



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Meeting Notice and Agenda Town Council

Thursday, November 5, 2020

3:00 PM

Council Chambers

**IN-PERSON ATTENDANCE AT PUBLIC MEETINGS HAS BEEN SUSPENDED UNTIL
FURTHER NOTICE. ATTEND VIA ZOOM ID 667 890 2153 OR WATCH LIVE STREAMED
MEETINGS AT:**

<https://paradisevalleyaz.legistar.com/Calendar.aspx>

1. CALL TO ORDER / ROLL CALL

THIS MEETING WILL BE HELD BY REMOTE PARTICIPATION ONLY

PUBLIC PARTICIPATION IN THE MEETING

Members of the public are encouraged to participate in the meeting via the following options:

1. View the live stream at <https://paradisevalleyaz.legistar.com/Calendar.aspx>
 - (a) Click on Calendar Tab
 - (b) Look for Town Council meeting (you may have to select it from the dropdown list) and find the meeting date
 - (c) Click the "In Progress" link in the column titled Video
 2. Zoom Conference
 - (a) Computer: <https://zoom.us/j/6678902153>
 - (b) Telephone: 1 669 900 6833 Meeting ID 667 890 2153
 3. Submitting questions and comments:
 - (a) Visit <https://paradisevalleyaz.legistar.com/Calendar.aspx>, search for the meeting date, and click "eComment". Locate the agenda item you are interested in and click "Comment" (Please submit comments at least 1 hr prior to meeting)
 - (b) Email dmiller@paradisevalleyaz.gov (Please submit comments at least 1 hr prior to meeting)
 4. Speaking during Call to the Public / Public Hearings
 - (a) Visit <https://paradisevalleyaz.legistar.com/Calendar.aspx>, search for the meeting date, and click "eComment". Locate the agenda item and click "Register to Speak". Join the meeting by dialing 1 669 900 6833 Meeting ID 667 890 2153
 - (b) If attending by Zoom Video Conference, click the chat button and enter your name and the agenda item you would like to address
- (These meeting participation guidelines are pursuant to Town Council Resolution 2020-08 adopted March 17, 2020.)*
- Notice is hereby given pursuant to A.R.S. §38-431.02. that members of the Town Council will attend by audio/video conference call.*

2. EXECUTIVE SESSION

- [20-417](#) Discussion or consideration with legal counsel to consider the Town's position and instruct negotiators regarding a potential contract for ambulance services as authorized by A.R.S. 38-431.01(A)(4); and legal advice regarding the Town's procurement code and request for proposal for ambulance services as authorized by A.R.S. § 38-431.03(A)(3).
- [20-423](#) Discussion or consultation with the Town Attorney for legal advice regarding the Federal Fair Housing Act and short term rental law as s as authorized by A.R.S. §38 431.03(A)(3.)
- [20-414](#) The Town Council may go into executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the items listed on the agenda as authorized by A.R.S. §38-431.03(A)(3).

3. STUDY SESSION ITEMS - APPROXIMATE START TIME 4:00 PM

The Study Session is open to the public however the following items are scheduled for discussion only. The Town Council will be briefed by staff and other Town representatives. There will be no votes and no final action taken on discussion items. The Council may give direction to staff and request that items be scheduled for consideration and final action at a later date. The order of discussion items and the estimated time scheduled to hear each item are subject to change.

- [20-426](#) Discussion of Sober Living Homes/Reasonable Accommodation Process, Assisted Living Homes, Short Term Rentals, and Timeshares/Fractional Ownership

Staff Contact: Andrew Miller, 480-348-3691

4. BREAK

5. RECONVENE FOR REGULAR MEETING 6:00 PM**6. ROLL CALL****7. PLEDGE OF ALLEGIANCE*****8. PRESENTATIONS*****20-425**

Scottsdale Unified School District representatives will update the Town Council on the reconstruction of Cherokee Elementary School

Recommendation: Receive a presentation

Staff Contact: Chief Wingert 480 948-7410

9. CALL TO THE PUBLIC

Citizens may address the Council on any matter not on the agenda. In conformance with Open Meeting Laws, Council may not discuss or take action on this matter at this Council meeting, but may respond to criticism, ask that staff review a matter raised, or ask that it be placed on a future agenda. Those making comments shall limit their remarks to three (3) minutes. Please fill out a Speaker Request form prior to addressing the Council.

10. CONSENT AGENDA

All items on the Consent Agenda are considered by the Town Council to be routine and will be enacted by a single motion. There will be no separate discussion of these items. If a member of the Council or public desires discussion on any item it will be removed from the Consent Agenda and considered separately. Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.

20-415

Minutes of Town Council Meeting October 22, 2020

20-420

Approve Resolution 2020-34 Amending the Fiscal Year 2020/21 Adopted Budget

Recommendation: Approve Resolution 2020-34 Amending the Fiscal Year 2020/21 Adopted Budget

Staff Contact: Douglas Allen

11. PUBLIC HEARINGS

The Town Council may hear public comments and take action on any of these items. Citizens may address the Council regarding any or all of these items. Those making comments are limited to three (3) minutes. Speakers may not yield their time to others. Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.

12. ACTION ITEMS

The Town Council May Take Action on This Item. Citizens may address the Council regarding any or all of these items. Those making comments are limited to three (3) minutes. Speakers may not yield their time to others. Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.

13. FUTURE AGENDA ITEMS

The Town Council May Take Action on This Item. The Mayor or Town Manager will present the long range meeting agenda schedule and announce major topics for the following meeting. Any member of the Council may move to have the Town Manager add a new agenda item to a future agenda. Upon concurrence of three more Members, which may include the Mayor, the item shall be added to the list of future agenda items and scheduled by the Town Manager as a future agenda item within 60 days.

20-416

Consideration of Requests for Future Agenda Items

Recommendation: Review the current list of pending agenda topics.

Staff Contact: Jill B. Keimach, Town Manager, 480-348-3690

14. MAYOR / COUNCIL / MANAGER COMMENTS

The Mayor, Council or Town Manager may provide a summary of current events. In conformance with Open Meeting Laws, Council may not have discussion or take action at this Council meeting on any matter discussed during the summary.

15. ADJOURN

AGENDA IS SUBJECT TO CHANGE

**Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Town Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.*

The Town of Paradise Valley endeavors to make all public meetings accessible to persons with disabilities. With 72 hours advance notice, special assistance can also be provided for disabled persons at public meetings. Please call 480-948-7411 (voice) or 480-483-1811 (TDD) to request accommodation to participate in the Town Council meeting.



Action Report

File #: 20-426

TO: Mayor Bien-Willner and Town Council

FROM: Andrew Miller, Town Attorney
Jill Keimach, Town Manager

DATE: November 5, 2020

CONTACT:

AGENDA TITLE:

Discussion of Sober Living Homes/Reasonable Accommodation Process, Assisted Living Homes, Short Term Rentals, and Timeshares/Fractional Ownership

BACKGROUND:

Town Manager Jill Keimach provided an update to the Council on October 8, 2020 regarding some of the code enforcement activities and other matters of note over the summer months, including a summary of issues related to Assisted Living, Group/Sober Living Homes and Short-Term Rentals impacting the quiet enjoyment of neighborhoods. This report is a follow-up to that presentation with a focus on four specific land use-related matters that have one factor in common, that is, they are occurring in residentially zoned neighborhoods. The four matters to be addressed in the report include: 1) Assisted Living Homes, 2) Sober Living Homes and the related Reasonable Accommodation Process, 3) Short-Term Rentals, and 4) Time Shares/Fractional Ownership issues.

The attached memo goes into significant detail on each of these areas, including the prior Town ordinances and resolutions related to each of these uses, a brief history of Town staff enforcement of these ordinances and resolutions, prior enforcement efforts, and other issues to consider (see "Prior Adopted Ordinances, Resolutions, and Town Enforcement Actions" attached hereto). One fact pattern that is common to three of these four "land uses" is that they have some form of protection or preemption under federal or state law, which makes responding to neighborhood concerns regarding the impacts of each "use" problematic. The sections below provide a summary of the prior ordinances, enforcement efforts, and preemption issues along with recommendations on changes to the existing ordinances, resolutions, or processes related to each of these four land uses:

Assisted Living Homes:

- Assisted living homes are protected by the Fair Housing Act and the ADA, both of which "preempt" local codes, ordinances, and processes
- Any person with a disability, their representative, or a developer or provider of housing for individuals with a disability may request from a municipality a "reasonable accommodation" in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling

