement of the applicable CC&Rs available to the applicable Property Owners' Association or Owners shall include judicial enforcement by a court having subject matter jurisdiction over the particular dispute.

10. **Fees & Bonding.**

10.1 **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 **Limitations on New Development, Review or Impact Fees.** The Project shall not be made subject to any new development, review or impact fees or

impositions enacted after the Effective Date unless: (a) the amount charged has been determined in accordance with all applicable state laws; and (b) it is directly or in practical effect, proportionate to the costs incurred by the City from the Project, and it is imposed and used to mitigate an impact caused by the development of the Project.

10.3 **Warranty Bonding.** To the extent other public financing vehicles are not available for any on or off-site, publicly dedicated infrastructure or similar improvements for the Project, Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, in the form of letters of credit or cash bonds (all forms approved by the City) in relation to any on or off-site, publicly dedicated infrastructure or similar improvements for the Project (the “**Security**”), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails. Notwithstanding anything to the contrary under the City’s Vested Laws, Property Owners shall not be required to post any such security for any privately-owned infrastructure or improvements, not necessary for public health and safety. The Security required under this section shall otherwise conform to the requirements of State Law.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City's Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City’s Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

11.3 **Limitation to Three Stories.** No structure in the Project shall exceed three (3) stories in height.

12. **Grading, On-Site Processing of Natural Materials; Storm Water Management.**

12.1 **(Intentionally Left Blank)**

12.2 **On-Site Processing of Natural Materials.** Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review and approval for such improvements. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Any such uses shall not be considered gravel pits.

12.3 **Storm Water Management.** The Parties acknowledge that the City is presently contemplating a future regional storm water master plan that generally does not include the Property (as finalized and adopted by the City, the “**City Updated North Village Stormwater Master Plan**”). DMJ shall be required to comply with all future policies and standards of the North Village Stormwater Master Plan and associated Stormwater Design Manual, yet to be adopted, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Horrocks Engineering Report.

12.4 **Trail Construction.** Any and all trails shall be constructed along street frontage, and not within any drainage facilities.

12.5. **Future Transportation Plan** The Parties acknowledge that the City is presently contemplating a future Regional Transportation Plan that is expected to significantly benefit all the residents of Heber City (when finalized and adopted by the City, the “**City Updated North Village Transportation Plan**”). Even though that plan is not expected to be completed or approved until well after the anticipated development permits for the DMJ Project have been issued, DMJ agrees to financially contribute to the associated Impact Fees on a pro-rata basis, provided that the impact fees shall apply to all the projects in the North Village zone and shall be based upon an objective pro-rata basis (of size, ERUs or other similar metric).

13. **Provision of Municipal Services.** The City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project

at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. Default. Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following the receipt of written notice of such failure from the other party (unless such period is extended by mutual written consent, and subject to Sections 14.2 through 14.4), shall constitute a “**Default**” under this Agreement. Any notice given pursuant to the preceding sentence (“**Asserted Default Notice**”) shall comply with Section 14.1.

14.1. **Notice.** If a Property Owner or the City causes an event which remains uncured for a period of thirty (30) days, this would constitute a Default of this Agreement. The Party claiming a Default shall provide a written Asserted Default Notice to the other Party.

14.1.1. **Contents of the Asserted Default Notice.** The Asserted Default Notice shall:

14.1.1.1 **Claim of Default.** Specify the claimed event of Default;

14.1.1.2. **Identification of Provisions.** Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default;

14.1.1.3. **Specify Materiality.** Identify why the claimed Default is claimed to be material; and

14.1.1.4. **Proposed Cure.** Specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of an Asserted Default Notice, the defaulting Party shall have sixty (60) days in which to cure such claimed Default (the “Cure Period”). If more than 60 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in

which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence.

14.3. **Meet and Confer, Mediation, Arbitration.** Upon the failure of a defaulting Party to cure a Default within the Cure Period or in the event the defaulting Party contests that a Default has occurred, before initiating any formal litigation proceedings the Parties shall first engage in Mediation.

14.4. **Remedies.** If the Parties are not able to resolve the Default by Mediation, the Parties shall have the following remedies:

14.4.1. **Legal Remedies.** Legal Remedies available to both Parties shall include all rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages. In addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Nothing in this section is intended to, nor does it limit Developer's or City's right to such legal and equitable remedies as permitted by law. It is specifically acknowledged by both Parties that neither Party waives any such rights for legal and equitable remedies.

14.4.2. **Enforcement of Security.** The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

14.4.3. **Withholding Further Development Approvals.** The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of that portion of the Property owned by the defaulting Property Owner.

14.5. **Public Meeting.** For any Default by a Property Owner, before any remedy in Section 14.4.1 may be imposed by the City, Property Owners shall be afforded the right to attend a public meeting before the Council and to address the Council regarding the claimed Default.

14.6. **Emergency Defaults.** Anything in this Agreement notwithstanding, if the Council finds on the record in a public meeting that a Default by Property Owners materially impairs a compelling, countervailing interest of the City and that any delays in imposing a remedy to such a Default would also impair a compelling, countervailing interest of the City, the City may impose the remedies of Section 14.4., without any further requirements or obligations to the Property Owners. The City shall give Notice to Property Owners in accordance with the City's Vested Laws of any public meeting at which an emergency Default is to be considered and

Property Owners shall be allowed to attend such meeting and address the Council regarding the claimed emergency Default.

14.7. **Cumulative Rights.** The rights and remedies set forth herein shall be cumulative.

15. **Notices.** All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

DMJ, LLC
C/O Mark Halberg
9375 East Shea Boulevard, Suite 267
Scottsdale, AZ 85260

To the City:

City of Heber
Attn: City Recorder
25 North Main Street
Heber, Utah 84032

15.1 **Effectiveness of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 **Physical Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 **Electronic Delivery.** Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.**

16.1 **Allowable Administrative Applications:** The following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by DMJ or its successors, including proposed increases in commercial density.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 **Administrator's Review of Administrative Amendment.** The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed forty-five (45) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 **Notification Regarding Application and Administrator's Approval.** Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 45-day period set forth in Section 17.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall

be recorded against the applicable portion of the Property in the official City records.

16.2.4 City Council Requirement of Modification Application Processing. If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 17-2-3 above, notify the Administrator that the Administrative Amendment must be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. **Amendment.** Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 **Submissions of Modification Applications.** Only the City or DMJ or an assignee of DMJ, approved in writing by the City, and one that succeeds to all of the rights and obligations of DMJ under this Agreement may submit a Modification Application.

17.2 **Modification Application Contents.** Modification Applications shall:

17.2.1 **Identification of Property.** Identify the property or properties affected by the Modification Application.

17.2.2 **Description of Effect.** Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 **Identification of Non-City Agencies.** Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 **Map.** Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 **Fee.** Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. **Mutual Cooperation in Processing Modification Applications.** Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 **Planning Commission Review of Modification Applications.**

17.4.1 **Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and/or complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 **Recommendation.** The Planning Commission's vote on the Modification Application shall be only a recommendation.

17.5 **Council Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 **Council's Objections to Modification Applications.** If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 **Mediation of Council's Objections to Modification Applications.** If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 **Amendments by DMJ.** Notwithstanding any other provision in this Agreement to the contrary, DMJ may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the

City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from DMJ or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor DMJ shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of the Project in order to amend this Agreement pursuant to this Section 17.

18. **Estoppel Certificate.** Upon twenty (20) days prior written request by a Property Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. **Attorney Fees and Costs.** In the event of the failure of either Party hereto to comply with any provision of this Agreement, the defaulting Party shall pay any and all costs and expenses, including reasonable attorneys' fees, investigating such actions, taking depositions and discovery, and all other necessary costs incurred in, arising out of or resulting from such default (including any incurred in connection with any appeal or in bankruptcy court) incurred by the injured Party in enforcing its rights and remedies, whether such right or remedy is pursued by filing a lawsuit or otherwise.

20. **Entire Agreement.** Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

21. **Headings.** The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidences of intent.

22. **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD or NVSSD, concerning any improvements to the Property unless the City has accepted the

dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

23. **Assignability.**

23.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, DMJ or its successor may sell any portion of the Property to one or more Developers and/or Sub-developers at any time from and after the Effective Date. Each such transferred portion of the Property (each, a “**Development Property**”) shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

23.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property;

23.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless DMJ otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of DMJ, which may be granted or withheld in DMJ’ sole discretion:

(i) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by DMJ Owners to the City in respect of the Development Property;

(ii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by DMJ for the Development Property; or

(iii) propose or oppose any amendments, modifications or other alterations to this Agreement.

23.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

23.1.4 DMJ shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

24. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub-developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

25. **Mortgage Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such

Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

26. **Termination.**

26.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;
- (ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;
- (iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;
- (iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,
- (v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or
- (vi) in the event that Developer or the project are in default, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

26.2 **Notice of Termination.** City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of

the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

26.3 Partial Termination. In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

27. **Insurance and Indemnification.** Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

28. **Hazardous, Toxic, and/or Contaminating Materials.** Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

29. **Binding Effect.** If DMJ or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

30. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

31. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

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

33. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

34. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and DMJ each shall designate and appoint a representative to act as a liaison between the City and its various departments and DMJ. The initial representative for the City shall be City Manager, or his designee and the initial representatives for DMJ shall be Jeffrey Kuhn, of Kuhn Company, LLC. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

35. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

36. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

37. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions

of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

38. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

39. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

40. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

41. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

[Signatures appear on the following two pages.]

CITY

Heber City, a political subdivision of the State of Utah

By: _____

Name:

Its: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By: _____

By: _____

CITY ACKNOWLEDGMENT

STATE OF UTAH

)

:§.

CITY OF HEBER

)

On the ____ day of _____, 2022, personally appeared before me Heidi Franco who being by me duly sworn, did say that she is the Mayor of City of Heber, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its governing body.

NOTARY PUBLIC

EXHIBIT A
**TO DEVELOPMENT AGREEMENT FOR DMJ MIXED USE COMMERCIAL
DEVELOPMENT**

Legal Description

THE RLP FUND, LC ENTRY NO. 354261

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 0°15'09" EAST 852.56 FEET ALONG THE NORTH-SOUTH CENTER OF SECTION LINE (BASIS OF BEARINGS) TO THE NORTHERLY RIGHT OF WAY LINE OF PROJECT NO SP-1776, SAID POINT BEING NORTH 62°38'22" WEST 28.34 FEET FROM A 1989 BRASS CAP RIGHT OF WAY MARKER AT STATION 19+05.5 ON THE WEST LINE OF SAID PROECT; THENCE NORTH 62°38'22" WEST 144.30 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO THE EAST RIGHT OF WAY LINE OF THE OLD US 40 PROJECT NO. F-019-1(1); THENCE NORTH 13°14'33" WEST 814.81 FEET ALONG SAID EAST RIGHT OF WAY LINE TO THE NORTH LINE OF SAID SECTION 18; THENCE SOUTH 88°43'38" EAST 311.13 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

SPV FUNDING LLC ENTRY NO. 363459

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 18 (BASIS OF BEARING BEING 89°41'45" EAST 2647.680 FEET BETWEEN SAID NORTH QUARTER CORNER AND THE NORTHEAST CORNER OF SECTION 18); AND RUNNING THENCE NORTH 89°41'45" EAST ALONG THE NORTH LINE OF SAID SECTION 18 FOR 435.09 FEET TO THE INTERSECTION OF SAID NORTH LINE AND THE WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) CALLS: SOUTH 24°33'42" WEST FOR 805.05 FEET; THENCE SOUTH 27°47'41" WEST FOR 153.37 FEET; THENCE NORTH 62°38'22" WEST FOR 28.34 FEET TO A POINT ON THE QUARTER SECTION LINE OF SAID SECTION 18; THENCE NORTH 00°15'09" WEST ALONG SAID QUARTER SECTION LINE FOR 852.56 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR DMJ MIXED USE COMMERCIAL
DEVELOPMENT

Site Plan



EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR DMJ MIXED USE COMMERCIAL
DEVELOPMENT

