AGENDA 4:30 P.M.

CITY COUNCIL MEETING TUESDAY, SEPTEMBER 27, 2022

NOTES:

- Public Forum:
  Comments are generally limited to 3 minutes.
- Consent Items:
  Items listed under Consent Items have been distributed to Council Members in advance for study and will be enacted by one motion. Any member of the Council, staff or the public may remove an item from the Consent Items for discussion. For additional information on pulling a Consent Item, please contact the City Clerk's Office staff, preferably in advance of the Call to Order. Items removed from the Consent Items may be acted upon before proceeding to the next agenda item.
- Meeting room is wheelchair accessible. American Disabilities Act (ADA) accommodations are available upon request. Please phone 928-282-3113 at least two (2) business days in advance.
- City Council Meeting Agenda Packets are available on the City's website at:

www.SedonaAZ.gov

THE MEETING CAN BE VIEWED LIVE ON THE CITY'S WEBSITE AT WWW.SEDONAAZ.GOV OR ON CABLE CHANNEL 4.

GUIDELINES FOR PUBLIC COMMENT

PURPOSE:

- To allow the public to provide input to the City Council on a particular subject scheduled on the agenda.
- This is not a question/answer session.
- No disruptive behavior or profane language will be allowed.

PROCEDURES:

- Fill out a "Comment Card" and deliver it to the City Clerk.
- When recognized, use the podium/ microphone.
- State your:
  1. Name and
  2. City of Residence
- Limit comments to **3 MINUTES.**
- Submit written comments to the City Clerk.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE/MOMENT OF SILENCE/ROLL CALL
2. CITY'S VISION
3. CONSENT ITEMS - APPROVE LINK TO DOCUMENT =
   a. Minutes - September 13, 2022 City Council Regular Meeting.
   b. AB 2856 Approval of contract extension with Policy Development Group in an amount not-to-exceed $75,000 for legislative advocacy work during the 2023 Arizona State Legislative session.
   c. AB 2859 Approval of a recommendation regarding an application for a new Series 12 Restaurant Liquor License for The Hudson located at 671 HWY 179, Ste D, Sedona, AZ (File# 206500).
   d. AB 2872 Approval of a Resolution authorizing a Settlement Agreement with Son Silver West Gallery, Inc. to settle claims arising out of the retail business being conducted by Son Silver West pursuant to a conditional use permit approved by the City (CUP 92-3) and to resolve ongoing litigation in the matter of City of Sedona vs. Son Silver West Gallery, Inc., et al., Coconino County Case No. CV201900022.
4. APPOINTMENTS - None.
5. SUMMARY OF CURRENT EVENTS BY MAYOR/COUNCILORS/CITY MANAGER
6. PUBLIC FORUM (This is the time for the public to comment on matters not listed on the agenda. The City Council may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.)
7. PROCLAMATIONS, RECOGNITIONS & AWARDS - None.
8. REGULAR BUSINESS
   a. AB 2866 **Discussion/possible action** regarding an Ordinance to remove part C of Chapter 15.15.020 -a prior amendment to the 2017 National Electrical Code.
   b. AB 2860 **Discussion/possible action** regarding an Ordinance revising the Sedona City Code, Chapter 3.20.080, to add language related to collection charges.
   c. AB 2871 **Discussion/possible direction** regarding amending the Sedona City Code Chapter 9.10 (Offenses Against Public Peace), Section 9.10.010 (Camping and sleeping in certain places).
   d. **Reports/discussion** regarding Council assignments.
   e. **Discussion** regarding ideas for future meeting/agenda items.

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.

Page 2, City Council Meeting Agenda Continued

9. EXECUTIVE SESSION

If an Executive Session is necessary, it will be held in the Vultee Conference Room at 106 Roadrunner Drive. Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).

b. Return to open session. Discussion/possible action on executive session items.

10. ADJOURNMENT

Posted: 09/22/2022

By: DJ

JoAnne Cook, CMC,
City Clerk

Note: Pursuant to A.R.S. § 38-431.02 notice is hereby given to the members of the City Council and to the general public that the Council will hold the above open meeting. Members of the City Council will attend either in person or by telephone, video, or internet communications. The Council may vote to go into executive session on any agenda item, pursuant to A.R.S. § 38-431.03(A)(3) and (4) for discussion and consultation for legal advice with the City Attorney. Because various other commissions, committees and/or boards may speak at Council meetings, notice is also given that four or more members of these other City commissions, boards, or committees may be in attendance.

A copy of the packet with materials relating to the agenda items is typically available for review by the public in the Clerk's office after 1:00 p.m. the Thursday prior to the Council meeting and on the City's website at www.SedonaAZ.gov. The Council Chambers is accessible to people with disabilities, in compliance with the Federal 504 and ADA laws. Those with needs for special typeface print, may request these at the Clerk's Office. All requests should be made **forty-eight hours** prior to the meeting.

Action Minutes
Regular City Council Meeting
City Council Chambers, Sedona City Hall,
102 Roadrunner Drive, Sedona, Arizona
Tuesday, September 13, 2022, 4:30 p.m.

1. Call to Order/Pledge of Allegiance/Moment of Silence/Roll Call

Mayor Moriarty called the meeting to order at 4:30 p.m.

Council Present: Mayor Sandy Moriarty, Vice Mayor Scott Jablow, Councilor Kathy Kinsella, Councilor Tom Lamkin, Councilor Jon Thompson, and Councilor Jessica Williamson. Councilor Ploog was excused absent.

Staff Present: City Manager Karen Osburn, Deputy City Manager Joanne Keene, Assistant City Manager/Director of Public Works Andy Dickey, City Attorney Kurt Christianson, Magistrate Judge Paul Schlegel, Communications Specialist Sue Donahoe, Communications Supervisor Mark Coughlin, Associate Engineer Hanako Ueda, Transportation Administrator Robert Weber, Procurement Officer Heidi Weber, Sustainability Manager Alicia Peck, Police Chief Stephanie Foley, Executive Assistant to the Police Chief Sherri O'Connor, Communications Specialist Johnna Johnson, Officer Michael Lucas, Detective Jesus Evangelista, Records Clerk I Heidi Videto, Officer Josh Jones, Detective Aldo Ortega, Officer Steven Willadsen, Officer Kyle Nudelman, Officer Catherine Beers, Officer Ty Langmack, Sergeant Michael Dominguez, Parks and Recreation Manager Dawn Norman, Director of Financial Services Cherie White, Engineering Supervisor Kurt Harris, Human Resources Manager Brenda Tammarine, Communications and Public Relations Manager Lauren Browne, Accounting Technician II Marsha Beckwith, Revenue Supervisor Bernadette Krchnavy, Accounting Technician Katie Dutro, Accounting Technician II Joanne Plante, Public Works Administrative Supervisor Katie Chadwick, Public Works Administrative Assistant Celeste Bramble, Senior Code Enforcement Officer Brian Armstrong, Arts Coordinator Nancy Lattanzi, and City Clerk JoAnne Cook.

2. City's Vision/Moment of Art

The City's Vision video was played.

Nancy Lattanzi introduced musician Michael Kollwitz. He performed '*Baby Breach*' from his album *Calm Waters* and '*Ocean Pool'* from the album *Suntan Lady*.

Item 7 was moved ahead of item 3.

3. Consent Items

a. Minutes – August 17, 2022 City Council Special Meeting.
b. Minutes – August 23, 2022 City Council Regular Meeting.
c. Approval of Proclamation, Constitution Week, September 17-23, 2022.
d. AB 2855 Approval of award of a Streets Maintenance Job Order Contract extension with Cactus Asphalt, Inc. and J. Banicki Construction, Inc.
e. AB 2862 Approval of the updated FTA Title VI Implementation Plan, which is required to receive 5311 FTA funds from ADOT for the FFY2022 – FFY2023 funding cycle.

f. AB 2863 Approval of a Resolution authorizing an Intergovernmental Agreement for the provision of services by the Coconino County Elections Department.

g. AB 2864 Approval of a contract with WEX Bank, pursuant to WEX Bank's Sourcewell Cooperative Purchasing Contract No. 080620-WEX for the provision of fleet payment solutions.

h. AB 2865 Approval of a Resolution authorizing an agreement with Equalis Group for utilization of purchasing cooperative agreements for the purchase of goods and services.

i. AB 2867 Approval of a Guaranteed Price Agreement with ADP, Inc. for the provision of human resources and payroll services for FY23 through FY25.

Item 3d was pulled by Vice Mayor Jablow and item 3e was pulled by Councilor Kinsella.

Motion: Councilor Williamson moved to approve the consent items 3a, 3b, 3c, 3f, 3g, 3h, 3i. Seconded by Councilor Kinsella. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.

Andy Dickey provided information regarding item 3d and addressed concerns from public about public concerns over past work. He advised that the remediation to resolve those issues would begin this Fall.

Questions and comments from Council.

Will Hurst, Sedona, stated Andy Dickey answered all of his questions and concerns.

Councilor Kinsella requested to modify the language in the FTA's non-discrimination notice, non-discrimination procedures, and the filing complaint forms to meet the city's more robust standard to include race, gender, national origin, religion, age, sexual orientation, or disability. Councilor Williamson and Vice Mayor Jablow supported the request.

Motion: Councilor Williamson moved to approve the consent items 3d and 3e Seconded by Councilor Kinsella. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.

4. Appointments – None.

5. Summary of Current Events by Mayor/Councilors/City Manager

Councilor Kinsella said the Sedona Arts for Peace is celebrating Peace Week, September 18-23, 2022 by sponsoring six different art pieces, visit sedonacityofpeace.org for more information. Vice Mayor Jablow advised the Red Dirt Concert Series events take place on Fridays, the third Annual Wag Fest event will be on September 13, 2022, visit the City's website for more information about programs and upcoming events. Mayor Moriarty stated the WineFest event will take place on September 24 & 25, 2022.

6. Public Forum

Opened to the public at 5:11 p.m.

Steve Schiebs, Sedona, spoke in favor of the Climate Action Plan and voiced his concerns about the implementation of the Plan.

Brought back to Council at 5:13 p.m.

7. Proclamations, Recognitions & Awards

This item was moved after item 2 on the agenda.

Magistrate Judge Paul Schlegel administered the oath of office to Chief Foley for her official Swearing In Ceremony. Chief Foley thanked family, friends, and colleagues for their support.

Mayor Moriarty presented the Constitution Week Proclamation to Roberta Ross, member of the National Society of Daughters of the American Revolution. Roberta Ross thanked the Mayor and read a statement detailing their member's scope of service.

8. Regular Business

a. AB 2815 Presentation/discussion by the Arizona Community Foundation of Sedona's (ACF) Regional Director Jennifer Perry regarding their purpose and strategic initiatives.

Mayor Moriarty introduced Arizona Community Foundation of Sedona Regional Director Jennifer Perry. Presentation by Regional Director Jennifer Perry.

Questions and comments from Council. For presentation and discussion only.

b. AB 2844 Discussion/possible action regarding approval of an amount not-to-exceed $155,000 to expand and improve the Sedona Dog Park and off-leash use of athletic fields.

Questions and comments from Council.

Presentation by Dawn Norman, Andy Dickey, and Karen Osburn.

Opened to the public at 6:46 p.m.

The following spoke in favor of the proposed expansion and improvement of the Sedona Dog Park: Linda Brecha, Sedona, Sheila Harding, Sedona, Laurel Room, Sedona, Patricia Berry, Sedona, Peter Periharos, Sedona, Sandra Immerso, Sedona, Salvadore Lopes, Sedona, Maria Denny, Sedona., Barbara Hess, Sedona, suggested small pebble rock over dirt be used at the park.

The following spoke voiced concerns regarding the proposed plan and improvement of the Sedona Dog Park: Dr. Jaqualine Vaughn, Sedona, stated she believes the plan is poorly designed and voiced concerns over the availability of the field and other field uses, Sue Shannon, Sedona, voiced concerns about parking and sustainability.

Brought back to Council at 7:19 p.m.

Motion: Councilor Thompson moved to approve an expansion of the Posse Grounds Dog Park, to include a new field area, comprised of a non-grass surface such as crushed granite in an amount not-to-exceed $155,000. Seconded by Vice

Mayor Jablow. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.

Council asked staff to bring this issue back for consideration if the surface is not working at the park.

Break at 8:15 p.m. Reconvened at 8:41 p.m.

c. AB 2853 Discussion/possible action regarding a Resolution and Ordinance amending the Sedona City Code Chapter 8.10 (Litter - Nuisances), sections 8.10.010 (Definitions), 8.10.020 (Public nuisances defined), 8.10.180 (Abatement of nuisances), 8.10.210 (Abatement), and adding a new section 8.10.215 (Court-ordered abatement).

Presentation by Brian Armstrong and Kurt Christianson.

Comments and questions from Council.

Motion: Councilor Thompson moved to approve Resolution No. 2022-27, establishing as a public record the proposed amendment to Sedona City Code Chapter 10.20 entitled "2022 Amendments to Sedona City Code Chapter 8.10 (Litter)." Seconded by Councilor Kinsella. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.

(After First Reading)

Motion: Councilor Thompson moved to adopt Ordinance No. 2022-04 an ordinance of the Mayor and Council of the City of Sedona, Arizona adopting amendments to the Sedona City Code Chapter Page 3 8.10 (Litter) related to public nuisances and abatement; providing for a savings clause; and providing for repeal of any conflicting ordinances as amended. Seconded by Councilor Kinsella. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.

d. AB 2854 Discussion/possible action regarding a Resolution and Ordinance amending the Sedona City Code Title 8 (Health and Safety) by adopting amendments to Chapter 8.05 (Article II. Garbage and Solid Waste Containment) related to sections 8.05.070 and 8.05.080 trash regulations.

Motion: Councilor Thompson moved to approve Resolution No. 2022-28, establishing as a public record the proposed amendment to Sedona City Code Chapter 10.20 entitled "2022 Amendments to Sedona City Code Chapter 8.05 (Garbage and Solid Waste Containment)." Seconded by Councilor Lamkin. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.

(After First Reading)

Motion: Councilor Thompson moved to adopt Ordinance No. 2022-05 an ordinance of the Mayor and Council of the City of Sedona, Arizona adopting amendments to the Sedona City Code 8.05 (Garbage and Solid Waste Containment) related to trash

regulations; providing for a savings clause; and providing for repeal of any conflicting ordinances. Seconded by Councilor Lamkin. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.

e. AB 2857 Discussion/possible action regarding an Ordinance amending the Sedona City Code Title 1 (General Provisions) by adopting amendments to Chapter 1.15 (Penalties) adding a new Section 1.15.030 related to recording violations against real property.

(After First Reading)

Motion: Councilor Williamson moved to adopt Ordinance No. 2022-06 an ordinance of the Mayor and Council of the City of Sedona, Arizona adopting amendments to the Sedona City Code Chapter 1.15 (Penalties) related to recording of violations against real property; providing for a savings clause; and providing for repeal of any conflicting ordinances as amended. Seconded by Councilor Kinsella. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed

f. AB 2571 Discussion/possible direction regarding issues surrounding the COVID-19 pandemic and the City's response.

No discussion or direction. By majority consensus, Council agreed to remove this item from the agenda.

g. Reports/discussion regarding Council assignments.

Councilor Williamson attended the Affordable Housing meeting and said the Housing Manager, Shannon Boone, has received over 100 calls of interested applicants for the Rent Local Program from individuals and not corporate investors. She said future discussions will include what can be done to recognize housing heroes and Councilor Thompson suggested a landlord of the month award. Councilor Thompson attended the Sedona Recycles Board meeting and said their biggest challenge is the ability to retain and attract staff. Councilor Thompson also attended the Northern Arizona Council of Governments (NACOG) meeting. He said two at large members from the County serve on the Board, and Jennifer Perry will serve as new representative for Yavapai County. Councilor Lamkin attended the Coconino Plateau Water Shed Partnership meeting and said progress is being made regarding efforts to get legislature to work on items for the control of ground and surface water usage.

h. Discussion regarding ideas for future meeting/agenda items.

No discussion. Mayor Moriarty advised

9. Executive Session

Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).

b. Return to open session. Discussion/possible action on executive session items.

No Executive Session was held.

e. Adjournment

Mayor Moriarty adjourned the meeting at 9:24 p.m. without objection.

Mayor Moriarty advised there is no meeting scheduled for tomorrow, September 14, 2022.

I certify that the above are the true and correct actions of the Regular City Council Meeting held on September 13, 2022.

_____ _____

JoAnne Cook, CMC, City Clerk Date

Agenda Item: 3b
Proposed Action & Subject: Approval of contract extension with Policy Development Group in an amount not-to-exceed $75,000 for legislative advocacy work during the 2023 Arizona State Legislative session.

Department	City Manager
Time to Present **Total Time for Item**	N/A
Other Council Meetings	September 28, 2021, November 9, 2021
Exhibits	A. Original Contract with Policy Development Group B. Contract Extension C. Biographies for Policy Development Group

City Attorney Approval	Reviewed 09/20/22 KWC
City Manager's Recommendation	Approve a contract extension with Policy Development Group in an amount not-to-exceed $75,000

Expenditure Required	
	$ 75,000
Amount Budgeted	
	$ 75,000
Account No. (Description)	10-6220-13-6405 (Professional Services – one-time)
Finance Approval	☒

SUMMARY STATEMENT

Background: In September 20221, City Council provided direction to staff to contract with a legislative advocate to work on behalf of the City of Sedona to pursue legislative changes related to short-term rentals.

On November 1, 2021, the City entered into a contract with Policy Development Group (PDG) for legislative consulting services during the 2022 Arizona Legislative session. PDG was hired specifically to represent the City of Sedona on issues related to short-term rentals.

During the 2022 legislative session, several pieces of legislation were introduced related to short-term rentals. Along with the Deputy City Manager and City Attorney, PDG worked with the Arizona League of Cities and Towns and other cities and towns to educate and lobby the legislature. One outcome was a bill introduced by Representative Barton that addressed the City's unique needs and position related to short-term rentals. HB 2711 would have allowed cities with a population of less than 17,000 to regulate short-term rentals by setting a density cap locally, among other provisions.

While HB 2711 was not ultimately successful, the city's issues were highlighted with legislators and the city was able to provide testimony in committee during the February 14, 2022, hearing.

In the City's FY 23 adopted budget, funding was allocated to hire a legislative advocate to work on all State legislative priorities for the city. Staff is recommending that we continue our relationship with PDG and hire them for another legislative session. The original contract with PDG was for $75,000. This current amendment to the contract will expand the work of PDG to issues in addition to short-term rentals.

On December 13, 2022, City Council will have a State Legislative priorities discussion to help identify issues for the 2023 legislative session.

Climate Action Plan/Sustainability Consistent: ☐**Yes -** ☐**No -** ☒**Not Applicable**

Board/Commission Recommendation: ☐**Applicable -** ☒**Not Applicable**

Alternative(s): None

MOTION

I move to: approve a contract extension with Policy Development Group in an amount not-to-exceed $75,000 for legislative advocacy work during the 2023 Arizona State Legislative session.

CONTRACT FOR PROFESSIONAL SERVICES
FOR THE CITY OF SEDONA

This contract is made and entered into on this 1st day of November, 2021, by and between the City of Sedona ("CITY") and Policy Development Group ("CONSULTANT").

1. A. The CONSULTANT agrees to perform certain consulting and coordinating services for CITY, in connection with legislative advocacy for short-term rentals, as set forth in **Exhibit A** (attached).

   B. CITY agrees to pay the CONSULTANT as compensation for services on a MONTHLY basis in accordance with the process and fee schedule set forth in **Exhibit A** not to exceed a total amount of seventy-five thousand dollars ($75,000) paid on a monthly basis for eight (8) months. If deemed necessary by CITY, the CONSULTANT and CITY will confer to further define specific tasks in the scope of work.

   C. Any work that is different from or in addition to the work specified shall constitute a change in the scope of work. No such change, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the City Manager and by CONSULTANT. If CONSULTANT proceeds without such written authorization, CONSULTANT shall be deemed to have waived any claims of unjust enrichment, *quantum meruit* or implied contract. Except as expressly provided herein, no agent, employee or representative of CITY shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this contract.

2. Subject to Arizona Public Records Law, correspondence, reports and other documentation of CONSULTANT'S work shall be considered confidential information and will be distributed only to those persons, organizations or agencies specifically designated by CITY or its authorized representative, or as specifically required for completion of CONSULTANT'S task, or pursuant to a public records request under ARS 39-121 and related provisions. In the event such request is made for a commercial purpose, CITY will notify CONSULTANT for purposes of redaction or protection of proprietary work/confidential information.

3. Except as otherwise set forth in this contract, billing and payment will be in accordance with the conditions set forth in **Exhibit A**. Invoices are due and payable upon receipt and are delinquent only thirty (30) days after the date received by CITY. Each invoice shall set forth a general description of the work performed, in accordance with the scope of work, for the months billed. CONSULTANT may complete such work as it deems necessary, after termination, except that such work will be at its own expense and there shall be no "termination charge" whatsoever to CITY.

4. Any fee required by any governmental agency in order for CONSULTANT to accomplish a task hereunder shall be provided by CITY and is not included in the monthly fee.

5. In the event any term or provision of this contract is held to be illegal or in conflict with any law of the United States or Arizona or any local law, the validity of the remaining provisions shall not be affected, and this contract shall be construed and enforced as if it did not contain the particular term or provision,

6. OWNERSHIP OF DOCUMENTS. All documents, including, but not limited to,

correspondence, estimates, notes, recommendations, analyses, reports and studies that are prepared in the performance of this contract are to be, and shall remain, the property of CITY and are to be delivered to CITY before the final monthly payment is made to the CONSULTANT.

7. PROFESSIONAL RESPONSIBILITY. CONSULTANT hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

8. COMPLIANCE WITH LAW. It is contemplated that the work and services to be performed by CONSULTANT hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations that are in effect on the date of this contract. Any subsequent changes in applicable laws, ordinances, rules or regulations that necessitate additional work shall constitute a change in the scope of work. It is unlawful for any business to operate if it is (1) physically located within the city limits, or (2) if it has an obligation to pay transaction privilege taxes (TPT) to the City of Sedona for the business it is conducting, without first having procured a current business license from the City and complying with any and all regulations of such business specified in the Sedona City Code, Sedona Land Development Code (LDC), and Arizona Revised Statutes except as exempted pursuant to SCC 5.05.025. Said compliance shall include but not be limited to compliance with any and all zoning ordinances and specified building uses. A business license is in addition to the privilege tax license required by Section 8-300 of the Sedona City Tax Code.