- The Town adopted Ordinance No. 567 in November 2005 to provide for the regulation of Assisted Living Homes
 - Spacing requirements apply
 - Occupancy limited
 - DHS Licensing required at all times
 - Code compliance and parking requirements also apply
- No complaints about violations by Assisted Living Homes
- Based on a recent review of the regulations in other municipalities, the staff would recommend four changes to the current ordinance provisions and review process:
 - Change the occupancy allowed from 10 residents “not including staff” to up to 10 residents and 2 staff members for a total number of residents and staff not to exceed 12 residing in the home at any given time
 - Change the parking from a requirement that “all parking by staff...shall be on site” to “adequate parking for both residents and staff shall be provided on site,” thus making parking part of the analysis for approval of a particular application
 - Increase the spacing between Assisted Living Homes from 1,320 feet to 2,000 feet and add sober living homes to the spacing requirement for consistency
 - Police to provide Crime Prevention Through Environmental Design (CPTED) guidelines during the permitting process to encourage actions by owners/operators of the assisted living home to keep their residents secure and safe

Sober Living Homes/Reasonable Accommodation:

- Sober living homes are protected by the Fair Housing Act (“Act”) and the Americans with Disabilities Act (“ADA”) for “preemption” of local codes, ordinances, and processes
- Similar to an Assisted Living Home, any person with a disability, their representative, or a developer or provider of housing for individuals with a disability may request from a municipality a “reasonable accommodation” in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling
- The Town adopted Resolution 1252 in March 2012 (modified by Resolution 2017-15 in June 2017) to establish a reasonable accommodation process to address the requirements of the Act and the ADA related to existing sober living homes and any future requests for sober living homes in the Town
- The Town has had several applications for a reasonable accommodation in the past, many of which were withdrawn prior to a hearing
- There are no known sober living homes in the Town today
- Based on the experience with a recent application, Town staff would recommend the following changes in the Town’s processing of Reasonable Accommodation applications and in one of the RA “Requirements”:
 - Provide an overview of the process, printed and on the Town website.
 - Don’t rely on the applicant to mail the notice of the RA application to residents within 1,000 feet. Instead, it should be sent out by the Town staff
 - Mailings of the notice should be in envelopes that have the Town logo on the envelope in order to be noticeable when they arrive
 - The initial notice should include a letter from the Town staff with a full description of the

RA process, what to expect, timelines, and background on the Fair Housing Act in order to allay concerns and answer many of the initial “what if” questions

- Have additional information and an “updates” link on the Town website, but do not rely on the Town website for notice of the application itself
- Have an experienced staff person ready and available to answer questions from residents on a timely basis
- Have staff available for neighborhood meetings with residents to answer questions and alleviate fears of the unknown
- Change Reasonable Accommodation Requirement #8 in Resolution No. 2017-15 from 1,320 feet spacing between other group homes or assisted living homes to 2,000 feet

Short Term Rentals:

- Short Term Rental (STR) properties can look to the state statutes first adopted in May 2016 with SB1350 for “preemption” of local codes and ordinances
 - Town may not prohibit STRs
 - Town may not restrict the use of or regulate STRs based on their classification, use or occupancy; meaning the Town should treat them the same as other residential properties and not have special regulations that apply only to STRs
 - Can regulate nuisances (such as unruly gatherings), limit commercial use, and require responsible person/emergency contact
- Several ordinances have been adopted over time to address the impacts of STRs in the Town, including:
 - Home Occupation -no commercial use and parking must be on site and not in dirt or grass yard areas
 - Unruly Gatherings - significant penalties and fees can be assessed when such events happen and can be proven
 - Short Term Rentals - responsible party “registration,” prompt response to any PD emergency contact of owner or responsible person, requirement to obtain a tax license and list the license # on any online platform, along with registering STRs as “rental property” at the County Assessor
- STRs have been subject to vigorous code enforcement efforts for the past 20 plus years, including criminal and civil citations for commercial uses of residential properties for wedding venues, corporate reception centers, temporary auction houses; and most recently for Unruly Gatherings and to require identification of a “responsible person”
- Based on a recent review of the regulations in other municipalities and in-depth staff discussion on how to address some of the current hard to prosecute STR-related cases, the staff would recommend two changes to the current Unruly Gathering Ordinance provisions:
 - Change the definition of “responsible person” to include “property manager” or “rental agent”
 - Provide for an appeal of any assessment of police service fees prior to commencing collection efforts
 - Add an aggravating factor requiring that the mandatory fines shall be automatically increased to the next higher fine level should any of the following four violations or factors be found at an Unruly Gathering: 1) minor in possession, 2) minor in consumption, 3) illegal drugs or weapons, and 4) any felonious conduct

- Additionally, staff would recommend modifying the provisions of the current “Special Event” provisions in Article 8-8 of the Town Code to include any event that takes place on private property that is anticipated to impact the neighborhood (i.e. required parking for more than 20 motor vehicles on the public rights-of-way or plans on hosting more than 50 attendees) and require conditions of approval to minimize neighborhood impacts, as well as requiring Special Event permits for STRs that have any outstanding code violations such as the failure to identify a responsible person.

Time Shares/Fractional Ownerships:

- Ordinance No. 204 adopted April 1983 added Section 1026 to the Zoning Ordinance and prohibiting “time share projects” in any use district in the Town
- This applied to all SUP-zoned properties and to all residential use zoned properties
- No complaints or enforcement efforts needed until recent evidence gathered this summer indicated that one property in Town was being marketed as a “fractional offering” and after some added research, another property is currently marketed as part of an “investment portfolio of luxury properties that operates as a not-for-profit company utilizing a shared use model”
- One of these properties has now been taken off the market, the other is under investigation for violation of state and town laws regarding time shares and the illegal subdivision of land
- No changes to Town Codes or ordinances are recommended at this time

Staff desires Council input on the recommended changes to the Town codes and processes related to each of the four “uses.” This may be done either at the study session on November 5, 2020 (time permitting) or by Town staff bringing back each of these “use” issues to the Council separately with draft ordinance language relating to each of the recommended code or ordinance changes.

NEXT STEPS

Council discussion on each of the four matters and feedback on next steps and timing of bringing back further information or recommended code, ordinance or process changes back to the Council.

ATTACHMENTS:

Memo regarding “Prior Adopted Ordinances, Resolutions, and Town Enforcement Actions”
PowerPoint Presentation

PRIOR ADOPTED ORDINANCES, RESOLUTIONS, AND TOWN ENFORCEMENT ACTIONS

ASSISTED LIVING HOMES

Assisted Living Homes: Ordinance No. 567 adopted November 17, 2005 provided for the regulation of Assisted Living Homes:

Key Provisions/Regulations:

- Section 201 defines an “Assisted Living Home” as:
“A dwelling shared as a primary residence by persons who are disabled, as defined in Arizona Revised Statutes §41-1491, who do not meet the definition of “family” as set forth in this section, who live together as a single housekeeping unit in an environment in which staff persons provide supervisory care, personal care and/or custodial care for the residents. This definition shall not apply to a home for the developmentally disabled as regulated by Arizona Revised Statutes §36-582.”
- Section 1701 of the Zoning Ordinance contains most of the key regulations for Assisted Living Homes, which include:
 - A. Distribution of Uses. No assisted living home shall be located on a lot within one thousand three hundred and twenty (1,320) feet, measured by a straight line in any direction, from the lot line of another assisted living home located within the Town of Paradise Valley or any other adjacent jurisdiction.
 - B. Occupancy. The number of residents at such home shall be limited by applicable state laws, including any minimum square footage requirement per person, but in no event shall the number of residents exceed ten (10), not including staff.
 - C. Licensure. Such home shall be licensed or certified by the State of Arizona, and satisfactory evidence thereof shall be on file with the Town. In the event that the State of Arizona revokes or terminates the license or certification to operate such a home, the person operating the home shall immediately cease operations and inform the Town of such revocation or termination.
 - D. Administrative Review. Such home shall be reviewed and approved by the Planning Department Director, or designee, for building code and land use compliance prior to the use commencing.
 - E. Code compliance. Such home shall comply with all applicable Town codes, including building codes, fire safety regulations, zoning and subdivision codes.
 - F. Compatibility. Such home and its premises shall be maintained in a clean, well-kept condition that is consistent in materials and design style with homes in the surrounding or adjacent neighborhood.
 - G. Threat to Community. Such home shall not house any person whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.
 - H. All parking by staff associated with such home shall be on site.

History of Enforcement:

There have been no complaints or enforcement actions against any of the 7 Assisted Living Homes in the Town. There have been recent complaints about noise and construction activity without proper permits at a property in Town that is being remodeled by an owner who has stated that he plans to apply for an assisted living home license in the future, but such complaints are not related to the actual operation or use of the property for an Assisted Living Home.

Other Issues to Consider:

- *Fair Housing Act prohibits discrimination by entity limiting who lives in a residence if a protected class*
- *American Disability Act prohibits discrimination of individuals based on disability.*
- *Assisted Living home shall be licensed by the State of Arizona Department of Health Services and must maintain a valid license for as long as the assisted living home is in operation.*
- *Since federal laws override local regulations, Council has limited policy discretion and can only monitor local codes.*

SOBER LIVING HOMES

Resolution No. 1252 adopted March 22, 2012 Establishing Reasonable Accommodation Guidelines and RA Process.

Resolution 2017-15 adopted on June 22, 2017 modifying the application process for reasonable accommodation requests and approving changes to the reasonable accommodation process guide and forms.

