

A G E N D A

REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD FEBRUARY 1, 2011, AT 6:00 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. BRIEF SUMMARY OF CURRENT EVENTS BY MAYOR, CITY COUNCIL AND/OR CITY MANAGER--THE PUBLIC BODY DOES NOT PROPOSE, DISCUSS, DELIBERATE OR TAKE LEGAL ACTION ON ANY MATTER BROUGHT UP DURING THIS SUMMARY UNLESS THE SPECIFIC MATTER IS PROPERLY NOTICED FOR LEGAL ACTION.
- V. CALL TO THE PUBLIC--This portion of the agenda is set aside for the public to address the Council regarding an item that is not listed on the agenda for discussion. However, the Council cannot engage in discussion regarding any item that is not officially listed on the agenda for discussion and/or action (A.R.S. §38-431.02.A.(H).) Comments are limited to a 5 minute time period.
- VI. PROCLAMATION--JOINING THE "LET'S MOVE!" CAMPAIGN.
- VII. APPROVAL OF MINUTES--Regular Meetings of November 2 & 16, 2010, and Special Meeting of December 14, 2010.

Comments regarding items listed on the agenda are limited to a 5 minute time period per speaker.

- VIII. UNFINISHED BUSINESS
 1. ORDINANCE NUMBER 569--AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY DELETING SECTION 404. H. "BUILDING HEIGHT REQUIREMENTS" AND REPLACING IT WITH A NEW SECTION 404. H. "HEIGHT REGULATIONS" PERTAINING TO HEIGHTS OF NON-HABITABLE STRUCTURES; DELETING SECTION 404. H. 3. "RESIDENTIAL ACCESSORY BUILDINGS" AND ADDING A NEW SUB SECTION (7) TO SECTION 404. G. 6. c. "DETACHED ACCESSORY BUILDINGS IN RESIDENTIAL ZONES"; AND AMENDING SECTION 304. "DESIGN REVIEW" TO ALLOW MINOR HEIGHT EXCEPTIONS FOR VARIOUS NON-HABITABLE STRUCTURES SUBJECT TO DESIGN REVIEW PROCEDURES AND CRITERIA; SECOND & FINAL READING.
- IX. NEW BUSINESS--The following items are for Council discussion, consideration, and possible legal action.

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1. RESOLUTION NUMBER 2572--DEEMING THE GRANTING OF A NEW 25-YEAR ELECTRIC UTILITY FRANCHISE TO ARIZONA PUBLIC SERVICE CORPORATION IN ACCORDANCE WITH THAT CERTAIN FRANCHISE AGREEMENT THAT HAS BEEN PRESENTED TO THE COUNCIL TO BE BENEFICIAL TO THE CITY, AND AUTHORIZING THE PROPOSED FRANCHISE AGREEMENT TO BE PRESENTED TO THE CITY'S VOTERS FOR APPROVAL ON THE BALLOT OF THE MAY 17, 2011, SPECIAL ELECTION.
 2. FEE REDUCTION FOR USE OF THE COTTONWOOD RECREATION CENTER BY NON-RESIDENTS WHO HAVE THEIR RESPECTIVE BUSINESS OPERATIONS IN THE CITY LIMITS AND ARE A MEMBER OF THE COTTONWOOD CHAMBER OF COMMERCE.
- X. CLAIMS & ADJUSTMENTS
- XI. ANNUAL REVIEW OF THE CITY MANAGER--PURSUANT TO A.R.S. §38-431.03.(A)(1) DISCUSSION OR CONSIDERATION OF EMPLOYMENT, ASSIGNMENT, APPOINTMENT, PROMOTION, DEMOTION, DISMISSAL, SALARIES, DISCIPLINING OR RESIGNATION OF A PUBLIC OFFICER, APPOINTEE OR EMPLOYEE OF ANY PUBLIC BODY, EXCEPT THAT, WITH THE EXCEPTION OF SALARY DISCUSSIONS, AN OFFICER, APPOINTEE OR EMPLOYEE MAY DEMAND THAT THE DISCUSSION OR CONSIDERATION OCCUR AT A PUBLIC MEETING; THE COUNCIL MAY VOTE TO CONVENE INTO EXECUTIVE SESSION SUBJECT TO THE CITY MANAGER'S RIGHT TO COMPEL THE COUNCIL TO DISCUSS THIS MATTER IN OPEN MEETING.
- XII. ADJOURNMENT

Pursuant to A.R.S. § 38-431.02(B) 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) (7) for discussion and consultation for legal advice or negotiations for the purchase, sale or lease of real property with the City Attorney.

The Cottonwood Council Chambers is accessible to the disabled in accordance with Federal "504" and "ADA" laws. Those with needs for special typeface print or hearing devices may request these from the City Clerk (TDD 634-5526.) All requests must be made 24 hours prior to the meeting.



PROCLAMATION

WHEREAS, the City of Cottonwood supports policies that focus on health and wellness, continuing education, and healthier lifestyles in all communities; and

WHEREAS, the City Council believes there are important, long-term community benefits to be gained by encouraging healthy lifestyles, including a decrease in the rate of childhood obesity and its negative health-related impacts; and

WHEREAS, cities and other community partners can work together to understand the relationship between obesity and can work together to ensure that there are safe places for their residents to be active such as in parks, ball fields, pools, gyms, and recreation centers; and

WHEREAS, the City of Cottonwood supports the "Let's Move!" Campaign headed by the First Lady of the United States in an effort to solve the challenge of childhood obesity within a generation.