9. INDEMNIFICATION. To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CITY, and each council member, officer, employee or agent thereof (CITY and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of CONSULTANT, its officers, employees, agents or any tier of subcontractor in connection with CONSULTANT'S work or services in the performance of this contract. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this paragraph.

10. INSURANCE.

   A. The CONSULTANT agrees to procure and maintain in force during the term of this contract, at its own cost, the following coverages as may be requested by CITY, either in the initial bid, or prior to commencement of particular tasks.

      1. Worker's Compensation Insurance as required by the Labor Code of the State of Arizona and Employers' Liability Insurance.

      2. Commercial General or Business Liability Insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000.00) each occurrence and TWO MILLION DOLLARS ($2,000,000.00) general aggregate.

3. Professional Liability coverage with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) each claim and ONE MILLION DOLLARS ($1,000,000.00) general aggregate. If approved by CITY, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

B. CONSULTANT shall procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to CITY, acceptance of which shall not be unreasonably withheld. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the CONSULTANT pursuant this contract. In the case of any claims made to the policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

C. A Certificate of Insurance shall be completed by the CONSULTANT'S insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by CITY. The Certificate shall identify this contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated or limits reduced until at least 30 days prior written notice has been given to CITY. The City shall be named as an additional insured. The completed Certificate of Insurance shall be sent to:

City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336
ATTN: City Clerk

D. Failure on the part of CONSULTANT to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a Material Breach of Contract upon which CITY may immediately terminate this contract or, at its discretion, CITY may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by CITY shall be repaid by the CONSULTANT to CITY upon demand, or CITY may offset the cost of the premiums against any monies due to CONSULTANT from CITY.

E. CITY reserves the right to request and receive a certified copy of any policy and any pertinent endorsement thereto. CONSULTANT agrees to execute any and all documents necessary to allow CITY access to any and all insurance policies and endorsements pertaining to this particular job.

11. NON-ASSIGNABILITY. Neither this contract, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

12. TERMINATION. This contract shall terminate June 30, 2022 , or upon CITY providing CONSULTANT with seven (7) days advance written notice, whichever occurs first. In the event the contract is terminated by CITY'S issuance of said written Notice of Intent to Terminate, CITY shall pay CONSULTANT for all work previously authorized and performed prior to the date of termination. If, however, CONSULTANT has substantially or materially breached the standards and terms of this contract, CITY shall have any remedy or right of set-off available at law and equity. No other payments, including any payment for lost profit

or business opportunity, and no penalty shall be owed by CITY to CONSULTANT in the event of termination upon notice.

13. VENUE. This contract shall be governed by the laws of the State of Arizona, and any legal action concerning the provisions hereof shall be brought in the County of Yavapai, State of Arizona.

14. INDEPENDENT CONTRACTOR. CONSULTANT is an independent contractor. Notwithstanding any provision appearing in this contract, and any exhibits and/or addenda, all personnel assigned by CONSULTANT to perform work under the terms of this contract shall be, and remain at all times, employees or agents of CONSULTANT for all purposes. CONSULTANT shall make no representation that it is the employee of CITY for any purpose.

15. NO WAIVER. Delays in enforcement or the waiver of any one (1) or more defaults or breaches of this contract by CITY shall not constitute a waiver of any of the other terms or obligations of this contract.

16. ENTIRE AGREEMENT. This contract, together with the attached exhibits, is the entire agreement between CONSULTANT and CITY, superseding all prior oral or written communications. None of the provisions of this contract may be amended, modified or changed except by written amendment executed by both parties.

17. NON-DISCRIMINATION. CONSULTANT, its agents, employees, contractors and subcontractors shall not discriminate in any employment policy or practice. "Discrimination" means to exclude individuals from an opportunity or participation in any activity or to accord different or unequal treatment in the context of a similar situation to similarly situated individuals because of race, color, gender, gender identity, sexual orientation, religion, national origin or ancestry, marital status, familial status, age, disability, or Veteran status. (Ordinance 2015-10) (2015).

18. COMPLIANCE WITH FEDERAL AND STATE LAWS:

    A. Under the provisions of A.R.S. § 41-4401, CONSULTANT hereby warrants to CITY that CONSULTANT and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").

    B. A breach of the Contractor Immigration Warranty shall constitute a material breach of this contract and shall subject CONSULTANT to penalties up to and including termination of this contract at the sole discretion of CITY.

    C. CITY retains the legal right to inspect the papers of any contractor or subcontractor employee who works on this contract to ensure that the contractor or subcontractor is complying with the Contractor Immigration Warranty. CONSULTANT agrees to assist CITY in regard to any such inspections.

    D. CITY may, at its sole discretion, conduct random verification of the employment records of CONSULTANT and any subcontractors to ensure compliance with the Contractor Immigration Warranty. CONSULTANT agrees to assist CITY in regard to any random

verification performed.

E. Neither CONSULTANT nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if CONSULTANT or any subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

F. The provisions of this article must be included in any contract that CONSULTANT enters into with any and all of its subcontractors who provide services under this contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

G. CONSULTANT shall execute the required documentation and affidavit of lawful presence as set forth in ARS 1-502/8 USC § 1621 (Exhibit B).

H. CONSULTANT understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: CONSULTANT must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. § 34-302, as amended, "Residence Requirements for Employees."

19. DISPUTE RESOLUTION. The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this contract. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, upon which demand the matter shall be submitted to a mediation firm mutually selected by the parties. The mediator shall hear the matter and provide an informal opinion and advise within twenty (20) days following written demand for mediation. Said informal opinion and advice shall not be binding on the parties, but shall be intended to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter may then be submitted to the judicial system.

20. DELAYS. CONSULTANT shall not be responsible for delays which are due to causes beyond CONSULTANT'S reasonable control. In case of any such delay, any deadline established as part of the scope of work shall be extended accordingly.

21. ATTORNEYS' FEES AND COSTS. Should any legal action, including arbitration, be necessary to enforce any term of provision of this contract or to collect any portion of the amount payable hereunder, all expenses of such legal action or collection, including witness fees, costs of the proceedings and attorneys' fees, shall be awarded to the substantially prevailing party.

22. CONFLICT OF INTEREST. From the date of this contract through the termination of its service to CITY, CONSULTANT shall not accept, negotiate or enter into any contract or agreements for services with any other party that may create a substantial interest, or the appearance of a substantial interest in conflict with the timely performance of the work or ultimate outcome of this contract and/or adversely impact the quality of the work under this

contract without the express approval of the City Manager and the City Attorney. Whether such approval is granted shall be in the sole discretion of the City Manager and the City Attorney. The parties hereto acknowledge that this Contract is subject to cancellation pursuant to the provisions of ARS § 38-511.

23. NOTICE. Any notice or communication between CONSULTANT and CITY that may be required, or that may be given, under the terms of this contract shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

CITY:	City of Sedona Attn: City Manager 102 Roadrunner Drive Sedona, AZ 86336
CONSULTANT:	Policy Development Group 3636 North Central Avenue, Suite 590 Phoenix, AZ 85012

24. NOTICE TO PROCEED. Unless otherwise noted by CITY, acceptance of this contract is official notice to proceed with the work.

CITY OF SEDONA, ARIZONA

City Manager

ATTEST:

Deputy City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney

Policy Development Group

By: Paul C. Senseman, Jr.

Title: Principal

I hereby affirm that I am authorized to enter into and sign this contract on behalf of CONSULTANT

AMENDMENT NO. ONE
Contract for Professional Services

This Amendment No. One ("Amendment") to the Contract for Professional Services ("Contract") is made this 1th day of November, 2022, ("Effective Date"), by and between the City of Sedona, an Arizona municipal corporation ("City") and Policy Development Group, ("Consultant").

RECITALS

A. City and Policy Development Group ("Consultant") previously entered into the Contract for Professional Services, dated November 1, 2021 ("Agreement"); and

B. City and Consultant wish to modify and amend the terms of the Agreement subject to and strictly in accordance with the terms of this Amendment.

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant hereby agree as follows:

1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.

2. **Term.** Section 12 Termination is amended by extending the term of the Agreement through June 30, 2023.

3. **Scope of Work**. Section 1.A. and Exhibit A are amended to expand the services to include:

   (i) Provide visible representation of the City of Sedona at the State Legislature and State executive branch agencies;

   (ii) Anticipate, monitor and engage pending state and regional legislation and regulatory matters;

   (iii) As agreed to by the City, orchestrate the defeat of statutory proposals that preempt municipalities or weaken State Shared Revenues;

   (iv) Identify potential issues, with early intervention, and seek to mitigate problems before they become law;

(v) Ascertain if legislation can be amended to resolve the City's issue. Work with the bill sponsor and advocates to seek and implement those changes;

(vi) Attend State legislative sessions, committee meetings, stakeholder meetings, and negotiations pertaining to the City's legislative interests;

(vii) Identify, with the Mayor, City Council, and management staff, justifications and opportunities to articulate economic needs and mutually beneficial alliances;

(vii) Regularly communicate with City staff to provide updates and develop strategy on pending legislative matters.

4. **Compensation**. Consultant shall continue to be paid $9,375.00 per month for a total of 8 months. Section 1.B. and Exhibit B are amended by changing the not to exceed total to $150,000 for all contract terms (initial and extension).

5. **Ratification of Agreement.** City and Consulant hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

[Signatures on the following page.]

CITY OF SEDONA, an Arizona
municipal corporation

_____
Karen Osburn, City Manager

ATTEST:

_____
JoAnne Cook, City Clerk

APPROVED AS TO FORM:

_____
Kurt W. Christianson, City Attorney

PROVIDER

_____
Paul C. Senseman Jr, Principal
Principal



Paul Senseman

Since joining PDG in 2003, Paul has been recognized by colleagues as one of the most respected public affairs experts in Arizona. Paul and his wife, PDG's Kathy Senseman, made history as the first people ever voted by professional colleagues to win "Best of the Capitol" awards individually and then again as a single unit. Paul's distinguished resume and affable personality give him a broad base of strong relationships and respected credibility across Arizona, and his keen knowledge of a wide range of public policy, strategic acumen, and familiarity with critical media messaging maximize results for our clients. In addition to lobbying elected officials and department policymakers at state and local governments, Paul has significant experience in a variety of regulatory matters and crisis communications, as well as grassroots and grasstops strategy development. He brings extensive strategic, political and managerial experience to our clients at the local, state and federal levels.

A fourth-generation resident of Peoria, Paul received a Bachelor of Science from Arizona State University. He began his professional political career in the Phoenix office of U.S. Senator John McCain and went on to serve in a variety of positions on the Arizona legislative leadership staff, reporting to three House Speakers and ultimately becoming Chief of Staff of the Arizona House of Representatives. Paul rejoined PDG in January 2011 after serving two years as Deputy Chief of Staff for Communications for Arizona Governor Janice K. Brewer.

Paul is active in a variety of organizations. He is a current member and past Chairman of the Board of Directors for the Phoenix Rescue Mission, a nonprofit committed to serving those experiencing addiction and homelessness. Paul was appointed by Governor Brewer to the Arizona Commission on Appellate Court Appointments and was similarly appointed and reappointed by Governor Doug Ducey to the Maricopa County Trial Court Commission. Paul was also appointed and reappointed by the Chief Justice of the Arizona Supreme Court to the State Bar Board of Governors. Paul participates in forums with the Arizona Center for Civic Leadership at the Flinn Foundation and annually in the selection committee for the Gabe Zimmerman Public Service Award through the Center for the Future of Arizona. Previously, Paul was Chairman of the Board of the ASU West Alumni Association and Honorary Commander of the 309th Fighter Squadron at Luke Air Force Base.



Todd Baughman

Todd joined PDG in 2007 and serves as a lobbyist and strategist for our clients at the State level. He carries a genuine passion for the political process and the people involved. In addition to being the lead lobbyist for several clients, Todd assists with the firm's legislative efforts and coordinates the day-to-day legislative agenda for our clients. He also actively participates in non-legislative efforts involving public involvement and campaign initiatives.

Originally educated and trained as an accountant, Todd worked in the financial services industry doing tax, audit, and public accounting for several years before entering the world of politics as U.S. Senator Jon Kyl's deputy campaign treasurer. There he managed the budget for the campaign and actively participated in political efforts. Following the campaign, Todd worked with The Free Enterprise Club for a short time before joining PDG.

Todd graduated from The Master's University with a degree in business administration and accounting.

Agenda Item: 3c
Proposed Action & Subject: Approval of a recommendation regarding an application for a new Series 12 Restaurant Liquor License for The Hudson located at 671 HWY 179, Ste D, Sedona, AZ (File# 206500).

Department	City Clerk
Time to Present **Total Time for Item**	N/A
Other Council Meetings	N/A
Exhibits	Liquor License Application is available for review in the City Clerk's office.

City Attorney Approval	Reviewed 09/19/22 KWC
City Manager's Recommendation	Recommend approval of a new Series 12 Restaurant Liquor License for The Hudson located at 671 HWY 179, Ste D, Sedona, AZ (File# 206500).

Expenditure Required	
	$ 0
Amount Budgeted	
	$ 0
Account No. (Description)	N/A
Finance Approval	☒

SUMMARY STATEMENT

Background: State liquor laws require Sedona's City Council to forward a recommendation for approval or denial of applications for liquor licenses.

The City has received an application for a Series 12 Restaurant Liquor License for The Hudson located at 671 HWY 179, Ste D, Sedona, AZ (File# 206500). The liquor license application is available for review and inspection in the City Clerk's office or by email.

A Series 12 Liquor License is a non-transferable, on-sale retail privileges liquor license that allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.

Community Development, Finance, the City Clerk's Office, the Sedona Police Department (SPD), and Sedona Fire District (SFD) have conducted a review of the application. No objections regarding its approval were noted.

Climate Action Plan/Sustainability Consistent: ☐**Yes -** ☐**No -** ☒**Not Applicable**

Board/Commission Recommendation: ☐**Applicable -** ☒**Not Applicable**

Alternative(s): Recommend denial of a new Series 12 Restaurant Liquor License for The Hudson located at 671 HWY 179, Ste D, Sedona, AZ (File# 206500). Reasons for a recommendation of denial would need to be specified.

MOTION

I move to: approve a new Series 12 Restaurant Liquor License for The Hudson located at 671 HWY 179, Ste D, Sedona, AZ (File# 206500).

Agenda Item: 3d
Proposed Action & Subject: Approval of a Resolution authorizing a Settlement Agreement with Son Silver West Gallery, Inc. to settle claims arising out of the retail business being conducted by Son Silver West pursuant to a conditional use permit approved by the City (CUP 92-3) and to resolve ongoing litigation in the matter of City of Sedona vs. Son Silver West Gallery, Inc., et al., Coconino County Case No. CV201900022.

Department	City Attorney
Time to Present **Total Time for Item**	N/A
Other Council Meetings	May 10, 2022, October 26, 2021
Exhibits	A. Settlement Agreement B. Resolution Approving Settlement Agreement

City Attorney Approval	Reviewed 09/19/22 KWC
City Manager's Recommendation	Approve a resolution authorizing the City to enter into a Settlement Agreement with Son Silver West Gallery, Inc. to settle claims and to resolve ongoing litigation in the matter of City of Sedona vs. Son Silver West Gallery, Inc., et al., Coconino County Case No. CV201900022.

Expenditure Required	
	$ 0
Amount Budgeted	
	$ 0
Account No. (Description)	N/A
Finance Approval	☒

SUMMARY STATEMENT

Background:

In 1960, a homeowner in the Broken Arrow subdivision of Sedona opened and operated a small art gallery in her home. In 1964, Coconino County zoned the subdivision residential, but because the art gallery predated the rezoning, the county allowed it to continue operating as a legal nonconforming use. The Robson family ("Robsons") purchased the property in 1981 and renamed it Son Silver West ("SSW"). They purchased the adjacent lot in 1987, which they used for parking and as outdoor retail space. According to zoning maps, the original property is referred to as Lot 41, and the adjacent lot purchased in 1987 is Lot 41. After the City

incorporated in 1988, the Robsons were able to continue legally operating the gallery as a nonconforming use.



In 1989, SSW received from Sedona their first Notice of Violation ("NOV"). After inspecting the Robsons' properties, Sedona's Director of Community Development (the "Director") notified the Robsons that their use of Lot 41 was in violation of Sedona's Land Development Code. In response, the Robsons applied for and received a conditional use permit ("CUP 92-3") in 1992, retroactively authorizing the gallery's expansion from Lot 42 to Lot 41. CUP 92-3 included an estimated 5,000 square feet of outdoor retail area.

Over the next few years, the Robsons obtained minor adjustments to CUP 92-3, along with various permits that further developed Lots 41 and 42. In 1994, Sedona adopted a new Land Development Code, which precluded SSW from expanding CUP 92-3 beyond what already existed and was approved.

Between 1990 and 2014, the Robsons purchased three additional properties surround SSW—two houses on Lots 45 and 49 and one vacant lot on Lot 40 (collectively the "non-CUP properties"). SSW agrees that CUP 92-3 does not extend to these properties. During those same years, Sedona discovered and acted on multiple violations of SSW's properties. Some violations were resolved through compliance and some through after-the-fact permits. Each resolution was reached through cooperation between SSW and the City and no pre-2014 violations ever progressed beyond the issuance of an NOV.

In 2014, the Director received complaints regarding the non-CUP properties. The Director met with the Robsons and inspected these properties in September and the following month issued NOVs. The Robsons requested and were granted stays on the NOVs so they could apply for comprehensive zoning changes that would allow for commercial use of the non-CUP Properties. In May 2015, SSW submitted a Community Plan Amendment and rezoning

application, but after discussing with City representatives, ultimately decided to withdraw the application.

Following withdrawal of the application, the Director took two actions:1) renewed the 2014 NOVs on the non-CUP Properties, and 2) based upon information provided by the Robsons during the rezoning application process, issued two new NOVs alleging CUP 92-3 violations on Lots 41 and 42. All of the violations were listed in a November 10, 2015 letter from the Director to SSW. SSW appealed the Director's NOV to the Board of Adjustment arguing that the previous Director had approved SSW's right to operate in violation of CUP 92-3 and the Land Development Code. The Board of Adjustment ("BOA") mostly upheld the Director's enforcement actions. Specifically, the BOA determined that corrective actions A.1, A.3, A.5, C.1, C.2, D.1, D.3, D.4, D.6, and D.7 be upheld; that A.2, A.4, B.1, B.2 were resolved through compliance; and that the City and SSW work to mutually resolve D.2 and D.5.

SSW then appealed some of the corrective actions via special action to the superior court, alleging that the BOA failed to address their arguments regarding vested rights and equitable estoppel and the BOA exceeded its authority by directing the parties to work out actions D.2 and D.5 between themselves. The superior court mostly upheld the BOA's decision.

SSW appealed the superior court's decision and the court of appeals, on October 30, 2018, largely upheld the Director's enforcement of violations of the Land Development Code and CUP 92-3 against SSW.

Despite the court orders, SSW failed to fully abate all of the violations. On January 23, 2019, the City filed a complaint in the superior court requesting the court order abatement of the violations and a permanent injunction preventing SSW from continuing the violations outlined in the November 10, 2015 Notices of Violation.

SSW is currently compliant with all corrective actions in the November 15, 2015 NOV that were upheld by the courts.

Settlement Agreement:

City Staff recommends City Council adopt the attached Settlement Agreement to memorialize compliance with CUP 92-3. The Settlement Agreement includes an engineered site plan depicting the areas comprising the outdoor retail display area which SSW has marked with permanent ground markers for ease of inspection, conditions by which SSW must allow inspections to occur, predetermined daily fines for breaches of the development agreement, and binding arbitration in lieu of traditional court processes. Specifically, the City and SSW would agree to the following.

Son Silver West agrees to:

1. Remain in compliance with CUP 92-3, as adjudicated by the Coconino County Superior Court and the Arizona Court of Appeals.
2. Limit the enclosed retail space to 4,900 square feet and the Outdoor Retail Area to 5,563.81 square feet and install permanent ground markers delineating the Outdoor Retail Area. All currently clear areas will remain free of any merchandise or items. Not store or place any items not within the Outdoor Retail Area on Lots 40, 41, and 42, without permission of the Community Development Director.
3. Allow City staff entry onto Lots 40, 41 and 42 at any time during regular business hours for inspection.
4. Only use the chapel for personal religious purposes.
5. Maintain a code compliant fence between the residential and CUP properties.

6. Prohibit parking of vehicles on Lot 40, the vacant lot, and not use Lot 40 for commercial purposes except for the existing commercial driveway. SSW agrees to stripe the commercial driveway within 30 days of the Effective Date of the Settlement Agreement.
7. Install and maintain pre-approved screening along frontage of Lots.
8. Maintain all outdoor lighting fixtures to be shielded and dark-sky compliant.
9. Not use Lots 45 and 49, the non-CUP properties for commercial purposes, including fabrication, employee parking or warehousing merchandise and to allow City Staff to inspect each residence.

City agrees to:

1. Dismiss the City's abatement and injunction Case No. CV2019-00022.
2. Issue business license to SSW.
3. Follow procedures outlined in the Development Agreement for inspections and issuing notices of violations.

Climate Action Plan/Sustainability Consistent: ☒**Yes -** ☐**No -** ☐**Not Applicable**

Board/Commission Recommendation: ☐**Applicable -** ☐**Not Applicable**

Alternative(s):

MOTION

I move to: approve Resolution 2022- ____, authorizing the City of Sedona to enter into a Settlement Agreement with Son Silver West Gallery, Inc. to settle claims arising out of the retail business being conducted by Son Silver West pursuant to a conditional use permit approved by the City (CUP 92-3) and to resolve ongoing litigation in the matter of City of Sedona vs. Son Silver West Gallery, Inc., et al., Coconino County Case No. CV201900022.

SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (hereinafter, this "Agreement") is entered into by and between the **CITY OF SEDONA, ARIZONA**, an Arizona municipal corporation (the "***City***") and **SON SILVER WEST GALLERY, INC.** an Arizona corporation ("***Son Silver West***" or "SSW"), and Linda Rose Robson and William B. Robson, husband and wife, Linda Rose Robson and William B. Robson, trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999, William B. Robson and Linda Rose Robson, trustees of the William B. Robson Living Trust u/t/a dated July 12, 1999, and Rio Cody Robson, an unmarried man, (the Linda Rose Robson Living Trust, William B. Robson Living Trust, and Linda Rose, William B. and Rio Cody Robson are collectively called "the Robsons"). Hereinafter, the City, SSW and the Robsons are jointly referred to as the "parties".