North Fields

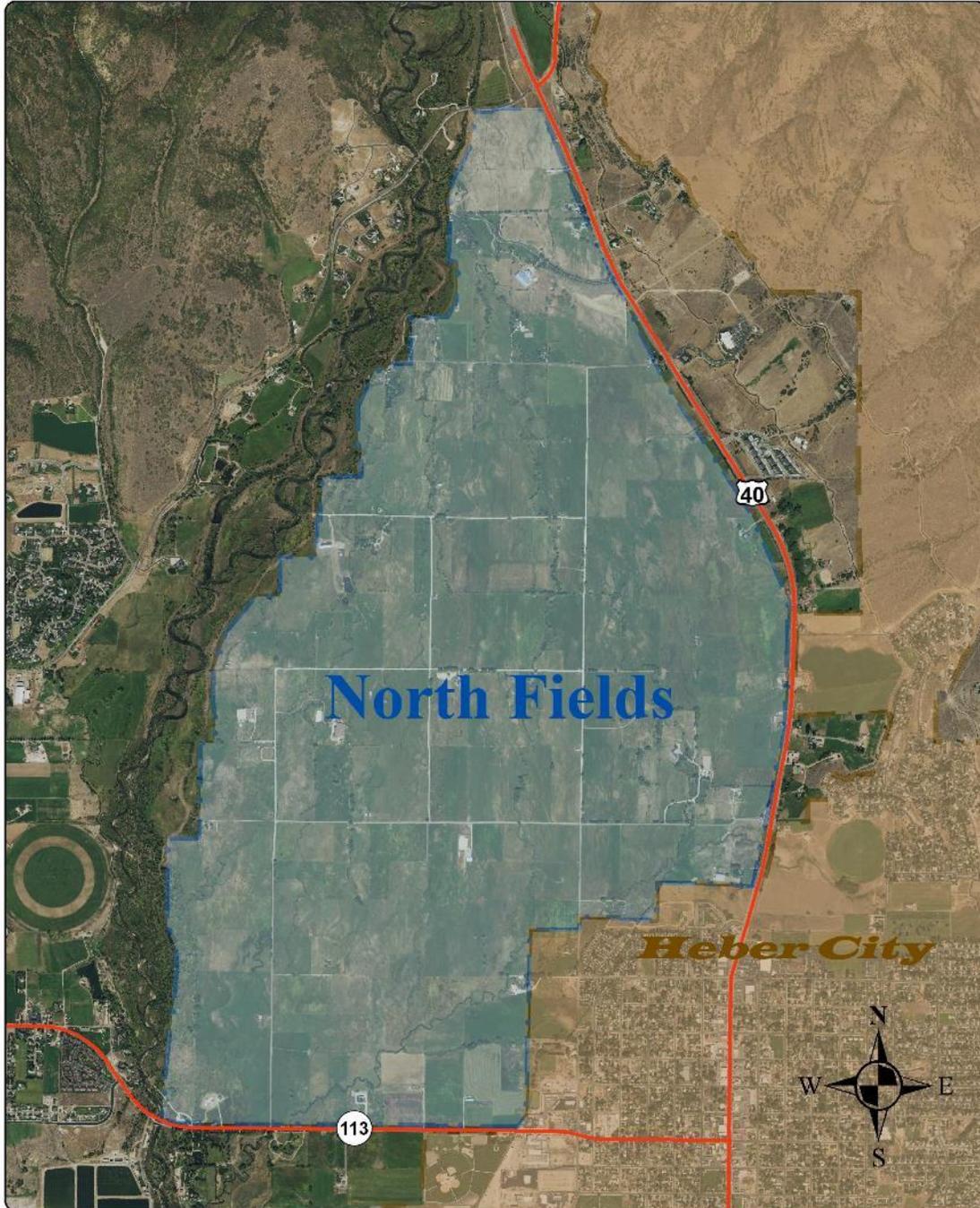


EXHIBIT D
TO DEVELOPMENT AGREEMENT FOR DMJ MIXED USE COMMERCIAL
DEVELOPMENT

City's Vested Laws

For the City's Vested Laws, reference the North Village Overlay Zone (NVOZ), adopted by the City Council of Heber City, Utah, in Chapter 18.81 of Heber Municipal Code on March 16, 2021.

EXHIBIT E
TO DEVELOPMENT AGREEMENT FOR DMJ MIXED USE COMMERCIAL
DEVELOPMENT

Horrocks Engineering Report

August 24, 2020

Heber City Corporation
Attn: Bart Mumford P.E.
75 North Main
Heber City, Utah 84032

Subject: DMJ Jordanelle Annexation – Review

Dear Bart:

Horrocks Engineers recently reviewed the concept plan for the DMJ Jordanelle Annexation located on the northwest corner of SR 32 and Old Hwy 40. The following items need to be addressed and are subject to further amendment as additional information is brought to our attention and discussed.

General

1. An Annexation agreement needs to be prepared prior to approval. The agreement needs to specify that Heber City's Construction Standards and Specifications, Local, State, and Federal rules are to be followed for all development, including periodic updates and revisions to these standards. It also needs to outline specific circumstances relating to services, transportation, and any issues identified by the City during the annexation process.
2. An Environmental Study needs to be completed to identify any environmental concerns or restrictions for development.
3. A Geotechnical Study needs to be completed to identify any concerns with slope stability, soil conditions, ground water, soil percolation, soil corrosiveness, and/or other soil analysis needs for the development.
4. A Geological Study with Hazard Analysis needs to be completed to identify any hazards including faults, landslide, debris flow, rockfall, or other potential hazards for the area. All hazards will need to be mitigated with the development plan.
5. Capital Facilities Plans (CIP) and Impact Fee Analysis needs to be prepared by Heber City for this and surrounding areas and impact fees established. It is anticipated that all improvements within this annexation will be private, however, development in the annexation needs to anticipate some impact fees could still apply; i.e. Public Safety, Parks/Trails, etc.
6. Heber City, Jordanelle Special Service District (JSSD), Wasatch County Fire District, Wasatch School District, Heber Light & Power, Wasatch County Water Efficiency Project (WCWEP), and other utility companies need to work together through the annexation and development process to coordinate and communicate each entities efforts and needs to ensure all services within the annexation are planned for. The annexation agreement needs to include side agreements from each entity acknowledging their commitment and ability to provide their respective services and note any associated needs or conditions.
7. A copy of proposed Home Owners Association (HOA) covenants, conditions, and restrictions will need to be provided to Heber City with the development plan.
8. The annexation agreement should include language indemnifying the City from responsibility to provide water, sewer, or other utility services to the area in the event of unwillingness or failure

to provide these services by special service districts or other utility providers intended to provide these services.

9. Additional easements or right-of-way dedication for the Timpanogos Canal on the east side of the annexation may be required.

Streets

1. UDOT needs to be consulted regarding this annexation and respective development. All requirements made by UDOT will need to be met such as future acceleration lanes, deceleration lanes, right-of-way dedications, that may be required.
2. A Traffic Study needs to be prepared and reviewed by Heber City and any recommendations incorporated into the development on the property.
3. The ownership and maintenance of Old Hwy 40 needs to be determined. At this time it is recommended that it remain in the County since it is anticipated that the City will have no utilities in the road or other accesses coming onto this road beyond a single access to this annexation.
4. All of the roads within the development are recommended to be private.
5. The development access on SR 32 needs to be separate from the existing Timpanogos Canal Company access unless they approve a combined access.

Parks and Trails

1. Proposed trails within the annexation need to correlate with the City's Draft Master Plan for trails in this area.
2. A trail along the canal needs to be discussed. According to the canal company, any trails along the canal need to be separate from the canal access road.
3. The community's proposed green space and park spacing needs to meet what is required in Heber City's code and Draft Parks/Trails Master Plan.

Water and Irrigation

1. The JSSD is anticipated to provide water and irrigation service to this area. Their Water Master Plan for the area needs to be reviewed and information provided to demonstrate how the area will be serviced with culinary water. The Water Master Plan or District should confirm their ability and intent to provide water service to the proposed development within the annexation area.
2. Secondary water or pressurized irrigation for outdoor irrigation purposes should be planned and installed within the development where feasible per JSSD's irrigation policies.
3. Water right ownership and acquisition must meet JSSD's requirements. The development must provide Heber City with evidence that the annexed area has sufficient water rights to meet the needs of the District. Any change applications must be approved prior to submission to JSSD for development approval, according to their requirements.

Sewer

1. The JSSD will be providing sewer service to annexation area. Their sewer master plan for the area needs to be reviewed and information provided to demonstrate how the area will be serviced with sanitary sewer service. The District needs to confirm their ability and intent to provide sewer service to the proposed development within the annexation area.

Public Safety

1. Development within this annexation area must follow the requirements of the wildland-urban interface (WUI) code.
2. The Wasatch County Fire District may request that all structures within this area be equipped with automatic fire sprinklers and have fire resistant roofs.
3. All Heber City Public Safety Department requirements need to be met.

Storm Water

1. Storm water will be administered by the City within this and the surrounding areas, including any City owned public right-of-ways. Within private developments roadways these facilities will be privately owned and maintained. Public and private roadway drainage should remain separate unless the private development proposes to maintain the public systems.
2. A storm water study and plan needs to be prepared for the annexation area. This study needs to provide an overview of the area's drainage basins as well as where the storm water run-off within the annexation area has historically discharged. The study needs to show what will be proposed for storm water collection, retention, and discharge at development. The storm drain study needs to also include any proposed modifications to the natural channel and ravine on the north side of the annexation and potential impacts downstream. The study needs to include upstream and downstream neighbors and potential hazards such as debris basins and flooding.
3. Storm water historical pre-development and post-development flows need to be evaluated and a determination made on how to address detention and discharge. Discharge to downstream properties is not allowed unless there is a feasible approved discharge location and permanent designated downstream channel.
4. Development within the annexation area will need to follow all Heber City development policies and requirements with respect to storm water collection, retention, and discharge to ensure that no downstream property owners are negatively affected. These policies and requirements are anticipated to significantly increase in the near future as the City becomes an MS4 community. Drainage improvements within the annexation will need to be designed to comply with these requirements.
5. The storm water plan needs to consider low impact development (LID) methods such as smaller more frequent retention/detention facilities that utilize infiltration within the development area rather than installing a larger collection facility. These methods would likely produce less downstream hazards and be more environmentally friendly.

Please call our office with any additional questions or concerns regarding this project.

Sincerely,

HORROCKS ENGINEERS



Willa Motley, P.E.

cc: file
DMJ
Heber Planning Department

H:\Heber City\Development Project\DMJ Jordanelle\DMJ Jordanelle Annexation 200814.docx