NOW, THEREFORE, I Diane Joens, Mayor of Cottonwood, do hereby proclaim the City of Cottonwood joining the First Lady's "Let's Move!" campaign.

IN WITNESS THEREOF, I have hereunto set my hand and caused to be affixed the Seal of the City of Cottonwood, Arizona, this 1st day of February 2011.



Diane Joens, Mayor

ATTEST:

Marianne Jiménez, City Clerk

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: February 1, 2011

Subject: ORDINANCE NUMBER 569 – Proposing Amendments to the Zoning Ordinance, Section 404. (General Provisions) Regarding Height Regulations.

Department: Community Development

From: Charles Scully, Planner

REQUESTED ACTION

Second reading and consideration of adoption of Ordinance Number 569 which proposes amendments to the Zoning Ordinance, Section 404. (General Provisions) regarding Height Regulations.

If the Council desires to approve this item the suggested motion is:

“I move to approve Ordinance Number 569 approving amendments to the city’s Zoning Ordinance regarding height regulations.”

BACKGROUND

The City Council considered the proposed amendments at their October 12, 2010 meeting and directed staff to proceed with the preparation of the ordinance. Ordinance Number 569 was presented to the City Council on January 18, 2011 for a first reading and discussion regarding the amendment. The Planning and Zoning Commission considered the proposed amendments at their September 9, 2010 meeting and recommended approval, subject to minor changes as may be recommended by staff.

The proposed amendments to Section 404 (General Provisions) and Section 304 (Design Review) of the Cottonwood Zoning Ordinance are intended to update the height regulations for various types of non-habitable structures which are not addressed by the existing ordinance. It is in the interest of the City of Cottonwood to provide regulations for the height of various types of structures so as to protect scenic views, protect property values and protect

the public health, safety and general welfare. The proposed amendments do not apply to any current development proposals.

Existing Height Regulations:

Height regulations for buildings and structures are currently found in several sections of the Zoning Ordinance:

- Each Zoning District section includes maximum building height limits under the property development standards.
- Section 404. (General Provisions) H. Building Height Requirements, lists exceptions and includes a reference to residential accessory structures.
- Also, Section 304. Design Review may limit height in terms of scale and placement on a case by case basis.

JUSTIFICATION/BENEFITS/ISSUES

Summary of Proposed Height Amendments:

The following section includes a summary of proposed amendments to the Zoning Ordinance, Section 404. (General Provisions) regarding Height Regulations.

- a. **Architectural Embellishments:** *spires, cupolas, chimneys, or similar architectural or ornamental structures.*
 - Allows certain rooftop and building features, with limitations, as a matter of right when considered through the Design Review process as part of the overall building design.
- b. **Non-Habitable Rooftop Structures:** *flues, vents, poles, beacons, mechanical towers, or other similar non-habitable structures extending above the highest point of the roof.*
 - Also allows small exceptions as a matter of right where integrated into the overall design of the building or structure.
- c. **Industrial Structures:** *chimneys, derricks, conveyors, cooling towers, elevator bulkheads, fire towers, storage tanks, water towers, or similar structures.*
 - Allows relatively tall structure where part of an approved use in Industrial District.
- d. **Monuments, Memorials, Statues:** *Freestanding monuments, memorials, symbolic representations, statues, art installations or similar structures.*
 - Monuments, memorials and art installations would be required to be designed in a manner that recognizes the location and the surrounding context. The details of a monument or statue, including its placement and scale, would be designed to recognize the specific location in which it is placed. The purpose of limiting the height would be to ensure the object or installation fits the scale of the development and does not adversely impact the aesthetic quality of the subject property or surrounding properties.
- e. **Flags and Flagpoles:** *Political and non-political flags.*
 - Flagpole height is intended to ensure the fall zone is within the subject property.

- f. **Wireless Communication Facilities:** *cell towers, equipment arrays.*
- The proposed standards in this ordinance are intended to cover maximum heights so as to protect both neighborhood quality and scenic view resources.
- g. **Solar, Wind and Energy Devices:**
Regulations are intended to ensure such devices and facilities allow reasonable use of property without adversely impacting surrounding properties:
- 1) **Solar Devices:** The proposal would make it easier to install solar panels on roofs by allowing certain height exceptions as a right.
 - 2) **Wind Energy Devices:** Proposed regulations are intended to address both visual and aesthetic issues, as well as proximity to adjacent uses so as to address potential noise impacts. The amendment limits such devices to larger properties so as to provide adequate setback. Exceptions could be made based on verifiable documentation.
- h. **Airport Height Restrictions:**
Development around the airport is currently subject to certain height restrictions based on proximity to the runway. This section identifies those existing rules for the convenience of developers and others.