RECITALS

WHEREAS, within the Broken Arrow Subdivision, recorded at Map 2, Page 71 Coconino County Official Records, Tracts 40, 41 and 42 are owned by Linda Rose Robson and William B. Robson, trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999, Tract 45 is owned by Rio Cody Robson and Tract 49 is owned by William B. Robson and Linda Rose Robson, trustees of the William B. Robson Living Trust, and William B. Robson and Linda Robson (the "Property"). Tract 49 is also known as 365 Bowstring Drive. Tract 45 is also known as 61 Arrow Drive. Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust, as Lessor, and Son Silver West Gallery, Inc., as Lessee, have entered into an existing lease for the purpose of Son Silver West operating a commercial art gallery business on Tracts 41 and 42; and

WHEREAS, there is an existing retail business being conducted by Son Silver West on Tracts 41 and 42 of the Property pursuant to a conditional use permit approved by the City on or about September 15, 1992 which allowed a legal nonconforming commercial art gallery on Tract 42 to be expanded onto Tract 41 (CUP 92-3) and the September 15, 1992 staff report; the terms of the staff report and CUP 92-3 are hereby incorporated by reference into this Agreement; and

WHEREAS, on or about November 10, 2015, the City issued a Notice of Violation to Son Silver West in which various violations of the specific terms of CUP 92-3 and the Sedona Land Development Code were identified, along with the Corrective Actions required to bring the Son Silver West business into compliance with CUP 92-3 and the Sedona Land Development Code. Corrective Actions were designated with a capital letter and a number, e.g., A.5. The November 10, 2015 Notice of Violation is hereby incorporated by reference into this Agreement; and

WHEREAS, on June 3, 2016, the City of Sedona Board of Adjustment (BOA) heard an appeal made by Son Silver West regarding the November 10, 2015 Notice of Violation and issued an Order with respect to its findings. The BOA's June 3, 2016 Order is hereby incorporated by reference into this Agreement; and

WHEREAS, on September 18, 2017, in Cause No. CV2016-00306, Hon. Dan Slayton of the Coconino County Superior Court entered a Final Judgment with respect to a Special Action Complaint brought by Son Silver West and the Robsons to challenge the June 3, 2016 decisions of the City of Sedona BOA. The Judgment upheld the BOA Order except as to Corrective Actions A.5, D.5 and D.6. Judge Slayton's Judgment is hereby incorporated by reference into this Agreement; and

WHEREAS, upon appeal by Son Silver West and the Robsons in Cause No. 1 CA-CV 17-0761, on October 30, 2018, the Arizona Court of Appeals, Division One, issued a Memorandum Decision in which the Court vacated Paragraphs 7 (Corrective Action D.2) and 10 (Corrective Action D.5) of the Superior Court's Final Judgment and reinstated the City of Sedona Board of Adjustment's decision regarding these Corrective Actions previously reversed by the Superior Court and affirmed the remainder of the Superior Court's Order. The Court of Appeals Memorandum Decision is hereby incorporated by reference into this Agreement; and

WHEREAS, on November 10, 2018, the City of Sedona issued a Notice of Violation to Son Silver West and the Robsons. On December 3, 2018, the City of Sedona issued a Notice of Violation to Son Silver West and the Robsons. The Notices of Violation are hereby incorporated by reference into this Agreement; and

WHEREAS, on January 24, 2019, the City of Sedona filed Cause No. CV201900022 in the Coconino County Superior Court seeking abatement of violations that remain out of compliance and authorization for injunctive relief authorizing the City to undertake such abatement, if necessary (hereinafter referred to as the "City's Complaint"). The City's Complaint is hereby incorporated by reference into this Agreement; and

WHEREAS, Son Silver West and the Robsons have submitted an engineered Site Plan of the Building and Shade Canopies Areas of Tracts 40, 41 and 42 and a Site Plan of Outdoor Retail Area of Tracts 41 and 42 (the "Outdoor Retail Area") based upon a scaled drawing prepared by the City of the allowable outdoor retail area (attached to this Agreement as Exhibits A and C, respectively) which have been determined by the parties to accurately reflect the conditions adopted in CUP 92-3 and which, if adhered to by Son Silver West, will establish compliance with CUP 92-3 and resolve all violations as identified in the November 10, 2018 and December 3, 2018 Notices of Violation; and

WHEREAS, Tracts 41 and 42 are located in Community Focus Area (CFA) 11: Morgan Road of the Sedona Community Plan. One of the listed attributes of CFA 11 is the existing nonconforming commercial uses; and

WHEREAS, the City's Complaint filed in Cause No. CV201900022 and all claims or counterclaims, whether asserted, unasserted, known or unknown, mandatory, or permissive arising out of or relating to the City's Complaint and the Notices of Violation shall collectively be referred to as the "Lawsuit"; and

WHEREAS, the Parties desire to fully settle the Lawsuit, including the merger herein of the orders, judgments and decisions of (i) the Board of Adjustment decision, (ii) the Coconino

County Superior Court Cause No. CV2016-00306, and (iii) Arizona Court of Appeals Cause No. 1CA-CV17-0761 and other issues as specified below, to buy their peace, and to avoid the attendant costs and expenses associated with further litigation directly or indirectly affecting one another with regard to the Property; and

WHEREAS, the Parties have reached agreement upon the terms and conditions of such settlement as set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below:

1. INCORPORATION OF RECITALS. The parties acknowledge the accuracy of the foregoing Recitals and hereby incorporate them by this reference.

2. SETTLEMENT TERMS.

a. **Execution of Agreement.** The parties shall execute and deliver to each other an executed copy of this Agreement.

b. **Covenants of Son Silver West and the Robsons.** Son Silver West and the Robsons agree as follows:

(1) To remain in compliance with the conditions applicable to Tracts 41 and 42 and established in the September 15, 1992 staff report, adopted in association with CUP 92-3, and with CUP 92-3, all as adjudicated by the BOA, Judge Slayton and the Arizona Court of Appeals, and any minor adjustments as referenced by the Arizona Court of Appeals, which includes, as shown on Exhibit A, SSW Site Plan of Building and Shade Canopies Area:

i. 4,900 square feet of retail space in enclosed buildings[1]
ii. 5,563.81 square feet of Outdoor Retail Area[2]
iii. 1,845 square feet of single family dwelling[3]
iv. 620 square feet of storage space
v. 1271 square feet of workshop[4]

(2) To not use more than the maximum allowable space on Tract 45 located at 61 Arrow Drive (APN 401-31-016) as a home occupation, as that use is defined in the Sedona Land Development Code, and to not use Tract 45 for

[1] See Footnote #1 described on Footnote Addendum attached hereto.
[2] See Footnote #2 described on Footnote Addendum attached hereto.
[3] See Footnote #3 described on Footnote Addendum attached hereto.
[4] See Footnote #4 described on Footnote Addendum attached hereto.

commercial purposes including, but not limited to, fabrication, employee parking and warehousing of merchandise in support of the Son Silver West business activities, and to allow the City staff upon notice to have access to the residence at 61 Arrow Dr. for the purpose of inspection as identified herein.

(3) To erect and maintain a Code compliant fence on the property line between the structure located at 61 Arrow Drive commonly referred to as "the chapel" and Tract 42 and that a residential-sized gate be maintained along the shared property line between Tracts 42 and 45. Further, that the chapel only be used for the owners and family friends' personal religious or contemplative purposes and not for public use.

(4) To ensure that the boundaries, buildings, walls, and fences of the Son Silver West business do not illegally encroach onto adjacent properties.

(5) To not use more than the maximum allowable space on Tract 49 located at 365 Bowstring Dr. (APN 401-31-020) as a home occupation, as that use is defined in the Sedona Land Development Code, and to not use Tract 49 for commercial purposes including, but not limited to, fabrication, employee parking and warehousing of merchandise in support of the Son Silver West business activities, and to allow the City staff upon notice to have access to the residence at 365 Bowstring Dr. for the purpose of inspection as provided herein.

(6) To prohibit the parking of vehicles on Tract 40 located at 1535 SR 179 (APN 401-31-011), to maintain a physical barrier between Tract 40 and Tract 41 at the south edge of the improved driveway on Tract 40, and to refrain from the use of Tract 40 for commercial purposes, except for the existing commercial drive which shall be used only for ingress and egress of automobiles and for the loading and unloading of shipments of business merchandise, equipment and supplies; provided, however, that unloading and loading of any such shipments shall occur before close of business by Son Silver West the same day as the arrival of the truck used for shipping and, provided further, that shipments received shall be removed from the commercial driveway area within 24 hours after being offloaded.[5] The northernmost 20 feet of the commercial drive shall be used only for ingress and egress with a center line striped and marked with paint accordingly. The remainder of the paved commercial drive shall be striped and marked with paint for unloading and loading of business merchandise, equipment and supplies within thirty (30) days after the Effective Date, and thereafter maintained.

[5] See Footnote #5 described on Footnote Addendum attached hereto.

(7) To install and maintain pre-approved screening or vegetative screening next to the existing wrought iron fencing, of a height not less than the height of the fencing, including the gates used for pedestrian access, on Tract 41 and Tract 42 along the frontage adjacent to State Route 179 so as to minimize visual impacts and maintain an attractive appearance of the Outdoor Retail Area.

(8) To maintain all outdoor lighting fixtures to be shielded and dark-sky compliant in accordance with existing City code requirements.

(9) To install permanent ground markers which will delineate the authorized Outdoor Retail Area as authorized in CUP 92-3 and accurately depicted on the site plan attached as Exhibit C. Further, that all areas and clear spaces on Tracts 40, 41 and 42 lying outside the Outdoor Retail Area shown on Exhibit C without a use designation, shall be kept open and free of any merchandise or other tangible items at all times and maintained in their current state. Further, the Robsons and SSW agree to not store, place, or locate anything, including but not limited to objects, items, merchandise, or artwork, whether for sale or not, at any exterior location on Tracts 40, 41 and 42 not within the Outdoor Retail Area as shown in Exhibits B and C and as described in Section 2(a)ii. of this Agreement without prior written permission from the City Community Development Director which shall not be unreasonably withheld. The City Community Development Director pre-approves only those non-retail items currently displayed outside the Outdoor Retail Area as recorded by video and photographs taken on July 12, 2021, by City staff and by photos provided by SSW to City staff on May 25, 2021.

(10) To allow the City staff entry onto Tract 40, Tract 41 and Tract 42 at any time during regular business operating hours of Son Silver West for the purpose of conducting inspections, including the taking of photographs, for compliance with CUP 92-3 and this Agreement in accordance with the City's standard practices for inspecting commercial properties within the City of Sedona.

(11) To promptly resolve any and all violations of CUP 92-3 or this Agreement identified through a properly conducted inspection by the City.

c. **Covenants of the City.** The City agrees as follows:

(1) To provide written confirmation to Son Silver West and the Robsons that suspension of CUP 92-3 is no longer in effect and the Son Silver West business has been found to be in compliance with CUP 92-3 and this Agreement as of the date of this Agreement.

(2) To issue current City business licenses to Son Silver West and the Robsons upon submittal of a complete application for Business Licenses, including payment of all associated licensing fees.

(3) To voluntarily dismiss with prejudice Cause No. CV201900022 in the Coconino County Superior Court.

d. **Merger of Prior Legal Proceedings.** The Parties hereby agree that the orders, judgments and decisions of the (i) June 3, 2016 Board of Adjustment decision, (ii) Coconino County Superior Court Cause No. CV2016-00306, and (iii) Arizona Court of Appeals Cause No. 1 CA-CV17-0761 are hereby merged into the terms, covenants and conditions of this Agreement.

3. NOTICE. Unless otherwise specifically provided in this Agreement, all notices, demands or other communication to be given shall be in writing and shall be deemed to have been duly delivered upon personal delivery or three (3) business days after deposit in the U.S. Postal System or one (1) business day after the sending of email notice (given between the hours of 8 am and 5 pm on a business day):

To City:
City of Sedona
Attn: Sedona Community Development Director
102 Roadrunner Drive
Sedona, Arizona 86336
jmcneely@sedonaaz.gov

Copy To:
Sedona City Attorney
102 Roadrunner Drive
Sedona, Arizona 86336
kchristianson@sedonaaz.gov

To Son Silver West:
Rio Cody Robson
1476 State Route 179
Sedona, Arizona 86336
rio@sonsilverwest.com

Copy To:
Francis J. Slavin
Francis J. Slavin, P.C.
2198 East Camelback Road, Suite 285
Phoenix, Arizona 85016
b.slavin@fjslegal.com

William and Rose Robson

25 Alpine Ln.
Sedona, Arizona 86336
bill@sonsilverwest.com

Either party may change the notice recipient or address by giving written notice to the other party as provided above.

4. MUTUAL RELEASE. In consideration of the terms, conditions and releases in this Agreement, the parties agree that:

a. The City hereby fully, completely, and finally releases and forever discharges Son Silver West and the Robsons from any and all claims, demands, actions, or causes of action of any nature whatsoever relating to, accruing or arising at any time from the beginning of the world through the date of the execution and delivery hereof, whether known or unknown, whether contingent or not contingent, whether or not in litigation, related to Cause No. S-0300-CV2016-00306 and 1 CA-CV 17-0761, the Notices of Violation that triggered such Cause, and the Lawsuit.

b. Son Silver West and the Robsons hereby fully, completely, and finally release and forever discharge the City and its officers, employees and agents from any and all claims, demands, actions, or causes of action of any nature whatsoever relating to, accruing or arising at any time from the beginning of the world through the date of the execution and delivery hereof, whether known or unknown, whether contingent or not contingent, whether or not in litigation, related to Cause No. S-0300-CV2016-00306 and 1 CA-CV 17-0761, the Notices of Violation that triggered such Cause, and the Lawsuit.

c. The claims, demands, actions, and causes of action released and discharged in subparagraphs 4(a)-(b) above includes, without limitation, any claims for any damages sustained at any time, whether before or after the date of the execution and delivery hereof, and whether or not known, anticipated, suspected, or expected in any way related to or arising out of the claims that were or could have been brought in the Lawsuit or otherwise asserted.

d. To the extent that any applicable federal or state law, rule, or regulation might make the releases and discharges set forth in paragraph 4(a)-(b) above inapplicable as to matters as to which any of the parties hereto have no knowledge, anticipation, suspicion, or expectation, each of the parties hereto hereby waives and relinquishes any and all of the rights and benefits to which it may be entitled under any such law, rule, or regulation. Each of the parties hereto hereby further acknowledges that such party may hereafter discover facts in addition to, or different from, those which such party now knows or believes to be true regarding the subject matter of the releases and discharges set forth in paragraph 4(a)-(b) above, but that, notwithstanding any such discovery, each of the parties hereto intends that the releases and discharges set forth in paragraph 4(a)-(b) above shall be full, complete, and final releases and discharges as set forth herein.

5. FULL AND FINAL SETTLEMENT. Each party declares that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making, respectively as the context may be, a full and final compromise, adjustment and settlement and release for all claims released herein, disputed or otherwise, between and among the parties hereto. This Agreement constitutes the full, complete, final, and exclusive expression of all of the representations, warranties, covenants, promises, and agreements of the parties hereto relative to the subject matter hereof.

6. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT. Each party represents and warrants to each other party that such party (i) has the entire right and exclusive authority to execute this Agreement, (ii) is not under any disability which could affect the capacity of such party to execute this Agreement and (iii) has not sold, assigned, transferred, conveyed, encumbered, hypothecated, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

7. NO ADMISSION OF LIABILITY. The parties are entering into this Agreement in order to buy such party's peace and avoid further litigation with each other and the costs and expenses associated therewith, and in so doing, each of the parties denies any and all liability and defenses and states that the settlement made herein is entirely a compromise.

8. REMEDIES UPON BREACH. If any party to this Agreement materially breaches the terms of the Agreement, the non-breaching party may exercise any and all remedies available to such party under Arizona law, including, without limitation, if applicable, bringing a lawsuit for monetary damages or specific performance. THE PARTIES HERETO EXPRESSLY COVENANT AND AGREE THAT IN THE EVENT OF LITIGATION ARISING FROM THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO AN AWARD OF ATTORNEY FEES, EITHER PURSUANT TO CONTRACT, PURSUANT TO A.R.S. § 12-341.01 (A) AND (B), OR PURSUANT TO ANY OTHER STATE OR FEDERAL STATUTE, COURT RULE, CASE LAW, OR COMMON LAW. THE PARTIES AGREE THAT ALL DISPUTES ARISING UNDER THIS AGREEMENT SHALL BE FILED IN THE COCONINO COUNTY SUPERIOR COURT IN FLAGSTAFF, ARIZONA.

9. EXHIBITS. All exhibits attached to this Agreement are incorporated herein by reference as though fully set forth in this Agreement. The exhibits are as follows:

Exhibit A: Son Silver West Gallery Site Plan of Building and Shade Canopies Area

Exhibit B: Legal Description of Perimeter of Son Silver West Outdoor Retail Area

Exhibit C: Son Silver West Gallery Site Plan of Outdoor Retail Area

Full-size copies of Exhibit A and Exhibit C are on file with the City of Sedona Community Development Department.

10. WAIVER, MODIFICATION, AND AMENDMENT OF AGREEMENT. This Agreement shall not be waived, modified, or amended, except by written agreement signed by the parties.

11. SEVERABILITY. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision will be fully severable and the remainder of the Agreement will remain enforceable and not affected thereby.

12. GOVERNING LAW. The validity, construction, interpretation, and administration of this Agreement will be governed by the laws of the State of Arizona.

13. HEADINGS. The headings set forth herein are inserted for convenience of the parties only, and shall not be used to interpret or construe or in any way affect the meanings of the terms and provisions of this Agreement.

14. COUNTERPARTS. This Agreement may be signed in any number of counterparts. All counterparts are deemed to constitute one and the same instrument, and each counterpart is deemed to be an original of that instrument. A facsimile signature on any counterpart shall be deemed an original signature by the parties.

15. BINDING EFFECT. This Agreement is binding upon and shall inure to the benefit of the parties, and their respective heirs, devisees, executors, administrators, beneficiaries, successors, and assigns.

16. TIME. Time is of the essence with respect to the performance of all terms, covenants, conditions and provisions of this Agreement.

17. VOLUNTARINESS AND ASSISTANCE OF LEGAL COUNSEL. Each party acknowledges that such party is freely and voluntarily entering into this Agreement, uncoerced by any other person, and that such party has been represented by competent legal counsel of such party's own choice or has had the opportunity to do so regarding this Agreement and fully understands the same. This Agreement reflects a good faith resolution of claims reached after arm's-length negotiations and without coercion and not in reliance upon any representations or promises not contained herein.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties as to the subject matter of this Agreement. There are no agreements, understandings, warranties, or representations among the parties as to the subject matter of this Agreement, except as set forth in this Agreement. All prior and contemporaneous agreements, representations, negotiations and understandings of the parties, oral or written, are superseded and merged into this Agreement. No provision of this Agreement may be amended, modified, supplemented, changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the amendment, modification, supplementation, change, waiver, discharge or termination is sought.

19. NO CONSTRUCTION AGAINST ANY PARTY. This Agreement has been negotiated by all of the parties hereto and shall not be interpreted more strictly against any party hereto on the basis that such party's counsel drafted this Agreement or any specific part thereof.

20. REMEDIES CUMULATIVE. All rights and remedies of any party under this Agreement are cumulative and non-exclusive and may be exercised singularly or concurrently.

21. SURVIVAL. All representations, warranties and covenants contained in this Agreement shall continue and survive execution of this Agreement and shall be binding upon the party making the representation, warranty, or covenant.

22. COOPERATION AND OTHER DOCUMENTS. The parties shall execute and deliver all other documents, mutually cooperate and take all other action as any party may reasonably request from time to time, before or after the execution of this Agreement, in order to further the intent of, and effectuate the parties' interest(s) and the transaction(s) provided for by this Agreement.

23. **SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL. THE PARTIES TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, DO THE FOLLOWING: (1) SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF ARIZONA WITH RESPECT TO ANY ACTION ARISING FROM OR RELATING TO THIS AGREEMENT; (2) AGREE THAT THE SUPERIOR COURT OF ARIZONA, COCONINO COUNTY (SITTING IN FLAGSTAFF, ARIZONA) SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT; (3) WAIVE ANY CLAIM THAT THE COURT IN SUBPART (2) IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE; (4) AGREE THAT THE EXCLUSIVE CHOICE OF FORUM SET FORTH IN THIS PARAGRAPH SHALL NOT PRECLUDE ANY PARTY FROM ENFORCING OR SEEKING TO ENFORCE ANY JUDGMENT IN ANY OTHER APPROPRIATE JURISDICTION; AND (5) ACKNOWLEDGE AND AGREE THAT (i) ANY CONTROVERSY WHICH MAY ARISE UNDER, AS A RESULT OF, OR IN CONNECTION WITH THIS AGREEMENT WOULD BE BASED UPON DIFFICULT OR COMPLEX ISSUES; AND (ii) AS A RESULT, ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

24. APPROVAL OF FORM OF AGREEMENT. The form of this Agreement has been approved by counsel for the Parties.

25. NO THIRD-PARTY BENEFICIARIES. This Agreement is made and entered into for the sole protection and benefit of the parties. No person other than the parties and their successors in interest shall have any right of action based upon any provision of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

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

CITY OF SEDONA, ARIZONA, an Arizona municipal corporation

_____
Sandra J. Moriarty, Mayor

ATTEST:

_____
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

_____
Kurt W. Christianson, City Attorney

STATE OF ARIZONA)
) ss.
County of Yavapai)

On this _____ day of _____, 2022, before me personally appeared Sandra J. Moriarty, the Mayor of the CITY OF SEDONA, ARIZONA, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be and acknowledged that she signed the above/attached documents.

_____
Notary Public

My Commission Expires:

_____

SON SILVER WEST GALLERY, INC.

By:_____
Linda Rose Robson
Its: President

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by Linda Rose Robson, President of Son Silver West Gallery, Inc. on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

LINDA ROSE ROBSON

_____
Linda Rose Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by Linda Rose Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

_____
Notary Public

My Commission Expires:

_____

d

WILLIAM B. ROBSON

_____
William B. Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by William B. Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

_____
Notary Public

My Commission Expires:

_____

WILLIAM B. ROBSON

_____
William B. Robson, Trustee of the William B. Robson Living Trust u/t/a dated July 12, 1999.

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by William B. Robson, Trustee of the William B. Robson Living Trust u/t/a dated July 12, 1999.

_____
Notary Public

My Commission Expires:

_____

RIO CODY ROBSON

_____
Rio Cody Robson, an unmarried man

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by Rio Cody Robson.

