



HIGHLAND CITY

# HIGHLAND CITY COUNCIL AGENDA

Tuesday, December 6, 2022

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

## VIRTUAL PARTICIPATION



YouTube Live: <http://bit.ly/HC-youtube>



Email comments prior to meeting: [council@highlandcity.org](mailto:council@highlandcity.org)

## 6:00 PM WORK SESSION – CEMETERY CODE UPDATE

## 7:00 PM REGULAR SESSION

Call to Order – Mayor Kurt Ostler

Invocation – Council Member Sarah D. Petersen

Pledge of Allegiance – Council Member Timothy A. Ball

### 1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

### 2. PRESENTATIONS

#### a. Youth Council Report – Youth Council Representative

A member of the Highland City Youth Council will provide a report on their recent and upcoming activities.

### 3. CONSENT ITEMS (5 minutes)

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

#### a. Approval of Meeting Minutes General City Management – Stephannie Cottle, City Recorder

Regular City Council Meeting – September 20, 2022, October 4, 2022, October 18, 2022 and City Council Work Session – November 29, 2022

#### b. ORDINANCE: 2023 City Council Regular Meeting Schedule General City Management – Stephannie Cottle, City Recorder

The City Council will consider approving the City Council Regular Meeting Schedule for 2023. The Council will take appropriate action.

### 4. PUBLIC HEARING/RESOLUTION: GARBAGE RATE UPDATES General City Management – Erin Wells, City Administrator

The City Council will hold a public hearing and consider whether to raise the rates for garbage cans. The Council will take appropriate action.

**5. PUBLIC HEARING/ORDINANCE: PROTECTION OF PUBLIC PROPERTY**

*Municipal Code Amendment - Rob Patterson, City Attorney*

The City Council will hold a public hearing and consider adopting an ordinance to prevent and punish damage to public property. The Council will take appropriate action.

**6. ACTION: AMENDMENT OF ENCROACHMENT POLICY** *General City Management - Rob Patterson, City Attorney*

The City Council will consider an amendment and update to the City's existing Encroachment Policy in order to clarify that remediating an encroachment may involve actions other than just removing everything, and to allow grandfathering of improvements based on prior maintenance agreements. The Council will take appropriate action.

**7. ORDINANCE: TEXT AMENDMENT - DAYCARES, PRESCHOOLS, AND IN-HOME INSTRUCTION** *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a request by Highland City Staff to amend several sections of the Development Code to add regulations for daycares, preschools, and in-home instruction. The City Council will take appropriate action.

**8. ACTION: DEVELOPMENT AGREEMENT AMENDMENT - HIGHLAND MARKETPLACE** *Land Use (Administrative) - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public meeting to consider an amendment requested by MNG Highland Development, LLC to the development agreement for the property known as Highland Marketplace located at the intersection of S.R. 92 and S.R. 74. The Council will take appropriate action.

**9. ACTION/RESOLUTION: INTERLOCAL COOPERATION AGREEMENT WITH UTOPIA** *General City Management - Andy Spencer, City Engineer/Public Works Director*

The City Council will consider an Interlocal Cooperation Agreement with UTOPIA for the installation of fiber optic cable and other associated facilities within Highland City streets and other rights-of-way. The Council will take appropriate action.

**10. ACTION: PLAT AMENDMENT - BEACON HILL THE HIGHLANDS PLAT G-4** *Land Use (Administrative) - Kellie Smith, Planner & GIS Analyst*

The City Council will consider a request by Merlin Huff with Perry Development, representing Christopher and Lauren Jepsen for approval to adjust the lot line between lots 543 and 544 in the Beacon Hill the Highlands Plat G-4 Subdivision. Council will take appropriate action.

**11. ORDINANCE: ELECTRONIC MEETING ORDINANCE AMENDMENTS** *Municipal Code Update (Legislative) - Rob Patterson, City Attorney*

The City Council will hold a public meeting to consider amending municipal code section 2.12.095 regarding electronic meetings to comply with H.B. 22 and other amendments to the Utah Open and Public Meetings Act. The Council will take appropriate action.

## 12. EXPEDITED ITEMS

- a. **Library Strategic Plan** *General City Management – Donna Cardon, Library Director* The City Council will consider approving the Library's Long Range Strategic Plan.
- b. **ACTION: Agreement – Pressurized Irrigation Meter Grant with the State of Utah** *General City Management – Andy Spencer, City Engineer/Public Works Director*  
The City Council will consider an agreement accepting grant funding from the Utah State Department of Natural Resources, Board of Water Resources, in the amount of \$5M for the installation of pressurized irrigation meters and the associated installation program expenses. The Council will take appropriate action.

## 13. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

- a. **Phyllis Smith Annexation Proposal** – *Kellie Smith, Planner & GIS Analyst*
- b. **Moderate Income Housing** – *Kellie Smith, Planner & GIS Analyst*
- c. **Financial Report** – *Tyler Bahr, Finance Director*
- d. **Update On Wimbledon Sales** – *Kellie Smith, Planner & GIS Analyst*
- e. **Sign Code Updates** – *Kellie Smith, Planner & GIS Analyst*
- f. **Future Meetings**
  - December 6, Lone Peak Public Safety District Work Session, 7:30 am, City Hall
  - December 14, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
  - January 3, City Council Meeting, 6:00 pm, City Hall
  - January 5, City Council Budget Work Session, 6:00 pm, City Hall
  - January 11, Lone Peak Public Safety District Board Meeting, 7:30 am, City Hall
  - January 17, City Council Meeting, 7:00 pm, City Hall

## 14. CLOSED SESSION

The City Council may recess to convene in a closed session to discuss items, as provided by Utah Code Annotated §52-4-205.

## ADJOURNMENT

In accordance with Americans with Disabilities Act, Highland City will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at (801) 772-4505 at least three days in advance of the meeting.

### ELECTRONIC PARTICIPATION

Members of the City Council may participate electronically during this meeting.

### CERTIFICATE OF POSTING

I, Stephannie Cottle, the duly appointed City Recorder, certify that the foregoing agenda was posted at the principal office of the public body, on the Utah State website (<http://pmn.utah.gov>), and on Highland City's website ([www.highlandcity.org](http://www.highlandcity.org)).

Please note the order of agenda items are subject to change in order to accommodate the needs of the City Council, staff and the public.

Posted and dated this agenda on the 1<sup>st</sup> day of December, 2022.

Stephannie Cottle, CMC, City Recorder

THE PUBLIC IS INVITED TO PARTICIPATE IN ALL CITY COUNCIL MEETINGS.

## Council Projects Table

Description	Owner	Due Date	Status
Park Use Policy – 8/17/2021	Erin Wells	Fall 2022	Need direction regarding Open Space parks.
Playground equipment for Highland Glen Park: look at different vendors – 9/21/2021	Erin Wells, Josh Castleberry	Winter 2022	Playground ordered. Anticipated install Winter 2022/2023
Community Center Carpet and Paint	Erin Wells	Winter 2022	Painting and upstairs carpet to be done.
Work with agreement with USAC for soccer fields	Mayor & PTTC	Winter 2022	Staff working to draft agreement based on 9/20 Council direction
Traffic Calming Toolbox	Andy Spencer	FY2023	Approved in budget. Bids went out 11/28/2022.
Field Rental Policy Improvements	Erin Wells	Fall 2022	Researching new system. Reviewing MOU with LPYB and CH. Fees under review. Dependent on Council's direction on Open Space property.
Add meters to Councilmembers homes and share water usage data	Jeff Murdoch	Fall 2022/ Winter 2023	Final meters to be installed shortly.
Hogs Hollow Trail Work	Andy Spencer	Fall 2022	Fence installation and trail construction underway. Completed
Adding surcharge for credit card fees	Tyler Bahr	November 2022	Approved with fee schedule. Set to begin November 1. Completed
Security Cameras for City Hall	Andy Spencer	February 2023	Research alternative options for Council decision.
Milkweed Planting	Andy Spencer	Winter 2022/ Spring 2023	Will be planted in Alpine Highway and west side of Highland Glen with remediation efforts. (Adopt a Patch)
10100 N Rebuild	Andy Spencer	Summer 2023	To happen requisite with Ridgeview Development
Park Drive Traffic Calming	Andy Spencer/ Rob Patterson	Winter 2022- 2023	Staff preparing plan and budget for Council review.
Daycare/Preschool ordinance update	Kellie Smith	Fall 2022	Will be presented to City Council on December 6.
Create and hire communications positions	Erin Wells	Fall 2022	Offer extended.
Place sign at Mountain Ridge Park	Erin Wells	Winter 2022	Working with Wes Warrant to design and post.



HIGHLAND CITY

# HIGHLAND CITY COUNCIL MINUTES

Tuesday, September 20, 2022

Waiting Formal Approval

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

## VIRTUAL PARTICIPATION



YouTube Live: <http://bit.ly/HC-youtube>



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## 7:00 PM REGULAR SESSION

Call to Order – Mayor Kurt Ostler

Invocation – Council Member Scott L. Smith

Pledge of Allegiance – Council Member Sarah D. Petersen

The meeting was called to order by Mayor Kurt Ostler as a regular session at 7:01 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Council Member Scott L. Smith and those in attendance were led in the Pledge of Allegiance by Council Member Sarah D. Petersen.

**PRESIDING:** Mayor Kurt Ostler

## COUNCIL MEMBERS

**PRESENT:** Timothy A. Ball, Brittney P. Bills, Kim Rodela, Sarah D. Petersen, Scott L. Smith

**CITY STAFF PRESENT:** Interim City Administrator Erin Wells, City Attorney Rob Patterson, Planning Secretary Heather White, Finance Director Tyler Bahr, Planner and GIS Analyst Kellie Smith, City Engineer/Public Works Director Andy Spencer, Fire Chief Brian Patten

**OTHERS PRESENT:** Jon Hart, Eileen H. Miller, Carley Tall, Shauna Larson, Linda Littlefield, Logan Fawcett, Gln Hinton, Krissie & Lily Norton, Cari and Mike Nahren, Jean & Julie Shoaee, Wesley Warren

## 1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

No comments were offered.

## 2. PRESENTATIONS

### a. **Constitution Week Proclamation** – *Mayor Kurt Ostler*

Mayor Kurt Ostler will issue a proclamation declaring September 17-23, 2022, as Constitution Week.

Mayor Ostler explained that in 1955 the Nation Society of the Daughters of the American Revolution petitioned congress to consider a resolution for a week of observance of the foundation of the American Form of Government. The intent of the resolution was to educate the public regarding the constitution, which was adopted by the American Congress in 1787. The Constitution is a living document that assures each citizen the freedoms American's cherish. He invited representatives of the Daughters of the American Revolution to address the Council regarding the importance of this population.

Judge Kelly Schaefer-Bullock spoke to significant historical events in the nation's history where notable Americans stood for ideals of liberty; the Constitution of the United States could never have come into being without the sacrifice of those individuals and it is one of the most beautiful documents of the national history. Together with the Declaration of Independence, the Constitution established new ideals that had not been seen in the history of the world. It established meritocracy and it would be a dereliction to forget the sacrifices of those that brought it to be. She thanked the Mayor and Council for their consideration and support of this proclamation. Mayor Ostler declared September 17-24 as Constitution Week in Highland City.

### b. **Arts Council** – *Shauna Larsen, Director*

Arts Council Director Shauna Larsen will give a brief presentation concerning the classes, programs, and activities sponsored by the Highland City Arts Council.

Arts Council Director Larsen used the aid of a PowerPoint presentation to discuss the goals and needs of the Arts Council. Currently, there is a lack of space for Arts Council storage and events and the members of the Arts Council would like to have a community arts center to meet their needs. All members of the Council are volunteers, and they appreciate the Mayor and Council's consideration and support of this request.

Council Member Peterson asked how many people are impacted by the Arts Council. Ms. Larsen indicated that every event has a different reach and impact on the community; all classes and workshops offered by the Arts Council are full. She concluded the arts show was very well attended this year.

Mayor Ostler stated that the reason that the storage space has been reduced is because the Parks Department has a need to provide more office and storage space. He thanked Ms. Larsen for the information provided and asked her to pass the Council's gratitude along to her Board.

### c. **Highland Fling** – *Miranda Doman, Civic Events Coordinator*

Civic Events Coordinator Miranda Doman will report on the 2022 Highland Fling.

Civic Events Coordinator Doman provided the Mayor and Council with a report of the expenses and revenues associated with the Highland Fling event; she also reported on successes realized during the event as well as lessons learned for future improvements. Overall, things went well, and she is grateful for the feedback she has received from the community and elected officials, which will be used to help improve the Highland Fling in future years.

The Mayor and Council thanked Ms. Doman and her volunteers for their efforts; they commented on the events they enjoyed. Mayor Ostler stated that Ms. Doman is leaving Highland to pursue her college education and he wished her luck in her future endeavors.

- d. **Timpanogos Special Service District** – *Brian Braithwaite, TSSD Board Member*  
TSSD Board Member Brian Braithwaite will give a brief update concerning Timpanogos Special Service District.

This item was moved to a later point in the meeting.

### 3. **CONSENT ITEMS** (5 minutes)

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

- a. **Approval of Meeting Minutes** *General City Management – Stephannie Cottle, City Recorder*  
Regular City Council Meeting – August 2, 2022
- b. **CONTRACT: Contract with Legislative Executive Consulting, LLC** *General City Management – Andy Spencer, City Engineer/Public Works Director*  
The City Council will consider a contract with Legislative Executive Consulting, LLC for consultant services focused on grant and legislative support for a one (1) year term. The Council will take appropriate action.
- c. **Agreement: Metropolitan Water District of Salt Lake & Sandy and Aberlour Development, LLC, and Highland City** *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*  
The City Council will hold a public meeting to consider a request by Aberlour Development, LLC, and the Metropolitan Water District of Salt Lake & Sandy, to enter into two cooperation agreements for the crossing of Inverness Road and municipal utilities. The Council will take appropriate action.
- d. **RESOLUTION/AGREEMENT: Utah County Community Development Block Grant Program Interlocal Agreement Amendment** *General City Management – Stephannie Cottle, City Recorder*  
The City Council will consider entering into an additional amended interlocal agreement with Utah County relating to the Community Development Block Grant Program for fiscal year 2023, 2024, and 2025. The Council will take appropriate action.
- e. **ACTION: Final Plat – Ridgeview Plat I** *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*  
The City Council will hold a public meeting to consider a request by Ivory Development LLC for final plat approval of 17 cottage lots on 1.62 acres located at approximately Dorado Way and Elmfield Way. The Council will take appropriate action.
- f. **ACTION: Final Plat – Ridgeview Plat J** *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public meeting to consider a request by Ivory Development LLC for final plat approval of 23 cottage lots on 2.37 acres located at approximately Dorado Way and 10100 N. The Council will take appropriate action.

**g. ACTION: Final Plat – Ridgeview Park Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst**

The City Council will hold a public meeting to consider a request by Boyer Ridgeview Commercial, L.C., for final plat approval for a 4.8-acre park located at approximately Featherstone Dr and Elmfield Way. The Council will take appropriate action.

Council Member requested to pull items 3b, d, e, f, g for further discussion.

*Council Member Brittney P. Bills MOVED that the City Council approve consent items 3a and 3c.*

*Council Member Scott L. Smith SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

**3b.** Council Member Smith stated that he has spoken to a few other Council Members about this item, and they wished to discuss this matter further before voting. He stated that he would like for Council Members to have an opportunity to ask any questions they have.

Council Member Bills asked if City Administration feels they do not have the resources to apply for this grant without help from a consultant. Interim City Administrator Wells stated the City would still be able to apply for the grant but may not have connections to elevate the application and help it stand out when compared to others. The consultant has the means to help the City with making the project stand out. Council Member Bills stated that from a philosophical standpoint, it is frustrating that the City has to spend money to improve a grant application. That component of the grant application process is frustrating. Mayor Ostler agreed; unfortunately, the current government environment is the reason for this proposal. Council Member Bills then asked if the contract term is just one year. Ms. Wells answered yes but noted that the consultant would be available to assist with other grant applications during that year.

Council Member Smith asked if City Administration feels the City will realize a return on this investment. Mayor Ostler stated that a consultant is only as good as his contacts, and he has found that the consultant has been highly effective for their other clients. He stated he is comfortable recommending approval of this contract.

*Council Member Scott L. Smith MOVED that City Council approve a contract with Legislative Executive Consulting, LLC in the amount of \$100,000 and authorize the Mayor to sign the contract document, and direct staff to prepare a mid-year budget adjustment to the water enterprise fund as detailed in the staff report.*

*Council Member Kim Rodela SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

**3d.** Council Member Smith discussed the history of this agreement, which was renewed for a three-year term in June of 2022. He asked if the City has ever received any Community Development Block Grant (CDBG) funding and if Administration anticipates receiving any at this point. City Attorney Patterson answered no, the City has not received CDBG funds in the past, and he is not sure that any funding will receive in the three-year term. The effectiveness of the interlocal agreement will be monitored to determine if it should continue to renew the agreement. Council Member Smith stated that he is concerned about the County's oversight of any funding the City could potentially receive. There is so much pressure from different government entities for the institution of additional high-density housing and he feels Highland residents are opposed to that type of continued growth. He is concerned that there may be strings attached to this agreement that would require the City to allow more high-density housing. Mr. Patterson stated that there will be strings attached, but he is not able to communicate exactly what those strings would be; the Council would be able to evaluate each individual grant agreement to determine if the funding is worth accepting those requirements. The interlocal agreement before the Council tonight only makes the City eligible to receive funding but does not obligate the City to accept funding.

Council Member Bills stated that the agreement does preclude the City from applying for other types of grants and he asked if City is willing to accept that stipulation. Mr. Patterson stated that the interlocal agreement only precludes the City from directly applying for Housing and Urban Development (HUD) grants; the County wants the City to go through them to secure HUD funding.

*Council Member Kim Rodela MOVED that the City Council adopt the resolution and enter into the additional amended agreement for the Utah County Community Development Block Grant Program.*

*Council Member Timothy A. Ball SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>No</i>
<i>Council Member Sarah D. Petersen</i>	<i>No</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>No</i>

*The motion failed 3:2*

**3e and f.** Council Member Smith stated that he has been supportive of the Ridgeview development in the past, but he has heard from several residents of the City who are concerned about housing density. He asked Planner and GIS Analyst Smith if the acreage of plats I and J were combined to achieve the developer's desired density.

Ms. Smith stated that density counts for the project are defined on the overall development plan for the project; areas of the property are broken down by 'pod' numbers and areas I and J are located in the same pod. The pod density is used to determine the density of each plat. This will be consistent with future applications for continued development of the property.

Mayor Ostler referenced an area of the project that has a density of 10 units per acre but is classified as single-family homes. He asked for an explanation as to how that area will be achieved. A representative of Ivory Homes referenced the layout of that area and indicated this is a product that has been built in other areas of the City; it will have single family cottages that will be five feet apart from one another. Mayor Ostler inquired as to the timeline of this portion of the development. The representative indicated that the road is paved, and he would like to install laterals in the Plat I property area.

Council Member Smith inquired as to the average square feet of the cottages. The representative answered 2,500 square feet and he briefly discussed the manner in which the exterior of the home will be regulated by the covenants, conditions, and restrictions (CCRs) for this project.

*Council Member Timothy A. Ball moved to approve consent items 3e and 3f.*

*Council Member Sarah D. Petersen SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

**3g.** Council Member Smith asked Mr. Moffet of The Boyer Company to answer questions regarding this project; he has been supportive of this project for various reasons, but again has heard from residents about the density and potential demographics of the project. The units are fairly small and were marketed as senior living units, but there are actually a number of large families and young families moving to the project. He also addressed the amenities included in the project; there will be somewhere between 1,600 and 1,700 people living in the neighborhood and the amenities are not sufficient for that population. He asked why there is a parking lot for the park in the project when it is intended to be used by the residents of the project and not the public. Mr. Moffet stated that he understands and appreciates those concerns; he noted that the amount of open space actually exceeds the requirements of the zoning for the project; he also has the maximum number of allowed connections to the nearby trail system. He stated he feels comfortable with what has been presented in terms of amenities and open space; he would love to take the parking lot away from the internal park if the City so directs, but his plat was developed to conform with the zoning ordinance. Council Member Rodela stated she feels the parking lot is actually needed, especially for residents with young children that cannot walk the distance to the park.

Mayor Ostler reviewed the list of amenities and open space that were included in the development plan for the project and facilitated high level discussion among the Council regarding their comfort level with any adjustments or deviations from those requirements. In closing there was brief discussion regarding the impact that parking by high school students could have on the project area, with Mr. Moffet indicating that the HOA for the project will need to consider whether to prohibit non-resident parking in the project area and determine appropriate enforcement measures for any violation of a parking regulation.

Council Member Scott L. Smith *MOVED* that City Council approve the final plat for the Ridgeview Park subject to the following three (3) stipulations recommended by Staff:

1. *The recorded plat shall be in substantial conformance with the final plat dated July 27, 2022, except as modified by these stipulations.*
2. *The final plat and final civil engineering plans shall be reviewed and approved by the City Engineer prior to recordation.*
3. *All required public improvements shall be installed as required by the City Engineer and shown on the approved construction plans.*

Council Member Kim Rodela *SECONDED* the motion.

The vote was recorded as follows:

Council Member Timothy A. Ball	Yes
Council Member Brittney P. Bills	Yes
Council Member Sarah D. Petersen	Yes
Council Member Kim Rodela	Yes
Council Member Scott L. Smith	Yes

The motion passed 5:0.

**2d. Timpanogos Special Service District** – Brian Braithwaite, TSSD Board Member  
TSSD Board Member Brian Braithwaite will give a brief update concerning Timpanogos Special Service District.

Board Member Braithwaite used the aid of a PowerPoint presentation to discuss the costs of growth and improvement plans of the District; the total cost for collections projects from 2022-2029 are projected to be \$252, with the costs for treatment projects projected to be \$415 million. This is a total of \$667 million that will be spread among new growth but will also impact existing residents. He discussed current collection at the District and discussed plans to change facilities and processes to respond to growth. Anaerobic digestion can be used to process waste and generate renewable natural gas that can be a revenue generator for the District. He presented master planning documents to identify the location of future infrastructure projects in Highland and other cities that are part of the District. He also discussed manhole and pipeline condition assessments and goals to improve the system. Finally, the District has undertaken an asset management project to inform budget decisions related to maintenance and replacement of the assets of the District.

Mayor Ostler stated that new lines in the District will be paid for by future growth through impact fees, but he asked if the expansion of existing lines will be paid for through a user fee. Mr. Braithwaite stated that if the expansion of a line is needed because of growth, the cost associated with the expansion of the line would be covered by impact fees, but the replacement of the existing line cannot be covered by impact fees. The District is in the middle of estimating what impact fees will be and what user fees will be to cover the costs detailed in the capital improvement plan.

**4. PUBLIC HEARING/ORDINANCE: RIGHT-OF-WAY VACATION - BEACON HILL THE HIGHLANDS PLAT G-3** *Land Use (Legislative)* – Kellie Smith, Planner & GIS Analyst

The City Council will hold a public hearing to consider a request by Michael and Caroline Nehren to vacate approximately 400 square feet of right-of-way along Minots Ledge Drive in

the Beacon Hill the Highlands Plat G-3 subdivision. The property in question is a small sliver of land behind the sidewalk, next to the Nehren's property. The Council will take appropriate action.

Planner and GIS Analyst Smith explained on August 1, 2017, the City Council approved the final plat for Beacon Hill the Highlands Plat G Phase 3 subdivision. Michael and Caroline Nehren have petitioned to vacate approximately 400 square feet of right-of-way along Minots Ledge Drive in the Beacon Hill the Highlands Plat G-3 subdivision. The property in question is a small sliver of land behind the sidewalk, next to the Nehren's property. Ms. Smith summarized Section 10-9a-609.5 of the Utah State Code, which describes the process for a petition to vacate a portion of a public street. Staff reviewed the petition as well as State Code and found the following:

- The way the road was constructed created a surplus of land dedicated as right-of-way in the Beacon Hill the Highlands Plat G-3 subdivision. The proposed vacation will bring the public right-of-way width to City Standard.
- Good cause exists for the vacation.
- The public interest or any person will not be materially injured by the proposed vacation.

Staff recommends the City Council hold a public hearing, accept the findings, and approve the request to vacate the proposed right-of-way with the following stipulation:

1. The applicant be responsible to hire a licensed surveyor to provide the legal description of the vacated right-of-way based upon a field survey of the existing sidewalk, curb, and gutter locations.

Council Member Smith stated he is supportive of this petition but asked how this action would differ from an action to surplus a property in one of the open space neighborhoods. Ms. Smith stated that surplus or vacated property can be deeded to the petitioning property owner; in this case, the City exacted more property than needed for the right of way and the vacation is supported by law and policy.

Council Member Ball left the meeting at 8:38 p.m.

Mayor Ostler opened public hearing at 8:40 p.m.

There were no public comments.

Mayor Ostler closed the public hearing at 8:41 p.m.

Mayor Ostler reminded the Council of the need to identify findings supporting the vacation in any motion regarding this petition.

*Council Member Scott L. Smith MOVED that City Council APPROVE the ordinance that vacates the proposed right-of-way in the Beacon Hill the Highlands Plat G-3 subdivision with the finding that no material injury exists by the vacation, and good cause exists, subject to the following stipulation recommended by Staff.*

1. *The applicant be responsible to hire a licensed surveyor to provide the legal description of the vacated right-of-way based upon a field survey of the existing sidewalk, curb, and gutter locations.*

*Council Member Sarah D. Petersen SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Absent</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>

Council Member Sarah D. Petersen	Yes
Council Member Kim Rodela	Yes
Council Member Scott L. Smith	Yes

*The motion passed 4:0.*

**5. DISCUSSION: SURF SOCCER** *General City Management – Erin Wells, Interim City Administrator*

The City Council will discuss the proposal by SURF Soccer regarding the Lone Peak soccer fields. This item is being presented for discussion only. No formal action will be taken.

Interim City Administrator Wells provided an overview of the City Administration's understanding of SURF soccer's current proposal to the City; they have offered a \$200,000 cash donation; improvement, maintenance, and scheduling oversight of the soccer fields for 11 years (beginning in May of 2023); and additional details of an agreement to be negotiated by both parties. City Administration needs feedback from the Council regarding these terms before proceeding to negotiation of a formal agreement. She provided current field usage data for Lone Peak fields, concluding they are heavily used and applying the City's new field rental policy to that usage would generate \$6,500 per year, or \$71,500 over the next 11 years. She provided a comparison of Lone Peak and Mountain Ridge Park fields, identifying total acreage, acres of field space, annual maintenance costs, and construction cost for grass and sprinklers. She encouraged dialogue between the Mayor, Council, and SURF soccer regarding their proposal in order to give feedback to Administration regarding this matter.

The Mayor and Council engaged in discussion regarding current usage of the Park, including parking availability, restroom facilities, and maintenance standards. They engaged in high level discussion with Blaine Hale of SURF soccer regarding any planned improvements they have for the fields; their maintenance standards; the layout of new fields at the Park; a buyout clause to be included in the agreement; enforcement of rental policies/rules; access to the field space by other user groups; the amount of time that field space will be open to the public without a requirement to rent. Mr. Hale stated he is concerned about other organized sports groups using the fields excessively; however, he feels this can be addressed with signage and posting of regulations before considering fencing the field spaces.

Mayor Ostler polled the Council to determine if they are supportive of the proposal to move to Lone Peak rather than Mountain Ridge Park. The Council voiced support for Administration to continue negotiations with SURF soccer on a private/public partnership for soccer fields at Lone Peak fields.

**6. ACTION: SITE PLAN - HIGHLAND GROVE PLAZA** *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*

The City Council will consider a request by Jean Shoaee representing Seeg Office Highland LLC, for approval of a site plan for an office building located at approximately 10806 N 5400 W. The Council will take appropriate action.

Planner and GIS Analyst Smith explained the proposed site plan is for one office building on .395 acres (17,200 square feet) at approximately 10806 N. 5400 W. The property is designated as Mixed Use on the General Plan Land Use Map and the site is zoned Town Center Flex-Use. The property is Lot #7 in the Highland Towne Center Business Park Amended Plat C subdivision. Vehicular access to the site will be provided from North Town Center East. The site plan includes a 30' wide shared drive with the Highland City property to the south that matches the centerline and width of the access to the City Office across the Street; the plans show 23 parking stalls, one of

which is a handicap stall. Hours of operation will be from 8:00 am to 5:00 pm. The maximum number of employees will be approximately 22. Noise, smoke, odor, dust, vibration, and illumination will be minimal with this use once construction is complete. She summarized staff's analysis of zoning/general plan compliance, landscaping, and utility provision. With the proposed stipulations, the site plan and architectural plan appear to meet the following findings:

- It is in conformance with the Highland City Development Code.
- It is consistent with site and architectural guidelines in the Highland City Commercial Design Standards.
- It is compatible with existing development in the Town Center Overlay.

The Planning Commission is the approval body for architectural plans in the Town Center Overlay Zone. The Planning Commission shared their support for the architectural elevations. The architectural plans included the following:

1. Building Height: 37'
2. Colors: light greys, white, brown
3. Materials: Stucco, beehive brick and natural stone, metal with walnut wood design

Staff recommends the City Council accept the findings and APPROVE the proposed site plan subject to the following stipulations:

1. Development of the site shall comply with the site plan received September 8, 2022, except as modified by these stipulations.
2. Final civil engineering plans shall be reviewed and approved by the City Engineer. The site shall meet all requirements of the City Engineer.
3. The locations of the tree grates be adjusted to be centered with the building.
4. A cross-access easement agreement will need to be approved by the City Council and recorded on the property. The agreement must be approved by the City Council before a preconstruction meeting can be held.

Council Member Timothy A. Ball returned to the meeting at 9:11 PM.

Mayor Ostler inquired as to the location of sewer connectivity for this project, to which Ms. Smith answered sewer infrastructure is already present in the road.

Council Member Smith stated with no fence being required on 10700 South, he wondered it will be possible to prevent people from parking there. If there is no barrier, the parking lot will be used by this development. Ms. Smith stated that there is some screening included in the plan, but the intent of that was to provide a separation between residential and commercial uses, but for 10700 South, the requirement was not imposed. If problems arise, the City could require a fence or barrier. Council Member Smith stated that his only concern is that the lack of fencing will result in residents of the residential development using private parking areas. Ms. Smith then spoke to the grading issue on the property, that will likely lead to some sort of barrier in that area; the sidewalk that will abut the property will be taller than the existing grade and it will be necessary for the developer to install a retaining wall in that area.

Mayor Ostler invited input from the applicant.

Jean Shoaee, applicant, stated his building will have two attorney offices on the upper floor and two professional office units on the lower floor. The parking requirements conform with the City Code based upon the zoning ordinance; he does not foresee a parking problem at this site.

*Council Member Sarah D. Petersen MOVED that the City Council accept the findings and approve the site plan for Highland Grove Plaza subject to the following four (4) stipulations recommended by Staff.*

1. *Development of the site shall comply with the site plan received September 8, 2022, except as modified by these stipulations.*
2. *Final civil engineering plans shall be reviewed and approved by the City Engineer. The site shall meet all requirements of the City Engineer.*
3. *The locations of the tree grates be adjusted to be centered with the building.*
4. *A cross-access easement agreement will need to be approved by the City Council and recorded on the property. The agreement must be approved by the City Council before a preconstruction meeting can be held.*

*Council Member Scott L. Smith SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

## **7. ORDINANCE: OPEN BURN AND RECREATIONAL FIRE REGULATIONS**

*Municipal Code Update (Legislative) – Rob Patterson, City Attorney*

The City Council will hold a public meeting to consider an amendment to two sections to the Municipal Code related to open burning and recreational fires. The Council will take appropriate action.

City Attorney Patterson explained on July 20, 2021, the City Council adopted Ordinance 2021-17, which updated the City's municipal code regarding fire code and open burning restrictions to require compliance with state laws and regulations. Currently, the City's code provides that fires and open burns are permitted everywhere in the city, subject only to the state Department of Environmental Quality regulations on timing of open burns. Under those regulations, open burns require a permit, require that the clearing index, which looks at air quality and wind speed, is 500 or greater, and open burns are restricted to between March 30 to May 30 and September 15 to October 30. Under Utah Code § 15A-5-202.5, the City Council can regulate all ignition sources and fires within or adjacent to certain hazardous or sensitive conditions, such as near waterways, grass-covered areas, and mountainous areas. These regulations can exceed the DEQ limitations, such as by limiting fires in those areas at all times. The City has regulated the use of fireworks within these areas. However, the City has not always directly regulated other types of ignition sources or fires within these sensitive and hazardous areas, such as open burns of weeds or other debris. Further, the City Code that regulates activities within public parks, trails, open space, and other public property does not address whether fires are permitted or not. The City has recently received questions about having private barbeques and other similar activities within City parks. The proposed ordinance would update City Municipal Code § 8.04.130 to clarify that open burning is restricted in all the same areas that fireworks are restricted in, regardless of whether the open burn is permitted under state DEQ regulations. The amendment would also add a definition of "recreational fires" that is consistent with DEQ regulations. A recreational fire is a 3-foot diameter by 2-foot-high fire that is not used to dispose of materials, and recreational fires must be monitored with a method of extinguishment and kept a minimum distance away from structures and combustible materials. Finally, the proposed ordinance clarifies that no fires, including recreational fires and open fires, are permitted in city parks and other city property unless the city specifically authorizes the fire or they are using a city-installed barbeque or fire pit, subject to the rules on recreational fires. He concluded staff recommends

that the City Council review and adopt the proposed ordinance; this action is not expected to have an impact on the City's budget.

Council Member Ball asked if this policy helps provide a level of protection for the City in association with any fire on City property. Mr. Patterson answered yes; it also applies to fireworks and someone who may bring their own grill to a City park.

The Council engaged in high-level philosophical discussion regarding the responsibility a private citizen could potentially have for damages caused by a recreational fire; they also discussed the City's ability to enforce the regulations included in the proposed ordinance.

Council Member Rodela asked if the proposed ordinance will have an effect on large agricultural burns in the City. Mr. Patterson stated that agricultural burns are regulated by the State of Utah and the City has not undertaken any regulation or enforcement of agricultural burns.

Fire Chief Patten then briefly discussed fire events that regularly occur in the City, typically in the fall months; he regularly responds to calls of unattended fires or people who are burning without permits. He stated that open burns have the same level of risk as fireworks, and it is important to implement reasonable regulations.

*Council Member Kim Rodela MOVED that City Council adopt and approve the Ordinance Amending Sections 8.03.130 and 12.24.030 of the Highland City Municipal Code Related to Regulation of Open Burning and Recreational Fires.*

*Council Member Brittney P. Bills SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>No</i>

*The motion passed 4:1.*

## **8. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS**

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

### **a. FY2022 General Fund Revenue Estimate – Tyler Bahr, Finance Director**

Finance Director Bahr explained the General Fund Fiscal Year (FY) 2022 estimated revenue is \$1.7 million, minus building revenues (\$1.05 million), for a total of \$650,000. Closeout of the FY22 budget should be completed in September or October and the external audit of the FY22 budget will be completed by the end of December. The audit report will be provided to the Council in January of 2023. The next steps for the City include assessing costs that can reasonably be allocated to building inspection and development and validate building related costs and allocations with the City's external auditor.

**b. Funding for Police Cars** – *Tyler Bahr, Finance Director*

Finance Director Bahr reported the Lone Peak Public Safety District (LPPSD) Board voted to purchase four (4) police vehicles funded by Highland & Alpine, rather than purchase lease through conventional lenders. Cities can charge lower interest rate than conventional lender, but it must be at least the return available through Public Treasurer's Investment Fund (PTIF). Interest savings associated with this transaction are estimated at \$15,000 over five years and Highland's portion of funding is \$132,000. This assumes availability of funds and ability to defer a return over the five-year period. Staff is looking for feedback from the Council tonight in order to develop an agreement as an action item for the Council in a future meeting.

Mayor Ostler inquired as to the funding source for the \$132,000, to which Mr. Bahr answered the General Fund. Council Member Smith asked why this was not discussed three months ago before the City Council adopted the City's budget and at the same time that the Council was discussing the increase to the public safety fee. Mr. Bahr stated that it actually was included in the budget. Mayor Ostler stated this arose because one of the LPPSD Board Members from Alpine City suggested utilizing General Fund monies rather than borrowing through a conventional lender. The District will repay the cities with interest. Council Member Smith stated he does not think the City's General Fund should be used as a 'piggy bank'.

Council Member Rodela asked if the vehicles would be kept longer if they are purchased rather than leased. Mr. Bahr answered no; the District keeps vehicles for five years, at which point they typically have 130,000 miles.

Mayor Ostler stated that the Council is not required to agree to the arrangement; if the Council prefers to pursue traditional lending for the vehicle purchase, they can so direct. Council Member Ball stated it seems that there may be better uses of the City's General Fund monies; the return on the investment is not significant. All other Council Members agreed.

**c. ACH Payments** – *Tyler Bahr, Finance Director*

Finance Director Bahr reported that Eagle Mountain was recently a victim of cybercrime with a reported loss of \$1.13 million. A contractor who worked with the City had their email network compromised and cyber criminals were able to redirect ACH funds to a fraudulent account. Highland City contacted the Utah Local Government's Trust to determine how this happened and how to prevent it from happening in Highland. He discussed best practices for preventing cybercrimes. The Mayor and City Council thanked Mr. Bahr for looking into this issue and for helping the City be prepared.

**d. Sewer Fee** – *Andy Spencer, City Engineer/Public Works Director*

Public Works Director/City Engineer Spencer explained a resident recently requested a second sewer lateral for an accessory structure. According to the City's current policy, the resident would be required to pay impact fees for the connection. The City and Sewer District talked about the issue and the District indicated they would not charge the impact fee if the lot cannot be subdivided in the future. Staff recommends that the City consider charging a connection fee, which would be less than the impact fee; the suggested connection fee is \$300.

The Mayor and Council briefly discussed potential unintended consequences of waiving an impact fee for this type of connection, especially for future accessory dwelling units that could be built in the City. The Council communicated they believe it makes sense to waive the impact fee in this instance, but a broader policy may be necessary to address different types of situations. For the issue at hand, however, the Council indicated they are

leaning towards not charging the impact fee for the accessory building and create a sewer connection fee to charge in lieu of an impact fee.

**e. Fence Materials – Kellie Smith, Planner & GIS Analyst**

Planner and GIS Analyst Smith explained that the Highland City Code currently permits vinyl, wood, wrought iron, and precast concrete fencing materials. It prohibits chain link. However, since the most recent adjustment to the City Code, staff has received applications for other fencing types and she presented photographic examples of some, including gabion, hog/horse wire, steel cable, and plain concrete.

The Mayor polled the Council regarding their feelings about whether the materials presented by Ms. Smith should be permitted or prohibited. The Council indicated they feel gabion should be prohibited; for hog/horse wire, the Council was supportive of allowing it for animal enclosures, and possibly for regular fencing. Relative to steel cable fencing, the Council was interested in considering allowing it. Finally, for plain concrete, a majority of the Council expressed support.

Ms. Smith stated the Council's recommendations will be forwarded to the Planning Commission for a formal recommendation of an ordinance amendment.

**f. Future Meetings/City Events**

- September 27, Planning Commission Meeting, 7:00 pm, City Hall
- October 4, City Council Meeting, 7:00 pm, City Hall
- October 12, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- October 18, Work Session & City Council Meeting, 6:00 pm, City Hall
- October 20, Mountain Ridge Park Donor Reception, TBA, Alpine Country Club
- October 25, Planning Commission Meeting, 7:00 pm, City Hall

**9. CLOSED SESSION**

The City Council may recess to convene in a closed session to discuss items, as provided by Utah Code Annotated §52-4-205.

*At 10:32 pm Council Member Timothy A. Ball MOVED that the City Council recess to convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, as provided by Utah Code Annotated §52-4-205.*

*Council Member Scott L. Smith SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed unanimously.*

*Council Member Scott L. Smith MOVED to adjourn the CLOSED SESSION and Council Member Kim Rodela SECONDED the motion. All voted in favor and the motion passed unanimously. All voted in favor and the motion passed unanimously.*

*The CLOSED SESSION adjourned at 11:35 pm.*

## **ADJOURNMENT**

*Council Member Kim Rodela MOVED to adjourn the regular meeting and Council Member Sarah D. Petersen SECONDED the motion. All voted in favor and the motion passed unanimously.*

*The meeting adjourned at 11:35 pm.*

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on September 20, 2022. This document constitutes the official minutes for the Highland City Council Meeting.

Stephannie Cottle  
City Recorder



## HIGHLAND CITY

# HIGHLAND CITY COUNCIL MINUTES

Tuesday, October 4, 2022

Waiting Formal Approval

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

### VIRTUAL PARTICIPATION



YouTube Live: <http://bit.ly/HC-youtube>



Email comments prior to meeting: [council@highlandcity.org](mailto:council@highlandcity.org)

## 6:00 PM WORK SESSION – UTOPIA

The meeting was called to order by Mayor Kurt Ostler as a work session at 6:11 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting.

**PRESIDING:** Mayor Kurt Ostler

### COUNCIL MEMBERS

**PRESENT:** Brittney P. Bills, Kim Rodela, Sarah D. Petersen, Scott L. Smith (arrived at 6:15 pm)

**CITY STAFF PRESENT:** Interim City Administrator Erin Wells, City Attorney Rob Patterson, City Recorder Stephannie Cottle, City Engineer/Public Works Director Andy Spencer

**OTHERS PRESENT:** Jon Hart, Wesley Warren, Aaron Leach, Curtis Whittaker, Jeff Starkey, Brady Brammer, Nicki Brammer, Deborah Larsen, Karma Campozano, Jorge Campozano, Roger Timmerman

Mayor Ostler reported on the history of Highland City discussions regarding fiber internet options for the community; the City Council has heard from many service providers and has evaluated many factors important to internet customers. He noted that through a community survey, 53 percent of residents indicated they would like the City to take responsibility for providing fiber internet service to the City. The Council has discussed their desire for a private provider to perform the fiber project in the City, but private providers have indicated they will only pursue the ‘lowest hanging fruit’ in terms of providing infrastructure to the areas of the City that would be easiest to serve. He then invited a Utopia representative, Roger Timmerman, to address the Council.

Mr. Timmerman provided information about the creation of Utopia in the State of Utah; he discussed partner cities and the costs those cities paid in the initial phases of the project. Utopia continues to partner with additional cities to expand its network; Utopia builds fiber networks in these cities and the cities then operate the network. Utopia issues the debt and if there are not enough customers who sign up for the service to repay that debt, the City would cover the difference; however, thus far no partner city has had to pay because the ‘take rate’ in each city has been sufficient to cover costs. He then briefly summarized the accomplishments of Utopia since 2009,

after which he engaged in high level discussion with the Mayor and Council regarding topics such as the number of customers they serve; internet speeds; customer service; the amount of the City that would have access to fiber; a comparison of Utopia and other service providers; the length of time it would take to complete a fiber project in Highland; and lessons learned in other cities.

Council Member Rodela stated that if the City chooses to partner with Utopia, the term of that commitment and debt repayment is 30 years. Mr. Timmerman stated that is correct. Council Member Rodela stated that her concern is the manner in which internet options could drastically change in that 30-year period and she wondered if fiber will be obsolete or if Utopia will be able to keep pace with ever changing technology. Mr. Timmerman stated that Utopia's technology has already changed at least three or four times, but all of that technology has used the same fiber; 90 percent of the project's cost are associated with the fiber infrastructure, and that is not the same as technology. The devices on the end of the infrastructure will always change, but even fiber infrastructure that was put in the ground 30 years ago is still delivering service and supporting new technologies. He then discussed the process the City would follow if the Council determined to proceed with partnering with Utopia.

Mayor Ostler concluded the Council is still evaluating other providers; other communities in the area have opted for Google Fiber and American Fork and Lehi are pursuing Strata. Mr. Timmerman stated that due diligence is important. He noted that Google Fiber uses micro-trenching to install their infrastructure, and this causes a great deal of damage to roads; additionally, their product is short term and experimental, whereas Utopia is not short term or experimental. Utopia should be considered a long-term municipal infrastructure asset and he suggested that no city allow micro-trenching. He added that he is willing to provide more side-by-side comparisons of all service providers to the City if they desire such information in the future. Mayor Ostler thanked Mr. Timmerman for that information and asked that he provide Utopia's research regarding potential 'take rates' in Highland. Mr. Timmerman stated he will provide his entire presentation to the Mayor and Council.

The Work Session adjourned at 7:01 p.m.

## **7:00 PM REGULAR SESSION**

Call to Order – Mayor Kurt Ostler

Invocation – Mayor Kurt Ostler

Pledge of Allegiance – Council Member Kim Rodela

The meeting was called to order by Mayor Kurt Ostler as a regular session at 7:11 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Mayor Kurt Ostler and those in attendance were led in the Pledge of Allegiance by Council Member Kim Rodela.

**PRESIDING:** Mayor Kurt Ostler

## **COUNCIL MEMBERS**

**PRESENT:** Brittney P. Bills, Timothy A. Ball (via phone at 8:47 pm, arrived at 9:14 pm)  
Kim Rodela, Sarah D. Petersen, Scott L. Smith

**CITY STAFF PRESENT:** Interim City Administrator Erin Wells, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, Planner and GIS Analyst Kellie Smith, City Engineer/Public Works Director Andy Spencer, Deputy Fire Chief Jake Beck, Police Chief Brian Gwilliam, PI Superintendent Tayson Arnoldsen

**OTHERS PRESENT:** Jon Hart, Wesley Warren, David Krueger, Andrew Ford, Jason & Jen Wooley, Randal & Andrea Banagus, Austin & Erynn Wilcox, Kim & Jon Brown, James Oler, Brad Colton, Pete & Penny Kilger, Anders Wilcox, Spencer Posey, Giuseppe & Jackie Vinci, Steve & Debbie Prinster, Helene Pockrus, Jonathan Brown, Travis Peterson, Becky Peterson, Joe Pavia, Catherine Pavia, Andrew Young, Jon Peachey, Diane Probst, Gina Brown, Noah Probst, Ryan Bills, Jinjing Shen, David He, Chad Johnson, Nate Gardner, Nicole Gardner, Malia Shaw, Carson Wilcox, Drake Slattery, Lucy Slattery, Josh & Ally Allred, Morian Eberhard

## **1. UNSCHEDULED PUBLIC APPEARANCES**

Please limit comments to three minutes per person. Please state your name.

Jason Wooley stated that he has lived in the Avonmore Subdivision since 2014 and the neighboring property houses a home-based business. In 2021 he submitted complaints to the City about code compliance and he is requesting that the City Council help to enforce the land use ordinances of the City. Specifically, he does not believe that commercial activities should be mixed with residential neighborhoods. The home-based business has operated since 2004 and has never been in compliance with City Codes. Through many exchanges with City officials over the past 18 months, there has been very little progress. These issues have been further exacerbated because the property owner is building an accessory building and they have indicated they would like to use the second story of that building for their business. He stated that he does not believe that should be allowed according to the current business license held by the property owner. He asked that the Mayor and Council familiarize themselves with the material facts regarding the property and follow processes that are in place and are intended to give residents the ability to live in peaceful neighborhoods.

