CITY COUNCIL REPORT
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TO: Mayor and Council

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SUBJECT: Community Commercial Zone Information

INTRODUCTION

The City Council is in the process of reviewing the provisions of a Nuisance Noise Ordinance. Several public comments on this issue have referenced the provisions of the Community Commercial (CC) zoning district. The comments stem from concerns about the compatibility of commercial land uses adjacent to residential land uses in the C/c zone. The comments indicate that the City should focus on the enforcement/compliance of the intent language provided in Section 10-40.30.040 of the Zoning Code (provided below).

10-40.30.040 Commercial Zones

A. **Intent.**

2. **CC.** The Community Commercial (CC) zone applies to areas of the City appropriate for dispersed commercial areas designed to serve communitywide needs. Such areas provide a wide variety of goods and services in predominately established, built up areas and must be consistent with the overall development of the City and its environs. The development of residential uses in addition to commercial uses is also encouraged in this zone to provide diversity in housing choices. ***The provisions of this zone are intended to ensure that such commerce will be compatible with adjacent, noncommercial development and to minimize the undesirable effects of heavy traffic, commercial activity, and site requirements.***

ENFORCEMENT OF EXISTING ZONING PROVISIONS

Intent language is meant to contextualize the zoning district but does not include regulatory provisions as provided elsewhere in the Zoning Code. As highlighted above the intent language of the CC zone states that the provisions of the zone are intended to make adjacent commercial and residential uses compatible. The provisions of the CC zone do not regulate noise. All compatibility language in the Zoning Code is specific to architectural compatibility in terms of bulk, mass, scale, and site design. There are no specific standards provided in the intent language that allows for a code compliance officer to definitively cite a specific violation. The reference to compatibility in this language is subjective and could be construed as arbitrary and capricious as to how it would be administered. While the compatibility language is specific in the CC zone intent language, this issue is not specific to the CC zone as all the commercial zones allow for both commercial and residential uses which supports a mixed-use, walkable environment in alignment with the goals and policies of the Regional Plan.

ADOPTION OF NOISE REQUIREMENTS IN ZONING CODE v. POLICE CODE

The primary purpose of the Zoning Code is to organize regulations for the development of land. As such, it is subject to the requirements of the Private Property Rights Protection Act (aka Proposition 207) which requires municipalities to reimburse landowners when regulations result in a decrease in the property's value unless a waiver is granted in lieu of compensation. If noise limits are added to the Zoning Code, they could be subject to this proposition. Additionally, the Zoning Code builds in protections of land uses that become "Legal Nonconforming" meaning an activity or land use that was established prior to the effective date of the Zoning Code. This could mean that any new noise standards would only apply to new land uses moving forward putting many existing land uses in the "Legal Nonconforming" category. Lastly, Zoning Codes are subject to the requirements of Arizona Revised Statute including "Uniformity" requirements. All zoning regulations are required to be uniform for each land use type throughout each zone, but the regulations in one zoning district may differ from those in other zoning districts. For example, all land uses in one zoning district may be held to a specific standard such as setbacks that are different from other zoning districts, but it is not possible to create individual setbacks for each land use in the same zoning district.

The City's Code Compliance team is responsible for ensuring that standards of the Zoning Code are met. Noise complaints are most often received, but not always, outside of regular working hours. The inclusion of noise standards within the Zoning Code could cause additional delays in response to complaints.

Title 6 Police Regulations are not subject to the same requirements as identified above. The addition of nuisance noise standards in the police regulations allows for a consistent enforcement process throughout the City of Flagstaff without the encumbrances or limitations of the Zoning Code. If the Police Code were to include noise standards for properties in different zoning districts, this could result in delays in enforcement until zoning information can be provided to the responding officer.

CONCLUSION

This report is for information only.