Key Provisions of the RA Process:

- Pursuant to federal law, a request for a reasonable accommodation (RA) may be made by any person with a disability, their representative, or a developer or provider for housing for individuals with a disability in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling.
- Whether an accommodation can be granted is determined by the Town's Accommodation Hearing Officer (who is appointed by the Town Manager) on a case-by-case basis.
- To request a RA, applicants must complete the Town's Request for a RA Form and return it with the filing fee of \$500.00.
- If additional information is needed for the Hearing Officer to properly evaluate the RA request, the Accommodation Hearing Officer may ask that medical and other health

information be submitted; however, the name or extent of the disability will not be required.

- Unless the Accommodation Hearing Officer has previously requested additional information, the accommodation request shall be deemed complete ten days after it is received (Note: Town staff still does an initial review of the application for completeness prior to accepting the application and transmitting it to the Hearing Officer).
- To ensure applicants have an actual, vested interest in the property where a RA is requested, proof of property ownership or written notarized authorization from the property owner is required.
- After receipt of a complete application, the Hearing Officer may seek comments from Town staff or adjacent landowners before issuing a decision, depending on the type of accommodation requested. By way of example, if the accommodation request concerns the zoning of the subject property, comments may be sought from the Town's Planning Division or landowners within 1,000 feet of the property; if the accommodation request concerns a building code provision, comments may be sought from the Town's Building Department.
- If the Accommodation Hearing Officer seeks comments, they will be due no less than five days before the decision deadline.
- Copies of any comments received will be provided to the applicant.
- Regardless of whether the Hearing Officer seeks comments, all Town property owners within 1,000 feet of the property will receive notice of the RA request and the Hearing Officer's decision.
- Depending on the type of accommodation requested and comments received, if any, the Accommodation Hearing Officer may issue a decision, seek additional information from the applicant, or conduct a public hearing after providing at least seven-day advance notice to the applicant and those providing comments, unless the Accommodation Hearing Officer determines a shorter notice period is necessary or reasonable.
- Within 30 days after receipt of a complete application, the Hearing Officer shall issue a written decision either granting the request, conditionally granting the request, offering an alternative accommodation, or denying the request with the reason for the denial stated.
- If the Hearing Officer requests additional information during the initial 30-day period, the time for making a decision shall be tolled until the additional information is received
- The Hearing Officer's decision will be considered final.
- The RA request and accompanying information will be kept with a record of the decision, will be a matter of public record, and will be made available to the public upon request.

RA Requirements: The following requirements must be met for the Hearing Officer to grant a RA:

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under Fair Housing Law.
2. The requested accommodation is reasonable and necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
3. The requested accommodation will not impose an undue financial or administrative burden on the Town as “undue financial or administrative burden” is defined in Fair Housing Law.
4. The requested accommodation will not result in a fundamental alteration in the nature of the Town’s land use and zoning scheme, as “fundamental alteration” is defined in Fair Housing Law.
5. The requested accommodation complies with all other applicable Town Code provisions, zoning regulations, and development standards.
6. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.
7. The applicant owns the property for which a reasonable accommodation is requested or has notarized written consent from the property owner to apply for the requested accommodation.
8. The requested accommodation site is not located on a lot within one thousand three hundred twenty (1,320) feet, measured by a straight line in any direction, from any lot line of another group home or any assisted living home located within the Town of Paradise Valley or any other jurisdiction.

History of Enforcement/Applications:

On two occasions sober living homes have been cited for violations of the Town Zoning Ordinance for not obtaining a reasonable accommodation prior to commencing operations. Both operators later chose to relocate their operations to locations outside of the Town. Applications have been made for several other locations in the Town, many of which were withdrawn prior to a hearing before the Hearing Officer.

Other Issues to Consider:

- *Fair Housing Act prohibits discrimination by entity limiting who lives in a residence if a protected class*
- *American Disability Act prohibits discrimination of individuals based on disability.*
- *The Town only allows more than 5 unrelated individuals to live together if they are protected under the Fair Housing Act and obtain a “reasonable accommodation” from an independent judge.*
- *Since federal laws override local regulations, Council has limited policy discretion and can only monitor local codes.*

SHORT TERM RENTALS

A. Home Occupation Regulations: Short term rentals (STRs) have been included as “home occupations” for over 14 years and there are several key provisions in the Home Occupation Regulations that apply to the operation of STRs. **Ordinance 566** adopted January 12, 2006 applies to STRs.

Key Provisions:

- Renting or use of residential properties as a commercial venue for weddings, luncheons, dinners, auctions, sales or similar events, is prohibited;
- all parking associated with the home occupation shall be on site.

B. Unruly Gatherings: The Unruly Gathering (UG) regulations apply both to STRs and any other property in the Town, although recent experience has seen a significant uptick in UGs at STRs.

1. **Ordinance No. 2018-05** adopted March 8, 2018 adding a new Section 10-13 Unruly Gatherings to the Town Code.
2. **Ordinance No. 2020-10** adopted September 11, 2020 amending certain portions of the Unruly Gathering Ordinance.

Key Provisions:

- An “Unruly Gathering” is defined as “a gathering of five (5) or more persons on any private property, including property used to conduct business, which constitutes a threat to the public peace, health, safety or general welfare including, but not limited to: excessive noise, impeding traffic, obstruction of public streets by crowds or vehicles, use or possession of illegal drugs, drinking in public areas, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and/or littering.”
- A “Responsible Person” for a UG includes any person in attendance at an UG including any Owner, occupant, tenant, or tenant's guest or any sponsor, host or organizer of a social activity or special occasion or Owner that was aware of the social activity or special occasion constituting the s even if such person is not in attendance, or any Owner who had been notified that an UG had previously occurred on the same Premises within one hundred eighty (180) days prior to a subsequent UG. Responsible Person does not include Owners or persons in charge of Premises where an UG takes place if the persons in attendance obtained use of the Premises through illegal entry or trespassing. A person need not be present at the time of the party, gathering or event to be deemed responsible.
- “UG Notice (Notice)” means be a document identifying the Premises as the site of an UG in which a citation was issued and advising the Owner, occupants, guests or other persons entering the Premises that any future UG upon the Premises shall have additional consequences; the PD calls these notices “green tags” and there are penalties

assessed for removing them, as well as provisions for an Owner to appeal the posting of the UG Notice if the Owner believes it was posted in error.

- When a police officer responds to any UG and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the police officer may issue a citation for UG to any Responsible Person; and if the Responsible Person is the Owner and the Owner is not present and was not the sponsor, organizer or host of the event and the Owner had notice that an UG had occurred on the Premises within the prior one hundred eighty (180) days, the Owner shall be charged with a civil citation. All other Responsible Persons shall be charged with a class one misdemeanor.
- A police officer may abate an UG by reasonable means including, but not limited to, citation or arrest of violators under applicable ordinances or state statutes, and dispersing any remaining gathered participants. Any participant not a tenant on a lease document who fails to disperse may be deemed a Responsible Person and cited.
- UG Notices are made by:
 - personal service of any Responsible Person(s) being cited at the UG;
 - posting of the Notice on the door of the Premises of the UG; or,
 - mailing the Notice to the Owner by certified mail, return receipt.
- UG Notices have the following information:
 - that an UG has occurred at the Premises;
 - the date of the UG;
 - that any subsequent UG on the same Premises resulting in a citation, and subsequent conviction thereof, within certain time periods shall result in the Responsible Person(s) liability for enhanced penalties and fees;
 - the right to contest the posting;
 - and contact information at the police department.
- In the event that the Premises was already posted with a UG Notice at the time of a subsequent posting, the 90 day period from the date of the existing posting shall be extended an additional 120 days from the date of the subsequent posting.
- Any Responsible Person(s) receiving a citation for an UG requiring an increased police response shall be assessed a "Police Service Fee."
- Upon request, the Owner must provide the names of any and all occupants listed on the leasing documents at any location where the Police Department responds to an UG.
- On a first offense, an Owner who was present at the UG and who made contact with the responding officers at the scene may apply retroactively for a special event permit under Article 8-8 of the Town Code of Paradise Valley by the close of business on the next business day. A special event permit may or may not be granted by the Town Manager retroactively.
- Penalties for UG violations increase for persons who are deemed to have subsequent violations within 90 days of a prior violation, which applies either at the same premises (each a "Consistent Premises" based upon a prior UG) or by the same person (each a

“Consistent Responsible Person” based upon having received a UG Notice or for any police response or responses necessary on any Premises involving the same Responsible Person; and upon a third response involving the same premises or same person over a 120 day period, the highest fines and the Police Service Fee will be assessed.