Mayor Ostler stated that Mr. Wooley met with him regarding this issue; the company in question is a landscaping business and they have several work vehicles stored on their property. He disclosed that in 2017, his sister lived in the neighborhood and was trying to address the situation, which led to police involvement and charges being filed against different individuals. The business continues to operate, and the City has received complaints very recently related to employees arriving at the property to get a work vehicle. The Code Compliance Officer has engaged the business owner, who communicated that they are remodeling their home and it is hard to determine which vehicles are related to that project and which are associated with the landscape business. He acknowledged that this is a frustrating issue for residents and his sister moved away from the area because of this business. However, City Administration is aware of the issue and is working with Code Enforcement and the City Attorney to determine how best to address the situation.

Helene Pockrus stated she is very concerned that the symphony is moving to Orem and Provo because there is more money in that area. However, the seniors of this community truly enjoy the symphony and she is going to miss it very much. She suggested that the City start a shuttle that will provide transportation for seniors to the symphony performance. Most seniors do not drive, but they enjoy the symphony and hate to see it move to another community.

Mayor Ostler stated he has not heard that the symphony is leaving Highland. Council Member Peterson stated she is a member of the Arts Council, and this is the first she is hearing of the symphony moving away from Highland. She reported the Arts Council is meeting tomorrow and she will get information on the matter.

Kim Brown spoke to Highland City's need for affordable childcare; Highland has 20,000 residents, three elementary schools, but zero daycare facilities or licensed home daycare providers. Commercial daycares cost twice as much as private care. Home daycares would help Highland families dramatically and could operate in a way that would not impact neighborhoods. There is one regulation that limits home childcare; home occupied

businesses are not allowed to have non-resident employees. However, it is unreasonable to expect one person living in the home to operate a daycare. Because there is such significant need for daycare in the community, she asked that the Council consider allowing a home daycare operator to have employees that do not live in the home. She stated that home daycares in surrounding communities are completely maxed out. Making this change would benefit Highland's families.

Mayor Ostler stated Ms. Brown sent an email to the Council earlier this week and this issue will be discussed during the communications portion of tonight's meeting.

## 2. PRESENTATIONS

### a. **Mayor's Award to Drake Slattery** – *Mayor Kurt Ostler*

Mayor Kurt Ostler will recognize Drake Slattery as a Highland Hero for his achievements in powerlifting.

Mayor Ostler presented the Highland Hero Award to Drake Slattery for his powerlifting accomplishments and for serving as an example to the youth of the community. He recently set a national record at the Utah State Powerlifting Championship.

### b. **Water Update** – *Tayson Arnoldsen, Pressurized Irrigation Superintendent*

Tayson Arnoldsen, Pressurized Irrigation Superintendent, will present an update on the current water conditions in Highland City.

Pressurized Irrigation Superintendent Arnoldsen reviewed the pressurized irrigation usage report for 2022; he reported that usage has decreased significantly (21 percent) since 2020. He reported on the status of the American Fork River and Provo River, after which he reiterated ongoing strategies for increasing public awareness of the drought.

Mayor Ostler thanked Mr. Arnoldsen for his report and noted that three Council Members have had pressurized irrigation meters installed at their homes; work is underway to complete the additional two-meter installations.

## 3. CONSENT ITEMS *(5 minutes)*

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

### a. **Approval of Meeting Minutes** *General City Management – Stephanie Cottle, City Recorder*

Regular City Council Meeting – August 16, 2022 and Special City Council Meeting – September 28, 2022

*Council Member Brittney P. Bills MOVED that the City Council approve meeting minutes from August 16, 2022 and September 28, 2022.*

*Council Member Scott L. Smith SECONDED the motion.*

*The vote was recorded as follows:*

*Council Member Timothy A. Ball                      Absent*

<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 4:0.*

#### **4. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT - FENCES NEAR GOLF COURSES** *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a request by Morian Eberhard to amend Section 3-612 Fences, Retaining Walls, Theme and Screen Walls, relating to fence height for properties adjacent to golf courses. The City Council will take appropriate action.

Planner and GIS Analyst Smith explained on August 2, 2022, the applicant attended City Council to express concern with the City's fencing ordinance. He lives on Caddie Lane close to a tee box for the golf course and he has serious concerns about golf balls hitting and penetrating his home or hitting family and friends while they are in the backyard of his home. One of the Councilmembers asked if the resident had spoken with the Cedar Hills Golf Course. Mr. Eberhard answered yes and indicated they have set aside some money to patch homes damaged by golf balls, but they instructed him to call the City about his questions about fencing. The Mayor explained the process of the proposed text amendment needing to go through the Planning Commission and then back to the City Council for review. After speaking with the City Council during unscheduled public appearances, Mr. Eberhard decided to apply for a Development Code amendment to allow for a taller fence on residential properties adjacent to golf courses to protect his home. The existing fence ordinance includes a section called "Specific lot considerations". The proposed amendment is to add a specific lot consideration for the following:

"v. Lots with side or rear property lines adjacent to a golf course facility

(1) The fence may be a maximum of fifteen (15) feet in height. The materials of this fence are limited to open style netting with black support posts or beams no closer than five (5) feet apart."

The Planning Commission held a public hearing on September 27, 2022. The applicant was present and explained the danger of the golf balls being hit into his yard. Some Commissioners expressed concern with regulating the safety netting at all. After more discussion, the Planning Commission voted six to zero to recommend approval of the proposed amendment. Ms. Smith discussed staff's analysis of the application, which is summarized below:

- The applicant has provided significant evidence of damage being caused to their home from golf balls (see Attachment #2 for the narrative)
- While the applicant's narrative describes a policy change that is very specific to certain properties, staff thought it necessary to be less detailed regarding distance from a tee box. Any resident with property adjacent to a golf course would be able to install a safety net to protect their homes.
- Material regulations are included in the proposed amendment to require that the fence be limited to open style netting with minimum separation between support posts or beams. The purpose of the material requirement is to prohibit residents from having a solid fence taller than six (6) feet.
- The proposed fence type is similar to what is currently permitted for fences around sport courts. The Development Code allows for sport court fences that are twelve (12) feet tall and made of vinyl coated chain link.

She concluded staff recommends approval of the proposed amendment to allow for taller fences adjacent to golf courses, based upon the finding that the amendment is consistent with the purpose and intent of the development code.

Council Member Rodela asked if public notice of the proposed amendment was required. Ms. Smith answered yes and indicated that all public notices were published in accordance with State Law.

Mayor Ostler opened the public hearing at 7:40 p.m.

Morian Eberhard thanked the Council for hearing his application; he indicated that he is willing to answer any questions the Council has. He noted that many golf balls continue to be hit into his property; additionally, a woman on the golf course was recently struck in the head and the injury required medical attention.

Mayor Ostler closed the public hearing at 7:41 p.m.

Council Member Smith thanked Mr. Eberhard for his efforts to address this safety concern; he walks along the trail near the golf course often and this matter has educated him on the importance of being on alert when walking near tee boxes and fairways.

*Council Member Scott L. Smith MOVED that the City Council accept the findings and APPROVE the proposed amendment to Section 3-612 of the Development Code to allow for taller fences adjacent to golf courses.*

*Council Member Sarah D. Petersen SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Absent</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 4:0.*

## **5. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT - FENCE MATERIALS** *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a proposal by Highland City Staff to amend Section 3-612 Fences, Retaining Walls, Theme and Screen Walls, relating to additional fence materials that may or may not be permitted. The City Council will take appropriate action.

Planner and GIS Analyst Smith explained on September 20, 2022, staff presented to the City Council several fence materials seen throughout the City or applied for in fence permit applications. The Council expressed opinions on several materials and directed staff to move forward with the code amendment process by taking the proposal to the Planning Commission. Section 3-612 of the Development Code limits allowable fence materials to vinyl, wood, wrought iron, and precast concrete. Chain link is the only prohibited material specified. Several fence permits have been applied for recently with materials that are not permitted nor prohibited. Staff has approved a couple of permits that were determined to be modern and attractive fence materials. Recently, staff placed a stop work order on a fence being built without a fence permit that is the Gabion fence style. In working with the resident, staff decided to bring the issues to the Planning Commission and City Council to clarify allowable fence materials in the Development Code. Staff is requesting that the following fence materials be considered when determining permitted and prohibited fence materials. Below is an example of a possible amendment:

1. Materials

- a. Permitted: Vinyl, wood, wrought iron, precast concrete, concrete, steel cable, and hog/horse wire with wooden or metal beams and posts. Hog/horse wire without beams are permitted for animal enclosures required for large animals.
- b. Prohibited: Chain link and gabion.

The Planning Commission held a public hearing on September 27, 2022. There was no public comment on the proposed amendment. The Planning Commission expressed their support to include examples of pictures in the code. After much discussion, the Planning Commission voted 6-0 to recommend the following materials be permitted:

- Vinyl
- Wood
- Wrought iron
- Precast concrete and concrete
- Steel cable
- Hog/horse wire within wooden or metal beams and posts. Hog/horse wire without beams are permitted for animal enclosures required for large animals.
- Chain link with horizontal top pole supports
- Gabion
- Stone and masonry

The Planning Commission voted six to zero to include a statement under prohibited materials that states: All materials not listed above are prohibited. Staff reviewed the application and found an amendment is needed to determine whether certain fence materials that are not included in current code are permitted or prohibited. After the City Council determines which fence materials are permitted, staff will update the fence help sheet included in the fence permit application to include example photos of the materials. Ms. Smith concluded staff recommends the City Council hold a public hearing, determine which fence materials to permit or not permit, and approve an amendment to Section 3-612 of the Development Code.

Mayor Ostler stated that it is his understanding that the Planning Commission wanted to allow gabion and chain-link so long as such fencing includes a top rail. They also added stone and masonry as allowed fencing materials. Ms. Smith stated that is correct.

Council Member Smith asked if there were concerns about the steel cable fencing. Ms. Smith stated that there is some worry about safety associated with steel cable, but it is becoming more commonly used on modern staircases. Interim City Administrator Wells indicated the City Council could require a top post for steel cable fencing.

The Mayor and Council discussed the increased popularity of newer fencing materials and identified existing developments in other communities where gabion fences have been used.

Council Member Bills asked if existing fences will be grandfathered if this proposed ordinance is adopted. Ms. Smith answered yes; if someone had a legal fence permit and their fence was installed before code amendments, the fence can stay. However, if modifications are made to the fence in the future, the property owner will be required to bring the fence into compliance with current codes.

Council Member Smith asked if there are any stipulations in the ordinance that will require regular maintenance of certain fencing materials, such as wood, which can appear black after a certain period of time. Ms. Smith stated that if a fence becomes a nuisance, enforcement action can be taken, but there is no regulation in the fencing code to require maintenance of wood fences.

Mayor Ostler opened the public hearing at 7:53 p.m.

Jacklin Vincy stated that she would like to add aluminum fencing to the approved fencing materials; this material has a similar appearance to wrought iron, but it is less heavy and can be crafted in different colors. She stated she feels it conforms with the aesthetic appearance the City is pursuing.

Mayor Ostler closed the public hearing at 7:54 p.m.

Council Member Rodela referenced the Council's original discussion of this issue on September 20; she does not support gabion or chain link fencing, and she would like for steel cable fences to have a top on them. She then inquired as to Ms. Smith's comments about Ms. Vincy's suggestion to allow aluminum fencing. Ms. Smith stated she would like to hear more about aluminum fencing, but it could be allowed so long as there is language included to indicate that its appearance must be similar to that of wrought iron. Mayor Ostler and Council Member Peterson stated that it is difficult to tell the difference between aluminum fencing and wrought iron fencing; Council Member Peterson stated that since the Council's last discussion of this item, she has changed her mind. Gabion fencing is not her favorite, but it may be something that residents favor. If the fencing is safe and does not 'ruin' the City, she would like to support the recommendation of the Planning Commission. She actually believes residents should be able to use chain link or gabion fencing.

Council Member Smith stated that he is unsure why the Commission would recommend allowing chain link fencing after it was prohibited as an approved fencing material. Ms. Smith stated that Commissioners cited the lifespan of chain link fencing; the material is much more durable than other fencing, such as wood. They also felt that some people feel chain link is aesthetically pleasing and they would like to use it on their property. Mayor Ostler stated that the Council made a decision 20 years ago to move away from chain link, and many homeowners' association (HOA) subdivisions prohibit chain link. However, things change, and the Council has the ability to make a different decision tonight.

Council Member Smith stated that he also personally does not like the look of gabion fencing, but he agreed with Council Member Peterson that it is not necessarily the role of the Council to decide what others should deem beautiful and aesthetically pleasing. He would like to be fairly broad in the type of fences allowed to give residents access to different options that range in cost.

Ms. Smith stated that it is important that the ordinance be clear about what types of materials are permitted and what is prohibited. She suggested that the Council include language in the ordinance to indicate that open style metal fencing, such as wrought iron, would be allowed. This would give residents the ability to use aluminum fencing that has the appearance of wrought iron.

*Council Member Sarah D. Petersen MOVED that the City Council APPROVE the amendment recommended by the Planning Commission (Attachment 1b) to Section 3-612 of the Development Code relating to fence materials, adding the open style fencing such as wrought iron, with a wrought iron appearance.*

*Council Member Scott L. Smith SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Absent</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>No</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 3:1.*

This item was brought back for further consideration after the closed session.

*At 12:31 am Council Member Brittney P. Bills requested to reconsider Item 5: Public Hearing/Ordinance: Text Amendment – Fence Materials.*

*Council Member Scott L. Smith SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Abstained</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>No</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 3:1.*

*Council Member Brittney P. Bills MOVED to amend the motion to include all the previously mentioned fence materials but keep the exclusion for chain-link fences.*

*Council Member Scott L. Smith SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Abstained</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>No</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 3:1.*

## **6. PUBLIC HEARING/RESOLUTION: ADDITION OF A SEWER CONNECTION FEE TO THE FY2023 FEE SCHEDULE**

*General City Management - Andy Spencer, City Engineer/Public Works Director*

The City Council will hold a public hearing to consider the addition of a sewer connection fee to the adopted FY2023 fee schedule.

City Engineer/Public Works Director Spencer explained on September 20, 2022, Council provided guidance to staff that a sewer connection fee was the preferred alternative to charging a sewer impact fee for conditions in which a second sewer lateral was requested for an existing lot or parcel. Any condition which was associated with an expansion of the allowable uses for the parcel would still require an impact fee in addition to the connection fee. Administration and inspection of a sewer connection that is within City rights-of-way, cuts the existing asphalt or concrete and connects to the existing sewer main requires approximately 8.5~10.5 hours of staff time. The proposed fee provides a mechanism for the City to collect fees appropriate to cover the incurred costs in conditions where the new or replacement sewer line does not result in additional sewer flow to the City sewer system. The resident making the connection would also be responsible to pay a contractor to perform the connection work and make the necessary repairs to the roadway. The addition of a sewer connection fee will address City costs associated with sewer lateral installations within City streets. There will be limited additional administrative costs which the new fee will cover. Very few instances of this occur in the City and as such, there

will not be a large impact to the City's budget. When the fee is charged, it will be shown as revenue in 57-37-10 Sewer Services. Staff recommends approval of a \$500.00 sewer connection fee.

Council Member Smith asked for example scenarios where a second sewer line would be needed, aside from an accessory structure. Mr. Spencer stated that the case that brought this issue to light is a property with a garage in which the owner wants to include a bathroom. Council Member Smith stated that would be classified as an accessory structure. Mr. Spencer clarified the difference between an accessory structure and an accessory dwelling unit (ADU); a property owner would not be able to secure a second sewer line for an ADU via the fee that is being recommended tonight. Rather, an impact fee would be assessed for that type of connection.

Mayor Ostler opened the public hearing at 8:09 p.m.

There were no public comments.

Mayor Ostler closed the public hearing at 8:09 p.m.

*Council Member Scott L. Smith MOVED that City Council approve the Resolution adding a sewer connection fee of \$500.00 to the FY2023 City fee schedule.*

*Council Member Kim Rodela SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Absent</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 4:0.*

Mayor Ostler asked that the Council consider item eight at this point in the meeting.

## **8. ACTION: ALLRED PI WATER DEDICATION AGREEMENT** *General City Management - Rob Patterson, City Attorney*

The City Council will hold a public meeting to consider a request from Joshua and Allison Allred regarding request to finance the purchase of additional PI water shares to irrigate their property. The Council will take appropriate action.

City Attorney Patterson explained Joshua and Ally Allred own a 2.38-acre property located at 10512 North 5470 West. The Allred's purchased the property in 2017 from Peggy and Gary Wold. Between 1996 and 2002, the Wolds connected to the City's PI system and bought into the City's excess water shares with a 20-year financing term in order to irrigate 34,848 square feet of their property (this term will be paid off soon). This left 68,825 square feet of the property (2.38 acres = 103,673 sq ft; less 34,848) without water dedicated for irrigation. To staff's knowledge, the Wolds never irrigated the remainder of the property through the City's PI system, and instead irrigated that portion of the property using water from an adjacent irrigation ditch based on separate shares or rights that the Wolds owned. The City has documentation showing the Wolds agreed to connect to the City's PI system and to purchase shares in order to water only 34,848 square feet of the property. The Allred's purchased the property in 2017, but they did not purchase the shares the Wolds were using in order to water the property from the irrigation ditch. In 2018, City staff completed an audit of their utility bill and saw the discrepancy

between the size of their property and the amount allowed for irrigation. In February and March 2018, staff sent letters to the Allred's informing them of the discrepancy. The notices requested the Allred's respond and explain whether they had purchased water shares for the property and confirm the amount of property being watered. The notices also stated that if the Allred's desired to continue watering only 34,848 square feet, that they would need to sign an agreement agreeing that they are not and would not irrigate the remainder of their property using the City's system. Otherwise, if they desired to irrigate the remainder of their property, they would need to provide water shares. The Allred's refused to sign the agreement. In 2019, staff followed up on the notices and proposed agreement. Mr. Allred responded, stating that they had made an inquiry to staff regarding irrigation prior to their purchase of the property in 2017. Mr. Allred claims that he spoke with a staff member who "said that the water shares were only required if we wanted to use the irrigation ditch. She told me that the utility bill covered the pressurized irrigation ...." It is unclear which staff member Mr. Allred spoke with. Staff's position is that whomever Mr. Allred spoke with was attempting to explain that the utility bill covered the currently existing sprinkler and irrigation system on the property (34, 848 square feet), and that irrigating the rest of the property would require using the irrigation ditch and associated shares. This is consistent with the written documentation. Unfortunately, it is impossible to know exactly what was communicated or not. In 2022, staff became aware that the Allred's had expanded their sprinkler system to include their entire property. A notice was sent in May 2022, leading to a meeting between staff, the Allred's, and their attorney, which in turn has led to this action. In discussing the matter with the Allred's, it appears that the expansion of the sprinkler system was done in 2019, after the previous notices and discussions, in order for them to irrigate the full beginning in 2020. No water shares have been dedicated for this increased use, nor has the Allred's PI bill been adjusted to reflect the increase water usage. Under Highland City Municipal Code 13.30.290, "Any person who desires or is required to connect to the pressurized irrigation system shall transfer the required water shares to the city, pay the required connection and other fees and file with the city for each such connection a written and signed application as provided by the city." Highland City Development Code 5-8-112 allows the City Council, at its discretion, to approve agreements to accept payments in lieu of actual dedication of water shares. The Allred's are requesting that the City Council allow them to finance their purchase of water shares in order for them to continue irrigating their entire property. Their proposed terms are a 20-year, 0% interest financing of the purchase of 3 acre-feet at \$7,000 per acre-foot. Per city standards, the Allred's are required to purchase 3.5 acre-feet of city water. The current City price for shares is \$7,500. In addition, the Allred's would have paid an additional \$1,453.34 in their PI bill between April 2020 and October 2022, if their bill had been updated to reflect their actual usage for that time period. Staff would recommend that any agreement with the Allred's address all of these matters. Further, the City has not financed a resident's purchase or buy-in of water shares for dedication since the transition to the City's PI system approximately two decades ago. Allowing the Allred's to finance their buy-in of water may be viewed as a precedent that other property owners should also be entitled to have the City finance their dedication of water. The financing of the Allred's purchase of shares, if approved, would result in payments to the City. Staff recommends resolving this issue permanently by having the Allred's purchase and/or dedicate water shares to cover their entire property. If the City Council desires to allow the Allred's to finance the purchase of shares through the City, Staff recommends that the agreement be drafted by City staff with the terms and conditions approved by City Council. Staff has a number of concerns with the drafted agreement the Allred's have provided. Proposed terms and conditions that staff is more comfortable with are below, however, no agreement is necessary if Council determines that it would prefer to simply require the Allred's to provide or purchase water without City financing. Staff recommends against a 20-year term for financing. Staff has recommended the following conditions of approval:

1. A contract to be drafted by City staff containing the terms approved by Council
2. Allred's be allowed to buy into 3.5 acre-feet at \$7,500 per acre-foot
3. The purchase of shares be financed as follows:
  - a. Term length: X years [set by Council]
  - b. Interest rate: X% [set by Council]
4. Allred's pay \$1,453.34 as additional amounts owed for PI water system usage for April 2020 through October 2022.
5. Contract to be recorded against Allred's title

Mayor Ostler stated there is no dispute regarding the purchase of water shares; the Allred's are willing to purchase the shares, but they are asking that the purchase price be \$7,000 rather than \$7,500 and that the City finance the purchase. Mr. Patterson answered yes and indicated that it would be more feasible for the Allred's to purchase the shares over a longer period of time rather than paying the total amount at one time. Mayor Ostler asked if this type of contract would set a precedent in which the City would need to offer the same opportunities to developers. Mr. Patterson answered no; the agreement can be crafted in a way that it is clear that the contract is extended for just this specific property owner and will not be available to developers. Mayor Ostler asked if there are any other similar agreements the City is party to. Interim City Administrator Wells stated that the City currently finances the purchase of cemetery lots, but those arrangements have a one-year term.

Council Member Smith asked if the water shares are already owned by the City. Mr. Patterson answered yes; they are excess water shares held by the City. Council Member Smith stated that during an inflationary time like now, he believes it is appropriate to charge interest for the loan; additionally, the shares are being financed for a 20-year term and the shares would likely dramatically increase in value in that time period. He wants to be sure that the terms of the agreement made are fair to the rest of the residents of the City. Mayor Ostler stated that he has spoken with water broker about this issue, and they have indicated that \$7,500 per share is very fair.

Mayor Ostler invited input from the Allred's.

Josh Allred stated that he was of the understanding that the purchase price was \$7,000 per share, but he is willing to accept \$7,500 per share. He has a letter from the City dated 2018 that indicated that he needed three acre-feet of water and that is the basis for the calculation of the number of shares he needs. He stated in the letter from 2018, one of the options listed for acquiring shares is to purchase through the City's utility billing and he was unaware that method is actually unusual. The only 'special' thing he thought was asking for was no-interest financing. He stated that he feels that these inconsistencies are a result of miscommunication or his misunderstanding of the arrangement. He stated that he wants to do the right thing and take care of this matter. Ally Allred added that she and her husband have learned a good lesson, they should not have relied entirely upon seller's disclosures when they purchased the property. She acknowledged that the value of the shares may increase over time, but she hopes the City will accept their offer at this time.

Mayor Ostler asked the Allred's if they take issue with the requirement to purchase 3.5 acre-feet. Mr. Allred stated he was told he needed three acre-feet per acre and until last week he assumed that was still the requirement. Mr. Patterson stated that there was a previous agreement utilized by the City that indicated the requirement would be three acre-feet. City Engineer/Public Works Director Spencer stated that the City still requires three acre-feet per acre developed, but in this case, there is a bit more than an acre that needs to be covered and that is why the calculation is 3.5-acre feet for the Allred property. Ms. Allred asked if calculations are based upon the total property size or the area that will be irrigated. Mayor Ostler stated that the calculation is based upon total acreage.

Mayor Ostler asked Mr. Allred if they are comfortable with the \$7,500 price and agree to 3.5 acre-feet. Mr. Allred answered yes. He stated that he does not have the cash to pay that amount and does not want to go into debt for it.

Mayor Ostler facilitated discussion among the Council to determine their comfort level with lending the money, which is 3.5 times \$7,500, plus \$1,453.34 to recoup uncharged pressurized irrigation bills based upon incorrect property information. Council Member Smith stated he is comfortable with those terms; the total cost paid by the Allred's would be \$27,703. Council Member Bills stated she does not want the City to act as a bank as she feels this will create a precedent where other residents may request a similar situation. She stated that she knows of another resident who is in a similar situation in terms of needing to secure water for their property and they may ask for exemptions because their total property area is not irrigable. She stated it is important for the Council to consider the ramifications of this decision and she indicated she is not comfortable financing a loan at zero percent. Council Member Rodela agreed; she does not want to get into this type of service provision for residents. Council Member Bills stated that she hates to make a decision that would negatively impact a family in the community, but the Council must consider impacts to the entire community. Council Member Peterson stated she also does

not feel comfortable acting as a bank. Additionally, she is not comfortable charging the Allred's \$1,453; if the City incorrectly calculated bill amounts, she does not think the City should be able to back charge them. She added the watering season is not over and she suggested the City give the Allred's time to resolve the issue of securing water shares until the next watering season starts. This led to brief discussion about the reasoning behind the \$1,453 pressurized irrigation charges; Mr. Patterson stated the Allred's were watering more than they were allowed, but the City was not aware of that for a two-year period. He stated that normally the City does not back charge for these types of things, but it was raised for Council consideration given that the Council is responding to a request from the Allred's regarding purchasing the water shares. He stated there is no requirement for the Council to collect that money. He added that water shares are usually required to be dedicated up front rather than deferring until the next watering season. However, the Council can provide alternative direction to staff.

Council Member Smith stated that he struggles with decisions like this; he feels that if the City does right by one citizen, it does right by all. Having heard from the Allred's, his opinion has somewhat changed, and it appears to him that they are trying to make things right. The City would receive approximately \$27,000 for the water shares. While he is hesitant for the City to act as a bank, he feels the Allred's make a compelling argument about their lack of options for purchasing the shares. Mayor Ostler stated that it is important for the Council to treat all residents the same; this is not a situation that has been forced upon the Allred's; rather, they have chosen to water the back portion of their property and that is the reason that they have incurred \$1,453 in back pressurized irrigation charges. Council Member Smith stated he understands that, but the City did not communicate that requirement very well to the Allred's. Mayor Ostler argued that the Allred's did not communicate to the City that they were increasing their watering.

Council Member Smith asked if it is actually true that the City has never made another similar financing arrangement in the City; he recalls that when the City sold open space in the past, there has been some associated financing. Planner/GIS Analyst Smith stated that the City has done some financing in the past with open space sales, but the recently adopted open space policy includes language prohibiting the City from engaging in any additional financing deals.

*Council Member Sarah D. Petersen MOVED that the City Council DENY the Allred's request to finance the purchase of water shares. The Allred's shall either restrict their use of City's PI system to previously allowed square footage or find another means to purchase and dedicate additional water shares without City financing. The Allred's have until the beginning of 2023 PI season to dedicate these shares. The price of the shares will be locked for the Allred's until the beginning of the 2023 PI season at \$7,500 per share.*

*Kim Rodela SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Absent</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>No</i>

*The motion passed 3:1.*

## **7. ACTION: VIEW POINTE SUBDIVISION/PARK DRIVE ACCESS** *General City Management - Rob Patterson, City Attorney*

The City Council will hold a public meeting to consider traffic mitigation options regarding a future street connection between Alpine City and Highland City by way of Park Drive in the View Pointe Subdivision. The Council will take appropriate action.

Council Member Timothy A. Ball joined the meeting via phone at 8:47 p.m.

City Attorney Patterson explained on July 19, 2022, Council conducted a work session regarding the View Pointe subdivision and the future connection between Park Drive in Highland to High Bench Road in Alpine. In preparation for that work session, the Council had a traffic study prepared to analyze the traffic impacts of the connection under different scenarios. In all analyzed scenarios, the connection increased traffic through View Pointe. The Council heard from residents, and city staff on the benefits, problems, and concerns related to the connection and new traffic impacts. No formal direction has been given by Council. He summarized the background of the matter:

- Alpine City will be considering and potentially approving a subdivision that will connect Alpine's High Bench Road to Park Drive in Highland in the near future.
- Per the traffic study the Council had performed, allowing the connection to High Bench Road will result in an increase in traffic through the View Pointe subdivision, which leads to safety and other traffic-related issues.
- The number of homes in View Pointe requires a second access to connect through to adjacent development under fire code, which is why Park Drive was stubbed and has been planned to connect through to Alpine.
- Park Drive exceeds the City code's restriction on length of single-access roads.
- Due to fire code requirements and safety and access concerns, Park Drive should have an unobstructed connection to High Bench per fire code standards.
- Traffic calming efforts can help mitigate traffic impacts. Staff recommends against installing break-away posts but can support other methods in the right locations.
- Park Drive has a steep slope coming off of SR92 that is particularly troublesome during winter. Access could be restricted near SR92 rather than near Alpine.
- Council action may set practical, but not legal, precedent. However, the Council has discretion to decide how to proceed with this particular circumstance.

City Engineer/Public Works Director Spencer then discussed the proposed development to occur in Alpine, compliance with the Fire Code, construction access plans, and the following traffic mitigation options:

1. Speed Radar Signs. Signs that measure and display vehicular speed to encourage drivers to be aware of their speed and slow down.
2. Chicanes/bump-outs. These involve construction of barriers or build-ups of road shoulders that narrow the road and encourage drivers to slow down. Staff supports creating chicanes in three areas along Park Drive in order to provide safer crosswalks along trails and for access to neighborhood parks and open space. Chicanes would impact and limit on-street parking to residents who live directly adjacent to the chicane.
3. Speed table. These are low rises in the road (approximately 4 inches) that encourage drivers to slow down. A speed table is longer than a speed bump, creating small rise in the road with a flatter surface (table). Staff can support a speed table to discourage use of Park Drive and slow down vehicle traffic, provided it is located at the City boundary or on the southern side of Park Drive. A speed bump, as opposed to a table, is not recommended due to problems created with snowplows and impact on personal vehicles.
4. Breakaway posts/bollards. These are posts installed in the street that can break-away or be lowered. The posts require some type of mechanism on the street that holds the posts in place. A majority of the time, the posts are in place to prevent through traffic and are only removed or lowered to facilitate emergency access. Staff recommends against installing breakaway posts/bollards because they cause significant issues with snow plowing, create maintenance issues and costs, and may not provide the recommended level of unimpeded safety and fire access.

With breakaway posts, a snowplow must either destroy the breakaway posts and/or supports every time the plow drives through, which requires the road to be repaired and the posts reinstalled at least annually, or the snowplow

must push the snow on top of the posts, which blocks all access, emergency or otherwise, until the snow melts. Even if the posts are lowered before the snow falls, there will remain some portion of the post support mechanism on the road above the road surface that will be damaged by the plow. He then discussed the SR92 emergency access option; a final consideration is that traffic calming such as a speed table or break-away posts could be located on the southern side of Park Drive at the bottom and top of the hill near where it connects to SR92, as opposed to the northern connection to Alpine City. The southern connection of Park Drive has a steeper slope than is preferred for public roads, which has caused traffic and access issues during winter. Numerous residents have described the problems with using the southern access. The Council does have the option to make the northern connection into Alpine the primary access for View Pointe residents and treat the southern access to SR92 as the discouraged emergency access. Mr. Spencer offered a comparison of this situation with other situations; good connectivity both between two cities and within a city contributes to overall quality of life. The City has several future development areas that will likely include connections to adjacent community roadways, potentially including connections to Lehi City, Alpine City, and American Fork City. Further, internal City road connections or expansions raise somewhat similar concerns. Because this type of issue and concern regarding road connections and traffic calming has occurred and will occur elsewhere in Highland, it may be helpful to consider prior actions, as Council decisions pertaining to Park Drive may be referenced by residents in future with new road connections or road expansions. In general, the Council has followed a pattern of requiring internal connections between Highland roads, despite resident objections, where there are clear safety and access benefits, while discouraging external connections between Highland roads and other cities. However, this is solely by way of information. No legal precedent is set by the Council's decision on View Pointe. The decision on how to manage roads is a legislative matter over which the Council has broad discretion, so each situation is dealt with on a case-by-case basis. Below are examples of situations that staff and/or the Council have dealt with in the past. The circumstances of the Park Drive/High Bench Road connection, where a Highland local residential road with parks, trail connections, and driveways will be connecting to a collector road outside of Highland City, merits particularized attention.

1. Manor Drive. A subdivision was approved with a single access that does not meet City code and fire code limitations on length of cul-de-sacs and turnaround requirements. Several meetings were held on the possibility of connecting Manor Drive to other streets, and a majority of Manor Drive residents were and are opposed to connecting their road through, due to concerns of Alpine City and other traffic increasing through Manor Drive. Staff supported the connection for emergency, utility, and snowplow access. A majority of the City Council voted to connect Manor Drive through to Snowflake Drive.
2. The Hollow Subdivision. Highland City was sued by residents regarding the approval of the Hollows subdivision, because the subdivision would connect Canal Boulevard, a major collector road, to their local residential road, 10250 North, which had slope and visibility issues. A traffic study confirmed that the subdivision would increase traffic on 10250 North. The Council approved the connection and authorized litigation against the residents to allow the subdivision and road connection to be built.
3. 4800 West Expansion. Highland City considered widening 4800 West in order to relieve traffic congestion and resolve issues with the 4800 West/SR92 intersection. After several meetings and receipt of feedback, comments, and analyses from staff, outside engineers, Highland residents, and Alpine residents, the Council rejected the initial approach of widening the entirety of 4800 West, out of concern that Highland City would be accommodating Alpine traffic at the expense of Highland residents. Instead, the Council only approved improvements to the intersection to address safety concerns.

Mr. Spencer concluded the cost of this project depends on the type and level of traffic mitigation decided by the Council. Funding for this expense is not included in the FY2023 budget. Thus, a funding source will need to be found, and there will need to be budget adjustments unless otherwise directed by the Council. Depending on the Council's direction, staff will bring back bids and contracts that identify the funding sources necessary to complete the improvements. As the timeline of the construction for the Smooth Canyon development is unknown, it may be that the expenditures associated with this decision fall in a future budget year and would not impact the FY2023 budget. If this happens, the project will be budgeted for through the normal budget process for a future fiscal year.

Council Member Smith stated he understands the concern about snow removal around bollards; however, if they are meant to create a barrier, he is not sure why snow would need to be cleared around them. He then stated there are two famous speed tables near an elementary school and if they were a problem for buses, he wondered why they would have been placed near a school.

Mr. Patterson then addressed areas of consideration for the Council:

- Impact to Park Drive as a local road
- Importance of Community Connection
  - Internal and external
- Future Precedent
  - Practical, but not legal
- Emergency Access
- Construction Access

Mayor Ostler stated there was a plat dedication in 2004 and it includes the following language: “hereby dedicates the streets and other public areas as indicated hereon in perpetuity use of the public.” He stated this is the View Pointe Plat and he wondered how the use of something like bollards would impact public access to the dedicated areas. Mr. Patterson stated that language is included on almost every plat because each subdivision has a public right-of-way that must be dedicated. Once the property becomes part of the City, it is under the jurisdiction of the City Council and the Council can consider options such as closing or vacating all or a portion of a road. He then concluded staff recommends that the City Council consider the various traffic calming options available to mitigate the impact of the Park Drive/High Bench Road connection on Highland residents. Staff recommends avoiding breakaway posts/bollards if possible. Staff also recommends consideration of the following conditions:

- A. Staff not move forward with any traffic calming option until the Smooth Canyon subdivision is approved by Alpine and is being constructed.
- B. Staff not move forward with traffic calming option unless the Smooth Canyon subdivision is approved without the U-shaped road.
- C. Traffic calming option[s] [Council choice] be installed now, with additional traffic calming options and funding for those options reserved until after the traffic impact on Highland residents is understood.
- D. Other conditions or stipulations as drafted by the City Council

Council Member Timothy A. Ball arrived at the meeting in person at 9:14 p.m.

Council Member Bills noted this is not an easy issue for the Council or City staff; she emphasized that everyone who works for the City is working for the best interest of the residents. She lives in the View Pointe subdivision, and she wondered if she has a conflict of interest in making a decision on this project. Mr. Patterson answered no as there is no financial interest for Council Member Bills. Council Member Bills provided the Mayor with a letter stating that she lives in the View Pointe project, and she is not recusing herself from discussing or voting on this matter. Mayor Ostler accepted the letter.

Council Member Bills then made a presentation regarding the matter; she provided a graphic identifying the use of breakaway posts on the north end of Park Drive and other traffic calming measures throughout the subdivision. Council Member Rodela asked if breakaway posts are the same as bollards, to which Council Member Bills answered yes. She then presented a map of Highland and identified other areas that are similar to this one in that they are areas that Highland and Alpine connect; however, she does not see one that is as similar as this in that the others do not connect to major roads. She also identified areas marked by red stars to indicate places that people will go if they are allowed access through View Pointe. Blue stars represent the three existing connections between Alpine and Highland; the blue line is 4800 West and everything in the orange box on the east side of the map is areas that she anticipates would use this new connection through View Pointe. The yellow line is High Bench Road, and it would connect through View Pointe; it is 2.5 miles long and only has one stop sign. This is the same type of road as 4800 West and Alpine Highway. As far as traffic studies, it is important to consider where from Alpine people will go, but she feels that most important is to consider where Alpine residents will be coming home from and what routes they will use. When using the canyon road, this new connection would be a

very obvious route for motorists to take to get to their neighborhood rather than going all the way to 4800 West. She then presented an aerial view of Park Drive; she noted the Highland City's design standards indicate that access to collectors shall be limited from local streets or individual driveways. On this road there are 38 driveways, three parks, seven intersections, seven trail crossings, and open space. The road is 2,459 feet, or .46 miles long. She then noted she has been collecting a list of possible problems with or objections to the current proposal and she wished to address those:

- The project was approved 18 years ago and there were several conditions of approval, including that the hill be graded at a grade that would allow school bus access. The grade that allows buses is eight percent, but the road is 10.5 percent.
- Once the road is widened to a collector road, the grade should be seven percent or less.
- There was to be some sort of access to the north, but the type of connection was not mentioned.

She added the reason the buses cannot get up the road is because of the steepness and a curve, which 't's' into Highway 92. Highway 92 is going to be widened to four lanes and making a left turn there would be problematic. There is significant traffic in that area as proven by the installation of traffic signals at Canyon Road and 4800 West. She noted this is not the same as other areas in Highland; View Pointe residents value safety over social. There have been plenty of emergencies in View Pointe and the area has been evacuated successfully.

Council Member Rodela inquired as to the prioritization of snow removal in and around the View Pointe area. Mr. Spencer stated that Park Drive is a steep road and is typically plowed first. Council Member Rodela asked if snow would be pushed up against the bollards recommended by Council Member Bills, which would create an emergency access issue. Mr. Spencer stated that was initially what he thought he would need to do, but in speaking with a plow driver, they have indicated they can raise their blade up and pull the bollards over temporarily, which would leave about eight inches deep of snow in the areas immediately around the bollards. After they are knocked down, they will stand back up on their own.

Council Member Bills then addressed the cost of her proposal; she asked Finance Director Bahr how much money View Pointe has contributed to the open space fund. Mr. Bahr stated that it is approximately \$200,000. Council Member Bills stated that the Council has discussed the use of that money in the past and has decided that approximately 50 percent could stay in the neighborhood from which it was collected. She feels that this would be a fine way to use that money.

Council Member Rodela stated that Alpine can have two access points without allowing this connection. She asked how, then, Highland will meet the requirement to have a second access point. Mr. Patterson stated he does not know how the City would provide a second access point if this connection is denied; there has been some discussion about providing access through the gravel pit. The proposed access point is the most immediate access point available.

Mayor Ostler suggested that any motion including the bollard solution also include a reference to future connectivity out of the subdivision.

Council Member Bills referenced the mention of a secondary access point through the gravel pit; she has been told that it is too expensive, but she does not think that the option has been fully explored and there are many who believe that it would be a viable solution for the future.

Mayor Ostler stated that it is great that Park Drive is the first road plowed in a snowstorm, but the road still becomes slippery and some motorists experience difficulty; this could be because of the steep grade of the road, but he inquired as to the thought process about plowing the area where the bollards would be placed when the road is slippery. Council Member Bills stated she has been told that the bollards could be removed in the fall and replaced in the spring with very little effort.

Mayor Ostler inquired as to the number of fires that have occurred in the View Pointe subdivision in the past 15 years. Council Member Bills stated she is aware of at least four fires, some of which have required evacuation of the neighborhood. Mayor Ostler stated he has heard from residents who recognize the concern about emergency access to the neighborhood in the event of a fire or other emergency issue, but they are more concerned about the daily safety associated with an increase in traffic due to the connection.

Council Member Rodela referenced the design options that were presented to Alpine City; one was a horseshoe road that would deter traffic and increase safety and the other was a straight through road. She asked Council Member Bills if the horseshoe road may impact her and the neighborhood's feelings about the appropriate traffic calming measures to be used. Council Member Bills stated that she was initially a proponent of the horseshoe road, but after reviewing the results of the traffic study and considering who will be using the road, she does not think the horseshoe would do enough to prevent an increase in traffic in the neighborhood. She stated that in looking at Highland collectively, she does not think there is any circumstance in which the proposed road will benefit Highland residents, other than the residents of View Pointe; it truly only benefits Alpine. She appreciates the need for connectivity, but in this case, she feels that the benefits of the road are so far outweighed by the negatives and costs of the project.

Council Member Ball asked if the City would have increased liability if the traffic calming measure chosen would impede a fire truck by even a couple of minutes. Mr. Patterson stated the City could potentially have increased liability, but he cannot predict the level of risk. He stated that the Governmental Immunity Act includes a waiver for defective or unsafe road conditions. He stated that he is not sure if breakaway posts would meet industry standards for providing fire access. He stated that may be an issue that would be heavily litigated based upon an attorney's assessment that the Council actively made a decision that impeded access. Council Member Ball asked if that would be the case if the City provides evidence that the selected design was based upon desires of the residents in the neighborhood. Mr. Patterson answered yes and noted the Council is ultimately responsible.

Mayor Ostler asked if the City would have liability if a motorist struck the bollards with their vehicle. Mr. Patterson stated he is less worried about liability associated that type of scenario. Council Member Ball stated that he has done some research on the issue and has found that a municipality can be held liable if signage is considered insufficient or inaccurate; he asked if the City's liability would be reduced if proper signage regarding the selected traffic calming measure were installed. Mr. Patterson answered yes; lighting and signage is important for vehicle access. Council Member Bills added it is important to consider the City's liability associated with allowing more traffic on a road with a 10 percent grade, even though the City Code indicates the grade should be no more than eight percent.

Council Member Rodela stated that she wants to have more discussion about the secondary access point; she would like Representative Brady Brammer to address that issue. Mayor Ostler stated that he contacted the developer, Patterson Construction, which is working on the project in Alpine. It may be possible to work with Patterson to design the road responsive to the concerns of both cities and including the traffic calming measure selected by Highland City.

Council Member Smith stated that he is on the Developmental Center Governing Board and in 2017 they commissioned a road study that was performed by a company for the Utah Department of Transportation (UDOT). They focused on the east/west corridor, which runs for his neighborhood and was a very controversial project for a long period of time. The road study projected that the traffic flow on the east/west corridor would be 6,000 to 8,000 vehicles per day by 2050. He stated that projection has already been reached and he does not believe that road studies are very helpful. It is his personal opinion that the proposed connection with Alpine City would result in traffic levels doubling. He noted that the Public Works facilities are located at the bottom of the road and there is connection to Timpanogos Highway, which will be widened to a four-lane highway. His concern is traffic congestion coming off the hill. School buses cannot get up the road, so people bring their children to the bottom of the road. This means there is a great deal of traffic already at the bottom of the road and there are potential problems at the connection point with Timpanogos Highway. He stated that he feels that the Alpine connection should avoided for these reasons. His personal opinion is that there should be a road west of View Pointe in the

gravel pit area. An emergency exit is needed on the north side of View Pointe, but it seems the ideal situation would be for the road to be to the west. He stated that he often hears that certain improvements cannot be made because they are too expensive, but he cited other recent projects in the community that have been very expensive. He supports the recommendations included in Council Member Bills' presentation and he hopes that the residents of View Pointe recognize that the staff and City Council are trying to make the best decisions they can.

Mayor Ostler referenced the map of the area included in Council Member Bills' presentation; he has family that lives in Alpine, and he took them to the area outlined in orange to ask them how they feel traffic patterns would change if the connection were approved. One of the concerns they shared is that in the afternoon, Healy Boulevard backs up to 4800 West and they would use the connection through View Pointe if it were approved. He stated that he is nervous about the potential impacts of the connection, but he asked Police Chief Gwilliam to address the proposal to install bollards as a traffic calming measure. Chief Gwilliam stated that getting around the bollards will not be an issue for the Police Department, if they are breakaway or bendable like others that are currently installed in the community. He stated that the main issue that his Department has experienced in the past is not being able to get up the hill into View Pointe because of snow/ice conditions, but once the road is plowed, the road is passable. Fire Chief Beck added that the Fire Department does not have any issues with the bollards.

Mayor Ostler stated that State Representative Brammer is present to provide some information to the Council. He added that a developer has made an offer on the gravel pit area, but that area is owned by Central Utah Water, and they must find a recharge area to replace the gravel pit area if it is sold.

Representative Brammer stated he is the Vice Chair of the Infrastructure in General Government Committee, and they are tasked with funding local roads. He addressed SR92 and identified connectors through Highland and Alpine cities, including intersections with traffic signals. If the connection is made through View Pointe, there is not enough distance between View Pointe and the light at the canyon to place another light at the new intersection. This would be a fundamental change in the area, and it would create a long-term problem. Traffic studies have been conducted for two signalized areas on SR92 and a left-hand turn lane has been added. There has been a rash of accidents near the gravel pit lately; speeds are very high and there is a great deal of truck traffic in that area. The Mountainland Association of Governments (MAG) and UDOT have allocated funding for traffic studies and lights and a lot of work has been done on SR92. However, moving away from SR92, he does not have a lot of control, however, he can help to work with MAG and UDOT to make sure they are considering the issues in the area. He discussed the risk and increased liability associated with the problems with the road through View Pointe; the engineering and design do not comply with code. There are real safety concerns related to fires/emergency access as well as snow removal. The traffic report does not communicate the type of traffic in the area; buses cannot get up the hill so there are kids walking up and down the hill in the morning and afternoon school hours. If traffic is diverted from 4800 West through View Pointe, the traffic levels will increase during the same time that kids are walking to and from school. This is a recipe for disaster. He stated that he is working with MAG on a concept plan that would run through the gravel pit, but funding is not yet secured. The City Council can change its General Plan to include a road in the gravel pit that would act like a connector; this would ensure that a private developer of the area would pay the majority of the costs for that road. He stated it is true this is a longer-term solution, but it would better support current and future traffic flow with appropriate connections onto SR92. He is dedicated to working with the City and MAG to pursue that option as he feels it is a much wiser and a more long-term solution.

Council Member Smith stated that he likes those ideas, and he feels the most compelling argument is to place a traffic signal at the end of the road onto SR92.

Council Member Peterson stated that she is prepared to make a motion and she supports the breakaway posts with option one that was included in the staff memo. She would like to wait to see what Alpine is going to do but be ready to place the posts to allow for a secondary emergency access. Her greatest concern coming to the meeting tonight was snow removal, but those concerns have been addressed.

Council Member Smith stated he would like for a motion to include language that Highland City is pursuing the option of a road through a gravel pit. Council Member Peterson stated she is in agreement with that concept.