Exhibit 2

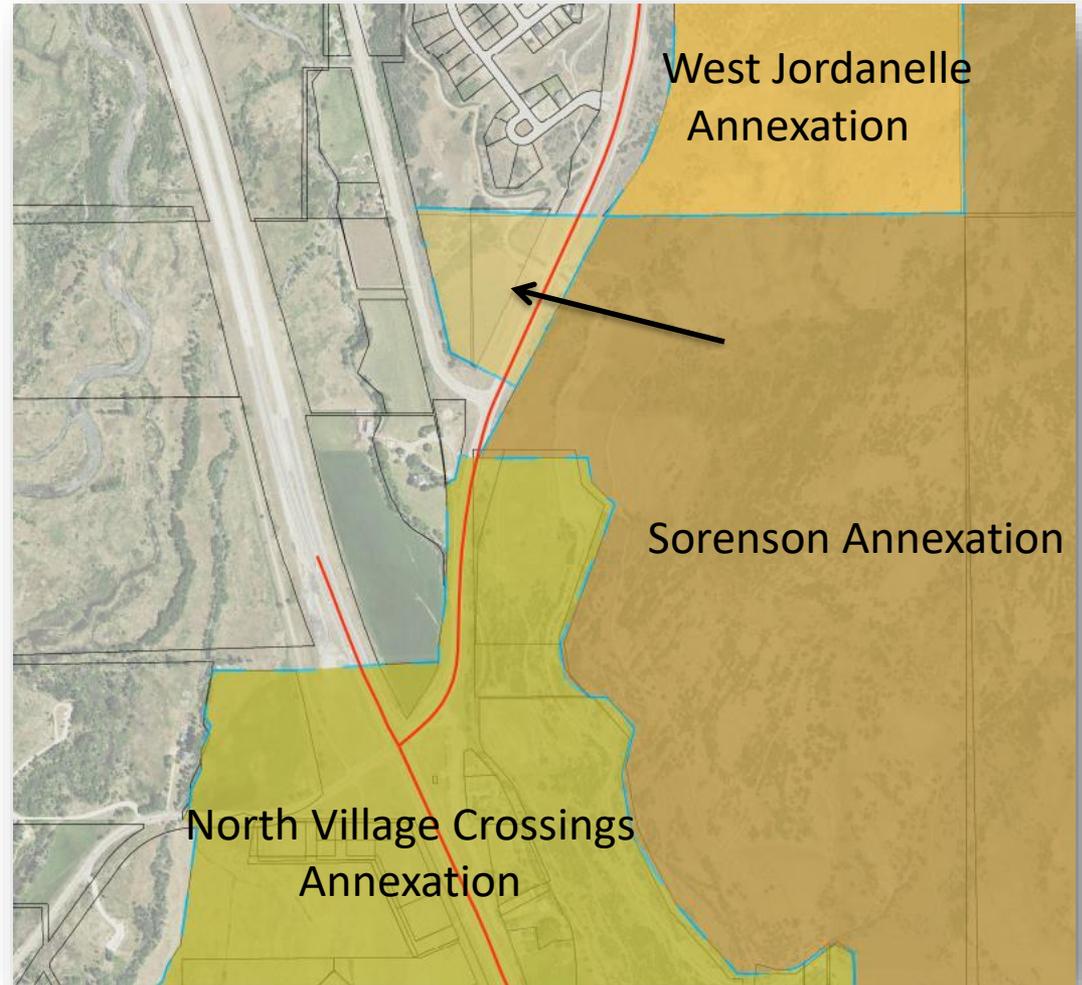
DMJ Jordanelle, LLC

May 17, 2022

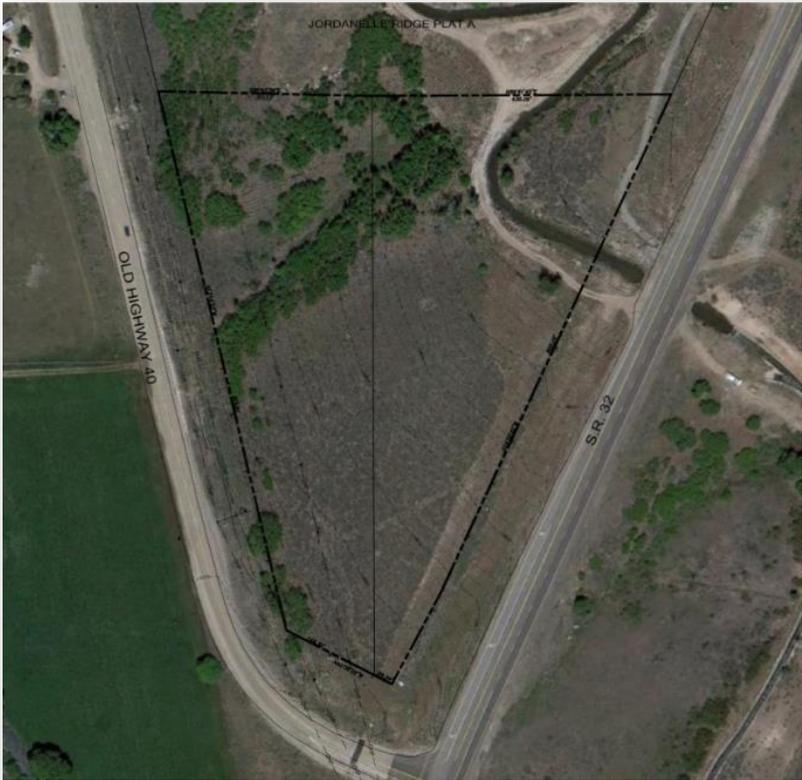


DMJ Details

- **Area**
 - 8.717 acres
- **Zoning**
 - NV (4.5 ERU/acre)
- **Building Area**
 - 125,325 square feet
- **Permitted Uses**
 - Commercial
- **Approval Status**
 - Annexation



Development Concept



HEBER CITY

MADE BY THE BARRIS GROUP

MDA Sections

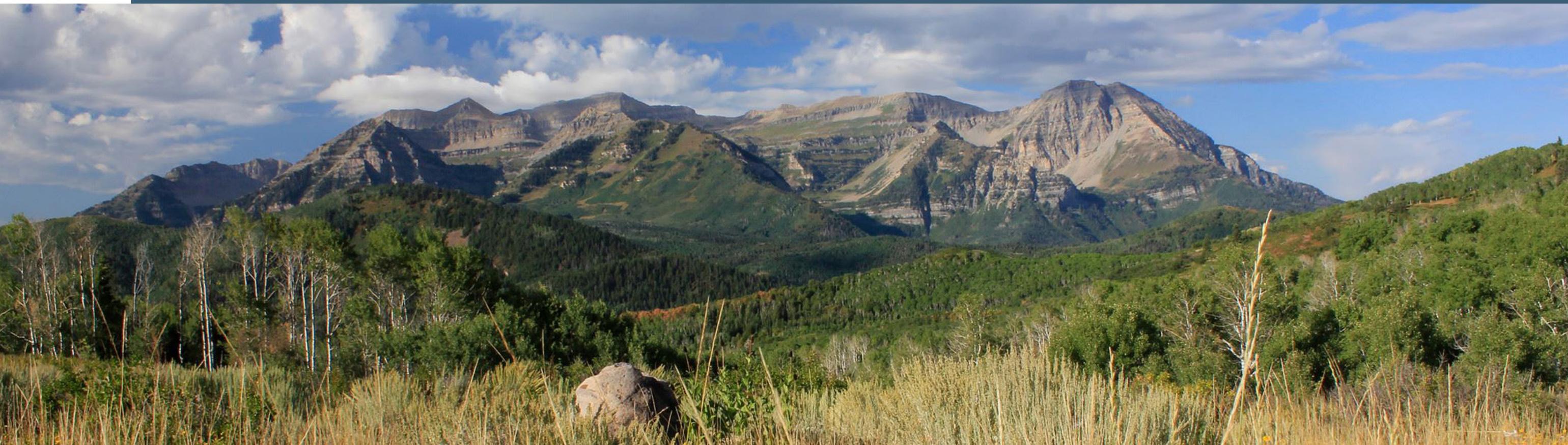
- Recitals
- 1. Definitions
- 2. Vested Laws
- 3. Master Plan & Compliance
- 4. Zoning & Vested Rights
- 5. Development Approval Process
- 6. City's Future Laws
- 7. Open Space & Parks
- 8. Public Improvements
- 9. Fiber Optic Service
- 10. Restrictive Covenants
- 11. Fees & Bonding
- 12. Construction Standards
- 13. Onsite Processing
- 14. Municipal Services
- 15. Default
- 16. Notices
- 17. Arbitration
- 18. Assignment
- 19. Estoppel
- 20. Attorney Fees & Costs
- 21. Entire Agreement
- 22. Headings
- 23. No 3rd Party Rights
- 24. Assignability
- 25. Effect of Breach
- 26. Mortgagee Protection
- 27. Termination
- 28. Insurance & Indemnification
- 29. Hazardous Materials
- 30. Binding Effect
- 31. No Waiver
- 32. Severability
- 33. Force Majeure
- 34. Time is of the Essence
- 35. Appointment of Representatives
- 36. Mutual Drafting
- 37. Applicable Law
- 38. Recordation and Running with the Land
- 39. Authority
- 40. Covenant of Good Faith
- 41. Further Actions & Instruments
- 42. Partial Invalidity Due to Governmental Action

Policy Question

- Should Council adopt Ordinance 2022-06, approving the DMJ Annexation and accompanying MDA?

