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TO: Mayor and Council

FROM: Sumedh Bahl, Community Services Area Administrator  
Jackie Beaudry, City Clerk  
John Seto, Safety Services Area Administrator

CC: Steven D. Powers, City Administrator

SUBJECT: Council Agenda Responses

DATE: 12/1/14

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**C-1 – An Ordinance to Amend Chapter 55 (Zoning), Section 5:10.20.A Downtown Character Overlay Zoning Districts Building Massing Standards (CPC Recommendation: Approval – 6 Yeas and 3 Nays) (Ordinance No. ORD-14-12)**

**Question:** At the last meeting, there were a couple of requests/open items (e.g., renderings of the new 120 ft. tower proposal, shading impacts/modeling, neighborhood review/feedback, possible need for a formal planning commission review of the ORC recommendation). Staff had requested that a postponement be made until the second meeting in December rather than to this meeting and the packet for this meeting did not include any updates on these items – will they be available for the Dec. 15<sup>th</sup> meeting as staff originally suggested, and, if not, when would they be available? (Councilmember Lumm)

**Response:** The requested information has been included in the revised agenda packet and is also attached.

**DC-1 – Adoption of Council Rules**

**Question:** Revised Rule 10 on Council Conduct of Discussion and Debate: It's unclear how time will be kept under this revision. For example, who would be responsible for totaling up the 25 minutes? Who would be responsible for pointing out to the individual councilmember when their time was up? (Councilmember Grand)

**Response:** The City Clerk, Deputy City Clerk, or City Administrator, could keep track of time and notify the Mayor when a councilmember's time limit has been met.

**Question:** Proposed Ethics Rule 12: Does the proposed rule include or exclude direct communication with staff under the level of Service Area Administrator related to work on boards, commissions, and committees? (Councilmember Grand)

**Response:** The rule would include direct communication between a councilmember and staff that occurs without the knowledge of the Service Area Administrator and that is more than a routine request for information.

### **DC-6 - Resolution Directing the City Administrator to Revise FOIA Administrative Policy**

**Question:** What would the approximate cost of waiving fees to media for FOIA requests? (Councilmember Grand)

**Response:** For calendar year 2014, excluding Police Department requests, which are separately managed, the City has answered 365 FOIA requests. Of those requests, it is estimated that between 400 and 500 hours of staff time were utilized without charge to the requestors to manage the administrative processing of the requests. This includes logging and tracking requests, the compiling of records, review and redaction of the requested records, and preparation of a response letter. Under the current policy, we do not charge permitted fees for the first hour of staff time. Of the 365 requests, only 14 requests generated fees that were billed back to the requestor, some of which were estimates based on broad and time-consuming requests.

It is difficult to estimate the cost of providing FOIA to the media at no charge, as it is unknown how the scope of the requests would change if cost was not a factor. We do know that currently many media representatives (self-identified in their requests) and others who submit FOIA requests, routinely simplify or narrow their requests so as to limit the amount of time and resources it would take for staff to answer. In many cases, there is a back and forth between the requestor and staff to clarify the request and narrow the scope in order to avoid an extensive amount of City time and resources used in compiling the records, and to allow for the release of documents without a burdensome cost to the requestor. This may not occur in the future if the policy allowed an unlimited waiver of costs. Additional time to study this question would be needed to provide guidance or recommendations.

From the AAPD records, as of December 1, AAPD has had 523 FOIA requests. Approximately 85 of these requests are from media, provided that they informed the City that these are media requests. Like the Clerk's Office and under current policy, AAPD does not charge permitted fees for the first hour of staff time.

AAPD FOIA experience is that media requests usually take the longest to prepare. If media requesters knew their fee would always be waived it is their opinion that requests would increase to an unmanageable amount of information being requested (for the current personnel to handle). Many of those involve producing police car videos and other audiovisual records for which there is an actual out of pocket cost to the City for the reproduction.

**Question:** What would the process look like for Council review of FOIA denials?  
(Councilmember Grand)

**Response:** The City Attorney's Office will provide a response.

**DB-1 – Resolution to Approve the Woodbury Club Apartments Annexation, 53.61 Acres, Southwest Corner of Nixon Road and M-14 (CPC Recommendation: Approval – 8 Yeas and 0 Nays)**

**Question:** What is the anticipated timeline for the various elements of this project – annexation finalized, request for council approval of zoning and site plan, construction start date and completion date? (Councilmember Lumm)

**Response:** The annexation will be finalized after the State Office of the Great Seal approves the annexation. The site plan and zoning will be brought to City Council once a funding mechanism for the construction of the Nixon/Green/Dhu Varren intersection is determined as the intersection's current level of service is poor and no new development can be approved until a plan is in place for its improvement.

**Question:** What is the current plan and timeline for the Nixon/Green/Dhu Varren intersection improvements? What is the projected total cost of that project and what are the anticipated funding sources and approximate contribution from each source (including this developer)? (Councilmember Lumm)

**Response:** A public meeting to present the recommended design is scheduled for December 11, 2014 (6:00 pm, Clague Middle School). The preliminary recommended cost (of design and construction) is in the \$1 million dollar range. The developers of the proposed Nixon Farms, Woodbury Club, and the Northsky development have been offered the chance to fully fund the design and construction of the recommended design in order to be able to construct the intersection improvements as soon as possible and enable the subsequent construction of their respective projects (if approved). Each would pay for their fair share of the total cost based on the number of trips each contributed to the intersection, according to their traffic studies. If the private developers decline this option, the improvement project will be included in the CIP and funding source will be identified at that time.

**Question:** The staff report to Planning Commission included a discussion of a potential city park purchase of a portion of this site (about 25 acres on east side of site). What is the current status on that potential purchase and what would be the next steps, timeline,

approximate cost/funding source(s)? Also, what type of park use is envisioned?  
(Councilmember Lumm)

**Response:** City staff is working with the developer on a possible acquisition of the 25 acres of open space on the east side of the site. Those negotiations are ongoing. The cost of the acquisition would be paid with park acquisition millage dollars. If the area were acquired, it would be used as a natural area because of the sensitive natural features on the site which include a portion of a large wetland.

**Question:** I understand that at this meeting, Council is only approving the annexation and that the zoning and site plan come later, but can you please confirm that there is no liability to the City if the annexation takes place, but council does not ultimately approve the contemplated zoning or the proposed site plan? Can you also please confirm that Planning Commission's recommending approval of the site plan and zoning does not create any implied commitment and/or resulting liability should the City annex the property, but not ultimately approve the project as planned? (Councilmember Lumm)

**Response:** The City Attorney's Office will provide a response.

**Question:** When is it expected the Nixon Farm (North and South) projects will come forward for approval of annexation, zoning, and site plan? (Councilmember Lumm)

**Response:** The Nixon Farm North and South projects are scheduled for Planning Commission consideration on December 16, 2014. If recommended for approval at that time, the annexation petitions for each are most likely to be scheduled for City Council action in January 2015.