_____
Notary Public

My Commission Expires:

_____

LINDA ROSE AND WILLIAM B. ROBSON

_____
Linda Rose Robson

_____
William B. Robson, her spouse

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by Linda Rose Robson.

_____
Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by William B. Robson.

_____

Notary Public

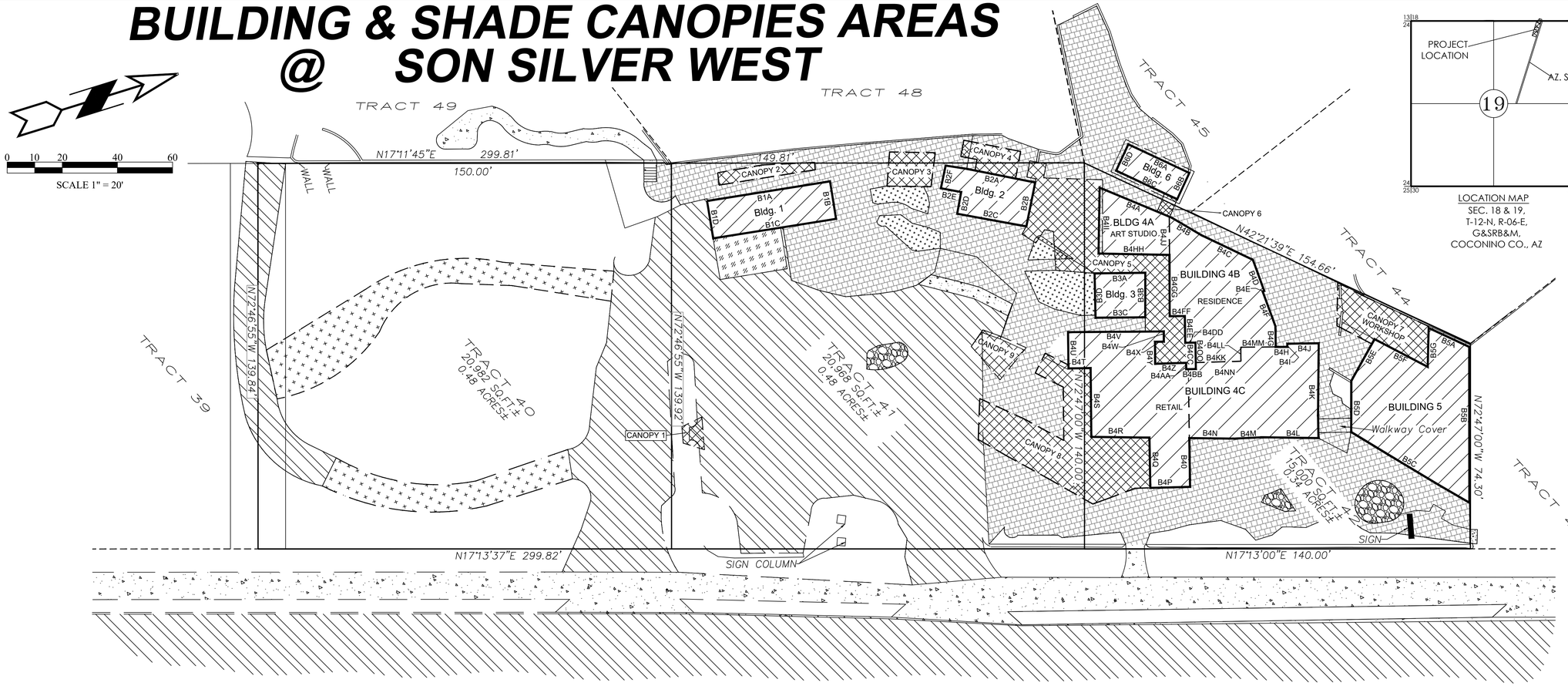
My Commission Expires:

_____

EXHIBIT A
TO
SETTLEMENT AGREEMENT

Building & Shade Canopies Areas @ Son Silver West filed the _____ day of _____, 20__ in Book _____ of Maps of Surveys at Page _____, Fee No. _____ of the Official Records of the Recorder of _____ County, Arizona.

BUILDING & SHADE CANOPIES AREAS @ SON SILVER WEST



LOCATION MAP
SEC. 18 & 19,
T-12-N, R-06-E,
G&SRB&M,
COCONINO CO., AZ

0 10 20 40 60
SCALE 1" = 20'

ARIZONA STATE HIGHWAY 179

BUILDING WALL LENGTH TABLE

WALL No.	LENGTH (ft.)
BUILDING 1	
B1A	45.01
B1B	13.81
B1C	45.13
B1D	13.74
BUILDING 2	
B2A	33.09
B2B	15.69
B2C	25.51
B2D	8.00
B2E	7.50
B2F	8.45
BUILDING 3	
B3A	18.41
B3B	16.16
B3C	18.03
B3D	16.10
BUILDING 4	
B4A	28.36
B4B	12.41
B4C	20.80
B4D	11.67
B4E	0.60
B4F	13.46
B4G	7.48
B4H	4.21
B4I	1.15
B4J	11.28
B4K	34.4
B4L	20.25
B4M	10.50
B4N	16.12
B4O	17.71
B4P	14.45
B4Q	18.24
B4R	21.10
B4S	24.97
B4T	8.07
B4U	13.15
B4V	16.16
B4W	3.70
B4X	3.20
B4Y	8.00
B4Z	11.22
B4AA	2.30
B4BB	3.50
B4CC	9.60
B4DD	3.70
B4EE	9.70
B4FF	5.52
B4GG	22.24
B4HH	25.73
B4II	24.00
B4JJ	13.89
B4JJ	13.89
B4KK	21.50
B4LL	5.09
B4MM	12.67
B4NN	2.35
B400	7.25
BUILDING 5	
B5A	16.20
B5B	57.17
B5C	50.00
B5D	18.58
B5E	17.30
B5F	21.77
B5G	14.13
BUILDING 6	
B6A	24.45
B6B	10.51
B6C	24.45
B6D	10.51

BUILDING AREA TABLE

BUILDING No.	AREA (SQ.FT.±)
1	620
2	485
3	294
4	4,897
5	1,846
6	257

BUILDING 4 AREA TABLE

BUILDING No.	AREA (SQ.FT.±)
4A–ART STUDIO	484
4B–RESIDENCE	1,359
4C–RETAIL	3,054

TRACT AREA TABLE

TRACT No.	SQ.FT.±	ACRES±
40	20,982	0.48
41	20,968	0.48
42	15,000	0.34

CANOPY AREA TABLE

CANOPY No.	AREA (SQ.FT.±)
1	67
2	615
3	201
4	186
5	1,340
6	35
7	492
8	1,751
9	182

NOTES:

1. THIS DRAWING IS BASED UPON A.L.T.A./N.S.P.S. LAND TITLE SURVEY OF TRACTS 40–42 OF BROKEN ARROW SUBDIVISION AS RECORDED IN BOOK 2 OF MAPS OF PLATS, PAGE 71, RECORDS OF COCONINO COUNTY, AS PREPARED BY ALTA LAND SURVEY, INC. DATED JUNE 13, 2017, PROJECT 17–157. TO BE RECORDED CONCURRENTLY WITH THIS DRAWING, IN BOOK _____ OF MAPS OF SURVEYS PAGE_____ .
2. ALL DIMENSIONS SHOWN ARE EXTERIOR WALL MEASUREMENTS.
3. THIS DRAWING DOES NOT SHOW EASEMENTS, UTILITIES, OR SITE IMPROVEMENTS. REFER TO REFERENCED A.L.T.A. SURVEY (NOTE 1), FOR THIS DATA.
4. BUILDING 4 INTERIOR WALL LOCATIONS ARE PER INFORMATION PROVIDED BY THE OWNER.

LEGEND:

- ADJACENT PROPERTY LINE
- CANOPY/OVERHANG LINE
- PROPERTY LINE
- BUILDING 4 INTERIOR WALL
- ASPHALT PAVEMENT
- BRICK PAVERS
- BUILDING
- CONCRETE AREA
- DIRT AREA
- CANOPY SHADE STRUCTURE

RECORDING DATA:

STATE OF ARIZONA } SS
COUNTY OF COCONINO }

FILED FOR RECORD AT THE REQUEST OF ALTA LANE ENGINEERING, LLC
THIS _____ DAY OF _____ 2021
IN BOOK _____ OF MAPS OF SURVEYS AT PAGE_____ THEREOF,
FEE NO.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR ABOVE WRITTEN.

COCONINO COUNTY RECORDER/DEPUTY COUNTY RECORDER

Registered Professional Engineer (Civil) CERTIFICATE NO. 31127 J DUSTY LANE Date Signed 10/07/21 ARIZONA, U.S.A.

EXHIBIT A

By: _____ Date: _____ Descr.: _____
By: _____ Date: _____ Descr.: _____
By: _____ Date: _____ Descr.: _____
Copyright 2021 – Lane Engineering – All Rights Reserved

Date August 25, 2021 Drawn THT
Scale 1"=20' Checked JDL
Approved JDL

LANE ENGINEERING, LLC
5155 E. EAGLE DR. #22074
MESA, AZ 85277

Dusty: (480) 319-3300 Direct @ Mesa Office
Tom: (520) 850-3636 Direct @ Tucson Office

RESULTS OF ENGINEERING SURVEY @SON SILVER WEST GALLERY
Building and Shade Canopies Areas
Located in Tracts 40, 41, & 42, Broken Arrow Subdivision, M & P 2-71, Sedona, Arizona in Coconino County, Arizona

Sheet 1 of 1

EXHIBIT B
TO
SETTLEMENT AGREEMENT

Legal Description of Perimeter of Sun Silver West Outdoor Retail Area

September 7, 2021

EXHIBIT B
LEGAL DESCRIPTION
SON SILVER WEST – OUTDOOR RETAIL AREA-SEDONA, ARIZONA
LOCATED IN A PORTION OF TRACT 41 & TRACT 42
OF BROKEN ARROW SUBDIVISION
RECORDED IN MAPS AND PLATS BOOK 2, PAGE 71
RECORDS OF COCONINO COUNTY, ARIZONA

COMMENCING AT an untagged 1-inch Open Iron Pipe at the Northeast corner of said Tract 41, said point also being the Southeast corner of said Tract 42,

Thence along the North Property Line of said Tract 41, at North 72 degrees 47 minutes 00 seconds West, a distance of 1.71 feet to Point "A", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 Feet West of Actual Point "A"], said Point "A" being **THE TRUE POINT OF BEGINNING OF SUBJECT OUTDOOR RETAIL AREA;**

Thence North 17 degrees 13 minutes 37 seconds East, a distance of 114.64' feet [Line ORA1], to Point "B", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.58 feet West of Actual Point "B"];

Thence North 79 degrees 31 minutes 33 seconds West, a distance of 32.36 feet [Line ORA2], to Point "C", [set a 2" Aluminum Washer on PK Nail];

Thence South 48 degrees 27 minutes 49 seconds West, a distance of 16.45 feet [Line ORA3], to Point "D", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.75 feet South of Actual Point "D"];

Thence South 06 degrees 45 minutes 27 seconds West, a distance of 12.08 feet [Line ORA4], to Point "E", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 feet East of Actual Point "E"];

Thence South 17 degrees 12 minutes 25 seconds West, a distance of 44.83 feet [Line ORA5], to Point "F", [set a 2" Aluminum Washer on PK Nail];

Thence South 67 degrees 13 minutes 49 seconds East, a distance of 17.78 feet [Line ORA6], to Point "G", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 feet East of Actual Point "G"];

Thence South 15 degrees 55 minutes 45 seconds West, a distance of 15.46 feet [Line ORA7], to Point "H", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 feet East of Actual Point "H"];

Thence North 73 degrees 50 minutes 49 seconds West, a distance of 17.24 feet [Line ORA8], to Point "I", [set a 2" Aluminum Washer on PK Nail];

Thence South 18 degrees 02 minutes 07 seconds West, a distance of 21.05 feet [Line ORA9], to Point "J", [set a 2" Aluminum Washer on PK Nail];

The North 73 degrees 17 minutes 44 seconds West, a distance of 24.94 feet [Line ORA10], to Point "K", [set a 2" Aluminum Washer on PK Nail];

Thence South 38 degrees 26 minutes 45 seconds West, a distance of 42.27 feet [Line ORA11], to Point "L", [set a 2" Aluminum Washer on PK Nail in Asphalt];

Thence South 73 degrees 23 minutes 36 seconds East, a distance of 41.37 feet [Line ORA12], to point "M', [set a 2″ Aluminum Washer on PK Nail in Asphalt];

Thence South 77 degrees 31 minutes 54 seconds East, a distance of 36.97 feet [Line ORA13], to Point "N",[set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.42 feet Northwest of Actual Point "N"];

Thence North 17 degrees 13 minutes 37 seconds East, a distance of 34.64 feet [Line ORA14], to Point "A", said point being THE TRUE POINT OF BEGINNING OF SUBJECT OUTDOOR RETAIL AREA.

Total Perimeter Area of Outdoor Retail Area = 6,649.75 square feet.
Minus Exception Area (Walkways & Planters) as determined by City of Sedona = (-1,086.14 square feet)
Total Net Outdoor Retail Display Area = 5,563.61 square feet

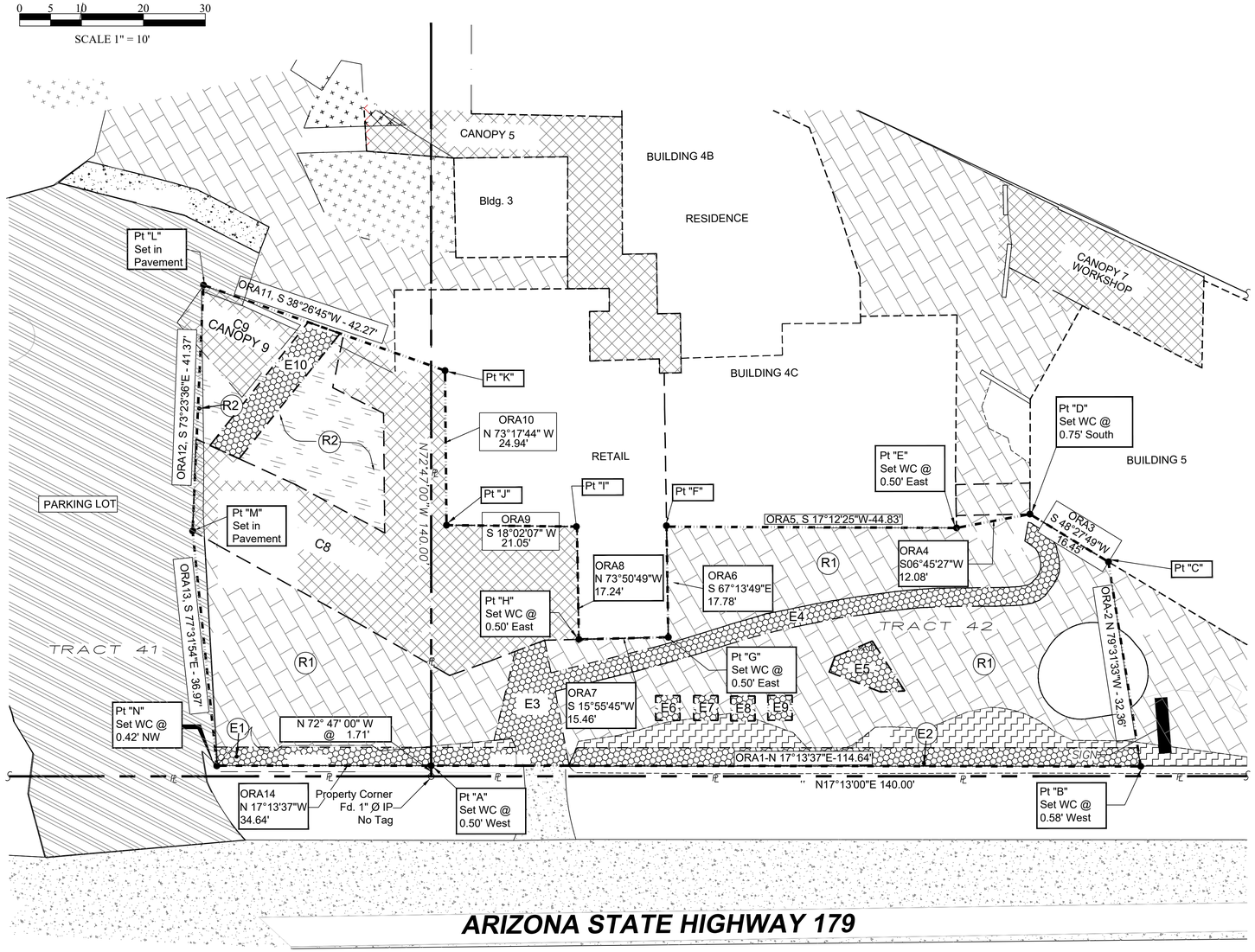
Note, this Legal Description is based upon the "Outdoor Retail Area @ Son Silver West" for Tracts 41 & 42 of Broken Arrow Subdivision, Records of Coconino County, Arizona as Recorded in Maps and Plats Book 2 at Page 71.



EXHIBIT C
TO
SETTLEMENT AGREEMENT

Outdoor Retail Area @ Son Silver West filed the _____ day of _____, 20__ in Book _____ of Maps of Surveys at Page _____, Fee No. _____ of the Official Records of the Recorder of _____ County, Arizona.

OUTDOOR RETAIL AREA @ SON SILVER WEST

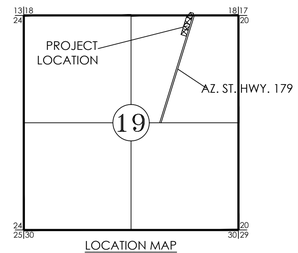


NOTES:

1. THIS DRAWING IS BASED UPON A.L.T.A./N.S.P.S. LAND TITLE SURVEY OF TRACTS 40–42 OF BROKEN ARROW SUBDIVISION AS RECORDED IN BOOK 2 OF MAPS OF PLATS, PAGE 71, RECORDS OF COCONINO COUNTY, AS PREPARED BY ALTA LAND SURVEY, INC. DATED JUNE 13, 2017, PROJECT 17–157. TO BE RECORDED CONCURRENTLY WITH THIS DRAWING, IN BOOK _____ OF MAPS OF SURVEYS PAGE_____ .
2. OUTDOOR RETAIL AREA SHOWN IS BASED UPON WORK DONE BY THE CITY OF SEDONA ENGINEERING DEPARTMENT.
   TOTAL PERIMETER SIZE OF OUTDOOR RETAIL AREA = 6,649.75 SQ. FT.
   TOTAL SIZE OF EXCEPTION AREAS =–1,086.14 SQ. FT.
   TOTAL SIZE OF OUTDOOR RETAIL AREA = 5,563.61 SQ. FT.
3. ALL DIMENSIONS SHOWN ARE EXTERIOR WALL MEASUREMENTS.
4. THIS DRAWING SHOWS AREAS OF OUTDOOR RETAIL AREA.
5. THIS DRAWING DOES NOT SHOW EASEMENTS, UTILITIES, OR SITE IMPROVEMENTS. REFER TO REFERENCED A.L.T.A. SURVEY (NOTE 1), FOR THIS DATA.
6. BRASS WASHERS ON PK NAILS WERE SET WHERE POSSIBLE AT THE OUTDOOR RETAIL AREA PERIMETER (W.C. REPRESENTS "WITNESS CORNER" WERE ACTUAL POINTS COULD NOT BE SET DUE TO BUILDING AND SITE IMPROVEMENT CONSTRAINTS.

EXCEPTION AREAS TABLE FOR RETAIL AREA AS PROVIDED BY CITY OF SEDONA			
Retail Area (C)–(With Canopy)			
	(Sq. Ft.)	Total	Description
C8	1484.81		Canopy 8 Area
C9	181.58		Canopy 9 Area
		1666.39 Sq. Ft.	
Retail Area (R)– Uncovered (No Canopy)			
	(Sq. Ft.)	Total	Description
R1	4435.03		Along SR–179, From Exist. Fence to Canopy 8 & Bldg. 4C & Bldg. 5
R2	584.33		East of Parking Area, From Canopy 9 to Canopy 8
		4983.36 Sq. Ft.	
Exception Area (E)			
	(Sq. Ft.)	Total	Description
E1	145.83		Along SR–179, From Fence/℄ North 3 Feet (West)
E2	264.87		Along SR–179, From Fence/℄ North 3 Feet (East)
E3	154.89		Entrance Area/Walkway From SR–179
E4	275.83		Emergency Walkway 3 Feet Wide, From Above Entrance to Gate Between Bldg. 4C & Bldg. 5
E5	55.01		Planter, Irregular as Shown on Survey
E6	16.00		Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E7	16.00		Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E8	16.00		Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E9	16.00		Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E10	125.71		Walkway 5 Feet Wide, From Canopy 8 to West Side of Canopy 9
		–1086.14 Sq. Ft.	
TOTAL (C)(R)		6649.75 Sq. Ft.	Net Retail Area, C8, C9, R1, & R2
TOTAL (E)		–1086.14 Sq. Ft.	Exception Areas E1 thru E10
NET (R)		5563.61 Sq. Ft.	Outdoor Retail Area, C8, C9, R1, & R2 Less Exception Areas (E1 thru E10)

Notes:
1. Areas for C8, C9, R1 & R2 are from AutoCad Drawing provided by Lane Engineering, LLC on 10–05–2019
2. Areas for E1 thru E10 are based on Field Measurements performed on 10–02–2019 by James Crowley, RLS at Son Silver West transferred to AutoCad Drawing Provided by Lane Engineering, LLC on 10–05–2019.



LOCATION MAP
SEC. 18 & 19,
T-12-N, R-06-E,
G&SRB&M,
COCONINO CO., AZ

LEGEND:

- MARKER SET -Aluminum Washer on PK Nail
- OUTDOOR RETAIL AREA PERIMETER BOUNDARY
- CANOPY/OVERHANG LINE
- E7 OUTDOOR RETAIL AREA EXCEPTION AREA
- ℄ PROPERTY LINE
- ASPHALT PAVEMENT
- BRICK PAVERS
- BUILDING
- CONCRETE
- CANOPY SHADE STRUCTURE
- RAISED BRICK PLATFORM

RECORDING DATA:

STATE OF ARIZONA }
COUNTY OF COCONINO } SS

FILED FOR RECORD AT THE REQUEST OF LANE ENGINEERING, LLC
ON THIS _____ DAY OF _____ 2021
IN BOOK _____ OF MAPS OF SURVEYS AT PAGE_____ THEREOF,
FEE NO.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR ABOVE WRITTEN.

