

INTEROFFICE MEMO

OFFICE OF THE CITY ATTORNEY

TO: Honorable Mayor and
Members of City Council

DATE: June 20, 2017

FROM: R. Joel Stern
City Attorney

SUBJECT: PROPOSED CITY CODE CHAPTER 8 COMMUNITY AND CIVIC EVENT
AMENDMENTS; OUR FILE NO. 17-021

HISTORICAL BACKGROUND:

This matter comes before the council as a continuation from May 16th regarding the above-noted matter. Set forth below is a chronology of events.

September 2016: The development services staff presented at a work session needed changes to Chapter 1, Zoning and the Chapter 8, event codes.

October 2016: Email communications were exchanged between Development Services Director Larry Kirch and residents David Bowling and Jim Duncan regarding the legality of the bull riding activities at the Hitching Post Restaurant, as well as special, community and civic events (administrative use permit v. conditional use permit) approval. Additional email communications were sent from Mr. Bowling to City Attorney Stern and between Mr. Duncan and City Attorney Stern on general due process/constitutional rights and zoning nexus relating to, among other things, the city's community and civic events processes.

November 15, 2016: At call to the public, Duncan spoke on individual property rights, wanted council to look into amending the Chapter 8 event provisions to include a review component for events applications. Council directed staff to look into his suggestions.

November 16, 20 & 21, 2016: The city attorney received emails from Messrs. Duncan and Bowling (*See Exhibit A*) on their suggested changes to the events code, which included:

- 1) The zoning administrator should review event applications. If amplified music or a PA system was an element of the event, the adjoining property owners should be notified.

2) An appeal process should be implemented as a “final check to make sure the zoning administrator is held accountable for fairly judging neighborhood noise impact”.

3) There should be notice to mobile home park owners rather than mobile home park residents if the event location was in close proximity to a mobile home park.

4) An “event” would be include any activity that includes amplified music and any PA system within 500 feet of a residentially zoned district. Notice would then be sent by certified mail at least one week prior to application submittal to property owners directly adjacent to land where the event would occur.

December 6, 2016: Email was sent from the city attorney to residents to discuss potential code changes and to schedule a meeting.

December 12, 2016: Messrs. Bowling and Duncan provided an email to the city attorney looking forward to the scheduled meeting.

December 15, 2016: Council held an e-session on the Chapter 8 amendment proposal.

December 19, 2016: Bowling sent email to the city attorney stating he would no longer be involved in the Chapter 8 discussions, but Duncan would represent the residents on the issue. Duncan responded with email addresses of interested residents.

December 20, 2016: The city attorney sent residents both Duncan and Bowling versions for upcoming January 11th meeting.

January 11, 2017: Meeting with the city attorney, pertinent city staff and residents took place. Discussion was on the event provisions including the legislative history, public and private nuisance laws and resident-sponsored versions of the proposed amendments.

January 17, 2017: Duncan attempted to recap the meeting via email to the city attorney.

January 25, 2017: Email was sent from the city attorney to residents (see Exhibit B) setting forth city’s version of the January 11th meeting and correcting certain statements/perceptions.

February 2, 2017: City Public Information Officer Bravo provided the city attorney civic and community events process summary (see Exhibit C).

February 27, 2017: Event code changes were discussed internally amongst staff.

February 28, 2017: With staff input, the city attorney created potential amendment to Chapter 8 which addressed the residents' concerns less the mobile home park comments. (See Exhibit D along with Exhibit E, the current Chapter 8 event provisions under Article 8-8)

March 1, 2017: The city attorney sent email to residents on draft amendments and advised them the matter would first be considered by council in e-session, but he would need direction for further communication.

March 7, 2017: E-session was held to discuss Chapter 8 amendments.

March 8, 2017: The city attorney emailed residents that May 16th would be the night council would discuss the Chapter 8 event proposed amendments.

May 2, 2017: Due to inadvertently and pre-maturely scheduling the matter on May 2, 2017, council continued the item to May 16, 2017, for public hearing/discussion.

May 16, 2017: Public Hearing. Council discussed the item. Duncan summarized the residents' position and council directed staff to place the matter on June 20th for a public hearing for consideration.

DISCUSSION:

The proposed changes in Exhibit D does the following:

- 1) Event application shall be submitted to city forty-five (45) city working days before any planned event.
- 2) The development services director shall review application and determine if planned event is within 500 feet of any residentially used property.
- 3) If so, city shall send first class U.S. certified mail notice to property owners having property within 500 feet of the proposed event and shall establish an administrative hearing date affording residents an opportunity to attend, review the event application and speak.
- 4) The hearing would be scheduled at least fifteen (15) city working days before the event date.
- 5) The city public information officer shall conduct the hearing, shall make a decision and give internet notice to all who appeared.
- 6) Any party may appeal the decision no later than three (3) city working days after the decision has been made and is posted on the city website.
- 7) The city manager will hear the appeal within three (3) city working days and will notify all interested parties and shall post his decision on the city's website.