Council Member Rodela stated that she has a lot of concerns; her last concern was making sure that there is a second access to View Pointe. She agrees with Council Members Bills, Smith, and Peterson about the breakaway posts and pursuing the road through the gravel pit. Council Member Ball agreed; the breakaway posts are a stop gap measure for a more permanent solution that was discussed by Representative Brammer.

Mayor Ostler invited public input at 10:12 p.m.

Karma Compazano stated her greatest concern is safety and she is wondering if there may be any consideration of lowering the speed limit to 20 miles per hour. She stated that the residents of View Pointe really want a second access point and she likes the idea of the gravel pit road, but it must have a light onto SR92.

Austin Wilcox stated he is very appreciative for the work that has been done on this issue. Regarding the bollards, he wondered if there could be a sign placed to accompany the bollards to advertise that the access is for emergency vehicles only. He stated that he would rather move forward with that concept first rather than waiting to see what Alpine decides. Alpine wants the access to be built, but he feels it is appropriate for Highland to be decisive at this point.

Matt Nelson thanked Council Member Bills and Representative Brammer for speaking on this issue; he has never seen an issue unite a neighborhood like this. He is supportive of the bollards with emergency access only signage, as well as a speed radar sign in View Pointe.

Randal Banagus stated he also supports the proposal for the bollards as well as the future road through the gravel pit area. He asked if the bollards would stay in place once the gravel pit road is built. He stated that he does not think it would be necessary to drive over the bollards on a regular basis; it should only be necessary when the main road is not passable.

John Nielsen stated he and his wife live in Alpine and they do not want the access to be built; they live in the area where the construction would happen, and he knows there would be an increase in traffic. It may be true that the Alpine City Council wants the access point, but the residents do not. He likes the proposals made by Council Member Bills as it will provide needed emergency access. He stated that traffic studies typically fall short; there is typically more traffic than projected in those studies.

Andrew Young stated he also lives in Alpine, and he discussed the differences between the ways that the Highland and Alpine City Councils have conducted themselves. Alpine does not listen to their residents while Highland promotes democracy. He thanked the Highland Council for listening to their residents; not one Alpine resident he knows wants this road to go through because they value safety and a family environment. However, the Alpine City Council wants the road to go through and residents have no idea why.

The public comment period was closed at 10:21 p.m.

Council Member Bills inquired as to whether it would be appropriate to adopt an ordinance that will regulate the use of the access for emergency purposes only. Mr. Patterson stated that would be essentially the same as closing the road and it would be difficult to enforce an ordinance that criminalizes access. He stated that a sign would be appropriate and reasonable. Council Member Bills asked Chief Gwilliam to respond to the question about reducing the speed limit in View Pointe to 20 miles per hour. Chief Gwilliam stated that is not in favor of reducing the speed limit; there is a standard across the State of Utah that calls for a speed limit of 25 miles per hour for residential neighborhoods and it would be his preference to install traffic calming measures rather than lowering the speed limit.

Council Member Bills asked that the Council consider language in the motion that calls for signage advertising the access point as emergency access only. Additionally, she would like to request two speed tables that would connect the crosswalks or trails on Park Drive.

Interim City Administrator Wells stated she wants to do more research on the use of open space funds for this project; she asked that the Council leave the funding source out of the motion.

Mayor Ostler asked Council Member Bills to identify the locations of the two speed tables she would like to see. Council Member Bills referenced the street drawing in her presentation and identified the location of existing crosswalks and/or trails that she like to bridge with the speed tables. Mayor Ostler asked if crossing has been a concern for existing residents in View Pointe. Council Member Bills answered yes; she would be willing to work with staff to identify the most appropriate areas for those speed tables. Council Member Petersen stated she will include that in her motion.

*Council Member Sarah D. Petersen MOVED that City Council approve staff to move forward with the following traffic calming options along Park Drive: Breakaway posts/bollards on the north end side where Highland meets Alpine to include signage for emergency access only; staff has discretion with the signage. The road will be 20' wide where the bollards are placed. Speed tables as shown on the map for staff to come back with recommendation on placement. Staff will not move forward with breakaway posts or bollards until the Smooth Canyon subdivision is approved by Alpine and is being constructed. Speed tables can move forward, as staff recommends. Staff will bring back to Council the exact location of the speed tables and recommendation for funding methods.*

*Council Member Kim Rodela SECONDED the motion.*

Council Member Smith asked if there would be any reference to the gravel pit road. The Council discussed this concept briefly and concluded they would like to discuss that matter further in a future meeting before taking action on it.

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

## **9. ACTION: AMENDMENT TO THE SUNRISE FARMS PLAT A DEVELOPMENT** *Land Use (Administrative) - Andy Spencer City Engineer/Public Works Director*

The City Council will consider the Amendments to the Sunrise Farms Development associated with the Lehi City water line conveying water from mountain springs above Alpine to Lehi City. This water line is often referred to as the “Lehi Spring Line.” The Council will take appropriate action.

City Engineer/Public Works Director Spencer explained on August 17, 2021, the City Council approved the final plat for Sunrise Farms, Plat A. At that time, the developer was aware of a Lehi City water line running through the property. However, they felt the line was south of the Plat A property area. Subsequent investigation in coordination with Lehi City found that the existing pipe was through the Plat A property area specifically through

Lot 106. Lehi City working with Berg Engineering have met with Highland City staff and have arrived at a mutually acceptable solution to reroute the Lehi Spring Line to the new Highland City public right-of-way alignment being installed by the development. The Lehi pipe will be intercepted on the northeast corner of the development on 6000 West. It will run under the west sidewalk on 6000 West and enter the development streets. It will proceed through the development on the south and east sides of the right-of-way in a location that will be under current or future sidewalk until it can reconnect with the existing pipe. Highland City installs black ductile-iron water pipe for culinary water. The Lehi Spring Line will be Blue PVC to avoid any conflicts or confusion in the future with our current water systems. Lehi has also agreed to place the pipe deeper than their normal depth. The Lehi pipe will be placed at 6-foot depth to top of pipe to avoid any water or PI lateral conflicts with Highland systems. Lehi City has agreed to address any surface repair costs associated with future repairs to their water line within Highland City rights-of-way. The developer has also requested permission to install utility laterals for future lots on the south side of the new roadway. This will avoid the cutting of the road in the future. Staff has reviewed the proposed locations and found them to be acceptable. Additionally, the developer has requested that they be allowed to defer installation of the sidewalk on the south side of the new roadway until development of Parcel A which is on the south side of Sunrise Way. Staff recommends the approval of the Amendments as stated and allow Lehi City to relocate the existing spring line to the described location. While this does represent an encumbrance on the City right-of-way, staff feels the benefit to the residents of Sunrise Farms through not having water lines in the side or rear properties outweighs any potential risk for the City. Additionally, staff recommends the laterals to serve future lots be allowed and the sidewalk deferral be approved as no current residents will need to use the south sidewalk for access to public pedestrian routes.

Council Member Smith asked if staff negotiated this arrangement. Mr. Spencer answered no but indicated that he feels it is a good solution and Lehi City has been very helpful.

*Council Member Scott L. Smith MOVED that City Council APPROVE the Amendments to the Sunrise Farms Development as shown in the provided development plans allowing Lehi City to install a water line in Highland City right-of-way; also approve the developer's request to install utility laterals for future lots as shown in the provided plans and allow the public sidewalk on the south side of Sunrise Way to be constructed with the development of Parcel A in the Sunrise Farms subdivision plat.*

*Council Member Kim Rodela SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

## **10. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS**

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

### **a. Daycare/Preschools – Kellie Smith, Planner & GIS Analyst**

Planner and GIS Analyst Smith explained that the Municipal Code and Development Code provide regulations for home occupations. The Development code indicates that the home occupation must be conducted entirely

within the main dwelling, including an attached garage. Additionally, the physical appearance of the dwelling, amount of traffic and parking, and other activities generated by the home occupation shall not be contrary to the intent of the zone in which the home occupation is located. The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located. She then discussed the differences between daycares and preschools; preschools have a concentrated impact in the morning and afternoon hours while daycares typically operate from 7:00 a.m. to 7:00 p.m. There is a traffic impact associated with both uses and it is common for caregivers employed by the preschool or daycare to not live in the home, which would make both uses noncompliant with home occupation requirements. She discussed state regulations for daycares, such as the child to adult ration, training requirements, and the requirement to submit to an annual inspection. She cited daycare regulations in other cities:

- Orem
  - Only allowed on collector or arterial streets
  - No backing out; parking & turn-around area required
  - Parking ratios per child and care givers
    - No on street parking
- Lehi
  - Residential: 5-8 children
  - Commercial: 9-16 children – Conditional Use
- Provo
  - Limit of 6 children with a Home Occupation permit

She indicated that staff is interested in hearing the Council's thoughts about the impacts of daycare home occupations; important points to consider include traffic, parking, number of kids allowed, and site plan issues such as parking areas and fencing.

Council Member Smith asked if preschools are allowed in Highland. Ms. Smith stated there are six preschools with home occupation licenses. Mayor Ostler asked if the City has received complaints regarding those uses. Ms. Smith stated that there have been complaints after preschools have been approved and licensees have tried to work with the City to mitigate any concerns. Council Member Smith stated there is a preschool located in his neighborhood and it does have a traffic impact that could be problematic in an emergency situation.

There was discussion among the Council and staff regarding the City's ability to regulate daycare and preschool uses; at the conclusion of the discussion, the Mayor indicated he feels more discussion is necessary and he noted that he likes Lehi City's code regarding the uses. Council Member Smith agreed; he suggested that any potential amendment to the Highland City Code be based upon the Lehi code.

#### **b. August Financial Report – Tyler Bahr, Finance Director**

Finance Director Bahr provided the August Financial Report; as of August 31, 2021, two months (17 percent) of the current Fiscal Year (FY) have lapsed. Interest income is up due to rising interest rates over the past few months. He cited the following observations from Administration:

##### General Fund

- Licenses/permits revenue at 33.6% of budget due to building permits
- Intergovernmental revenue at 52.7% - received the City's second, final ARPA allocation in July
- Council expenditures showing net revenue of \$23,863.02 – received \$30K to offset costs anticipated with Towne Center Road
- Administrative & Planning & Zoning expenditures include salary/vacation payouts
- Streets & Roads expenditures – snowplows
- Community events expenditures at 30.9%, includes Highland Fling

##### Open Space

- Property sales revenue YTD has already met the projected budget of \$10K

##### Library

- Property tax, main revenue source, received primarily in December and January

#### Parks Tax

- New parks tax revenue on target with budgeted projection of \$135K for the fiscal year

#### Debt Service

- Expenditures at 95.9% - principal payments on both Building & Parks bonds due September 1

Mr. Bahr then discussed sales tax; revenues received in July and August belong in FY22; the FY22 estimated sales tax revenue is \$3.6 million, which is \$337,000 above budget. FY23 sales tax is projected to be \$3.6 million. He presented a chart illustrating the steady increase in sales tax revenue since 2011, as well as a graph illustrating the history of sales tax dating back to 2001.

### **c. Events/Communications Positions** – *Erin Wells, Interim City Administrator*

Interim City Administrator Wells discussed the evolution of the events/communications positions in the City. In 2019 and before, the Assistant City Administrator handled communications. During the COVID-19 pandemic, the Events Coordinator and Communications positions were combined. In the spring of 2022, the City created an Assistant Events Coordinator/Communications position. At this time, both the Events Coordinator and Assistant Events Coordinator are leaving the City and Administration is proposing to create an independent position that divides communications from events coordination. Job duties for this position would include the following:

- Newsletter
- Social Media
- Website
- Everbridge alert manager
- PW project communication: weekly meetings, meet with impacted homeowners, coordinate between contractor and residents, etc.
- Design work
- Responses to the press
- Translate “city-speak” to resident language

The budget increase associated with this proposal is approximately \$6,500 and this can be spread throughout the City’s enterprise funds. Ms. Wells indicated that she feels this would allow the City to provide a higher level of service. The City may need additional help with bigger projects, but this position will make it possible to complete more communications work in-house.

Mayor Ostler asked if the City will still need to have a consultant on contract for communications matters. Ms. Wells stated that Administration is not completely sure if it will be necessary to continue to utilize consultants, and she anticipates this proposal will actually result in a cost savings. The Mayor polled the Council to determine if they were in favor of adding the communications position. Council Members Rodela, Ball, and Bills answered yes.

### **d. Fire ISO Rating Update** – *Brian Patten, Fire Chief*

Fire Chief Patten reported the City received a new ISO rating update; on a scale of one to 10, the City’s last rating was a four. The newest rating is two and it will go into effect in January. Lowest scores are best, and he is very proud that the City received such a low rating. He indicated that a low ISO rating will help residents realize lower insurance costs.

### **e. Trick or Treat Street Plans** – *Mayor Kurt Ostler*

Mayor Ostler reported the City will have a booth at the Trick or Treat Street on October 24<sup>th</sup>, all Council Members are invited to attend in costume.

**f. Future Meetings**

- October 12, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- October 18, Work Session & City Council Meeting, 6:00 pm, City Hall
- October 20, Mountain Ridge Park Donor Reception, TBA, Alpine Country Club
- October 25, Planning Commission Meeting, 7:00 pm, City Hall

Council Member Smith recommended that the donor reception be moved to the first of November. Council Member Bills also asked to move the Lone Peak Public Safety District meeting.

**11. CLOSED SESSION**

The City Council may recess to convene in a closed session to discuss items as provided by Utah Code Annotated §52-4-205.

*At 11:20 pm Council Member Scott L. Smith MOVED that the City Council recess to convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, as provided by Utah Code Annotated §52-4-205.*

*Council Member Kim Rodela SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed unanimously.*

*Council Member Scott L. Smith MOVED to adjourn the CLOSED SESSION and Council Member Sarah D. Petersen SECONDED the motion. All voted in favor and the motion passed unanimously. All voted in favor and the motion passed unanimously.*

*The CLOSED SESSION adjourned at 12:29 am.*

The City Council reconvened in a regular session to further discuss Item 5. See minutes for Item 5 for additional motions.

**ADJOURNMENT**

*Council Member Scott L. Smith MOVED to adjourn the regular meeting and Council Member Brittney P. Bills SECONDED the motion. All voted in favor and the motion passed unanimously.*

*The meeting adjourned at 12:33 am.*

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on October 4, 2022. This document constitutes the official minutes for the Highland City Council Meeting.

Stephannie Cottle, CMC  
City Recorder

DRAFT



HIGHLAND CITY

# HIGHLAND CITY COUNCIL MINUTES

Tuesday, October 18, 2022

Waiting Formal Approval

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

## VIRTUAL PARTICIPATION



YouTube Live: <http://bit.ly/HC-youtube>



Email comments prior to meeting: [council@highlandcity.org](mailto:council@highlandcity.org)

## 7:00 PM REGULAR SESSION

Call to Order – Mayor Kurt Ostler

Invocation – Council Member Timothy A. Ball

Pledge of Allegiance – Council Member Scott L. Smith

The meeting was called to order by Mayor Kurt Ostler as a regular session at 7:00 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Council Member Timothy A. Ball and those in attendance were led in the Pledge of Allegiance by Council Member Scott L. Smith

**PRESIDING:** Mayor Kurt Ostler

## COUNCIL MEMBERS

**PRESENT:** Brittney P. Bills, Timothy A. Ball, Kim Rodela, Sarah D. Petersen, Scott L. Smith

**CITY STAFF PRESENT:** City Administrator Erin Wells, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, Planner and GIS Analyst Kellie Smith, City Engineer/Public Works Director Andy Spencer, Fire Chief Brian Patten

**OTHERS PRESENT:** Jon Hart, Wesley Warren, Mike Kennedy, Gordon Cottle, Jackie Nostrom, Audrey Moore, Chris Howden, Sophia Thompson, Blake Leonelli, several members of the Highland City Youth Council

## 1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

There were none.

## 2. PRESENTATIONS

**a. Youth Council Report - *Youth Council Representative***

A member of the Youth Council will report on their recent and upcoming activities.

Sophia Thompson, Government Chair of the Youth Council, reminded the Mayor and Council of the Trick or Treat street event next week. She then noted that applications are now being accepted to be a part of the Youth Council next year; the deadline to submit an application is October 27. She concluded the Youth Council is getting ready for its retreat in January.

**b. Waste Management Presentation to Youth Council - *Blake Leonelli, Waste Management***

Blake Leonelli from Waste Management will present a special award to the Highland City Youth Council.

Blake Leonelli presented an award to the Youth Council Mayor, on behalf of the entire Youth Council, for their work in the community. He presented the Youth Council with a \$2,500 check.

**c. Certified Municipal Clerk Recognition - *UMCA President Jackie Nostrom***

UMCA President Jackie Nostrom will recognize City Recorder Stephannie Cottle for achieving the Certified Municipal Clerk designation.

Jacki Nostrom, President of the Utah Municipal Clerks Association (UMCA), presented Highland City Recorder Cottle with a plaque signifying Ms. Cottle's Certified Municipal Clerk (CMC) designation. In order to achieve the CMC designation, Ms. Cottle has undergone 240 hours of in-class course work and earn an additional 50 experience points. The CMC is considered to be the equivalent of earning an associate's degree in the field. Ms. Cottle could not have earned this certification without the support of Highland City leadership.

Ms. Cottle thanked the Mayor, City Council, and City Administration for their support and allowing her to pursue training. She feels the education she has received is very important and will benefit Highland City.

**d. Legislative Updates - *Senator Mike Kennedy***

Senator Kennedy will present information on current legislation which may have an impact on Highland City.

Senator Kennedy provided the Mayor, Council, City staff, and those visitors in attendance with information about the lawsuit against Pleasant Grove relating to that city charging fees rather than taxes for municipal services. The case is currently with the supreme court, and he does not know what the outcome will be; if the decision is made that the fee is a tax, that decision could have impacts on other municipalities in the State. He then discussed land use issues, with a focus on recent legislation that has contemplated land use regulation being handled by the State rather than local cities. He finds it to be very disturbing that the state and even federal government agencies are seeking to control local land use and he is deeply invested in protecting cities' rights to make their own decisions. He invited the Mayor, Council, and public to provide any feedback they have regarding legislation that the Utah Legislature will be considering in the upcoming legislative session. He stated his main focus in healthcare and human services, but he is willing to get involved in researching any type of bill that will be presented to the legislature.

Assistant City Administrator Wells stated that one thing she has been talking with the City's Justice Court Judge about is the recommendation to add a division court, which would eliminate much of the work performed by justice courts; she noted she would be interested in hearing Senator Kennedy's ideas on that matter. Senator Kennedy stated that he has not heard any information on that matter, but he will look into it and would like to

hear the opinion of City Administration. Ms. Wells stated that Justice Courts provide service to local residents, and she would hate to see that service shifted to another court level, which could create a burden for residents.

Council Member Smith referenced Senator Kennedy's comments about land use; Highland has been very interested in limiting extensive high-density housing in the community, but many at the state level are being urged to place mandates on cities to require even more high-density housing. He asked for Senator Kennedy's support in helping Highland to get the state legislature to 'back off' on that matter. He and many others are concerned about the unintended consequences of allowing too much high-density housing in the community. Senator Kennedy agreed; he feels that northern Utah County has its share of high-density housing, even though developers want more, and they have the means to hire lobbyists that will continue to push the legislature. This led to high level discussion among the Mayor, Council, and Senator Kennedy about the various types of land uses already permitted in Highland; Highland City is trying to address the demand for housing through providing multiple types of housing products, not just high density.

Council Member Smith asked about the billion-dollar surplus in the State's budget this year. Senator Kennedy stated a majority of that is related to the State's receipt of American Rescue Plan Act (ARPA) funds, but there are many regulations attached to that money. He noted that while the State currently has a budget surplus, it is projected that the economy will flatten out and the surplus will not be available for long. He stated he feels it is appropriate to begin to prepare for an economic downturn.

Council Member Rodela referenced the Pleasant Grove lawsuit and asked if there is anything Highland should be doing in terms of evaluating its fees and taxes. Senator Kennedy stated that when implementing fees, it is important to ensure that the product or service received is harmonious with the fee charged. He stated it does not make sense to institute a road fee because it is not easy to communicate the amount of road that can be built or maintained with the fee paid by each household. The formula used to determine the Pleasant Grove fee was complicated that is likely what has led to this lawsuit. He stated that if cities are going to levy fees for services, he feels that should be done through taxation because it is more transparent. He stated he knows that taxation is difficult and increasing tax rates is painful, but he prefers taxes over problematic fees.

Mayor Ostler thanked Senator Kennedy for always being so responsive and representing Highland City. Senator Kennedy thanked the Mayor and Council for their time and stated he looks forward to seeing them throughout the upcoming legislative session.

**e. Xeriscaping and Waterwise Code** – *Chris Howden, Planning Commissioner & Kellie Smith, Planner & GIS Analyst*

Chris Howden, Planning Commissioner, will present a proposal for an amendment regarding xeriscaping in the City. Kellie Smith, Planner & GIS Analyst, will present an update on communications with Central Utah Water Conservancy District.

Planning Commissioner Howden discussed the Commission's recent focus on landscaping regulations for park strips throughout the City; currently the City allows either grass or xeriscaping in park strips, but the Commission is proposing that xeriscaping be mandatory in park/planter strips and in parkway details in all zones.

Council Member Smith asked if this would apply to new development or existing landscaping as well. Commissioner Howden stated that the mandate would only apply to new construction, but existing homeowners would also have the choice to rip out their grass/landscaping and install xeriscaping instead. He then presented examples of xeriscaping projects that have been completed in the community, after which he noted that along with amending the City's landscaping ordinance, it would be necessary to amend the City's General Plan as well. This led to high level philosophical discussion among the Mayor, Council, Commissioner Howden, and

Commissioner Moore regarding whether an exemption to such a xeriscaping mandate should be provided; the importance of xeriscaping design to avoid 100 percent rock xeriscaping; input from the Central Utah Water Conservancy District (CUWCD); including some vegetation/greenery in a xeriscape design; opportunities for encouraging or incentivizing landscape conversions rather than issuing a mandate. The Mayor and Council indicated they desire for the City to lead by example by using xeriscaping in public spaces where possible; they concluded they do not want to issue a strict mandate but would like to consider ordinance amendments that encourage and provide for developers or individual homeowners to install xeriscaping in their park strips. They emphasized they like xeriscaping designs that include a certain amount of vegetation rather than 100 percent rock/hard surface. City Administrator Wells indicated City Administration will work with the Planning Commission to prepare a recommendation for the Council to consider.

### 3. **CONSENT ITEMS** (5 minutes)

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

- a. **Approval of Meeting Minutes** *General City Management - Stephannie Cottle, City Recorder*  
Regular City Council Meeting – September 6, 2022
- b. **City Administrator Contract** *General City Management - Mayor Kurt Ostler*  
The City Council will consider an employment contract for City Administrator Erin Wells. The Council will take appropriate action.
- c. **ACTION: Amendment of Encroachment Policy** *General City Management - Rob Patterson, City Attorney*  
The City Council will consider an amendment and update to the City's existing Encroachment Policy in order to remove the requirement to mail the policy with notices of encroachment. The Council will take appropriate action.

Mayor Ostler asked to pull item 3b from the consent agenda; he noted that the agenda item will be brought back before the Council at their next meeting. He stated that the City has chosen Interim City Administrator Erin Wells to serve as the City Administrator, but negotiations regarding her employment contract have not yet been completed.

Council Member Smith asked to pull item 3c from the consent agenda.

*Council Member Kim Rodela MOVED that the City Council approve consent items 3a approval of meeting minutes.*

*Council Member Sarah D. Petersen SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

Council Member Smith addressed item 3c; he does not want to send the entire encroachment policy to residents, but he is concerned that the letter about the policy is confusing. Before more letters are delivered, he would like for the Council to have the opportunity to look at a City map again to consider prioritization of open space/areas of encroachment for which the City will send letters to residents in the future. Planner and GIS Analyst Smith stated the letter was sent to the Highland Hollows area only. Council Member Smith stated he understands but asked if the new policy totally eliminates a resident's ability to purchase property. Mayor Ostler stated that is the case in Highland Hollows area; there are only 10 homes that are encroaching, and those residents have the option of entering into a maintenance agreement with the City to continue to encroach on the property. However, there are two properties in that area that he feels could be sold at the benefit of both the City and the residents.

Council Member Smith then read a paragraph from the letter that was sent to Highland Hollows to communicate the reason that he feels the letter is confusing; he does not feel that the options available to residents are clear and it appears there are contradictions within the letter regarding maintenance agreements. The Council and staff discussed plans for existing and future maintenance agreements and the term of those maintenance agreements.

*Council Member Kim Rodela MOVED that the City Council approve consent item 3c.*

*Council Member Timothy A. Ball SECONDED the motion.*

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

Mayor Ostler asked to move to Communication Item 5a on the agenda.

**a. Report on Encroachment Policy Enforcement** – *Kellie Smith, Planner & GIS Analyst*

Planner and GIS Analyst Smith reported that letters were sent to nine Highland Hollows residents on September 29. The subdivision plat for Highland Hollows includes conservation easements on private property, but residents were specifically asked to address encroachment onto City property. She met with City Engineer/Public Works Director Spencer as well as Parks Superintendent Castleberry to discuss remediation plans and expectations of residents and an outline of those expectations was included in the letter. She has since had communications with three residents and staff have met with two of them on-site to help them understand how to mitigate the encroachment. She then reported on lessons learned through this process:

- The replacement of grasses/shrubs/trees may take several years;
- The growth will need water (sprinklers);
  - Option 1: have residents remove the sprinklers; seed would take approx. 4 years to grow
  - Option 2 (preferred): allow residents to keep sprinklers until seed is established (approx. 1 year); Staff would follow-up annually until seed is established and then cut and cap the lines
- Finances/cost of removal;

- Equipment that needs to be used to take out improvements; do we let them use the city property to access. Possible trail option to access the property;
- Remove ALL improvements? What's the goal?

She then stated the next steps are to attempt to communicate with the other six residents that have not yet responded to the initial letter; after October 29, the City will send a follow-up letter and perform site visits.

The Mayor and Council engaged in discussion with staff regarding individual properties in the Highland Hollows subdivision, with a focus on the types of improvements that have been completed in the encroachment areas; some properties contain permanent structures while others only contain grass/minor landscaping improvements. Mr. Spencer discussed potential liability on the part of the City if some improvements, such as stairs that have been installed from a private property to the public trail, are allowed to remain. Council Member Smith stated that he understands that it is important to prevent and address illegal encroachment, but he is concerned about the financial burden of requiring some residents to remove costly improvements. He stated he wants to try to strike a compromise whenever possible. Mr. Spencer stated he believes City Administration agrees; some of the properties where encroachments have occurred are very beautiful and pleasing to any member of the public who may be viewing the property from a public open space area. Council Member Petersen agreed that encroachments should not have happened, but she wants to try to be flexible and work with residents to help achieve mitigation of the encroachments. She suggested that properties be considered on a case-by-case basis and noted she is willing to consider any recommendation from staff. She stated that it is difficult to put staff in the position of making a decision about what improvements benefit the City and should be allowed to stay. She noted that she thinks it is appropriate to consider a penalty that can be imposed against those who are unwilling to engage with the City in response to the encroachment letters that have been sent. Mayor Ostler engaged City Attorney Patterson in discussion about the method of penalizing a resident who fails to respond. Mr. Patterson stated that the City could issue administrative citations or utilize City resources to correct the encroachment and bill the property owner for that work. If the City wants to force the resident to remove the improvements, a lawsuit may be necessary. Council Member Petersen stated that she supports administrative fines before taking legal action. She would like to be fair and impose the same regulations to all properties from which encroachment has occurred.

Council Member Smith asked if a Code Enforcement Officer can handle this issue or is it necessary for Ms. Smith, Mr. Spencer, and Mr. Castleberry to be engaged in site visits. Ms. Smith stated that Mr. Spencer and Mr. Castleberry have been involved because of their expertise in modifying and designing landscaping and other property improvements. She added that the Code Enforcement Officer was asked not to engage in enforcement in the Highland Hollows subdivision because he lives there and that could be a sensitive issue for him. She stated that in the future, the matter will be handled through Code Enforcement.

City Administrator Wells attempted to summarize the direction given by the Council; she understood they would like for the City to be flexible in working with residents who will need to pursue major costly adjustments to their property to correct encroachments. Additionally, sprinklers can be left on the property to provide a water source to establish new seed on the City property; and, improvements that benefit the City will be allowed to stay. Additionally, encroachment issues will be handled by Code Enforcement in the future and if residents fail to respond, the City will begin to assess fines, the nonpayment of which would lead to collection and other legal options.

Discussion shifted briefly to whether this type of process could be applied to other types of damage done to City property, namely vandalism/graffiti or driving motorized vehicles in open spaces. Council Member Petersen recommended that the City erect signs that prohibit four-wheelers and other types of off-road vehicles on City open space. Mayor Ostler stated he wants to follow up with the Police Department to determine their ability to respond to these kinds of instances when they are noticed by residents.

Council Member Ball asked if there is any type of opportunity for a resident to assert they have a prescriptive easement for property upon which they have encroached. Mr. Patterson stated he does not believe that would be a valid claim, but someone has done so in the past and it had to be litigated. The resident who made the claim received a favorable outcome, but the City did not believe it was a good claim. He noted that most important in protecting the City from legal recourse is to be fair and consistent in terms of code enforcement and addressing encroachments.

Ms. Smith then indicated there are four different types of maintenance agreements in place in the City:

- **Type 1** – No expiration; 90-day notice
- **Type 2** – Renews automatically every 2 years; 12-month notice before anniversary date of the agreement
  - Sent out expiration notices
- **Type 3** – 10 years; expires upon notice
- **Type 4** – 5 years; expires upon notice

Administration feels an appropriate goal is to transition all existing maintenance agreements to type four; those with type two maintenance agreements have been sent a letter to communicate the expiration date of their agreement and asking the resident to communicate any additional improvements to the property that should be addressed in a new maintenance agreement. She added that based upon the Council's adoption of a new policy, if residents enter into a new agreement, they will need to meet requirements of the new policy, which includes a limit of 2,500 square feet of irrigable space. Mayor Ostler stated that some residents have existing maintenance agreements that have allowed more than 2,500 square feet of irrigable space; some residents have spent extra money on these improvements. Council Members Rodela and Smith indicated they feel these improvements should be grandfathered under a new agreement. Council Member Petersen stated she is comfortable grandfathering so long as the resident met their original agreement. Council Member Ball agreed with Council Member Petersen.

Mayor Ostler then wondered if the Council needs to consider amendments to the policy based upon tonight's discussion. Mr. Patterson stated that Administration can consider that question after the meeting; he believes that the policy allows for exceptions to be made based upon special terms or conditions. All Council Members indicated they are comfortable amending the policy to include a grandfathering clause for those moving to a new maintenance agreement.

#### **4. ACTION: FINAL PLAT UPDATES – RIDGEVIEW PLAT F, PLAT G, AND PLAT J** *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public meeting to consider a request by Lennar Homes, Ivory Development, and David Weekley Homes for an adjustment to Ridgeview Plats F, G, and J to dedicate the property along 10100 N as Highland City right-of-way. The Council will take appropriate action.

Planner and GIS Analyst Smith explained on May 21, 2019, the property was rezoned as a Planned Development (PD) district. On November 9, 2021, the City Council approved the preliminary plat for Pod B subject to nine stipulations. The preliminary plat included a total of 424 residential units, two roads (Featherstone Drive and Dorado Way), and the park. The City Council approved the final plats for Plat F and Plat G and June 21, 2022. Ridgeview Plat J was approved on September 20, 2022. Highland City is maintaining the landscaping along North County Blvd and 10100 N. All interior landscaping and landscaping along Canal Blvd will be maintained by the HOA. During the civil review process, it was brought to staff's attention that the property between the Development's fence on 10100 N and the sidewalk was reflected as HOA owned on each of the final plats

approved by the City Council. The property from the sidewalk north is City right-of-way. She then summarized the request:

1. The proposed adjustment to the plats is to include the property between the HOA's fence and the sidewalk as City right-of-way.
2. A cross-section was added to each plat clarifying that the fence along 10100 N is HOA maintained.

Staff has found that the subdivision plat is consistent with the Ridgeview PD Zoning District, and it conforms to the Development Code as applicable. It is staff's preference that the property we maintain be City right-of-way rather than privately owned. Staff recommends the City Council accept the findings and approve the final plat adjustments to Ridgeview Plats F, G, and J subject to the following stipulations:

- The recorded plat shall be in substantial conformance with the final plat dated October 11, 2022, except as modified by these stipulations.
- All stipulations of the original final plat approvals be met.

Council Member Smith addressed the landscaping on North County Boulevard, specifically the areas with grass that will need to be mowed by the City. He asked for City Engineer/Public Works Director Spencer's opinion on that design; there will be patches of grass and it will be labor intensive for the City to maintain it. Mr. Spencer stated that the blended landscaping plan matches the existing aesthetic in the area and there is some thought that the existing aesthetic should be continued. However, from the maintenance perspective, it will be difficult to maintain. Council Member Smith stated that landscaping has not been installed from Canal Boulevard to the north and he wondered if there is an opportunity to develop a new aesthetic to decrease the maintenance burden on the City. Ms. Smith stated she believes The Boyer Company may be open to that type of recommendation.

Council Member Petersen asked why the City cannot require the HOA to maintain the landscaping. Ms. Smith stated that she reviewed the development agreement for the project and landscape maintenance is not outlined in that agreement; for this reason, the City has not attempted to require them to maintain the property. Mayor Ostler stated the City does not own the property. The HOA owns it and even though the agreement does not specify such, they should maintain it. He wondered why the City would be so willing to take on that maintenance burden. City Administrator Wells stated that there is no agreement that calls out who is responsible maintaining the property; one thing the applicant has pointed out is that the area is the entrance to the Highland Glen Park, and it may be beneficial and more cohesive for the City to handle the maintenance of landscaping on both sides of the street. Mayor Ostler stated that the City owns the park strip in front of his home, but the City does not maintain it; the same is true for all other properties in the City and he wondered why this particular property owner is being treated differently.

Council Member Smith stated the developer is installing the park strip between the street and sidewalk as well as other improvements up to the fence; the developer wants to the City to maintain everything from the fence to the street. Ms. Smith stated that is correct. Council Member Smith asked if the City requires other property owners to maintain that area. Ms. Smith stated that technically everything inside a fence is maintained by the private property owner and the City maintains the area on the other side of the fence; this is why the City maintains the park strips along North County Boulevard. Mayor Ostler asked if that is the case because the property is a planned residential unit development (PRUD). Ms. Smith stated that a development agreement was written to hash out these details; both parties have agreed to the development agreement for Ridgeview, but some items were missed, and the City has learned lessons from this process. Mayor Ostler suggested the City may have been taken advantage of by the developer in this case.

Council Member Smith stated that if the City is required to maintain the area, the City should have some control over the design to ensure that it is easier to maintain. Council Member Petersen agreed. Mayor Ostler stated that he would like to explore whether there is an option to have the developer maintain the area. Mr. Patterson stated that the City may be able to negotiate with the developer, but the matter is not addressed in the development

agreement. The developer had the understanding that the City would be maintaining the area, but staff is not sure where that understanding came from.

Council Member Smith reiterated that if the City is going to be responsible to maintain the area, the City should have influence over the landscaping to be installed. Mr. Spencer suggested the Council provide such guidance in a motion to approve this application. Parks staff can then communicate with the developer about appropriate adjustments to the streetscape. Council Member Petersen stated she would like to pursue xeriscaping in the area.

*Council Member Sarah D. Petersen MOVED that City Council APPROVE the adjustment to Ridgeview Plats F, G, and J relating to City right-of-way subject to the two (2) following stipulations recommended by Staff.*

- 1. The recorded plat shall be in substantial conformance with the final plat dated October 11, 2022, except as modified by these stipulations.*
- 2. All stipulations of the original final plat approvals be met.*
- 3. Entire section along 10100 N is xeriscaped with trees and bushes and the plan will come back to Council for final approval.*

*Mayor asked for clarification that it is the entire section.*

*Council Member Kim Rodela SECONDED the motion.*

Council Member Smith stated he likes the idea of xeriscaping, but he feels that contrast in the landscaping would be appropriate. Mr. Spencer stated he would prefer uniformity; if the Council wants xeriscaping, the entire area should be xeriscaped. He wants to avoid a patchwork design that is difficult to maintain.

Council Member Smith asked if the curving sidewalks will be used in this area, to which Mr. Spencer answered no. Ms. Wells noted the area between the park strip and the fence is five feet; this narrow space will create issues with watering landscaping. She suggested the Council task staff with developing a landscape plan for the area and bring that back to the Council before final approval. Council Member Petersen stated that was the intent of her motion above.

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>

*The motion passed 5:0.*

## **5. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS**

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

### **a. Report on Encroachment Policy Enforcement – Kellie Smith, Planner & GIS Analyst**

This item was discussed after the consent agenda items.

**b. Sewer Lift Station Code Amendments** – *Andy Spencer, City Engineer/Public Works Director*

City Engineer/Public Works Director Spencer explained in FY2022-2023 the City spent \$2.3 million on sewer lift stations. Staff is proposing a code amendment that would ensure that all new subdivisions shall operate via gravity flow means without introducing, or causing to be created, additional lift or pumping systems. He stated if the Council is supportive of such an amendment, staff will prepare an ordinance for consideration in a future Council meeting.

The Council briefly discussed the proposal and indicated they are supportive of formally considering the proposal in the future.

**c. Park Strip Code Update** – *Kellie Smith, Planner & GIS Analyst*

Planner and GIS Analyst Smith stated that staff found a gap in the City Code; the Code does not specify that the landowner adjacent to a park strip must maintain the park strip area. Staff would like to include language in the Code to make clear that property owners must maintain all park strips abutting their property. Parkway detail would be different and that will be specified in the ordinance. Mayor Ostler asked if the amendment would apply to snow removal as well as landscape maintenance. Ms. Smith stated she will research that issue.

**d. Council Policies & Procedures** – *Erin Wells, City Administrator & Rob Patterson, City Attorney*

City Administrator Wells provided brief information regarding the City's form of government; Highland is governed by the Six-Member Council form of government. She invited City Attorney Patterson to provide brief training regarding the roles and responsibilities of each elected official as well as City staff under this form of government.

Mr. Patterson stated that under the Six-Member Form of Government, the Mayor (is/will):

- CEO to whom all employees report
- Enforce and carry out ordinances and resolutions
- Report the condition and needs of the city
- Recommend measures to Council
- Appoint officers with advice/consent of Council
- Chair of council (procedural processes)
- Votes on ties, administrators, and mayor powers
- Budget officer

He noted the City Council (is/will):

- Legislative body – adopt, amend, and repeal ordinances, laws, policies, budget
- Adopt policies for regulation and administration
- Prescribe duties and powers of officials
- Administrative body – all duties and powers not given to mayor or administrator
- Adjust mayor/administrator powers and duties

He added the City Administrator is not governed by State statute, but is regulated by City Code:

- Chief administrative officer to whom all employees report (taken away from mayor powers)
- Supervise operations, projects, and property
- Assist with establishing and administering budget

- Execute, enforce, and carry out all laws, rules, regulations, contracts, permits, policies, programs
- Prepare and submit ordinances, resolutions, plans, programs, and policies to mayor/council for approval
- Review claims before presentation to council
- Has right to participate but not vote during meetings
- Mayor keeps power to appoint/remove city officers

He further expounded on the roles and duties of the Mayor and City Council; the Mayor presides as chair over City Council meetings. The City Council may pass all ordinances and rules and make all regulations. The City Council may require from every officer of the City at any time a report in detail of all transactions in his office or any matters connected therewith. And, two City Council members or Mayor can call special meetings on any topic.

Staff would like direction from the Mayor and Council regarding whether to consider adjustments to the City's Rules of Order and Procedure; the Council briefly discussed changes they feel may be appropriate and directed staff to prepare for continued discussion of the matter at a future work session meeting. Ms. Wells indicated staff will be prepared to discuss the matter further during the November 29 work session.

#### **e. Future Meetings**

- October 19, 2022, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- October 25, 2022, Planning Commission Meeting, 7:00 pm, City Hall
- November 1, 2022, Work Session & City Council Meeting, 6:00 pm, City Hall
- November 9, 2022, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- November 15, 2022, Planning Commission Meeting, 7:00 pm, City Hall
- November 29, 2022, City Council Work Session, 6:00 pm, City Hall

Mayor Ostler also announced a few upcoming events, such as the Trunk or Treat and the City's Christmas party. An official invitation for the Christmas Party will be forthcoming.

## **6. CLOSED SESSION**

The City Council may recess to convene in a closed session to discuss items, as provided by Utah Code Annotated §52-4-205.

There was no closed session.

## **ADJOURNMENT**

*Council Member Scott L. Smith MOVED to adjourn the regular meeting and Council Member Sarah D. Petersen SECONDED the motion. All voted in favor and the motion passed unanimously.*

*The meeting adjourned at 10:03 pm.*

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on October 18, 2022. This document constitutes the official minutes for the Highland City Council Meeting.

Stephannie Cottle, CMC  
City Recorder



## HIGHLAND CITY

# HIGHLAND CITY COUNCIL WORK SESSION MINUTES

**Tuesday, November 29, 2022**

**Waiting Formal Approval**

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

### VIRTUAL PARTICIPATION



Email comments prior to meeting: [council@highlandcity.org](mailto:council@highlandcity.org)

## 6:00 PM WORK SESSION

Call to Order – Mayor Kurt Ostler

The meeting was called to order by Mayor Kurt Ostler as a work session at 6:00 pm. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting.

**PRESIDING:** Mayor Kurt Ostler

### COUNCIL MEMBERS

**PRESENT:** Timothy A. Ball, Brittney P. Bills, Kim Rodela, Sarah D. Petersen, Scott L. Smith

**CITY STAFF PRESENT:** City Administrator Erin Wells, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, City Engineer/Public Works Director Andy Spencer, Assistant Public Works Director Jeff Murdoch, Police Chief Brian Gwilliam, Fire Chief Brian Patten, Library Director Donna Cardon

**OTHERS PRESENT:** Tom Hanson

## 1. TEAM BUILDING

Tom Hanson will lead the City Council and staff in a series of team building activities. No formal action will be taken.

Tom Hanson, City Administrator from Washington Terrace, led the City Council and staff in a team building activity using the 4 Lens Personality Test. City Council and staff members self-evaluated their personalities using pictures and questions. They were then divided into groups according to their personality type. Each group was asked to write down their values, joys, strengths, and needs, which was shared with the entire group. There was a discussion about how each personality relates to and works with each other.

## 2. 2023 MEETING SCHEDULE

The City Council will discuss the 2023 meeting schedule. No formal action will be taken.

City Administrator Erin Wells presented two options for the 2023 City Council meeting schedule. The first option shifted meeting dates to accommodate holidays, spring, break, and Highland Fling, but still allowed for two meetings each month. The second option kept City Council meetings on the first and third Tuesday of each month; however, because of holidays, or other conflicts, there would be some months where only one meeting was scheduled. City Council discussed the options and directed staff to proceed with option 2, including that meetings begin at 7:00 am with work sessions only as needed at 6:00 pm. Ms. Wells said this item will be brought back to Council on December 6<sup>th</sup> for their consideration.

*The meeting adjourned at 8:57 pm.*

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on November 29, 2022. This document constitutes the official minutes for the Highland City Council Meeting.

Stephannie Cottle, CMC  
City Recorder



# CITY COUNCIL AGENDA REPORT

## ITEM #3b

**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Stephannie Cottle, City Recorder  
**SUBJECT:** **ORDINANCE:** 2023 City Council Regular Meeting Schedule  
**TYPE:** **GENERAL CITY MANAGEMENT**

### **PURPOSE:**

The City Council will consider approving the City Council Regular Meeting Schedule for 2023. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

On Tuesday, November 29, at a City Council Work Session, Council provided direction to staff to schedule 2023 City Council meetings on the first and third Tuesdays of each month as has been done during previous years except for certain holiday type conflicts. Additional work sessions may be added as needed.

### **BACKGROUND:**

Utah Code Annotated (UCA) 10-3-502(1) requires the City Council to approve, by ordinance, a time and place for holding regular meetings and hold regular meetings at least once each month.

Highland City Municipal Code 2.12.080 requires the City Council to hold regular meetings on such a schedule as it may establish from time to time.

UCA 52-4-202 requires all public entities which hold regular meetings that are scheduled in advance over the course of a year to provide a notice of their Annual Meeting Schedule.

Staff proposes that the City Council continues to hold their regular meetings on the first and third Tuesday of every month at 7:00 pm with the following exceptions:

- No meeting on April 4<sup>th</sup> due to Alpine School District spring break.
- Only one meeting in July, on the 18<sup>th</sup>, due to the 4<sup>th</sup> of July falling on the first Tuesday.
- Only one meeting in November, on the 14<sup>th</sup>, due to elections being held on the 7<sup>th</sup>, and Thanksgiving on the 4<sup>th</sup> week.
- Only one meeting in December, on the 5<sup>th</sup>, as has been typically done in past years due to the holiday season.

The City Council may modify the schedule to delete or add any meetings as desired. Any work sessions and special meetings may still take place, as needed. Meetings are typically

held at Highland City Hall, Council Chambers at 7:00 p.m.

**FISCAL IMPACT:**

This action will not have any additional impacts on this fiscal year's expenditures.

**STAFF RECOMMENDATION:**

Staff recommends the Council approve the 2023 Regular Meeting Schedule.

**MOTION TO APPROVE:**

I move that the City Council ADOPT the ordinance approving the 2023 Regular Meeting Schedule.

**ATTACHMENTS:**

1. Ordinance

# AN ORDINANCE OF THE HIGHLAND CITY COUNCIL ADOPTING AN REGULAR MEETING SCHEDULE FOR 2023

**WHEREAS**, the City Council of Highland, Utah, has deemed it appropriate to adopt a meeting schedule for the year 2023; and

**WHEREAS**, per Utah Code 10-3-502(1), the City Council shall by ordinance prescribe the time and place for holding its regular meeting and the Council shall hold a regular meeting at least once each month; and

**WHEREAS**, per Utah Code 52-4-202 the Utah State Legislature has further required public bodies which hold regular meetings scheduled in advance over the course of a year to give public notice of the annual meeting schedule, and to include the date, time and place of such meetings.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of Highland, UT that the 2023 Regular Meeting Schedule for City Council be as follows.

Regular Meeting	Date
January	3, 17
February	7, 21
March	7, 21
April	18
May	2, 16
June	6, 20
July	18
August	1, 15
September	5, 19
October	3, 17
November	14
December	5

**PASSED** by the Highland City Council this 6<sup>th</sup> day of December, 2022.

HIGHLAND CITY, UTAH

\_\_\_\_\_  
Kurt Ostler  
Mayor

ATTEST:

\_\_\_\_\_  
Stephannie Cottle  
City Recorder

COUNCILMEMBER	YES	NO
Timothy A. Ball	<input type="checkbox"/>	<input type="checkbox"/>
Brittney P. Bills	<input type="checkbox"/>	<input type="checkbox"/>
Sarah D. Petersen	<input type="checkbox"/>	<input type="checkbox"/>
Kim Rodela	<input type="checkbox"/>	<input type="checkbox"/>
Scott L. Smith	<input type="checkbox"/>	<input type="checkbox"/>



# CITY COUNCIL AGENDA REPORT

## ITEM #4

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**DATE:** Tuesday, December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Erin Wells, City Administrator  
**SUBJECT: PUBLIC HEARING/RESOLUTION:** Garbage Rate Updates  
**TYPE: GENERAL CITY MANGEMENT**

---

### **PURPOSE:**

The City Council will hold a public hearing and consider whether to raise the rates for garbage cans. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

On June 21, 2022, Council approved new garbage rates beginning July of 2022. These rates were a result of the increase passed on by Waste Management for hauling charges to the City.