REVIEWED BY:

City Manager: _____

City Attorney: _____

ATTACHMENTS

- **Ordinance Number 569**

ORDINANCE NUMBER 569

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY DELETING SECTION 404. H. "BUILDING HEIGHT REQUIREMENTS" AND REPLACING IT WITH A NEW SECTION 404. H. "HEIGHT REGULATIONS" PERTAINING TO HEIGHTS OF NON-HABITABLE STRUCTURES; DELETING SECTION 404. H. 3. "RESIDENTIAL ACCESSORY BUILDINGS" AND ADDING A NEW SUB SECTION (7) TO SECTION 404. G. 6. c. "DETACHED ACCESSORY BUILDINGS IN RESIDENTIAL ZONES"; AND AMENDING SECTION 304. "DESIGN REVIEW" TO ALLOW MINOR HEIGHT EXCEPTIONS FOR VARIOUS NON-HABITABLE STRUCTURES SUBJECT TO DESIGN REVIEW PROCEDURES AND CRITERIA.

WHEREAS, the City Council has determined that the following changes to the City's Zoning Ordinance are appropriate and desirable.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AS FOLLOWS:

Section 1. That Section 404. H. "BUILDING HEIGHT REQUIREMENTS", of the Cottonwood Zoning Ordinance is hereby deleted in its entirety, and a new Section 404. H. "HEIGHT REGULATIONS" is hereby added as follows:

H. HEIGHT REGULATIONS.

1. Purpose: Height regulations for buildings and structures are established for the City of Cottonwood to protect scenic view resources, promote compatible development and ensure development occurs in a manner that protects the health, safety and general welfare of the citizens of Cottonwood.
2. Applicability: No building or structure shall be erected, reconstructed or structurally altered to exceed the height limit designated for the Zoning District in which such building or structure is located, except as otherwise specifically provided in this Section, and provided such exceptions are in conformance with all other applicable city codes, ordinances, and regulations.

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3. Architectural Embellishments: Except as described for Industrial Zoning Districts, the height limitations for each Zoning District may be exceeded by no more than ten (10) feet for spires, cupolas, domes, pediments or similar architectural or ornamental structures integrated directly into the design of the building, provided such elements occupy no more than ten percent (10%) of such roof area in total measured in plan view and provided the design is subject to review and approval through the Design Review process.
4. Non-Habitable Rooftop Structures: Except as described for Industrial Zoning Districts, the height limitations for each Zoning District may be exceeded by no more than ten (10) feet for flues, vents, poles, beacons, enclosed mechanical towers, or other similar non-habitable structures extending above the roof of a building provided such structures occupy no more than ten percent (10%) of such roof area in total measured in plan view and provided the design is subject to review and approval through the Design Review process.
5. Industrial Structures: In Industrial Zoning Districts, chimneys, derricks, conveyors, cooling towers, elevator bulkheads, fire towers, storage tanks, water towers, or similar accessory structures necessary and integral to the industrial process may extend to a height of sixty (60) feet above grade, provided that such structures shall be so located and constructed that if it should collapse, its reclining length would still be contained on the property on which it was constructed. The Planning and Zoning Commission may approve additional height for accessory industrial structures where it is determined that the location does not adversely impact scenic views from other properties and provided it meets safety standards and is not in conflict with any other codes, ordinances and regulations of the City of Cottonwood.
6. Monuments, Memorials, and Statues: Height limits for freestanding or attached monuments, memorials, symbolic representations, statues, art installations or similar structures shall be subject to the following:
 - a. Review and approval through the Design Review process which shall consider the height and size of a proposed structure in terms of scale, proportion and relationship to the surrounding context, including buildings, site plan layout, landscape features, streets and pedestrian areas, and which may limit such height to lower than the maximum allowed by this Section based on the specific considerations of the site so as to achieve an integrated design for the development;
 - b. Shall not exceed 25 feet in height above the prevailing finished grade; and
 - c. All such structures or installations must meet the setback standards for the underlying zoning district.
7. Flagpoles: A flagpole shall be located so that if it should collapse, its reclining length would be contained on the property on which it was installed.

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8. Wireless Communication Facilities: So as to ensure the protection of scenic view resources in and around Cottonwood, which otherwise define a significant and valued aspect of the character of the city, the following regulations shall apply to new and expanded wireless communication facilities:
 - a. The regulations contained in this Ordinance are intended to be in compliance with the Federal Telecommunications Act of 1996, which shall supersede any regulations contained herein;
 - b. The overall height of any wireless communications structure, antenna and/or antenna array shall not be greater than a maximum of sixty (60) feet from the ground to the highest physical point on the structure;
 - c. Encourage the location and colocation of wireless communications equipment on existing structures thereby minimizing adverse visual, aesthetic and public safety impacts, and effects upon the natural environment and wildlife, and to reduce the need for additional antenna-supporting structures;
 - d. Wireless communication facilities shall be discouraged within any Historic District or in proximity to any historic properties in the City of Cottonwood unless designed in a manner that avoids adversely impacting such historic resources through the use of design techniques that minimize or hide the facility; and
 - e. Such structure shall be located and constructed so that if it should collapse, its reclining length would be contained on the property on which it was installed.
9. Solar and Wind Energy Devices:
 - a. Solar Devices: Solar energy equipment mounted on rooftops may exceed the maximum allowable height for the zoning district by up to five (5) feet.
 - b. Wind Energy Devices: In Industrial, Agricultural Residential or Community Facility zoning districts with a minimum five (5) acre site no more than one accessory wind energy device per parcel or development site may be installed on a freestanding pole or support structure, not to exceed 60' in height at its highest point above grade and subject to obtaining a building permit. Such structure shall be located and constructed so that if it should collapse, its reclining length would be contained on the property on which it was installed.
10. Airport Height Restrictions: No building or structure shall be erected, altered, or maintained within any existing or proposed portions of Cottonwood Airport property, Cottonwood Industrial Airpark or any related airspace that has a height in excess of the height limitations established by that zoning district or as per any special restrictions for such established by the FAA, the Cottonwood Airport Master Plan or any other related regulations, including Building Restriction Lines or

Runway Protection Zones, so as to protect the safety and integrity of the airport functions.