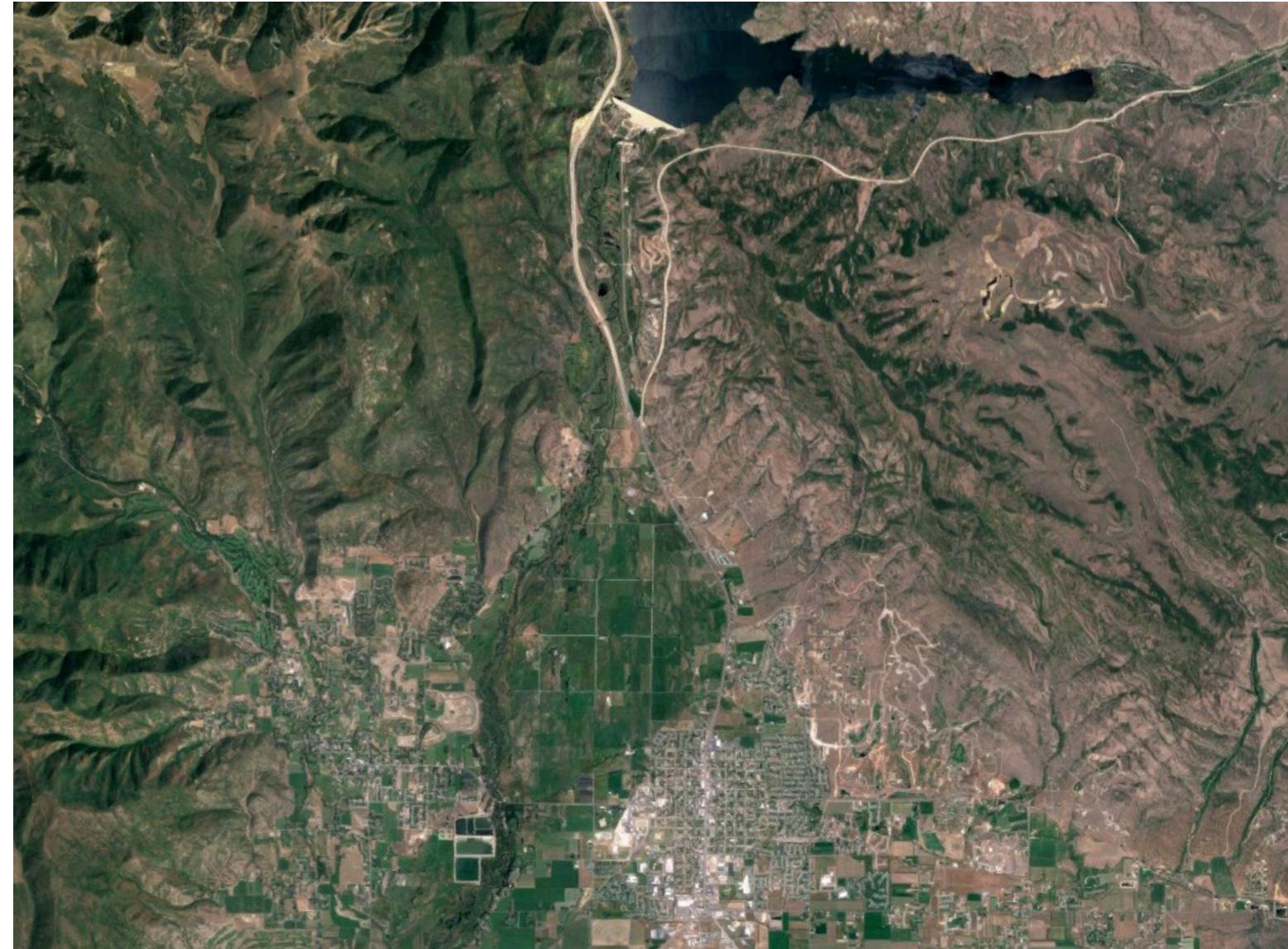
TAB 5

NORTH VILLAGE



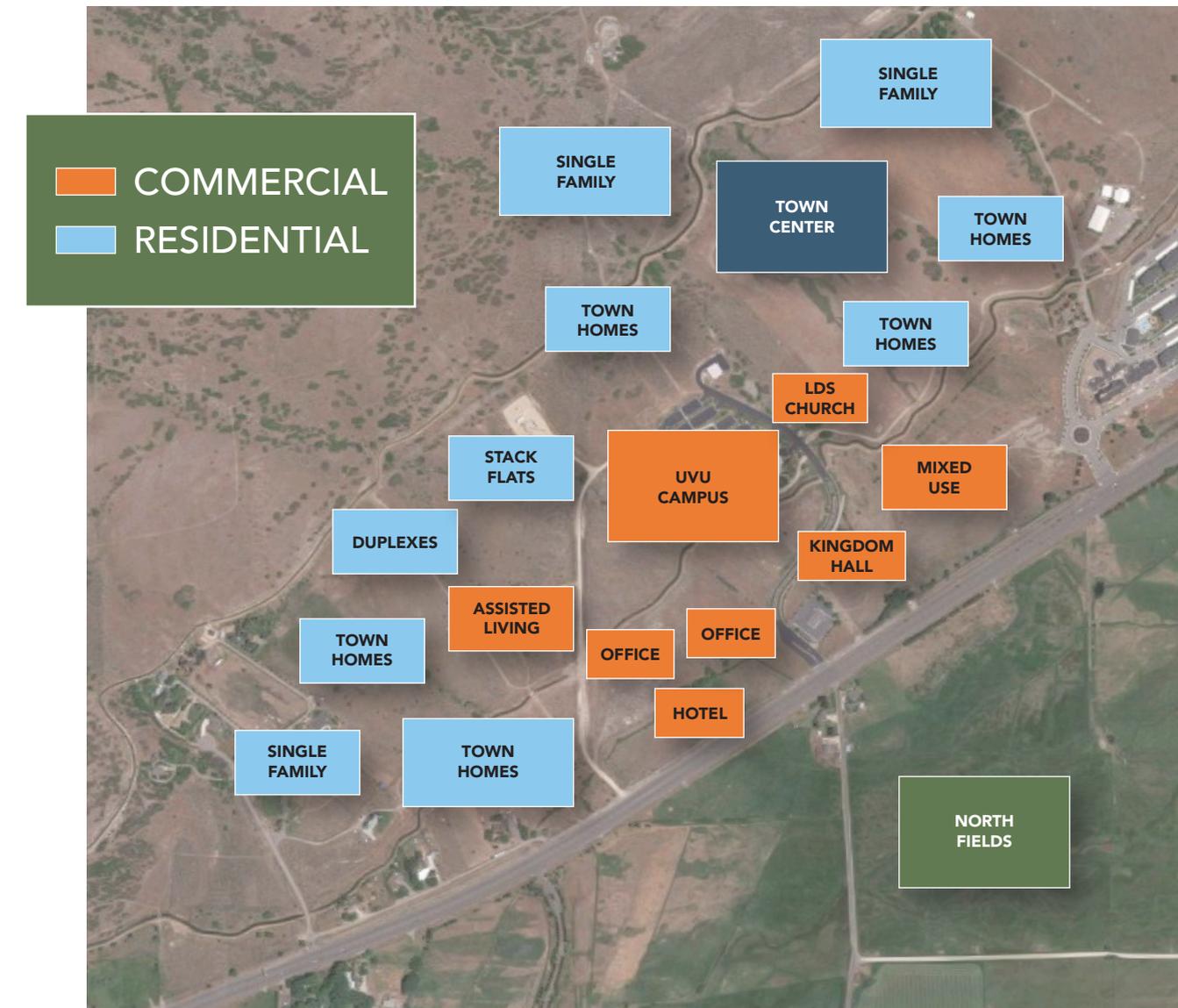
CONCERNS WE WISH TO ADDRESS

- Lack of commercial uses
- The need for more open space & gathering areas
- Density perception
- Potential UVU / MTECH closure



LACK OF COMMERCIAL USES

- According to urban planners* the recommended ratio for commercial space to residential space is 2,000 households to support every 30,000 SF of commercial space in a small neighborhood business district
- Previous presentations have shown snapshots of each individual project's site plan instead of a high-level view of the North Village, the Highlands, and College Downs areas together
- In viewing the three areas in their entirety with the aforementioned recommendation, the commercial aspect would be proportional to the amount of residential development seeking annexation
- According to Envision 2050*, 79% of residence preferred the town center option, over conventional subdivisions.



*"Creating Walkable Neighborhood Districts" Architecture & Urban Design 6/17/09

** "Envision Utah 2050, Pg 13, Adopted March 17, 2020

NEED FOR MORE OPEN SPACE

The average open space in this area is 62%, despite the fact that the required open space in the University Village sub-district is currently 20%

PARK, TRAIL, AND OPEN SPACE TYPES BY SUB-DISTRICT

TYPE	NV	NOS	UV	RR
REQUIRED OPEN SPACE AS A PERCENTAGE OF THE TOTAL SITE AREA	10%	25%	10%	35%
TRADITIONAL PARK SPACE	10%	20%	10%	10%
TOTAL MINIMUM OPEN SPACE AND PARK AREAS	20%	45%	20%	45%

OPEN SPACE PERCENT BY PROJECT

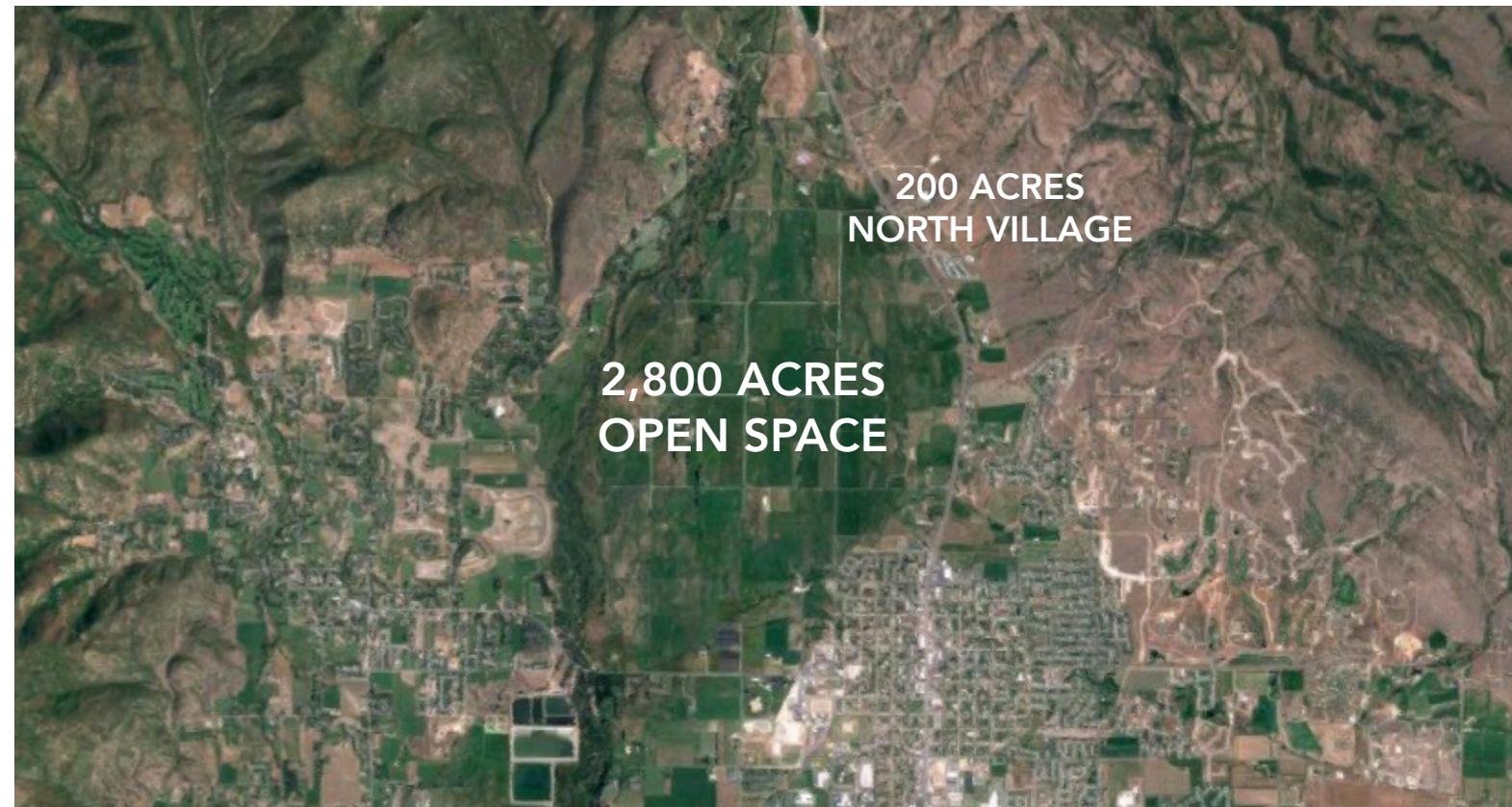
66% - Sorenson Project
 62% - The Highlands
 54% - The Views
 57% - Finch Creek
 61% - Assisted Living
 67% - Zitting Development

AVERAGE OPEN SPACE: 62%

OVERALL OPEN SPACE

North Village - 200 acres (of which 124 acres is open space)

North Fields - 2,800 acres open space

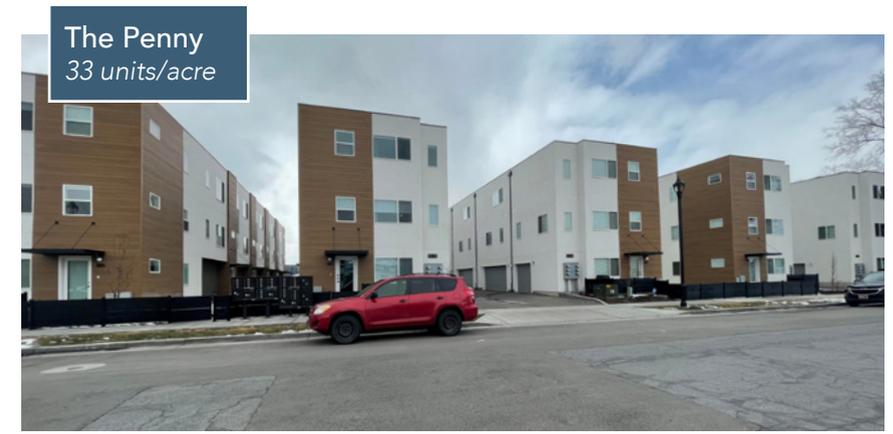
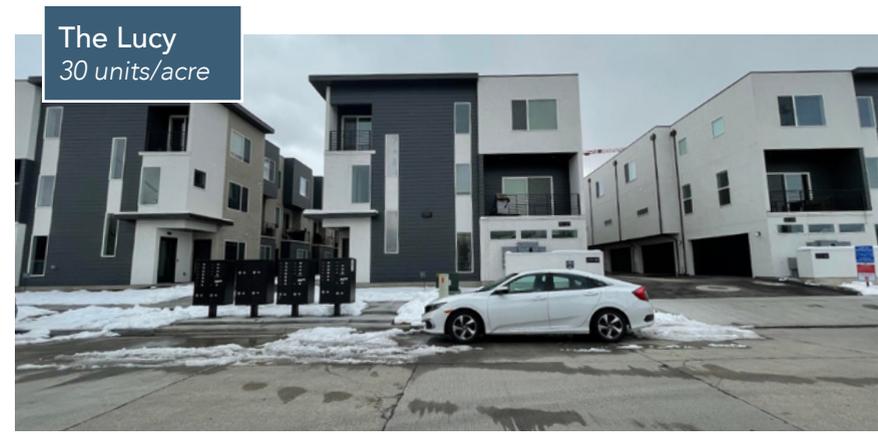
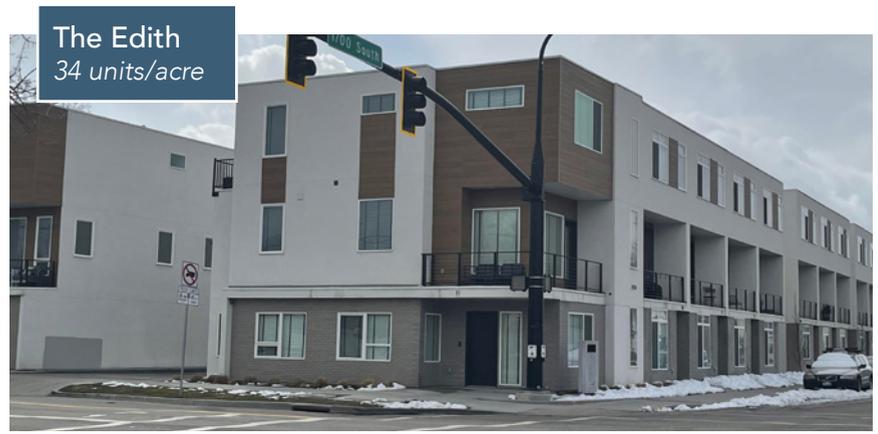


NEED FOR MORE GATHERING AREAS

Revised site plan created more gathering areas / open space (from 57% to 59%)



HIGH-DENSITY HOUSING 30-34 UNITS/ACRE



MEDIUM-DENSITY HOUSING *6 ERU'S/ACRE*

Park's Edge Townhomes



Retreat at Jordanelle



Wasatch Springs Townhomes



*According to Envision Heber 2050 (Pg 20), UV & NV Subdistrict density range in the Envision Heber 2050 was approved for 14-30 units per acre. All our projects are between 6 -12 units per acre.