### **BACKGROUND:**

Garbage revenue is derived solely from the monthly fees paid by residents on their utility bills. Garbage expenses are mainly composed of direct garbage costs from our hauler – Waste Management and the garbage transfer station – North Pointe. There are also some other costs that go into the total expenses including salaries and billing expenses.

The garbage rates adopted by Council in June of this year were designed to create a “break-even” scenario for garbage services where the revenue collected came as close as possible to matching the expenses related to garbage services. As such any unexpected increases in garbage expenses (such as an increase from North Pointe) will result in a situation where either the General Fund will have to subsidize garbage services as revenues will not cover expenses or garbage fees need to be raised.

In late October of this year, the City was informed that North Pointe was considering a tonnage fee increase as a result of fee increases they were receiving from their hauler. On November 14, the North Pointe Board approved the fee increase to \$34 per ton. Based on the estimates of garbage tonnage our City produces, this will equate to approximately a \$21,000 per year increase. To spread the increased cost out over all of the garbage cans serviced in our City (7,733) equates to \$0.23 per month per can. Below is a summary of the proposed rate changes:

	Monthly			
Rates	Current Rate	Proposed Rate	Difference	Percent Change
First Garbage	\$ 10.75	\$ 10.98	\$ 0.23	2%
Second Garbage	\$ 7.49	\$ 7.72	\$ 0.23	3%
Recycling	\$ 7.18	\$ 7.18	\$ -	0%
Monthly Difference			\$ 0.46	
6 Month Difference			\$ 2.76	
Annual Difference			\$ 5.52	

**FISCAL IMPACT:**

The increased cost of garbage tonnage deposited at the North Pointe transfer station is \$21,000 per year. Funding for this expense was not included in the FY23 budget. As this increased expenditure was not included in the budget, staff recommends it be funded by a requisite increase to garbage rates and will be included as part of the mid-year budget adjustments unless otherwise directed by the Council.

**STAFF RECOMMENDATION:**

Staff recommends Council approving the increased garbage rates as a result of the increased charges from North Pointe Transfer Station beginning January 1. Rates will again be calculated as a part of the FY24 budget.

**MOTION TO APPROVE:**

I move that the Highland City Council approve the Resolution Fee Schedule Amendments for Garbage Can Fees.

**ATTACHMENTS:**

1. Resolution

**RESOLUTION NO. 2022-XX**

**A RESOLUTION OF THE HIGHLAND CITY COUNCIL,  
HIGHLAND CITY, UTAH  
Fee Schedule Amendments for Garbage Can Fees**

WHEREAS, the City pays a number of costs to provide garbage hauling for residents; and

WHEREAS, the North Pointe Transfer Station Board voted to increase the tipping fee the City will charge beginning January 1, 2023; and

WHEREAS, the City Council finds it in the best interest to charge residents for all garbage hauling related costs.

NOW, THEREFORE, by Resolution of the Highland City Council, the garbage and recycling can fees are set forth as follows:

- First Garbage Can – \$10.98
- Second Garbage Can – \$ 7.72

This resolution and shall take effect on January 1, 2023.

PASSED by Highland City Council this 6<sup>th</sup> day of December 2022.

HIGHLAND CITY, UTAH

\_\_\_\_\_  
Kurt Ostler, Mayor

\_\_\_\_\_  
Stephannie Cottle, Highland City Recorder

COUNCILMEMBER	YES	NO
Timothy A. Ball	<input type="checkbox"/>	<input type="checkbox"/>
Brittney P. Bills	<input type="checkbox"/>	<input type="checkbox"/>
Sarah Petersen	<input type="checkbox"/>	<input type="checkbox"/>
Kim Rodela	<input type="checkbox"/>	<input type="checkbox"/>
Scott L. Smith	<input type="checkbox"/>	<input type="checkbox"/>



# CITY COUNCIL AGENDA REPORT

## ITEM #5

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**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Rob Patterson, City Attorney  
**SUBJECT: PUBLIC HEARING/ORDINANCE:** Protection of Public Property  
**TYPE: MUNICIPAL CODE AMENDMENT**

---

### **PURPOSE:**

The City Council will hold a public hearing and consider adopting an ordinance to prevent and punish damage to public property. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

The City Council previously directed staff to prepare an ordinance that impose penalties for individuals who damage to public property, as the City's current ordinances do not directly address such situations.

### **BACKGROUND:**

The proposed ordinance amends the existing municipal code dealing with trespassing to also include other types of damage to public property. The proposed ordinance provides for criminal or civil penalties for anyone who damages any public property, including damage to public buildings, planting, parks, and landscaping. Damaging public property also includes individuals who construct buildings or other structures on public property. There is an exception built into the ordinance for work, construction, and changes to public property that are made pursuant to a proper permit or license.

The proposed penalty would be a class C misdemeanor (or civil equivalent) for damage to property of less than \$500, and a class B misdemeanor (or civil equivalent) for damage exceeding \$500. Class C misdemeanors involve fines up to \$750, whereas class B misdemeanors involve fines up to \$1,000. The Council could adjust and increase or decrease the penalty as the Council determines is appropriate.

### **FISCAL IMPACT:**

No impact is expected.

### **STAFF RECOMMENDATION:**

Staff recommends that the City Council consider and adopt the proposed ordinance.

### **MOTION:**

I move that City Council approve and adopt the ordinance related to protecting public property and providing penalties for the violation thereof.

**ATTACHMENTS:**

1. Proposed ordinance

**ORDINANCE NO. 2022-XX**

**AN ORDINANCE ADOPTING REGULATIONS AND PENALTIES FOR DAMAGE TO PUBLIC PROPERTY, AND RELATED MATTERS**

WHEREAS, Highland City is authorized to acquire, control, and protect public property under Utah Code sections 10-8-1, 10-8-2, 10-8-5, and other applicable sections;

WHEREAS, Highland City is authorized to adopt criminal and civil penalties for violations of city ordinances under Utah Code section 10-3-703 and 10-3-703.7;

WHEREAS, Highland City has previously adopted ordinances regarding protection of open space and trespassing, but has not directly provided for the protection of all other types of public property;

WHEREAS, the City Council finds it is in the public interest to deter damage and destruction of public property by criminal and civil penalties, because it will help decrease maintenance and repair costs incurred by the city;

NOW THEREFORE, BE IT ORDAINED by the Highland City Council as follows:

Section 1. The City Council adopts the ordinance and amendments set forth in Exhibit A attached hereto.

Section 2. All previously adopted Highland City ordinances or provisions thereof in conflict with this ordinance are hereby repealed as of the effective date of this ordinance.

Section 3. This ordinance shall be effective immediately upon publication as required by law.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF HIGHLAND CITY, UTAH, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

ATTESTED:

\_\_\_\_\_  
City Recorder

PUBLICATION DATE: \_\_\_\_\_

## EXHIBIT A

### Chapter 9.13 ~~TRESPASSING~~ PROTECTION OF PROPERTY

#### **9.13.010 Trespassing**

- A. It shall be Highland City's policy to adopt, implement and enforce Section 76-6-206, Criminal Trespass, of the Utah State Code, and any other applicable state and/or federal regulations related to trespass to private or public property.
- B. New editions of the Utah State Criminal Trespass Code shall be automatically adopted unless otherwise specified or amended herein.
- C. All persons found in violation of this ~~provision~~ section shall be guilty of a Class C misdemeanor. The minimum fine for a first offense shall be two hundred fifty dollars. The minimum fine for a second offense shall be five hundred dollars. The fine for all subsequent offenses of this provision after the second offense shall be a minimum of one thousand dollars. Fines, as established herein, are minimum fines. Violations of this section can be subject to increased fines when deemed appropriate by the court, but not to exceed one thousand dollars. Each offense shall be deemed a separate violation of this provision.
- D. Vandalism of signs, fences, and/or public or private property attempting to denote and give notice against entering shall constitute a separate violation of this provision and subject to a separate fine as set forth herein ~~noted in Section 9.13.010~~.

#### **9.13.020 Damage to Public Property**

- A. For the purpose of this chapter, "public property" means any property, real or personal, owned by the city, the state, a public utility, or other political subdivision of the state of Utah, and includes all easements, leases, rights of way, and other property interests owned or used by the same.
- B. On any public property it is unlawful for any person to recklessly, knowingly, or intentionally:
  - 1. Mark, deface, disfigure, injure, break, cut, carve, burn, tamper with, displace, or remove any building, structure, railing, wall, fence, tree, shrub, vegetation, landscaping, bench, sign, notice, placard, paving, paving material, utility line, cable, or facility, whether temporary or permanent.
  - 2. Dig and remove any sand, soil, rock, stones, trees, shrubs, sod or plants, or make any excavation by tool, equipment, blasting, or other means.
  - 3. Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run, install, or string any rope, cord, line, pipe, or wire into, upon, through, under, or across any public property.

4. Damage, cut, carve, burn, transplant or remove any tree or plant or injure the bark or pick the flowers or seeds of any tree or plant. No person shall attach any rope, wire or other contrivance to any tree or plant. No person shall dig in or otherwise disturb or in any other way injure or impair the natural beauty or usefulness of any park area.

#### **19.13.030 Penalty for Damage to Public Property**

- A. Violations of section 19.13.020 may be penalized by criminal or civil remedies. Any civil citation or enforcement shall impose a fine commensurate with the applicable criminal penalty.
- B. The criminal penalty for a violation of section 19.13.020 shall be as follows:
  1. Violations resulting in damage to property equal to or exceeding \$500 in value shall be a class B misdemeanor;
  2. Violations resulting in damage to property less than \$500 in value shall be a class C misdemeanor.
- C. In determining the value of damages under this section, the value of any property shall be determined by the market value of the property, if totally destroyed, or the measurable cost to replace, repair, or restore the damaged property, plus the measurable value of the loss of use of the property and any cost to remove any unauthorized property, construction, structure, improvement, or other installation.
- D. If the value of the property is unknown or cannot be ascertained, the property shall be deemed to have a value of less than \$500.

#### **19.13.040 Exceptions**

This ~~section~~ chapter does not prohibit the use of public or private property by the following:

1. Emergency vehicles;
2. Vehicles of commerce in the course of normal business operations upon authorized, designated, and improved rights-of-way, driveways, and other areas;
3. Vehicles being operated on property devoted to commercial or industrial purposes where such operation is in conjunction with commercial or industrial use and permission for such operation is implied or expressly given by the person in possession of said property;
4. Vehicles operated on property actually used for residential purposes, where such vehicles are there at the express or implied invitation of the owner or occupant;
5. Vehicles being operated on public or private parking lots, where permission to do so is implied, or expressly given, by the person in possession of such lot.

6. Persons that are expressly authorized to conduct or carry out activities on public property by the applicable public entity in writing by permit, contract, easement, or license, provided that such person complies with all terms and conditions of said writing.



# CITY COUNCIL AGENDA REPORT

## ITEM #6

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**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Rob Patterson, City Attorney  
**SUBJECT:** **ACTION:** Amendment of Encroachment Policy  
**TYPE:** **GENERAL CITY MANAGEMENT**

---

### **PURPOSE:**

The City Council will consider an amendment and update to the City's existing Encroachment Policy in order to clarify that remediating an encroachment may involve actions other than just removing everything, and to allow grandfathering of improvements based on prior maintenance agreements. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

The City Council has discussed private encroachments on City property, and the City's response and handling of the same, on numerous occasions. On July 19, 2022, the Council voted unanimously to adopt a policy regarding enforcement and directed City staff to bring information back to Council in order for the Council to give direction on which areas to begin enforcing the new policy. On August 2, 2022, the Council directed that enforcement begin with the Highland Hollows Subdivision. Since then, City Staff and the Mayor have prepared and sent out notices of encroachment per the policy and Council direction. An amendment was made on October 18 to not require the entire policy be mailed. As part of that approval, Council directed staff to propose an amendment to the policy to allow grandfathering of improvements that were allowed under prior maintenance agreements.

### **BACKGROUND:**

In dealing with proposed resident plans to remediate and remove encroachments, staff has found the current language of the policy to be somewhat restrictive, as it requires the resident to "remove all encroachments and restore property to its original or natural state." There are times where removal is not the best solution; where encroachments can be altered and adjusted such that the improvements are no longer a private yard or private improvement and instead becomes a public benefit. This includes improvements to trails and other natural features. Accordingly, staff recommends Council consider changing the policy to give staff more flexibility on remediation plans other than just removal.

Staff also recommends Council adopt a requirement that, as part of any remediation plan, the resident agrees to indemnify and release the city from liability arising out of the resident's work to remediate their encroachment on city property. This way, the improvement plan authorizes residents to work on city property (as required by the new

public property damage/trespass ordinance), but protects the city from liability if a resident hurts themselves or others while on city property.

Finally, staff has prepared language to allow for grandfathering of encroaching improvements that were previously authorized under prior maintenance agreements, even if those improvements would not now be allowed. This is pursuant to a request by Council.

**FISCAL IMPACT:**

No impact expected

**STAFF RECOMMENDATION:**

Staff recommends adopting the proposed amendment to the Encroachment Policy.

**MOTION TO APPROVE:**

I move that City Council approve the amendment to the Encroachment Policy as presented in the staff report.

**ATTACHMENTS:**

1. Encroachment Policy with proposed amendment

# **HIGHLAND CITY ENCROACHMENT POLICY**

## **I.BACKGROUND AND PURPOSE**

Highland City has been a sought-after place to live for years, and it is the goal of the Mayor, Council, Planning Commission, and staff to support the continuation of Highland being a great place to live and raise families. Part of the attraction of Highland is its low density and beautiful natural landscapes. In order to attain and preserve these benefits, the City has acquired a large amount of property throughout the City.

The primary purpose of this public land is to benefit all Highland residents. Some of these parcels are small slivers of natural non-manicured open space land that provide spacing in residential neighborhoods; others are multi-acre properties reserved for parks and trails. Some of this land is immediately needed and used for a specific benefit to the residents of Highland, other property is reserved for future needs, while yet other property is kept solely for open space, aesthetic, and buffering purposes. Regardless of the size of the property, the City acquired and preserved those properties in order to protect the Highland way of life.

The Highland City Council, Mayor, and other City staff, officers, and representatives serve as stewards of this public property and must be vigilant in the protection of tax dollars and city property. Highland City officials and staff recognize and appreciate the time, effort, and resources spent by many residents in voluntarily maintaining and beautifying open space areas for the benefit of their neighbors. Unfortunately, there has been an ongoing and increasing issue in Highland related to encroachments by private citizens onto public property for the purpose of benefitting the citizen but not the residents of Highland at large.

These types of encroachments are unlawful and do not benefit the residents of Highland City. These encroachments convert public property—acquired and supported by taxpayer dollars—into a private benefit without recompense to the City and its residents. Encroachments may increase the City's expenses and utility service and maintenance costs, to the detriment of taxpayer dollars and resident fees.

While many residents unintentionally encroached or unknowingly continued an encroachment started by a previous owner, a resident's intention does not change the City's responsibility to its citizens, nor does it change the ownership of the property in question. Under the Utah Constitution, the City is prohibited from giving away taxpayer property. As such, regardless of the timing, past action or inaction, or source of the encroachment, the City has a constitutional obligation to protect City property and to require that unauthorized private encroachments be prohibited and removed.

Great cities are founded on principles of accountability, respect, and a desire to work together to create a beautiful city. The purpose of this policy is to outline how Highland City officers and staff will support these principles by providing procedures for the removal of illegal encroachments and protection of public property. It is the Mayor and City Council's hope that all residents, including those who encroached unknowingly, are willing to help protect City property for all current and future residents of this wonderful city.

## **II. PERMITTED AND PROHIBITED ENCROACHMENTS**

### **1. Definitions and Examples**

- a. “Encroachment” refers to circumstances where a person extends their private property or private uses onto public property or when a person modifies public property without authorization. An encroachment is treating public property as private property. Most encroachments involve extensions of residential yards, landscaping, and structures into public parks, open space areas, and trail corridors. The only allowed encroachments are those that received prior written authorization from the City by way of a written agreement.
- b. “Public property” refers to property owned by the City. Property being “public” means that it kept by the City for the benefit and use of the public. It does not mean that members of the public have the right to unilaterally or exclusively modify or use the public property for personal purposes. Public property includes parks, trails, city buildings and yards, roads, sidewalks, park strips, and open space areas and remains public even if it is not accessible to or used by most residents.
- c. Private use of public property is regulated by the City in order to ensure that the property remains useful and beneficial for the public. Just as a resident cannot use their neighbor’s yard without their neighbor’s permission, neither can a resident use the City’s property without the City’s permission. The following is a non-exhaustive list of the types of illegal encroachments on City-owned property:
  - i. Building accessory structures such as garages and sheds or installing retaining walls and fencing;
  - ii. Installing above- and below-ground pools, play structures, trampolines, sports equipment, and other recreational equipment or facilities;
  - iii. Installing sprinklers, irrigation lines, sodding, landscaping, grading, curbing, and paving;
  - iv. Planting trees, shrubs, hedges, creating gardens or planters, and creating or extending yard-like spaces;
  - v. Restricting access to or across public property by other members of the public.

### **2. Maintenance Agreements**

- a. The only encroachments that are permitted are those that are specifically authorized by way of a duly authorized Maintenance Agreement.
- b. Maintenance Agreements – Prior to 2022
  - i. Highland City has authorized Maintenance Agreements for many residents to allow those residents to encroach onto certain areas of public property. Those

residents were required to obtain City approval of “Improvement Plans” that detailed the type and extent of the allowed encroachment. These agreements do not give residents any property interest or exclusive right in or to the public property, nor do they allow residents to exclude others members of the public from the property.

- ii. Highland City will no longer approve or extend Maintenance Agreements initially approved prior to 2022. All such currently existing Maintenance Agreements in good standing will continue to be honored; however the Agreements will not be renewed or extended except through a new Maintenance Agreement (see below) that contains terms and requirements in accordance with this policy. All existing Maintenance Agreements will be terminated when their term expires. If the resident has not complied with the terms of the Maintenance Agreement or Improvement Plan, then the Agreement will be terminated and revoked.

c. Maintenance Agreements – 2022 and Beyond

- i. Any property owner or resident who desires to improve, beautify, landscape, maintain, or otherwise encroach upon public property for the benefit of Highland residents as a whole must apply for a new Maintenance Agreement. This includes any person who previously had a Maintenance Agreement that expired or was terminated. The applicant will be required to show and explain how the proposed encroachment benefits the City, rather than just benefitting the applicant.
- ii. Maintenance Agreements may be approved by the City Council based on property circumstances and City needs. The Council may condition Maintenance Agreements on payment of application fees, increased water charges, limitations on allowable uses, and other terms and conditions as the City Council finds are appropriate. No person shall have any right to obtain or enter into a Maintenance Agreement, and the City Council shall have the right, in its sole discretion, to approve or deny a Maintenance Agreement. This Agreement must be recorded with the Utah County Recorder.
- iii. Maintenance Agreements will not grant any person any property right or interest in the public property, nor will the Agreements allow any person to exclude any member of the public from the public property.
- iv. Maintenance Agreements approved by the City Council after adoption of this policy shall have a term of 5 years. Such Agreements may be renewed for additional 5-year terms by city staff upon application by the property owner or resident on the same terms and conditions as the previously authorized Maintenance Agreement, plus any new terms or conditions that are generally required for all Maintenance Agreements, so long as the property owner or resident has complied with all terms and conditions of the Agreement. City staff may refer any request for renewal to the City Council for review and approval.

- v. Any dispute or conflict regarding compliance with the terms and conditions of a Maintenance Agreement, the approval of an improvement plan or remediation plan, the renewal of a Maintenance Agreement, or any other matter regarding Maintenance Agreements shall be referred to the City Council for review and decision.

### **III. ENCROACHMENT REMOVAL PROCEDURES**

#### **1. Voluntary Compliance**

The preferred method for rectifying illegal encroachments is voluntary compliance. Highland City encourages all residents to review their property information and boundaries to ensure that they have not encroached on public property. The Utah County Parcel Map, found online at [maps.utahcounty.gov/ParcelMap/ParcelMap.html](https://maps.utahcounty.gov/ParcelMap/ParcelMap.html) is available for residents to check their property boundaries. City staff are available to help people understand their boundaries and to come up with a plan to remove encroachments and restore public property to its original state.

#### **2. City-Enforced Compliance Procedures**

- a. Notice of Encroachment. The City shall mail a written Notice of Encroachment to the responsible property owner, or to all adjacent owners and residents when the responsible party is not apparent, when the City determines that an encroachment exists. The Notice shall summarize the circumstances and type of encroachment, explain the compliance options and timeframes, contain information on how to view or obtain a copy of this policy, and provide City contact information.

- b. Compliance Options

- i. Removal and Remediation.

- 1. Resident shall be required to remediate the encroached-upon property to ensure the encroachment no longer interferes with the intended public use of the property. This required remediation may include removing or altering encroachments; restoring grades, natural landscapes, and vegetation; and taking other actions approved by City staff~~remove all encroachments and restore property to its original or natural state~~, unless otherwise authorized by the City Council. The resident must submit and obtain City staff approval of resident's plan for remediating the property within thirty (30) days after receipt of the notice of encroachment or denial of a Maintenance Agreement application. Approval of such plan shall also require the resident, and any contractor or representative thereof, to agree to waive, indemnify, and release the City from liability in connection with the remediation efforts.
    - 2. Restoration must be completed within one (1) year after receipt of the notice of encroachment. Resident shall schedule with the City an inspection of the property after completing the remediation plan. Resident

may request an extension as part of their plan for remediating the property, which extensions may be granted by the Mayor for good cause.

- ii. Maintenance Agreement. Resident applies for a Maintenance Agreement within thirty (30) days after receipt of the notice of encroachment. The Agreement may or may not be approved with or without conditions, based on a review of the property at issue and the resident's proposed encroachment, as set forth in this policy. If the Maintenance Agreement is denied, the resident must remove the encroachment and restore the property to its original or natural state.
- iii. Existing Agreement. Resident provides a written copy of their approved Maintenance Agreement and Improvement Plan authorizing the encroachment. So long as the resident has complied with the approved Agreement and Plan, the encroachment shall be permitted to continue for the remaining term of the Agreement. After the Agreement expires, Resident shall be required to remove the encroachment and remediate the property or apply for a new Maintenance Agreement. The new Maintenance Agreement shall "grandfather" and allow for the continuation of previously approved improvements, even if those improvements would not otherwise be permitted under the new Maintenance Agreement.

### 3. No Waiver of Rights

It is each resident's responsibility to understand this policy, review their property, and ensure that their landscaping, sprinklers, sheds, pools, and all other private improvements and features are located entirely on their own property and not on City property. The City's failure to send a written notice regarding an encroachment, or the City's failure to follow-up on a written notice regarding an encroachment, does not waive the City's rights to enforce this policy or governing law. The only authorized encroachments are those that have been approved in writing by agreement with the City. All other encroachments are illegal and constitute a trespass on public property. No resident or other person shall interpret or rely on the City's omission, inaction, or failure to exercise any right as approval of an encroachment or as a waiver of any right that the City may have. The City retains and reserves the right at all times to enforce its property rights and any other rights granted under this policy, City Code, and Utah law.



# CITY COUNCIL AGENDA REPORT

## ITEM #7

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**DATE:** November 1, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Kellie Smith, Planner & GIS Analyst  
**SUBJECT:** **ORDINANCE:** Text Amendment – Daycares, Preschools, and In-Home Instruction  
**TYPE:** **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

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### **PURPOSE:**

The City Council will hold a public hearing to consider a request by Highland City Staff to amend several sections of the Development Code to add regulations for daycares, preschools, and in-home instruction. The City Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

On October 4, 2022, a resident spoke during City Council's unscheduled public appearances sharing their concern of Highland's need for affordable childcare. They explained that the use can exist with minimal impact on the neighborhoods they are located in. In addition, the individual voiced that in-home daycares are a much more affordable option than daycares in commercial locations.

At the end of the meeting, staff presented to the Council the inconsistencies in approving daycares and preschools under the existing home occupation regulations. Staff briefly reviewed daycare requirements in other cities. The Mayor and Councilmembers were in favor of drafting an ordinance based on Lehi City's code on daycares and preschools and directed staff to move forward with a text amendment.

On November 1, 2022, the City Council discussed the text amendment recommended by the Planning Commission. The Council's discussion included the maximum number of children, possibly removing Type 1 and Type 2 for daycares, potential impacts on surrounding neighborhoods, and whether or not to require background checks. The Council voted 4:0 to continue the item with a stipulation that staff would do more research.

### **BACKGROUND:**

In the past, preschools and daycares have been approved by the City through home occupation licenses.

The existing Development Code requires home occupations to meet the following:

- The home occupation shall be conducted entirely within the main dwelling, including an attached garage.
- The physical appearance of the dwelling, amount of traffic and parking, and other

activities generated by the home occupation shall not be contrary to the intent of the zone in which the home occupation is located. The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.

The Municipal Code requires that only bona fide residents of the premises, as defined by the city zoning ordinance, shall be employed by the licensee.

In August of this year, a home occupation license application was submitted for a daycare with 8-16 children and one caregiver that did not live in the home. Staff reviewed the application, and informed the applicant that the number of requested children exceeded the allowable impact of a home occupation, and that no one can be employed by the home occupation that does not live in the home. The applicant is the same individual who spoke to the City Council on October 4.

While discussing with the applicant what is permitted and what is not, Staff came to the conclusion that it was necessary to update the code to clarify what level of impact is allowed for daycares and preschools.

#### **SUMMARY OF THE REQUEST:**

*The following is a summary and outline of the code changes staff originally drafted for review. This summary does not include the changes that were later recommended by the Planning Commission.*

#### *Definitions*

Daycare. The care and supervision of children, other than children related to the adult resident(s) of a residential property, which care and supervision is in place of care ordinarily provided by a parent in the parent's home, for less than 24 hours a day, and for direct or indirect compensation.

Home Occupation. Any use conducted entirely within a building and carried on by persons residing in the dwelling unit, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. A business license does not automatically grant the privilege of conducting a business in a residential dwelling unit.

- This definition was updated to be consistent with the existing definition in the Municipal Code

In-home instruction. The provision of classes, lessons, training, practice, and other organized instruction in fields such as, but not limited to, dance, music, art, swimming, fitness, health, school subjects, or other similar subjects, offered within a residence to people, including children, who do not live at the residence. Includes in-home preschools.

Preschool. An early childhood program that provides education and care to pre-elementary school aged children that emphasizes learning and development rather than daycare services.

#### *Daycares – (R-1-40, R-1-30, and R-1-20)*

- All home occupation regulations apply except that employed caregivers associated with the daycare are not required to live in the home. The number of caregivers is limited to the minimum required by the State.
- All daycares must receive applicable licensing from the Utah Department of Health and Human Services. A copy of this license must be submitted to the City.
- Daycares have been divided into 3 types based on number of children:
  1. Type 1 – 8 children or less
  2. Type 2 – 9-16 children
    - For Type 2 daycares, the following site improvements are required:
      - At least ¼ mile (or a different radius) from another daycare or preschool with 9-16 children.
      - 1 off street parking space per caregiver required.
  3. Commercial – 16+ children
    - A daycare with more than 16 children is considered a commercial use and is only permitted in commercial zones that list daycares as a permitted use.

#### *In-Home Instruction (includes preschools) (R-1-40, R-1-30, and R-1-20)*

- All home occupation regulations are required.
- Maximum of 12 students per day.
- Maximum of 2 time blocks (morning, afternoon). Each block must be less than 4 hours.
- A background check is required for teachers or instructors for students younger than 18 years of age.
- The teacher or instructor must live in the home.
- Preschools or instruction with more than 12 students per day is considered a commercial use and is only permitted in commercial zones that list a preschool as a permitted use.

#### *Commercial Zones*

- Residential Professional – Preschools and daycares are already permitted conditional uses in this zone.
- Professional Office – The proposed amendment adds “daycares” as a permitted conditional use. Preschools are already listed as a conditional use.

#### **CITIZEN PARTICIPATION:**

Notice of the public hearing held at the Planning Commission meeting was posted on the state and city websites and three public places on October 13, 2022.

Notice of the public hearing to be held at City Council was posted on the state and city websites and three public places on October 20, 2022. No comments have been received.

#### **PLANNING COMMISSION ACTION:**

The Planning Commission held a public hearing on October 25, 2022. There was no public comment on the proposed amendment. Some Commissioners expressed that they did not think that residential daycares were a needed use. Commissioner Moore explained that she has seen a need for the use from the community point of view. Commissioner Jones

shared his opinion that the use is vital to communities and that the City should have as many as are comfortable. Commissioner Thayn expressed concern that commercial daycares are not affordable for young parents.

After much discussion, the Planning Commission voted 5-0 to recommend approval of the amendment proposed by staff with the following changes:

- *All daycares be required to provide a traffic flow and parking plan.*
- *The maximum number of children allowed in a residential daycare be reduced to 12.*
- *The regulation that the number of caregivers is limited to the minimum required by the State be removed.*
- *In-home instruction (including residential preschools) be allowed a maximum of 12 students per day provided that no student attend for longer than 4 hours.*

The Planning Commission discussed and was in favor of allowing additional teachers or instructors for in-home instruction that are not bona fide residents of the home. This detail was likely inadvertently excluded when the motion was made.

#### **STAFF REVIEW:**

- The Utah Department of Health and Human Services regulates the following for all daycares:
  - Children to caregiver ratio;
  - Training hours for caregivers;
  - Background checks for caregivers as well as anyone in the home that is over 12 years old;
  - Safety and injuries;
  - Food;
  - Transportation (if provided); and
  - Medical records
- The State conducts annual inspections to ensure compliance with their regulations.
- Childcare for less than 4 hours does not require State licensing. Staff is proposing to require a background check for instructors that have students under the age of 18 to provide an assurance of protection to the youth and their parents that will be using the services of the instructors.
- The average impact of a daycare or preschool exceeds the allowable impact outlined for home occupations in Highland City. According to the Utah Travel Study (updated January 2013), the State-wide average trips per household is 11.26 (each travel to or from the home is counted as one (1) trip). For a daycare, for example, one child would produce at least 4 additional trips for pick-up and drop-off. Some daycares provide transportation to and from school, which is an additional 4 trips. For a preschool with 12 students, this creates 48 trips. If there are two (2) time blocks available, this could create 96 trips per day. This is well over the expected average of 11.26 trips per day for a household.
- The three (3) types of daycares, and the maximum number of students for a preschool, are from the Lehi City Code. The purpose of adding possible mitigation measures for Type 2 (9-16 children) is to enforce a consistent requirement for this level of impact in a residential zone rather than going through the conditional use process.
- Generally when land use codes are updated, previous uses that received proper

permits are grandfathered so long as the use stays consistent with what was permitted.

*After the City Council's request for staff to do more research, staff found the following:*

### **Highland City Home Occupation Data**

- Daycares, Preschools, In-home Instruction *with* a Business License in Highland

Type of Home Occupation	Blocks Per Day	Max # of Children at any one time	Total # of Children Per Day	# of Employees (not including homeowner)	Days per Week
Fitness/Preschool	2	10	20	1	4
Preschool	2	8	16	0	3
Daycare	1	10	10	1	5
Childcare w/ curriculum	1	8	8	1	5
Preschool	2	15	30	2	5
Preschool	2	16	32	2	5
Dance Lessons	2	10	20	3	3
Music Lessons (no longer operating)	Unknown	Unknown	8	0	5

\*Complaints regarding traffic have been submitted to the City for 3 of the 8 home occupation licenses listed.

- Daycares, Preschools, In-home Instruction *without* a Business License in Highland

Type of Home Occupation	Blocks Per Day	Max # of Children at any one time	Total # of Children Per Day	# of Employees (not including homeowner)	Days per Week
Dance Lessons	2	13	26	1	3
Preschool	1	12	12	0	4
Preschool	Unknown	16	16	Unknown	Unknown

- The data collected gives the following averages for number of children:
  - Average maximum # of children at one time: **11.33**
  - Average total # of children per day: **18**

### **Background Checks**

The following cities were contacted to collect data regarding background checks for instructing minors (preschools/in-home instruction):

City	Estimated Licensed	Background Check Required?	Type of Background	Cost?
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	<b>Businesses Applicable to Discussion</b>		<b>Check</b>	
Alpine	2	No, but requires a state license. She did mention that she used to work part time for a school, and the school district required a fingerprint background check	None	NA
American Fork	10	No, but the Police Department does look at the applications that involve children	None	NA
Cedar Hills	10	Yes: Home Business Application with impact (Pre-School, Daycare, Group Instruction with 4+ individuals, etc.). If your business works primarily with children or the elderly, or if you are a solicitor, you will need to submit a background check from the Utah State Department of Safety.	*BCI Only: Name Check	Cost is not assessed by city - the individual must pay for it through BCI
Draper	10	Requires Planning Commission Approval for Childcare Services or Personal Instruction	BCI Only: Name Check	Cost is not assessed by city - the individual must pay for it through BCI
Eagle Mountain	100s	Any business involving minors is required to provide a background check if the state doesn't (cleaning, hair salons, photography, preschools).	BCI Only: Name Check	Eagle Mountain has a form that they will run. Part of application fee.
Lehi	500	No background check at all	None	NA
Saratoga Springs	18 known	Investigating to update their code - hasn't been part of their process to date, but their applications state that they can ask for one.	BCI Only: Name Check	Cost is not assessed by city - the individual must pay for it through BCI
Vineyard	5	No background check at all	None	NA

\*BCI is only a background check on the name. Fingerprints are a full background check.

- Lone Peak Police can take fingerprints and do a live scan where the fingerprints are uploaded directly to BCI. The cost is \$10.25 per card.
- Fingerprinting through BCI office directly costs \$15.00 for up to 3 cards.

#### **FINDINGS:**

The proposed amendment appears to meet the following findings:

- The proposed update to the Professional Office zone is consistent with existing uses in the zone.
- Clarifications are included to require appropriate State licensing for the care of children.
- The proposed amendment allows for a needed use while appropriately mitigating impact in residential zones.

#### **FISCAL IMPACT:**

This action will not have a financial impact on this fiscal year's budget expenditures.

#### **STAFF RECOMMENDATION:**

Staff recommends the City Council review and discuss the new information provided in the Staff Review, and determine if any changes should be made to the amendment recommended by the Planning Commission.

Staff also recommends the City Council consider that the Planning Commission discussed and was in favor of allowing additional teachers or instructors for in-home instruction that are not bona fide residents of the home. This detail was missed when the motion was made.

#### **MOTION TO APPROVE:**

I move that the City Council **APPROVE** the text amendment *as recommended by the Planning Commission* to amend several sections of the Development Code to add regulations for daycares, preschools, and in-home instruction.

If the City Council would like to include the preference that the Planning Commission expressed regarding allowing additional teachers for in-home instruction, the following motion can be used:

I move that the City Council **APPROVE** the text amendment *as recommended by the Planning Commission* to amend several sections of the Development Code to add regulations for daycares, preschools, and in-home instruction with the following change:

- In-home instruction will allow for additional teachers or instructors that are not bona fide residents of the home. At least one teacher or instructor associated with the in-home instruction is required to be a bona fide resident of the home.

#### **ALTERNATIVE MOTION:**

The City Council may also make any changes it feels necessary to the Planning Commission's recommendation. If so, the following motion can be used:

I move that the City Council **APPROVE** the proposed amendment to amend several sections of the Development Code to add regulations for daycares, preschools, and in-home

instruction with the following changes: (the City Council will need to outline the changes they would like to see).

The following are items that the Council discussed changing or removing during the November 1<sup>st</sup>, 2022 discussion:

- Remove Type 1 and Type 2 for Daycares.
- Allow employees for in-home instruction that do not live in the home.
- One (1) off-street parking stall is required for each employee that does not live in the home.

**ATTACHMENTS:**

1. Ordinance – As recommended by the Planning Commission

ATTACHMENT #1:

**AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING SEVERAL SECTIONS OF THE HIGHLAND CITY DEVELOPMENT CODE AND THE HIGHLAND CITY MUNICIPAL CODE RELATING TO DAYCARES, PRESCHOOLS, AND IN-HOME INSTRUCTION AS SHOWN IN FILENAME TA-22-15.**

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the “Commission”) and the Highland City Council (the “City Council”) were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on October 25, 2022 and

WHEREAS, the City Council held a public hearing on this Ordinance on November 1, 2022.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** Several sections of the Development Code are hereby amended as shown on “Exhibit A” attached hereto and incorporated herein.

SECTION 2: **ADOPTION** Section 5.08.050 in the Municipal Code is hereby amended as shown on “Exhibit B” attached hereto and incorporated herein.

SECTION 3: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 4: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 5: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from December 6, 2022 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, December 6, 2022

HIGHLAND CITY, UTAH

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Kurt Ostler  
Highland City Mayor

ATTEST:

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Stephannie Cottle  
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	<input type="checkbox"/>	<input type="checkbox"/>
Brittney P. Bills	<input type="checkbox"/>	<input type="checkbox"/>
Sarah D. Petersen	<input type="checkbox"/>	<input type="checkbox"/>
Kim Rodela	<input type="checkbox"/>	<input type="checkbox"/>
Scott L. Smith	<input type="checkbox"/>	<input type="checkbox"/>

**EXHIBIT A**  
**Development Code**

R-1-40

**3-4102 Permitted Uses**

...

16. Home Occupations please refer to Article 6, Section 3-614, Supplementary Regulations.

17. Daycares accessory to a single-family dwelling.

- a. All Home Occupation regulations found in Article 6 Supplementary Regulations are required, except that employed caregivers associated with the Daycare are not required to be bona fide residents of the home.
- b. All daycares must receive applicable licensing from the Utah Department of Health and Human Services. A copy of this license must be submitted to the City.
- c. All daycares must provide a traffic flow and parking plan to be approved by City staff.
  - i. Type 1 – 8 children or less
  - ii. Type 2 – 9-12 children

For Type 2 daycares, the following site improvements are required:

    - a) At least ¼ mile radius from another daycare or preschool with 9-12 children.
    - b) 1 off street parking space per caregiver required.

A daycare with more than 12 children is considered a commercial use and is only permitted in commercial zones that list a daycare as a permitted use.

18. In-home instruction (includes preschools) accessory to a single-family dwelling.

- a. All Home Occupation regulations in Article 6 Supplementary Regulations are required.
- b. Maximum of 12 students per day provided that no student attend for longer than 4 hours.
- c. A background check is required for teachers or instructors for students younger than 18 years of age.
- d. The teacher or instructor must be a bona fide resident of the home.

Preschools or instruction with more than 12 students per day is considered a commercial use and is only permitted in commercial zones that list a preschool as a permitted use.

R-1-20

**3-4202 Permitted Uses**

...

14. Home Occupations please refer to Article 6, Section 3-614, Supplementary Regulations.

15. Daycares, preschools, or in-home instruction; please refer to Section 3-4102(17) and Section 3-4102(18) in this Code.

R-1-30

### **3-4252 Permitted Uses**

...

15. Daycares, preschools, or in-home instruction; please refer to Section 3-4102(17) and Section 3-4102(18) in this Code.

### **R-P Zone (Residential Professional)**

**Preschools and Daycares are already permitted conditional uses in this zone**

Professional Office ("P.O.")

### **3-4902 Conditional Uses**

...

4. Other types of Professional Services including but not limited to: information technology services, marketing, travel and employment agencies, journalists, collection agencies, educational services, daycares, music studios, photography studios, churches, colleges & schools (academic, pre-schools, special education, indoor instruction only).

Supplementary Regulations

### **3-614 Home Occupations**

Any person desiring a home-occupation permit, as provided in this Section, shall file an application with the City Treasurer. For preschools, daycares, or in-home instruction requirements, refer to permitted uses and associated regulations in the applicable residential zone.

Definitions

### **10-102 Definitions**

16. Daycare. The care and supervision of children, other than children related to the adult resident(s) of a residential property, which care and supervision is in place of care ordinarily provided by a parent in the parent's home, for less than 24 hours a day, and for direct or indirect compensation.

...

34. Home Occupation. ~~Any occupation conducted within a dwelling and carried on by persons residing in the dwelling.~~ Any use conducted entirely within a building and carried on by persons residing in the dwelling unit, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. A business license does not automatically grant the privilege of conducting a business in a residential dwelling unit.

...

36. In-home instruction. The provision of classes, lessons, training, practice, and other organized instruction in fields such as, but not limited to, dance, music, art, swimming, fitness, health, school subjects, or other similar subjects, offered within a residence to people, including children, who do not live at the residence. Includes in-home preschools.

...

55. Preschool. An early childhood program that provides education and care to pre-elementary school aged children that emphasizes learning and development rather than daycare services.

\*Numbering in 10-102 Definitions will be adjusted accordingly.

## EXHIBIT B

### Municipal Code

#### Chapter 5.08 Home Occupation Licenses

##### **5.08.050 Conditions**

As a prerequisite to the issuance of a home occupation license, conditions must be observed at all times by the licensee and the licensee shall comply with the following:

1. Only bona fide residents of the premises, as defined by the city zoning ordinance, shall be employed by the licensee.
2. The home occupation shall not physically change the dwelling to the extent that it would alter the residential character or appearance of the dwelling or neighborhood.
3. The home occupation shall be conducted wholly within a structure on the premises and shall not exceed twenty-five percent of the total main floor area of the residential structure; nor in the alternative, more than fifty percent of the total floor area of any attached garage wherein the license activity is conducted. The home occupation shall not involve the use of any accessory building or yard space for storage, nor shall any activities be conducted outside the building.
4. The home occupation shall not display nor create outside the building any external evidence of the operation of the home occupation.
5. No display of any kind shall be visible from the exterior of the premises.
6. All maintenance or service vehicles and equipment, or any vehicle bearing any advertising related to the home occupation or any other similar vehicle shall be garaged or stored entirely within a building or structure, or entirely behind the dwelling, out of view of the street.
7. The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.
8. There shall be complete conformity with fire, building, plumbing, electrical and health codes and to all state and city laws and ordinances.
9. The home occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.
10. The home occupation shall not be associated with, or produce odor, fumes, light, glare, color, design, materials, construction, lighting, sounds, noises, or vibrations or other nuisances including radio and television reception that may be discernable beyond the premises or unreasonably disturb the peace and quiet of the neighborhood.
11. Any special condition established by the city council and made of record in the home occupation license, as they deem necessary to carry out the intent of this section shall be met.
12. All home occupation licenses shall expire annually on June 30th, and may be renewed annually provided there have been no reported violations, complaints, or detrimental characteristics which may, in the opinion of the city council or city zoning administrator, require termination of such occupation.
- 12-13. Daycares, preschools, and in-home instruction are subject to additional regulations under the Highland City Development Code.



# CITY COUNCIL AGENDA REPORT

## ITEM #8

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**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Kellie Smith  
Planner & GIS Analyst  
**SUBJECT:** **ACTION:** Development Agreement Amendment - Highland Marketplace  
**TYPE:** **LAND USE (ADMINISTRATIVE)**

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### **PURPOSE:**

The City Council will hold a public meeting to consider an amendment requested by MNG Highland Development, LLC to the development agreement for the property known as Highland Marketplace located at the intersection of S.R. 92 and S.R. 74. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

On November 1, 2022, Joe Ham, representing MNG Highland Development, LLC, presented to the Council a new site plan and architectural standards for the undeveloped property in the Highland Marketplace commercial project. Councilmembers shared support for the new architectural themes. There was discussion regarding the ownership of the existing buildings, and if there were plans to update the old buildings to match the new architectural theme. Mr. Ham shared that the intent would be that when buildings were renovated that they would match the new theme.

### **BACKGROUND:**

A Development Agreement for the Highland Marketplace subdivision was entered into on April 24, 2007. This agreement outlined architecture, landscaping, lighting, and signage of Highland Marketplace. The approved site plan included 118,250 square feet of grocery and retail on the subject property.

On February 2nd, 2021, the City Council reviewed and approved an updated master commercial site plan for Highland Marketplace. That site plan included a 45,000-grocery building. On December 7, 2021, the Council reviewed and approved a request from the applicant to amend the site plan because of the failure to find a grocer interested in the site.

The construction plans for the site plan approved December 7, 2021 were approved, a preconstruction meeting was held with staff, and three building permits were issued. The Developer then contacted City staff to notify them that they had hired a new architect and wanted to redesign the site plan and architectural themes for the site. Staff concluded that it would be necessary to amend the 2007 Development Agreement to address these changes.

### Development Agreement Amendment:

A summary of the proposed amendment is as follows:

#### *Completed Improvements*

- The Parties acknowledge that improvements including medians, the fence along the west boundary, and parkway detail along S.R. 92 and S.R. 74 have been completed.

#### *Masonry Wall*

- The required screen wall on the north boundary of the development must be completed before the issuance of a Certificate of Occupancy for the property.

#### *Landscape, Signage, Lighting*

- The landscape, signage, and lighting plans from the original agreement are replaced with new exhibits.
  - The overall landscape and lighting plans are consistent with the CR Zone regulations as proposed (details will be reviewed by Staff at the civil plan review stage).
  - The signage plan includes a commercial center monument sign to replace the originally proposed 25' freestanding sign. The Development Code does not address this type of sign.

#### *Architecture*

- The architectural themes from the original agreement are replaced with new exhibits.
  - A clarification is added that in the event that the developer proposes a deviation from the architectural themes, that the CR Zone guidelines shall govern, subject to review and approval by the Planning Commission.

#### *Site Plan*

- The master site plan from the original agreement is replaced with two (2) new exhibits. The Developer is requesting that the agreement include two (2) options in for them to choose from.
  - Option 1: This option was presented to the Council on November 1, 2022. This option has **7 buildings** with a total floor area of **142,418 square feet** (93,535 square feet for the building footprints). This site plan meets 4 parking stalls per 1,000 square feet by providing 580 stalls.
  - Option 2: This option adds 1 additional office building. There would be **8 buildings** with a total floor area of **129,762 square feet** (97,257 square feet for building footprints). This site plan also meets at least 4 parking stalls per 1,000 square feet by providing 520 stalls.
- The master site plan is *authorized*, and final details regarding Section 3-4373 in the Development Code (parking configuration, the location of drive aisles, pedestrian accesses, landscaping/planting details, etc.) will be reviewed and approved by City Staff.
- Setbacks.
  - Buildings are proposed be setback a minimum of 20' from the north and west boundaries, or 100' from any home or residence (excluding the garage or other accessory structure) on adjacent property, whichever is greater.

- The Developer requested to be as close as 10' from the boundary, consistent with what was approved in the original agreement. The CR Zone typically requires 30'. Because of the locations of the homes to the west and the church property to the north, Staff felt it appropriate to allow 20' from the property line.
- Parking lots or other hard surface improvements must be setback a minimum of 10' from the north and west property lines. (A 10' landscape buffer is required).
- Refuse collection is proposed to be setback a minimum of 10' from the north property line or 100' from any residence, whichever is greater. This setback is consistent with what was allowed in the original agreement. All other refuse collection areas must meet the setbacks defined in the Development Code.
  - The CR Zone requires refuse collection areas to be 40' from property line or 100' from any residence, whichever is greater. Staff felt like the 10' setback was appropriate on the north as it is next to a church parking lot rather than homes.

**FISCAL IMPACT:**

This action will not have a financial impact on this fiscal year's budget expenditures.

**STAFF RECOMMENDATION:**

Staff recommends the City Council **APPROVE** the amendment to the existing Development Agreement.