Section 3. That existing Sub-Section 404. H. 3. "Residential Accessory Buildings" is hereby moved to Section 404. G. 6. c. "Detached Accessory Buildings in Residential Zones" as a new Sub-Section (7) as follows:

- (7) Residential Accessory Buildings: No building which is accessory to any residential building shall be erected to a height greater than one (1) story or sixteen (16) feet to the peak or highest point of the roof.

Section 4. That sub-sections "n." "o." "p." and "q." are hereby added to Section 304. Design Review, Sub-Section E. Criteria, as follows:

- n. Architectural Embellishments: The design and placement of architectural embellishments shall be subject to the standards for Design Review as described in Section 404. H. "Height Regulations."
- o. Non-Habitable Rooftop Structures: The design and placement of non-habitable rooftop structures shall be subject to the standards for Design Review as described in Section 404. H. "Height Regulations."
- p. Monuments, Memorials and Statues: The design and placement of freestanding or attached monuments, memorials, statues, art installations or similar structures shall be subject to the standards for Design Review as described in Section 404. H. "Height Regulations."
- q. Wireless Communications Facilities: The design and placement of wireless communication facilities shall be subject to the standards for Design Review as described in Section 404. H. "Height Regulations."

Section 4. That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be unlawful, invalid or unenforceable by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, ARIZONA, THIS 18TH DAY OF JANUARY 2011.

Diane Joens, Mayor

ORDINANCE NUMBER 569

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APPROVED AS TO FORM:

ATTEST:

Steven B. Horton, Esq., City Attorney

Marianne Jiménez, City Clerk

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: February 1, 2011

Subject: Resolution No. 2572 - Franchise Agreement with Arizona Public Service

Department: Legal; City Clerk

From: Steve Horton, City Attorney; Marianne Jimenez, City Clerk

REQUESTED ACTION

Approval of Resolution No. 2572, deeming the granting of a new 25-year franchise to Arizona Public Service in accordance with a new franchise agreement beneficial to the City; and authorizing the agreement to be presented to the City's voters for approval at the May 17, 2011 election.

If the Council desires to approve this item the suggested motion is:

"I move to approve Resolution No. 2572, deeming the granting of a new 25-year franchise to Arizona Public Service in accordance with a new franchise agreement beneficial to the City; and authorizing the agreement to be presented to the City's voters for approval at the May 17, 2011 election."

BACKGROUND/JUSTIFICATION/BENEFIT/ISSUES

Arizona Public Service's current franchise agreement with the City expires on June 2, 2011. Under Arizona Revised Statutes Sections 9-501 and 9-502, in order to receive a new or renewed franchise to operate a public utility within a city or town, a utility must first "present" the franchise to the governing body. If the governing body determines that the proposed franchise would be beneficial, then it passes a resolution to that effect, and submits the proposed franchise to the voters for approval at the next regular election, or at a special election called for that purpose.

Over the last several weeks, APS staff and City staff have conferred and developed the attached franchise agreement, which APS and staff now "present" to the Council for a determination that it would be beneficial to the City to grant APS a new 25-year franchise in accordance with this agreement. The Council has already called for an election on this matter

to be held on May 17, 2011 (the costs of which will be borne by APS), and if the Council approves this Resolution, the attached franchise will be presented to the City's voters for renewal of the franchise at that election.

Among other provisions, the agreement provides for APS' payment of a franchise fee equal to 2 percent of APS' revenues from selling electricity to customers within the City. Over the last ten years, the amounts paid to the City under the existing agreement, which also provided for a 2 percent franchise fee, amounted to just over one million dollars.

Accordingly, it is staff's belief that it is in the City's best interest for the Council to approve Resolution 2572, deeming the granting of a new 25-year franchise to Arizona Public Service in accordance with the attached franchise agreement beneficial to the City; and authorizing the agreement to be presented to the City's voters for approval at the May 17, 2011 election.

COST/FUNDING SOURCE

N/A

REVIEWED BY

City Manager: _____

City Attorney: _____

ATTACHMENTS

Resolution 2572
Proposed Franchise Agreement

RESOLUTION NUMBER 2572

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, DEEMING THE GRANTING OF A NEW 25-YEAR ELECTRIC UTILITY FRANCHISE TO ARIZONA PUBLIC SERVICE CORPORATION IN ACCORDANCE WITH THAT CERTAIN FRANCHISE AGREEMENT THAT HAS BEEN PRESENTED TO THE COUNCIL TO BE BENEFICIAL TO THE CITY, AND AUTHORIZING THE PROPOSED FRANCHISE AGREEMENT TO BE PRESENTED TO THE CITY'S VOTERS FOR APPROVAL ON THE BALLOT OF THE MAY 17, 2011 SPECIAL ELECTION.