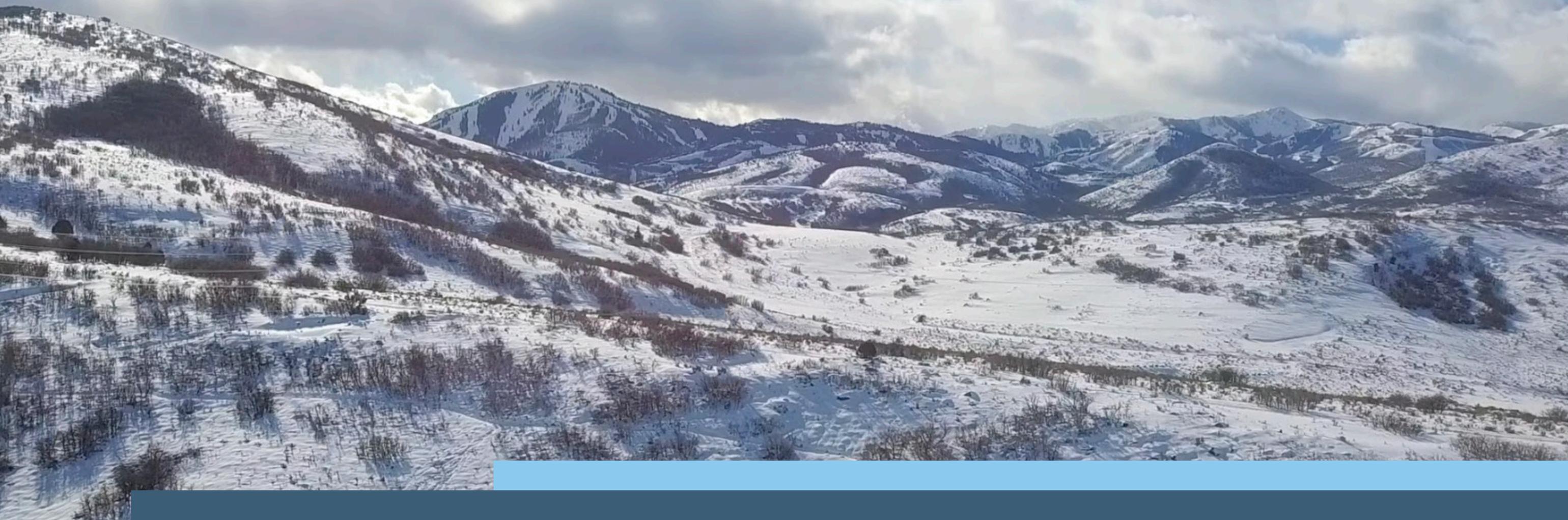
UVU / MTECH

- The UVU Wasatch Campus currently has only 140-145 students - If they do not get more students they will need close.
- MTECH has expressed interest in using the UVU Wasatch Campus, but can not do it without additional housing.
- In order to obtain more attendees for both UVU and the MTECH there needs to be more housing for students
- Currently there is not enough housing for rent or for sale that is affordable.



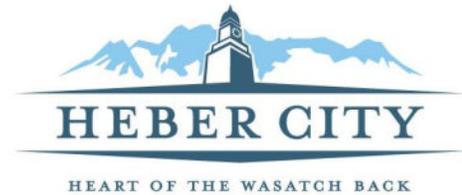
THANK YOU

FROM THE NORTH VILLAGE TEAM



TAB 6

City Council Staff Report



MEETING DATE: May 17, 2022
SUBJECT: Fencing, Ordinance
RESPONSIBLE: Jamie Baron
DEPARTMENT: Planning Department
STRATEGIC RELEVANCE: Community and Economic Development

SUMMARY

The Council has directed staff to peruse a code amendment regarding the commercial fencing requirements, including the fencing materials.

The policy questions include the following:

1. What fencing materials are appropriate for commercial areas?

RECOMMENDATION

The Planning Commission has forwarded a positive recommendation of the proposed ordinance. Staff is recommending approval of Ord 2022-09, as outlined in the conclusion of the staff report.

BACKGROUND

As the Council has been reviewing developments under construction, the council directed staff to ensure that barbed wire is prohibited on Main Street. Some on the council would like to see chain link prohibited on Main Street.

During the Planning Commission work meetings, the Planning Commission discussed trying to find a way to allow for a flexibility on fencing types.

DISCUSSION

The following table is being proposed to be added to Section 18.68.120 Heights of Fences and Walls. This change does not impact an residential properties.

Zone	Barbed or Razor Wire	Chain Link	Vinyl	Wood	Decorative Metal	Welded Wire	Cast Concrete	CMU Block	Field Fencing
C-3	N	N	N	P	P	C	P	C	N
C-2	N	N	N	P	P	C	P	C	N
C-4	N	N	N	P	P	C	P	C	N
MURC	N	N	C	P	P	C	P	C	N

NVOZ	N	N	C	P	P	C	P	C	N
MBP	P	P	P	P	P	C	P	C	C
I-1	P	P	P	P	P	C	P	C	C
I-2	P	p	P	P	P	C	P	C	C
CMP	N	N	P	P	P	C	P	C	C

(P) Permitted (N) Not Permitted (C) Conditional

Conditions:

Welded Wire is only permitted when used with another permitted material in the applicable zone. Field Fence is only permitted for properties with an agricultural use or in keeping of grazing animals.

CMU Block must be split face, honed, or covered with a decorative veneer.

Vinyl, where conditional, is only permitted for residential uses.

* Where these provisions conflict with individual zones, the stricter shall apply.

Additionally, the following definitions are proposed to be added to Section 18.08.207 Fence.

- A. "Field Fencing" means a metal wire mesh where the joints of the wire are tied together by additional pieces of wire or the twisting of the wire. This includes all other wire mesh products that are not defined as "Welded Wire", such as chicken wire.
- B. "Welded Wire" mean a metal wire mesh where the joints of the wire are welded to create the square mesh, commonly known as hog wire or box wire.

PROCESS

Section 18.12.190 outlines the process for the amending of Title 18 and the Zoning Map. Per **Section 18.12.190**, text amendments to the code require a public hearing at the Planning Commission, Planning Commission recommendation, and approval by the City Council.

Staff Finding: Consistent. *The Planning Commission held a public hearing on February 22, 2022 and forwarded a positive recommendation to the City Council.*

Section 18.12.190 outlines the criteria for code or map amendments. The criteria are as follows:

The governing body may amend, change or modify any provision of this title or the zoning map provided:

1. The proposed amendment or amendments have been submitted to the Planning Commission for its recommendations. The Planning Commission shall prepare and recommend amendments following a public hearing reasonably noticed for at least ten (10) calendar days. Unless the Planning Commission submits its recommendations within sixty days from receipt of the proposed amendment, the governing body may assume an affirmative recommendation;
2. **Staff Finding: Consistent.** *The Planning Commission held a public hearing on February 22, 2022 and forwarded a positive recommendation to the City Council.*

3. The governing body has held a public meeting on the proposed amendment reasonably noticed for 24 hours;

Staff Finding: *Consistent.* *City Council meetings are public meetings and are noticed more than 24 hrs. in advance. This item will be on a future Council agenda following a recommendation from the Planning Commission.*

4. The amendment will not be contrary to the Comprehensive Plan;

Staff Finding: *Consistent.* *The changes don't change any land uses.*

5. The amendment will more fully carry out the intent and purpose of the Comprehensive Plan and this Title.

Staff Finding: *Consistent.* *The proposed is to further refine the characteristics of commercial development.*

The City Council should discuss the proposed amendment, make changes if desired, and address the criteria outlined above.

FISCAL IMPACT

N/A

CONCLUSION

Council has asked staff to bring forth an amendment to the commercial fencing materials. Staff has worked with the Planning Commission to identify key material changes. The Planning Commission held a public hearing and forwarded a positive recommendation. Staff is recommending approval of Ord 2022-09 with the following findings:

Findings

1. The Planning Commission held a public hearing on February 22, 2022.
2. The Planning Commission forwarded a positive recommendation on February 22, 2022.
3. The amendment is consistent with the General Plan.
4. The amendment is consistent with Section 18.12.190.

ALTERNATIVES

1. Approve
2. Continue
3. Deny

POTENTIAL MOTIONS

Staff Recommendation – Approval

“I move to **approve** Ordinance 2022-09 as outlined in the conclusion of the staff report.”

ACCOUNTABILITY

Department: Planning Department
Staff Member: Jamie Baron

EXHIBITS

1. Fence Material Examples
2. Ordinance 2022-09

Exhibit 1

Razor and Barbed Wire



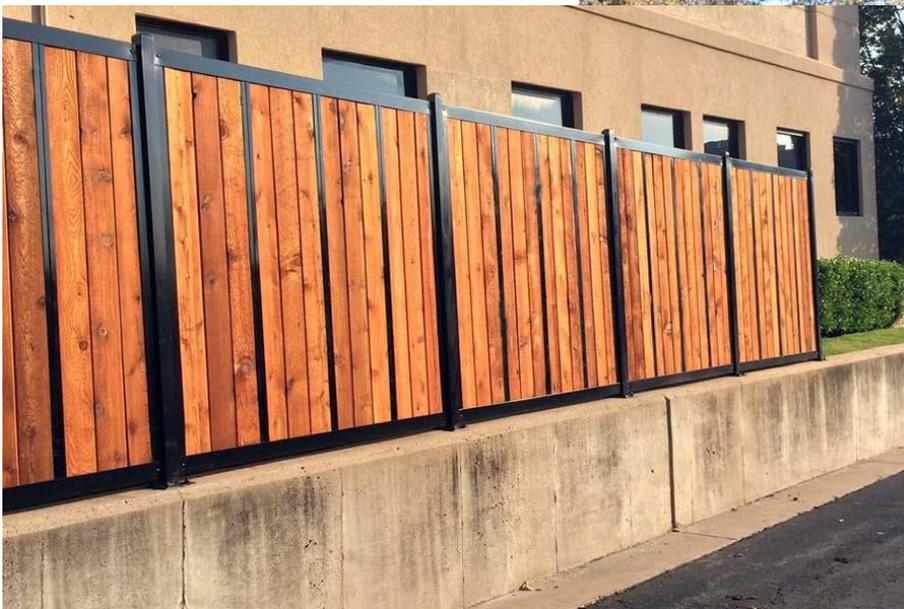
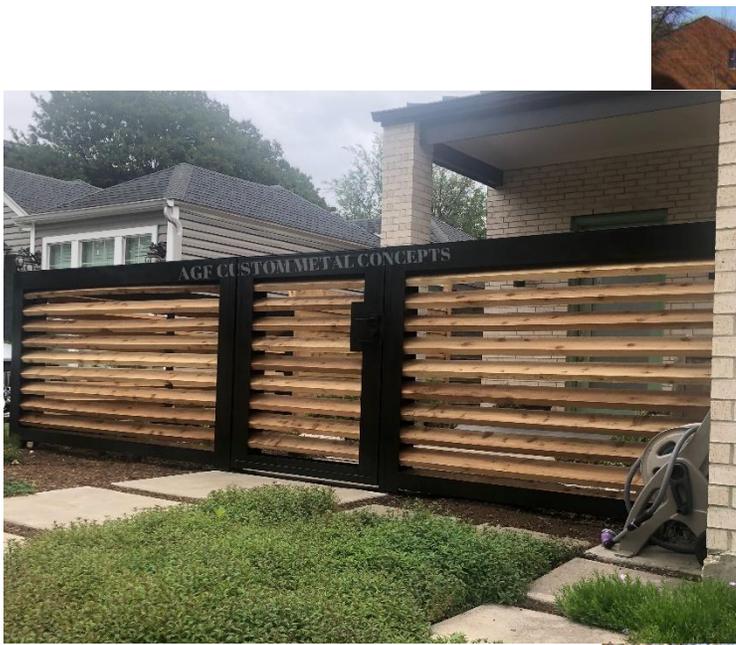
Chain Link



Vinyl



Wood



Metal Fencing



Welded Wire



Cast Concrete



CMU



Field Fencing



Exhibit 2

ORDINANCE NO. 2022-09

AN ORDINANCE AMENDING SECTIONS 18.08.207 FENCE AND 18.68.120 HEIGHTS OF FENCES AND WALLS

WHEREAS, the Heber City Council finds it in the public interest to amend Fencing Standards in commercial zones to ensure a consistent character of the Commercial Zones.