**MOTION TO APPROVE:**

I move that the City Council **APPROVE** the amendment to the Development Agreement between MNG Highland Development, LLC, SBP Holdings Reverse, LLC, successors to Thomas Fox Properties, LLC, and Highland City and **AUTHORIZE** the Mayor to execute the document.

**ALTERNATIVE MOTION:**

I move that the City Council **APPROVE** the amendment to the Development Agreement between MNG Highland Development, LLC, SBP Holdings Reverse, LLC, successors to Thomas Fox Properties, LLC, and Highland City and **AUTHORIZE** the Mayor to execute the document with the following changes: (The City Council will need to draft appropriate changes).

**ATTACHMENTS:**

1. First Amendment To Development Agreement
2. Original Development Agreement (Highland City/Thomas Fox Properties, LLC)

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 by and between HIGHLAND CITY, a municipal corporation, whose address is 5400 West Civic Center Drive, Suite 1, Highland, Utah 84003 (the “**City**”), MNG HIGHLAND DEVELOPMENT, LLC, a California limited liability company (“**MNG**”), whose address is 415 South Cedros Avenue, Suite 2400, Solana Beach, California 92075, and SBP HOLDINGS REVERSE, LLC, a Utah limited liability company (“**SBP**”), as successors in interest to THOMAS FOX PROPERTIES, LLC, (at times collectively “**Developer**”). The City, MNG, and SBP are at times referred to collectively in this Amendment as the “**Parties**”).

WHEREAS, Developer and the City are parties to that certain Development Agreement dated April 24, 2007 (the “**Agreement**”) pertaining to the development of the Property, as more particularly described in the Agreement; and

WHEREAS, since the execution of the Agreement, the development of Lots 3-11 of the original Property has been completed and all conditions as provided in the Agreement have been satisfied as such relate to Lots 3-11 of the original Property; and

WHEREAS, Developer and the City desire to amend the site plan, signage, lighting, and architecture for development of Lots 1 and 2 of the original Property or Lots 1-7 of the Mid-Town Highland Marketplace Subdivision – Amended.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings given them in the Agreement.
2. Effect of Amendment. This Amendment shall only apply to and affect the development of the Property as defined herein.
3. 1.6 “Property”. For purposes of this Amendment, the definition of the Property is amended to be:

Lots 1 through 7 of the MID-TOWN HIGHLAND MARKETPLACE SUBDIVISION – AMENDED, according to the official plat thereof as recorded in the office of the Utah County Recorder.

4. 2.1. Medians. The Parties acknowledge and agree that the medians described in Section 2.1 of the Agreement have been installed as provided in Section 2.1 of the Agreement. All such obligations of Section 2.1 have been satisfied.

5. 2.3 Masonry Walls. The parties acknowledge and agree that the masonry wall along the westerly boundary of the Property has been installed as provided in Section 2.3. of the Agreement. Prior to the issuance of the first Certificate of Occupancy for the Property, Developer shall construct and install a masonry wall along the northerly boundary of the Property consistent with the City's Development Code.

6. 2.4.1. Exhibit "A". The landscaping plan attached at Exhibit "A" to the Agreement is amended with the landscaping plan attached at Exhibit "A" hereto. The parkway landscape improvements as shown on Exhibit "B" to the Agreement have been satisfied in full.

7. 2.4.2 Parkway Landscape. The Parties acknowledge and agree that the landscaping within the parkway easement and the hardscape abutting that landscaped area as shown on the original Plat have been completed. No additional bond shall be required from Developer for the completed landscaping.

8. 2.4.3 State Road 92. The Parties acknowledge and agree that all obligations of Section 2.4.3 have been complied with and nothing remains for Developer to complete in relation thereto.

9. 2.5 Signage, Lighting and Architecture. The signage set forth on Exhibit "C", the lighting set forth on Exhibit "D", and the architectural themes set forth on Exhibit "E" attached to the Agreement are each amended with the signage set forth on Exhibit "C", the lighting set forth on Exhibit "D", and the architectural themes ("**Architectural Themes**") set forth on Exhibit "E" attached hereto. The Architectural Themes consist of general concepts to be used in the development of the final elevations for the improvements of the Property and are hereby approved by the City. The final details of the Architectural Themes shall be proposed by Developer and approved by City Staff. In the event that the Developer proposes a deviation from the Architectural Themes set forth in the Agreement as determined by staff, the general guidelines of the City's CR Zone shall govern, subject to review and approval by the Planning Commission..

10. 3.2 Action of Site Plan. The Parties acknowledge and agree that the findings for granting approval for the Site Plans, as defined in section 11 of this Amendment, have been satisfied and fulfilled in full. The Parties further agree that the items for Lots 1-7 of the Property set forth in Section 3-4374(2) of the Highland City Development Code shall be reviewed and approved by City Staff.

11. Site Plan. Copies of the authorized alternative site plans for the Property are attached hereto as Exhibit "B" ("**Site Plans**"). MNG may elect which of the two site plans to use in its sole discretion. The Site Plans are approved generally, provided that the details of those Site Plans, including all items required by Section 3-4374(2), shall be reviewed and approved by the

City Staff consistent with the Agreement, this Amendment, and the City's Development Code and engineering design and construction standards, as applicable.

12. Setbacks. The setback area for all buildings and structures shall be a minimum of twenty (20) feet from the northern and western property lines or one hundred (100) feet from any wall of a home or residence (excluding the garage or other ancillary buildings) on adjacent property. The setback area for parking lots and other hard surface improvements shall be a minimum of ten (10) feet from the northern and western property lines.

13. Refuse Collection. The setback for refuse collection may be reduced to ten (10) feet from the northern property line and no closer than one hundred (100) feet from any residence. All other refuse collection areas must meet the setbacks defined in Section 3-4363 of the Highland City Development Code.

14. Remaining Provisions. Except as otherwise expressly set forth herein, the Agreement is hereby ratified and confirmed and remains in full force and effect.

[Signatures and acknowledgments on the following pages]

<u>Approved as to Form:</u>  _____ _____	THE CITY:  HIGHLAND CITY  _____ By: _____ Its: _____
---	--

On the \_\_\_\_ day of \_\_\_\_\_, 2022 personally appeared before me \_\_\_\_\_ who duly acknowledged to me that they executed the foregoing Amendment as \_\_\_\_\_ of Highland City.

Notary Public

MNG HIGHLAND DEVELOPMENT, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022 personally appeared before me \_\_\_\_\_ who duly acknowledged to me that they executed the foregoing Amendment as \_\_\_\_\_ of MNG HIGHLAND DEVELOPMENT, LLC.

\_\_\_\_\_  
Notary Public

SBP HOLDINGS REVERSE, LLC,  
a Utah limited liability company

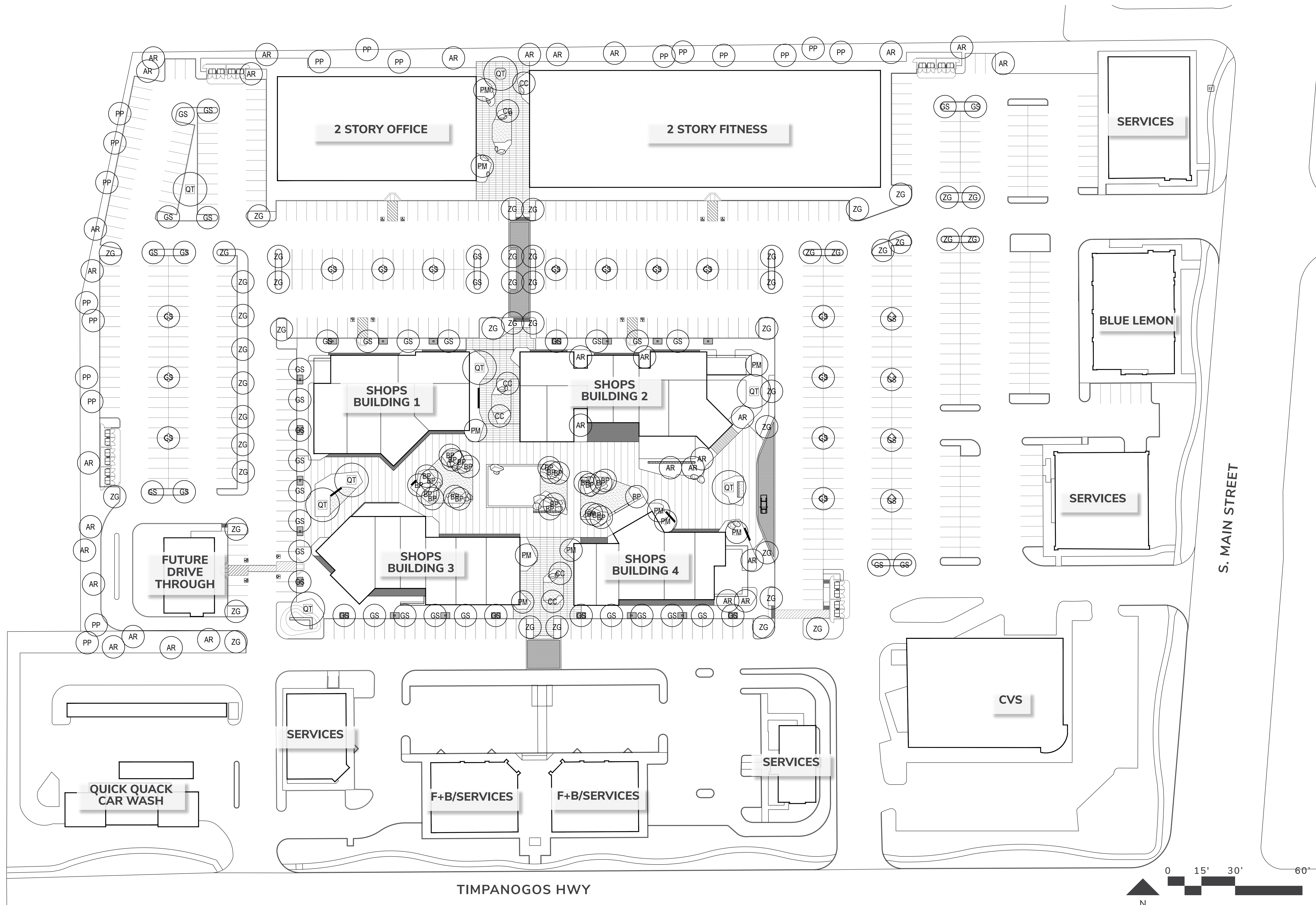
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

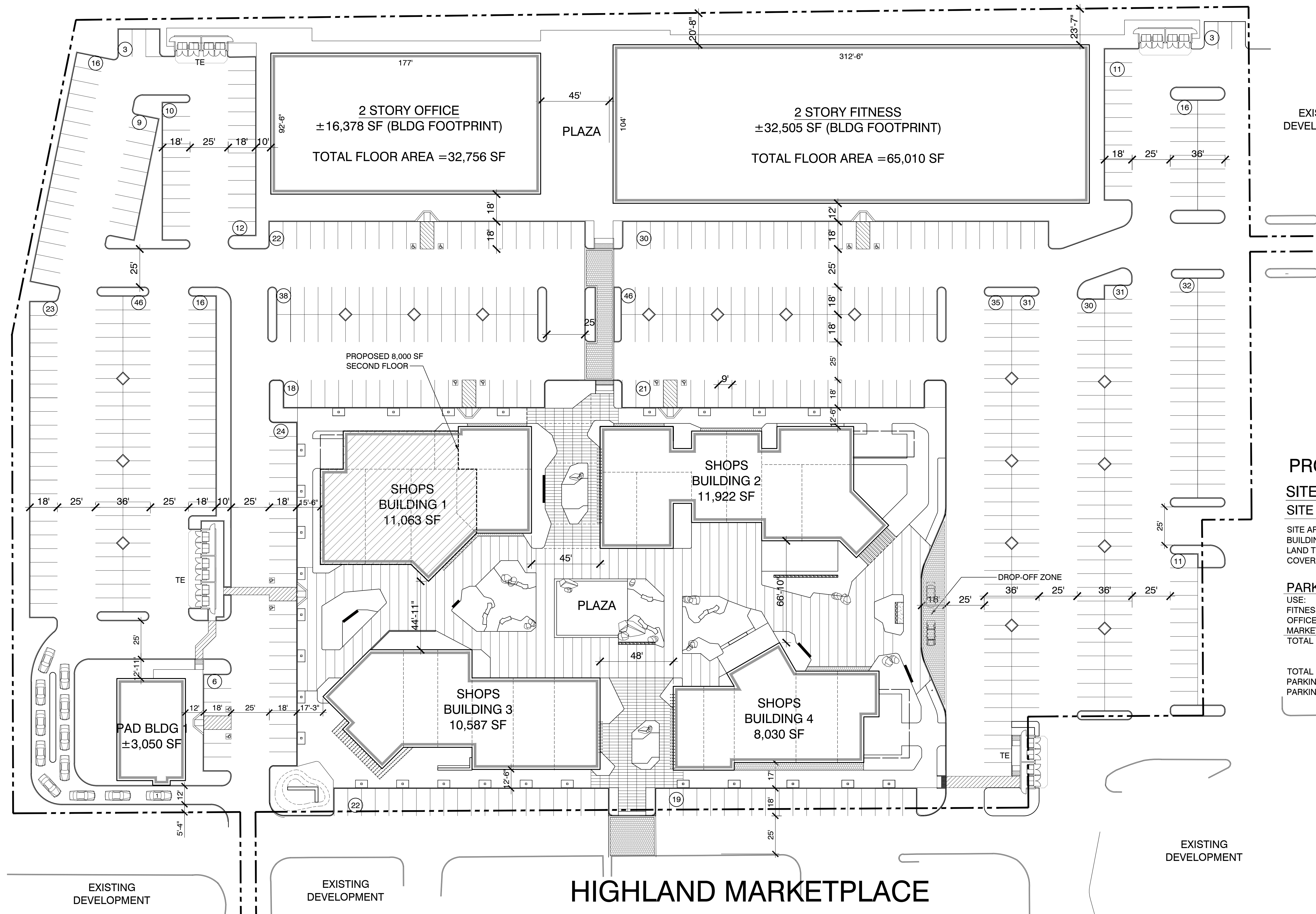
On the \_\_\_\_\_ day of \_\_\_\_\_, 2022 personally appeared before me \_\_\_\_\_ who duly acknowledged to me that they executed the foregoing Amendment as \_\_\_\_\_ of SBP HOLDINGS REVERSE, LLC.

\_\_\_\_\_  
Notary Public

**EXHIBIT “A”**  
**LANDSCAPING PLAN**



**EXHIBIT “B”**  
**APPROVED SITE PLANS**



## PROJECT INFORMATION

### SITE SUMMARY:

#### SITE AREA

SITE AREA	±9.44 AC	±411,117
BUILDING AREA (BLDG FOOTPRINT)		93,535 SF
LAND TO BUILDING RATIO		3.39 / 1
COVERAGE		22.75%

#### PARKING REQUIREMENT

USE:	BLDG. AREA	REQ'D STALLS
FITNESS CENTER @ 4/1000	65,010 SF	260 STALLS
OFFICE BLDG @ 4/1000	32,756 SF	131 STALLS
MARKET/RETAIL/SHOPS @ 4/1000	44,652 SF	179 STALLS
TOTAL BLDG AREA	142,418 SF	

TOTAL PARKING REQUIRED:	570 STALLS
PARKING PROVIDED:	580 STALLS
PARKING RATIO:	4.07/1000

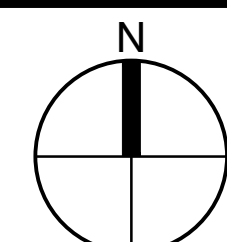
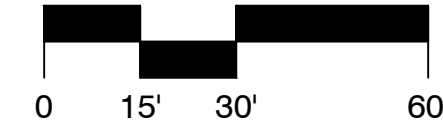
DATE: 11.22.2022  
MCG JOB #: 22.605.01

DATE	REVISIONS

©MCG ARCHITECTURE 2022 ALL RIGHTS RESERVED  
NOTE: This information is conceptual in nature and is subject to adjustments pending further verification and Client, Tenant, and Governmental Agency approvals. No warranties or guarantees of any kind are given or implied by the Architect.

### SITE PLAN SP-01

Scale : 1" = 30'



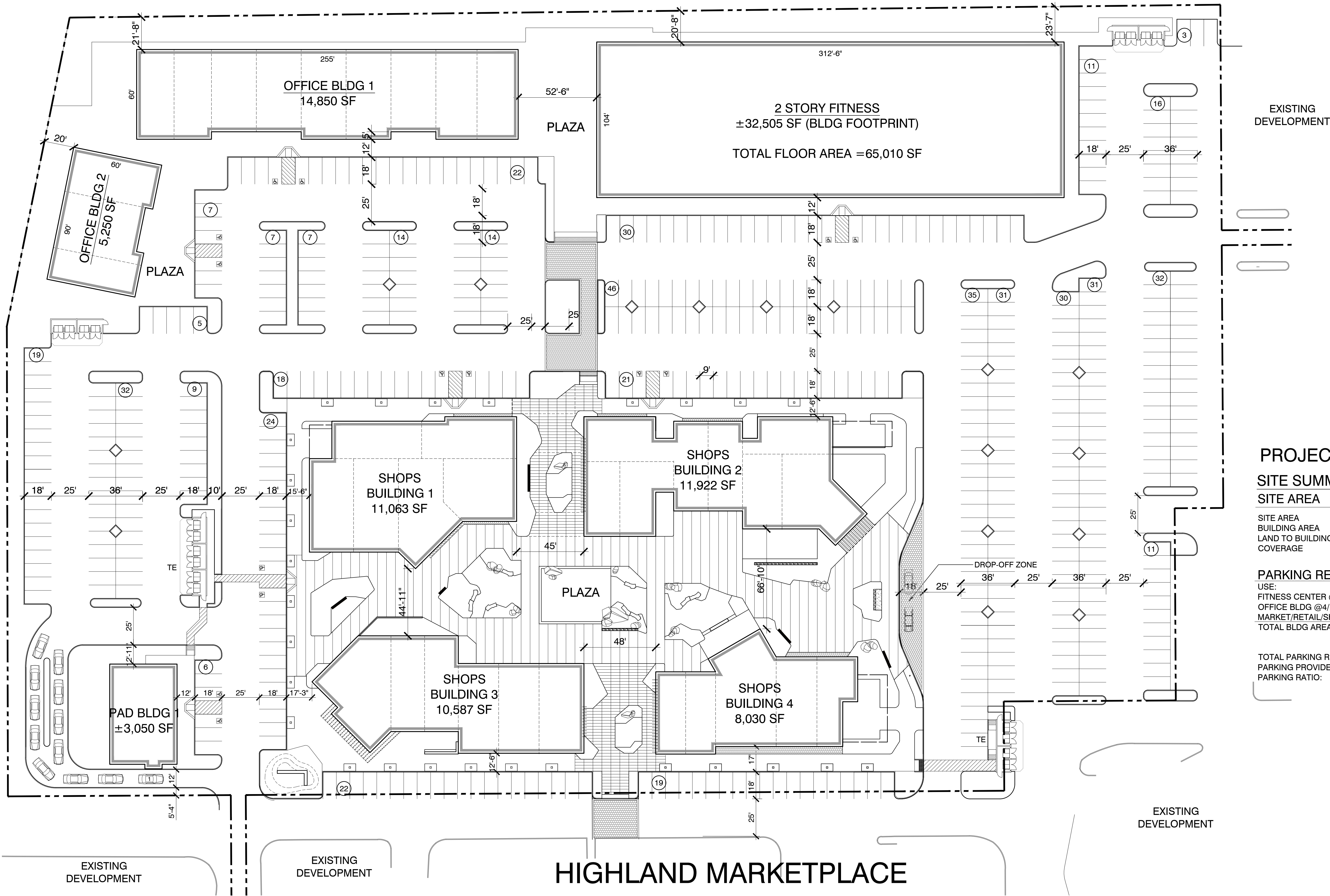
## HIGHLAND MARKETPLACE UTAH

CLEVELAND  
DENVER  
GLENORA  
IRVINE  
ORLANDO  
PHOENIX  
SAN FRANCISCO



mcgarchitecture.com

**EXHIBIT “B” (continued)**



## PROJECT INFORMATION

### SITE SUMMARY: SITE AREA

SITE AREA	±9.44 AC	±411,117
BUILDING AREA (BLDG FOOTPRINT)		97,257 SF
LAND TO BUILDING RATIO		3.22 / 1
COVERAGE		23.65%

### PARKING REQUIREMENT

USE:	BLDG. AREA	REQ'D STALLS
FITNESS CENTER @4/1000	65,010 SF	260 STALLS
OFFICE BLDG @4/1000	20,100 SF	80 STALLS
MARKET/RETAIL/SHOPS @ 4/1000	44,652 SF	179 STALLS
TOTAL BLDG AREA	129,762 SF	

TOTAL PARKING REQUIRED:	519 STALLS
PARKING PROVIDED:	520 STALLS
PARKING RATIO:	4.00/1000

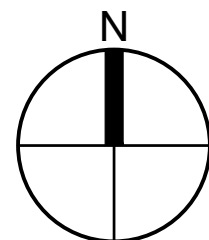
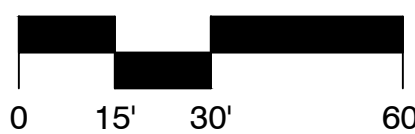
DATE: 11.22.2022  
MCG JOB #: 22.605.01

DATE	REVISIONS

© MCG ARCHITECTURE 2022 ALL RIGHTS RESERVED  
NOTE: This information is conceptual in nature and is subject to adjustments pending further verification and Client, Tenant, and Governmental Agency approvals. No warranties or guarantees of any kind are given or implied by the Architect.

### SITE PLAN SP-02

Scale : 1" = 30'



## HIGHLAND MARKETPLACE UTAH

CLEVELAND  
DENVER  
GLENORA  
IRVINE  
ORLANDO  
PHOENIX  
SAN FRANCISCO

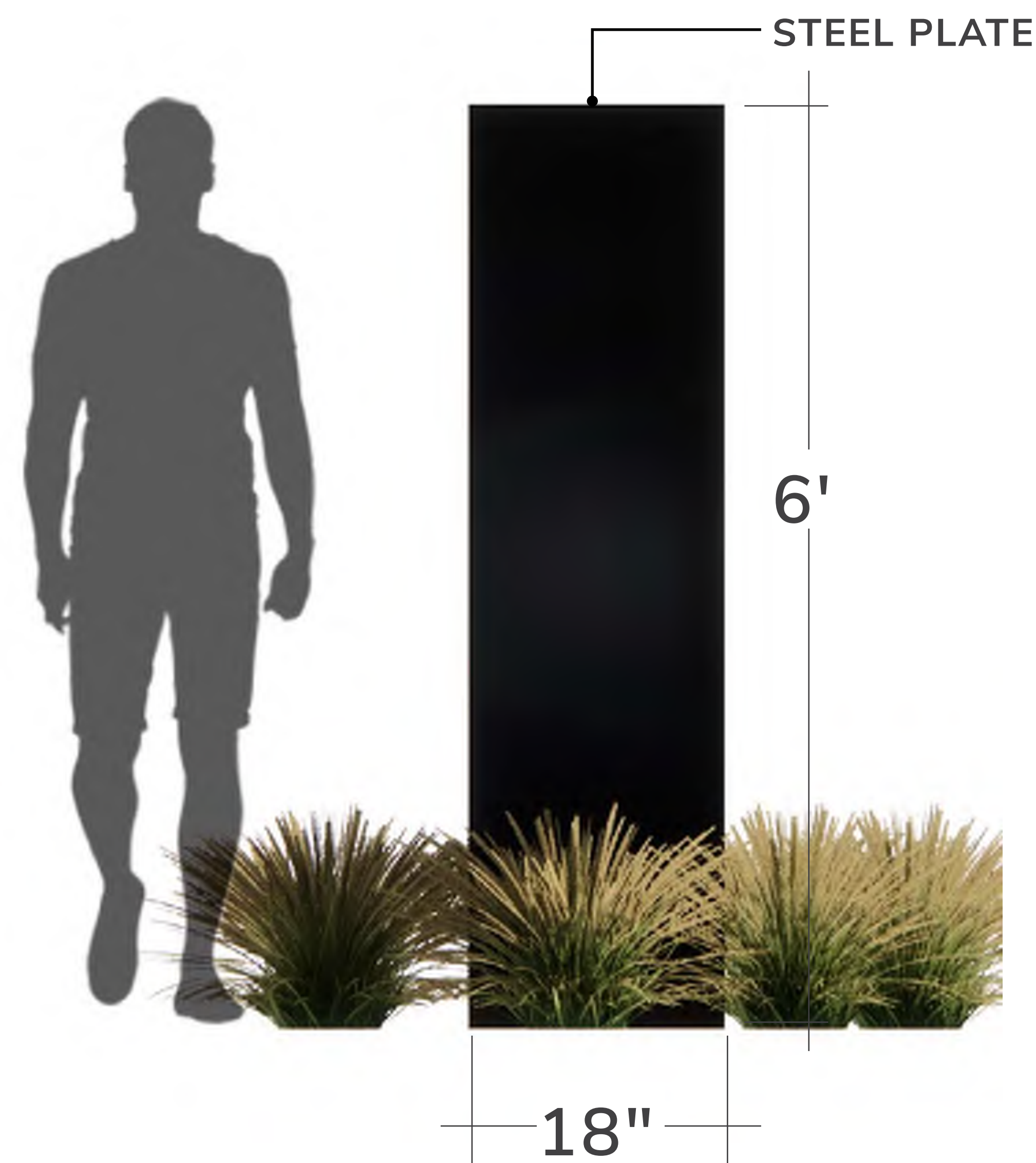


mcgarchitecture.com

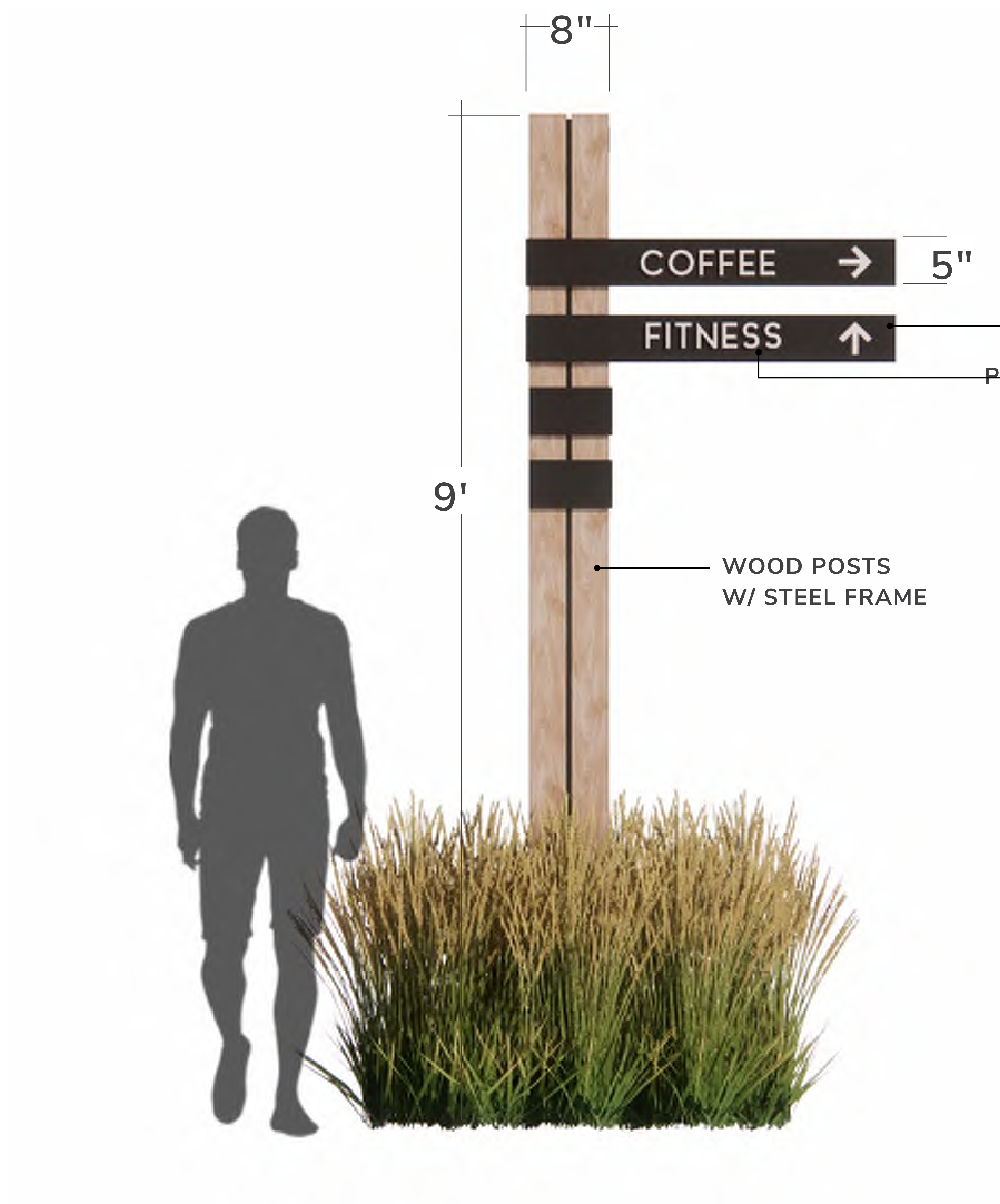
**EXHIBIT “C”**  
**SIGNAGE PLANS**



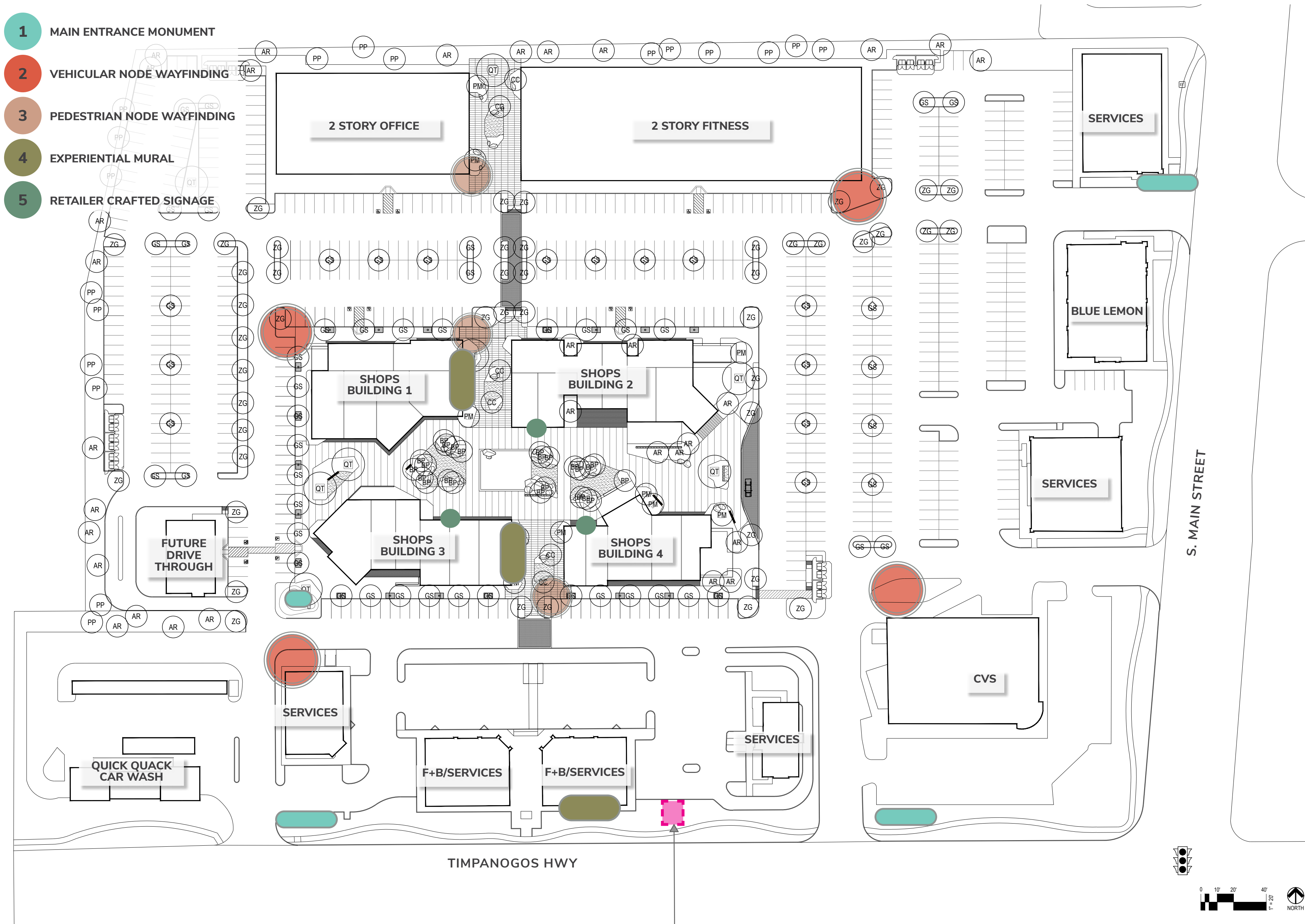
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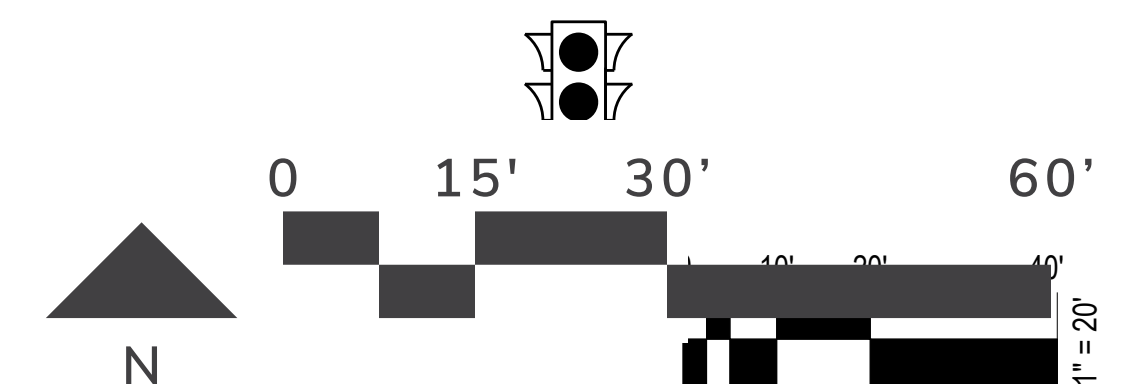


Previous proposed location, discussed with city



**EXHIBIT “D”**  
**LIGHTING PLAN**

POLE PARKING LIGHT



**GROUNDLEVEL**  
LANDSCAPE ARCHITECTURE



**PROJECT**  
**HIGHLAND MARKETPLACE**  
No: 22084

CITY OF HIGHLAND, UTAH

**PHASE**  
Schematic Design  
Date: November 30, 2022

**SUBJECT**  
**PARKING LOT  
LIGHTING PLAN**

FIXTURE TYPE: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_



Glulam solid wood shaft and aluminum base pole available in 8' – 24' heights

## FEATURES:

- Available with straight, tapered, or square to round wood shaft
- Square extruded aluminum pole base with flush handhole cover held with countersunk stainless steel fasteners
- Tenon or drill mount fixture mounting

## SPECIFICATIONS:

**HOUSING:** Solid wood pole is assembled through glulam construction and precision machined using CNC technology. An electrical raceway is provided in the pole's center for wiring. Laminations measure no more than 2" in thickness. Adhesive complies with ASTM D-2559 glulam construction specifications for extreme exposed weather conditions, is waterproof and rated for wet or dry use exposure.

Glulam wood shaft is fastened to aluminum pole base welded to a 3/4" thick aluminum anchor bolt base. Anchor bolt kit includes (4) 3/4" hot dip galvanized anchor bolts and fasteners and ridged concrete pour template.

**ELECTRICAL:** A 5/16" – 18 grounding point is provided on the aluminum pole base. Wireway access is provided through a NEC compliant handhole with a flush, gasketed cover plate.

**FINISHES AND MATERIALS:** Wood pieces are finished with a low VOC waterborne matte exterior finish containing UV and mildew inhibitors. All exterior aluminum parts are polyester powder coat painted to AAMA-2604 standards. [Care and Maintenance](#)



Spar straight pole shown with banner bracket arm option.

**HARDWARE:** All hand hole fasteners and luminaire bracket arm hardware are stainless steel. Anchor bolt kits are ASTM F1554 grade 55 steel with galvanized steel hex nuts and washers.

**FIXTURE MOUNTING:** Fixtures mount either by 2 3/8", 2 7/8", 3 1/2", or 4" diameter by 4" tall tenon or drill mount for arm brackets. Consult factory for other tenon sizes. Bolt mounted luminaires must use stainless steel hardware.

# Flindt Bollard

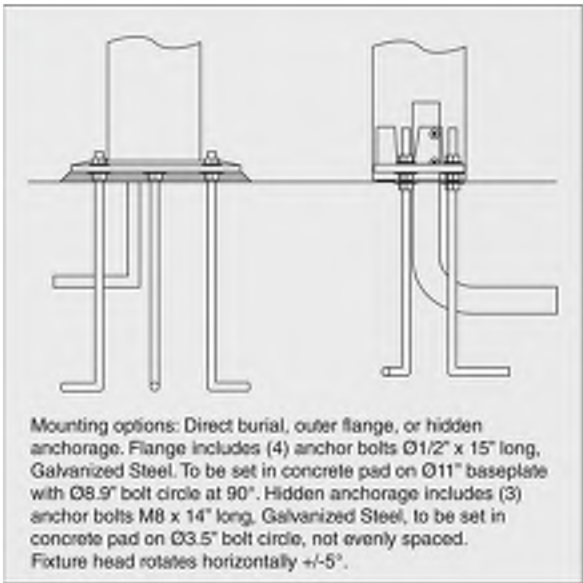


## Design

Christian Flindt

## Product description

Beautifully crafted slender post with a carved surface that is gently illuminated. Top section conceals downward facing LEDs that are positioned for wide distribution. Two horizontal connection lines underline the three parts of the bollard. A facet increases the visibility of the connection lines. Available in two heights, 43.3 IN and 31.5 IN. Available in three different mounting methods: with an 11 inch base plate and visible anchor bolts, with internally hidden anchor bolts, or direct burial in soil or gravel. Part of a family.



## Variant options

### Dimension

31.5 IN

43.3 IN

### Color



Corten color



Natural paint aluminum

### Mounting

Post w/anchorage unit

Post w/base plate

Post w/direct burial

### Light source

15W LED/3000K

15W LED/4000K

### Lumen

536

548

578

591

### Voltage frequency

120-277V/60HZ

## Specification notes

a. Direct burial mounting only available with 43.3" size.

**EXHIBIT “E”**  
**ARCHITECTURAL THEMES**







SIMPLICITY OF FORM



MOUNTAIN TONALITY



CAPTURING WARMTH







PREPARED BY AND WHEN  
RECORDED RETURN TO:

Victor A. Taylor, Esq.  
Parr, Waddoups, et al.  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111-1537  
telephone: (801) 532-7840

DEVELOPMENT AGREEMENT  
[Highland City/Thomas Fox Properties, LLC]

THIS AGREEMENT (this "Agreement") is entered into as of the 24th day of April, 2007, between HIGHLAND CITY, a Utah municipal corporation (the "City"), whose address is 5378 West 10400 North, Highland, Utah 84003, and THOMAS FOX PROPERTIES, LLC, a Utah limited liability company ("Developer"), whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115. (The City and Developer are referred to in this Agreement collectively as the "Parties.")

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions. As used in this Agreement, each of the following terms shall have the indicated meaning:

1.1. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

1.2. "Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

1.3. "Official Records" means the official records of the Utah County, Utah Recorder.

1.4. "Owner" means the fee owner(s) of record in the Official Records of the realty concerned. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.5. "Plat" means the approved subdivision plat for the Property.

1.6. "Property" means the real property located in Utah County, Utah, described as follows:

Lots 1 through 11, inclusive, HIGHLAND MARKETPLACE SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder.

## 2. Agreements.

2.1. Medians. Developer shall, at Developer's cost, work with the City to install one-half (½) of the medians within State Road 92 along the southerly boundary of the Property, and one-half (½) of the medians within State Road 74 along the easterly boundary of the Property. The City shall, at its cost, concurrently install the other one-half (½) of such medians.

2.2. Restriction of Ingress/Egress. The City may restrict the ingress into, and egress out of, the curb cut (the "Southeastern Curb Cut") located on State Road 92 near the Southeast corner of the Property, and the ingress into, and egress out of, the curb cut located on State Road 74 near the Southeast corner of the Property, as follows: right in and right out only, and also require Developer to install concrete curbing ("T bone" design) to restrict ingress and egress to right in and right out only.

2.3. Masonry Walls. Prior to the issuance of a building permit for the Property, Developer shall construct and install a masonry wall along the westerly boundary of the Property consistent with the setbacks defined in the City's Development Code and the subdivision final approval for the Property. At some date in the future, to be mutually agreed on between the Parties, Developer shall construct and install a masonry wall along the northerly boundary of the Property consistent with the setbacks defined in the City's Development Code and the subdivision final approval for the Property.

## 2.4. Landscaping.

2.4.1. The landscaping installed on the Property shall comply generally with the approved landscaping plan attached as Exhibit A, and, where appropriate, the parkway detail shown on the attached Exhibit B, the detail of which landscaping shall be approved concurrently with the issuance of a building permit for the realty concerned.

2.4.2. Prior to the issuance of the first building permit for the Property, Developer shall bond for the landscaping within the parkway easement shown on the Plat, and for the significant hardscape abutting that landscaped area.

2.4.3. Concurrently with the construction of any of buildings E through I, inclusive, as shown on the approved site plan for the Property, Developer shall install the landscaping and the significant hardscape along State Road 92 from the Southwest corner of the Property to the Southeastern Curb Cut. Prior to the earlier of the following: (a) the completion of the construction of any buildings other than those identified in the immediately preceding sentence; or (b) the expiration of the three (3) year period following the recordation of the Plat, Developer shall install the balance of the landscaping within the parkway easement shown on the Plat, and the significant hardscape abutting that landscaped area.

2.4.4. Once installed, the landscaping and the hardscape on the Property shall be maintained or caused to be maintained (such as through a common maintenance regime) in good

order and condition by the Owner of that portion of the Property on which the same is located, substantially in accordance with the approved site plan for the Property.

2.5. Signage, Lighting and Architecture. The signage set forth on the attached Exhibit C, the lighting set forth on the attached Exhibit D and the architectural themes set forth on the attached Exhibit E are hereby approved by the City for the Property, and shall be followed and maintained on the Property in a consistent manner.

3. Submittal Requirements; Action of Site Plan.

3.1. Submittal Requirements. All of the submittal requirements for the Property set forth in Section 3-4373 of the Highland City Development Code (the "Code") have been satisfied and fulfilled in full.

3.2. Action of Site Plan.

3.2.1. All of the findings for the Property set forth in Section 3-4374(1) of the Code have been satisfied and fulfilled in full.

3.2.2. All of the items for the Property set forth in Sections 3-4374(2)(a), (b) and (c) of the Code have been satisfied and approved generally, and the details of those items shall be satisfied and approved by the City staff, without the requirement of further or additional City approval.

3.2.3. All of the items for the Property set forth in Sections 3-4374(2)(d), (e) and (f) of the Code have been satisfied and approved in full.

4. Estoppel. The City shall, within a reasonable time, not to exceed fifteen (15) business days after the request of any Owner, execute and deliver to the requesting Owner an estoppel certificate in favor of the requesting Owner and such other persons as the requesting Owner shall designate setting forth the following:

4.1. that, to the knowledge of the City, there is not any then-existing default under this Agreement, or, in the alternative, that there is a then-existing default under this Agreement, setting forth in reasonable detail the nature of such default;

4.2. that, to the knowledge of the City, this Agreement is in full force and effect, and has not been modified or amended, except as may be set forth in such estoppel certificate; and

4.3. such other information as the requesting Owner may reasonably request.

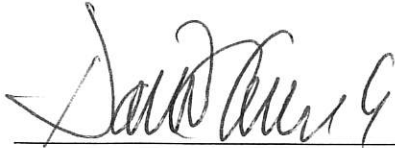
5. General Provisions. This Agreement shall be recorded in the Official Records, and the provisions contained in this Agreement shall constitute covenants running with the land. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This Agreement shall inure to the benefit

of, and shall be binding on, the Parties and their respective successors and assigns. There are no third-party beneficiaries of this Agreement, and this Agreement shall not be enforceable by any person other than the Parties and their respective successors and assigns. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, on the transfer of title by any Owner of any portion of the Property, the transferee of such portion shall be deemed to have assumed, and shall be responsible for, the timely performance of the obligations of such Owner under this Agreement, and such Owner shall be released from such obligations, as to such transferred portion of the Property. Each exhibit referred to in, and attached to, this Agreement is an integral part of this Agreement and is incorporated in this Agreement by this reference.

THE PARTIES have executed this Agreement on the respective dates set forth below, to be effective as of the date first set forth above.

THE CITY:

Approved as to Form:

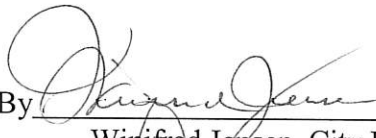
  
\_\_\_\_\_  
David L. Church, Esq., City Attorney



HIGHLAND CITY

By   
\_\_\_\_\_  
Jay W. Franson, Mayor

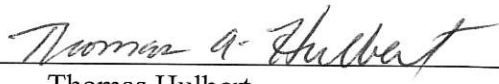
Date 4/24/07

By   
\_\_\_\_\_  
Winifred Jensen, City Recorder

Date 4/24/07

DEVELOPER:

THOMAS FOX PROPERTIES, LLC

By   
\_\_\_\_\_  
Thomas Hulbert  
Manager

Date 5-14-07

State of Utah )  
 ) ss.  
County of Utah )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of April, 2007, by Jay Franson and Winifred Jensen, the Mayor and City Recorder, respectively, of Highland City.

Brian D. Brunson

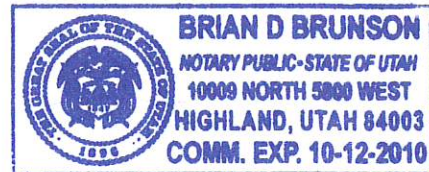
Notary Public

My Commission Expires:

Residing at:

10-12-2010

Highland, UT



State of Utah )  
 ) ss.  
County of Utah )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May, 2007, by Thomas Hulbert, the Manager of Thomas Fox Properties, LLC.