WHEREAS, on May 20, 1986, the qualified electors of the Town of Cottonwood approved the granting of a 25-year franchise to Arizona Public Service Corporation ("APS") for the construction, maintenance and operation of an electric utility plant in the Town of Cottonwood, Arizona, and future additions thereto, in accordance with the proposed ordinance submitted by the mayor and common council of the Town of Cottonwood, Arizona; and

WHEREAS, the Franchise expires on June 3, 2011; and

WHEREAS, APS has presented a proposed new 25-year franchise to the City Council, which is subject to approval by the City's voters if deemed by the Council to be beneficial to the City; and

WHEREAS, the City Council finds that it will be beneficial to the City to grant a new 25-year Franchise to APS conferring the right to maintain and operate an electric utility system and future additions thereto within the City, in accordance with the franchise agreement that has been presented to the City by APS; and

WHEREAS, no Franchise can be granted by the City for a public utility unless authorized by a majority vote of the City's qualified voters; and

WHEREAS, by Resolution 2569, the City has previously called for a special election to be held on May 17, 2011 for the purpose of presenting a proposed new 25-year franchise to the City's voters;

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AS FOLLOWS:

Resolution Number 2572

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Section 1: That pursuant to Arizona Revised Statutes Section 9-502, the City Council of the City of Cottonwood, Arizona, does hereby deem the granting of a new 25-year franchise to Arizona Public Service Corporation pursuant to the terms of the proposed franchise agreement that has been presented to the Council to be beneficial to the City

Section 2: That the proposed franchise shall be presented to the City's qualified voters for approval on the ballot of the May 17, 2011 special election called for that purpose.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 1ST DAY OF FEBRUARY 2011.

Diane Joens, Mayor

ATTEST:

Marianne Jiménez, City Clerk

APPROVED AS TO FORM:

Steve Horton, Esq.
City Attorney

FRANCHISE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

CITY OF COTTONWOOD, ARIZONA

Section 1. - Grant of Franchise:

There is hereby granted to Arizona Public Service Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona (herein called "Grantee"), its successors and assigns, a franchise (herein called the "Franchise") to construct, maintain and operate its electrical system, as defined herein, upon, over, along, across and under the present and future public rights-of-way. These rights-of-way include but are not limited to streets, alleys, ways and highways in the City of Cottonwood, Arizona (herein called "City"). Grantee's system includes electric power lines, together with all necessary or desirable appurtenances, including, but not limited to, poles, towers, wires, cables, conduits, transmission lines, transformers, switches and communication lines for its own use. This Franchise is for Grantee's use of City's public rights-of-way to supply and deliver electric energy to City, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

This franchise shall extend to and include all streets, avenues, alleys, highways, bridges and other public rights of way within the limits of the City, and any part thereof, either as now located and as may be hereafter or extended within the present or any future limits of the City, provided, however, that the City shall not be liable to Grantee should Grantee construct facilities

pursuant to this grant on any area over which the City has erroneously exercised dominion and control.

Section 2. – Grantee’s Compliance with City Practice; Plans Submitted for Approval; City Construction near Grantee’s Facilities:

All construction under this Franchise shall be performed in accordance with established practices of City with respect to such public rights-of-way. Such construction shall be completed within a reasonable time. Before Grantee makes any installations in the public rights-of-way, Grantee shall upon request or direction from City obtain a construction permit and submit for approval a map showing the location of such proposed installations to City’s Engineer. City and Grantee agree and understand that there may be instances when Grantee is required to make repairs that are of an emergency nature. Grantee shall notify City prior to such repairs, to the extent practicable, and shall obtain the necessary permits in a reasonable time after notification, showing the work performed in the public rights-of-way.

If City authorizes either directly or through a contractor any construction project adjacent to or near Grantee’s facilities operated pursuant to this Franchise, City shall notify Grantee of such construction project.

Section 3. – Construction and Relocation of Grantee’s Facilities; Payment:

All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic, or other authorized uses over, under or through the public rights-of-way. Furthermore, Grantee shall not install, construct, maintain or use its facilities in a manner that damages or interferes with any existing facilities of another utility located in the public rights-of-way and agrees to relocate its facilities, if necessary,

to accommodate another facility relocation that has a prior rights interest in the public rights-of-way.

Grantee shall coordinate the installation, construction, use, operation and relocation of its facilities within City as appropriate to enable City to better plan, facilitate and protect public safety and convenience. Without limiting the foregoing, Grantee shall provide reasonable advance notice of work hereunder to City. For a period of three (3) years following construction, repaving, or widening of any City street, Grantee shall prior to cutting any such City street:

- A. Meet with the City Engineer before Grantee begins work which will disturb the new surfaces, and set forth the proposed method of work and objective for the project to be accomplished by Grantee;
- B. Propose a work method for approval by the City Engineer that will not disturb or will minimize the disturbance of the New Surfaces; and,
- C. Adopt a construction method by mutual agreement with the City Engineer that least disturbs new surfaces while also considering Grantee's work objectives and cost.