COCONINO COUNTY RECORDER/DEPUTY COUNTY RECORDER

Registered Professional Engineer (Civil) CERTIFICATE NO. 31127 J DUSTY LANE Date Signed 10/07/21 ARIZONA, U.S.A.

EXHIBIT C

By: _____ Date: _____ Descr.: _____
By: _____ Date: _____ Descr.: _____
By: _____ Date: _____ Descr.: _____

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Date August 25, 2021 Drawn THT
Scale 1"=20' Checked JDL
Approved JDL

LANE ENGINEERING, LLC
5155 E. EAGLE DR. #22074
MESA, AZ 85277
Dusty: (480) 319-3300 Direct @ Mesa Office
Tom: (520) 850-3636 Direct @ Tucson Office

SON SILVER WEST GALLERY @ SEDONA
Site Plan of Outdoor Retail Area for Tracts 41 & 42 of Broken Arrow Subdivision, M & P 2/71
Sedona, Arizona in Coconino County, Arizona

SHEET 1 of 1

SETTLEMENT AGREEMENT
(SON SILVER WEST GALLERY)
FOOTNOTE ADDENDUM

FOOTNOTE # 1. Both the Board of Adjustment and the Final Judgment of the Coconino County Superior Court mandated a staff review of the specific site dimensions that constitute the allowable indoor retail space so that acknowledged discrepancies could be resolved. This number (4,900 sf) represents a reconciliation of the intended, allowable indoor retail space under CUP 92-3. The original site plan referenced and adopted in CUP 92-3 was not to scale. The engineered site plan attached hereto as Exhibit A accurately reflects the intended square footage at issue as depicted in the original site plan adopted in CUP 92-3. CUP 92-3 identifies 1,300 sf for a "pottery shop with kiln." That 1,300 sf has been merged into the overall allowable retail square footage of 4,900 sf identified in 2(b)(1)(i) and not separately referenced in this Agreement so as not to result in a duplication in accounting.

FOOTNOTE # 2. The location of the 5,563.61 sf of Outdoor Retail Area is described on Exhibit B and delineated on Exhibit C attached hereto. The on-the-ground location of the Outdoor Retail Area shall be designated by metal flush mounted monuments set by an Arizona registered land surveyor in substantial conformance with Exhibit C. The Outdoor Retail Area was calculated by taking 6649.75 sf of gross outdoor retail area and subtracting ten Exception Areas (E1-E10) which total 1086.14 sf to obtain the 5563.61 sf of net Outdoor Retail Area.

FOOTNOTE #3. Per the Sedona Land Development Code, up to 25% of the single-family dwelling may be used for a home occupation. The 25% allowable square footage for home occupation would be approximately 461 sf.

FOOTNOTE #4. Buildings 2 and 3 and Canopy 7 shown on Exhibit A.

FOOTNOTE #5. As part of the SR 179 improvements, in the mid 2000's, Arizona Department of Transportation officials discussed with the City the use of a portion of Tract 40 to construct a new driveway that would accommodate a new median break and left turn lane to support ingress/egress to the Son Silver West business and the circulation of large delivery trucks to the site which would eliminate any backing up of large trucks on SR 179.

RESOLUTION NO. 2022-__

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING A SETTLEMENT AGREEMENT WITH SON SILVER WEST GALLERY, LLC, ETC., TO RESOLVE ONGOING LITIGATION.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA as follows:

Section 1. That it is deemed in the best interest of the City of Sedona and its citizens that the City enter into a Settlement Agreement with Son Silver West Gallery, Inc., Linda Rose Robson Living Trust, William B. Robson Living Trust, and Rio Cody Robson which resolves ongoing litigation, provides for the operation of the Son Silver West art gallery, Sedona, Arizona, which Agreement is now on file in the office of the City Clerk of the City of Sedona.

Section 2. That the Mayor is authorized and directed to execute and deliver said agreement on behalf of the City of Sedona.

ADOPTED AND APPROVED by the Mayor and Council of the City of Sedona, Arizona, this 27th day of September, 2022.

_____
Sandra J. Moriarty, Mayor

ATTEST:

_____
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

_____
Kurt W. Christianson, City Attorney

CITY COUNCIL AGENDA BILL

AB 2866
September 27, 2022
Regular Business

Agenda Item: 8a
Proposed Action & Subject: Discussion/possible action regarding an Ordinance to remove part C of Chapter 15.15.020 – a prior amendment to the adopted 2017 National Electrical Code.

Department	City Manager - Housing
Time to Present	5 minutes
Total Time for Item	15 minutes
Other Council Meetings	September 24, 2019
Exhibits	A. Resolution 2019-18 B. Ordinance

City Attorney Approval	Reviewed 09/19/22 KWC
City Manager's Recommendation	Approve an Ordinance removing part C of Chapter 15.15.020 an amendment to Article 15 of the Sedona City Code.

Expenditure Required	
	$ 0
Amount Budgeted	
	$ 0
Account No. (Description)	N/A
Finance Approval	☒

SUMMARY STATEMENT

Background: In Resolution 2019-18 when the City adopted the 2017 National Electrical Code (NEC), it was adopted with a local amendment stating, "Type NM, NMC and NMS cable shall be permitted to be used only for branch circuits of Group R-3 one- and two-family dwellings regulated under the scope of the International Residential Code." https://sedona.municipal.codes/SCC/15.15.020.

Ultimately, that requires armored cable wiring / conduit throughout multi-family buildings in Sedona, even though the NEC doesn't require it. Through this amendment, Sedona restricted the use of Type NM (Romex) to only single-family and duplex housing. Electrical quotes provided show this adds $8-10,000/unit to the cost of multi-family development. As such, it creates an impediment to affordable housing.

The change to not permit Type NM to be used at all in any portion of the multi-family building was two-fold. 1) It removed confusion of where in the building the NM could be and, 2) it reduced fire load from the building (Type NM is wiring within insulation wrapped by a rubberized plastic cover whereas conduit provides a metal sheath). Some in the industry see Type NM Cable as a subpar system compared to wiring within a conduit system for multi-

family and commercial buildings. However, its use is rarely limited beyond the scope of the NEC in state or local codes.

When installed properly within the permitted construction, Type NM (Romex) is deemed a safe installation and is permitted by the NEC. The NEC does permit it within multi-family buildings of type III, IV, and V construction, which are most typical in Sedona.

The adoption by municipalities of building codes that exceed the national model building codes are the subject of much debate in the legislature currently which threatens local control and possibly eligibility for housing grants in the future.

An Ordinance to remove the stricter local amendment would lower development costs for the much-needed multi-family development in Sedona while still complying with the National Electrical Code.

Climate Action Plan/Sustainability Consistent: ☒**Yes -** ☐**No -** ☐**Not Applicable**
Removing limitations to future housing opportunities is in alignment with the CAP and Sustainability Program goals.

Board/Commission Recommendation: ☐**Applicable -** ☒**Not Applicable**

Alternative(s): N/A

MOTION

I move to: for discussion/possible direction only.

RESOLUTION NO. 2019-18

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, ESTABLISHING AS A PUBLIC RECORD PROPOSED AMENDMENTS TO ARTICLE 15 OF THE SEDONA CITY CODE.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA that the terms set forth in that document attached hereto as Exhibit A and entitled "2019 Amendments to Article 15 of the Sedona City Code" constitute a public record to be incorporated by reference into Ordinance No. 2019-05.

At least one (1) paper copy and one (1) electronic copy of this public record shall be kept in the office of the City Clerk for public use and inspection.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 24th day of September, 2019.

Sandra J. Moriarty, Mayor

ATTEST:

Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

Robert L. Pickels, Jr., City Attorney

Exhibit A
2019 Amendments to Article 15 of the Sedona City Code

Chapter 15.05
BUILDING CODE

Sections:

15.05.010 Adoption of the International Building Code.
15.05.020 Amendments to the International Building Code.
15.05.030 Adoption of the International Residential Code.
15.05.040 Amendments to the International Residential Code.
15.05.050 Conformance to the land development code.
15.05.060 Building permit fees and valuation.
15.05.070 Wood burning fireplaces.
15.05.080 Permitting of wood stoves and similar devices.
15.05.090 Manufactured homes, factory-built buildings and mobile homes.
15.05.100 Jurisdiction of other agencies.

15.05.010 Adoption of the International Building Code.

The following document, three copies of which are on file and are available for public inspection in the office of the director of community development, is adopted as the building code of the city of Sedona, Arizona, for regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings or structures in the city; and providing for issuance of permits and collection of fees therefor:

A. International Building Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc.

B. Each and all of the regulations, provisions, conditions and terms of the International Building Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc., are hereby referred to, adopted and made a part of this code as if fully set out in herein, excepting such provisions as hereinafter deleted or amended. [Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-1].

15.05.020 Amendments to the International Building Code.

The International Building Code, as adopted, is hereby modified as follows:

A. Section 101.1 Title, is hereby amended by adding the words "City of Sedona" in place of "Name of Jurisdiction".

B. Sections 101.4.1 Gas, 101.4.2 Mechanical, 101.4.3 Plumbing, 101.4.4 Property maintenance, 101.4.6 Energy and 101.4.7 Existing buildings, are hereby amended by adding the following directly after the title of the code:

..., as adopted and amended by the City of Sedona,

C. Section 105.2 Work exempt from permits, Building Item Nos. 1, 2, 4, 9, 10 and 11, relating to Exempted Work, are hereby amended to read:

1. One-story detached buildings used as tool and storage sheds, playhouses or similar uses, provided the projected roof area does not exceed 120 square feet, the building does not exceed 7 feet high at the highest point of the roof or wall, and it has no electrical or plumbing installations.

2. Freestanding fences and walls not supporting a structure, not over 30 inches high, and not located within flood hazard areas as determined by the City or County flood hazard administrative authority.

4. Retaining walls not over 30 inches in height, measured from top of footing to the top of wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.

9. Prefabricated swimming pools accessory to Group R-3 occupancies, which are less than 18 inches in depth and less than 8 feet in all dimensions and constructed entirely above grade.

10. This item, referring to shade cloth structures, is deleted in its entirety.

11. Swings and other playground equipment.

D. Section 105.7 Placement of permit, is hereby amended by deleting the section in its entirety and substituting the following:

Section 105.7 Placement of permit. The building permit shall be kept on site in a conspicuous place, visible from the public way, and shall be kept on the site of the work until the completion of the project and the issuance of final inspection approval by the City.

E. Section 107.1 General, is hereby amended by the addition of the following paragraphs to the end of the section:

Such documents may be reviewed and approved by other departments of this City and other agencies with jurisdiction in the areas of public health and safety prior to permit issuance, including, but not limited to, the Arizona Department of Environmental Quality, the County Health Department and the County Flood Control District to verify compliance with any applicable laws under their jurisdiction.

The Building Official shall require that contractors be licensed as required by Arizona state law before issuing permits to them. The Building Official shall also require contractors and builders to either be licensed or otherwise retain the services of someone who is properly licensed or certified, as may be necessary to assure the proper installation of building components,

equipment or appliances consistent with the technical codes or the approved installation specifications and standards.

Owners of Property may construct, add to, alter or remodel structures on their property subject to the provisions of Arizona Revised Statutes, Section 32-1121. Violation of the provisions of ARS § 32-1121 shall be cause to commence enforcement proceedings. The Building Official may also report such violations to the Arizona Registrar of Contractors.

F. Section 107.3.1 Approval of construction documents, is hereby amended by adding the following paragraph to the end of the section:

When plans are required, if the Building Official issues a permit, he/she shall endorse in writing or stamp the plans and specifications "Reviewed for Code compliance" which signifies only that said plans may be used in conjunction with a building permit for construction. Any omission or error in said plans shall not be grounds to fail to comply with or waive any city, state or federal requirements. The designer, builder and owner are hereby charged with the responsibility to comply with all said requirements. Approved plans, specifications, building addresses, legal descriptions and permits shall not be changed, modified or altered without authorization from the Building Official, and all work shall be done in accordance with the approved plans, specifications and permits. A land split or subdivision of land made on property for which a building permit has been issued shall be approved by the Director of Community Development prior to recording.

G. Section 110.3.5 Lath, gypsum board and gypsum panel product inspection, is hereby amended by deleting the exception.

H. Section 111.1 Change of occupancy, is hereby amended by inserting the following text after the first sentence of the paragraph:

Every tenant of every building and structure, except Group R-3 and U occupancies associated with Group R-3 uses, and non-occupied Group U occupancies, shall obtain a tenant occupancy permit and a certificate of occupancy prior to opening for business. Tenant occupancy permits and certificates shall be nontransferable from one building to another and from one tenant to another.

I. Section 111.3 Temporary occupancy, is hereby amended by adding the following to the end of the section:

The issuance of Temporary Certificates of Occupancy is not customary, is reviewed by the Director of Community Development after the submittal of a written request identifying the hardship(s) not caused directly or indirectly by the applicant, property owner, design professionals or contractors, and is based solely on incomplete or non-compliant exterior work. Upon approval of the Director of Community Development to allow issuance of a Temporary Certificate of Occupancy, the owner shall submit to the Building Official for review and approval a

letter requesting temporary occupancy for a period of time to be approved by the Building Official and include with the request:

1. An itemization of all work authorized and required by the building and grading permits that must be completed to permanently occupy the building. (Note that said work shall be exterior to the building or structure. Temporary Certificates of Occupancy will not be issued for any work not completed and approved by the City that is interior to the building or structure.)

2. An irrevocable bond or other financial deposit acceptable to the Building Official and payable to the City of Sedona in the event construction is not completed before expiration of the Temporary Certificate of Occupancy. The amount of the bond or deposit shall equal 100 percent of the construction cost to complete the work required by the permits.

For the purpose of this section, construction cost shall include all labor, materials, equipment, sales tax, permit fees and contractors' profit and overhead plus a twenty-five percent (25%) contingency amount for unforeseen construction expenses and City administration in the event the City undertakes completion of the project. The Building Official may require written proposals or estimates from contractors to substantiate the amount of the bond or deposit.

3. The payment of a non-refundable fee for the Temporary Certificate of Occupancy shall be $300.00 for single-family dwellings and $500.00 for commercial projects.

4. A written agreement that the bond or deposit is forfeited by the owner to the City in the event all required work is not completed before expiration of the Temporary Certificate of Occupancy and authorization for the City to undertake and complete construction with the forfeited funds.

If the City undertakes completion of the project with the forfeited funds, any unexpended amount shall be returned to the owner or bonding agent as applicable. If costs to complete the project exceed the amount of the bond or deposit, the City may file a lien against the subject property and take appropriate action as necessary to recover all the additional expenses incurred completing the construction.

The Building Official may extend the time period of an original Temporary Certificate of Occupancy or issue one or more additional temporary certificates if conditions beyond the control of the owner prevent project completion by the expiration of the original Temporary Certificate. Extensions and additional temporary certificates shall be requested by the owner before the expiration of the original certificate and approved by the Building Official in the same manner as the original certificate. The owner shall provide a bond or deposit and pay a new fee for each extension or additional certificate.

EXCEPTION: Public schools are not required to provide a bond or deposit for completion of work or pay temporary certificate fees.

J. Section 113.3 Qualifications, is hereby amended by deleting the section in its entirety and substituting the following:

> 113.3 Board Composition and Authority. All reviews required of a Board of Appeals shall be delegated to a hearing officer to be appointed in the same manner as such other hearing officers appointed by the City Council to hear appeals to the City of Sedona's Board of Adjustment. The hearing officer(s) appointed pursuant to this section shall have final review authority and no further appeal shall be required by the City of Sedona.

K. Section 114.4, Violation penalties, is hereby amended by adding the following paragraph to the end of the section:

> Such person, firm or corporation shall be subject to the penalties as provided in SCC 1.15.010 for each and every such violation and non-compliance as a separate offense. Imposition of penalty for a violation of this code shall not excuse the violation or permit it to continue. A violation shall be remedied within a reasonable time, and each day that such violation continues unabated shall constitute a separate offense.

L. Section 115.2 Issuance, is hereby amended by removing the first sentence in its entirety and inserting the following:

> A stop work order shall be in writing and shall be given to the owner of the property, to the owner's authorized agent, or to the person performing the work, or shall be posted on the structure or on site in a conspicuous location.

M. Section R115.3 Unlawful continuance, is hereby deleted in its entirety and replaced by the following:

> Section R115.3 Unlawful continuance and/or removal of stop work notice. Any person who shall continue or allow the continuance of any work in or about the structure or property after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, or any person who removes, or causes the removal of, the stop work notice without the consent of the City, shall be subject to fines and penalties as set by the applicable governing authority.

N. Sections 305.2 Group E, day care facilities, and 308.5 Institutional Group I-4, day care facilities, are hereby amended by adding the following exception:

> A "child care group home" complying with the requirements ARS 36-897 through 36-897.13 and providing child care for less than 24 hours per day for not less than five (5) children but no more than ten (10) children through the age of twelve years shall be classified as Group R-3, provided that all child care rooms are located on the level of exit discharge and each child care room has an exit door directly to the exterior.

O. Section 502.1, Address identification, is hereby amended by adding the following paragraph to the end of the section:

> In addition to the requirements stated herein, building addressing and display shall comply with SCC 12.20.070. Building addresses placed on building permits and Certificates of Occupancy shall not be changed unless approved by the City Engineer pursuant to Chapter 12.20 SCC.

P. Section 901.2, Fire protection systems, is hereby amended by deleting the first paragraph and replacing said paragraph with the following:

> Fire protection systems shall be designed, installed, repaired, operated, tested and maintained in accordance with this code and the Sedona Fire District's adopted regulations, codes and amendments. Where there is a conflict between this code and those of the Sedona Fire District, the more restrictive of those regulations, codes, and amendments shall apply.

Q. Section 903.2, Where required, is hereby amended by adding the following paragraph to the end of the section:

> Approved automatic sprinkler systems shall also be designed and provided in accordance with the adopted and amended codes and regulations of the Sedona Fire District, and all plan review and inspections for said systems will be done by the Sedona Fire District.

R. Section 907.2.10.1 Group R-1, is hereby amended by deleting the section in its entirety and substituting the following:

> Section 907.2.10.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:
>
> 1. In sleeping areas.
> 2. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.
> 3. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level, and that the smoke alarm is installed on the ceiling in close proximity of the stairs.
> 4. In sleeping units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches (24") or more, smoke detectors shall be installed in the hallway and in the adjoining room.

S. Section 907.2.10.2 Groups R-2, R-3, R-4 and I-4, is hereby amended by adding the following to the end of the section:

4. In sleeping units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches (24") or more, smoke detectors shall be installed in the hallway and in the adjoining room.

T. Section 1008.1 is hereby amended by adding the following sentence to the end of the first sentence:

> In addition, emergency illumination shall be required in non-residential occupancies where deemed necessary by the Building Official.

U. Section 1015.2 Where required, is hereby amended by deleting "30 inches (762 mm)" from the first sentence and replacing it with "20 inches (508 mm)".

V. Section 1612.3 Establishment of flood hazard areas, is modified by deleting the section in its entirety and replacing it with the following:

> 1612.3 Establishment of flood hazard areas. Flood hazard areas and regulations shall be established by the appropriate, governing County or City agency having flood management jurisdiction. Where the requirements of this section conflict with the flood hazard regulations adopted by the appropriate, governing County or City agency having flood management jurisdiction, the regulations of the governing County or City agency shall apply.

W. Section 1807.1.6 Prescriptive design of concrete and masonry foundation walls is hereby amended by adding the following to the end of the sentence:

> ... provided that the minimum vertical reinforcement for any concrete or masonry foundation wall shall be a #4 spaced not more than 48 inches on center. Un-reinforced concrete (PC) is not permitted.

X. Section 2901.1 Scope, is hereby amended by deleting the third sentence in its entirety and replacing it with the following:

> Plumbing systems and equipment shall be designed, constructed and maintained in accordance with the International Plumbing Code as amended by the City of Sedona. Private sewage disposal systems shall conform to the requirements of the applicable State or County governing authority.

Y. Section 3109.1 General, is hereby amended by adding the following to the end of the sentence:

> ...and all applicable state and county regulations including Arizona Statute A.R.S. 36-1681.

15.05.030 Adoption of the International Residential Code.

The following document, three copies of which are on file and are available for public inspection in the office of the director of community development, is hereby adopted as the building code of the city of Sedona, Arizona, for regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all one- and two-family dwellings and townhouses and associated buildings or structures in the city; and providing for issuance of permits and collection of fees therefor:

A. International Residential Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc., including the following appendix chapters:

1. Appendix A: Sizing and Capacity of Gas Piping;

2. Appendix B: Sizing of Venting Systems Serving Appliances Equipped With Draft Hoods, Category I Appliances and Appliances Listed For Use With Type B Vents;

3. Appendix C: Exit Terminals of Mechanical Draft and Direct-Vent Venting Systems;

4. Appendix G: Piping Standards for Various Applications;

5. Appendix J: Existing Buildings and Structures;

6. Appendix K: Sound Transmission;

7. Appendix N: Venting Methods;

8. Appendix O: Automatic Vehicular Gates;

9. Appendix P: Sizing of Water Piping System;

10. Appendix Q: Tiny Houses as amended to include the following:

Section AQ106 ADDITIONAL REQUIREMENTS AND ALLOWANCES

Section AQ106.1 Egress door. The main egress door shall be no less than 32" in width.

Section AQ106.2 Room dimensions. The minimum room dimension of a habitable room, other than the loft or kitchen, shall be 6'-6", and the room area shall be no less than 60 sq.ft.

Section AQ106.3 Foundation. Tiny houses shall be built on, and permanently attached to, full, continuous concrete or masonry foundations.

Section AQ106.4 General. Tiny houses shall comply with all other requirements of the adopted International Residential Code.

11. Appendix R: Light Straw-Clay Construction;

12. Appendix S: Strawbale Construction;

13. Appendix T: Solar-Ready Provisions – Detached One- And Two-Family Dwellings And Townhouses;.

B. Each and all of the regulations, provisions, conditions and terms of the International Residential Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc., are hereby referred to, adopted and made a part of this code as if fully set out in herein, excepting such provisions as hereinafter deleted or amended. [Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-3].