Winifred N. Jensen  
Notary Public

My Commission Expires:

Residing at:

9/20/10

Highland, Utah

EXHIBIT A

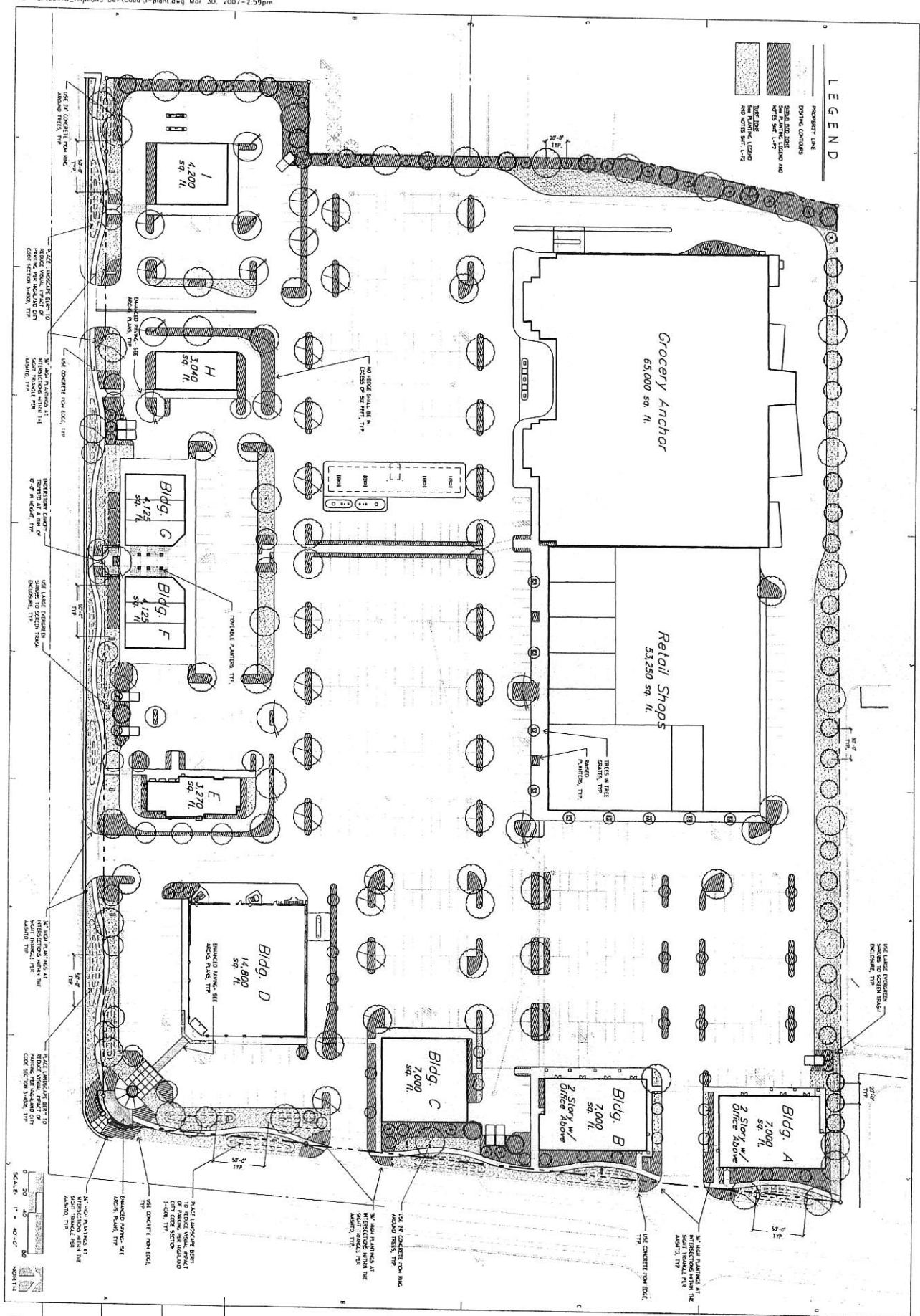
to

DEVELOPMENT AGREEMENT

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GENERAL LANDSCAPING PLAN

The general landscaping plan referred to in the foregoing Development Agreement is set forth on the attachment(s).



L-P1

LANDSCAPE PLAN

Date	3-30-2007
Drawn	MC
Checked	RC

Revision / Date

Highland  
Marketplace  
SR 92 and SR 74

| OWNER

**Thomas Fox Properties**  
515 W. Pickett Circle,  
Ste. 400  
Salt Lake City, UT 84115

Tel. 801.596.7711  
Fax 801.596.7161

CONSULTANT

**ArcSizio**  
Design, Inc  
Landscape Architecture &  
Architectural Site Design

1058 East 2100 South  
Salt Lake City, Utah 84106  
office / fax 801.487.4923  
www.arcaalitedesign.com

ARCHITECT

Axis Architects



EXHIBIT B

to

DEVELOPMENT AGREEMENT

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PARKWAY DETAIL

The parkway detail referred to in the foregoing Development Agreement is set forth on the attachment(s).

# PARKWAY LANDSCAPE DETAIL

The Parkway is designed as a 30 foot wide strip with a 5 foot meandering sidewalk, landscaping and fence.

The length of the parkway will be sodded or planted in grass. The trees will be spaced on average of 30 feet apart and no closer than 7.5 feet from the curb or the fence. Each tree must have a 24" cement mow ring for maintenance. This will allow for lawn mowing equipment to maneuver around trees.

All trees will be at least 2 inch caliper and be properly staked. Trees will be guaranteed by the developer for 18 months after planting. Tree types are to be approved as on the City tree committee list. Any substitutes must be approved by Highland City.

The back side of the parkway has a 6-foot high quality fence constructed of brick, pre-cast concrete, wrought iron, or block approved by the city. A sample of acceptable concrete is shown in detail no. 2.

An encroachment permit is required from the Region 3 UDOT office before landscaping work begins.

Sidewalk should be installed with gradual curves in a random, less structured format

6' DECORATIVE PRIVACY FENCE TO BE APPROVED BY CITY

VARIES 100' TO 150'

4'

5'

2' HIGH BERM

The Entrance Ways to the Subdivision will be bordered by 20ft x 15 ft Planter areas with numerous trees, shrubs, rocks and ground cover. Such Entrance Ways shall conform to the clear sight requirements with the vegetation in the clear site area not capable of growing over 2 feet in height.

FENCE SHALL NOT EXCEED 3' IN HEIGHT TO 30' SETBACK ON LOCAL STREET

LOCAL SUBDIVISION STREET

## PARKWAY LANDSCAPING DETAIL PLAN

This plan will be submitted by the developer at the time of preliminary subdivision approval and will include the following:

1. The proposed location of trees with the exact location to be approved by the city Inspector at the time of planting.
2. Fence design.
3. Sidewalk design.
4. Sprinkler system design.
5. Topography of parkway.
6. planter area design.

## SPRINKLING SYSTEM

The majority of the Parkway will be watered with the ... HUNTER 1-20 POP-UP HEAD, or equivalent. The sprinkler heads will be spaced at 30 foot intervals. Each head will cover a 30 foot arc.

Planter areas will be controlled by a separate valve system.

Sprinkler heads will be the RAIN BIRD 1800 HEADS, or equivalent. Spacing will be at 15 foot intervals around the PLANTERS.

Sprinkler heads which back onto the curb shall not be a rotor type. All valve boxes shall be installed away from the curb, preferably on the back side of the sidewalk.

## GENERAL LANDSCAPE DESIGN

All Grass areas to be HYDRO SEEDED or SODDED. The grass will be seeded first and after growth is established, then the trees will be planted.

Topography of the Parkway will be... Back portion of the grass area from the sidewalk to the fence and Front portion of the grass area from the sidewalk to the curb... BERM area 2 feet high in the wide areas, sloping down to relatively flat BERM in the narrow areas.

## PLANTER AREAS

Decorative Planters are planned at all Entrances to the Subdivision.

The basic size of the Planters will be approximately 20ft x 15ft and each will be decorated with a variety of trees, shrubs, rocks and ground cover. Vegetation may not infringe on required clear area.

Ground cover within the Planter will be Shredded Bark approximately 2 inches in depth.

Planters must have a cement mow edge for maintenance.

The suggested design of the Planter is indicated in the outline specified ABOVE.

REVISED DATE: OCTOBER 20, 1999

HIGHLAND CITY

NO. 1  
STANDARD DETAIL

PARKWAY LANDSCAPE DETAIL

EXHIBIT C

to

DEVELOPMENT AGREEMENT

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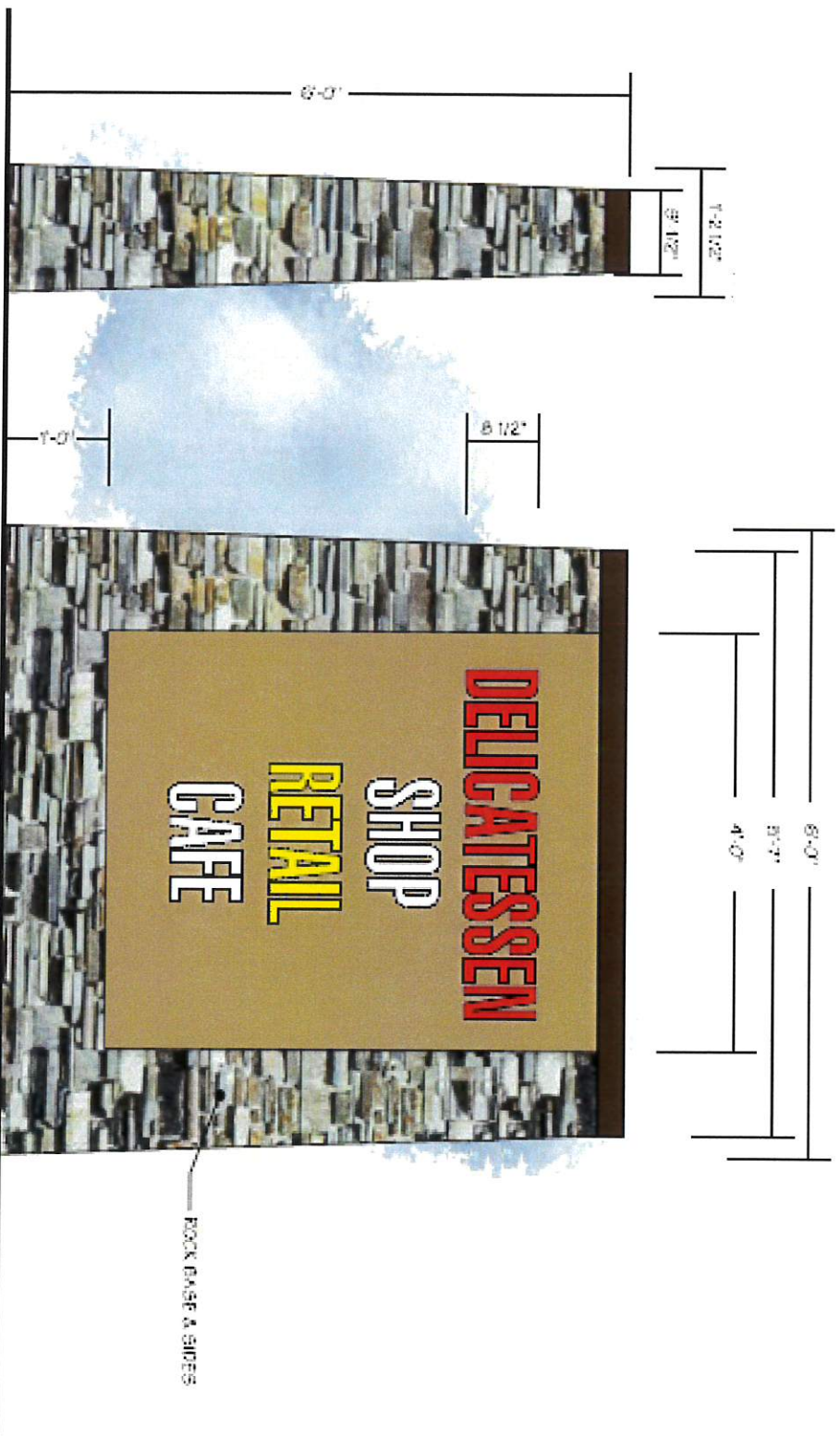
SIGNAGE

The signage referred to in the foregoing Development Agreement is set forth on the attachment(s).









SECTION 1000

EXHIBIT D

to

DEVELOPMENT AGREEMENT

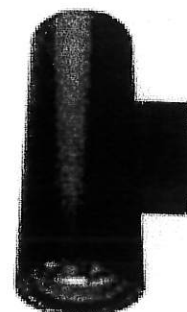
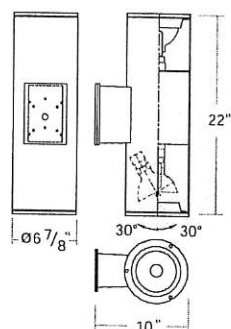
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LIGHTING

The lighting referred to in the foregoing Development Agreement is set forth on the attachment(s).

# W2D271

7" Round, 2 Directional, Wall Luminaire (1 Lamp)



**Applications:** This directional Wall Luminaire can be used in both interior and outdoor settings. Typical locations are in commercial and retail spaces that contain walls and/or columns that require directional lighting.

**Housing:** Constructed from a round, one piece high grade aluminum extrusion and die cast arm with a powder coat finish. Includes an adjustable lampholder and anodized aluminum reflector (MHC G12). Fixture includes a mounting bracket for installation to an electrical junction-box.

**Faceplate:** Two round, one piece die cast aluminum with baffle and powder coat finish, clear tempered glass lens, silicone gasket, and an anodized aluminum reflector (compact fluorescent and metal halide T6, G12). Faceplate is secured to the housing by three (3) captive, tamper resistant, stainless steel screws. Takes three (3) accessories and lens holder.

**Reflector:** Anodized aluminum. Approximate beam (MHC G12): 6° (RE0001), 14° (RE0002), 28° (RE0003), 35° (RE0004) and 50° Included (RE0005).

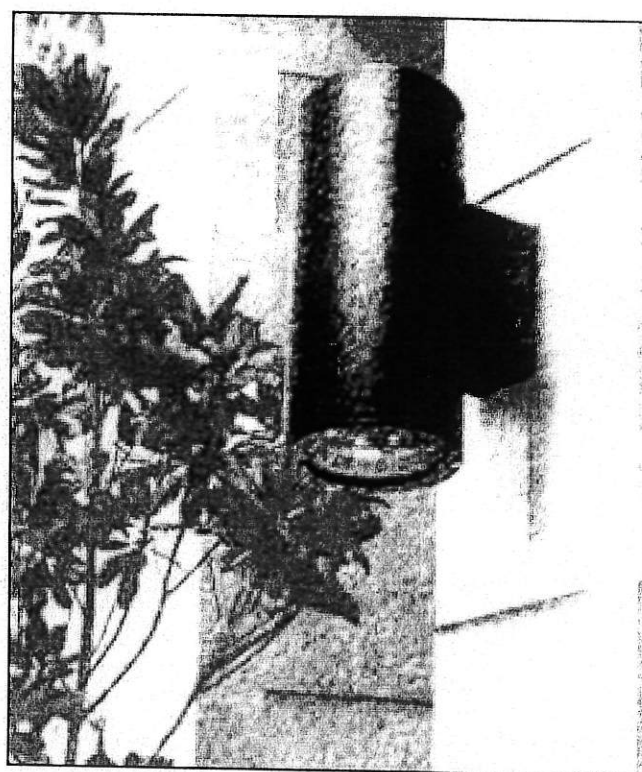
## Electrical:

- Line Voltage Lampholder: Medium Base Incandescent PAR38 Halogen (120W Max.) with high temperature leads (660W, 600V).
- H.I.D. Lampholder: Porcelain, G12 Base 5 KV pulse rated with high temperature leads (1000W, 600V).
- Metal Halide (MHC): T4.5 (20W) & T6 (39/70W) G12 Base. Bottom lamp only **Adjustable** (30°) from vertical. Ballast: Electronic, HPF. Available in 120V through 277V (minimum start temperature -30°C). Ballast: Magnetic, HPF. Available in 120V or 277V (minimum start temperature -30°C) for MHC270. Also available for Remote Ballast (RMT): max. distance 48 ft.
- Compact Fluorescent Lampholder (4 Pin): G24q-1 or GX24q-1 (13W), G24q-2 or GX24q-2 (18W), G24q-3 or GX24q-3 (26W), GX24q-3 (32W) rated 75W, 600V. Ballast: Electronic, HPF. Available in 120V or 277V (minimum start temperature -30°C). Ballast: Electronic, HPF. Available in 120V through 277V (minimum start temperature -30°C for 26W, -18°C for 32W) for PL226 or PL232. Also available for Remote Ballast (RMT): max. distance 15 ft (1 lamp).

**Note:** Dimming capability for compact fluorescent lamps requires alternate ballast. Please contact your local representative or factory for options.

**Finish:** Powder coat. Standard colors in black, white or natural aluminum finish. Custom colors available on special order, supply two (2) samples.

**Listing:** UL / ETL Listed, suitable for wet locations.



## ORDERING

Example : W2D271/MHC270/120/B

W2D271 /				Lamp	/ Volt / Finish		
Lamp Description	Lumen	Base	Bulb				
<b>Compact Fluorescent</b>							
(2) 13W PL	900	GX24q-1	4 Pin	PL213	120	B	Black
(2) 18W PL	1200	GX24q-2	4 Pin	PL218	277	N	Natural
(2) 26W PL	1800	GX24q-3	4 Pin	PL226	RMT	W	White
(2) 32W PL	2400	GX24q-3	4 Pin	PL232	UNV		
<b>High Intensity Discharge</b>							
(2) 20W MH	1600	G12	T4.5	MHC220			
(2) 39W MH	3300	G12	T6	MHC239			
(2) 70W MH	6600	G12	T6	MHC270			
<b>Halogen</b>							
(2) 120W	1800	MED SKI	PAR38	INC2			

## Codes

- Ⓐ Architects Choice: Most visually appealing fixture based on lamp type.
- Ⓐ Highest Efficacy: Maximum light output per Watt (Lumen/Watt)
- RMT - Remote ballast Option (see back cover)

LUMENTON

Tel: 888.458.6368 Los Angeles, CA www.lumenton.com  
Product specifications subject to change without notice.

H1.10



## FEATURES & SPECIFICATIONS

### INTENDED USE

Streets, walkways, parking lots and surrounding areas.

### CONSTRUCTION

Rugged, die-cast, single piece aluminum housing with nominal wall thickness of 1/8". Die-cast doorframe has impact-resistant, tempered, glass lens (3/16" thick). Doorframe is fully gasketed with one-piece tubular silicone.

### FINISH

Standard finish is dark bronze (DDB) corrosion-resistant polyester powder finish, with other architectural colors available.

### OPTICAL SYSTEM

MIRO finish, segmented reflectors for superior uniformity and control. Reflectors attach with tool-less fastener and are rotatable and interchangeable. Five full cutoff distributions available: Type II (roadway), Type III (asymmetric), Type IV (forward throw), Type IV (forward throw sharp cutoff) and Type V (symmetric square).

### ELECTRICAL SYSTEM

Ballast is a constant-wattage autotransformer standard. 200W, 320W, and 350W require Super SCWA Pulse Start ballast (must order SCWA option). All ballasts are mounted on a removable power tray. Ballasts are copper-wound and 100% factory-tested. Porcelain, mogul-based socket with copper alloy, nickel-plated screw shell and center contact.

### LISTING

Listed and labeled to UL standards for wet locations. Listed and labeled to CSA standards (see Options). NOM Certified (see Options). IP65 Rated.

Catalog Number

Notes

Type



Architectural Area & Roadway Lighting

# MR2



**METAL HALIDE  
HIGH PRESSURE SODIUM**  
200W-400W

### Specifications

Length: 32.875" (83.5025cm)

Diameter: 25" (63.5cm)

Overall Height: 8.25" (20.955cm)

Max. Weight: 46 lb. (20.9 kg)

EPA: 0.914

All dimensions are inches (centimeters) unless otherwise specified.

## ORDERING INFORMATION

Choose the boldface catalog nomenclature that best suits your needs and write it on the appropriate line.

Example: **MR2 400M SR3 TB LPI**

MR2		Voltage		Ballast		Options		Lamp <sup>12</sup>	
Series	MR2								
Wattage									
Metal halide									
200M <sup>1</sup>		120		<u>Metal halide and high pressure sodium</u>		<u>Shipped installed in fixture</u>		LPI	Lamp included
250M		208 <sup>3</sup>		(blank) Standard magnetic ballast		SF Single fuse (120, 277, 347V) <sup>8,9</sup>		L/LP	Less lamp
320M <sup>1</sup>		240 <sup>3</sup>		CWI Constant wattage isolated <sup>6</sup>		DF Double fuse (208, 240, 480V) <sup>8,9</sup>			
350M <sup>1,2</sup>		277		<u>Pulse-start metal halide</u>		PER NEMA twist-lock receptacle only (no photocontrol)			
400M <sup>1,2</sup>		347		SCWA Super CWA ballast		CR Corrosion-resistant finish (epoxy clear coat over paint)			
High pressure sodium		480 <sup>3</sup>		LLRPSL Low-loss reactor pulse start		QRS Quartz restrike system <sup>9,10</sup>			
200S		TB <sup>4</sup>				HS Houseside shield (SR2, SR3)			
250S		TBV <sup>5</sup>				EC Emergency circuit <sup>10</sup>			
400S						TP Tamper-proof			
						CSA Listed and labeled to Canadian safety standards			
						NOM NOM Certified			
						<u>Shipped separately<sup>11</sup></u>			
						PE1 NEMA twist-lock PE (120, 208, 240V)			
						PE3 NEMA twist-lock PE (347V)			
						PE4 NEMA twist-lock PE (480V)			
						PE7 NEMA twist-lock PE (277V)			
						SC Shorting cap for PER option			
						MR2VG Vandal guard			

### NOTES:

- 1 Must order with SCWA.
- 2 Must use reduced jacket lamp ED28.
- 3 Consult factory for availability in Canada.
- 4 Optional multi-tap ballast (120, 208, 240, 277V; 120, 277, 347V in Canada).
- 5 Optional penta-tap ballast (120, 208, 240, 277, 480V; not available in Canada). 175W metal halide only.
- 6 Isolated two-coil system meets Canadian electrical code requirements for 208V, 240V and 480V applications.
- 7 Mounted in lens up orientation, fixture is damp location rated.
- 8 Must specify voltage. Not available with TB or TBV.
- 9 SF, DF or QRS cannot be ordered together.
- 10 Lamp by others.
- 11 Can be ordered as an accessory.
- 12 Must be specified.

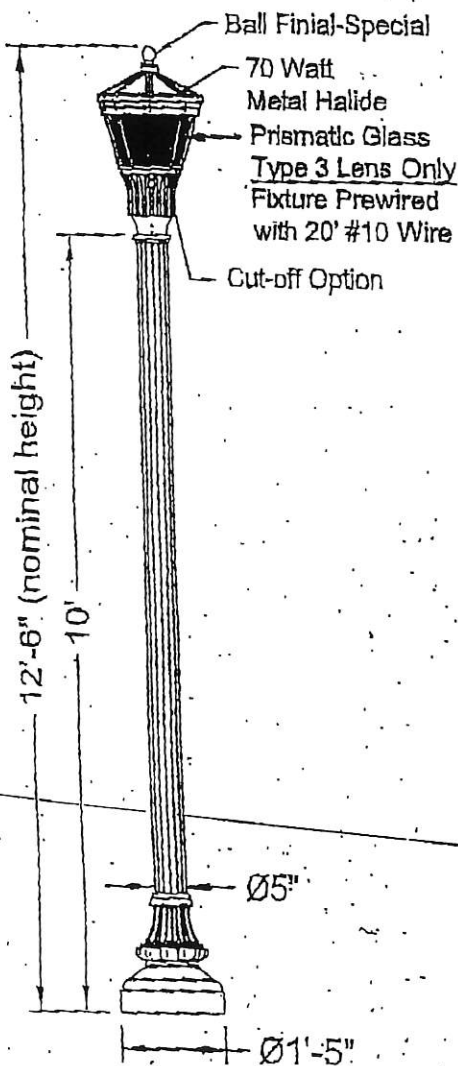
When ordering poles, specify the appropriate drilling pattern. See below example.

Example: **SSA 20 4C DM19AS**  
**DM19AS** 1 at 90 degrees  
**DM28AS** 2 at 180 degrees  
**DM29AS** 2 at 90 degrees  
**DM39AS** 3 at 90 degrees  
**DM49AS** 4 at 90 degrees  
**DM32AS** 3 at 120 degrees (round poles only)



Consistent with LEED® goals  
& Green Globes™ criteria  
for light pollution reduction





FIXTURE AND POLE TO MEET  
PACIFICORP STANDARD

## SPECIFICATIONS

### LUMINAIRE DESCRIPTION

The Utility Arlington is designed for ease of maintenance with the plug-in electrical module. A precision optical system maximizes post spacings while maintaining uniform illumination. The luminaire shall be catalog number ARU10DMH12RAL6007G3-BALL FINIAL-H

**OPTICAL SYSTEM** The optical system consists of a precisely molded refractor operating in conjunction with a formed anodized aluminum reflector located in the top cover. Positive pressure from three coiled springs backing the reflector and gaskets at the top and bottom of the refractor create a sealed optical compartment. The molded thermal resistant, borosilicate glass refractor is designed to provide an I.E.S. Type III distribution.

**LUMINAIRE HOUSING** The luminaire housing, cast of aluminum, cradles the refractor and provides an enclosure for the plug in electrical module. The nickel plated lamp grip socket and the three station incoming line terminal block are pre-wired to a five conductor receptacle for ease in connecting the electrical module. A slipfitter will accept a 3" high by 2 7/8" to 3 1/8" O.D. pole tenon.

**LUMINAIRE HOUSING / DOOR** Cast of aluminum, the housing / door is removable without the use of tools and is retained by a nonconductive lanyard. For units with an E.E.I.-N.E.M.A. twist lock photocell receptacle, the door contains an acrylic "window" to allow light to reach the cell.

**ELECTRICAL MODULE** The ballast components are mounted on a steel plate that is removable without the use of tools. A matching five conductor plug connects to the receptacle in the luminaire housing to complete the wiring. Where a starting aid is required, it is provided with a separate plug-in connector and can be replaced without the use of tools. For photoelectric operation, the electrical module is provided with an E.E.I.-N.E.M.A. twist lock photocell receptacle. The luminaire shall be prewired with 20' #10 wire.

**TOP COVER** The octagonal cover, cast of aluminum, is attached to the top ring of the luminaire housing by a stainless steel piano hinge and latched by an overcenter, positive action, stainless steel latch which allows tool-less entry to the lamp chamber for relamping. A special cast aluminum ball finial shall be installed onto the top cover.

**BALLASTS** 70 watt MH units are available only with High Power Factor High Reactance type ballasts.

**FINISH** The luminaire is finished with polyester powder paint applied after a seven stage pretreatment process to insure maximum durability.

**UL** The luminaire is UL listed as suitable for wet locations at a maximum of 40 degrees C ambient temperature.

**POST DESCRIPTION** The lighting post shall be all-aluminum, one-piece construction, with a classic double-tapered and fluted base design. The shaft shall be Ø5" fluted. The post shall be catalog number W10F5/17-CA/RAL6007.

**MATERIALS** The base shall be heavy wall, cast aluminum produced from certified ASTM 356.1 ingot per ASTM B-179-B5a or ASTM B26-95. The straight shafts shall be extruded from aluminum, ASTM 6061 alloy, heat treated to a T8 temper. All hardware shall be tamper resistant stainless steel. Anchor bolts to be completely hot dip galvanized.

**CONSTRUCTION** The shaft shall be double welded to the base casting and shipped as one piece for maximum structural integrity. The shaft shall be circumferentially welded inside the base casting at the top of the access door, and externally where the shaft exits the base. All exposed welds below 8" shall be ground smooth. All welding shall be per ANSI/AWS D1.2-B0. All welders shall be certified per Section 5 of ANSI/AWS D1.2-90.

**DIMENSIONS** The post shall be 10' in height with a 17" diameter base. The shaft diameter shall be 5". At the top of the post, an integral 3" O.D. tenon with a transitional donut shall be provided for luminaire mounting.

**INSTALLATION** The post shall be provided with four, hot dip galvanized L-type anchor bolts to be installed on a slotted 12" diameter bolt circle. A door shall be provided inside the base for anchorage and wiring access. A grounding screw shall be provided inside the base opposite door.

### CATALOG #S:

HOLOPHANE-W10F5/17-CA/RAL6007

HOLOPHANE-ARU70DMH12RAL6007G3 C-BALL FINIAL-H

Highland City Residential Standard

DRW: ACM

DATE: 9-15-06

PAGE #: 1 of 2

REV: 3

EXHIBIT E

to

DEVELOPMENT AGREEMENT

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ARCHITECTURAL THEMES

The architectural themes referred to in the foregoing Development Agreement are set forth on the attachment(s).



Axis Architects

# Highland Marketplace

Small Retail

THOMAS FOX PROPERTIES



Axis Architects

Highland Marketplace  
Office

THOMAS FOX PROPERTIES



Axis Architects

# Highland Marketplace Shops

THOMAS FOX PROPERTIES



# CITY COUNCIL AGENDA REPORT

## ITEM #9

---

**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Andy Spencer, City Engineer/Public Works Director  
**SUBJECT: ACTION/RESOLUTION:** Interlocal Cooperation Agreement with UTOPIA  
**TYPE: GENERAL CITY MANAGEMENT**

---

### **PURPOSE:**

The City Council will consider an Interlocal Cooperation Agreement with UTOPIA for the installation of fiber optic cable and other associated facilities within Highland City streets and other rights-of-way. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

The Council has not previously provided guidance relative to this item.

### **BACKGROUND:**

Utah Telecommunication Open Infrastructure Agency (UTOPIA) has approached the City regarding the installation of fiber utilities to serve the Ridgeview development. Ridgeview has installed conduits in anticipation of UTOPIA installing facilities to serve the Highland City residents in Ridgeview. The City typically signs utility franchise agreements with similar communication providers to allow them to place their facilities within the rights-of-way and provide services to Highland residents and businesses. As UTOPIA is a government agency, the agreement is in the form of an Interlocal Cooperation Agreement. The approval of the agreement is necessary UTOPIA to place the utility within public right-of-way. Without this agreement in place, UTOPIA will not be able to serve Ridgeview.

Prior meetings have been held with City Council to discuss a potential agreement with UTOPIA to serve the entirety of Highland City. Should the Council so desire, this agreement certainly will help to further those discussions; however, this agreement is not intended for that process or purpose. This agreement does not bind Highland City to any type of financial guarantee, nor does it bind UTOPIA to any type of guaranteed service. This agreement is intended solely to facilitate the placement of the facilities within the City rights-of-way. While the need for the agreement is being prompted by the Ridgeview development, the agreement does apply to all streets and rights-of-way within the City.

### **FISCAL IMPACT:**

No fiscal impact will be incurred by the City by this agreement.

**STAFF RECOMMENDATION:**

Staff recommends approval of the Interlocal Cooperation Agreement with UTOPIA for the installation of their facilities within Highland City rights-of-way.

**MOTION TO APPROVE:**

I move that City Council approve the Resolution for the Interlocal Cooperation Agreement with UTOPIA for the installation of their facilities within Highland City rights-of-way and authorize the Mayor to sign the resolution and agreement.

**ATTACHMENTS:**

1. Resolution
2. Interlocal Cooperation Agreement

**A RESOLUTION OF HIGHLAND CITY, UTAH**  
**APPROVING AN INTERLOCAL COOPERATION AGREEMENT**  
**BETWEEN UTAH TELECOMMUNICATION OPEN**  
**INFRASTRUCTURE AGENCY (UTOPIA) AND HIGHLAND CITY**

WHEREAS, the Highland City Council acknowledges that Highland City owns certain public rights-of-way used for streets and utility corridors, and;

WHEREAS, Utah Telecommunication Open Infrastructure Agency (UTOPIA) desires to place its facilities within these rights-of-way, and;

WHEREAS, Highland City and UTOPIA have mutually agreed to the conditions under which UTOPIA facilities may be placed within Highland City rights-of-way and have determined the agreed upon conditions to be in the best interest of the citizenry;

NOW, THEREFORE be it resolved the City Council has reviewed and hereby approves the Interlocal Cooperation Agreement which sets forth the terms and agreements between the parties.

This resolution shall take effect immediately upon passage.

ADOPTED by the City Council of Highland City, Utah, this 6th day of December 2022.

HIGHLAND CITY, UTAH

COUNCIL MEMBER	YES	NO
Timothy A. Ball	<input type="checkbox"/>	<input type="checkbox"/>
Brittney P. Bills	<input type="checkbox"/>	<input type="checkbox"/>
Sarah D. Petersen	<input type="checkbox"/>	<input type="checkbox"/>
Kim Rodela	<input type="checkbox"/>	<input type="checkbox"/>
Scott L. Smith	<input type="checkbox"/>	<input type="checkbox"/>

---

Kurt Ostler, Mayor

ATTEST:

---

Stephannie Cottle, City Recorder

## **INTERLOCAL COOPERATION AGREEMENT BETWEEN HIGHLAND CITY AND UTOPIA**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Highland City, a municipality and political subdivision of the State of Utah, hereinafter called "City," and Utah Telecommunication Open Infrastructure Agency, an interlocal entity of the State of Utah created pursuant to the Interlocal Cooperation Act, Utah Code Section 11-13-101 et seq., hereinafter called "UTOPIA." City and UTOPIA are collectively referred to herein as the "Parties."

### **WITNESSETH:**

**WHEREAS**, UTOPIA desires to obtain from City, a license to lay, maintain, operate, repair, inspect, protect, install, remove, and replace fiber optic cable, and other transmission and distribution structures and facilities (the "Facilities"), within the public highways, streets, roads, and rights-of-way which are within the jurisdiction and responsibility of City, together with the right of ingress and egress for UTOPIA, its officers, employees, agents, and contractors to enter upon said public rights-of-way with such equipment as is necessary to install, maintain, operate, repair, inspect, protect, remove and replace said Facilities; and

**WHEREAS**, City is willing to grant said license under the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Parties are authorized to enter into an Interlocal Cooperation Agreement pursuant to the Interlocal Cooperation Act, Utah Code Section 11-13-101 et seq. and wish to enter into an Interlocal Cooperation Agreement reflecting the arrangement described above.

**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 parties hereby agree as follows:

1. Grant of License. The City hereby grants, conveys and sets over unto UTOPIA, a non-exclusive license to lay, maintain, operate, repair, inspect, protect, install, remove and replace the Facilities over and through the public highways, streets, roads, and public rights-of-way dedicated or used for vehicular traffic (collectively, the "Streets"), which are within the jurisdiction and responsibility of City, together with the right of ingress and egress for UTOPIA, its officers, employees, agents, contractors and assigns to enter upon said Streets with such equipment as is necessary to install, maintain, operate, repair, inspect, protect, remove and replace the Facilities. This non-exclusive license will expire upon termination of this agreement (the "Agreement.")

2. Term. The Parties agree that either Party may terminate this Agreement for cause upon 90 days prior written notice, or at any other time mutually agreed to by the Parties. Unless terminated pursuant to the provisions of this paragraph, the initial term of this Agreement will expire fifteen years from its effective date, and will automatically renew for an additional one year term on each Anniversary, unless either Party elects to not renew the Agreement by way of written

notice provided to the other Party at least 90 days in advance of an Anniversary. In no event will this Agreement run for more than fifty years.

3. Construction and Location. UTOPIA may install Facilities at those locations within the Streets as shall be determined in accordance with plans, specifications and maps prepared, or caused to be prepared, by UTOPIA. Prior to performing any work in the Streets for initial Facilities installation or otherwise, UTOPIA shall apply for a right-of-way encroachment/excavation permit, or other applicable City permit. City shall review and may improve the submitted plan prior to permit issuance. City shall not be compelled to approve any permit that does not comply with City standards, current, or future plans for a given Street. Upon compliance with this Agreement and all applicable permit requirements, including but not limited to a traffic management plan, surface and landscaping restoration plan, and work schedule, City shall issue a permit to UTOPIA's contractor, allowing said contractor to proceed with the work in accordance with the terms of this Agreement and the permit. As-built drawings shall be submitted to the City within thirty days of the completion of construction. All applicable regulations and permits of City shall be fully complied with by UTOPIA and its contractor(s).

4. Protection of Traffic During Construction. UTOPIA shall require its contractor to conduct its construction operation so that there shall be a minimum of interference or interruption to City with respect to the handling of traffic. UTOPIA's contractor shall at all times require such watchmen, barricades, lights or other reasonable measures for the protection of traffic as may be reasonably required to warn and safeguard the public against injury or damage during construction, maintenance, repair or replacement of the Facilities and shall hold City harmless from any and all liabilities arising from UTOPIA's negligence or intentional wrongdoing during any construction commenced under the terms of this easement.

5. Dangerous Conditions. UTOPIA shall in all instances comply with Highland City regulations and standards regarding safety of persons and property, including traffic sight triangle regulations and standards. If a Facility is found to violate the sight triangle provisions or endangers or poses a significant risk of endangering the public right of way, a utility facility, or City-owned property, UTOPIA shall relocate or otherwise remediate the Facility to correct the violation or danger at no cost to Highland City within 30 days, or within such longer period as is reasonably necessary due to weather conditions and other circumstances, after Highland City gives UTOPIA notice. In the event that UTOPIA fails or refuses to relocate or remediate the Facility, or if emergency conditions exist which require immediate action, Highland City may enter upon the property and take such actions as are necessary to protect the public, streets, utilities, and public property, and UTOPIA shall be liable to Highland City for the reasonable costs thereof.

6. Underground installations. UTOPIA shall install Facilities underground in all instances where an existing overhead powerline is not present, or where agreements with the appropriate utility entity are not in place to allow for placement on overhead powerline structures.

7. Compaction of Backfill. The backfilling of any trench within the paved portion of the street, the shoulders thereof, within park strips, under sidewalk or curb and gutter, or the portion under or intersecting the street, shall be thoroughly compacted in accordance with all applicable standards and regulations, including City's construction standards. The method of compaction shall be subject to review by City at the time the permit application is reviewed. UTOPIA shall

require its contractors to comply with City's construction standards and permit requirements. UTOPIA contractors shall submit proof of compliance with compaction standards in the form of independent testing for compliance verification.

8. Restoration of Existing Pavement. UTOPIA shall require its contractor to replace any hard surface removed or damaged with the same type and depth of hard surface as that which is adjoining, including the gravel base material. All disturbed surfaces shall be restored to the standards established by City. In the event weather conditions do not permit immediate replacement of permanent hard surface, a temporary surface shall be placed until such time as weather conditions are favorable, at which time the temporary surface shall be removed and replaced with a permanent road surface. If the gravel surface, gravel shoulder, or gravel surface approach to City roads become fouled with clay or other unsuitable material, such surfacing shall be removed and replaced with new gravel surfacing material. The repairs to hard surface shall include hard surfaces which are damaged by construction equipment used in accessing, constructing, maintaining, or repairing the Facilities, excluding normal wear and tear on the Streets due to normal and reasonable transportation of equipment. In all cases UTOPIA hereby agrees to cause its contractor to restore those portions of the street, including affected portions of the curb, gutter, or sidewalk, through which the work actually traverses, to as near its original condition as is reasonably possible.

9. Directional Boring Investigations. UTOPIA shall require its contractors to backfill directional boring investigations with existing asphalt via cored pavement sections that are adhered to surface. Contractors shall backfill all investigative holes with sand and flowable fill in accordance with Highland City standards and applicable utility company standards.

10. Disposal of Surface Material in Cleaning Up Street. Upon completion of the work, UTOPIA shall assure that all surplus material shall be removed from within the limits of the Streets and properly disposed of by the contractor. The disturbed surface shall be carefully graded to the lines and grades established. UTOPIA shall immediately notify the City in the event that any highway facility such as signs and culverts are disturbed or damaged during the process of the work and shall promptly restore or replace the same to as near their original condition as is reasonably possible. No material shall be left on private property adjacent to the Streets. Streets shall not be left with visible concrete or asphalt residue.

11. Maintenance of Facilities by UTOPIA. The Facilities and their attached appurtenances shall at all times be maintained, repaired and operated by and at the expense of UTOPIA.

12. Reconstruction of Street. In the event that any Street, or portion thereof is so reconstructed at any future date as to location, grade or width, so as to require the adjustments or relocation of manholes or other Facilities, UTOPIA shall assume and pay all costs incident to the adjustment or relocation of such manholes or other Facilities in accordance with paragraph 14. Where Highland City rights-of-way are not sufficient or do not permit relocation within the right-of-way, UTOPIA shall acquire easement from private properties as necessary to facilitate relocation. This easement shall be acquired entirely at the sole cost of UTOPIA.

13. Crossing of Facilities and Expansion of Street System. It is expressly understood and agreed by the Parties that as part of the consideration for this Agreement, that City shall have the right to cross the Facilities at any point deemed necessary in the future construction and expansion of City's street system, provided that City shall use due care and diligence in the protection of the Facilities in making such crossings. City shall provide a minimum 96 hour notice of anticipated work unless an emergency necessitates immediate work take place. UTOPIA will mark and identify its Facilities in or adjacent to the zone of the City's work within 2 days prior to City work.

14. Indemnification. Both parties are governmental entities under the Utah Governmental Immunity Act of Utah, Title 63G, Chapter 7, Utah Code, 1953, as amended. Consistent with the terms of this Act, it is mutually agreed that each party is responsible and liable for its own negligent acts which it commits or which are committed by its agents, officials, or employees. UTOPIA agrees to defend and indemnify City against any and all claims of third-parties against City, which arise from UTOPIA's exercise of any of its rights under this Agreement, except in the case of City's sole negligence. Neither party waives any defenses otherwise available under the Governmental Immunity Act. This Agreement shall in no manner constitute an admission of any liability as to any third party or give any third party any greater or further right or cause of action. It is hereby expressly understood and agreed that neither City nor UTOPIA is hereby acknowledging any liability for any act of negligence, whether of omission or commission, of their respective agents, servants, contractors or employees. UTOPIA shall procure and maintain in force at its sole expense during the term of this Agreement property damage and public liability insurance providing liability coverage for UTOPIA's actions in relation to this interlocal agreement and shall provide certificates of insurance to City upon request, which certificates shall name the City as an additional insured. Such insurance shall provide for such coverages, protections, insurable amounts, etc., as deemed advisable by the Parties and available through Utah Local Governments Trust, or any other insurance provider utilized by City or UTOPIA, and which would be standard and reasonable for the uses contemplated hereunder.

15. Agreement Not to be Assigned. Neither party shall assign this Agreement nor any interest hereunder without first obtaining the written consent of the other party.

16. Successors and Assigns. All covenants and agreements herein contained shall be binding upon the parties hereto, and their respective successors in interest and assigns.

17. Subject To Relocation. This license is subject to the right of City at all times as City deems necessary to construct, reconstruct, remove, and realign roads, sidewalks or to carry out any other City purpose over the areas covered by this license, and when UTOPIA's Facilities and appurtenances or any of them materially interfere with any City purpose, UTOPIA will remove, adjust and/or relocate such Facilities and appurtenances within a reasonable time after written notice to do so by City and at the expense of UTOPIA.

18. Notices. Any notice required or desired to be given pursuant to this Agreement shall be in writing and shall be delivered personally or mailed, return receipt requested postage prepaid, to the parties as follows:

To UTOPIA: Attn: General Counsel

5858 South 900 East  
Murray, UT 84121

Copy to: Attn: Secretary  
5858 South 900 East  
Murray, UT 84121

To City:

Copy to:

The City and UTOPIA may change their addresses by providing written notice, as required under this provision.

19. Contract Integration. This Agreement embodies the entire agreement between the Parties and shall not be altered, enlarged or modified except in writing signed by both Parties. The benefits and protection provided by this Agreement shall not inure to the benefit of third-parties.

20. Governing Law. This Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.

21. Venue. Venue for any dispute related to this Agreement shall lie exclusively in the Third Judicial District, Salt Lake County, State of Utah.

22. No Separate Legal Entity Created; Interpretative Joint Board. No separate legal entity is created by this Agreement; however, to the extent that any administration of this Agreement becomes necessary, then the City Mayor and the UTOPIA Executive Director, or their designees, shall constitute a Joint Board for such purpose. Each of the Parties shall bear its own costs associated with the Joint Board.

23. Manner of Acquiring, Holding and Disposing of Property. No real property will be acquired pursuant to the terms of this Agreement.

24. Facilities Upon Termination. Prior to the expiration of the term of this Agreement, including any renewed and extended terms, the Parties shall negotiate the potential acquisition by Highland City of the facilities or the extension of the license granted to UTOPIA regarding the installation, construction, and maintenance of the Facilities within the Streets. If the Parties do not reach agreement, or in the event of the termination of this Agreement for any other reason, UTOPIA shall elect, within thirty (30) days after termination, either to remove all of its Facilities from the Streets or to abandon the Facilities in place. If UTOPIA elects to remove its Facilities, it shall have one (1) year after termination of this Agreement to complete such removal and to

remediate all property damaged or affected by UTOPIA in connection with such removal according to the requirements set forth herein. If UTOPIA elects to abandon the Facilities in place, or if UTOPIA fails to remove all Facilities within one (1) year, all Facilities that are not removed shall automatically and without compensation become the property of Highland City.

25. Review by Legal Counsel. Each of the Parties hereby certifies that, pursuant to the requirements of Section 11-13-202.5, Utah Code (1953 as amended), it has submitted this agreement to an attorney authorized to represent it for review as to proper form and compliance with applicable law.

26. Filing of Interlocal Agreement. Executed copies of this Interlocal Cooperation Agreement shall be placed on file with the official keeper of records of each of the Parties within twenty-four hours of its execution and shall remain on file for public inspection during the term of this Interlocal Cooperation Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed by their respective, duly authorized representatives as of the day and year first hereinabove written.

**Highland City**

By: \_\_\_\_\_  
Kurt Ostler, Mayor

**UTOPIA**

By: \_\_\_\_\_  
Roger Timmerman, Executive Director

ATTEST:

\_\_\_\_\_  
Stephannie Cottle, City Recorder

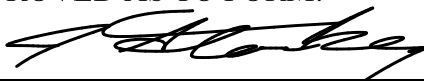
ATTEST:

\_\_\_\_\_  
Christa Evans, Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Rob Patterson, City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeff Starkey, General Counsel





# CITY COUNCIL AGENDA REPORT

## ITEM #10

---

**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Kellie Smith  
Planner & GIS Analyst  
**SUBJECT:** **ACTION:** Plat Amendment – Beacon Hill the Highlands Plat G-4  
**TYPE:** **LAND USE (ADMINISTRATIVE)**

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### **PURPOSE:**

The City Council will consider a request by Merlin Huff with Perry Development, representing Christopher and Lauren Jepsen for approval to adjust the lot line between lots 543 and 544 in the Beacon Hill the Highlands Plat G-4 Subdivision. Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

On August 1, 2017, the City Council approved Beacon Hill the Highlands Plat G phases 3 and 4.

### **BACKGROUND:**

A Development Agreement for the Beacon Hills Development was approved in August of 2003. This agreement outlines the City and Developer obligations as it relates to the development of the project; included is the number of lots, density, open space, etc. Beacon Hills was approved under the Open Space Subdivision option. This allowed for 369 lots on approximately 246 acres.

The project narrative for the application explains that while completing the landscaping for Lot 543, the contractor installed a concrete slab over the property line of Lot 544. Both property owners would like to adjust the lot line to match the wrongfully installed amenities.

### **CITIZEN PARTICIPATION:**

Notice of the plat amendment request was mailed to all property owners within 500 feet on November 22, 2022. No correspondence has been received.

### **STAFF REVIEW/FINDINGS:**

- Section 3-4806 Open Space Bonus of the Development Code states that no lots shall be smaller than 14,000 square feet, and no lots shall have less than 110' feet of frontage. The lot line adjustment meets both of these requirements.
- The 10' public utility easements have been adjusted along with the proposed

property line.

**FISCAL IMPACT:**

This action will not have a financial impact on this fiscal year's budget expenditures.