Activities related to the construction of Grantee's facilities within the rights-of-way such as traffic control, backfilling, compaction and paving, and the location or relocation of lines and related facilities shall be subject to regulation by City. Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to City upon request. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall, upon request or direction from City, provide City's Engineer with corrected drawings showing the location of the underground facilities in those cases where the actual location differs significantly from the proposed location. Grantee shall provide to City, upon

City's request, the actual location of such new or relocated facilities in the public rights-of-way in an electronic format. Such format shall conform to utility industry best-practice standards.

A. If City requires Grantee to relocate Grantee's facilities which are located in private easements obtained by Grantee prior to City's acquisition of said property from which the facilities must be relocated, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement if necessary) shall be borne by City. City shall also bear the entire cost of all subsequent relocations of the relocated facilities required by City, until such time as City condemns or purchases Grantee's private easement.

B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating its facilities located on public rights-of-way, the relocation of which is necessary for City's carrying out of its governmental functions. Notwithstanding the foregoing, if Grantee is requested to perform work of a temporary nature on a governmental project to relieve construction problems which could be relieved by other means, the cost of said temporary work will be borne by City or City's contractor working on the governmental project. Governmental functions are those duties imposed on City, where the duties involve a general public benefit, not in the nature of a corporate or business undertaking for the corporate benefit and interest of City. Governmental functions include, but are not limited to, the following:

1. Any and all improvements to City's public rights-of-way;
2. Establishing and maintaining domestic water systems, sanitary sewers, storm drains, and related facilities;

3. Establishing and maintaining municipal parks, parking spaces, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purpose of landscaping any street or public property;
 4. Providing fire protection and other public safety functions; and
 5. Collection and disposal of garbage and recyclables.
 6. The relocation of Grantee's facilities necessary to carry out the exercise of the City's police power for urban renewal.
- C. City will bear the entire cost of relocating any of Grantee's facilities, the relocation of which is necessitated by the construction of improvements by or on behalf of City in furtherance of a proprietary function. All functions of City which are not governmental are proprietary.
- D. If City participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to City shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.
- E. Grantee shall bear the entire cost of relocating any facilities regardless of the function served where the City has a prior superior right to use the public right-of-way, or where City facilities or other facilities occupying public right-of-way under authority of a City permit, license or franchise which must be relocated are already located in the public right-of-way and the conflict between the Grantee's potential facilities and the existing facilities can only be resolved expeditiously as determined by the City, by movement of the existing City or permittee facilities. The City and Grantee agree that City is not a party to disputes among permittees using the public right-of-way.

- F. While the City and Grantee acknowledge that the City has a right to require relocation of Grantee's facilities in public rights-of-way, the City will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner, or to avoid its obligation under the Franchise. In such instances where relocation of Grantee's facilities is required, the City will provide Grantee with sufficient time for such relocation.
- G. City agrees it will not require Grantee to relocate its facilities located within the public rights-of-way without providing Grantee adequate space within the rights-of-way to relocate the facilities that must be moved.
- H. City will not plant any tree that can normally grow to a height of more than 25 feet under or adjacent to Grantee's overhead power lines in the public rights-of-way. Grantee shall have the authority to prune or remove any trees or shrubs located within or hanging over the limits of the public rights-of-way of City that in the judgment of Grantee may interfere with the construction, or endanger the operation, of the lines and/or facilities of Grantee. Grantee shall provide reasonable notice to City prior to performing routine line clearance pruning or tree removal. All said vegetation management work is to be done at Grantee's expense and pursuant to A.N.S.I. Standard A300.

Section 4. – Indemnification:

Grantee shall, to the fullest extent permitted by law, defend, indemnify, and hold City harmless from and against any and all claims, costs, suits, damages, judgments, expenses and losses including, but not limited to attorney fees and court costs relating to, arising out of, or alleged to have resulted from the exercise of this Franchise by Grantee; provided, however, that

such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of City. Grantee, so long as it maintains, operates or owns facilities, within rights-of-way of City, at its own cost and expense, shall keep, or cause to be kept, in force insurance against claims and liability for personal injury, death and property damage arising from the construction, operation or maintenance by Grantee of its facilities in a reasonable amount sufficient to insure Grantee's obligations under this Section, with City named as an additional insured. Grantee shall provide City with 30 days written notice of material change, cancellation or nonrenewal by the insurer. The policy shall be primary and noncontributing with any policy of City.

Section 5. – Restoration of Rights-of-Way:

Whenever Grantee shall cause any opening or alteration whatsoever to be made for any purpose in any public right-of-way, the work shall be completed with due diligence within a reasonably prompt time. Grantee will restore the disturbed property to substantially its former condition with comparable materials, so that the restoration meets or exceeds industry standards and City standards adopted by the City Council. If Grantee fails to restore the disturbed property to the required standards within thirty (30) business days of receipt of written notice to the local office of Grantee, City may restore the property and charge the actual and reasonable cost thereof to Grantee.