15.05.040 Amendments to the International Residential Code.

The International Residential Code, as adopted, is hereby modified as follows:

A. Section R101.1 Title, is hereby amended by adding the words "City of Sedona" in place of "Name of Jurisdiction".

B. Section R101.2 is hereby amended by adding the following new section:

R101.2.1 Fences, yard walls and retaining walls. Fences, yard walls and retaining walls shall be designed in accordance with the minimum requirements of the City of Sedona prescriptive fence, wall and retaining wall details located within the City of Sedona Fence Building Permit Packet or the design of such structures shall be supported by structural calculations performed by an Arizona registered design professional approved to perform structural design.

C. Section R104.10.1 Flood hazard areas, is hereby deleted in its entirety.

D. Section R105.2 Exempted work, Item Nos. 1, 2, 5 and 7, are hereby amended to read:

1. One-story detached buildings used as tool and storage sheds, playhouses or similar uses, provided the projected roof area does not exceed 120 square feet, the building does not exceed seven feet (7') high at the highest point of the roof or wall, and it has no electrical or plumbing installations.

2. Fences not over thirty inches (30") high and not located within flood hazard areas as determined by the City or County flood hazard administrative authority.

3. Retaining walls not over thirty inches (30") high measured from the top of footing to the top of wall and not support any structures or located within flood hazard areas as determined by the City or County flood hazard administrative authority.

7. Prefabricated swimming pools accessory to Group R-3 occupancies which are less than 18 inches in depth and less than 8 feet in any dimension and constructed entirely above grade.

10. Decks not exceeding 100 square feet in area, that are less than 20 inches above grade at any point, are not attached to a dwelling, do not have stairs or steps and do not serve the exit door required by Section R311.2.

E. Section R105.3.1.1 Determination of substantially improved or substantially damaged existing buildings in flood hazard areas, is hereby amended by deletion in its entirety and substituting the following:

Reconstruction, rehabilitation, additions, alteration, repair, relocation or other improvements to buildings or structures located in flood hazard areas as established by Table R301.2(1), shall comply with the regulations and requirements of the appropriate, governing County or City authority.

F. Section R105.5 Expiration, is hereby amended by adding the following to the end of the first sentence:

Lack of a scheduled and performed qualified inspection within 180 days constitutes a suspension or abandonment of work, and therefore an expiration of the permit.

G. Section R105.7 Placement of permit, is hereby amended by deleting the section in its entirety and substituting the following:

Section 105.7 Placement of permit. The building permit shall be kept on site in a conspicuous place, visible from the public way, and shall be kept on the site of the work until the completion of the project and the issuance of final inspection approval by the City.

H. Section R106.1.1 Information on construction documents, is hereby amended by adding the following to the end of the section:

All text, numbers, symbols, lines, shading, etc. shall be clear, well defined, sized and properly weighted so as to be clearly legible, and plan sheets shall be no larger than 30" x 42" in size.

I. Section R106.3 Examination of documents, is hereby amended by adding the following to the end of the section:

The application and construction drawings may be reviewed and approved by other departments of this City and other agencies with jurisdiction in the areas of public health and safety prior to permit issuance, including, but not limited to, the Arizona Department of Environmental Quality, the County Health Department and the County Flood Control District to verify compliance with any applicable laws under their jurisdiction.

The Building Official shall require that contractors be licensed as required by Arizona state law before issuing permits to them. The Building Official shall also require contractors and builders to either be licensed or otherwise retain the services of someone who is properly licensed or certified, as may be necessary to assure the proper installation of building components,

equipment or appliances consistent with the technical codes or the approved installation specifications and standards.

Owners of Property may construct, add to, alter or remodel structures on their property subject to the provisions of Arizona Revised Statutes, Section 32-1121. Violation of the provisions of ARS § 32-1121 shall be cause for the Building Official to commence enforcement proceedings. The Building Official may also report such violations to the Arizona Registrar of Contractors.

J. Section R108.2 Schedule of permit fees, is hereby amended by adding the following to the end of the section:

Fees, valuations, plan review deposits and refunds that are within the scope of this Section shall be assessed in accordance with the provisions of this section and as set forth in SCC 15.05.060.

K. Section R109.1.3 Floodplain inspections, is hereby amended by adding the following to the end of the paragraph:

Inspections for the reconstruction, rehabilitation, additions, alteration, repair, relocation or other improvements to buildings or structures located in flood hazard areas as established by Table R301.2(1), shall comply with the regulations and requirements of the appropriate, governing County or City authority.

L. Section R110.4, Temporary occupancy, is amended by adding the following to the end of the section:

The issuance of Temporary Certificates of Occupancy is not customary, is reviewed by the Director of Community Development after the submittal of a written request identifying the hardship(s) not caused directly or indirectly by the applicant, property owner, design professionals or contractors, and is based solely on incomplete or non-compliant exterior work. Upon approval of the Director of Community Development to allow issuance of a Temporary Certificate of Occupancy, the owner shall submit to the Building Official for review and approval a letter requesting temporary occupancy for a period of time to be approved by the Building Official and include with the request:

1. An itemization of all work authorized and required by the building and grading permits that must be completed to permanently occupy the building. (Note that said work shall be exterior to the building or structure. Temporary Certificates of Occupancy will not be issued for any work not completed and approved by the City that is interior to the building or structure.)

2. An irrevocable bond or other financial deposit acceptable to the Building Official and payable to the City of Sedona in the event construction is not completed before expiration of the Temporary Certificate of Occupancy. The amount of the bond or deposit shall equal 100 percent of the construction cost to complete the work required by the permits.

For the purpose of this section, construction cost shall include all labor, materials, equipment, sales tax, permit fees and contractors' profit and overhead plus a twenty percent (25%) contingency amount for unforeseen construction expenses and City administration in the event the City undertakes completion of the project. The Building Official may require written proposals or estimates from contractors to substantiate the amount of the bond or deposit.

3. The payment of a non-refundable fee for the Temporary Certificate of Occupancy shall be $300.00 for single-family dwellings and $500.00 for commercial projects.

4. A written agreement that the bond or deposit is forfeited by the owner to the City in the event all required work is not completed before expiration of the Temporary Certificate of Occupancy and authorization for the City to undertake and complete construction with the forfeited funds.

If the City undertakes completion of the project with the forfeited funds, any unexpended amount shall be returned to the owner or bonding agent as applicable. If costs to complete the project exceed the amount of the bond or deposit, the City may file a lien against the subject property and take appropriate action as necessary to recover all the additional expenses incurred completing the construction.

The Building Official may extend the time period of an original Temporary Certificate of Occupancy or issue one or more additional temporary certificates if conditions beyond the control of the owner prevent project completion by the expiration of the original Temporary Certificate. Extensions and additional temporary certificates shall be requested by the owner before the expiration of the original certificate and approved by the Building Official in the same manner as the original certificate. The owner shall provide a bond or deposit and pay a new fee for each extension or additional certificate.

EXCEPTION: Public schools are not required to provide a bond or deposit for completion of work or pay temporary certificate fees.

M. Section R112.3, Qualifications, is hereby deleted and replaced with the following:

R112.3 Board Composition and Authority. All reviews required of a Board of Appeals shall be delegated to a hearing officer to be appointed in the same manner as such other hearing officers appointed by the City Council to hear appeals to the City of Sedona's Board of Adjustment. The hearing officer(s) appointed pursuant to this section shall have final review authority and no further appeal shall be required by the City of Sedona.

N. Section R114.1 Notice to owner or the owner's authorized agent, is hereby amended by adding the following to the end of the section:

Posting of the Stop Work order on the structure or property in question is deemed proper notification to the owner or owner's authorized agent.

O. Section R114.2 Unlawful continuance, is hereby deleted in its entirety and replaced by the following:

> Section R114.2 Unlawful continuance and/or removal of stop work notice. Any person who shall continue or allow the continuance of any work in or about the structure or property after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, or any person who removes, or causes the removal of, the stop work notice without the consent of the City, shall be subject to penalties as prescribed by law and City Code.

P. The design criteria required of Table R301.2(1) are established as follows:

Ground Snowload	Speed (mph)	Seismic Design Category	Subject to Damage From				Winter Design Temperature	Flood Hazards
			Weathering	Frost Line Depth	Termite	Decay		
25 psf	115 mph Vult	C	Moderate	12"	Moderate to Heavy	None to Slight	16	***

*** Flood hazard areas shall be designated and regulated by the adopted regulations of the appropriate, governing county or city agency having flood management jurisdiction.

Q. Section R302.2.6 Structural independence, is hereby amended by adding the following to the end of the first sentence:

> The common wall separating townhouses shall not be used for gravity load bearing purposes including the support of joists or trusses.

R. Section R302.3 Two-family dwellings, is hereby amended by deleting "1-hour" in the first sentence and replacing it with "2-hour".

S. Section R302.3 Two-family dwellings, is hereby amended by deleting "1/2 hour" in Exception 1 and replacing it with "1-hour".

T. Section R302.3 Two-family dwellings, is hereby amended by deleting Exception 2 in its entirety.

U. R312.1.1 Where required, is hereby amended by replacing "30 inches (762 mm)" in the first sentence with "20 inches (508 mm)".

V. R314.3 Location, is hereby amended by adding the following to the end of the section:

> 5. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches (24") or more, smoke detectors shall be installed in the hallway and in the adjoining room.

W. Section R322.1 General, is hereby modified by adding the following sentence to the end of the first paragraph:

> Where the requirements of this section conflict with the flood hazard regulations adopted by the appropriate, governing County or City agency having flood management jurisdiction, the regulations of the governing County or City agency shall apply.

X. Section R326.1, General, is hereby amended by adding the following to the end of the first sentence:

> ... and all applicable state and county regulations including Arizona Statute A.R.S. 36-1681.

Y. Section R403.1.1 Minimum size, is hereby amended by adding the following to the end of the fifth sentence:

> ... and shall not be less than 18" x 18" in width and 12" in height.

Z. Section R403.1.1 Minimum size, is hereby amended by adding the following subsection:

> R403.1.1.1 Minimum footing reinforcement. Continuous spread concrete footings shall be reinforced with at least two #4 horizontal reinforcement bar located 3 inches from the bottom of the footing. Monolithic interior and exterior concrete footings shall be reinforced with at least two #4 horizontal located 3 inches from the bottom of the footing and one #4 located 3 inches from the top of the slab. Pier and column footings shall be reinforced with #4 horizontal reinforcement spaced no more than 12 inches in each direction and located 3 inches from the bottom of the footing.

AA. Table R404.1.1(1) Plain Masonry Foundation Walls, is hereby amended by deleting the table in its entirety.

BB. Section R404.1.2.1, Masonry foundation walls is hereby amended by deletion in its entirety and substituting the following:

> Masonry foundation walls. Concrete masonry foundation walls shall be constructed as set forth in Tables R404.1.1(2), (3) and (4) for the most restrictive soil class (unless a soils report is provided that shows that the site consists of a different soils class.) and shall also comply with the provisions of this section. Rubble stone masonry walls are not permitted.

CC. Section R404.1.3.2 Reinforcement for foundation walls, is hereby amended by adding the following to the end of the paragraph:

> Concrete foundation walls, including insulating concrete form (ICF) foundation walls, shall be constructed as set forth in Tables R404.1.2(2) through R404.1.2(8) for the most restrictive design soil class (unless a soils report is provided that shows that the site consists of a different soils class) provided that PC in the table represents a minimum vertical reinforcement of #4 at

forty-eight inches (48") oc. PC or Plain Unreinforced Concrete is not permitted. Concrete foundation walls shall also comply with the provisions of this section and the applicable provisions of sections R402.2 and R612.

DD. Section R404.1.8 Rubble stone masonry, is hereby deleted in its entirety.

EE. Section R404.2 Wood foundation walls, is hereby deleted in its entirety.

FF. Section M1602.2 Return air openings, is hereby amended by adding the following to the end of the section:

8. Return air shall be provided through the use of approved ducts, plenums, transfer ducts and transfer grills. Return air shall not be provided through the use of under-door cuts or openings.

GG. Section G2417.4.1 (Section 406.4.1) Test pressure, is hereby amended by deleting "3 psig (20kPa gauge)" and replacing with "10 psig".

HH. Section P2801.1 Required, is hereby amended by adding the following sentence to the end of the section:

All new R-3 occupancies shall have a hot water recirculating system installed.

II. Section E3406.2 Conductor material, is hereby amended by deleting the section in its entirety and substituting the following:

Section E3406.2 Conductor material. Conductors used to conduct current and regulated by this code shall be of copper. All references to the contrary are hereby deleted from this code.

JJ. Section E3901 Receptacle Outlets, is hereby amended by adding the following new section:

Section E3901.13 EV-Ready outlet. An approved conduit of no less than ¾" in diameter shall be installed from the service panel to an approved and covered junction box located in the garage or carport area and sized to allow the installation of a 240-volt receptacle. All junction boxes installed as part of the EV-ready conduit system shall be labeled as "EV Use".

KK. Appendix T, Section T103.6 Capped roof penetration sleeve, is hereby amended by deleting the section in its entirety and substituting the following:

Section T103.6 Preinstalled PV-ready conduit. An approved conduit of no less than ¾" in diameter shall be installed from the service panel to an approved and covered junction box located in an area adjacent to or in an accessible attic directly beneath the required solar-ready zone. All junction boxes installed as part of the PV-ready conduit system shall be labeled as "PV Use".

[Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-4].

15.05.050 Conformance to the land development code.

Whenever a building permit is issued and a building inspection performed, such building shall conform to the provisions of the city land development code in addition to the provisions of SCC 2.60.020, Chapters 5.30, 8.30, 12.05, 12.15, 12.20, 12.25 and 14.10 SCC and this title. [Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-5].

15.05.060 Building permit fees and valuation.

A. Plan Review Payment. At the time of submitting plans, specifications or other data for plan review, the full amount of the plan review fee shall be collected by the director of community development for each permit application as set forth in the City of Sedona Consolidated Fee Schedule, Valuation/Permit Fee Schedule.

B. Building Valuations. Building construction and unit construction valuations, for the purpose of calculating building permit fees, shall be determined by the director of community development in accordance with the City of Sedona Consolidated Fee Schedule, Valuation & Fee Schedule and/or Unit Construction Valuations, or may be based upon the applicant's submitted construction valuation if items listed in the City of Sedona Consolidated Fee Schedule are not applicable to the proposed work.

C. Building Permit Fees. Building permit fees based upon construction valuations shall be calculated in accordance with the City of Sedona Consolidated Fee Schedule, Valuation/Permit Fee Schedule. Building permit fees for individual items of construction shall be calculated in accordance with the City of Sedona Consolidated Fee Schedule, Unit Permit Fees, when the fees are not based upon the construction valuation.

D. Plan Review Fees. The plan review fee shall be 65 percent of the building permit fee stipulated in this section when the building permit fee is based upon the construction valuation. The plan review fee is a separate fee from the building permit fees specified in this section and is in addition to the building permit fees. Where plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate specified in this section.

E. Fee Refunds.

1. The building official may authorize the refunding of any fee collected pursuant to this section that was erroneously paid or collected.

2. The building official may authorize refunding of not more than 80 percent of the building permit fee paid when no work has been done under the permit issued in accordance with this code; not more than 70 percent of the building permit fee after foundation construction has commenced; and not more than 50 percent of the building permit fee after framing or above-grade wall construction has commenced. No building permit fee shall be refunded after the framing or above-grade wall construction has been inspected and approved.

3. The building official may authorize refunding of not more than 80 percent of the plan review fee when a permit application for which a plan review fee was paid is canceled or withdrawn before any plan review is commenced; no plan review fee shall be refunded after an initial plan review has been completed or the permit application has been approved for issuance.

[Ord. 98-05, 3-24-1998; Ord. 2007-04, 4-24-2007; Ord. 2009-05, 5-12-2009; Ord. 2009-06, 5-12-2009. Code 2006 § 7-1-6].

15.05.070 Wood burning fireplaces.

A. Definitions. For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Alternative fuel" means natural gas, propane, electric or other nonsolid fuel.

"Solid fuel" means wood, or any compressed wood or fiber product, including coal, other solid hydrocarbons or compounds, oil and combustible pellets, or solids of any composition.

"Wood burning fireplace" means an open fireplace within buildings or structures that will burn wood or other solid fuel.

B. Abatement.

1. After the effective date of the ordinance codified in this section, no person within the city of Sedona, Arizona, shall place, install or fabricate in place a wood burning fireplace.

2. In order to receive a final occupancy permit for any structure, any new fireplace must be equipped with an operable alternative fuel device.

3. Wood burning fireplaces in existence prior to the effective date of the ordinance codified in this section will be exempt from the provisions of this section.

C. Violations and Penalties. The owner of any property subject to this section, wherein such fireplace was reconverted to wood burning in contravention of this section, will be subject to a $500.00 fine and be required to convert to alternative fuel or seal the fireplace within 90 days from notice of violation. Failure to comply within 90 days will result in an additional $500.00 fine each day the violation continues to exist.

D. Effective Date. This section is effective on August 11, 2003. [Ord. 2003-08, 5-13-2003; Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-7].

15.05.080 Permitting of wood stoves and similar devices.

A. Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. In the event that a definition set forth herein is unclear or raises a conflict, the applicable definitions set forth by the United States Environmental Protection Agency shall prevail in construing this section.

"Certified device" means a wood stove or fireplace insert which has been certified in accordance with minimum Phase II standards adopted by the United States Environmental Protection Agency. If it cannot be verified by the director of community development that a wood stove or fireplace insert has been certified, then it is deemed uncertified.

"Cook stove" means a wood stove installed in the kitchen which is primarily designed for cooking and has a stove top and an oven, or a stove which is equipped with gas burners for cooking. Cook stoves are exempt from compliance with subsections (B) and (C) of this section.

"Fireplace" means a hearth, fire chamber and chimney, and includes:

1. "Factory-built fireplace" means a fireplace composed of listed factory-built components assembled in accordance with the terms of listing to form the completed fireplace.

2. "Masonry fireplace" means a hearth and fire chamber of solid masonry units such as bricks, stones, masonry units or reinforced concrete, provided with a suitable chimney.

"Fireplace insert" means a factory-built, field-installed product consisting of a firebox assembly designed to be installed within or partially with the fire chamber of a fireplace, which uses the fireplace flue to vent the products of combustion.

"Pellet stove" means a solid fuel burning appliance designed to heat the interior of a building. It is a forced draft heater with an automatic feed which supplies appropriately sized feed material of compressed wood pellets or other biomass material to the firebox.

"Solid fueled burning appliance" means a chimney-connected device that burns solid fuel and which is designed for purposes of heating, cooking or both.

"Stove kit" means a kit that may include a door, legs, flue pipe and collars, brackets, bolts and other hardware and instructions for assembling a wood heater with ordinary tools.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite matter.

"Wood heater" means an enclosed wood burning appliance capable of and intended for space heating, domestic water heating or indoor cooking which has an air-to-fuel ratio of less than 35:1 in the low burn cycle. It also shall have a usable firebox volume less than 20 cubic feet weight, less than 800 kilograms, and a minimum burn rate less than five kilograms per hour. Appliances that are described as factory-built fireplaces and are designed to accommodate doors or other accessories which would create the air-starved operating conditions of a wood heater are deemed to be wood heaters if they meet the criteria in the above definition with those accessories in place.

"Wood stove" means, for purposes of compliance with subsections (B) and (C) of this section, a solid fuel burning appliance which may be a wood heater or pellet stove, or an appliance with doors or other items

which cause a fireplace to function as a wood heater. Wood stoves do not include exempt fireplaces, barbecue devices, gas-fired fireplaces or cook stoves.

B. General Standard. Commencing June 30, 1992, it is unlawful for any person to advertise, sell, offer to sell, install or replace any wood stove or fireplace insert in any structure within the city which is not a certified device. Wood heaters built from stove kits are subject to this standard. Fireplaces that have not been modified to create an air-starved operating condition are exempt from this standard.

C. Installation.

1. Commencing June 30, 1992, no person shall install or replace a wood stove or fireplace insert with a certified device within the city without first obtaining a permit from the director of community development for such installation in accordance with the applicable provisions of the International Building Code and International Mechanical Code adopted by the city.

2. Commencing June 30, 1992, installation or replacement of a wood stove or fireplace insert within the city shall comply with all written manufacturer's specifications. A wood stove or fireplace insert shall not be operated until after its inspection and approval, upon completion, by the director of community development or his designee.

3. Wood heaters built from stove kits are subject to the requirements of this subsection. Fireplaces that have not been modified to create an air-starved operating condition are exempt from the requirements of this subsection. [Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-8].

15.05.090 Manufactured homes, factory-built buildings and mobile homes.

Definitions. For the purpose of the City Code, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Factory-built building" means a residential or nonresidential building (including a dwelling unit or habitable room) which is wholly or in substantial part manufactured at an off-site location to be assembled on site, except that it does not include a manufactured home, recreational vehicle or mobile home as defined in this section.

"Manufactured home" means a structure built in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974 and Title VI of the Housing and Community Development Act of 1974, as implemented by the Arizona Office of Manufactured Housing pursuant to A.R.S. Title 41, Chapter 16.

"Mobile home" means a structure built prior to June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site utilities, except it does not include recreational vehicles or factory-built buildings.

"Recreational vehicle" means a vehicle-type unit which is:

1. A portable camping trailer mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold for camping;

2. A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use, and consisting of roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck;

3. A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, and which has an area less than 320 square feet when measured to the exterior of the unit. This definition includes fifth wheel trailers;

4. A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle;

5. A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances, and has a gross trailer area of not less than 320 square feet and not more than 400 square feet when it is set up, except it does not include fifth wheel trailers. Area measurements shall be taken on the exterior of the unit. [Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-9].

15.05.100 Jurisdiction of other agencies.

Permits issued under the requirements of this chapter shall not relieve the owner of responsibility for securing required permits for work which is regulated by any other department or division of the city or other governing agency, or any other city code provision or ordinance. A grading permit shall not be issued until all required permits are obtained from the Arizona Department of Environmental Quality, the county health department, the county flood control district and other agencies with regulatory jurisdiction. [Ord. 2007-16, 10-23-2007. Code 2006 § 7-1-10].

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Editorial note: See Ordinances 90-01, 91-22, 92-01, 93-09, 93-22, 98-05, 2007-04 and 2007-16.

Chapter 15.10
INTERNATIONAL PLUMBING CODE

Sections:

15.10.010 Adoption of International Plumbing Code.
15.10.020 Amendments to International Plumbing Code.

15.10.010 Adoption of International Plumbing Code.

That certain document, three copies of which are on file and available for public inspection in the office of the director of community development, entitled International Plumbing Code, 2018 Edition, as amended and codified, published by the International Code Council and including appendix chapters:

Appendix B – Rates of Rainfall for Various Cities;

Appendix C – Structural Safety;

Appendix D – Degree Day and Design Temperatures;

Appendix E – Sizing of Water Piping System;

is hereby adopted as the International Plumbing Code of the city, excepting such portions as are hereinafter deleted or amended. [Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007; Ord. 2008-05, 6-10-2008. Code 2006 § 7-2-1].