**STAFF RECOMMENDATION:**

Staff recommends the City Council accept the findings and **APPROVE** the final plat amendment subject to the following stipulations:

1. The recorded plat shall be in substantial conformance with the final plat received November 21, 2022.
2. Prior to recording, the recorded plat shall be reviewed and revised as required by the City Engineer.

**MOTION TO APPROVE:**

I move that the City Council accept the findings and **APPROVE** Beacon Hill the Highlands Plat G-4 Lots 543 & 544 Amended subject to the two (2) stipulations recommended by Staff.

**ATTACHMENTS:**

1. Vicinity Map
2. Project Narrative
3. Proposed Plat Amendment

# ATTACHMENT #1:



## Lot Line Adjustment for Lot 544 & Lot 543 of the Beacon Hills The Highlands Plat G-4

At the request of Chris Jepsen – Lot 544 – 12527 N. Minots Ledge Dr. & David B. Larsen – 12517 N. Minots Ledge Dr.

While Landscaping David B. Larsens (Lot 543) property the contractor installed the Concrete slab for the Basketball Court & Playhouse over the legal boundary Line of Lot 544.

Both Chris & Lauren Jepsen (Lot 544) & David B. Larsen (Lot 543) would like to fix the boundary lot line legally to accommodate the wrongfully installed amenities over Chris & Lauren Jepsen (Lot 544) legal boundary line.

See aerial exhibit in application for visual details

11:017:0116

11:017:0148

35:728:0543

35:728:0544

35:728:0545

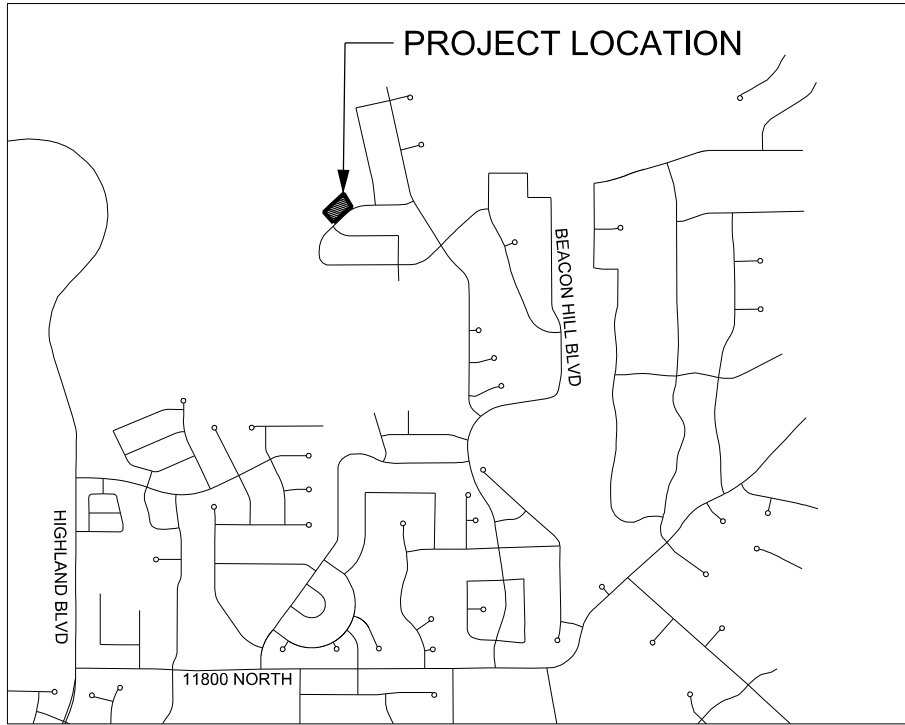
N40°54'51"E --- 125.74 N  
N 86°15'1" --- N40°25'09"S  
N 91°47'5" --- N15°45'09"S

S45°02'04"E --- 149.82 N  
N 15°07'1" --- N40°40'19"W

N40°37'52"E --- 149.82 N  
N 89°51'1" --- N45°11'09"S  
N 41°54'1" --- N40°42'15"S

N 149°53'03"E --- 149.82 N  
N 89°51'1" --- N45°11'09"S

ATTACHMENT #3:



VICINITY MAP N.T.S.

LEGEND

- SECTION CORNER (FOUND)
- EASEMENT LINE
- RIGHT OF WAY LINE
- ROAD CENTERLINE
- BOUNDARY LINE
- P.U.E. PUBLIC UTILITY EASEMENT

NORTHWEST CORNER SECTION 23,  
TOWNSHIP 4 SOUTH, RANGE 1 EAST,  
SALT LAKE BASE AND MERIDIAN.  
(FOUND BRASS CAP)

NORTH QUARTER CORNER SECTION 23,  
TOWNSHIP 4 SOUTH, RANGE 1 EAST,  
SALT LAKE BASE AND MERIDIAN.  
(FOUND BRASS CAP)

SOUTH 1734.34'

P.O.B. (NORTH CORNER OF LOT 544)

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY  
SERIAL #11:017-0148

LOT 545  
BEACON HILL THE HIGHLANDS PLAT G-4  
ROBERT & JERUSHA FOSHEE  
SERIAL #35:728:0545

544  
21,190 SQ.FT.  
0.486 ac

543  
19,020 SQ.FT.  
0.437 ac

LOT 542  
BEACON HILL THE HIGHLANDS PLAT G-4  
JESSICA BRANAN  
SERIAL #35:728:0542

SURVEYOR'S NOTES:  
THIS PURPOSE OF THIS PLAT IS TO AMEND LOTS 543 & 544 OF BEACON HILL THE  
HIGHLANDS PLAT G-4 FOR THE PURPOSE OF DOING A BOUDNARY LINE AGREEMENT  
BETWEEN THE TWO SAID LOTS. HENCE THE ONLY CHANGE FROM THE ORIGINAL  
PLAT BEING THE LOT LINE BEARING AND DISTANCE BETWEEN LOTS 543 & 544.

SURVEYOR'S CERTIFICATE

I, JARED ASHTON, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR HOLDING LICENSE  
NO. 12411560 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, PROFESSIONAL ENGINEERS AND PROFESSIONAL  
LAND SURVEYORS LICENSING ACT. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS, I HAVE  
COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS PLAT IN ACCORDANCE WITH SECTION 17-23-17,  
AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS AND THAT THE SAME HAS BEEN CORRECTLY  
SURVEYED AND MONUMENTED ON THE GROUND AS SHOWN ON THIS PLAT AND THAT THIS PLAT IS TRUE  
AND CORRECT.

BOUNDARY DESCRIPTION

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 4 SOUTH, RANGE  
1 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, SAID PARCEL BEING ALL OF LOTS 543 AND  
544 OF THE "BEACON HILL THE HIGHLANDS PLAT G-4" ON RECORD WITH THE UTAH COUNTY RECORDERS  
OFFICE AS ENTRY #32181:2018, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF LOT 544 OF THE BEACON HILL THE HIGHLANDS PLAT G-4 ON  
RECORD WITH THE UTAH COUNTY RECORDERS OFFICE AS ENTRY #32181:2018, SAID POINT BEING NORTH  
89°48'33" WEST 1153.67 FEET AND SOUTH 1734.34 FEET FROM THE NORTH QUARTER CORNER OF SECTION  
23, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG SAID LOT 544  
SOUTH 31°43'40" EAST 163.34 FEET TO AN ARC TO THE RIGHT, HAVING A RADIUS OF 328.00 FEET, SAID ARC  
BEING ALONG THE RIGHT OF WAY OF MINOTS LEDGE DRIVE, THENCE ALONG SAID RIGHT OF WAY THE  
FOLLOWING TWO (2) COURSES: (1) ALONG SAID ARC 89.05 FEET (CHORD BEARS SOUTH 54°24'27" WEST  
88.79 FEET), (2) SOUTH 46°37'49" WEST 162.41 FEET TO THE SOUTHERLY CORNER OF LOT 543 OF THE SAID  
BEACON HILL THE HIGHLANDS PLAT G-4; THENCE ALONG SAID LOT 543 NORTH 43°08'00" EAST 149.53 FEET  
TO THE NORTHERLY BOUNDARY OF SAID BEACON HILL THE HIGHLAND PLAT G-4; THENCE ALONG SAID  
NORTHERLY BOUNDARY NORTH 46°56'51" EAST 282.74 FEET TO THE POINT OF BEGINNING.

CONTAINS 40,210 SQ. FT. OR 0.923 ACRES MORE OR LESS, 2 LOTS

11-17-22  
DATE

Jared Ashton  
SURVEYOR  
(See Seal Below)

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, ALL OF THE UNDERSIGNED OWNERS OF ALL OF THE PROPERTY  
IN THE SURVEYOR'S CERTIFICATE HEREON AND SHOWN ON THIS MAP AND SUBJECT TO ANY CONDITIONS AND  
RESTRICTIONS STATED HEREON HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS, BLOCKS, STREETS  
AND EASEMENTS AND DO HEREBY DEDICATE THE STREETS AND OTHER PUBLIC AREAS AS INDICATED HEREON  
FOR PERPETUAL USE OF THE PUBLIC.

IN WITNESS WHEREBY WE HAVE HEREUNTO SET OUR HANDS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D., 20\_\_\_\_.

DAVID B. LARSEN II

CHRISTOPHER DAN JEPSEN

LAUREN RUTH JEPSSEN

ACKNOWLEDGMENT

STATE OF UTAH } S.S.  
COUNTY OF UTAH }

ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D., 20\_\_\_\_, PERSONALLY APPEARED BEFORE ME, THE SIGNORS OF  
THE FOREGOING DEDICATION AND DULY ACKNOWLEDGE TO ME THAT TRACT DID EXECUTE THE SAME.

MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC  
(See Seal Below)

ACCEPTANCE BY LEGISLATIVE BODY

THE CITY OF HIGHLAND, COUNTY OF UTAH, APPROVES THIS SUBDIVISION SUBJECT TO THE CONDITIONS AND RESTRICTIONS  
STATED HEREON READY ACCEPTS THE DEDICATION OF ALL STREETS, EASEMENTS, AND OTHER PARCELS OF LAND INTENDED  
FOR PUBLIC PURPOSES FOR THE PERPETUAL USE OF THE PUBLIC THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D., 20\_\_\_\_.

APPROVED: \_\_\_\_\_  
MAYOR

APPROVED: \_\_\_\_\_  
ENGINEER  
(See Seal Below)

ATTEST: \_\_\_\_\_  
CLERK-RECORDER  
(See Seal Below)

PLANNING COMMISSION APPROVAL

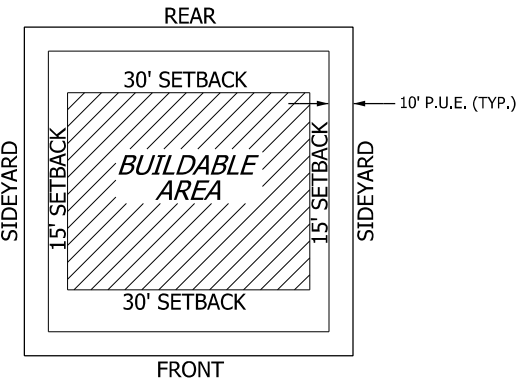
APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D., 20\_\_\_\_, BY THE \_\_\_\_\_ PLANNING COMMISSION.

DIRECTOR-SECRETARY

CHAIRMAN - PLANNING COMMISSION



0 20  
HORIZONTAL: 1" = 20'



LOT SETBACK DETAIL

OWNER:

CHRIS JEPSEN  
12527 N MINOTS LEDGE DRIVE  
HIGHLAND, UTAH 84003



APPROVAL AS TO FORM

APPROVED AS TO FORM THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, A.D., 20\_\_\_\_

CITY ATTORNEY

SURVEYOR'S SEAL



NOTARY PUBLIC SEAL

CITY-COUNTY ENGINEER SEAL

CLERK-RECORDER SEAL

UTAH COUNTY RECORDING STAMP

BEACON HILL THE HIGHLANDS PLAT G-4  
LOTS 543 & 544 AMENDED

HIGHLAND CITY

UTAH COUNTY, UTAH

SCALE: 1" = 20 FEET

LOCATED IN THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 4 SOUTH,  
RANGE 1 EAST, SALT LAKE BASE & MERIDIAN



# CITY COUNCIL AGENDA REPORT

## ITEM #11

---

**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Rob Patterson, City Attorney  
**SUBJECT:** **ORDINANCE:** Electronic Meeting Ordinance Amendments  
**TYPE:** **MUNICIPAL CODE UPDATE (LEGISLATIVE)**

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### **PURPOSE:**

The City Council will hold a public meeting to consider amending municipal code section 2.12.095 regarding electronic meetings to comply with H.B. 22 and other amendments to the Utah Open and Public Meetings Act. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

The Council previously adopted an ordinance regarding electronic meetings in June 2006. The ordinance has not been amended since that time.

### **BACKGROUND:**

In the past legislative session, the state legislature adopted H.B. 22 and H.B. 439, which amended the Utah Open and Public Meetings Act regarding electronic meetings. These amendments require municipalities and other public bodies to adopt an ordinance, resolution, or rule that meets the current requirements of OPMA, or be prohibited from holding electronic meetings after the end of December 2022.

The state law changes require public bodies to clarify how they count remote members for quorum purposes, require roll call votes for all votes that are not unanimous, require notice to members on how to connect remotely (if allowed), and give options to public bodies regarding anchor site locations, closing anchor sites for health and safety reasons, and other aspects of electronic meetings.

The proposed amendments:

1. Clarify that the electronic meeting ordinance applies to all city public bodies
2. Require notice of remote participation as far in advance as practicable, rather than strictly 1 week
3. Require notice to members on how to connect remotely
4. Require the chair to state on the record which members are participating remotely
5. Require votes to be by roll call if the vote is not unanimous or if the vote of the remote member is unclear
6. Allow the chair to close the anchor location to the public if necessary for health and safety

Other options that the Council could consider including in the ordinance are:

1. Restricting the number of members allowed to participate remotely
2. Requiring a quorum to be physically present at the anchor location

**FISCAL IMPACT:**

No impact is expected.

**STAFF RECOMMENDATION:**

Staff recommends that the City Council consider and adopt the proposed amendments.

**MOTION:**

I move that City Council approve and adopt the amendments to Municipal Code section 2.12.095.

**ATTACHMENTS:**

1. Proposed ordinance

**ORDINANCE NO. 2022-XX**

**AN ORDINANCE AMENDING HIGHLAND CITY MUNICIPAL CODE SECTION 2.12.095 REGARDING ELECTRONIC MEETINGS, AND RELATED MATTERS**

WHEREAS, Highland City has previously adopted ordinances and regulations regarding electronic meetings and remote connections for members of a Highland City public body;

WHEREAS, the Utah State Legislature has adopted amendments to the Utah Open and Public Meetings Act regarding electronic meetings to require all public bodies to adopt an ordinance, resolution, or rule regarding counting remote members for quorum purposes, voting by remote means or proxy, and roll call votes;

WHEREAS, such amendments require Highland City to amend its electronic meeting ordinance in order to continue to be able to conduct electronic meetings after December 31, 2022;

WHEREAS, the City Council desires to amend Highland City Municipal Code Section 2.12.095 regarding electronic meetings in order to comply with the Open and Public Meetings Act, as amended;

NOW THEREFORE, BE IT ORDAINED by the Highland City Council as follows:

Section 1. The City Council adopts the amendments to Municipal Code § 2.12.095 set forth in Exhibit A attached hereto.

Section 2. All previously adopted Highland City ordinances, resolutions, rules, or standards related to electronic meetings in conflict with this ordinance are hereby repealed as of the effective date of this ordinance.

Section 3. This ordinance shall be effective immediately upon publication as required by law.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF HIGHLAND CITY, UTAH, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

ATTESTED:

\_\_\_\_\_  
City Recorder

PUBLICATION DATE: \_\_\_\_\_

## EXHIBIT A

### **2.12.095 Electronic Meetings**

A. Definitions. As used herein, the following terms shall have the following meanings:

"Anchor locations" means Highland City offices, or such other place where a public meeting is held, as established by law.

"City" means the Highland City Council.

"Member" means an individual who serves ~~either~~ on the council, planning commission, other public body, or as staff of city.

"Real time" means instantaneous communications such as speaking face to face, without undue delays, hearing and/or seeing what is being said or done.

"Remote location" means any place other than the anchor location, where a member is at who participates in an electronic meeting.

"Electronic meeting" means a formal meeting of the city where one or more member(s) participates from a remote location via telephone, Internet, television, or other telecommunication means now known or yet to be developed.

B. Telecommunications Meetings Authorized.

1. Members may participate in meetings via telecommunications media.
2. Any form of telecommunication may be used, as long as it allows for real time interaction in the way of discussions, questions and answers, and voting.
3. Members who desire to participate in a meeting of the city via telecommunications should notify the city manager or recorder of their intent at least one week in advance of the meeting, or as soon as otherwise practicable, so that appropriate arrangements can be made to conduct the meeting via telecommunications. ~~The one week notice may be waived by the city in the event of emergency conditions which preclude the ability to give one weeks notice.~~
4. Any member(s) participating from remote locations shall make contact with the city fifteen minutes prior to the start of the meeting to ensure the equipment to be used is in proper working order.

C. Notices.

1. Notices of meetings and descriptions of how to connect via telecommunications are to be given to members in the manner and within the time frame set forth by law, at least 24 hours in advance.

2. Public notices of electronic meetings, to the extent applicable, are to be given according to law, listing the anchor location as the site of the meeting.

D. Quorum and Voting.

1. The Chair of the meeting shall state on the record each member who is participating via telecommunications.
- ~~1.2.~~ Members participating via telecommunications are to be considered present at an electronic meeting for purposes of establishing a quorum, as defined by law.
3. In the event of failure of equipment, or other factor, which causes a lack of communications with a member(s) participating via telecommunications, that does not cause a lack of a quorum, the chair may proceed with business and voting without the remote member(s). Continuances may be granted as set forth by law.
4. In the event of failure of equipment, or other factor, which causes a lack of communications with a member(s) participating via telecommunications, causing lack of a quorum, no additional business may be conducted until the quorum can be reconstituted. Continuances may be granted as set forth by law. Business already conducted remains valid and binding.
- ~~2.5.~~ The council shall make all votes during an electronic meeting by roll call if the vote is not a unanimous vote or if the vote of member(s) participating via telecommunications is unclear.

E. Location.

1. Whenever a meeting is to be held with a member(s) via telecommunications, the anchor location, identified in all notices, shall be the city offices, ~~5378 West 10400 North,~~ 5400 West Civic Center Drive, Highland, Utah, or such other location as determined by the council in accordance with law.
2. Public participation is limited to the anchor location. Public participation at the anchor location for an electronic meeting may be limited in the event of substantial risks to health and safety, as provided by law. In such events, the city shall attempt to provide alternative methods for the public and applicants to attend and participate in the electronic meeting remotely.
3. Members participating via telecommunications may do so from any location where access can be had and the criteria of this section met.

F. Method.

1. Any telecommunications method now known or hereafter developed may be used to conduct an electronic meeting, so long as the criteria set forth herein can be met.

2. All persons at the anchor location shall be required to have real time video and/or audio contact with member(s) participating from remote locations, so as to know the entire discussion and deliberations of the council.
3. Members participating from remote locations shall have the obligation to use appropriate equipment or take other precautions to eliminate static or other disturbances to the orderly conduct of the meeting.
4. If available, and not cost-prohibitive, an audio and video feed is the preferred method of conducting an electronic meeting.

~~G. — Costs.~~

- ~~1. The city may elect to pay the costs of an electronic meeting when additional fees are generated.~~

- ~~2.5. If the city is paying the costs, it may make the arrangements and initiate the contact in order to conduct the meeting.~~



# CITY COUNCIL AGENDA REPORT

## ITEM #12a

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**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Donna Cardon, Library Director  
**SUBJECT:** Library Strategic Plan  
**TYPE:** **GENERAL CITY MANAGEMENT**

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### **PURPOSE:**

The City Council consider approving the Library's Long Range Strategic Plan.

### **PRIOR COUNCIL DIRECTION:**

On November 1, 2022, the Library Board presented their annual report to the City Council. As part of the report, the Library gave the Council a draft of a Long-Range Strategic Plan to review and invited the Council to send any suggestions for revision before the scheduled Library Board meeting on November 17<sup>th</sup>. No suggestions have thus far been received.

### **BACKGROUND:**

According to the Library Board Bylaws, one of the responsibilities of the Library Board is to "Develop and maintain a long-range strategic plan and submit the plan to the City Council for approval." (G.2.h)

The Library Director created a draft of a Long-Range Strategic Plan that was discussed and approved by the Library Board in their September 22<sup>nd</sup> meeting. Below are some key changes from the previous year's Long-Range Strategic Plan.

### **Completed items:**

- **Improve displays in the Children's Room:** We added shelf top displays and an additional bank of shelves to the children's room.
- **Acquire Security Gates:** Security gates were installed in February 2022, resulting in a nearly 50% drop in the number of "missing" books each month.
- **Investigate eliminating fines:** We discussed eliminating fines during two Library Board meeting last spring and decided it was not financially viable at this time.

### **Adjustments:**

- **Establish a quarterly Bilingual Story Time:** Last summer the Library received a grant to purchase 60 Spanish Language books for the collection. We decided that

this met the larger goal of improving services for Spanish speakers, so we are no longer planning on providing Spanish Story Times.

- **Hold a Senior Services Fair annually:** I have discovered that the Arts Council holds a monthly event for seniors during which seniors learn about different services in the community. We decided that since the Arts Council is providing information for Seniors, we would take this item off our Strategic Plan.
- **Set up an AV Maker-Space computer:** In the 2022 City Survey, we had a question to gauge the interest in this kind of service. There wasn't much interest, so we removed this item as well.
- **Replace Public Access Computers with Laptops:** We removed this item because we acquired circulating tablets for adults in Fall 2021. They have not been very popular. We therefore guess that laptops would also not be very popular with our patrons who use public access computers.

#### **New items**

- **Create an additional Reading Nook in the Children's Department:** During an annual inspection of the Library, Lynn Lonsdale of the Library Board proposed removing the large room dividers that we no longer use and turning the space where they are stored into another small reading nook.
- **Add Science Kits for Circulation:** We received a grant to add 20 new circulating science kits for children.
- **Update the Juvenile Nonfiction section:** We have discovered that the average publication date of books in the Juvenile Nonfiction section is 2008. About 2,000 of the 2,866 JNF books are at least 10 years old. Most nonfiction books that old have inaccurate and outdated information. We plan to gradually replace the old books with newer, up-to-date titles.
- **Hold one major fundraiser each year with the Library Foundation:** For the last two years the Library has depended heavily on COVID and ARPA grants to fund basic operation. When that income is no longer available, the Library will need to do fundraising to help support our services.

#### **FISCAL IMPACT:**

The activities proposed in the Long-Range Strategic Plan can be funded using the Library's regular anticipated revenue and funds acquired through fundraising.

#### **STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the Highland City Library Long-Range Strategic Plan.

#### **MOTION TO APPROVE:**

I move that City Council approve the Highland City Library Long-Range Strategic Plan.

#### **ATTACHMENTS:**

## 1. Library Long-Range Strategic Plan (Proposed)

## **Highland City Library: Long-Range Strategic Plan 2022-2027**

### **Introduction**

Public libraries have long been an important aspect of American life. From the early days of the Republic, libraries were valued by Americans. Benjamin Franklin founded the first subscription library in Philadelphia in 1732 with fifty members to make books more available for citizens of the young nation. From that time to the present, public libraries have been valued because they allow equal access to information and educational resources regardless of social or economic status.

Library service has long been important to the residents of Highland. From 1994 to 2001, residents of Highland and Alpine were served by a joint-use facility at Mountain Ridge Junior High School. That arrangement was eventually terminated and in 2001 the entire library collection was relocated to the old Highland City building for storage. In 2008, Highland City built a new city hall and dedicated a portion of the building for a city library. In 2016, the Library received permission to convert a public meeting room into a Children's Room for the Library. The new Children's Room was opened in spring of 2018.

The Library joined the North Utah County Library Cooperative (NUCLC) on April 1, 2012 as an associate member. NUCLC is a reciprocal borrowing system that allows library card holders from participating libraries to check out materials from other participating libraries. It is not a county library system. Each participating library maintains its own policies, budget, administration, non-resident fees, etc. In 2018, the Library reached the required collection size and was accepted as a full NUCLC member.

The Library is supported by three constituent bodies: the Library Board, the Friends of the Library, and the Library Foundation.

1. The Library Board oversees the operation of the Library. It consists of seven persons: six volunteers appointed for three-year terms, and a representative from the City Council. All meetings are held in the Highland City Hall or electronically using a video meeting platform. Records of the Library Board meetings are available on the City website.
2. The Friends of the Library is an independent non-profit organization that supports the library in the following ways: raising funds through used book sales and other endeavors, creating community connections through programs and events, and increasing volunteerism to support and supplement Library resources.
3. The Library Foundation is a nonprofit, tax-exempt foundation dedicated to assisting the Highland City Library with fund-raising and additional support. The Foundation administers larger donations, particularly those targeted at capital improvement.

### **Vision Statement**

The Highland City Library seeks to be a valued resource in the community that evolves with changes in society while meeting learning, information, and entertainment needs.

### **Mission Statement**

The Highland City Library provides materials, programs, tools, and space that strengthen the community by informing, educating, and entertaining community members of all ages.

### **Long-Range Strategic Plan, 2022-2027**

The elements of the Strategic Plan support the goals and values expressed in the Library Mission Statement. Most of the goals listed below are expected to be accomplished within the current annual budgets for the Library. Capital improvement goals involve fundraising by the Library Foundation.

#### **Materials:**

Plan	Value	Metric	Date Initiated/ Completed	Responsible Party
Grow physical collection back to 50,000 items	Provide Materials	Simple count of physical materials	Ongoing/ December 2026	Collection Development Team
Expand picture book section	Provide Materials	Add additional shelving to accommodate up to 8,000 picture books	Ongoing/ December 2026	Collection Development Team
Add Science Kits for circulation	Provide Materials	Use grant money to add 20 Science Kits for circulation	Winter 2023	Collection Development Team.
Update Juvenile Nonfiction Section	Provide Materials	Purchase at least 150 books each year for 5 years.	Fall 2022-Fall 2027	Collection Development

#### **Programs**

Plan	Value	Metric	Date initiated/ Completed	Responsible Party
Continue providing educational	Educate	Offer weekly children's programs,	Fall 2022-ongoing	Programming Team

programs for each age group		and monthly adult/teen programs		
Maintain working relationship with all local schools	Inform/ Educate/ Community	Quarterly contact with representative from each school	August 2022-ongoing	Public Relations Team/ Library Director
Increase number of current library card holders	Inform	Number of card holders will increase 5% each year	August 2022-December 2025	Library Director/ Public Relations Team
Maintain Summer Reading participation and increase completion	Educate/ Entertain	Have 1000 + participants and 35% completion each year	Summer 2023-Summer 2027	Library Director/ Public Relations Team/ Programming Team
Improve Adult Programing	Educate/ Inform	Hold an in-person adult program quarterly	Fall 2022-onward	Library Director/ Public Relations Team/
Continue programs for special needs	Educate/ Inform/ Entertain	Hold monthly story time for HIVES	Fall 2022-onward	Library Director/ Programming Team

### Training

Plan	Value	Measure	Date initiated/ Completed	Responsible Party
Send at least one staff member to a national conference each year	Train	Staff member attends a national conference	Spring 2022, and continuing forward	Library Director
Send at least three staff members to state training sessions	Train	Three staff members attend state training each year	Fall-2022, and continuing forward	Library Director
Have a staff	Train	Staff member	Already initiated/	Library

member complete “Uplift Training”		receives Uplift Training Certificate	Fall 2023	Director/ Participating Staff Member
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### Space

Plan	Value	Measure	Date initiated/ Completed	Responsible Party
Replace Library carpet	Community Space	Get a bid, figure out funding, contact a vendor, have carpet installed	Bid by June 2023 / Jan 2024	Library Director
Replace Library upholstered furniture	Community Space	Purchase 2 love seats and 6 chairs	Jan 2024/ Dec 2025	Library Director
Conduct a survey about public interest in an addition to the Library	Space	Question added to the City’s annual survey about the interest in an addition to the Library	Spring 2025	Library Director
Create Biography Nook in the Children’s Room	Space	Take out dividers and make a space for more biography books	Fall 2023	Library Director

### Financial Oversight

Plan	Value	Measure	Date initiated/ Completed	Responsible Party
Conduct a financial audit of the Library Fund and investigate need for an increase in the dedicated tax rate	Community Resource	Engage a professional financial audit of the Library Fund	Fall 2022/Winter 2023	Library Director
Hold one major fund raiser each	Community Resource	The Foundation	Fall 2022 and onward.	Library Foundation

year with Library Foundation.		with work with the Library to do one major fundraiser event each year		and Library Director
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# CITY COUNCIL AGENDA REPORT

## ITEM #12b

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**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Andy Spencer, City Engineer/Public Works Director  
**SUBJECT:** **ACTION:** Agreement - Pressurized Irrigation Meter Grant with the State of Utah  
**TYPE:** **GENERAL CITY MANAGEMENT**

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### **PURPOSE:**

The City Council will consider an agreement accepting grant funding from the Utah State Department of Natural Resources, Board of Water Resources, in the amount of \$5M for the installation of pressurized irrigation meters and the associated installation program expenses. The Council will take appropriate action.

### **PRIOR COUNCIL DIRECTION:**

The approved FY23 budget includes \$3,753,500 in 53-40-60, PI Capital Expenses/Projects. A portion of this funding (approximately \$1M) is intended for PI meters in FY23. The utility rate study included funding in the forthcoming successive budget years of approximately \$1M per year.

On November 1, 2022 the Council authorized purchase of meters in the amount of \$3,263,424 and associated parts in the amount of \$2,197,555. The grant funding was known at that juncture and was relied upon as a part of the decision process.

#### PI Meter Project Funding

Federal BOR WaterSMART Grant	\$2,000,000	( 1:1 local match req'd)
State of Utah Grant	\$5,000,000	(30% local match req'd)
Highland City	\$2,800,000	
Current Anticipated Cost	\$9,800,000	

### **BACKGROUND:**

Recent state legislative action requires pressurized irrigation meters to be installed throughout all secondary water systems in Utah. Highland City applied for grant funding with the State of Utah to assist with the costs of the project. Highland was awarded grant funding for 51% of the total project cost up to a total grant award of \$5M dollars. The current anticipated cost of the project is \$9.8M.

The agreement does require that the City must include anti-discrimination language in our solicitations for employees. This is consistent with existing City policies that do not allow for discrimination.

**FISCAL IMPACT:**

The agreement provides the City \$5M in funding to assist in the PI meter program. Funding for the PI meter project expenses will be taken from GL 53-40-50, PI Meter Grant within the FY23 budget. Funds will be transferred to this account as they are received from the grant sources with the commensurate local match being transferred from the capital account 53-40-60. The State of Utah grant is a reimbursement program, the City will have to pay the initial expenses and be reimbursed. The State representatives have assured that the reimbursements will occur within a short time following the City reimbursement request.

**STAFF RECOMMENDATION:**

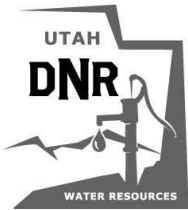
Staff recommends authorizing the Mayor to sign the agreement with the State for grant funding for the pressurized irrigation meter project.

**MOTION TO APPROVE:**

I move that City Council authorize the Mayor to sign the agreement with the State of Utah to receive grant funding for the pressurized irrigation meter project in the amount of \$5,000,000 dollars.

**ATTACHMENTS:**

1. Agreement with State of Utah



STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

Copies:  
WRE  
Applicant  
Finance

Contract No.

Date \_\_\_\_\_

Vendor No. 50483GA TIN 87-0344281

Vendor CITY OF HIGHLAND

Address 5400 W CIVIC CENTER DRIVE, SUITE 1

City, State Zip HIGHLAND, UT 84003

c/o Andy Spencer, Public Works Director Phone 801-772-4508

Commodity Code 99999 Payable X Receivable \_\_\_\_\_

Description: The project will install secondary meters, in and around  
Section 36, T4S, R1E, Salt Lake Base & Meridian.

Advances:

Repayment:

Frequency As Requested

Interest/Term      %      Years

Amount Variable

Amount \_\_\_\_\_

Total \$5,000,000 (51%)

Beginning \_\_\_\_\_

Less Admin Fee \_\_\_\_\_

Effective Date \_\_\_\_\_

Net Payable Amount \$5,000,000

Expiration Date 12/31/2026

Fund	Dept	Unit	Approp Unit	Balance Sheet	Expend/ Revenue	Program	Function	Activity	Total Amount
1000	560	6207	RPG		7501	RM016	ARPA		\$5,000,000

Approved STG STG MDE MDE SGD SGD JRW JRW JSE JSE CAH CAH KRS KRS

Grant Doty  
Monitor

Grant Doty  
Signature

# **AGREEMENT**

## **(Secondary Meter Grant)**

STATE OF UTAH AGREEMENT # \_\_\_\_\_

1. PARTIES TO AGREEMENT: This agreement is between the State of Utah, Department of Natural Resources, BOARD OF WATER RESOURCES, referred to as STATE, and the following RECIPIENT:

CITY OF HIGHLAND

5400 W. CIVIC CENTER DRIVE, SUITE 1

HIGHLAND, UT 84003

Legal Status of Recipient:

☐ Sole Proprietor

☐ Non-Profit Corporation

☐ For Profit Corporation

☐ Partnership

☒ Governmental Agency

Phone #: 801-772-4508

Federal Tax ID#: 87-0344281

Vendor #: 50483GA

2. GENERAL PURPOSE OF AGREEMENT: The general purpose of this agreement is to provide grant funds for partial payment of costs incurred to purchase and install approximately 4,500 secondary meters ("PROJECT").

3. AUTHORITY: This agreement is entered into by authority of legislation enacted by the 2022 Utah State Legislature.

4. AGREEMENT PERIOD: Agreement is effective \_\_\_\_\_ and will terminate December 31, 2026 unless otherwise terminated or extended in accordance with the terms and conditions of this agreement.

5. GRANT AMOUNT: The RECIPIENT will be paid a maximum of \$5,000,000 for costs authorized by this agreement.

6. METHOD OF PAYMENT: a. Payment to the RECIPIENT shall be made approximately monthly upon receipt by the STATE of statements or vouchers for payment of work completed. b. The STATE shall pay 51% of the eligible costs incurred.

7. ATTACHMENTS INCLUDED AS A PART OF THIS CONTRACT:

Attachment A – Typical Section Drawings

8. The RECIPIENT hereby warrants the STATE that the construction of the PROJECT will not interfere with existing water rights. If the PROJECT herein described shall give rise to a claim, or cause of action to any holder of any water rights because of the interference with such rights by the operation of the PROJECT, then the RECIPIENT hereby agrees to indemnify the STATE to the extent of such claim or cause of action.

9. A. In constructing or causing the PROJECT to be constructed, the RECIPIENT shall comply with the provisions of the Utah Anti-Discrimination Act (Act) of 1965 and hereby agrees as follows:

1. The RECIPIENT will not discriminate against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap.

2. In all solicitations or advertisements for employees, the RECIPIENT will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, national origin, or handicap.

3. The RECIPIENT will send to each labor union or workers' representative notices stating the RECIPIENT'S responsibilities under the Act.

4. The RECIPIENT will furnish such information and reports as requested by the Anti-Discrimination Division for the purpose of determining compliance with the Act.
5. The RECIPIENT will include the provisions of sub-sections 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor unless exempted by law.

B. Failure of the RECIPIENT to comply with the statute, the rules and regulations promulgated thereunder and this non-discrimination clause shall be deemed a breach of this contract and may be canceled, terminated or suspended in whole or in part.

10. If either party to the contract violates any of the conditions or covenants made herein, the other may give written notice of such breach or failure, and if the same shall not be cured within Ninety (90) days after such notice, the other may declare the contract forfeited and may proceed to its remedies at law for such breach.

11. The RECIPIENT hereby agrees to indemnify and hold harmless the STATE and its officers, agents and employees from any and all liability or claims in connection with this agreement or the development, design, inspection, construction, or operation and maintenance of the PROJECT, including, but not limited to, any and all claims for injury or death of persons or animals, or for any property loss or damage, including damage to the project facilities; except for any such claims arising from or caused by the sole negligence of the STATE.

12. It is mutually understood that the STATE'S review of the plans and specifications, bidding documents and general conditions is solely for the purpose of assuring that the PROJECT to be constructed by the RECIPIENT is as represented in its application and that the PROJECT meets the STATE'S lending criteria. Neither the STATE or officers, employees, or agents thereof shall have any duty to note any design or other defect relating to the PROJECT, and none shall be liable for any loss, claim or damages with respect to the design, bidding, construction, maintenance or operation of the PROJECT or any water system of which the PROJECT is a part.

13. This agreement, or any part thereof, or the benefits to be received under this agreement, may not be the subject of any assignment to any person, firm, or corporation, by the said RECIPIENT, without first having secured the written consent of the STATE to any such proposed assignment or disposition of this agreement.

14. The RECIPIENT hereby agrees, in accordance with Utah Code 73-10-34.5, to provide an educational component for end users either on a monthly use statement, or by a customer specific Internet portal that provides information on the customer's usage more frequently than monthly.

15. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED: All other governmental laws, regulations, or actions applicable to the services authorized by this agreement.

IN WITNESS WHEREOF, the parties sign and cause this agreement to be executed.

CITY OF HIGHLAND

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Public Works Director

BOARD OF WATER RESOURCES

Kyle R. Stephens

Kyle R. Stephens (Oct 24, 2022 21:17 MDT)

\_\_\_\_\_  
Chairman

C.C. A. H.

\_\_\_\_\_  
Executive Secretary

Shelby R. Williams

\_\_\_\_\_  
Division Budget/Accounting

APPROVED: DIVISION OF FINANCE

\_\_\_\_\_  
For Director



## PI-02



# CITY COUNCIL AGENDA REPORT

## ITEM #13a

**DATE:** December 6, 2022  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Kellie Smith, Planner & GIS Analyst  
**SUBJECT:** **DISCUSSION:** Waiver Request for Potential Annexation Agreement  
**TYPE:** **LAND USE (LEGISLATIVE)**

### PURPOSE:

The City Council will consider a request from Lisa Watts Baskin, representing Phyllis Smith, to waive specific code requirements as part of a potential annexation agreement. This item is for discussion only.

### BACKGROUND:

On April 13, 1988, the City Council reviewed an annexation request by Mark and Darcie Miner. The Miners requested have the public improvement requirements be waived, as they were only annexing one (1) lot. The Planning Commission recommended to the City Council “that a variance be given to the Miners to use the roadway and have it deeded to the City, that the roadway be graveled with road base, a cul-de-sac set with gravel, improvements be waived for the one lot, and lien be put on the property noting if it is subdivided that improvements will be put in.” The City Council approved the annexation with allowing “access to the property through a private lane to be dedicated and approved at the time it is subdivided.” (see Attachment #3 for April 13, 1988 minutes)

### STAFF REVIEW:

- The subject property (star) is included in the Highland City Annexation Policy Expansion Plan. The planned zoning for the southwest area is R-1-20. If the City Council allowed the property to be annexed and zoned R-1-20, the subject property would have enough square footage to be subdivided into two (2) lots. The highlighted property was deeded to Highland City with the Miner’s annexation approval; however, it was not deeded as right-of-way. In order for the southern portion of Ms. Smith’s property to have enough frontage for a second lot (minimum 115’ required), the



Highland City property would need to be included in the subdivision plat to be designated as public right-of-way. These details would be included in the annexation agreement.

#### *City Code References*

- Development Code Section 5-9-102 Required Improvements:  
The subdivider shall improve, or agree to improve all streets, pedestrian ways or easements in the subdivision and on streets which abut, or serve as access to, the subdivision.
- Development Code Section 5-9-104 Curb, Gutter, Sidewalk and Asphalt Paving:  
Curbs, gutters, sidewalks and asphalt paving shall be provided in front of all commercial and residential lots ... At the discretion of the Planning Commission, sidewalk and/or curb and gutter improvements may be omitted in **major** residential subdivisions **where all lots in the subdivision have a minimum lot size of 43,560 square feet** if adequate provisions have been made for storm water runoff.
- Highland City Design Criteria for Public Improvements Section 2.05 Sub-Section F:  
When roads are designed along the exterior of developed property, a minimum of ten (10) feet of unobstructed asphalt on the opposite side of the designed centerline must be constructed. Depending on the classification of the road, additional width may be requested by the City.

#### *Conclusion*

- Based on the code references above, the City would require Ms. Smith to complete half of the road width (sidewalk, curb, gutter, and asphalt) plus 10' of asphalt on the opposite side of the centerline. None of Ms. Smith's property would need to be dedicated as right-of-way as the necessary property was dedicated by the Miners.

#### **SUMMARY OF REQUEST:**

Ms. Smith is seeking to waive the requirement to complete the half-street public improvements plus 10' of asphalt. Her reasons are set forth in the attached waiver request.

#### **STAFF RECOMMENDATION:**

The decision to annex and under what circumstances are legislative decisions. The Council has complete discretion in making these decisions. Staff requests that the City Council provide direction to Ms. Smith on their opinion of her waiver request to help her decide whether to move forward with a formal annexation request.

#### **ATTACHMENTS:**

1. Waiver Request for Parcel No. 12:057:0025 dated November 29, 2022
2. Highland City Annexation Policy Expansion Plan
3. City Council Minutes – April 13, 1988



**Electronic Copy  
Hard Copy to Follow**

J. Craig Smith, Attorney  
jcsmith@shutah.law  
Lisa Watts Baskin, Attorney  
lwbaskin@shutah.law

November 29, 2022

Highland City Council  
Ms. Erin Wells, Acting City Administrator  
erin@highlandcity.org  
Ms. Kellie Smith, City Planner  
kelsmith@highlandcity.org  
5400 West Civic Center Drive, Suite 1  
Highland City, UT 84003

Re: Waiver Request for Parcel No. 12-054-0025  
Phyllis Smith  
7015 West 9600 North  
Highland, UT 84003

Dear Honorable Members of Highland City Council:

We have been engaged to represent Mrs. Phyllis Smith, homeowner at 7015 West 9600 North, Parcel No. 12-054-025, located in the unincorporated area between Lehi and Highland City. We have been asked to assist in obtaining a waiver of the ordinance provisions that require Mrs. Smith to "improve, or agree to improve, all streets which abut or serve as access" to her intended second home on the proposed lot split. The street or dedicated roadway which runs along, or abuts, the east side of the property remains unimproved under the stewardship of Mark and Darcie Miner, adjacent landowners.

On November 18, 2022, Randy Rindlisbacher, Phyllis Smith's son-in-law, Brandon Ames with Bach Homes, and I met with Highland's Interim City Administrator Erin Wells and City Planner Kellie Smith. According to Kellie Smith, it is city policy that subdividers adjacent to an unimproved road are required to do the half-street improvements on their side of the road plus 10' of asphalt to provide for two travel lanes. We discussed our concerns about the city's intention to enforce Highland City's Development Code 5-9-102 and 5-9-104 and any possible options to achieve waiver of the street road improvement requirements. Erin Wells and Kellie

Smith recommended that we petition the Highland City Council in your Communications Session on December 6, 2022.

To that end, we intend to request a direct waiver from the City Council of Code 5-9-102 and 5-9-104 and related provisions. In exchange for the waiver, Phyllis Smith is willing to pay the costs to remove the septic tank on her current home with grading upon completion and connection to the existing sewer main. Additionally, she will pay for startup preparation, earthwork, sewer installation and connections, storm drain installation and connections, and culinary water installation and connections along the street or roadway. The anticipated costs of improving and paving the private roadway is still under review and will be provided to the City Council once estimated.

The relevant documents are attached to this letter. If there are other supplemental materials that are needed, please contact us prior to the City Council meeting.

Thank you in advance for your attention this matter.

Sincerely,



Lisa Watts Baskin, Of Counsel

Enclosures:  
Phyllis Smith Proposal  
Attached Exhibits

# **PROPOSAL FOR WAIVER OF STREET IMPROVEMENT REQUIREMENTS IN EXCHANGE FOR SEWER, WATER, AND STORM WATER INFRASTRUCTURE**

## **BACKGROUND**

This matter involves property located at 7015 West 9600 North, Parcel No. 12-054-0025, adjacent to Highland City. The property has been owned by Mrs. Phyllis Smith since 1979, and she lives in her home on the north portion of the 1.13 acre parcel. The lot sits between Lehi to the west and Highland City to the east in the unincorporated area of Utah County. **Exhibit A.** (Photo of Smith Parcel, Utah County GIS, Deed, and Adjacent Properties). Mrs. Smith will seek annexation through an annexation notice and petition, depending on the City Council's decision.

Mrs. Smith is a 74-year-old widow who has been financially compromised by her deceased husband's medical bills. She is self-employed as a janitor for cleaning services in large office buildings and works for Simply The Best Food Catering. However, her strength and mobility are diminishing so she wants to live in a single-level home on her property that does not require stairs nor require ongoing and expensive repairs. **Exhibit B.** (Photo of Mrs. Phyllis Smith). Her son-in-law, Randy Rindlisbacher, is offering to construct the new home that is more suitable to her needs. To do this, however, the parcel must be split in two because no more than one dwelling unit shall occupy one lot pursuant to Highland City Development Code 5-8-104. 9 (hereafter "**Code**"). The second home would be placed on the back lot. The purpose of the lot-split is only to make room for the second home, not to subdivide the property into smaller lots for future houses.

## **JURISDICTION**

The City Council has final jurisdiction in the approval of subdivision plats, the establishment of requirements for and design standards of public improvements, and the acceptance of lands and public improvements that may be proposed for dedication. See Code 5-1-106. 8. Highland City Development Code provisions are included as **Exhibit C.**

## **INTERPRETATION OF HIGHLAND CITY DEVELOPMENT CODE**

Highland City's Acting City Administrator, Zoning Administrator and City Planner, Erin Wells, and Kellie Smith, Deputy City Planner, informed Mrs. Smith that any proposed lot-split is considered the same as a subdivision according to Code.

On October 4, 2022, Kellie Smith explained by email that "[i]n order for Ms. Smith to be able to annex into the City, and then subdivide, the public improvements on the City property would be required and the parcel would need to be dedicated as right-of-way in order to count as road frontage for the back lot. It is City policy that subdividers adjacent to an unimproved road are required to do the half-street improvements on their side of the road plus 12' [sic] of asphalt to provide for 2 travel lanes. These requirements would be outlined in an annexation agreement."

Consequently, Mrs. Smith is considered to be a subdivider who is required to “improve, or agree to improve, all streets, pedestrian ways or easements in the subdivision and on streets which **abut, or serve as access to**, the subdivision.” Code 5-9-102. 1: Required Improvements.

There are several code provisions that govern street improvement requirements such as installing curb, gutter, sidewalk and asphalt paving. Code 5-9-104. Code 5-8-104.2 also requires that all lots or parcels created by the subdivision shall have access to a dedicated street “improved to standards hereinafter required.” At present, private streets are prohibited unless “the most logical development of the land requires that lots be created which are served by a private street or other means of access” based upon written findings by the Planning Commission. Code 5-8-104. 2. Additionally, Highland City adopted Design Criteria for Public Improvements in 2021 which may also be modified by the City Engineer pursuant to Section 1.03 (Modifications) and Section 2.05 (Street Design).

There are also provisions that apply to small subdivisions with the intent to process “as quickly as possible” simplified and combined preliminary and final plats. Code 5-4-202. To that end, Mrs. Smith seeks these simplified solutions.