Section 6. – Franchise Fee:

Grantee shall pay to City in consideration of the grant of this Franchise a sum equal to two percent (2%) of all revenues of Grantee from its retail sales and/or delivery of electric energy. For the purposes of this section, the term "revenues" shall include all rates, charges, fees, and assessments, including Regulatory Assessments, levied and received by Grantee for the sale

and/or delivery of electric energy and services attendant thereto, delivered through Grantee's electric distribution system within the present and any future corporate limits of City, as shown by Grantee's billing records; but shall not include applicable transaction privilege taxes and similar governmental impositions paid by Grantee and charged through to its customers, or revenues charged to Grantee's retail customers by third party electric service providers. Said payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by City in any way associated with Grantee's use of the rights-of-way, including but not limited to, the construction of Grantee's facilities hereunder or for inspections thereof during the term of this Franchise. Said payment shall be considered delinquent if not received by the last day of the month following the end of the quarter (the "Delinquent Date"). If the payment is later than the Delinquent Date, a 2% penalty will be added, and interest of 1.5% monthly shall occur on the entire amount due. The penalty and interest may be waived by the City if the failure to pay by the Delinquent Date was the result of an unforeseen event that renders Grantee unable to compute the liability from business records; provided, however, Grantee in such event must file an estimated payment by the Delinquent Date to avoid penalty and interest charges. Based on a history of prior on-time payments, the City may waive the penalty and interest.

For the purpose of verifying amounts payable hereunder, the books and records of Grantee shall be subject to inspection by duly authorized officers or representatives of City at reasonable times.

Beginning June 3, 2011, payment as described in the preceding paragraphs shall be payable in quarterly amounts within 30 days after the end of each calendar quarter.

Notwithstanding the provisions of this Franchise, if during the term of this Franchise Grantee enters into any electric franchise with any other municipality in Arizona during the term

of this Franchise that provides for a higher percentage of Grantee's revenues than two percent (2%) or includes more categories of revenues than set forth in this Franchise, Grantee shall notify City Council of such higher percentage or expanded revenue base. Grantee agrees to henceforth pay to City a new franchise fee at the higher franchise percentage or to include the additional revenue categories.

Section 7. – Additional Fees and Taxes:

Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided in Section 6, the following charges, taxes and fees as established in a code or ordinance properly adopted and/or amended by City:

- A. General ad valorem property taxes;
- B. Transaction privilege and use tax as authorized by law and collected by Grantee for its retail sales to its electric customers within the present and any future corporate limits of City;
- C. Other charges, taxes or fees generally levied upon businesses by City, provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within City.

Section 8. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from June 3, 2011; provided, however, that either party may terminate this Franchise on its tenth anniversary by giving written notice of its intention to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

Section 9. – Franchise; Non-Exclusive:

This Franchise is not exclusive, and nothing contained herein shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 10. – Conflicting Ordinances:

Notwithstanding any other provisions hereof, Grantee agrees that it will comply with all codes and ordinances of the City, unless inconsistent with the expressed agreement contained in this Franchise.

Section 11. – Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

Section 12. – City Use of Facilities:

In consideration of this Franchise and the rights granted hereby, City shall, if the following six criteria are met, have the right to place, maintain, and operate on Grantee's poles located on public rights-of-way within City's corporate limits, any and all wires and appurtenances (other than steps or climbing devices) for City's fire alarm, police telephone or other municipal communications services utilized for governmental functions:

- A. City must notify Grantee in writing of City's intended use of Grantee's poles;

- B. City shall, to the fullest extent permitted by law, defend, indemnify and hold Grantee harmless from any and all claims, costs, damages, expenses and losses, including but not limited to attorney fees and court costs relating to, arising out of, or alleged to have resulted from City's use of Grantee's facilities pursuant to this Franchise; provided however, that such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of Grantee.
- C. City's facilities and the installation and maintenance thereof must comply with the applicable requirements of the Occupational Safety and Health Act, the National Electrical Safety Code, and all other applicable rules and regulations as amended. If City does not comply with all applicable laws, ordinances and regulations, or if City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct City's facilities at City's expense;
- D. City's facilities and the installation and maintenance thereof must not cause Grantee's facilities and the installation and maintenance thereof to be out of compliance with all applicable requirements of the Occupational Safety and Health Act and the National Electrical Safety Code and all other applicable rules and regulations as amended. If City does not comply with all applicable laws, ordinances and regulations, or if City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct City's facilities at City's expense;
- E. City's use of its facilities shall not interfere with Grantee's use of Grantee's facilities, and;

F. City shall be responsible for any incremental costs incurred by Grantee as a result of City's use of Grantee's facilities.

Section 13. – No Third Party Beneficiaries:

There are no third party beneficiaries to this Franchise agreement between City and Grantee.

Section 14. – Voter Approval Required:

This Franchise is subject to the approval of the electors of City. Grantee shall pay all of the costs incurred in conducting the franchise election, except that, if one or more additional propositions are presented to the electors at such election, Grantee shall pay only that portion of City's election expense determined by dividing all of City's expenses by the number of issues presented on the ballot.

Section 15. – Transfer of Franchise

The right, privilege and franchise hereby granted may not be transferred in whole or in part by the Grantee, its successors and assigns, without the prior consent of either the City or the Arizona Corporation Commission. The consent of the City is hereby given to Grantee to transfer or assign this Franchise to Grantee's parent corporation, Pinnacle West Capital Corporation or one of its affiliates. Grantee will notify the City if such transfer or assignment should occur. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with subsequent transfer made pursuant to any such instrument.