15.10.020 Amendments to International Plumbing Code.

The International Plumbing Code, 2018 Edition, is hereby modified as follows:

A. Section 101.1 Title, is hereby amended by replacing "Name of Jurisdiction" with "City of Sedona".

B. Section 106.5.3 Expiration, is hereby amended by adding the following to the end of the first sentence:

> Lack of a scheduled and performed inspection within 180 days constitutes a suspension or abandonment of work, and therefore an expiration of the permit.

C. Section 106.5.4 Extensions, is amended by deleting the last sentence in its entirety.

D. Sections 106.6.2 Fee Schedule, and 106.6.3, Fee Refunds, are amended by deleting both sections in their entirety and inserting the following:

> Fees and refunds shall be assessed in accordance with SCC 15.05.060.

E. Section 108.4 Violation penalties, is hereby amended by deleting the section in its entirety and inserting the following:

Section 108.4 Violation penalties. Any person, firm or corporation who shall violate this code shall be subject to the penalties as provided in SCC 1.15.010 for each and every such violation and non-compliance as a separate offense. Imposition of penalty for a violation of this code shall not excuse the violation or permit it to continue. A violation shall be remedied within a reasonable time, and each day that such violation continues unabated shall constitute a separate offense.

F. Section 108.5 Stop work orders, is hereby amended by deleting the last sentence in its entirety and inserting the following:

Any person, firm or corporation who removes a stop work order without authorization from the Building Official, or who shall continue any work in or about the structure after having been served a stop work order, or where a stop work order has been posted, except such work as that person, firm or corporation is directed to perform to remove a violation or unsafe condition, shall be subject to the penalties as provided in SCC 1.15.010 for each and every such violation and non-compliance as a separate offense. Imposition of penalty for a violation of this code shall not excuse the violation or permit it to continue. A violation shall be remedied within a reasonable time, and each day that such violation continues unabated shall constitute a separate offense.

G. Section 109 Means of Appeal, is hereby amended by deleting the section in its entirety and inserting the following:

Section 109 Means of Appeal. Appeals of decisions made by the code official shall be to the Board of Appeals as established in the 2018 International Building Code as amended by the City of Sedona.

H. Section 312.2 Drainage and vent water test, is hereby amended by adding the following to the end of the paragraph:

All pre-slab or underslab plumbing shall be tested with a five pound air test exclusively.

I. Section 403.1.2 Single-user toilet facility and bathing room fixtures, is hereby amended by deleting the word "shall" in the last sentence and replacing it with the word "may".

J. Section 403.2 Separate facilities, is hereby amended by adding the following new exception to the end of the section:

5. Separate facilities for each sex shall not be required in any occupancy or structure where the total number, type and design of fixtures required by Table 403.1 of this code, Section 1109.2.1 of the International Building Code and Chapters 2 and 6 of the most current ADA Standards for Accessible Design can be met by the use of single-user toilet facilities and bathing room facilities.

K. Section 504.6 Requirements for discharge piping, is hereby amended by adding the following to the end of Item No. 5:

Where discharging outdoors, discharge piping shall be no less than six inches and no greater than 24 inches from grade.

L. Section 714.1 Sewage backflow, is hereby amended by deleting the first sentence in its entirety and replacing with the following:

Where plumbing fixtures are installed on a floor with a finished floor elevation of four inches or less above the elevation of the next upstream manhole in the public sewer, such fixtures shall be protected with a backwater valve installed in the building drain, or horizontal branch serving such fixtures.

M. Section 714.3 Location, is hereby amended by adding the following to the end of the sentence:

Such valves shall be located exterior to the building and a minimum of 10 feet from drainage ways and inlets.

N. Section 903.1 Roof Extension, is hereby amended by replacing "[number]" with "six" in the first sentence.

O. Section 1003.1 Where required, is hereby amended by deleting the section in its entirety and replacing with the following:

Section 1003.1 Where required. Interceptors and separators shall be provided to prevent the discharge of oil, grease, sand and other substances harmful or hazardous to the public sewer, the private sewage system, the sewage treatment plant or process, storm drainage systems and drainage ways.

P. Section 1003.2 Approval, is hereby amended by adding the following to the end of the paragraph:

In addition to the requirements herein, grease interceptors, grease traps, oil separators, and sand interceptors shall comply with SCC Title 13.

Q. Section 1003.3.5.2 Rate of flow controls, is hereby amended to read:

Number of fixture units x 1.5 min. retention time = gallon capacity of grease trap.

R. Section 1003.3.5.2 Rate of flow controls, is hereby amended to add to the end of the paragraph:

A four-inch inspection tee fitting shall be installed in the waste line on the outlet side of the interceptor.

S. Section 1302.6.1 Gray water used for fixture flushing, is hereby amended by adding the following to the end of the sentence:

> Gray Water Systems, shall also comply with the requirements contained in regulations approved by the Arizona Department of Environmental Quality.

[Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007; Ord. 2008-05, 6-10-2008. Code 2006 § 7-2-2].

Chapter 15.15
ELECTRICAL CODE

Sections:

15.15.010 Adoption of the National Electrical Code.
15.15.020 Amendments to the National Electrical Code.

15.15.010 Adoption of the National Electrical Code.

That certain code entitled National Electrical Code, 2017 Edition, as amended and codified, published by the National Fire Protection Association, three copies of which are available for public inspection in the office of the director of community development, is adopted as the electrical code of the city, and made a part of this title the same as though set forth in full herein, excepting those portions hereinafter deleted or amended. [Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007. Code 2006 § 7-3-1].

15.15.020 Amendments to the National Electrical Code.

The National Electrical Code, 2017 Edition, is modified as follows:

A. Article 110.5 Conductors, is hereby amended by deleting the article in its entirety and substituting the following in its place:

> Conductors normally used to carry current shall be of copper. All references to the contrary are hereby deleted from this code.

B. Article 310.106(B) Conductor Material, is hereby amended by deleting the article in its entirety and substituting the following in its place:

> Conductors in this article shall be of copper. All references to the contrary are hereby deleted from this code.

C. Article 334.10 Uses Permitted, is hereby amended to read:

> Type NM, NMC and NMS cable shall be permitted to be used only for branch circuits of Group R-3 one- and two-family dwellings regulated under the scope of the International Residential Code.

[Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007. Code 2006 § 7-3-2].

Chapter 15.20
MECHANICAL CODE

Sections:

15.20.010 Adoption of the International Mechanical Code.
15.20.020 Amendments to the International Mechanical Code.

15.20.010 Adoption of the International Mechanical Code.

That certain code entitled International Mechanical Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc., three copies of which are available for public inspection in the office of the director of community development, is hereby adopted as the mechanical code of the city and made a part of this title the same as though set forth in full herein, excepting those portions hereinafter deleted or amended. [Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007. Code 2006 § 7-4-1].

15.20.020 Amendments to the International Mechanical Code.

The International Mechanical Code, 2018 Edition, is modified as follows:

A. Section 101.1 Title, is hereby amended by replacing "Name of Jurisdiction" with "City of Sedona".

B. Section 106.4.3 Expiration, is hereby amended by adding the following to the end of the first sentence:

> Lack of a scheduled and performed qualified inspection within 180 days constitutes a suspension or abandonment of work, and therefore an expiration of the permit.

C. Section 106.4.4 Extensions, is hereby amended by deleting the last sentence in its entirety.

D. Sections 106.5.2 Fee Schedule, and 106.5.3, Fee Refunds, are hereby amended by deleting both sections in their entirety and inserting the following:

> Fees and refunds shall be assessed in accordance with SCC 15.05.060.

E. Section 106.5.3 Fee refunds, is hereby amended by adding the following to the end of the section:

> Refunds that are within the scope of this Section shall be assessed in accordance with the provisions of this section and as set forth in SCC 15.05.060.

F. Section 107.2 Required inspection and testing, is hereby amended by adding the following new Item 4:

> 4. A test and balance report(s), performed by a third party, certified test and balance contractor, shall be submitted to the City prior to final inspection. Said test and balance report(s) shall verify compliance of any newly installed or altered ventilation and/or hydronic system(s) and equipment with the approved permit plans, the mechanical code and any applicable standards.

G. Section 108.5 Stop work orders, is hereby amended by deleting the second sentence and substituting the following:

> A stop work order shall be in writing and shall be given to the owner of the property, to the owner's authorized agent, or to the person performing the work, or shall be posted on the structure or on site in a conspicuous location.

H. Section 108.5 Stop work orders, is hereby amended by deleting the fifth sentence and substituting the following:

> Any person who shall continue or allow the continuance of any work in or about the structure or property after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, or any person who removes, or causes the removal of, the stop work notice without the consent of the City, shall be subject to fines and penalties as set by the applicable governing authority.

I. Section 109 Means of Appeal, is hereby amended by deletion in its entirety and substituting the following:

> Appeals of decisions made by the code official shall be to the Board of Appeals as established in the 2018 International Building Code as amended by the City of Sedona.

J. Section 506.3.11 Grease duct enclosures, is hereby amended by deleting the Exception in its entirety.

[Ord. 98-05, 3-24-1998; Ord. 2007-16, 10-23-2007. Code 2006 § 7-4-2].

Chapter 15.30
INTERNATIONAL FUEL GAS CODE

Sections:

15.30.010 Adoption of the International Fuel Gas Code.
15.30.020 Amendments to the International Fuel Gas Code.

15.30.010 Adoption of the International Fuel Gas Code.

That certain code entitled International Fuel Gas Code, 2018 Edition, published by the International Code Council, Inc., three copies of which are available for public inspection in the office of the director of community development, is hereby adopted as the fuel gas code of the city and made a part of this title the same as though set forth in full herein, excepting those portions hereinafter deleted or amended. [Ord. 2007-16, 10-23-2007; Ord. 2010-04 § 1, 1-12-2010. Code 2006 § 7-6-1].

15.30.020 Amendments to the International Fuel Gas Code.

The 2018 International Fuel Gas Code is hereby modified as follows:

A. Section 101.1 Title, is hereby amended by replacing "Name of Jurisdiction" with "City of Sedona".

B. Section 106.5.3 Expiration, is hereby amended by adding the following to the end of the first sentence:

> Lack of a scheduled and performed qualified inspection within 180 days constitutes a suspension or abandonment of work, and therefore an expiration of the permit.

C. Sections 106.6.2 Fee Schedule, and 106.6.3, Fee Refunds, are hereby amended by deleting both sections in their entirety and inserting the following:

> Fees and refunds shall be assessed in accordance with SCC 15.05.060.

D. Section 108.5 Stop work orders, is hereby amended by deleting the second sentence and substituting the following:

> A stop work order shall be in writing and shall be given to the owner of the property, to the owner's authorized agent, or to the person performing the work, or shall be posted on the structure or on site in a conspicuous location.

E. Section 108.5 Stop work orders, is hereby amended by deleting the fifth sentence and substituting the following:

> Any person who shall continue or allow the continuance of any work in or about the structure or property after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, or any person who removes, or causes the removal of, the stop work notice without the consent of the City, shall be subject to fines and penalties as set by the applicable governing authority.

F. Section 109 Means of Appeal, is amended by deletion in its entirety and substituting the following:

> Appeals of decisions made by the code official shall be to the Board of Appeals as established in the 2018 International Building Code as amended by the City of Sedona.

G. Section 404.12 Minimum burial depth, is hereby amended by adding the following to the end of the paragraph:

> However, in cases other than that specified in Section 404.12.1, underground plastic piping systems shall be installed a minimum depth of 18 inches below grade to the top of the pipe.

H. Section 404.12.1 Individual outdoor appliances, is hereby amended by adding the following to the end of the paragraph:

> However, in such cases, underground plastic piping systems shall be installed a minimum depth of 12 inches to the top of the pipe or in accordance with the manufacturer's installation guidelines, whichever is deeper.

I. Section 406.4 Test pressure measurement, is hereby amended by adding the following to the end of the paragraph:

> Where the test pressure requirement is 10 psig or less the test pressure measurement shall be a gauge having a reading of one tenth of a pound per square inch (0.10 psi) increments.

J. Section 406.4.1 Test pressure, is hereby amended by deleting "3 psig (20kPa gauge)" and replacing with "10 psig".

K. Section 409.3.2 Individual Buildings, is hereby amended by deleting in its entirety and substituting the following:

> Section 409.3.2, Individual Buildings. Gas piping shall be equipped with separate shutoff valves located at each building and so arranged that the gas supply can be turned on or off to any individual or separate building. Such shutoff shall be placed on the riser located outside the building it supplies and shall be readily accessible at all times. [Ord. 2007-16, 10-23-2007; Ord. 2010-04 § 1, 1-12-2010. Code 2006 § 7-6-2].

Chapter 15.40
INTERNATIONAL EXISTING BUILDING CODE

Sections:

15.40.010 Adoption of the International Existing Building Code.
15.40.020 Amendments to the International Existing Building Code.

15.40.010 Adoption of the International Existing Building Code.

That certain code entitled International Existing Building Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc., three copies of which are available for public inspection in the office of the director of community development, is hereby adopted as the existing building code of the city and made a part of this title the same as though set forth in full herein, excepting those portions hereinafter deleted or amended.

15.40.020 Amendments to the International Existing Building Code.

The International Existing Building Code, 2018 Edition, is modified as follows:

A. Section 101.1 Title, is hereby amended by replacing "Name of Jurisdiction" with "City of Sedona".

B. Section 105.2 Work exempt from permit, is hereby amended by deleting Building Item 4 in its entirety.

C. Section 108.2 Schedule of permit fees, is hereby amended by deleting the section in its entirety and inserting the following:

> The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be assessed in accordance with SCC 15.05.060.

D. Section 112 Board of Appeals, is hereby amended by deletion in its entirety and substituting the following:

> Appeals of decisions made by the code official shall be to the Board of Appeals as established in the 2018 International Building Code as amended by the City of Sedona.

E. Section 114.2 Issuance, is hereby amended by removing the first sentence in its entirety and inserting the following:

> A stop work order shall be in writing and shall be given to the owner of the property, to the owner's authorized agent, or to the person performing the work, or shall be posted on the structure or on site in a conspicuous location.

F. Section R114.3 Unlawful continuance, is hereby amended by deletion in its entirety and substituting the following:

Section R114.3 Unlawful continuance and/or removal of stop work notice. Any person who shall continue or allow the continuance of any work in or about the structure or property after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, or any person who removes, or causes the removal of, the stop work notice without the consent of the City, shall be subject to fines and penalties as set by the applicable governing authority.

Chapter 15.45
INTERNATIONAL ENERGY CONSERVATION CODE

Sections:

15.45.010 Adoption of the International Energy Conservation Code.

15.45.020 Amendments to the International Energy Conservation Code.

15.45.010 Adoption of the International Energy Conservation Code.

That certain code entitled International Energy Conservation Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc., three copies of which are available for public inspection in the office of the director of community development, is hereby adopted as the energy conservation code of the city and made a part of this title the same as though set forth in full herein, including Appendix Chapters CA, Solar Ready Zone - Commercial and CB Electrical Vehicle Ready Parking Areas - Commercial, and excepting those portions hereinafter deleted or amended.

15.45.020 Amendments to the International Energy Conservation Code.

The International Energy Conservation Code, 2018 Edition, is modified as follows:

A. Section C101.1 Title, is hereby amended by replacing "Name of Jurisdiction" with "City of Sedona".

B. Section C104.2 Schedule of permit fees, is hereby amended by deleting the section in its entirety and inserting the following:

> The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be assessed in accordance with SCC 15.05.060.

C. Section C108.2 Issuance, is hereby amended by removing the first sentence in its entirety and inserting the following:

> A stop work order shall be in writing and shall be given to the owner of the property, to the owner's authorized agent, or to the person performing the work, or shall be posted on the structure or on site in a conspicuous location.

D. Section C108.4 Failure to comply, is hereby deleted in its entirety and replaced by the following:

> Section C108.4 Failure to comply and/or removal of stop work notice. Any person who shall continue or allow the continuance of any work in or about the structure or property after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, or any person who removes, or causes the removal of, the stop work notice without the consent of the City, shall be subject to fines and penalties as set by the applicable governing authority.

E. Section C109 Board of Appeals, is hereby amended by deletion in its entirety and substituting the following:

Appeals of decisions made by the code official shall be to the Board of Appeals as established in the 2018 International Building Code as amended by the City of Sedona.

F. Appendix CB, is hereby added as a new appendix as follows:

Appendix CB Electrical Vehicle Ready Parking Areas – Commercial

CB 101.1 General. These provisions shall be applicable for new construction where electrical vehicle ready provisions are required in Section CB 201.1.

CB 201.1 Electrical vehicle ready parking spaces. For every newly permitted structure governed by, and within the scope of, the International Building Code, with more than 9 parking spaces, 5 percent of the total number of parking spaces shall be capable of supporting future electric vehicle charging stations (EVCS) and said spaces shall be identified on the construction documents along with the location of the proposed EVCS. At least one EVCS shall be located in common use areas and available for use by all residents. (Note: When calculating the required electrical vehicle ready parking spaces, rounding shall be used to the nearest whole number. Where the calculations fall at the midpoint of a whole number, the number must be rounded up.)

CB 201.2 Design and installation requirements – Single EVCS required. When only one EVCS space is required, a 208/240-volt individual branch circuit or a listed raceway to accommodate a future individual branch circuit shall be installed. The raceway shall not be less than trade size 1 (nominal 1-inch inside diameter). The raceway shall originate at the main service or subpanel and shall terminate into a listed cabinet, box or other enclosure in close proximity to the proposed location of the electric vehicle charger. Construction documents shall identify the raceway termination point. The service panel or subpanel circuit directory shall provide capacity to install a 40-ampere minimum dedicated branch circuit and space(s) reserved to permit installation of a branch circuit overcurrent device. Electric vehicle supply equipment shall be installed in accordance with NFPA 70.

CB 201.3 Design and installation requirements – Multiple EVCS required. Construction documents shall indicate the raceway termination point and proposed location of future EVCS and electric vehicle chargers. Constructions documents shall also provide information on amperage of future electric vehicle supply equipment (EVSE), raceway methods(s) wiring schematics and electrical panel service capacity and electrical system, including any on-site distribution transformer(s), have sufficient capacity to simultaneously charge all electric vehicles at all required EVCS at the full rated amperage of the EVSE. Plan design shall be based upon 40-ampere minimum branch circuit. Raceways and related components that are planned to be installed underground, enclosed, inaccessible or in concealed areas and spaces shall be installed at time of the original construction. Electric vehicle supply equipment shall be installed in accordance with NFPA 70.

CB 201.4 Identification. The service panel or subpanel circuit directory shall identify the overcurrent protective device space(s) reserved for future electric vehicle charging as "EV CAPABLE". The raceway termination location shall be permanently and visibly marked as "EV CAPABLE".

G. Section R101.1 Title, is hereby amended by replacing "Name of Jurisdiction" with "City of Sedona".

H. Section R104.2 Schedule of permit fees, is hereby amended by deleting the section in its entirety and inserting the following:

> The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be assessed in accordance with SCC 15.05.060.

I. Section R108.2 Issuance, is hereby amended by removing the first sentence in its entirety and inserting the following:

> A stop work order shall be in writing and shall be given to the owner of the property, to the owner's authorized agent, or to the person performing the work, or shall be posted on the structure or on site in a conspicuous location.

J. Section R108.4 Failure to comply, is hereby deleted in its entirety and replaced by the following:

> Section R108.4 Failure to comply and/or removal of stop work notice. Any person who shall continue or allow the continuance of any work in or about the structure or property after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, or any person who removes, or causes the removal of, the stop work notice without the consent of the City, shall be subject to fines and penalties as set by the applicable governing authority.

K. Section R109 Board of Appeals, is hereby amended by deletion in its entirety and substituting the following:

> Appeals of decisions made by the code official shall be to the Board of Appeals as established in the 2018 International Building Code as amended by the City of Sedona.

Chapter 15.50
INTERNATIONAL SWIMMING POOL AND SPA CODE

Sections:

15.50.010 Adoption of the International Swimming Pool and Spa Code.
15.50.020 Amendments to the International Swimming Pool and Spa Code.

15.50.010 Adoption of the International Swimming Pool and Spa Code.

That certain code entitled International Swimming Pool and Spa Code, 2018 Edition, as amended and codified, published by the International Code Council, Inc., three copies of which are available for public inspection in the office of the director of community development, is hereby adopted as the swimming pool and spa code of the city and made a part of this title the same as though set forth in full herein, excepting those portions hereinafter deleted or amended.

15.50.020 Amendments to the International Swimming Pool and Spa Code.

The International Swimming Pool and Spa Code, 2018 Edition, is modified as follows:

A. Section 101.1 Title, is hereby amended by replacing "Name of Jurisdiction" with "City of Sedona".

B. Section 102.9 Other laws, is hereby amended by adding the following to the end of the sentence:

> ...including Arizona Statute 36-1681, except that Section (D)(7) of Statute 36-1681 is hereby deleted in its entirety.

C. Section 105.5.3 Expiration, is hereby amended by adding the following to the end of the first sentence:

> Lack of a scheduled and performed inspection within 180 days constitutes a suspension or abandonment of work, and therefore an expiration of the permit.

D. Section 105.5.4 Extensions, is hereby amended by deleting the last sentence in its entirety.

E. Section 105.6.2 Fee schedule, is hereby amended by deleting the section in its entirety and inserting the following:

> The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be assessed in accordance with SCC 15.05.060.

F. Section 105.6.3 Fee refunds, is hereby amended by adding the following to the end of the section:

> Refunds that are within the scope of this Section shall be assessed in accordance with the provisions of this section and as set forth in SCC 15.05.060.

G. Section 107.4 Violation penalties, is hereby amended by deleting the section in its entirety and inserting the following:

Section 108.4 Violation penalties. Any person, firm or corporation who shall violate this code shall be subject to the penalties as provided in SCC 1.15.010 for each and every such violation and non-compliance as a separate offense. Imposition of penalty for a violation of this code shall not excuse the violation or permit it to continue. A violation shall be remedied within a reasonable time, and each day that such violation continues unabated shall constitute a separate offense.

H. Section 107.5 Stop work orders, is hereby amended by removing the second sentence in its entirety and inserting the following:

Such notice shall be in writing and shall be given to the owner of the property, or to the owner's authorized agent, or to the person performing the work, or shall be posted on the building or on site in a conspicuous location.