8) The proposal also includes a new outdoor entertainment component definition which triggers the review and notice requirement by the development services director. The inquiry is whether the activity takes place outside of an enclosed building (one which has a roof, walls and doors) in a parking lot or vacant lot, which has the potential of creating noise, odor, dust, lighting, vibration, or proposes the use of amplified music in any form (recorded or live).

ACTION REQUESTED:

Direction to staff is sought on how the council wants to proceed.

POSSIBLE MOTIONS:

- 1) Move forward with the February 28, 2017 version attached hereto for ordinance preparation with a public hearing on July 18, 2017.
- 2) Move forward with the February 28, 2017 version attached hereto for ordinance preparation with a public hearing on July 18, 2017, with any amendments as specified by council.
- 3) Continue the matter to July 18, 2017 for more discussion at another public hearing.
- 4) Take no further action.



R. Joel Stern
City Attorney

Attachments

EXHIBIT A

DUNCAN AND BOWLING RECOMMENDATIONS

Joel Stern

From: Jim Duncan <jim.duncan@cox.net>
Sent: Monday, November 21, 2016 8:08 AM
To: Joel Stern
Cc: 'Dee Bee'
Subject: RE: Ch 8-Civic and Community Events
Attachments: AJCityChapter8.docx

Duncan's
Version

Good morning Joel,

David and I met over the weekend and decided to send you two different ideas or options the city may consider that would correct the Chapter 8 Ordinance that was amended on November 2, 2015 by the City Council.

Please don't hesitate to call with questions.

This version I worked on is listed below with the idea in mind of keeping the current application process in place but adds as a beginning to the process a review of the zoning administrator (that includes Noise and neighborhood impact) and then inserts an appeal process after the zoning administrator's decision.

The Bold underlined text is what I've added as a recommendation. I've also attached this in the word file.

Most of the text in the appeal process was taken from other parts of the city code. There may be the need for changes on the process and City personnel.

ARTICLE 8-8: REQUIREMENTS FOR COMMUNITY AND CIVIC EVENTS

§ 8-8-1 PURPOSE & INTENT. This article is intended to regulate community and civic events for the benefit of its citizens and visitors which enable the city to:

- (1) Protect life, health, property and general welfare of the city and its residents;
- (2) Minimize expenditures of public funds for community and civic events;
- (3) Minimize business interruptions during events while promoting business growth and economic development;
- (4) Implement a high profile, proactive approach to local economic development through public/private partnerships;
- (5) Provide a range of community and civic events open to everyone to improve the quality of life in the city;
- (6) Facilitate the redevelopment and revitalization of the downtown and older commercial areas;
- (7) Assist the city in implementing its overall economic development goals;
- (8) Provide a consistent set of standards for community and civic events;
- (9) Compete on an equal basis with other communities for tourism and other economic development projects.

§ 8-8-2 DEFINITIONS. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMUNITY EVENT. An activity or gathering not exceeding 4 consecutive days in any calendar year which is conducted, organized and sponsored by non-profit organizations or forprofit organizations and is open to all participants on an equal basis.

EVENT. An activity or gathering with the purpose of promoting or benefitting the city and its residents and/or the sponsoring organizations. An application will be required for any activity or gathering which meets any of the following criteria and will be first reviewed by the zoning administrator;

- (1) Whereas any event located adjacent to or within 500 feet of a residentially zoned neighborhood will have been determined to pass two criteria prior to further application approval:
 - a) No Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare;
 - b) No Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values;
- (2) Whereas the application Event is located within 500 feet of a residentially zoned neighborhood and upon zoning Administrator pre-approval (Denied) or (Approved) the following will occur:

- (a) **Mailing Notice.** The City shall notice by first class mail (a) if denied to applicant or (b) if approved to each real property owner, as shown on the last assessment of the property, within five hundred feet of the property subject to the event application.
- (b) **Appeals.** Any person aggrieved by the decision made by the Zoning Administrator may appeal such decision within 5 working days by filing a written notice of appeal and request for a hearing in the office of the City Manager. Upon receipt of such notice, the City Manager or designee thereof, shall notify the appellant and applicant within 5 working days of the scheduled hearing time, date and place, which shall in no case take place more than 8 working days from the date of receipt of the notice of appeal. The hearing shall be conducted informally. The appellant, applicant and Zoning Administrator may present any relevant evidence. Hearsay evidence may be considered and witnesses need not be sworn nor cross-examined. The City Manager or designee thereof shall sustain, overrule or otherwise modify the Zoning Administrator's determination at completion of the hearing. The decision shall be final and conclusive, except that appellant may pursue an appeal to the City Council by written request.
- (c) **An appeal to the City Council within 3 working days from the date of the hearing decision stays all proceedings in the matter, and shall be subject to the following:**
- a. **Appeals shall be in writing on a form provided by the City Manager and shall include the specific items being appealed and the nature upon which the decision was in error.**
 - b. **The City Manager or designee shall transmit to the City Council a report and any background material regarding the appeal to the City Council for its next regularly scheduled meeting within 30 calendar days of receipt of any appeal.**
- (d) **The Council, at its public hearing, shall uphold, modify or overrule the decision of the City Manager or designee. The decision of the Council shall be final.**