BE IT ORDAINED by the City Council of Heber City, Utah, that Sections 18.08.207 Fence and 18.68.120 Heights of Fences and Walls is **AMENDED** as shown in Exhibit A.

This Ordinance shall take effect immediately upon passage.

ADOPTED and PASSED by the City Council of Heber City, Utah this ____ day of _____, 2022, by the following vote:

	AYE	NAY
Council Member Rachel Kahler	_____	_____
Council Member Ryan Stack	_____	_____
Council Member Mike Johnston	_____	_____
Council Member Yvonne Barney	_____	_____
Council Member Scott Phillips	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

_____ Date: _____

RECORDER

Date of First Recording: _____

Exhibit A

18.08.207 Fence

“Fence” means a structure serving as an enclosure, barrier, or boundary, enclosing an area such as a garden, yard or field, and usually made of posts of timber, concrete, vinyl, or metal and connected by wire, netting, rails, or boards.

A. “Field Fencing” means a metal wire mesh where the joints of the wire are tied together by additional pieces of wire or the twisting of the wire. This includes all other wire mesh products that are not defined as “Welded Wire”, such as chicken wire.

A-B. “Welded Wire” mean a metal wire mesh where the joints of the wire are welded to create the square mesh, commonly known as hog wire or box wire.

18.68.120 Heights Of Fences And Walls Fence And Wall Standards

A. Fences and Walls in Residential Zones. No fence or wall shall be constructed to a height greater than four (4) feet in any front yard. Any fence or wall along a side yard or rear yard shall be not be constructed to a height greater than six (6) feet. However, a fence along a side or a rear property line of a residential lot, which side or rear property line borders a non-residential zone, may be constructed to the height allowed in the non-residential zone. The "thirty foot" setback may be reduced to the front wall line for legally non-conforming homes which are closer than thirty feet to the street right-of-way line.

1. New subdivisions must have Covenants, Conditions, and Restrictions for the subdivision approved by the City through the subdivision process and recorded with the subdivision plat, addressing standardized fence height, materials, and color for fences constructed within the subdivision.

B. Fences and Walls in Non-Residential Zones. No fence or wall shall be constructed to a height of greater than eight (8) feet in any non-residential zone. The permitted fencing materials for non-residential zones are as follows:

<u>Zone</u>	<u>Barbed or Razor Wire</u>	<u>Chain Link</u>	<u>Vinyl</u>	<u>Wood</u>	<u>Decorative Metal</u>	<u>Welded Wire</u>	<u>Cast Concrete</u>	<u>CMU Block</u>	<u>Field Fencing</u>
<u>C-3</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>N</u>
<u>C-2</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>N</u>
<u>C-4</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>N</u>
<u>MURC</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>N</u>
<u>NVOZ</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>N</u>
<u>MBP</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>C</u>
<u>I-1</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>C</u>
<u>I-2</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>C</u>
<u>CMP</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>C</u>

Formatted Table

(P) Permitted (N) Not Permitted (C) Conditional

Conditions:

Welded Wire is only permitted when used with another permitted material in the applicable zone.

Field Fence is only permitted for properties with an agricultural use or in keeping of grazing animals.

CMU Block must be split face, honed, or covered with a decorative veneer.

Vinyl, where conditional, is only permitted for residential uses.

* Where these provisions conflict with individual zones, the stricter shall apply.

- ~~B.C.~~ The provisions of 18.68.150 shall apply to all fences on all corner lots.
- ~~C.D.~~ Outdoor swimming pools shall be completely enclosed by a six (6) foot tall fence.
- ~~D.E.~~ All private fences, regardless of fence height or property zoning classification, shall be constructed upon private property and not within the street right-of-way.
- ~~E.F.~~ No fence shall be constructed near any driveway which would interfere with the visibility triangle required in Section 18.68.155.
- ~~F.G.~~ Fences and walls may be extended to eight (8) feet in height with the top two (2) feet constructed of barb-wire in the following institutional use areas: around culinary wells and springs, pump houses, airport, sewer facilities and electrical transmission and telecommunication facilities. When institutional fences are adjacent to residential zones, residential fences immediately adjacent to an institutional fence may be extended to eight (8) feet in height. However, no part of an institutional fence may hang over a residential lot
- ~~G.H.~~ Any fence constructed on top of or along a retaining wall, which is legitimately retaining, shall have their regulated height measured from the highest point of the top of the retaining wall. However, any fence constructed within a driveway visibility triangle or street visibility triangle as regulated by Section 18.68.155 and 18.68.150 shall not exceed the height limits for those respective code sections, with such height measured along street grade for street visibility triangles and driveway grade for driveway visibility triangles.
- ~~H.I.~~ All fences constructed prior to May 19, 2011, which conform to Sections 18.68.155 and 18.68.150, shall be considered legal.

PowerPoint Presentation:

Fencing in Commercial Zones

ORD 2022-09

Policy Questions...

What fencing materials are appropriate for Commercial Zones?

Is the proposed amendment ready for an ordinance?

Background

- Council asked staff to initiate a code amendment prohibiting chain link on Main Street
- Multiple work meetings with PC
- PC gave positive recommendation

Proposed Code

A. “Field Fencing” means a metal wire mesh where the joints of the wire are tied together by additional pieces of wire or the twisting of the wire. This includes all other wire mesh products that are not defined as “Welded Wire”, such as chicken wire.

B. “Welded Wire” mean a metal wire mesh where the joints of the wire are welded to create the square mesh, commonly known as hog wire or box wire.

Zone	Barbed or Razor Wire	Chain Link	Vinyl	Wood	Decorative Metal	Welded Wire	Cast Concrete	CMU Block	Field Fencing
C-3	N	N	N	P	P	C	P	C	N
C-2	N	N	N	P	P	C	P	C	N
C-4	N	N	N	P	P	C	P	C	N
MURC	N	N	C	P	P	C	P	C	N
NVOZ	N	N	C	P	P	C	P	C	N
MBP	P	P	P	P	P	C	P	C	C
I-1	P	P	P	P	P	C	P	C	C
I-2	P	p	P	P	P	C	P	C	C
CMP	N	N	P	P	P	C	P	C	C

(P) Permitted (N) Not Permitted (C) Conditional

Conditions:

Welded Wire is only permitted when used with another permitted material in the applicable zone.
 Field Fence is only permitted for properties with an agricultural use or in keeping of grazing animals.
 CMU Block must be split face, honed, or covered with a decorative veneer.
 Vinyl, where conditional, is only permitted for residential uses.

* Where these provisions conflict with individual zones, the stricter shall apply.

Vinyl



Wood



Metal



Welded Wire



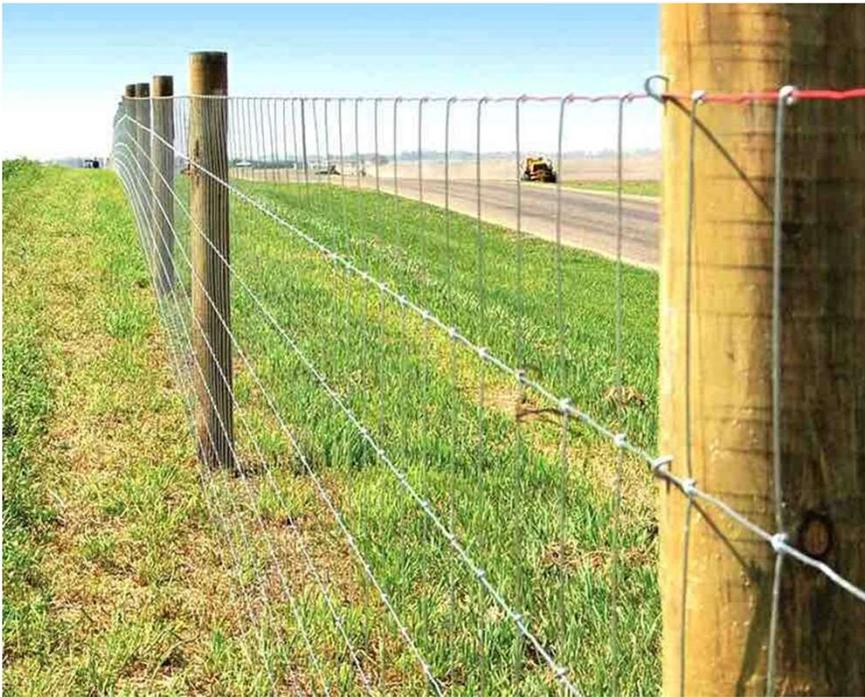
Cast Concrete



CMU



Field Fencing



Policy Questions...

What fencing materials are appropriate for Commercial Zones?

Is the proposed amendment ready for an ordinance?

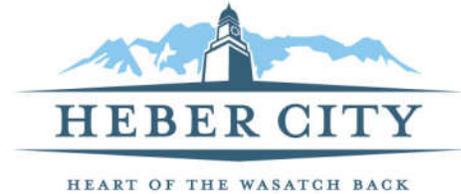
Discussion

& Next Steps



Tab 7

City Council Staff Report



MEETING DATE: May 17, 2022

SUBJECT: Traffic Study Approval

RESPONSIBLE: Russell Funk, City Engineer

DEPARTMENT: Engineering

STRATEGIC RELEVANCE:

- Principles: Necessary Administrative Action
- Goals: 2) Infrastructure Sustainability

FILE NO: N/A

SUMMARY

The purpose of this item is to seek Council approval to move forward with a Traffic Study to address safety concerns and provide recommendations for the intersection of 1200 South 500 East and the existing railroad crossing located on Southfield Road near 1000 South.

RECOMMENDATION

1. Approve and authorize staff to issue a Task Order for Horrocks Engineers to complete a Traffic Study to address safety concerns and provide recommendations for the intersection of 1200 South 500 East and the existing railroad crossing located on Southfield Road near 1000 South.

BACKGROUND

During this year's budget retreat, Engineering Staff and several City Council members brought up safety concerns relating to the 1200 South 500 East intersection near Wasatch High School as well as the existing railroad crossing on Southfield Road near 100 South.

Staff recommended that a Traffic Study be completed to evaluate the concerns and provide recommendations to the City for future projects to address the concerns.

Horrocks Engineers was contacted to provide a proposed scope of services for the Traffic Study. Their proposal is for a cost plus (Hourly) contract with an estimated cost of \$18,794.50. Per our purchasing policy, this work can be approved as a new Task Order under our existing "As-Needed" Engineering Services Agreement with Horrocks.

Staff recommends approving a budget of \$25,000 to provide a contingency in case the City decides to additional scope to the project.

FISCAL IMPACT

This project is currently not approved in the FY 21/22 adopted budget. If approved, Staff will bring back a future budget amendment to address this issue. It is proposed that the project be funding out of surplus Transportation Operating funds (Fund 48).

CONCLUSION

Based on the need to provide a safe and reliable roadway/transportation network, staff is recommending Council provide authorization to issue a Task Order for Horrocks Engineers to complete the proposed Traffic Study.

POTENTIAL MOTIONS

Staff Recommended Option - Approval

"I move to Approve this item and authorize Staff to issue a Task Order for Horrocks Engineers to complete the proposed Traffic Study and approve a budget for the work in an amount not to exceed \$25,000.00"

Alternative 1 - CONTINUANCE

"I move to Continue this item to Date , with direction to Staff on information and/or changes needed to render a decision, as follows: ..."

Alternative 2 - DENIAL

"I move to Deny this item with the findings described as follows: ..."

