

**RESOLUTION NO. 2020-49**

**A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING A BINDING WAIVER OF ENFORCEMENT BETWEEN THE CITY OF FLAGSTAFF AND NORTHGATE HOLDINGS, LLC, RELATING TO ASSESSOR PARCEL NUMBERS 103-15-023, 103-15-024, 103-15-025, 103-15-026, 103-15-002, AND 103-15-003, GENERALLY LOCATED NORTH OF ELLERY AVENUE AND SOUTH OF DUPONT AVENUE ON SOUTH SAN FRANCISCO STREET WITHIN THE CORPORATE LIMITS OF THE CITY OF FLAGSTAFF**

**RECITALS:**

WHEREAS, Northgate Holdings, LLC (“Northgate”) is the owner of six parcels of land located north of Ellery Avenue and south of Dupont Avenue on South San Francisco Street in Flagstaff, with Assessor Parcel Numbers 103-15-023, 103-15,024, 103-15-025, 103-15-026, 103-15-002, and 103-15-003 (“Northgate Properties”); and

WHEREAS, the Northgate Properties are zoned Community Commercial (CC) and also have the option to elect T4 Neighborhood 1 (T4N.1) transect zoning; and

WHEREAS, on December 19, 2017, the Flagstaff City Council adopted a land use law, Ordinance 2017-31, which made various amendments to the Flagstaff Zoning Code; and

WHEREAS, Northgate was the owner of the Northgate Properties on December 19, 2017; and

WHEREAS, Arizona Revised Statutes §12-1134 (“Prop 207”) allows a property owner to seek just compensation when a city adopts a land use law that reduces the property owner’s existing rights to use, divide, sell, or possess private real property and such action reduces the fair market value of the property; and

WHEREAS, on December 2, 2019, Northgate filed a claim for just compensation under Prop 207, asserting that some of the amendments to the Flagstaff Zoning Code adopted by Ordinance 2017-31 reduced its rights to use the Northgate Properties and thereby reduced the fair market value of the Northgate Properties; and

WHEREAS, Northgate is seeking \$2 million in just compensation for the alleged reduction in market value of the Northgate Properties; and

WHEREAS, in response to a claim for just compensation under Prop 207, a city may reach an agreement with the property owner on the demanded compensation, deny the demanded compensation and defend such denial in litigation, amend the use law, repeal the land use law, or issue to the property owner a binding waiver of enforcement of the land use law on the owner’s specific parcels; and

WHEREAS, the City and Northgate acknowledge and agree that the Northgate Properties shall not be subject to certain amendments adopted by Ordinance 2017-31 and that a binding waiver of enforcement will be executed by the City to that effect.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. That the Binding Waiver of Enforcement by and between the City of Flagstaff and Northgate Holdings, LLC, which is attached hereto, is hereby approved and the Mayor is authorized to execute the Binding Waiver of Enforcement.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 18th day of August, 2020.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Exhibits:  
Binding Waiver of Enforcement