Section 16. – Condemnation; Right Reserved by the City

This grant is made upon the condition that City may purchase and take over the whole or any part of the property and plants of Grantee in accordance with applicable law.

Section 17. – Notices:

Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

- A. To City: City Clerk, City of Cottonwood
827 North Main Street
Cottonwood, Arizona 86326
- City Attorney, City of Cottonwood
827 North Main Street
Cottonwood, Arizona 86326
- B. To Arizona Public Service: Franchise Department
Arizona Public Service Company
P.O. Box 53999, M.S. 8679
Phoenix, Arizona 85072-3999

Section 16. – Adoption:

We, the undersigned, have adopted this document on the dates written below in accordance with the results of the City of Cottonwood Election on May 17, 2011.

CITY OF COTTONWOOD

ARIZONA PUBLIC SERVICE COMPANY,
An Arizona Corporation

By _____
Diane Joens, Mayor
On behalf of the City of Cottonwood
Date: _____

By _____
Daniel Froetscher, Energy Delivery Vice President
On behalf of Arizona Public Service Company
Date: _____

ATTEST:

_____,
Marianne Jimenez, City Clerk

APPROVED AS TO FORM:

_____,
Steve Horton, City Attorney

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: February 1, 2011

Subject: Revised Fee Structure Program - Cottonwood Recreation Center (Fee Reduction for Cottonwood Chamber of Commerce Members – Non Resident Rates)

Department: Parks & Recreation

From: Richard Faust, Community Services General Manager

REQUESTED ACTION

Direction to staff regarding a revision to the fee structure and public use rates for the Cottonwood Recreation Center facility.

If the Council desires to approve this item the suggested motion is:

“I move to approve the fee structure reduction in the amount of 10% for non-resident Cottonwood Chamber of Commerce Members for the New Cottonwood Recreation Center”.

BACKGROUND

The attached fee structure for public user rates is identical to that which Council reviewed and approved in the November 2009 Council Work Session whereby staff was directed to submit rates for an action item on the agenda. Recently, the City Manager discussed with the Cottonwood Chamber of Commerce Director the possibility of adding an additional fee reduction (discount) to the Recreation Center Public Use Rate policy. This policy change would only affect “non-residents” who have their respective business operations within the Cottonwood city limits and belong to the Chamber of Commerce. It was felt that this would be a way to thank business owners who live outside the City, but choose to conduct business in the City, and another method to increase recreation center memberships. It is recommended that business owners who reside in the City would not receive a discount as they already receive a resident discount. This discount would not apply to employees of the business as discounts for employees are generally handled through a corporate membership.

JUSTIFICATION/BENEFITS/ISSUES

This revision would provide an additional option for the City of Cottonwood to obtain memberships from local business owners at the Recreation Center pertaining to Public Use Rates. Business owners and their families who reside outside the City limits of Cottonwood would enjoy the benefits of the health/fitness and social center with reduced costs. Fee reductions would be based upon “General Fees” (non-resident) whereby a 10% reduction would be offered to business owners in all columned areas of the Membership Fee Structure Program (attached). These fee reductions would be authorized towards all

prices in the “red” figures of the fee chart. Staff feels that these changes would reflect well in achieving Councils direction for achieving a 60 to 70% Cost Recovery rate for facility operational costs.

COST/FUNDING SOURCE

Not Applicable

REVIEWED BY

City Manager: _____

City Attorney: _____

ATTACHMENTS

One Attachment:

- Recreation Center Public Use Fee Schedule (Revised)

Cottonwood Recreation Center

Membership Fee Structure Program



Below are listed the general fees and resident discount fee structure for the Cottonwood Recreation Center. **Blue** color represents Resident Discount Fees and **Red** color represents General Fees (non-resident).

Recreation Center Fees:

	Daily	10-Visit	1 Month	3 Months	6 Months	1 Year
5-17 Years	\$3.00	\$18.00	\$20.00	\$50.00	\$85.00	\$150.00
	\$4.00	\$24.00	\$25.00	\$60.00	\$100.00	\$175.00
Adult	\$5.00	\$30.00	\$35.00	\$85.00	\$150.00	\$275.00
	\$6.00	\$36.00	\$45.00	\$110.00	\$200.00	\$350.00
Senior	\$3.00	\$18.00	\$20.00	\$50.00	\$85.00	\$150.00
	\$4.00	\$24.00	\$25.00	\$60.00	\$100.00	\$175.00
Couple			\$50.00	\$120.00	\$220.00	\$400.00
			\$60.00	\$150.00	\$270.00	\$500.00
Family			\$65.00	\$160.00	\$280.00	\$520.00
			\$75.00	\$185.00	\$335.00	\$600.00
Additional Members			\$12.50	\$30.00	\$50.00	\$100.00
			\$15.00	\$35.00	\$60.00	\$115.00

- Cottonwood Chamber of Commerce Members living outside city limits would be offered a 10% fee reduction off of all “General Fee” categories identified in “red” (must show Membership Credentials). Example: 1 year membership of \$600 would be \$540. An annual couple membership of \$500 would be \$450. A monthly adult rate of \$45 would be reduced to \$40.50.