ACCOUNTABILITY

Department: Engineering Name

Staff Member: Russell Funk

EXHIBITS / ATTACHMENTS

Exhibit 1 – Horrocks Scope of Work

**Heber City - 2022 Traffic Study 1200 S & 500 E Intersection. Southfield Rd. & ~1000 S Railroad Crossing Safety Analysis
Proposed Scope of Work Man-Hours**

2/28/2022

		Contract Total	Total	Hours	Hours	Hours	Hours	Hours	Hours	Hours
		Amount	Hours	<i>Principal Engineer II</i>	<i>Associate Engineer II, P.E.</i>	<i>Engineer Intern II</i>	<i>Engineer Intern</i>	<i>Design Technician IV</i>	<i>Jr. Field Technician II</i>	<i>Jr. Field Technician II</i>
Labor rate				\$170	\$166	\$117	\$99	\$134	\$61	\$61
				Willa M.	Kevin C.	Scott N.	David R.	Cameron C.	Jake P.	Cody G.
Task 1	Traffic Study 1200 S & 500 E Intersection									
1.01	Traffic Counts & Analysis of Counts	\$1,685	27				1		6	20
1.02	4-Way Stop Investigation	\$630	6			2	4			
1.02.1	Study	\$513	5			1	4			
1.02.2	Cost Estimate	\$481	4		1	1	2			
1.02.3	Recommendations Draft	\$481	4		1	1	2			
1.03	Traffic Signal Investigation	\$513	5			1	4			
1.03.1	Study	\$630	6			2	4			
1.03.2	Cost Estimate	\$481	4		1	1	2			
1.03.3	Recommendations Draft	\$481	4		1	1	2			
1.04	Roundabout Investigation	\$1,021	8	1		1	2	4		
1.04.1	Study	\$962	8		2	2	4			
1.04.2	Cost Estimate	\$849	7	1	1	1	4			
1.04.3	Recommendations Draft	\$481	4		1	1	2			
1.05	Prepare Report	\$630	6			2	4			
1.06	Report QA/QC	\$1,004	6	2	4					
1.07	Final Report	\$800	7	1		2	4			
Total Dollars Task 1		\$11,642.00	111	5	12	19	45	4	6	20
Task 2	Southfield Rd. & ~1000 S Railroad Crossing Safety Analysis									
2.01	Traffic Counts & Analysis of Counts	\$1,728	24			2	4		6	12
2.02	Create Options for Improvement of Safety	\$1,260	12			4	8			
2.03	Cost Estimate for Each Option	\$630	6			2	4			
2.04	Recommendations	\$630	6			2	4			
2.05	Prepare Report	\$828	8			2	6			
2.06	Report QA/QC	\$1,004	6	2	4					
2.07	Final Report	\$630	6			2	4			
Total Dollars Task 2		\$6,710.00	68	2	4	14	30	0	6	12
Direct Costs										
	Mileage @ \$0.57/mile	\$142.50	250							
	Traffic Tubes	\$300.00								
Direct Costs Total		\$442.50								
Project Total		\$18,794.50	179	7	16	33	75	4	12	32

Scope of Work Notes:

Tab 8

FINANCIAL PLANNING POLICIES

Budget guidelines are essentially policy statements that provide a sense of the budgetary environment. Budget guidelines and financial policy statements address the budget's scope, definitions of balance, maintenance of reserves, and the assignment of roles to various budgetary participants. The following formal policy statements are presented to establish the financial goals of the organization and the principles that will govern budget deliberations.

Balanced Budget

Heber City's budget process complies with Utah Fiscal Procedures Act and Generally Accepted Accounting Principles. The City must always operate within a balanced budget, under normal circumstances. This is accomplished through a thorough budgeting process:

- A budget/strategic planning session with the Mayor and Council to establish priorities.
- A budget kick-off meeting with Department Heads and support staff to review priorities, budgeting policies and processes, and timeframes.
- Recommendations from the City Manager, Finance Manager, and Department Heads.
- Annual revenue forecasting.
- Needs assessment, level of service analysis, and cost projections for personnel, operating, and capital cost requirements.
- A review of the tentative budget with the City Council, City Manager, and Department Heads.
- Adoption of tentative budget on or before the first regularly scheduled meeting of the governing body in May of each year as set forth in section 10-6-111, Utah Code Annotated.
- Adoption of the budget by resolution or ordinance on or before June 22 of each fiscal year and if a tax increase is contemplated, the budget must be adopted by September 1.
- A copy of the final budget must be certified and filed by the financial office with the State Auditor within 30 days after adoption.
- Budget amendments are requested anytime an expenditure overage or a revenue shortfall is anticipated, or an unexpected project requires funding and approval.
- The City Manager may approve budget transfers of all or part of any unencumbered appropriation balance among programs within a department, office, or agency at any time during the fiscal year.
- The City Manager may institute a cessation during the fiscal year on hiring, promotions, transfers, and capital equipment purchases to respond to a loss or decline in a major revenue source or natural disaster.

Budget Oversight

The City Manager is the primary Budget Officer of the City and is the recommending authority for budget requests. Once a budget is adopted, the City Manager also has the authority to reallocate budget items within the same departmental budget or the same fund's budget; move line items to a "frozen appropriation" status, or seek appropriate cuts if revenues fail to keep pace with projections.

Budget Flexibility and Adjustments

Utah State law requires that a Budget Adjustment be approved before encumbrances or expenditure.

Budget transfers between departments, but within the same fund, require both the Department Heads' and City Manager's authorization. Budget transfers between funds require City Council approval by following the State law for budget amendments. Budget Openings require a public hearing and City Council approval is conducted approximately every three to four months, as needed. General instances which warrant a budget opening are as follows:

- New unforeseen grants and related expenditures.
- Unforeseen emergency repairs.
- Actual bids exceeded estimates on projects already approved in the budget.
- Actual revenues exceed estimates (if significant).
- Unexpected vendor price increases (if significant impact on the budget).
- New regulatory requirements (state and federal—if the significant impact on the budget).
- Significant economic changes.

Budget Carryforward

If completion of a project or acquisition is not expected during the fiscal year, the appropriation will lapse at the end of the current fiscal year, and funding for the project or acquisition must be re-requested in the budget for the following fiscal year and balanced along with other requests.

Fund Accounting

The City follows principles of fund accounting for all governmental funds, where each fund is defined as a separate accounting entity. Each fund is a self-balancing set of accounts established for the purpose of carrying out specific activities in accordance with clearly defined restrictions and/or limitations. For enterprise funds, the City follows principles of full accrual accounting as required by GAAP.

Budgeting Basis

The City follows the principles of modified accrual accounting for preparing its Comprehensive Annual Financial Report (CAFR); however, for budgeting purposes, a primary goal is to determine the level at which incoming sources of funds will cover outgoing payments of expenditures. Therefore, the City's budget is prepared using a modified accrual basis of accounting for governmental fund activities. This would include general fund, debt service fund, capital projects, and other governmental "type" funds.

The accrual basis mainly impacts the Enterprise Funds (Water, Sewer, Storm Water, and Pressurized Irrigation) where capitalized assets, bond debt service, bond issuances and redemptions, leases, and year-end inventory adjustments are recorded as expenditures for budgeting purposes. Depreciation and bond amortization costs or bond premiums are not budgeted.

Independent Audit

State statutes require an annual audit by independent certified public accountants to be completed and submitted to the State Auditor's Office within 180 days of the end of the fiscal year. Generally accepted auditing standards and the standards set forth in the General Accounting Office's Governmental Auditing Standards will be used by the auditors in conducting the engagement. The selection of the Auditor and management of the auditing and reporting process will be directed by the City Manager.

The City will seek to obtain annually the Government Finance Officers Association Awards for "Distinguished Budget Presentation" and the "Certificate of Achievement for Excellence in Financial Reporting."

Investment Policy

The Utah State Money Management Act provides the legal framework cities must follow when investing public monies. The primary objective of the City is the preservation of capital and the preservation of investment principal. The City's investment portfolio will provide sufficient liquidity to meet the City's operating and capital requirements to ensure the orderly execution of the City's business affairs. In investing public funds, the City will strive to maximize the return of its investment portfolio but will avoid assuming unreasonable risks. To control risks regarding specific security types, the City will diversify its investments. A comprehensive report related to the City's investment performance will be provided semi-annually to the City Council. Confidence in the City's investment policies is based on clear and constant communication of decisions and

performance of investments.

Financial Reporting and Monitoring

The City Manager's office will provide the financial reports as outlined below. Such reports contain information by which the City's Management can manage city departments and services effectively. These reports are in part designed to alert impending shortfalls in revenues or overruns in expenditures. The City will monitor revenues against expenditures.

- Monthly Reports: A financial report shall be provided monthly, that compares budgeted with actual amounts of revenues and expenditures to date.
 - Expenditure by Department/Fund budget/actual
 - Revenue by Fund
- Quarterly Reports: Quarterly reports will be presented to the City Council within 45 days of the end of each quarter
 - City Quarterly Financial with transmittal report.

CAPITAL PROGRAM POLICIES

Capital Improvement Plan

The City will develop and implement a five-year capital improvement plan (CIP), which will assess and anticipate long-term capital needs. The five-year capital improvement plan will determine the capital improvement priorities, provide for the budget of subsequent year projects (i.e. capital budget), and provide for the forecasting and anticipation of future year expenditures.

Capital Expenditures

All capital projects planned and budgeted for in any given fiscal year will have funding identified and proven to be available. Capital projects are defined as having all of the following attributes: (1) having an established value as approved annually by the City Manager; (2) a life span of greater than one year; and (3) required to be placed on the City's fixed asset list.

Capital Equipment

The City's budget will provide for the adequate maintenance, repair, and replacement of fleet equipment and information technology investments. All operating departments will be charged their proportionate share of the related replacement cost.

REVENUE POLICIES

Revenue Diversification

The City encourages diversity of revenue sources to improve the ability to handle fluctuations in individual revenues. Whenever possible, the City should review user fees, licenses, and permit fees to determine the service costs:

- Are not being subsidized by general revenues or passed on to future generations of taxpayers. Heber City should strive for generational fairness, and thus, each generation of taxpayers should pay its fair share of the long-range costs of City services.
- To determine the subsidy level of some fees and to consider new fees—the City should finance services rendered to the general public as police, streets, and parks, from revenues imposed on the general public, such as property and sales taxes. Special services rendered to specific groups of citizens should be financed by user fees, impact fees, license and permit fees, or special assessments.
- To allow for a reasonable surplus (fund balance) to accumulate and provide sufficient working capital—to provide a cushion to absorb emergencies such as floods, earthquakes, etc., to provide for unavoidable revenue shortfalls.

General Taxes and Revenues

The City should seek to maintain a stable tax rate. Generally, taxes should not be increased unless inflation has forced operating costs upward faster than growth and/or new services are instituted to meet citizens' needs. An annual analysis of general taxes and revenues will review:

- How the tax is calculated.
- Significant trends.
- State law (anticipated legislative actions and/or changes).
- Underlying assumptions for the revenue estimates; and
- A review of how Heber City taxes compare with other jurisdictions.

Fees and Charges

The City is committed to offering general government services at the lowest price possible. Recognizing that it's not the intent to make money on general government services and programs, the City will continually identify, monitor, and update user fees and charges to the extent to which they cover the cost of the services provided.

User fee revenue will be reviewed and updated annually during the budget process by the department that provided the service funded by the fee. User fees are based on an analysis of how much of the cost should be covered by the fee versus how much should be subsidized by

general taxes and revenue. Factors considered in the analysis include:

- How do the fees compare with those charged by other cities.
- Whether the service benefits the general public versus an individual user; and
- Whether the same service can be offered privately at a lower cost.

Moreover, beginning with the FY 2019-2020 fiscal year, the City will complete comprehensive cost of service studies for each service area no less than every five years. Fees will be adjusted pursuant to full recovery of cost as detailed in the cost of service studies.

Use of One-Time Revenues

The City will discourage the use of one-time revenues for ongoing expenditures. One-time revenues should only be budgeted when they are tied to a specific expenditure in the same budget year. When a one-time revenue occurs in a fiscal year and there is not a corresponding expenditure identified in the same fiscal year, the revenue is transferred to a Capital Project Fund, where the revenue will remain until a project is identified.

Consolidated Fee Schedule

The City will maintain a consolidated fee schedule encompassing all the City's fees and rates. Heber City shall review fees and rates annually to assure that fees reflect the actual cost of service delivery and make warranted changes via the budget review and adoption process. In conjunction with the adoption of the annual budget, the City Council will adopt a comprehensive fee schedule by resolution. Allowances may be given for non-profit programs when established by the resolution of the City Council.

Annual Review of Fund Balances

In conjunction with the preparation of the annual budget, a review of fund balances will be provided to the City Council. The purpose of this review is to ensure compliance with established reserve targets, assess the sufficiency of rates, evaluate whether the cost of service studies are warranted, and/or determine what projects excess funds should be earmarked for.

EXPENDITURE POLICIES

Wage/Benefits, Operating Expenditures, Capital Outlays Ratio for the General Fund

The City has established a guideline for the General Fund of a spending ratio of Wages and Benefits to Materials and Supplies to Capital Outlays of 70%/25%/5%. The City will incorporate these target ratios into its annual General Fund budget with the understanding that economic factors may outweigh or temporarily preclude such, as was experienced with the recession, but that as much as possible this guideline will be maintained.