- “Police Service Fees” may be assessed by the Chief of Police to any Responsible Person, said fees an amount equal to the actual costs (essentially a reimbursement) of the law enforcement response to an UG, including salaries and benefits of the responding officers for the time actually spent in responding to and remaining at the UG; and similar costs for dispatcher time, costs of any medical treatment for officers or any damage to Town property, and vehicle and equipment costs as well.
- Penalties
 - Criminal Offenses - a Responsible Person convicted of an UG shall have a minimum mandatory fine of \$1000 for a first violation, \$2,000 for a second violation, and \$2,500 for a third or subsequent violation (which is the maximum currently permitted by law);
 - Civil Offenses - if the Responsible Person is an Owner that was not present at the UG, was not aware of the social activity or special occasion constituting the UG, and was not an organizer, host or sponsor of the UG, but had been notified that an UG had previously occurred on the property within one hundred eighty (180) days prior an UG, then the civil penalty shall be a minimum mandatory fine of \$1000 for a first violation, \$2,000.00 for a second violation, and a minimum mandatory fine of the maximum amount permitted by law for civil violations for a third or subsequent violation.

Other Issues to Consider:

- *Adopted and increased penalties from three ordinances that have to apply to all residences equally.*
- *Staff can enforce its nuisance laws but must be consistent regardless of owner.*

C. Short Term Rentals Ordinance:

Ordinance 2019-12 was adopted January 10, 2020 after the Legislature added some additional exceptions to the state preemption on municipal regulations of STRs that permitted some additional regulatory control:

Key Provisions:

- STR and vacation rental do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center or similar use.
- Before offering for rent or renting a STR within the Town the owner of a STR shall provide the Town with contact information for the owner or the owner’s designee who

is responsible for responding to complaints in a timely manner in person, over the phone or by e-mail at any time of day.

- Additionally, the owner of a STR shall provide to the Town the name and contact information of a person designated as an “emergency contact.”
- The owner or the owner’s designee is responsible for responding to complaints in a timely manner in person, by telephone, or by e-mail at any time of day or night, which means within 2 hours after the initiation of contact with the owner’s designee when the contact is made by a police department officer and where the police officers are at the owner’s property at the time that such contact is initiated, and within 24 hours after the initiation of contact with the owner’s designee when the contact is made by a police department officer or employee or a code enforcement officer and for which the police are not at the scene of the complaint or incident at the time that such contact is initiated.
- A STR must at all times comply with the federal, state and local laws, rules and regulations related to public health, safety, sanitation, solid waste, hazardous waste, tax privilege licensing including advertising requirements, property tax registration, traffic control, pollution control, noise, property maintenance, and nuisance abatement.
- No short-term rental or vacation rental may be used for any non-residential use or purpose including but not limited to any of the uses listed in ARS § 9-500.39(B)(3).

History of Enforcement:

- STRs have been subject to vigorous code enforcement efforts for the past 20 plus years, including criminal and civil citations for commercial uses of residential properties for wedding venues, corporate reception centers, temporary auction houses, corporate use during super bowls and other violations.
- Unruly Gathering Ordinance has been used frequently, with such use being even more frequent during the closure of bars under Executive Orders:
 - Changes to UG ordinance have been recently made to simplify the charging of UG violations and allow for additional means of pursuing all parties who may have some form of culpable conduct;
 - Owners frequently state that they were unaware that the renters planned for a party or other event that leads to an UG;
 - PD service fees now being assessed when appropriate and facts permit.
- Commercial use is often difficult to prove; however, the PVPD uses a “party house protocol” to help gather evidence of knowing rental for commercial uses by owners or property managers.
- Legislative changes needed to permit more vigorous enforcement alternatives.

Other Issues to Consider:

- *Significant Preemption under State Law (SB 1350): (See ARS § 9-500.38. Limitations on regulation of vacation rentals and short-term rentals; state preemption):*

- A city or town may not prohibit vacation rentals or short-term rentals;
- A city or town may not restrict the use of or regulate vacation rentals or short-term rentals based on their classification, use or occupancy;
- A city or town may regulate vacation rentals or short-term rentals for the following purposes:
 - Protection of the public's health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and designation of an emergency point of contact, if the city or town demonstrates that the rule or regulation is for the primary purpose of protecting the public's health and safety;
 - Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance and other nuisance issues, if the ordinance is applied in the same manner as other property classified under sections 42-12003 and 42-12004;
 - Limiting or prohibiting the use of a vacation rental or short-term rental for the purposes of housing sex offenders, operating or maintaining a structured sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing and other adult-oriented businesses;
 - Vacation rental and short-term rental do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center or another similar use.
- A STR is residence that is rented for less than 30 days. May or may not be on a short-term rental platform such as VRBO, Airbnb, Expedia, etc.
- Also, no ability of staff to license home per State law.
- No federal protection to date.
- Summary, other than responsible person requirement and limiting “commercial uses” of STRs, no ability of Town to regulate or license short-term rentals per State Law.
- Since State laws (SB1350) and (SB 1487) override local laws, Council has limited policy discretion with the exception of nuisance laws.
- Town has been very involved in fighting against the preemption and in seeking changes to state law to restore ability of municipalities to regulate STRs.

TIME SHARES/FRACTIONAL OWNERSHIP

Time Shares: Ordinance No. 204 adopted April 28, 1983 by adding a new Section 1026 prohibiting time share projects.

Key Provisions:

- “Time-Share Project” is defined as “A project in which a purchaser receives the right in perpetuity, for life or for a term of years to the recurrent, exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided.”
- Section 1026. Time-Share Projects...are hereby prohibited within any use district within the Town of Paradise Valley.

History of Enforcement:

- No complaints or enforcement efforts needed until recent evidence gathered this summer indicated that one property in Town was being marketed as a “fractional offering” and after some added research, another property is currently marketed as part of an “investment portfolio of luxury properties that operates as a not-for-profit company utilizing a shared use model.”
- One of these properties has now been taken off the market, the other is under investigation for violation of state and town laws regarding time shares and the illegal subdivision of land.

Other Issues to Consider:

- *No state law preemption; rather, state law has certain regulatory requirements placed on developers and realtors;*
- *No one can apply today for a permit for a time share project in PV;*
- *No changes to Town Codes are needed.*

TOWN OF PARADISE VALLEY

Discussion Regarding Assisted Living Homes, Group Homes, Short Term Rentals, and Time Shares

**Town Council Study Session
November 5, 2020**



KEY QUESTION

Does the Council desire to have the Staff explore any changes to the current Town Codes, processes and practices with respect to Assisted Living Homes, Group Homes, Short Term Rentals, and/or Time-shares/Fractional Sales?



FAIR HOUSING - BACKGROUND

- The Federal Fair Housing Amendments Act of 1988 (Act) prohibits discrimination against individuals with disabilities, including those in recovery for substance abuse, in housing and housing-related activities
- The Act also prohibits local and state land use and health and safety laws and practices which discriminate against individuals with handicaps
- The Ninth Circuit has recently affirmed this in the context of sober living homes and struck down, under the Act, Newport Beach zoning practices that discriminated against individuals with disabilities (Pac. Shores v. Newport Beach, 730 F.3rd 1142 (2013)).
- Federal law prohibits consideration of the prejudices or fears of a community; a city or county may be liable for denying housing opportunities for individuals with disabilities if its actions or decision-making are motivated by discriminatory intent or it adopted the discriminatory animus of those in the community



ASSISTED LIVING HOMES

Current Regulations:

- No assisted living home shall be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of another assisted living home located within the town of paradise valley or any other adjacent jurisdiction
- The number of residents at such home shall be limited by applicable state laws, including any minimum square footage requirement per person, but in no event shall the number of residents exceed ten (10), not including not including staff
- Such home shall be licensed or certified by the state of Arizona, and satisfactory evidence thereof shall be on file with the Town
- In the event that the state of Arizona revokes or terminates the license or certification to operate such a home, the person operating the home shall immediately cease operations and inform the town of such revocation or termination



ASSISTED LIVING HOMES

Current Regulations (cont'd.):

- Such home shall be reviewed and approved by the Planning Department Director, or designee, for building code and land use compliance prior to the use commencing
- Such home shall comply with all applicable Town codes, including building codes, fire safety regulations, zoning and subdivision codes; and obtain a business license
- Such home and its premises shall be maintained in a clean, well-kept condition that is consistent in materials and design style with homes in the surrounding or adjacent neighborhood
- Such home shall not house any person whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others

All parking by staff associated with such home shall be on site



ASSISTED LIVING HOMES

Recommended Changes to Regulations:

- Change the occupancy allowed from 10 residents “not including staff” to up to 10 residents and 2 staff members for a total number of residents and staff not to exceed 12 residing in the home at any given time
- Change the parking from a requirement that “all parking by staff...shall be on site” to “adequate parking for both residents and staff shall be provided on site,” thus making parking part of the analysis for approval of a particular application
- Increase the spacing between Assisted Living Homes from 1,320 feet to 2,000 feet and add sober living homes to the spacing requirement for consistency
- Police to provide Crime Prevention Through Environmental Design (CPTED) guidelines during the permitting process to encourage actions by owners/operators of the assisted living home to keep their residents secure and safe



SOBER LIVING HOMES – PV PROCESS

- A request for a reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of housing for individuals with a disability in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling
- Resolution 2017-15 adopted “standards and procedures for granting a reasonable accommodation to its zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, where such an accommodation does not cause an undue financial or administrative burden or does not result in a fundamental alteration in the nature of the Town’s zoning program, as those terms are defined in fair housing laws and interpretive case law”
- Resolution 2017-15 also adopted a reasonable accommodation guide and forms to be completed by applicants for a reasonable accommodation, set a reasonable fee (\$500) for any application for a reasonable accommodation, as well as appointing a hearing officer to hear and consider applications for reasonable accommodations



SOBER LIVING HOMES – PV PROCESS

Town Reasonable Accommodation Guide:

- The term “reasonable accommodation” (RA) is the same as is contained in the Fair Housing Act and the ADA
- Grant of a RA by the Town’s Accommodation Hearing Officer is decided on a case-by-case basis
- Town Manager appoints the RA Hearing Officer – currently Ty Taber
- After the application is filed the RA Hearing Officer may request additional information; and unless the Officer requests additional information, the application is deemed complete 10 days after receipt
- Applicant must evidence an actual vested interest in the property (owner approval) and submit a current title report with all Schedule B exceptions
- The RA Hearing Officer “may seek comments from Town staff or adjacent landowners before issuing a decision, depending on the type of accommodation requested.”