I. Section 107.5 Stop work orders, is hereby amended by deleting the last sentence in its entirety and inserting the following:

Any person, firm or corporation who removes a stop work order without authorization from the Building Official, or who shall continue any work in or about the structure after having been served a stop work order, or where a stop work order has been posted, except such work as that person, firm or corporation is directed to perform to remove a violation or unsafe condition, shall be subject to the penalties as provided in SCC 1.15.010 for each and every such violation and non-compliance as a separate offense. Imposition of penalty for a violation of this code shall not excuse the violation or permit it to continue. A violation shall be remedied within a reasonable time, and each day that such violation continues unabated shall constitute a separate offense.

J. Section 108 Means of appeal, is hereby amended by deletion in its entirety and substituting the following:

Appeals of decisions made by the code official shall be to the Board of Appeals as established in the 2018 International Building Code as amended by the City of Sedona.

K. Section 305.2.1 Barrier height and clearances, is hereby amended by deleting "48 inches (1219 mm)" from Item 1 and replacing with "60 inches".

L. Section 305.3.3 Latches, is hereby amended by deleting "3 inches (76 mm)" from the fourth line of the paragraph and replacing with "5 inches".

M. Section 305.3.3 Latches, is hereby amended by deleting "18 inches (457 mm)" from the last line of the paragraph and replacing with "24 inches".

N. Section 305.4 Structure wall as a barrier, is hereby amended by deleting Item 1 in its entirety.

O. Section 305.4 Structure wall as a barrier, is hereby amended by deleting Item 3 in its entirety adding in its place the following new Item 3:

> 3. All ground level doors or other doors with direct access to the swimming pool or other contained body of water shall be equipped with self-closing, self-latching devices which meet the requirements of Section 305.3.3. Emergency escape or rescue windows from sleeping rooms with access to the swimming pool or other contained body of water shall be equipped with a latching device not less than 54 inches above the adjacent finished floor. All other openable dwelling unit or guest room windows with similar access shall be equipped with a screwed in place wire mesh screen, or a keyed lock that prevents the window from opening more than 4 inches, or a latching device located not less than 54 inches above the adjacent finished floor.

P. Section 305.5 Onground residential pool structure as a barrier, is hereby amended by deleting "48 inches (1219 mm)" from Items 1 and 2 and replacing with "60 inches".

ORDINANCE NO. 2022-__

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, ADOPTING PROPOSED AMENDMENTS TO THE SEDONA CITY CODE CHAPTER 15.15 ELECTRICAL CODE; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR REPEAL OF ANY ORDINANCE OR PARTS OF ORDINANCES OR CODE PROVISIONS IN CONFLICT HEREWITH.

BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, as follows:

Section 1. Amendments to Sedona City Code Chapter 15.15. Electrical Code

That subsection 15.15.20.C. of the City Code of the City of Sedona is hereby repealed.

Section 2. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance.

Section 3. Repeal

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict as of the effective date hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 27th day of September, 2022.

_____
Sandra J. Moriarty, Mayor

ATTEST:

_____
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

_____
Kurt W. Christianson, City Attorney

CITY COUNCIL AGENDA BILL

AB 2860
September 27, 2022
Regular Business

Agenda Item: 8b
Proposed Action & Subject: Discussion/possible action regarding an Ordinance revising the Sedona City Code, Chapter 3.20.080, to add language related to collection charges.

Department	Financial Services
Time to Present	5 minutes
Total Time for Item	15 minutes
Other Council Meetings	N/A
Exhibits	A. Ordinance

City Attorney Approval	Reviewed 09/19/22 KWC
City Manager's Recommendation	Approve an ordinance revising Chapter 3.20.080 of the Sedona City Code.

Expenditure Required	
	$ 0
Amount Budgeted	
	$ 0
Account No. (Description)	N/A
Finance Approval	☒

SUMMARY STATEMENT

Background:

Current City Code reads:

- **3.20.080 Collection Charges** Any person who has a delinquent account maintained by the city will also be responsible for all costs incurred by the city in collecting those delinquent funds. This includes a reasonable charge for staff time and any direct costs incurred.

This revision to the City Code will clearly define the additional charges incurred on delinquent accounts being sent to a third-party collection agency. Delinquent accounts currently being sent to collections include wastewater customers that are more than 180 days past due and have sold their property or are a tenant and after all internal collection attempts have failed. Most internal collection attempts are successful, however, in some cases collections is a necessary final attempt at collecting. City staff has made considerable efforts to minimize the number of accounts being sent to collections with only nine accounts being sent over the past two years. When the need arises to utilize a collection agency, this additional verbiage to the City Code will put the onus on the delinquent account holder for additional charges in the collection process.

Staff recommendation is to revise the City Code to read:

- **3.20.080 Collection Charges** Any person who has a delinquent account maintained by the city will also be responsible for all costs incurred by the city in collecting those delinquent funds. This includes a reasonable charge for staff time and any direct costs incurred. Any person who defaults in his or her obligation for the payment of monies owed or due to the city, including but not limited to fines, sanctions, assessments, penalties, costs and/or fees, is liable for any and all fees and charges assessed by a collection agency that is licensed pursuant to A.R.S. Title 32, Chapter 9, Article 2, and that is engaged by the city to collect and enforce such payment. The collection fees and charges assessed by the collection agency shall be added to the sum or sums due from the person.

Climate Action Plan/Sustainability Consistent: ☐**Yes -** ☐**No -** ☒**Not Applicable**

Board/Commission Recommendation: ☐**Applicable -** ☒**Not Applicable**

Alternative(s): 1. Do not approve the change to City Code Chapter 3.20.080

2. Suggest different language for the change to City Code Chapter 3.20.080

MOTION

I move to: approve Ordinance 2022-__, revising Chapter 3.20.080 of the Sedona City Code.

ORDINANCE NO. 2022-___

AN ORDINANCE OF THE CITY OF SEDONA, ARIZONA, ADOPTING AN AMENDMENT TO THE CITY CODE CHAPTER 3.20 (COLLECTION OF DELINQUENT AMOUNTS OWED TO THE CITY) BY AMENDING SECTION 3.20.080; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, as follows:

Section 1. Amendment of Chapter 3.20

That those changes to Sedona City Code Chapter 3.20 (Collection of Delinquent Amounts owed to the City) set forth in the attached Exhibit A, and incorporated herein by this reference, are hereby officially adopted amending City Code Chapter 3.20 by amending Section 3.20.080 (Collection charges).

Section 2. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance.

Section 3. Repeal

All other code provisions, ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict as of the effective date hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 27th day of September, 2022.

_____
Sandra J. Moriarty, Mayor

ATTEST:

_____
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

_____
Kurt W. Christianson, City Attorney

EXHIBIT A

3.20.080 Collection charges.

Any person who has a delinquent account maintained by the city will also be responsible for all costs incurred by the city in collecting those delinquent funds. This includes a reasonable charge for staff time and any direct costs incurred. Any person who defaults in his or her obligation for the payment of monies owed or due to the city, including but not limited to fines, sanctions, assessments, penalties, costs and/or fees, is liable for any and all fees and charges assessed by a collection agency that is licensed pursuant to A.R.S. Title 32, Chapter 9, Article 2, and that is engaged by the city to collect and enforce such payment. The collection fees and charges assessed by the collection agency shall be added to the sum or sums due from the person.

CITY COUNCIL AGENDA BILL

AB 2871
September 27, 2022
Regular Business

Agenda Item: 8c
Proposed Action & Subject: Discussion/possible direction regarding amending the Sedona City Code Chapter 9.10 (Offenses Against Public Peace), Section 9.10.010 (Camping and sleeping in certain places).

Department	City Attorney
Time to Present	30 mins
Total Time for Item	60 mins
Other Council Meetings	N/A
Exhibits	A. Proposed Amendments to SCC 9.10.010

City Attorney Approval	Reviewed 09/19/22 KWC
City Manager's Recommendation	For discussion and direction.

Expenditure Required
$ 0
Amount Budgeted
$ 0
Account No. (Description) N/A
Finance Approval ☒

SUMMARY STATEMENT

This item is brought to Council for discussion and direction. National affordable housing issues and homelessness crises in nearby states and cities has led to an increase in the number of persons experience homelessness and homeless encampments within the City. The presence of camp facilities in the certain areas of the City pose a threat to the public health, safety and welfare of the residents and the millions of visitors to Sedona annually. Staff has determined that the public health, safety and welfare is served by amending the City's camping ordinance SCC 9.10.010.

1. Background:

On April 13, 1999, the City Council adopted the O1999-08 which prohibited camping in the City on public or private property. There was first a work session to discuss the proposed ordinance on March 22, 1999. At those public meetings, it was stated that the ordinance was proposed and adopted in response to problems with persons parking and camping within the City. Prior to the ordinance, there was nothing the police department could do to prevent persons from camping on public property.

On September 14, 2018, the U.S. 9th Circuit Court of Appeals ruled that cities cannot prohibit sleeping and camping everywhere in the city when there is no place for a homeless person to sleep or camp.

The holding in Martin v. Boise is self-described as being narrow:

> 1. "Our holding is a narrow one. . . '[W]e in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.'" *Martin*, 920 F.3d at 617.
>
> 2. "Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying or sleeping outside at particular times or in particular locations might well be constitutionally permissible. (Internal citation omitted.) So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures." *Martin*, 920 F.3d at 617, n. 8.
>
> 3. In the denial of rehearing en banc the 9th Circuit said, "On the merits, the opinion holds only that municipal ordinance that criminalize sleeping, sitting, or lying in ***all*** public spaces, when ***no*** alternative sleeping space is available, violate the Eighth Amendment...Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter." *Martin*, 920 F.3d at 589, emphasis in original.

Many cities, in response to *Martin v. Boise* ruling, ceased enforcing camping prohibitions on public property against homeless persons. The City did similarly but has not yet updated its ordinance.

2. Current Situation:

In the last 20 months, the Sedona Police Department has been dispatched to 237 incidents of camping within the City. The calls stem from camping in vehicles, tents or in the open on a wide variety of locations on public and private property. A few examples are included.

Camping in vacant buildings:



A small group of individuals were found camping in this vacant building on private property at the Cultural Park.

Camping in culverts and watercourses:



This culvert near Walgreens is frequently used for camping.

Vehicular camping on both private and public property:



Vehicular camping is one of the most common forms of camping within the City. Persons frequently attempt to camp in motorhomes, vans or other vehicles on City streets, in City parks and on private property.

Camping on the sides of roadways:



Individuals sometimes camp at dangerous locations at the edge of roadways. In the past two years, multiple vehicular accidents have ended up with vehicles driving off the roadway including a DUI. The City has received two notices of claims regarding persons driving their cars over curbs and sidewalks and damaging their vehicles.

The Camping Ordinance is currently the subject of a lawsuit: *Sabrina Beram vs. City of Sedona*. In April 2021, the City was served a Complaint, filed in Federal Court, District of Arizona, from Community Legal Services who represents Sabrina Beram. Ms. Beram rents an apartment in the City and claims the City violated the American with Disabilities Act by not allowing her to sleep in her vehicle on private property where even the owner did not want her to sleep in her

car. She requested injunctive relief from the City's camping ordinance that prohibits sleeping in cars. She had initially requested a blanket exemption from SCC 9.10.010 in the entire City, private and public property, which the City denied as not a reasonable accommodation and not required per the ADA. Her second request was an exemption from SCC 9.10.010 on the private property where she rents an apartment. The property owner did not approve of that request.

The Sedona Police Department has never contacted Ms. Beram or cited Ms. Beram for an alleged violation of SCC 9.10.010. The parties are currently awaiting a ruling from the Federal District Court on the plaintiff's request to file a 3rd amended complaint.

3. Proposed Ordinance:

The proposed ordinance expands locations available for camping and sleeping. While the current ordinance prohibits all camping and sleeping on public property within the City, the new ordinance only prohibits camping and sleeping in the following public locations and for the following public health, safety and welfare reasons:

1. On a street, highway, sidewalk, bike lane, shared-use path, trail or other public right-of-way, or in a manner that impedes passage as required by ADA laws.
    a. Camping in or on these locations impedes the free movement of residents and visitors and creates safety hazards for persons by increasing the likelihood of trips, falls and crashes. Camping at these locations impedes pedestrian, bicycle and vehicular traffic, including emergency responders. Additionally, camping in or on these locations violates the ADA.
2. Within 10 feet of a fire hydrant, a mailbox, the edge of a street or highway, building entrances, driveway or intersection.
    a. Camping near these locations blocks the delivery of mail, business and emergency access and creates unsafe conditions. Camping within 10 feet of streets, highways, driveways and intersections distracts drivers, blocks drivers' view of other vehicles and pedestrians, and vehicles involved in accidents regularly end up off the paved roadway onto the shoulder and sides of streets and highways. Police officers and other emergency responders must be able to use the shoulder and edges of roadways for emergency access, especially in high traffic situations. Also, camping within 10 feet of driveways and intersections blocks the view required by the Traffic Visibility Triangle.
3. Within 100 feet of youth-serving facilities and within 100 feet of critical infrastructure.
    a. Camping on, in, near, or within 100 feet of youth-serving facilities such as schools, parks, libraries, childcare, and churches impacts the ability of children and youth to access public and private facilities by creating obstructions to safe pedestrian access and increasing safety concerns.
    b. Camping in, on, under, or within 100 feet of infrastructure that is critical to the provision of public services such as law enforcement, fire protection, flood protection, transportation, utilities, flood risk areas, water and wastewater disposal leads to the destruction of, damage to, or interference with maintenance and operation of the critical infrastructure.

Additionally, no person may camp on public property for more than 24 hours without moving more than 1/10 of a mile (528 feet) because public property is owned by the public and is intended for the use and enjoyment of all people, not just select persons. Generally, no person can rent, lease, adversely possess, or maintain control of public property for their exclusive

use without written permission from the City. Also, camping in one spot for more than 24 hours kills grass, flowers and other natural plants and native landscaping.

The proposed ordinance maintains the prohibition on camping on private property or sleeping in vehicles within the City. Vehicular camping is allowed at nearby National Forest locations and campgrounds.

The proposed ordinance would allow the City to remove camp facilities or encampments in prohibited locations upon 24 hour written notice. Personal property shall be stored by the City for 90 days.

Climate Action Plan/Sustainability Consistent: ☒**Yes -** ☐**No -** ☐**Not Applicable**

Making policy recommendations to increase the safety of Sedona's unhoused population leads to greater resiliency in our community.

Board/Commission Recommendation: ☐**Applicable -** ☐**Not Applicable**

Alternative(s):

MOTION

I move to: for discussion/possible direction only.

EXHIBIT A "*2022 Amendments to Sedona City Code Section 9.10.010 Camping and sleeping in certain places*."

Chapter 9.10
OFFENSES AGAINST PUBLIC PEACE

Sections:

9.10.010 Camping and sleeping in certain places.

9.10.010 Camping and sleeping in certain places.

A. The purpose of this Section is to protect the health, safety, and welfare of the public by prohibiting camping in, on, or near critical infrastructure, locations inherently unsafe for camping, including in areas prone to flooding and immediately adjacent to streets and highways, and youth-serving facilities. The prohibition of camping in these areas is intended to further mitigate nuisance activities related to unauthorized activities and the threat of degradation, fire, destruction, and damage to and interference with, critical infrastructure, and youth-serving facilities.

~~A~~B. It shall be unlawful for any person to ~~set up,~~ use or maintain any ~~temporary structure, tent, bag,~~ vehicle, camper, trailer, or ~~any other thing~~recreational vehicle for the purpose of camping, lodging, sleeping, cooking, or starting or maintaining a campfire, or establishing a temporary place of rest, on any public property within the city limits unless exempted by the following subsections.

C. No person shall obstruct public property:

1. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property or camping facilities, in or on a street, highway, sidewalk, bike lane, shared-use path, trail, or other public right-of-way, or in a manner that impedes passage, as provided by the Americans with Disabilities Act of 1990, Pub. L, No. 101-336, 104 Stat. 328, as amended from time to time;

2. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property or camping facilities, in, on, under, or within ten feet of:

a. A fire hydrant or other fire department connection.

b. A mailbox.

c. The back of the curb or edge of pavement of a street or highway.

d. An operational or utilizable loading dock, building entrance or exit.

e. A driveway or intersection or within the Traffic Visibility Triangle pursuant to the Sedona Land Development Code 6.5.J, whichever is greater.

3. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property or camping facilities, in, on, under, or within 500 feet of:

a. Youth-serving facilities.

b. Critical infrastructure.

~~B~~D. It shall be unlawful for any person to set up, use or maintain any temporary structure, ~~tent~~camp facilities, bag, vehicle, camper or any other thing for the purpose of camping, lodging, sleeping, cooking, or starting or maintaining a campfire, or establishing a temporary place of rest, on any private property within the city limits unless exempted by the following subsections.

~~C~~E. ~~It shall be unlawful for any person to sleep in or upon any public building, alley, sidewalk, public way, or any federal, state, county or municipal designated trail head, or any property owned, operated or managed by any local, state or federal agency or department or any Indian tribe, or any other public place or facility within the corporate limits of the city.~~ No person shall occupy public property for more than 24 hours by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property or camping facilities. A person shall be considered in violation of this subsection when the person occupies, either personally or with camp facilities, the same public property, thereby excluding the use of the public, without having moved more than 1/4 of a mile within a 24 consecutive hour period.

~~D~~. ~~It shall be unlawful for any property owner of any private property, or any manager, renter, lessee or agent thereof, to knowingly permit any person to violate this section.~~

~~E~~F. No person shall be ~~arrested for a~~found in violation of any provision in this section unless such person continues to engage in such conduct after warning by any police officer, an authorized representative of the government entity managing or responsible for such public property, or the property owner, manager, renter, lessee or agent thereof, as the case may be,

or unless such property is conspicuously posted, warning of the provisions of subsection ~~(A)~~, (B), (C), (D) or (E~~C~~) of this section as applicable~~, and designating such violation thereof as a misdemeanor~~.

~~F~~G. This section shall not apply to the ordinary and permitted uses of improved residential lots subject to and in conformity with the land development code of the city, nor shall this section be interpreted to limit the use of such lots by the owners thereof for any lawful purpose.

~~G~~H. This section shall not apply to legally permitted campgrounds operated or controlled by private persons or government agencies, including but not limited to the United States Forest Service within the Sedona city limits.

~~H~~I. This section shall not be construed to limit the normal activities or designated uses of the public parks of the city.

~~I. This section shall not apply to the parking of any vehicle camper or recreational vehicle for a period of less than 24 hours with the consent, express or implied, of the respective government property owner, manager, renter, lessee or agent thereof, unless the property upon which any such vehicle, camper or recreational vehicle is parked is conspicuously posted as provided in subsection (E) of this section or unless an authorized agent of the respective government entity managing or responsible for such public property or the property owner, manager, renter, lessee or agent thereof specifically requests that such vehicle, camper or recreational vehicle be removed within the 24-hour period.~~

J. Unless otherwise specifically permitted by this section, the placement of camp facilities or the parking of any vehicle, ~~tent~~, camper, recreational vehicle, or other similar device in any location for more than 24 hours when not upon one's own real property shall be prima facie evidence of intent to violate this section.

K. Violations of this section involving a person who willfully resists, delays, or obstructs a City employee from enforcing this section or who willfully refuses to comply after being requested to do so by an authorized City employee shall be subject to the penalties set forth in Sedona City Code Sections 1.15.010 and 9.05.010.

~~K~~L. Any violation of this section shall constitute a class 1 misdemeanor, punishable by a fine of not more than $2,500 or by six months in jail, or both. ~~[Code 2006 § 10-3-1].~~

M. Abatement and Storage of Personal Property.

1. The city may abate or remove camp facilities or encampments established in violation of subsection (B) or (C) of this Section 9.10.010 after providing 24 hour written notice of said abatement. Such notice shall be posted in a conspicuous place near the camp facilities. Any encampment established in violation of subsection (B), (C), (D), or (E) of this section may be abated with less than 24-hour written notice by the city if the encampment poses an imminent threat to public health or safety. For the purposes of this section, an encampment poses an imminent threat to public health or safety if there are facts and circumstances that would cause a reasonable person to believe, that there is an increased risk of fire or flood, actual fire or flooding, obstructions or interference with the flow of pedestrian or vehicular traffic, and blockage of driveways or emergency vehicle access.

2. Abatement pursuant to subsection A may include, but is not limited to removal of the encampment, camp facilities, garbage, waste, litter, junk, or debris and securing the perimeter with fencing or barricades to prevent further violations. Any personal property identified and left behind during the abatement shall be stored for at least 90 days and notice shall be provided regarding the retrieval process. After 90 days, the city may dispose or donate unclaimed personal property pursuant to A.R.S. § 9-402(D).

N. Definitions. When used in this section, the following words and phrases have the following meanings:

1. “Camp” or “camping” means to place, pitch, use or occupy camp facilities; or to live temporarily in a camp facility or outdoors.

2. “Camp facilities” include, but are not limited to, tents, huts, temporary shelters, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks, cooking facilities and similar camping-related items.

3. “Critical infrastructure” means either of the following:

a. Washes, rivers, creeks, watercourses, and stormwater drainage facilities as defined in SCC Title 13 and associated facilities including pumps, culverts, drainage ditches, access and control roads.

b. Real property or a facility, which is owned, operated, leased, or maintained, or any combination thereof, by a governmental agency that is so vital or integral to the operation or function of the city that its damage, incapacity, disruption, or destruction would have a

debilitating impact on the public health, safety and welfare. Critical infrastructure includes fire stations, police stations, jails, courthouses, antennas, radio towers, and above ground public utilities, including water and wastewater treatment, storage, transmission and distribution systems. The Council of the City of Sedona may identify additional critical infrastructure by resolution.

4. "Encampment" means one or more camp facilities that are being used, occupied, or stored on public or private property.

5. "Personal property" means effects or property consisting of the following items: identification or social security cards; medications, medical devices, eyeglasses, photos, and photo albums; tax or medical records; reasonably usable, non-soiled, non-verminous items that are reasonably believed to have value to persons experiencing homelessness, including tents, blankets, sleeping bags, clothes, and operational bicycles.

6. "Street" or "highway" means the entire width between the boundary lines of every road, alley, way, or place of whatever nature, if a part of the way is publicly maintained and open to the use of the public for purposes of vehicular travel.

7. "Youth-serving facilities" means public or private schools, libraries, childcare facilities, parks, or churches.

O. In enacting and implementing this section, the city is assuming an undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury or damage.