## **RELEVANT FACTORS**

### **Special Circumstances Exist.**

Mrs. Smith owns a unique piece of property situated next to a dedicated but semi-private roadway. Her back lot, if annexed into Highland City, would abut this roadway. The roadway would provide access to her newly constructed home. Special circumstances exist that predated Mrs. Smith’s efforts to secure a new living arrangement. The roadway that leads to the back lot does not yet have any public improvements due to a previous City Council’s decision to permit Mark and Darcie Miner, adjacent landowners, to delay street improvements until they later subdivided their parcel. Miners deeded the roadway to Highland City in 1988. In exchange, the City Council granted annexation, access, and a waiver of the road improvement requirements. **Exhibit D.** (Annexation Agreement between City and Miners). Thus, the city has permitted specialized, self-executing conditions to be applied exclusively to the Miners in the Annexation Agreement. Mrs. Evelyn Worlton’s home and parcel, just north of Miners’, also abuts the roadway, and we are unaware of any street improvement requirements imposed upon her.

As a result, Mark and Darcie Miner have used the roadway since 1988 without making any public improvements simply because they have not subdivided their parcel. Randy Rindlisbacher requested cooperation from the Miners. The Miners informed him that they have no intention to subdivide their property nor any willingness to contribute to the costs experienced by Mrs. Smith. Miners’ land is considerably larger than Mrs. Smith’s at a combined 4.40 acres, with 2.47 acres and 1.93 acres for both parcels. Miners would benefit far more from these street improvements if Miners ultimately subdivided. Yet, Highland City is presently requiring Mrs. Smith to install the street improvements. **Exhibit E.** (Miner Property).

When Mrs. Smith approached Highland City to obtain permission to build a second home on the parcel, she was informed that the “earliest” subdivider whose land abuts the roadway is

required to put in the curb, gutter, sidewalk, and asphalt along the roadway which is shared with Miners and Worlton. In contrast, Miners received a wholesale waiver of these requirements back in 1988. Nevertheless, Code Sections 5-4-205, 5-9-102, 5-9-104, 5-8-105 and design standards adopted in 2021 are now being applied unilaterally to Mrs. Smith although the Miners and Worlton share the common roadway and benefit through their daily access.

**An Undue Hardship Is Created Upon Mrs. Smith.**

Mrs. Smith and her son-in-law Randy Rindlisbacher are here at the City Council Communications Session to request a similar waiver from the city's road improvement requirements and design standards. The 56'-wide road extends approximately 400 feet from 9600 North to the southern end of Smith's parcel. The roadway is the only access to the back lot. Highland City does not allow flag lots nor does it permit detached accessory dwelling units, and Mrs. Smith does not desire to utilize these options. The roadway remains unpaved to this date only because Miners chose not to subdivide or further develop their property. The City Council cannot find that Mrs. Smith created this situation although she would be forced now to address it. As lawful as Miners actions are, the roadway remains unimproved. Mrs. Smith would be deprived of similar privileges granted to the Miners if she is literally forced to improve . . . streets which abut the subdivision. Literal enforcement of Sections 5-9-102 and 5-9-104 would work an extreme, undue hardship upon Mrs. Smith and would provide an unfair, unearned benefit upon the Miners.

**Waiving the Requirement is Essential to Mrs. Smith's Enjoyment of Substantial Property Rights Possessed by Others.**

Other landowners in the same zone, if zoned R 1-20, will continue to enjoy their property without installing new road improvements. In contrast, Mrs. Smith cannot enjoy similar substantial property rights unless she installs the road improvements. Waiving this requirement is essential to her ability to use the back lot for a much-needed home.

**Waiving the Requirement Does Not Substantially Affect the General Plan.**

Highland City Council has the authority to determine the comprehensiveness, extent and fullness of the General Plan which it has been done. Code 2-101. Granting the waiver to Mrs. Smith would not substantially affect the purpose and scope of the general plan because this waiver would flexibly adapt to the present and future needs of this small parcel only, without harming citywide land use concerns.

**Waiving the Requirement is Not Contrary to Public Interest.**

Mrs. Smith's desire to utilize her property by simply splitting it into two lots is in the public interest. She may improve her living conditions and make reasonable accommodations to meet her pressing health and financial concerns in a beautiful, well-planned city.

**Waiving the Requirement Meets the Spirit of Land Use Ordinances and Satisfies Substantial Justice.**

If the City Council grants the waiver on street improvements to Mrs. Smith, this decision would meet the highest and best use of land particular to her needs without harming others. If widespread development in the future warrants street improvements to satisfy land use standards and those improvements impact more than just three parcels and landowners through some future development, the City Council may then implement the 1988 Annexation Agreement applicable to Miners. Substantial justice will be done by equitably waiving the street improvement requirements imposed upon Mrs. Smith at this time.

### **RELIEF REQUESTED**

Therefore, Mrs. Smith respectfully requests a waiver of the road improvement requirements. The Highland City Development Code provisions 5-9-102 and 5-9-104 read:

#### **5-9-102 Required Improvements**

1. The subdivider shall improve, or agree to improve all streets, pedestrian ways or easements in the subdivision and on streets which abut, or serve as access to, the subdivision. Permanent improvement work shall not be commenced until improvement plans and profiles have been approved by the City Engineer and, if applicable, a bond agreement has been executed between the subdivider and the City.

#### **5-9-104 Curb, Gutter, Sidewalk and Asphalt Paving**

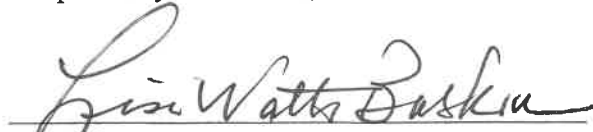
Curbs, gutters, sidewalks and asphalt paving shall be provided in front of all commercial and residential lots. . . .

These code provisions should be waived on grounds analogous to those applied to variance request applications. *See* Utah Code § 10-9a-702. Mrs. Smith has shown the inequity if these street improvement requirements apply to her alone.

### **CONCLUSION**

Mrs. Smith respectfully requests the City Council to waive the street improvement requirements for good cause. If granted, Mrs. Smith will begin the annexation process.

Respectfully Submitted,



Lisa Watts Baskin, Of Counsel  
Smith Hartvigsen PLLC

# EXHIBIT A

Ariel Photo of Smith Parcel,  
Utah County GSI, Deed,  
and Adjacent Properties with  
Explanations

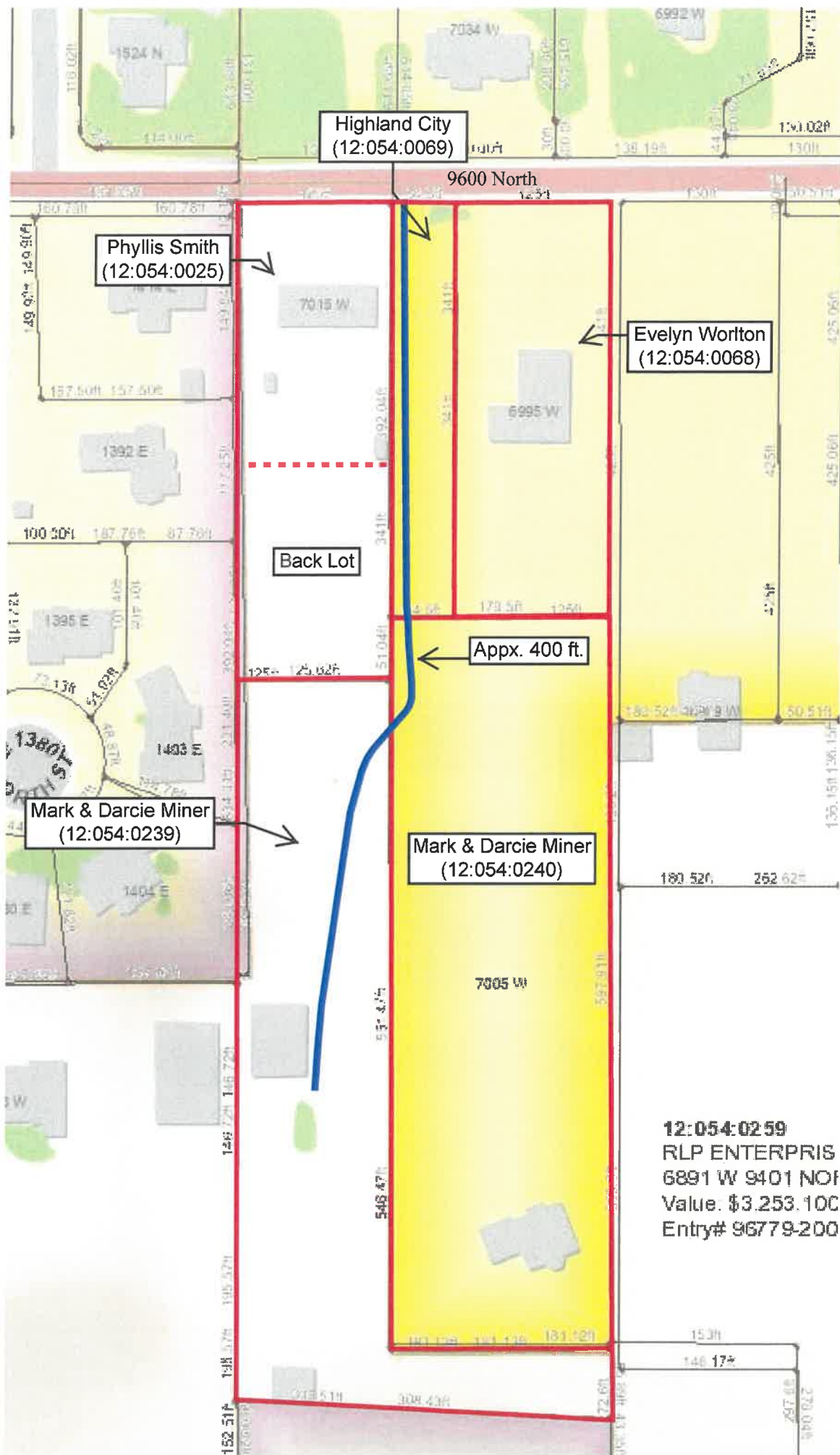


► Measurement

WE WOULD LIKE TO ANNEX INTO HIGHLAND CITY AND SUBDIVIDE BACK PARCEL. ARE WE ALLOWED TO USE THIS ROAD THAT IS OWNED BY HIGHLAND CITY AS ACCESS?

7015 W 9600 N  
12:054:0025

Open Deed Points Page



DEED OF RECONVEYANCE

THE DRAPER BANK AND TRUST, as Trustee under a trust deed dated August 20 19<sup>79</sup>, Executed by Lynn E. Smith and Phyllis B. Smith, as joint tenants and not as tenants in common, with full rights of survivorship as Trustor and recorded on August 27, 19<sup>79</sup> as Entry No. 33592 Book 1772 Page 411 of the records of the County Recorder of Utah County, Utah, pursuant to a written request of the Beneficiary thereunder, does hereby reconvey, without warranty, to the person or persons entitled thereto, the trust property now held by it as Trustee under said Trust Deed, which Trust Deed covers real property situated Utah County, State of Utah, described as follows:

COMMENCING at a fence intersection East along the Section line 1006.40 feet and South 16.50 feet from the Northwest corner of Section 10, Township 5 South, Range 1 East, Salt Lake Base & Meridian; thence East 125.00 feet along a fence line; thence South 392.04 feet; thence West 125.00 feet; thence North 392.04 feet to the point of BEGINNING.

ENT 42012 BK 3181 PG 259  
NINA B REID: UTAH CO RECORDER BY MB  
1993 JUN 28 10:51 AM FEE 10.00  
RECORDED FOR SECURITY TITLE AND ABSTRACT

Dated this 21st day of June, 19<sup>93</sup>

DRAPER BANK & TRUST, TRUSTEE

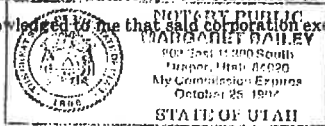
By:

State of Utah

:50

COUNTY OF SALT LAKE

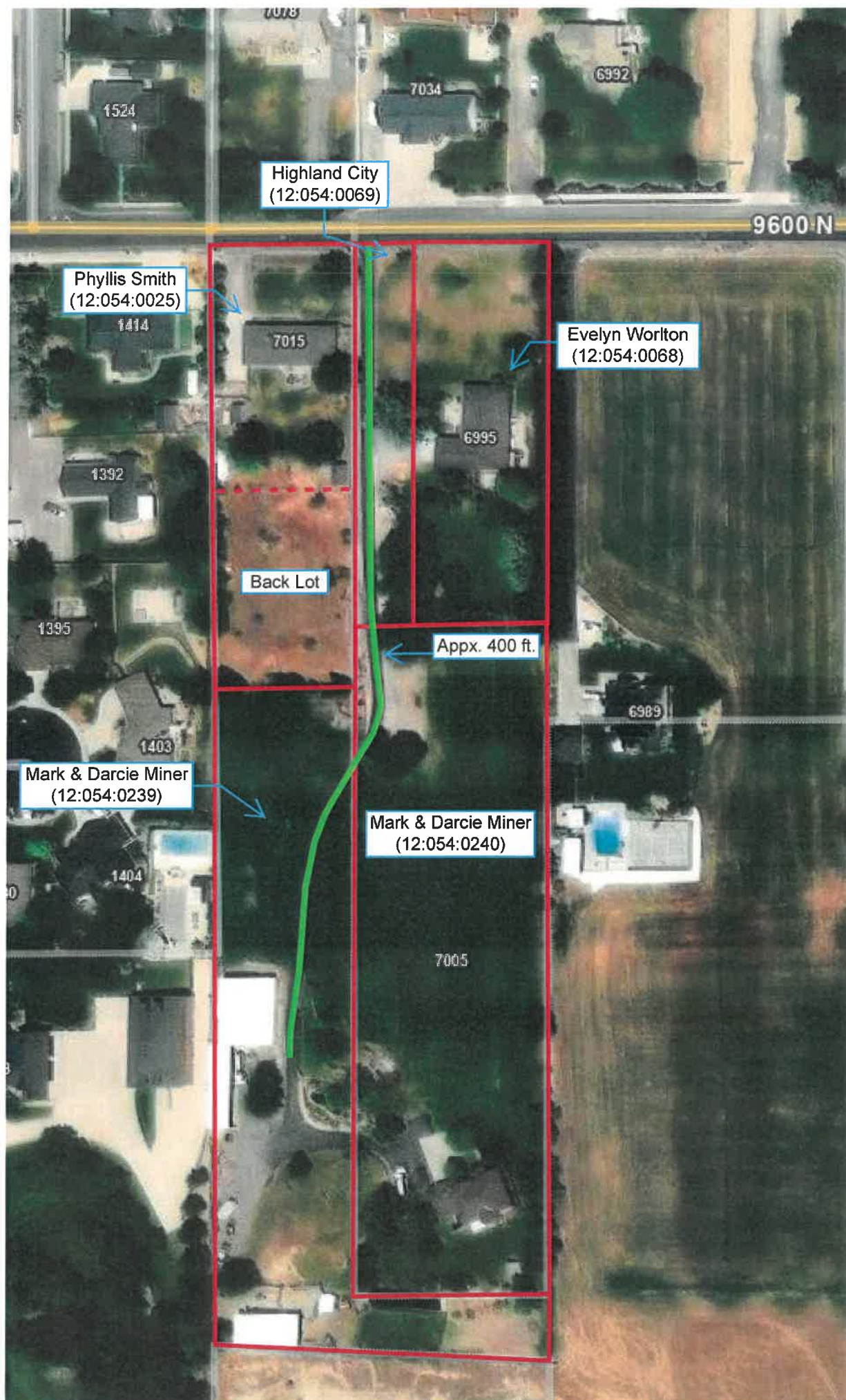
On the 21st day of June, 19<sup>93</sup>, personally appeared before me Glen B. Cherrington, who being by me duly sworn, did say that he is Vice President of the Draper Bank & Trust, a Corporation and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Glen B. Cherrington acknowledged to me that said corporation executed the Same as Trustee.



Notary Public

Residing in

My commission expires: 10-25-97



# EXHIBIT B

Photo of Mrs. Phyllis Smith



# EXHIBIT C

Highland City Code Sections and  
2021 Design Criteria

### **5-1-106 General Responsibilities**

1. The subdivider shall prepare a plat consistent with the standards contained herein and shall pay for the design and inspection of the public improvements required. The subdivider shall not alter the terrain or remove any vegetation from the proposed subdivision site or engage in any site development until he or she has obtained the necessary approvals as outlined herein.
2. The City Zoning Administrator shall review the plats for design, for conformity to the General Plan and to the Zoning Code; for the environmental quality of the subdivision design; and shall process the subdivision plats and reports as provided for in this Title.
3. Plats of proposed subdivisions shall be referred by the Zoning Administrator to such City departments and special districts, governmental boards, bureaus, utility companies, and other agencies which will provide public and private facilities and services to the subdivision for their information and comment. The City Zoning Administrator coordinates the comments received from all public and private entities and shall decide which agencies to refer proposed subdivision plats.
4. The City Administrator may request the City Engineer to make comments as to engineering requirements for street widths, grades, alignments and flood control, whether the proposed public improvements are consistent with this Code and other applicable ordinances and for the inspection and approval of all construction of public improvements. Street layout and overall circulation shall be coordinated.
5. The Planning Commission shall act as an advisory agency to the City Council. It is charged with making investigations, reports and recommendations on proposed subdivisions as to their conformance to the General Plan and Zoning Code, and other pertinent documents. The Planning Commission shall recommend approval, approval with conditions, or disapproval of the final plat to the City Council.
6. The City Attorney may be consulted by the Zoning Administrator to approve the form of the final plat if it is correct and acceptable that the subdivider dedicating land for use of the public is the owner of record, and that the land is free and clear of unacceptable encumbrances according to the title report, which shall be submitted by the subdivider.
7. For the purpose of administering the subdivision process, the City Zoning Administrator should act as liaison between the Planning Commission, staff, and the City Council. Prior to preliminary approval for a subdivision, the City Zoning Administrator shall review the proposed plat and request written comments from the City Council on the plat. The comments shall then be forwarded to the Planning Commission for evaluation. Upon approval of the Final Plat by the Planning Commission, the final plat will be sent to the City Council.
8. The City Council has final jurisdiction in the approval of subdivision plats; the establishment of requirements for and design standards of, public improvements; and the acceptance of lands and public improvements that may be proposed for dedication.

### **5-9-102 Required Improvements**

1. The subdivider shall improve, or agree to improve all streets, pedestrian ways or easements in the subdivision and on streets which abut, or serve as access to, the subdivision. Permanent improvement work shall not be commenced until improvement plans and profiles have been approved by the City Engineer and, if applicable, a bond agreement has been executed between the subdivider and the City.
2. Improvements shall be installed to permanent line and grade and to the satisfaction of the City Engineer and in accordance with the standard specifications adopted by the City Council. Cost of inspection shall be paid by the subdivider as outlined in the Consolidated Fee Schedule.

3. Notwithstanding the fact that the land on which the improvements will be located is dedicated at the time of the recording of a plat, the City shall not be responsible for the improvements, their construction, etc., until such time as there is an official acceptance of the property and the improvements by the City. Such acceptance shall be made as follows:
  1. The City Engineer shall have inspected the improvements and determined that they meet City standards.
  2. The subdivider shall deed the property to the City by warranty deed for official acceptance by the City Council.
  3. The subdivider shall provide a current title report, and a property tax clearance if determined to be necessary by the City Attorney's Office, showing that the warranty deed is signed by all of the owners of the property and that there are not any unacceptable encumbrances on the property.

#### **5-9-104 Curb, Gutter, Sidewalk And Asphalt Paving**

Curbs, gutters, sidewalks and asphalt paving shall be provided in front of all commercial and residential lots. Curb, gutter and paving shall be required on all industrial property. At the discretion of the Planning Commission, sidewalks may also be required for industrial property. At the discretion of the Planning Commission, sidewalk and/or curb and gutter improvements may be omitted in major residential subdivisions where all lots in the subdivision have a minimum lot size of 43,560 square feet if adequate provisions have been made for storm water runoff.

#### **5-8-104 Lots**

1. All subdivisions shall result in the creation of lots which are developable and capable of being built upon. A subdivision shall not create lots, and no building permit shall be issued for any lots which would make improvement impractical due to size, shape, steepness of terrain, location of watercourses, problems of sewerage or driveway grades, or other physical conditions.
2. All lots or parcels created by the subdivision shall have access to a dedicated street improved to standards hereinafter required. Private streets shall not be permitted unless the Planning Commission finds that the most logical development of the land requires that lots be created which are served by a private street or other means of access, and makes such findings in writing with the reasons stated therein. Land designated as public right-of-way shall be separate and distinct from lots adjoining such right-of-way and not be included in the area of such lots.
3. The minimum area and dimensions of all lots shall conform to the requirements of the Zoning Code for the district in which the subdivision is located.
4. The side lines of all lots, so far as possible, shall be at right angles to the street which the lot faces, or approximately radial to the center of curvatures, if such street is curved. Sidelines of lots shall be approximately radial to the center of curvature of a cul-de-sac on which the lot faces. The Planning Commission may allow exceptions to this requirement where considerations for solar orientation are involved.
5. Corner lots for residential use shall be platted wider than interior lots in order to permit conformance with the required street setback requirements of the Zoning Code.
6. A lot shall not be divided by a City limit line. Each such boundary line shall be made a lot line.
7. Remnants of property shall not be left in the subdivision which do not conform to lot requirements or are not required or more suitable for a common open space, private utility or public purpose.

8. Lot numbers shall begin with the number "1" and shall continue consecutively through the subdivision, without omissions or duplications; block designations shall not be used. Temporary address as approved by the City shall be noted.
9. Except as specifically authorized by this Title and the Zoning Code, not more than one dwelling unit shall occupy any one lot.

#### **5-4-201 Purpose**

The intent of the minor subdivision process is to allow for small subdivisions to be processed as quickly as possible. Minor subdivisions include those developments of three or fewer lots which meet the requirements of this Code. In this process, the preliminary and final plats, required for most subdivisions, are simplified and combined.

#### **5-4-202 Applicability**

The procedures set forth in this Chapter shall govern the processing of, and the requirements pertaining to, minor subdivisions, and shall take precedence over any other provisions of this Code to the contrary.

#### **2021 Design Standards (pp. 1-7)**

<https://www.highlandcity.org/DocumentCenter/View/1037>

#### **12.08.050 New Roads Serving Property Outside Highland City Corporate Limits**

1. The city shall not accept, extend, or construct roads, nor permit the extension or construction of roads on city-owned property, nor require the extension or construction of roads if such roads will primarily serve property outside the Highland City corporate limits and will increase the impact on existing public roads under the jurisdiction of Highland City, unless such new roads are planned for in the city's transportation plan or the property is included within the city's annexation policy plan.
2. At the discretion of the city council, the city may allow or require the roads described in subsection (A) if the city has in place an agreement on such terms and conditions as are acceptable to the city council with at least one of the following entities:
  1. With the owners of the property outside of Highland City, who shall be required to annex the property into Highland City and pay all costs of extending and constructing the roads to the property, acquiring rights of way, and upgrading or widening of existing roads to accommodate the increased impact; and/or
  2. With the governmental entity that has jurisdiction over the property, regarding the allocation of road construction and upgrade costs.
  3. The restrictions of this Section shall not restrict planned or existing local neighborhood street connections with existing cities.

**DESIGN CRITERIA FOR PUBLIC  
IMPROVEMENTS  
2021**



**HIGHLAND CITY**

Passed and Adopted by the Highland City Council, November 9th, 2021  
Ordinance No. O-2021-25

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## **DIVISION 1 GENERAL REQUIREMENTS**

### **Section 1.01 PURPOSE OF DOCUMENTS**

The purpose of the Design Criteria is to govern any design and engineering performed regarding public improvements. Engineers and designers working on projects within Highland City should thoroughly read and understand these requirements before designing and creating construction plan sets for public improvements.

This division contains design criteria that are in addition to normal and acceptable engineering practices including APWA, AWWA, AASHTO, and ACSE standards and are to be used on designs in the City. The City Engineer shall have authority to modify the criteria as needed to meet changing or unusual needs or conditions.

### **Section 1.02 USES OF THESE CRITERIA**

The criteria contained in this document are organized into divisions and sections covering specific areas of design. It will often be necessary to use a number of sections for the design of a single project. For instance, the design of a street may require the use of standards regarding streets, sidewalks, pressure pipe, sewer, and storm drain.

These standards are a guide for design, but not a substitute for good engineering. It is the obligation of the designer to use these standards responsibly and professionally to produce designs conforming with commonly accepted engineering practices and the Code of Professional Conduct. It will at times be desirable and/or necessary to vary from the standards in this document to produce a good product. When the need arises, please refer to the following section on modifications.

### **Section 1.03 MODIFICATIONS**

If a person believes it is necessary or desirable to modify the technical requirements and standards presented in this document in connection with a particular improvement, a request for modification may be requested from the City Engineer. Such a request shall be made in writing and will include:

- a) The standard to be modified.
- b) The proposed modification.
- c) Justification for the modification.

A written response will be given within a reasonable timeframe of the submittal of the request. A modification determination may be appealed to the appropriate land use authority. If a request seeks a modification of a land use regulation, the person shall follow the City's variance process.

### **Section 1.04 AMENDMENTS**

Amendments to these standards may be requested by writing the City Engineer with details and justification for an amendment. The City Engineer along with the City Staff will meet periodically to discuss proposed amendments and make recommendations to the City Council. The City Council will entertain changes to the standards once a year at their discretion.

## **DIVISION 2 STREET DESIGN CRITERIA**

### **Section 2.01 GENERAL**

The following street design criteria shall apply to all street designs in the City. It will be necessary to refer to the current master transportation plan for correct street designation. Design shall comply with the current AASHTO guidelines on geometric design. Additional design criteria are specified in the Standard Drawings.

### **Section 2.02 STREET CLASSIFICATION**

Streets will be classified according to their functional use as described below. Existing facilities may not fully comply.

#### **Sub-Section A. Arterials:**

The arterial streets provide continuous routes for the movement of large volumes of all types of through traffic across Highland and between Highland and outlying areas. Geometric design and traffic control should emphasize the safe movement of through traffic and minimize property access. Access to arterials shall be limited from local streets or individual driveways. Arterials will typically be multi-lane streets and shall have separate turning lanes at intersections. Arterials will connect to the Expressway system.

#### **Sub-Section B. Collectors:**

The collector streets provide continuous routes for the movement of large volumes of all types of through traffic across Highland and may also connect to outlying areas. Geometric design and traffic control should emphasize the safe movement of through traffic and minimize property access. Access to collectors shall be limited from local streets or individual driveways. Collectors will typically be two-lane streets with separate turning lanes at intersections and may be multi-lane streets if warranted by traffic volumes.

#### **Sub-Section C. Local Streets:**

The Local Streets serve as a means of access to abutting property. They are intended to serve low speeds, short trip routes, and a relatively uniform low traffic volume.

#### **Sub-Section D. Design Vehicle for Classification Type:**

All street classifications are designated to carry passenger vehicles and up to the following Design Vehicle Types:

- 1) Arterial Streets up to WB50.
- 2) Collector Streets up to WB40.
- 3) Local Streets up to SU30.

### **Section 2.03 TRAFFIC IMPACT STUDIES**

A traffic impact study may be necessary to identify, review and make recommendations for mitigation of the potential impacts a development may have on the roadway system. Physical and operational characteristics of the roadway are typically identified. The development design engineer is expected to follow the Utah Department of Transportation document entitled "Traffic Impact Study Requirements" (current edition). Generally, a traffic study may be required for all developments expected to produce over 100 average daily trips (ADT). The City engineer will have the authority to dismiss this requirement if it can be illustrated that the traffic impact will be negligible on the roadway system. All developments expected to produce over 100 ADT must be discussed with the City Engineer to determine the necessity of this requirement.

**Section 2.04 MINIMUM AND MAXIMUM GRADES**

The minimum acceptable grade slope measured at the centerline of the street is one-half percent (0.5%). The flow line of curb returns, knuckles and cul-de-sacs' shall also be no less than one-half percent (0.5%). The maximum slope varies depending on road classification. The sub-sections below shall be used to determine maximum slope.

**Sub-Section A. Arterials and Collectors:**

Arterial and Collector streets shall be limited to a maximum grade of eight percent (8%). Sustained grades (600 feet or more) shall be limited to seven percent (7%).

**Sub-Section B. Local Streets:**

Local streets shall be limited to maximum grade of twelve percent (12%). Sustained grades (600 feet or more) shall be limited to eight percent (8%).

**Sub-Section C. Cul-de-sacs:**

Cul-de-sacs shall be limited to a maximum grade of six percent (6%). The cul-de-sac shall terminate at the bulb with a grade not to exceed three percent (3%) for the last one hundred feet (100') of traveled surface.

**Sub-Section D. Vertical Alignment:**

All changes in vertical alignment shall be made by vertical curves with minimum length of one hundred feet (100') for local streets and three hundred feet (300') for arterial and collector streets. Actual vertical curve length shall be a function of design speed.

**Section 2.05 STREET DESIGN**

The following street design criteria shall apply to all street designs in the City. Additional design criteria are specified in the Standard Drawings.

**Sub-Section A. Design Speeds:**

The design speed will be used to design and establish geometric features including sight distance, intersections, etc. to current AASHTO standards. The following minimum design criteria shall be met:

- 1) Local streets shall be designed to at least 30 mph.
  - 2) Collector streets shall be designed to at least 40 mph.
  - 3) Arterial streets shall be designed to at least 50 mph
- Posted speed limits shall be 5 mph less than the listed design speeds.

**Sub-Section B. Horizontal Curves:**

Changes in horizontal alignment of over one degree shall be made using horizontal curves. In some cases horizontal alignment changes on local streets may be allowed without a horizontal curve if the resulting alignment functions as a two-legged intersection.

- 1) Local streets shall have a centerline radius of at least 150 feet.
- 2) Collector streets shall have a centerline radius of at least 370 feet.

**Sub-Section C. Vertical Curves:**

Streets shall be designed with vertical curves where grade changes greater than 1% occur. Vertical curves shall be designed using the appropriate design speed according to the latest AASHTO design guidelines. It is encouraged to include the "K" value in the profile illustrating the vertical curve.

**Sub-Section D. Cul-de-sacs:**

The cul-de-sac shall be limited to a maximum length of six hundred feet (600') as measured from the intersection centerline to the center of the cul-de-sac. Cul-de-sacs shall have a minimum radius of fifty feet (50'). Cul-de-sac returns shall have a twenty-four foot (24') radius at TBC. Downhill cul-de-sacs are strongly discouraged and may only be allowed if it can be demonstrated that surface drainage will be controlled in a manner acceptable by the City Engineer and approved by City Council.

**Sub-Section E. Widening Asphalt along an Existing Road:**

When a development project requires asphalt widening due to the placing of new curb and gutter along an existing road, the existing asphalt shall be cut a minimum of two feet (2') from the lip of gutter and twelve inches (12") from the existing edge of asphalt. The cross slope of the new asphalt must be between one percent (1%) and four percent (4%). The construction drawings must adequately show the cross slope and the asphalt "saw cut line" required to create the slope. Overlays shall be a minimum thickness of two inches (2").

**Sub-Section F. Finished Width of Exterior Roads:**

When roads are designed along the exterior of developed property, a minimum of ten (10) feet of unobstructed asphalt on the opposite side of the designed centerline must be constructed. Depending on the classification of the road, additional width may be requested by the City.

**Sub-Section G. Lane Widths, Turning Lanes and Clear Zones:**

- 1) The minimum traffic lane width will be 12 feet. Pavement widths are as defined in the Highland City Standard Drawings.
- 2) Turning lanes shall be incorporated on arterial and collector street designs. Length of separate turning lanes shall be designed using the current addition of AASHTO and based on a capacity analysis. Width of separate turning lanes shall be 12-foot width for arterial streets and 12-foot width for collector streets.
- 3) A three (3) foot clear zone shall be required on all streets built with a curb and having a speed limit of 25 mph or less. Streets with speed limits greater than 25 mph will use the AASHTO Standard to determine clear zone limits. Modifications to clear zone requirements will be considered for overhead electrical facilities where compliance will significantly impact existing trees. In no case will a clear zone of less than eighteen (18) inches be allowed. A clear zone modification must be approved by the City Engineer.

**Sub-Section H. Pavement Loading and Design:**

Asphalt shall be PG 58-28 Performance Graded Asphalt Cement placed in maximum of four (4) inch lifts. Road base shall be compacted to ninety-five percent (95%) modified proctor.

- 1) Table 2.1 illustrates the minimum requirements to be used for the roadway structural sections.

**TABLE 2.1**

MINIMUM STREET CROSS SECTION			
	Asphalt	Road Base	Sub Base
Residential	3"	8"	*
Collector	4"	8"	*
Arterial	6"	8"	*
* The Northwest Area of Highland City or Dry Creek Bench Area, shall have an 18" minimum sub base with an underlying woven geotextile as per APWA Section 31 05 19 on all street cross sections.			

# EXHIBIT D

1988 Annexation Agreement

Requested Copy  
Not Provided

# EXHIBIT E

Ariel Photo of Miner Property

120540126

500470016

1403

Mark & Darcie Miner  
(12:054:0239)

500440017

Mark & Darcie Miner  
(12:054:0240)

6989

120540156

120540240  
7005

120540239

120540241

Imagery Date: 2022-06-21

# EXHIBIT F

Pivot Excavation Estimate

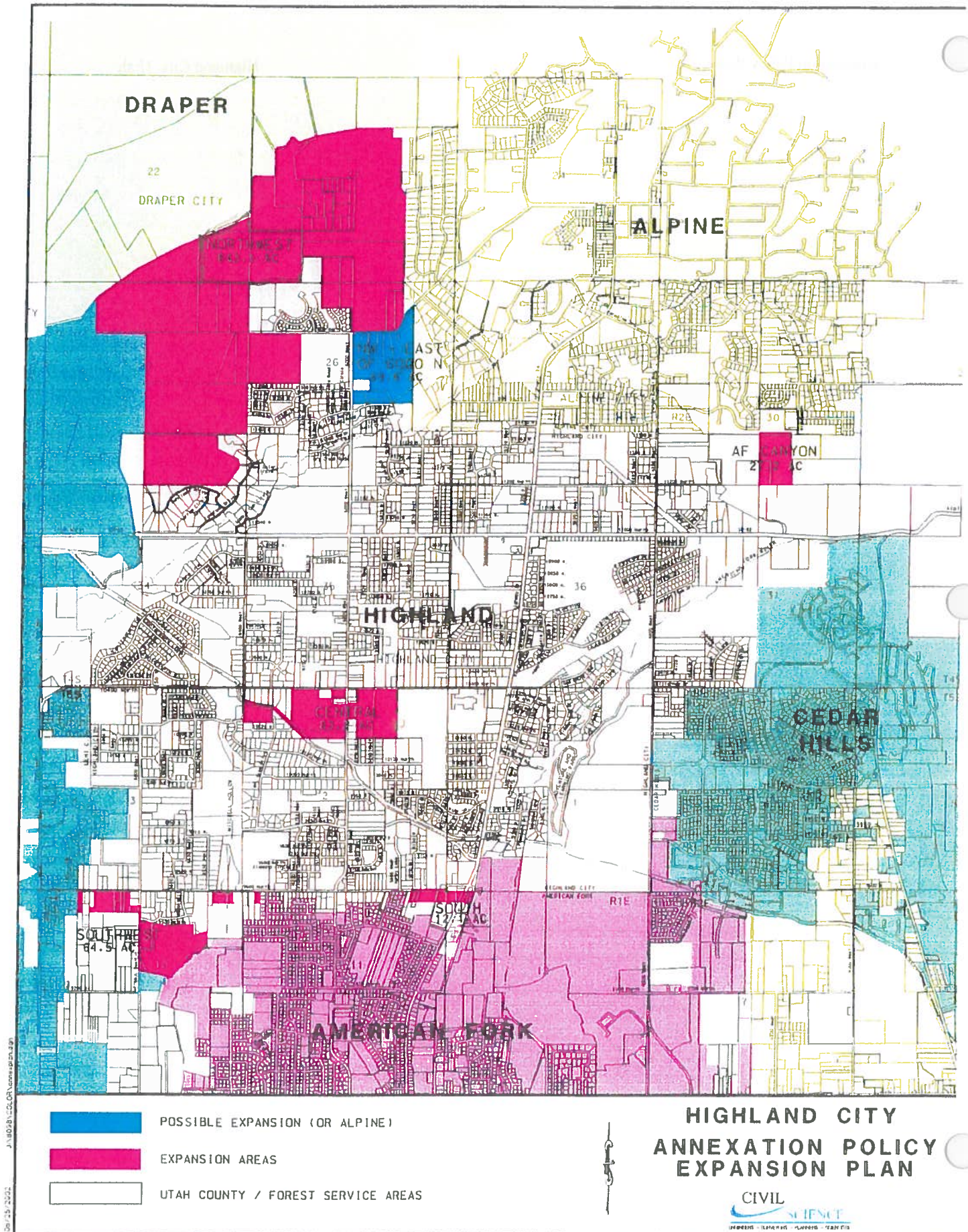


**PIVOT EXCAVATION**  
 11650 S State St. #300, Draper, UT 84020  
 (801)633-3075

### Phyllis Smith Home

Item#	Item Description	Estimated Quantity	Unit	Unit Price	Total
Plan Set: n/a					
Bid Date: 11/22/2022					
Startup					
	Mobilization	1.00	LS	\$12,000.00	\$12,000.00
	SWPPP Installation and Maintenance	1.00	LS	\$5,000.00	\$5,000.00
	Materials Testing Allowance	1.00	LS	\$4,000.00	\$4,000.00
	Traffic Control	1.00	LS	\$7,500.00	\$7,500.00
	Survey/Staking	1.00	LS	\$4,000.00	\$4,000.00
Total Price for Startup					\$32,500.00
Site Work					
	Remove Existing Septic Tank	1.00	LS	\$5,000.00	\$5,000.00
	Grade PUE upon completion	1.00	LS	\$7,500.00	\$7,500.00
Total Price for Earthwork/Misc.					\$12,500.00
Sewer					
	Connect to existing sewer main (pour in place manhole)	1.00	EA	\$ 7,500.00	\$7,500.00
	8" (0' - 8' depth)	375.00	LF	\$ 60.00	\$22,500.00
	8" (9' - 16' depth)	-	LF	\$ 65.00	\$0.00
	5' Manhole	-	Ea	\$ 6,150.00	\$0.00
	4' Manhole	2.00	EA	\$ 5,350.00	\$10,700.00
	Sewer Service	2.00	EA	\$ 2,350.00	\$4,700.00
Total Price for Sewer					\$45,400.00
Storm Drain					
	Connect to existing storm drain	1.00	EA	\$ 2,250.00	\$2,250.00
	15" RCP	353.00	LF	\$ 50.00	\$17,650.00
	18" RCP	-	LF	\$ 3.00	\$0.00
	24" RCP	-	LF	\$ 62.00	\$0.00
	36" RCP	-	LF	\$ 100.00	\$0.00
Total Price for Storm Drain					\$19,900.00
Culinary Water					
	8" Culinary Water Line	375.00	LF	\$ 54.00	\$20,250.00
	Gate valves	1.00	EA	\$ 2,650.00	\$2,650.00
	Tees' and crosses w/ thrust blocks	1.00	EA	\$ 1,650.00	\$1,650.00
	3/4" Service	2.00	LS	\$ 2,175.00	\$4,350.00
	Connection	-	EA	\$ 2,600.00	\$0.00
	Hot Tap Connection W/ Construction Valve	1.00	EA	\$ 7,500.00	\$7,500.00
	Blowoff	1.00	LS	\$ 1,250.00	\$1,250.00
	Install fire hydrant	1.00	EA	\$ 7,375.00	\$7,375.00
	Loop as needed	-	EA	\$ 2,250.00	\$0.00
	Bends With Thrust Blocks	-	EA	\$ 1,750.00	\$0.00
	Water Testing	1.00	LS	\$ 2,250.00	\$2,250.00
Total Price for Culinary Water					\$47,275.00
Hardscapes					
	Asphalt Patch (3")	3,000.00	SF	\$ 3.25	\$ 9,750.00
	Remove Existing Asphalt	3,000.00	SF	\$ 1.25	\$ 3,750.00
	8" Road Base in Roadway (Trench Patch)	3,000.00	SF	\$ 2.15	\$ 6,450.00
		-	LF	\$ 27.00	\$ -
Total Price for Hardscapes					\$19,950.00

Item#	Item Description	Estimated Quantity	Unit	Unit Price	Total
<b>Imported Trench Backfill</b>					
	Sewer Trench Backfill	600.00	CY	\$ 25.50	\$15,300.00
	Water Trench Backfill	175.00	CY	\$ 25.50	\$4,462.50
	Storm Trench Backfill	-	CY	\$ 25.50	\$0.00
	Pressure Irrigation Trench Backfill	-	CY	\$ 25.50	\$0.00
<b>Total Price for Trench Backfill</b>					<b>\$19,762.50</b>
<b>Total Bid Price</b>					<b>\$197,287.50</b>



**Exhibit B**

**HIGHLAND CITY ANNEXATION POLICY  
PLANNED EXPANSION**

AREA	ACRES	Zone	LOTS	POPULATION
Northwest Area	843.1	R-1-40 with OS Overlay	1011	4643
Northwest - East	69.6	R-1-40	70	323
Central	83.2	R-1-40	90	416
AF Canyon	27.2	R-1-40 with OS Overlay	32	149
Southwest	64.5	R-1-20	140	644
South	12.1	R-1-20	26	120
Total	1099.7		1369	6295

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The Council discussed the bill from S & L on the snow removal, noting that the bill is for a larger amount than the recommended \$1,500 for payment. Wini noted that Jay had requested that the City pay only this amount, and that he needs to review the other billing.

Roger Tracy moved approval of the bills. Motion was seconded by Kreg Kirkham, and passed by unanimous vote.

14. Annexation Request by Mark and Darcie Miner

Kreg Kirkham reported that the Planning Commission had approved the request for a two-acre annexation for Mark and Darcie Miner. Bill Blomquist, Chairman of the Planning Commission, noted that the Planning Commission recommended that a variance be given to the Miners to use the roadway and have it deeded to the City, that the roadway be graveled with road base, a cul-de-sac set with gravel, improvements be waived for the one lot, and a lien be put on the property noting if it is subdivided that improvements will be put in.

Mayor Miller noted that the City has to accept maintenance on the road if it is graveled. He stated he didn't know if the City would want to accept maintenance on the road until it is paved.

There was a discussion as to whether the frontage requirements were met. Bill indicated that it is covered by the cul-de-sac.

Kreg Kirkham moved that the Council approve the two-acre annexation for Mark and Darcie Miner, and in accordance with the Planning Commission's recommendation that the Council grant a variance on the road to allow continuance of the road, and waive the curb and gutter requirements. If the Miner's determine to subdivide they would have to meet the requirements for the road, curb and gutter, and a note and/or lien explaining such would be attached to the property by the City Attorney. There was no second to the motion.

There was further discussion on the matter. Rick Westwood noted his concern for a concept of development where everyone who comes in for a building permit pays equivalent to everyone else who builds. This would mean that people like the Miners would pay equal fees as those who come into a subdivision. He noted that it averages \$7,000 per lot for subdivision development to cover park fees, impact fees, etc. He stated he has asked the Planning Commission to look at this concept. He noted concern to allow someone to come in and be permitted to have a graveled roadway. Bill asked what the City Council would require? He asked if they are requiring the Miners to put in a hard-surfaced road, curb and gutter, sidewalk, and sewer line? Rick stated if

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the City were to waive these requirements, then he felt there should be a contribution to whatever everyone else in a subdivision has to pay.

Merlin Larson stated that the Planning Commission felt by dedicating the 56' road, whether the City accepts it or whether it is a lane, they won't have to acquire that property later to develop a road to meet the specifications. Bill noted that the Planning Commission's recommendation does just that by attaching the property for future development.

Mayor asked how much property Arland Russon owns to the west. Mark Miner noted he owns some property, but it is not farmable as it is gully. He also noted that the sewer could not be brought into that property because of the terrain.

Boyd Wilson noted that the Planning Commission has attached the concerns by a lien.

Kreg Kirkham moved that the Council grant annexation approval and access to the property through a private lane to be dedicated and approved at the time it is subdivided. Motion was seconded by Lowell Nelson. Motion passed by the following voting in favor: Roger Tracy, Kreg Kirkham, Lowell Nelson. Rick Westwood opposed.

Rick stated that the variance he is familiar with approved by a Council previously is Jerry Coates, and he had frontage on a second home, and they have frontage on the road. Any further development stipulated they would have to improve the road, and with other homes going in it would generated funds for the improvement. He felt with the Miner property there would not be another home go in. Mayor Miller felt that the Planning Commission should address the private lane concept. He also noted concerns for the number of requests for variances. He wondered if there should be a review of the ordinances and see if they are doing what we want them to do. He felt if the Council are always changing them, we weaken our position to enforce them.

Boyd Wilson noted that he felt the Planning Commission had addressed the annexation issue by a lien. He stated he felt the City is getting themselves backed into a corner, with those individual lots that have frontage on a city street and yet are not required to provide for street improvements. Someday we need to repair the roads, and the City needs to address the issue of road development costs.

Merlin noted that the City needs to address a master road plan and get it approved before there is too much cost involved in moving homes, etc.

Darcie Miner noted that even though they don't have the

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major expense of curb and gutter, they still have a lot of expense with the property that another person coming into a building lot wouldn't have. She noted they need to get trees out just to prepare a building lot, and build a road back to the lot.

Wini noted that the Council needs to pass an ordinance amending the articles of incorporation and a formal resolution to adopt the annexation.

Kreg Kirkham moved that the Council adopt Ordinance No. 1988-2 "ORDINANCE OF AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE CITY OF HIGHLAND". Motion was seconded by Rick Westwood, and passed by the following voting in favor: Roger Tracy, Kreg Kirkham, Lowell Nelson, and Rick Westwood. Kent Day abstained as he joined the Council at this point of the discussion.

Kreg Kirkham moved that the Council approve Resolution No. 1988-5 "MARK AND DARCIE MINER ANNEXATION." Motion was seconded by Roger Tracy, and passed by the following voting in favor: Roger Tracy, Kreg Kirkham, Lowell Nelson, and Rick Westwood. Kent Day abstained.

15. Planning Commission Recommendation for American Fork Power Plant

Kreg Kirkham noted that the Planning Commission endorsed the American Fork Power Plant in concept, but they have had some reservations.

Bill noted that EPA approval has been given and approval from the federal agencies, but the Planning Commission haven't seen any of them. He stated that he has told the representatives of the American Fork Power Plant that the Planning Commission would like to review these. Bill also reported that the Planning Commission are looking at modifying the substation and utility ordinance to allow installation of a power plant of this type. He noted that Larry Rhodes thought it might bring a problem to the City.

Kreg reported that Larry Rhodes had prepared a letter to the Planning Commission noting concerns that the American Fork Power Plant is a private enterprise, and that it is being presented as a public utility. Larry has also expressed concern that we are entering into an active commercial zone, which may present problems in terms of zoning and how the Gibbons and Reed project has been handled to date.

Mayor Miller noted if the plant isn't built in Highland, but under the County's jurisdiction, he asked how it would be zoned. He noted the County would have the same problem as Highland City in determining how to zone the project.