Employee Benefits

In that employee wages and benefits are the most significant City budget expenditure, the City Manager and Finance manager will review these costs annually and other benefits in advance of the contract renewal to determine the level of benefits to maintain City market competitiveness, subject to budget availability.

DEBT MANAGEMENT POLICIES

It is the policy of the Heber City Council: (a) to periodically approve the issuance of Debt Obligations on behalf of the City to finance the construction, acquisition, and/or equipping of infrastructure and other capital assets to meet its governmental obligation to its residents; (b) to approve the issuance of Debt Obligations to refund outstanding debt when indicated by market conditions or management considerations; (c) that such Debt Obligations are issued and administered in such a manner as to ensure and sustain the long-term financial integrity of the City, to achieve the highest possible credit rating and to preserve and enhance the quality of life, safety, and welfare of its residents; and (d) that such Debt Obligations will be issued for specific projects approved by the City Council and shall not be issued or debt proceeds used to finance current operating expenditures of the City government.

Debt Capacity, Issuance, and Management

Heber City will specify the appropriate uses for debt and identify the maximum amount of debt and debt service that should be outstanding at any time. City Management will ensure that debt is used wisely, and efficiently, and that future financial flexibility is maintained. City Management will endeavor to achieve high bond ratings and take any steps reasonable to preserve or improve upon existing ratings.

Heber City doesn't currently have any general obligation bonds and therefore doesn't have a bond rating for an individual bond.

The use of debt financing will be considered under the following circumstances only:

- For one-time capital improvements and major equipment purchases.
- When the debt will be financed for a period not to exceed the expected useful life of the project; and
- When the project revenues of specific resources can be proven sufficient to cover the debt service payments.

Debt financing is NOT considered appropriate for:

- Current operating and maintenance expenses except for the issuance of short-term instruments such as tax anticipation notes; and
- Any purposes that are reoccurring in nature except as indicated above.

The following guidelines should be followed with debt financing:

- City staff will use all resources available to determine the best vehicle for debt financing.
- Refinancing of existing debt shall be considered only if the net savings exceed 3% or more.
- Annual debt service shall not exceed as outlined in Utah State Law. The legal debt (general obligation debt) limit for a city is 4% of the estimated market value of all personal and real property within the City. The legal debt margin for Heber City is calculated by using the formula outlined by the Utah State Law.
- The City will follow full disclosure on every financial report and bond prospectus.

Inter-Fund Borrowing/ Transactions Defined

Inter-Fund Advances and Loans: The City may provide loans between City funds for significant one-time purchases or critical construction projects. Such loans will be repaid by the applicable City funds, with interest on an annual basis of no less than the Local Agency Investment Fund (LAIF) rate and no more than the City's pooled investments monthly yield to maturity.

- Short-term advances or loans between City funds for short-term cash flow needs (expected to be repaid within ninety days after the end of the current fiscal year) must be approved in advance in writing by the City Manager.
- Advances or loans between City funds that will not be repaid within ninety days after the end of the current fiscal year must be approved in advance by the City Council.
- Advances or loans between City funds that are not initially expected to extend beyond ninety days after the end of the current fiscal year, but which extend beyond this period must be approved by the City Council as soon as it is determined that the term of the loan or advance will extend beyond the fiscal year.
- Any adjustment to the terms of a fund advance or loan which will result in the extension of repayment, an increase in the repayment amount, a write-off or cancellation must be approved by the City Council.

Each advance or loan approved by the City Manager or City Council will be documented in writing and will provide the following information:

- Purpose of the advance or loan.
- Identification of the borrowing and lending fund or funds.

- Dollar amount of the advance or loan and the interest rate.
- Terms for repayment, including the dates for installment payments and maturity date on which all principal and unpaid interest will be due.
- Source of repayment and the ability to repay the loan within the terms without causing a negative impact on the fund's financial position.
- Restricted monies, have additional requirements, if used for an inter-fund loan, including:
 - Must demonstrate restricted fund has a surplus
 - Terms cannot extend beyond 5 years
 - Cannot be used for unrelated services
 - Cannot be used to subsidize other funds.

All of the above conditions must be met to qualify for an advance or loan. The City Manager or his designee will review the inter-fund advances and loans annually to determine compliance with the agreed-upon terms.

RESERVE POLICIES

Reserve or Stabilization Accounts

The City will maintain a prudent level of financial resources to protect against the need to reduce service levels or raise taxes and fees due to temporary revenue shortfalls or unpredicted one-time expenditures.

Fund balances are accumulated in various funds for the following purposes:

- To avoid short-term debt that might be needed to provide working capital.
- To meet unexpected expenditures as the result of an emergency.
- To secure the City's debt and related bond ratings.
- To accumulate funding for planned capital expenditures including the replacement of capital assets.
- To meet reserve requirements for liability already incurred but not yet paid.

Utah State Law (10-6-116) allows cities to accumulate retained earnings or fund balances as appropriate in any fund. However, the law restricts balances in the General Fund as follows: 1) any fund balance less than 5% of estimated revenue may be used for working capital, certain emergency expenditures, or to cover an unexpected revenue shortfall that would result in a

year-end excess of expenditures over revenues; 2) fund balance greater than 5% but less than 35% may be used for budget purposes; and 3) any fund balance in excess of 35% must be included in the appropriations of the next fiscal year.

One-Time Reserves

A local government that becomes dependent on one-time revenue, such as reserves, or on a source of revenue that will soon disappear, can, in essence, create deficits for itself. The City will utilize one-time or temporary funds to obtain capital assets or to make other nonrecurring purchases.

General Fund Reserve Policy

Per the Fiscal Procedures Act for Utah Cities, the fund balance in the City's general fund may not exceed 35% of the total revenue of the City general fund for the current fiscal period. Total revenues include operating expenditures, transfers out, and allocations. To maintain the ability of the City to meet operational expenses daily, support unforeseen emergencies, and provide flexibility to issue short-term internal loans, the City shall maintain an operating reserve between the ranges of 15% to 35% of total revenues for the current fiscal period.

Management will exercise every mechanism available, e.g. budget cuts, hiring freezes, etc., to prevent reserves from dropping below the 15% level. Should reserve levels exceed 35%, excess funds could be transferred to support the City's Capital Improvement Plan (CIP). To the extent the reserve level falls below 15%, the City Manager shall prepare a plan within six months of approval of the audited financial statements to restore the 15% level in as short a period of time as permissible.

Enterprise Funds Reserve Policy

Enterprise Funds are used to account for operations that are financed and operated in a manner similar to private business and whose costs are paid from user charges or revenue sources other than general government revenue. Enterprise Funds should be self-supporting if (1) the benefits largely accrue to the users of the service, and (2) collecting a fee from the end-user is administratively feasible. Each Enterprise Fund shall be balanced and the overall objective of all enterprise funds is self-sufficiency.

Due to the high investment in capital assets and risk exposure, all utility funds will maintain a cash reserve of 180-210 days. This should be made up of approximately 55-75 days of unrestricted operating cash reserves, a Repair and Replacement Reserve of 40-45 days, an emergency reserve of 40-45 days, and impact fee cash reserves of 40-45 days.

Enterprise Funds Repair and Replacement Costs (R&R)

User rates should be set to recover full annual depreciation costs. Depreciation costs are intended to be accrued over many years and applied to the replacement costs of aging

infrastructure. The City should at a minimum have a repair and replacement budget annually for 2% of the estimated replacement costs of the system.

Emergency Replacement Reserve:

The City should maintain an emergency replacement reserve in each enterprise capital fund. This reserve is determined by 2% of the replacement costs of the infrastructure as estimated by the engineering department. This should be restricted in use in the enterprise capital funds.

Enterprise Funds Operating Reserve:

In each of the enterprise funds now or hereafter created by the Council, there shall be created a reservation of retained earnings to provide for day-to-day cash flow, address unforeseen emergencies, and ensure services levels are not adversely impacted. When operating reserves fall below the targeted level of total revenue for the current fiscal year, the City Manager shall prepare a plan within six months of approval of the audited financial statements to restore the minimum level of targeted retained earnings. Total revenues include transfers in:

- Water Operating Fund: 15%-25% retained earnings target.
- Sewer Operating Fund: 15%-25% of retained earnings target.
- Secondary Operating Fund: 15%-25% of retained earnings target.
- Storm-water Utility Operating Fund: 15%-25% of retained earnings target.

UTILITY OFFICE BILLING AND COLLECTION POLICIES

New Utility Customers

All customers are required to submit a utility application. By doing this they agree to the current rules, regulations, and collection process. At this time a deposit is not required.

Collecting on Terminated Accounts

When a customer terminates their account the final billing is sent with the regular billing cycle. If a customer does not pay the balance within 60 days, the account will be assessed a collection fee and the full balance will be forwarded to our collection company. If the customer has another account in the City the amount due on the closed account will be transferred to the open account after 30 days.

Inaccurate Billing

If the meter reading is determined to be inaccurate by the Public Works Department, an adjustment will be made using the historical account usage. If this is not available, the average of the account usage will be used.

Back Billing

Back billing shall be done only when it can be proven that the customer was aware of the error or intentionally created the error. Refunds shall only be given for billing errors in the past 24 months.

Delinquent Accounts and Shut Offs

Utility bills are sent to the printing service on the last working day of each month, showing the current amount due by the 20th of the following month. If payment is not received by the 20th, a late fee of either \$5.00 or 5% (whichever is greater) of the outstanding balance will be assessed and added to the following month's bill. If payment is not received by shut-off notice day, a past due reminder is sent out by mail. The shut-off notice will state the past due amount and the date payment is needed to avoid having water disconnected. If the past due amount is not paid by the shut-off day stated in the shut-off notice, water will be disconnected and the account will be assessed an additional \$50.00 disconnect fee if the account has been turned off in the previous 12 months the fee is increased to \$100.

Once the water has been disconnected the account balance must be paid in full before water will be reconnected. The account balance at this point will include the past due amount and the current amount. Customers whose water has been disconnected can pay with cash, card, or money order. Due to the possibility that checks may not clear the bank, they will not be accepted. If payment is made in full during business hours, water will be reconnected that same day. If payment is made after hours it will be reconnected the next day.

Name Changes

A name change is only permitted to update a name due to marriage, divorce, or death.

Set-Up Fees

An account setup fee is assessed on each new account; this fee is added to the customer's first bill.

Waiving Fees

All waived fees need to have the approval of the City Treasurer. The most common reasons to waive a late fee are:

- A mistake was made on the billing which resulted in a customer being charged a fee
- A late fee may be waived for someone with good payment history as a courtesy once every 12 months.
- If a shut-off/reconnection fee has been assessed and payment was made prior to the water being shut off, the fee may be reduced by half.

Meter Damage/Tampering or Accessing Meter Vault

Water meters and the meter vaults they are installed in are City-owned property. As such, access by unauthorized individuals is prohibited and punishable by a fine of up to \$500, as well as the cost of repair. If a meter is damaged by a person accessing the meter vault without proper authorization, the property owner will be billed for the cost of the repairs. If a meter is damaged by landscape or snow removal equipment, that homeowner may be charged the cost of repairs if it is determined that the homeowner was negligent or if the problem is reoccurring.

Vacant Property/Seasonal Occupancy Billing (Snowbird Policy)

There may be times when a property is vacant or does not need service for a period of time. There is a cost to provide access to service even if the service isn't being used. The base rate on services, which are assessed regardless of usage, helps cover the cost of providing access. The City recommends that customers turn the water off at the shut-off valve inside the home instead of at the meter. If a customer wishes to have the water shut off at the meter, there will be a \$50 shut-off/reconnection fee added to their account for each time it is turned on/off. The customer is not allowed to access the meter vault at any time. All connection and disconnection requests must be scheduled with the Public Works Department at least 48 hours in advance and must be done during regular business hours. Additional fees will be assessed if service is requested outside of regular business hours.

Service Fee

Heber City provides customers the ability to pay all fees regardless of the type of fee to be paid by credit card. This policy change also results in assessing a service charge to all customers that use a credit card of 3%.

Convenience Fee

Heber City provides customers the ability to make payments on their accounts over the phone. This convenience of taking the payment over the phone comes at a cost to the City. For all payments accepted over the phone, a \$3 fee will be assessed.