SOBER LIVING HOMES – PV PROCESS

Town Reasonable Accommodation Guide (cont'd):

- “By way of example, if the accommodation request concerns the zoning of the subject property, comments may be sought from the Town’s Planning Division or landowners within 1,000 feet of the property; if the accommodation request concerns a building code provision, comments may be sought from the Town’s Building Department”
- If the Accommodation Hearing Officer seeks comments, they will be due no less than five days before the decision deadline; copies of any comments received will be provided to the applicant
- Regardless of any request for comments, owners within 1,000 feet will receive notice of the RA request within 5 days of application filing
- Notice of Officer’s decision to be sent to owners within 1,000 feet w/in 5 days after the decision is made
- Hearing Officer has discretion to either:
 - issue a decision on the application as filed,
 - seek additional information from applicant, or
 - conduct a public hearing after providing at least 7 day advance notice to applicant and those providing comments



SOBER LIVING HOMES – PV PROCESS

Town Reasonable Accommodation Guide:

- Hearing Officer decision to be made w/in 30 days of receipt of a complete application, but may be tolled during time that Officer seeks more information on the application
- With or without a hearing, the Hearing Officer has discretion to:
 - grant the request,
 - conditionally grant the request,
 - offering an alternative accommodation, or
 - denying the request with the reason for the denial stated
- Hearing Officer shall issue a written decision
- Hearing Officer decision is final



SOBER LIVING HOMES – CHANGES SUGGESTED

Based on recent feedback the staff would recommend the following changes to the RA Process:

- Provide an overview of the process, printed and on the Town website
- Don't rely on the applicant to mail the notice of the RA application to residents within 1,000 feet. Instead, it should be sent out by the Town staff
- Mailings of the notice should be in envelopes that have the Town logo on the envelope in order to be noticeable when they arrive
- The initial notice should include a letter from the Town staff with a full description of the RA process, what to expect, timelines, and background on the Fair Housing Act in order to allay concerns and answer many of the initial “what if” questions



SOBER LIVING HOMES – CHANGES SUGGESTED

Recommended changes to the RA Process (cont'd):

- Have additional information and an “updates” link on the Town website, but do not rely on the Town website for notice of the application itself
- Have an experienced staff person ready and available to answer questions from residents on a timely basis
- Have staff available for neighborhood meetings with residents to answer questions and alleviate fears of the unknown
- Change Reasonable Accommodation Requirement #8 in Resolution No. 2017-15 from 1,320 feet spacing between other group homes or assisted living homes to 2,000 feet



TITLE 9 - SHORT TERM RENTALS

9-500.38. Limitations on regulation of vacation rentals and short-term rentals; state preemption; definitions

- A. A city or town may not prohibit vacation rentals or short-term rentals.
- b. A city or town may not restrict the use of or regulate vacation rentals or short-term rentals based on their classification, use or occupancy
- A city or town may regulate vacation rentals or short-term rentals for the following purposes:
 - 1. Protection of the public's health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and designation of an emergency point of contact, if the city or town demonstrates that the rule or regulation is for the primary purpose of protecting the public's health and safety
 - 2. Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance and other nuisance issues, if the ordinance is applied in the same manner as other property classified under sections 42-12003 and 21 42-12004
 - 3. Limiting or prohibiting the use of a vacation rental or short-term rental for the purposes of housing sex offenders, operating or maintaining a structured sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing and other adult-oriented businesses



STR - ADOPTED ORDINANCES

The Town has adopted Two Ordinances to “police” Short Term Rentals

- Ordinance No. 2018-05 - Unruly Gatherings Section 10-13-1
 - The purpose of this article is to deter behavior associated with unruly gatherings and allow the Town to obtain reimbursement for expenses related to responses to unruly gatherings which have been determined to be a threat to the peace, health, safety, or welfare of the general public
 - “Unruly Gathering” means a gathering of five (5) or more persons on any private property, including property used to conduct business, which constitutes a threat to the public peace, health, safety or general welfare including, but not limited to: excessive noise, impeding traffic, obstruction of public streets by crowds or vehicles, use or possession of illegal drugs, drinking in public areas, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and/or littering
 - Increased fines, assessment of police service fees, posting of notice of UG on the property, and notices to owners of the UG on their property are additional enforcement tools
 - Assessing responsibility to the Owners of the STRs often difficult as owners often not present, profess no knowledge of the “social gathering” that led to the violations, or have agents that handle the rental activity



STR-ADOPTED ORDINANCES

- Ordinance No. 2019-12 - A new Section 10-14 re Short-Term Rentals, Responsible Party Requirement, and Other Violations
 - Before offering for rent or renting a short-term rental or vacation rental within the Town the owner of a short-term rental or vacation rental shall provide the Town with contact information for the owner or the owner's designee who is responsible for responding to complaints in a timely manner in person, over the phone or by e-mail at any time of day
 - In addition to the information required above, the owner of a short-term rental or vacation rental shall provide to the Town the name and contact information of a person designated as an emergency contact
 - The owner or the owner's designee is responsible for responding to complaints in a timely manner in person, by telephone, or by e-mail at any time of day or night
 - For purposes of this section "timely manner" shall mean: 1) within two hours after the initiation of contact with the owner's designee when the contact is made by a police department officer or employee for a complaint or incident that is reported to the police department and for which police officers have been called out to the owner's property due to such complaint or incident and where the police officers are at the owner's property at the time that such contact is initiated;
 - No STR may be used for a non-residential use, including a retail, restaurant, banquet space or other similar use (See ARS §9-500.39(F) also)



STR-CHANGES SUGGESTED

Staff Recommended Changes to STR Regulations:

- Change the definition of “responsible person” to include “property manager” or “rental agent”
- Provide for an appeal of any assessment of police service fees prior to commencing collection efforts
- Add an aggravating factor requiring that the mandatory fines shall be automatically increased to the next higher fine level should any of the following four violations or factors be found at an Unruly Gathering: 1) minor in possession, 2) minor in consumption, 3) illegal drugs or weapons, and 4) any felonious conduct
- Modify the provisions of the current “Special Event” provisions in Article 8-8 of the Town Code to include any event that takes place on private property that is anticipated to impact the neighborhood (i.e. required parking for more than 20 motor vehicles on the public rights-of-way or plans on hosting more than 50 attendees) and require conditions of approval to minimize neighborhood impacts, as well as requiring Special Event permits for STRs that have any outstanding code violations such as the failure to identify a responsible person



TOWN CODE - FRACTIONAL LIVING

- Section 1026. Prohibition of Time-Share Projects:
Time-Share Projects, as defined in Article II, Section 201 are hereby prohibited within any use district within the Town of Paradise Valley.
- Section 201 (ZO Definitions):
Time-Share Project: A project in which a purchaser receives the right in perpetuity, for life or for a term of years to the recurrent, exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided.
- Fairly new issue in Town; one such “fractional offering” on Maverick now withdrawn from the market; complaint filed with another such fractional offering located on Quail Run Place



TIME-SHARE/FRACTIONALS

State Law:

- Any division of an interest in land into over 6 fractions or interests would be a “subdivision” under state law (ARS 32-2181) and would fall under the investigative authority of the Arizona Department of Real Estate (AzDRE)
 - If properties are actually being offered as time shares (as defined in ARS 32-2197), AzDRE would investigate
 - Since AzDRE licenses realtors, it may be able to use that authority to gather information during an investigation
 - A link for filing complaints is available on the AzDRE site
 - The Town code enforcement staff has filed a recent complaint
- NO changes to the regulations on Time-shares is recommended



QUESTIONS? NEXT STEPS!

Does the Council desire to have the Staff explore any of the recommended changes to the current Town Codes and practices with respect to Group Homes, Assisted Living Homes, Short Term Rentals, Fractional Sales?





Action Report

File #: 20-425

AGENDA TITLE:

Scottsdale Unified School District representatives will update the Town Council on the reconstruction of Cherokee Elementary School

RECOMMENDATION:

Receive a presentation

STAFF CONTACT:

TOWN
Of
PARADISE VALLEY



STAFF REPORT

TO: Mayor Bien-Willner and Town Council Members

FROM: Jill Keimach, Town Manager
P. Wingert, Chief of Police

DATE: November 5, 2020

DEPARTMENT: Police Department
Chief P. Wingert 480 948-7410

AGENDA TITLE:

Scottsdale Unified School District representatives will update the Town Council on the reconstruction of Cherokee Elementary School

RECOMMENDATION:

Receive a presentation from SUSD representatives

SUMMARY STATEMENT:

This presentation will update the Town Council on the reconstruction of Cherokee Elementary School and discuss the impact to the neighborhood traffic as a result of the construction.

BUDGETARY IMPACT:

There is no cost to receiving this presentation.

ATTACHMENT(S):

- A. Staff Report
- B. Presentation-not currently attached, will be sent on Tuesday, November 3, 2020.



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Action Report

File #: 20-415



**TOWN COUNCIL MEETING
6401 E. LINCOLN DRIVE
PARADISE VALLEY, ARIZONA 85253
MINUTES
THURSDAY, OCTOBER 22, 2020**

1. CALL TO ORDER / ROLL CALL

Mayor Bien-Willner called to order the Town Council Meeting for Thursday, October 22, 2020 at 3:08 p.m. in the Town Hall Boardroom and through remote participation as authorized by Resolution 2020-08.

COUNCIL MEMBERS PRESENT

Mayor Jerry Bien-Willner attended by video conference
Vice Mayor Julie Pace attended by video conference
Council Member Ellen Andeen attended by video conference
Council Member Paul Dembow attended by video conference
Council Member Scott Moore attended by video conference
Council Member Mark Stanton attended by video conference
Council Member Anna Thomasson attended by video conference

STAFF MEMBERS PRESENT

Town Attorney Jill Keimach attended by video conference
Town Attorney Andrew Miller
Assistant Town Attorney Deborah Robberson attended by video conference
Town Clerk Duncan Miller
Town Engineer Paul Mood attended by video conference

A motion was made by Council Member Stanton, seconded by Council Member Thomasson, to go into executive session to discuss items number 20-400 and 20-408. The motion carried by the following vote:

Aye: 7 - Mayor Bien-Willner
Council Member Andeen
Council Member Dembow
Council Member Moore
Vice Mayor Pace
Council Member Stanton
Council Member Thomasson

2. EXECUTIVE SESSION

20-400	Discussion and consultation with the Town Attorney regarding pending or contemplated litigation related to Five Star Development project as authorized by A.R.S. §38-431.03(A)(4); and discussion
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Note: Minutes of Town Council meetings are prepared in accordance with the provisions of Arizona Revised Statutes. These minutes are intended to be an accurate reflection of action taken and direction given by the Town Council and are not verbatim transcripts. Video recordings of the meetings along with staff reports and presentations are available online (www.paradisevalleyaz.gov) and are on file in the Office of the Town Clerk. Persons with disabilities who experience difficulties accessing this information may request accommodation by calling 480-948-7411 (voice) or 480-348-1811 (TDD).

and consultation with the Town Attorney for legal advice regarding the development agreement and associated agreements with Five Star Development as authorized by A.R.S. §38-431.03(A)(3).

20-408 Discussion or consideration with legal counsel to consider the Town's position and instruct negotiators regarding a potential contract for outside legal services as authorized by A.R.S. 38-431.01(A)(4); and legal advice regarding the Town's procurement code and draft request for proposal for legal services as authorized by A.R.S. § 38-431.03(A)(3).

20-401 The Town Council may go into executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the items listed on the agenda as authorized by A.R.S. §38-431.03(A)(3).

3. STUDY SESSION ITEMS

COUNCIL MEMBERS PRESENT

Mayor Jerry Bien-Willner attended by video conference
Vice Mayor Julie Pace attended by video conference
Council Member Ellen Andeen attended by video conference
Council Member Paul Dembow attended by video conference
Council Member Scott Moore attended by video conference
Council Member Mark Stanton attended by video conference
Council Member Anna Thomasson attended in-person

STAFF MEMBERS PRESENT

Town Attorney Jill Keimach attended by video conference
Town Attorney Andrew Miller
Assistant Town Attorney Deborah Robberson attended by video conference
Town Clerk Duncan Miller
Town Engineer Paul Mood attended by video conference
Chief of Police Peter Wingert attended by video conference
Planning Manager Paul Michaud
CFO Douglas Allen attended by video conference

Mayor Bien-Willner reconvened the study session at 5:17 PM

20-228 Discussion of Storm Water Management Regulations (Curbing)

Town Engineer Paul Mood briefed the Town Council on the following Storm Water Management topics.

1. Storm Water Management
2. Storm Drainage Design Manual – This includes regulations for street drainage and provides for hydraulic design criteria for new roadways or projects that make major improvements to existing

- roadways
3. General Plan Roadway Cross-Sections
 4. Types of Curbing
 5. Right-Of-Way Permit Requirements
 6. Flood Control District's Cudia City Wash Study

The presentation was for informational purposes and no further direction was given.

20-410 Discussion and Possible Direction Regarding the FY2020/21 Monthly Financial Update No. 2 for October 2020

Chief Financial Officer Douglas Allen presented the Fiscal Year 2020/21 monthly financial update. The October update included highlights and analysis of the Town's major revenue sources. He concluded that, overall, revenue collections were strong enough for the Town Council to consider authorizing Priority Two expenditures budgeted in contingency.

He discussed the following recommendations for Priority Two funding that would be brought back to Council in a Budget Amendment Resolution in November:

RECOMMENDED BUDGET AMENDMENTS FOR:	FY2021 Source	BA for November	Future Review BA(s)		BA Total	Brief Description
			Jan-Mar	Apr-June		
USES: NON-RECURRING		\$ 3,785,919			\$ 7,938,693	
General Plan Consultant (\$4,900 new)	Priority 2	104,900	-	-	104,900	Appr. 10/8 Council meeting
PSPRS Unfunded Liability	Priority 2	2,400,000	-	-	2,400,000	4 monthly payments; See options
PSPRS Unfunded Liability	Priority 3	-	-	3,000,000	3,000,000	Consider AEL, Cash, Outlook
Lincoln mill and overlay (Move up July '21 to May '21)	Priority 3	1,152,774	\$1,152,774	-	2,305,548	Timing of cash and AEL; See options
Post office seasonal overtime	Priority 2	3,000	-	-	3,000	Traditionally busy over holidays
Zoom in the Community room (in-house)	IT CIP 2021	2,000	-	-	2,000	Vital upgrade
Board room technical upgrades (RFP)	IT CIP 2021	55,000	-	-	55,000	Correct hardware failures, virtual
Town-wide direct service fee study	Priority 2	28,000	-	-	28,000	Eng, CDD, Clerk, Other (VHS tapes)
Replace sign truck	Priority 2	40,245	-	-	40,245	Beyond life cycle; 1998 no salvage
USES: RECURRING		\$ 338,438			\$ 568,438	
Operating contingency	Priority 2	68,000	TBD	TBD	68,000	Town policy of 1-3% GF
Expanded hours PT: Asst. Attorney & Procurement	Priority 2	34,438	-	-	34,438	Defined Priority 2 Services
TM special performance awards	Priority 2	2,500	-	-	2,500	Was temporarily on hold
Town reporter	Priority 2	3,500	-	-	3,500	Was temporarily on hold
Employee merit (LUMP) - Potentially recurring	Priority 2	230,000	-	-	230,000	Non-base 1/2 merit; See options
Employee merit (BASE)	Priority 3	-	230,000	-	230,000	Resumes merit program; See options
All other Department Budgeted Priorities 2 & 3	Priorities 2 & 3	-	TBD	TBD	-	Consensus: hold for rev. rebound
TOTAL USES: NON-RECURRING & RECURRING		\$4,124,357	\$1,382,774	\$ 3,000,000	\$ 8,507,131	1/2 of adopted contingencies
TOTAL SOURCES OVER (UNDER) USES		\$ 355,409	\$ 313,625	\$ 96,399	\$ 765,433	Predominately non-recurring

The Council supported staff's recommendations and directed staff to prepare a budget amendment resolution for consideration at the next meeting.

Mayor Bien-Willner recessed the meeting at 5:46 p.m.

4. BREAK

5. RECONVENE FOR REGULAR MEETING

Mayor Bien-Willner reconvened the meeting at 6:00 PM.

6. ROLL CALL**COUNCIL MEMBERS PRESENT**

Mayor Jerry Bien-Willner attended by video conference
Vice Mayor Julie Pace attended by audio conference
Council Member Ellen Andeen attended by video conference
Council Member Paul Dembow attended by video conference
Council Member Scott Moore attended by video conference
Council Member Mark Stanton attended by video conference
Council Member Anna Thomasson attended in-person

STAFF MEMBERS PRESENT

Town Attorney Jill Keimach attended by video conference
Town Attorney Andrew Miller
Assistant Town Attorney Deborah Robberson attended by video conference
Town Clerk Duncan Miller
Town Engineer Paul Mood attended by video conference
Public Works Director Brent Skoglund
Chief of Police Peter Wingert attended by video conference
Chief Information Officer Steven Brunasso attended by video conference
Chief Financial Officer Douglas Allen attended by video conference

7. PLEDGE OF ALLEGIANCE*

Resident Rachel Sacco led Pledge of Allegiance.

8. PRESENTATIONS**20-411 Experience Scottsdale 2020-2021 Quarter 1 Report**

Experience Scottsdale President and CEO Rachel Sacco presented the first quarter report for Fiscal Year 2020-2021. She summarized Scottsdale/Paradise Valley tourism data including occupancy, average daily rate, and revenue per available room. She highlighted accomplishments from July through September.

Ms. Sacco responded to questions from the Council.

9. CALL TO THE PUBLIC

There were no public comments.

10. CONSENT AGENDA

Town Manager Keimach summarized the items on the Consent Agenda.

20-402 Minutes of Town Council Meeting October 8, 2020

20-405 Adoption of Resolution No. 2020-32; Recognition of Deed for the Western 25 feet of Right of Way on Quail Run Road South of Lincoln Drive

Recommendation: Adopt Resolution No. 2020-32; recognizing and clarifying the Town ownership of the western 25 feet of Right of Way on Quail Run Road just south of Lincoln Drive.

20-407 Approval of Design Contract Amendment No.1 for Lincoln Dr Median Improvements

Recommendation: Approve design contract amendment no. 1 and authorize the Town Manager to execute in the amount not to exceed \$22,655.00 for Kimley-Horn contract CON-19-084-ENG-A1, and to waive the 14-day wait period to sign the agreement.

20-412 Adoption of Resolution Number 2020-33: Paradise Valley Public Safety Foundation and Process for Accepting Donations to the PVPD

Recommendation: Adopt Resolution Number 2020-33

A motion was made by Council Member Stanton, seconded by Council Member Andeen, to approve the Consent Agenda. The motion carried by the following vote:

Aye: 7 - Mayor Bien-Willner
Council Member Andeen
Council Member Dembow
Council Member Moore
Vice Mayor Pace
Council Member Stanton
Council Member Thomasson

11. PUBLIC HEARINGS

20-409 Adoption of Ordinance No. 2019-07; Revisions to the Zoning Ordinance Relating to Medical Marijuana Dispensaries

Town Attorney Andrew Miller summarized Ordinance Number 2019-07 revising the Zoning Ordinance relating to medical marijuana dispensaries. He stated that this was a continuation of the public hearing held on May 28, 2020. The amended ordinance provides for a two-step approach to reviewing a zoning application for a medical marijuana dispensary in the Town. The first step is for the applicant to determine whether there are any existing medical marijuana dispensaries operating within 10 miles of the approximate center of the Town. If there is, the application shall be refused. The second step amends the spacing requirement in Section 1102.2.B.2.f.iii(11) to provide that the spacing between a dispensary and any residential use, including Special Use Permit resort residential use, must be at least 300 feet.

Mayor Bien-Willner opened the public hearing. There were no public comments.

Mayor Bien-Willner closed the public hearing.

There was no Council discussion.

A motion was made by Council Member Thomasson, seconded by Council Member Stanton, to Adopt Ordinance No. 2019-07. The motion carried by the following vote:

Aye: 7 - Mayor Bien-Willner
Council Member Andeen
Council Member Dembow
Council Member Moore
Vice Mayor Pace
Council Member Stanton
Council Member Thomasson

12. ACTION ITEMS

There were no action items

14, FUTURE AGENDA ITEMS

20-403 Consideration of Requests for Future Agenda Items

Town Manager Keimach summarized the future agenda schedule.

There were no motions to add any items to the future agenda list.

15. MAYOR / COUNCIL / MANAGER COMMENTS

The Mayor, Manager, and Council Members provided updates.

16. ADJOURN

A motion was made by Council Member Dembow, seconded by Council Member Moore, to adjourn. The motion carried by the following vote:

Aye: 7 - Mayor Bien-Willner
Council Member Andeen
Council Member Dembow
Council Member Moore
Vice Mayor Pace
Council Member Stanton
Council Member Thomasson

Mayor Bien-Willner adjourned the meeting at 7:39 PM.

TOWN OF PARADISE VALLEY

SUBMITTED BY:

Duncan Miller, Town Clerk

STATE OF ARIZONA)
COUNTY OF MARICOPA) :ss.

CERTIFICATION

I, Duncan Miller, Town Clerk of the Town of Paradise Valley, Arizona hereby certify that the following is a full, true, and correct copy of the minutes of the regular meeting of the Paradise Valley Town Council held on Thursday, October 22, 2020.

I further certify that said Municipal Corporation is duly organized and existing. The meeting was properly called and held and that a quorum was present.

Duncan Miller, Town Clerk



Action Report

File #: 20-420

TO: Mayor Bien-Willner and Town Council Members

FROM: Jill Keimach, Town Manager
Douglas Allen, CCO

DATE: November 5, 2020

DEPARTMENT: Finance

AGENDA TITLE:

Approve Resolution 2020-34 Amending the Fiscal Year 2020/21 Adopted Budget

RECOMMENDATION:

Approve Resolution 2020-34 Amending the Fiscal Year 2020/21 Adopted Budget

SUMMARY STATEMENT:

As part of the FY2020/21 budget process, Town Council reviewed each department and program budget and priorities with the respective Director. The final adopted budget incorporated a **tiered plan** to monitor revenues and expenditure priorities to be *flexible and adaptive to fluidly transition operations as revenues rebound or demands shift*.

"Priority One" expenditures represent the base budget for primary services with spending authority effective July 1. **"Priorities Two and Three"** contingencies are designed to keep pace with demands that are poised to resume the Town's direction at February 2020 that will be assessed and potentially eased into in the second and third quarters, respectively.

As outlined in the FY2020/21 budget, beginning July 1, 2020:

- Spending authority was approved for **Priority One** programs;
- **Priority Two** and **Three** programs were set in a contingency account with:
 - **Priority Two** to be assessed in October 2020; and
 - **Priority Three** in January-March 2021 timeframe.

At the October 22, 2020 Town Council meeting, the Mayor and Council gave consideration and direction to ease into opening budget priorities as represented in Resolution 2020-34.

This budget amendment provides spending authority for **89%** of **"Priority Two"** expenditures, including \$2,400,000 for the Public Safety Personnel Retirement System ("PSPRS"). It also provides

½ of the total funding and the ability to start the Lincoln mill and overlay street improvement project earlier in the year. Due to its estimated start time in late summer 2021, this project was a “**Priority Three**”.

Of the total “**Priority Two**” budget amendment of \$2,971,583:

- \$2,633,145 are for **non-recurring** expenditures; and
- \$338,438 are for **recurring** expenditures.

The budget amendment for the “**Priority Three**” project of \$1,152,774 is all **non-recurring** expenditures.

Additional funding sources for general spending authority identified in FY2020/21 include, but not limited to:

- A favorable closing FY2019/20 is driven by many strategic actions taken by the Mayor & Town Council and Town Management at the onset of COVID19 in March 2020;
- Grant funding for public safety; and
- A localized rebound in retail transaction privilege (sales) boosted by internet sales and reopening of hospitality business in Paradise Valley.

This is supported by:

- Construction and development continue to be solid; and
- State shared revenues are steady as estimated.

Options to provide the remainder of funding for Lincoln mill and overlay project will be identified and brought to the Mayor and Town Council for consideration in the third quarter of FY2020/21 before contracts are awarded.

Further discussion with the Mayor and Town Council on the mechanics of paying PSPRS Unfunded Liability will occur on a future agenda.

ATTACHMENT(S):

01 Resolution 2020-34 Amending the FY2020/21 Budget

RESOLUTION NUMBER 2020-34

**A RESOLUTION OF THE MAYOR AND COUNCIL OF
THE TOWN OF PARADISE VALLEY, ARIZONA
AMENDING THE FISCAL YEAR 2020/21 ADOPTED
BUDGET.**

WHEREAS, the Fiscal Year 2020/21 budget was adopted by Resolution 2020-17 on June 11, 2020;

WHEREAS, the budget incorporated a tiered plan to monitor revenues and priorities to be flexible and adaptive to fluidly transition operations as revenues rebound or demands shift;

WHEREAS, “Priority One” expenditures represent the base budget for primary services with spending authority effective July 1; “Priorities Two and Three” contingencies are designed to keep pace with demands that are poised to resume the Town’s direction at February 2020 that will be assessed and potentially eased into in the second and third quarters, respectively;

WHEREAS, budget amendments are consistent with Generally Accepted Accounting Principles (GAAP) and recommended budgeted practices;

WHEREAS, the Town of Paradise Valley’s Adopted Financial Management Policies requires the approval of the Town Council for the use contingency accounts in excess of \$25,000;

WHEREAS, the Town of Paradise Valley’s Adopted Financial Management Policies requires the approval of the Town Council for shifts in appropriations within funds and in departments exceeding \$50,000;

WHEREAS, the Town of Paradise Valley’s Adopted Financial Management Policies require that amendments to the capital improvement fund be approved by the Town Council;

WHEREAS, adjustments do not increase the total budget or enable the Town Council to increase spending in excess of the Adopted Budget or the Annual Expenditure Limitation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Paradise Valley, Arizona, as follows:

Section 1. Record the FY2020/21 budget amendment for “Priority Two Spending Authority”; of the \$3,321,906 of priority two programs, this amendment provides spending authority for \$2,971,583 or 89% with \$2,633,145 for non-recurring expenditures and \$338,438 recurring expenditures as listed below.

PRIORITY TWO Spending Authority		Current Budget	Budget Increase	Budget Reduction	Amended Budget
Description					
Non-recurring expenditures					
1	Community development - General plan	\$ 20,000	\$ 104,900	-	\$ 124,900
2	Police - PSPRS Unfunded liability	-	2,400,000	-	2,400,000
3	Technology - Board room tech upgrades	-	55,000	-	55,000
4	Public works - Sign truck	-	40,245	-	40,245
5	Finance - Town wide service fee study	-	28,000	-	28,000
6	Post Office - seasonal overtime	4,000	3,000	-	7,000
7	Facilities - Zoom in the Community room	-	2,000	-	2,000
Total non-recurring expenditures		24,000	2,633,145	-	2,657,145
Recurring expenditures (potentially)					
8	Operating contingency	600,000	68,000	-	668,000
9	Merit program lump sum award	-	230,000	-	230,000
10	Town Attorney - Personnel (BA for part-time hours)	635,983	17,115	-	653,098
11	Finance - Personnel (BA for part-time hours)	522,453	17,323	-	539,776
12	Town Manager - Special performance awards	2,500	2,500	-	5,000
13	Town Manager - Town reporter	13,000	3,500	-	16,500
Total recurring expenditures		1,773,936	338,438	-	2,112,374
Contingencies for priorities					
14	Total Priority two spending authority	\$ 3,321,906		\$(2,971,583)	350,323

Section 2. Record the FY2019-20 budget amendment for a “Priority Three Spending Authority” of \$1,152,774 to move up the timing of the Lincoln mill and overlay project; authorizing full spending authority and identifying the funding source for this project will occur in the third quarter of the FY2020/21.

PRIORITY THREE Spending Authority		Current Budget	Budget Increase	Budget Reduction	Amended Budget
Description					
Non-recurring expenditures					
1	Pavement program - Lincoln mill and overlay	-	\$1,152,774	-	\$ 1,152,774
Contingencies					
2	Priority three spending authority	\$ 7,709,843	-	\$(1,152,774)	6,557,069

Section 3. Record the FY2020/21 budget amendment for “Current revenue budget monitoring” of \$1,680,424 from the AZCares program that provides funding for public safety and \$392,798 from a localized rebound in retail transaction privilege (sales) taxes boosted by internet sales and partial reopening of hospitality business in Paradise Valley.

CURRENT REVENUE Budget Monitoring		Current Budget	Budget Increase	Budget Reduction	Amended Budget
Description					
Non-recurring revenue					
1	Federal grants - AZ Cares for public safety	-	\$1,680,424	-	\$ 1,680,424
Recurring revenue					
2	Sales tax - (increase in retail category)	9,660,000	\$ 392,798	-	\$ 10,052,798
Contingencies for revenue					
3	Local taxes - Level II contingency	\$ 5,250,000		\$ (392,798)	\$ 4,857,202
4	Grant funding contingency	1,100,000		(1,100,000)	-
5	Other miscellaneous revenue (can use for grants)	918,050		(580,424)	337,626

PASSED, ADOPTED AND APPROVED by the Town Council of the Town of Paradise Valley this 5th day of November 2020.

TOWN OF PARADISE VALLEY
a municipal corporation

Jerry Bien-Willner, Mayor

APPROVED AS TO FORM:

ATTEST:

Andrew M. Miller, Town Attorney

Duncan Miller, Town Clerk



Action Report

File #: 20-416

TO: Mayor Bien-Willner and Town Council Members

FROM: Jill B. Keimach, Town Manager
Duncan Miller, Town Clerk

DEPARTMENT: Town Manager

AGENDA TITLE:
Consideration of Requests for Future Agenda Items

Council Goals or Other Policies / Statutory Requirements:
Resolution 2018-09: Town Council Rules of Procedure

RECOMMENDATION:
Review the current list of pending agenda topics.

SUMMARY STATEMENT:
Attached is the most recent Town Council Study Session Topic Schedule. Pursuant to the Council's Rules and Procedures, as adopted by Resolution Number 2018-09, any member of the Council may move to have the Town Manager add an item to a future agenda. Upon concurrence of two or more Council Members, which may include the Mayor, the item will be added to the pre-business meeting study session agenda within the next two regularly scheduled Town Council meetings.

Discussion on the motion to add an item to a future agenda shall be limited to the propriety of placing the item on an agenda and shall not include discussion on the merits of the topic itself.

BUDGETARY IMPACT:
None

ATTACHMENT(S):
Future agenda topics schedule

TOWN COUNCIL STUDY SESSION TOPIC SCHEDULE

October 30, 2020

11/19	12/03	12/17	01/14
3 PM STUDY SESSION <ul style="list-style-type: none"> General Plan Update Public Outreach/Participation Plan Phoenix IGA for Fire Vehicle Replacement Five Star Area C Replat Monthly Financial Update 	3 PM STUDY SESSION <ul style="list-style-type: none"> General Plan Update Public Outreach Participation Plan Smoke Tree Resort Update on Financial Audit 	3 PM STUDY SESSION <ul style="list-style-type: none"> Monthly Financial Update 	New Council Term
EXECUTIVE SESSION	EXECUTIVE SESSION	EXECUTIVE SESSION	
PRESENTATION	PRESENTATION	PRESENTATION	
CONSENT <ul style="list-style-type: none"> Award of Contract for Sewer Line Maintenance 	CONSENT	CONSENT	
PUBLIC HEARING	PUBLIC HEARING	PUBLIC HEARING	
ACTION ITEMS	ACTION ITEMS <ul style="list-style-type: none"> Approval of General Plan Update Public Outreach Participation Plan Phoenix IGA for Fire Vehicle Replacement Five Star Area C Replat Accept CAFR and PAFR 	ACTION ITEMS	
STUDY SESSION CONTINUED	STUDY SESSION CONTINUED	STUDY SESSION CONTINUED	

01/28	02/11	02/25	03/11
3 PM STUDY SESSION <ul style="list-style-type: none"> Monthly Financial update, review previously approved expenditure priorities; and options to ease into / out of expenditure priorities. 	3 PM STUDY SESSION	3 PM STUDY SESSION <ul style="list-style-type: none"> Budget Amendment Options 	3 PM STUDY SESSION
EXECUTIVE SESSION	EXECUTIVE SESSION	EXECUTIVE SESSION	EXECUTIVE SESSION
PRESENTATION	PRESENTATION	PRESENTATION	PRESENTATION
CONSENT	CONSENT	CONSENT	CONSENT
PUBLIC HEARING	PUBLIC HEARING	PUBLIC HEARING	PUBLIC HEARING
ACTION ITEMS	ACTION ITEMS	ACTION ITEMS	ACTION ITEMS
STUDY SESSION CONTINUED	STUDY SESSION CONTINUED	STUDY SESSION CONTINUED	STUDY SESSION CONTINUED

<u>Items to be scheduled*</u> <ol style="list-style-type: none"> SUP Guidelines (Community Development) Cell Service Task Force Update (Mayor / Manager) Cell Infrastructure on SUP Ordinance – Amending Chapter 12 Municipal Court (Court) Investment Policy (Finance) Contract for Pavement Management Program (PW) Pad Height (Engineering) Scooter/Bike Share Policy (Manager) Historic Property Recognition Policy 	<ol style="list-style-type: none"> Crown Castle Agreement (Attorney) Towing Services Contract (Attorney) Alarm Ordinance (Police Department) Sanitary Sewer – Executive Session (Attorney) IGA with Scottsdale for roundabout at Indian Bend and Palmeraie (Attorney) Hillside Safety Manual added to Town Code (Attorney) Council Minutes Policy (Town Clerk) Mockingbird Lane Realignment Committee/Board Vacancies (Town Clerk)
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*Numbering does not reflect priority or order in which items will be scheduled