Clerical Notes:

The Rest of the Code continues unchanged except that the rest of this paragraph continues with re-numbering

(3) Use of or impact/encroachment on any city street, sidewalk, alley or other right-of-way area (which includes any indirect impact that will affect the flow of typical vehicular or pedestrian traffic) that requires more than one city department approval, or will require the approval of more than one city department for inspections, assistance or permits.

(4) Is likely to draw a crowd to a venue not properly suited and has the potential to require special accommodations, regulations, traffic control devices or public works or safety personnel;

(5) Presence or participation of one or more for-profit or nonprofit vendors that intend to make a sale, advertise for sale, solicit sales, offer for sale, or provides a service or offer/advertise to provide a service. This provision does not apply to vendors already in possession of a valid city license issued under this code or city tax code;

Joel Stern

From: Dee Bee <d.bowling777@gmail.com>
Sent: Sunday, November 20, 2016 8:35 PM
To: Joel Stern
Subject: Chapter 8 potential changes
Attachments: Chapter 8 ordinance changes- David-11-18-16

*Bowling's
version*

Joel,

Jim Duncan Cc'd his version of proposed changes to me after running them by me. I wrote my own as I got a bit lost in his use of English grammar and placement of items that caused confusion for me as to whether they were inserted in the right place to make logical sense.

Neither of us are lawyers, obviously. But we agree on the purpose of the proposed changes and hope you can make suggestions as to whether either form of the changes sufficiently accomplishes our goals to:

- 1) Make sure the criteria for approval of any event that is done "in-house" includes the same protections for neighborhood property and welfare of citizens as found in the two mentioned "findings" for the CUP process that I reference. We agree that the zoning administrator should be the logical one for making that determination.**
- 2) That if outside amplified music and/or P.A. systems were to be included in the event that adjoining property owner notification should be made, and**

4) I invite your input into my notes about the appeal process as I have not researched the fees for the community event application or for the CUP appeal process.

Regards

David

ARTICLE 8-8: REQUIREMENTS FOR COMMUNITY AND CIVIC EVENTS

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- (1) Protect life, health, property and general welfare of the city and its residents;
- (2) Minimize expenditures of public funds for community and civic events;
- (3) Minimize business interruptions during events while promoting business growth and economic development;
- (4) Implement a high profile, proactive approach to local economic development through public/private partnerships;
- (5) Provide a range of community and civic events open to everyone to improve the quality of life in the city;
- (6) Facilitate the redevelopment and revitalization of the downtown and older commercial areas;
- (7) Assist the city in implementing its overall economic development goals;
- (8) Provide a consistent set of standards for community and civic events;
- (9) Compete on an equal basis with other communities for tourism and other economic development projects.

§ 8-8-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMUNITY EVENT. An activity or gathering not exceeding 4 consecutive days in any calendar year which is conducted, organized and sponsored by non-profit organizations or for profit organizations and is open to all participants on an equal basis.

EVENT. An activity or gathering with the purpose of promoting or benefitting the city and its residents and/or the sponsoring organizations. An application will be required for any activity or gathering which meets any of the following criteria:

- (1) Use of or impact/encroachment on any city street, sidewalk, alley or other right-of-way area (which includes any indirect impact that will affect the flow of typical vehicular or pedestrian traffic) that requires more than one city department approval, or will require the approval of more than one city department for inspections, assistance or permits.
- (2) Is likely to draw a crowd to a venue not properly suited and has the potential to require special accommodations, regulations, traffic control devices or public works or safety personnel;
- (3) Presence or participation of one or more for-profit or nonprofit vendors that intend to make a sale, advertise for sale, solicit sales, offer for sale, or provides a service or offer/advertise to provide a service. This provision does not apply to vendors already in possession of a valid city license issued under this code or city tax code;
- (4) Activities such as weddings, funerals, private yard sales, car shows or charity car washes shall not be considered an event.
- (5) A programmed event of a city department shall not be considered an event, however if the event includes vendors that are not already properly licensed with the city, then a fee of \$15 per vendor shall be collected for each event. The city department sponsoring the programmed event shall be responsible for collecting this fee from each participating vendor. These fees shall be paid in total to the city no later than 8 working days following the last day of the event.
- (6) Any activity which will include outside amplified music and/or P.A. system within 500 ft of a residentially zoned district. Any such activity shall require applicants one week prior to application submittal to notify by return receipt requested U.S. Mail 100% of property owners immediately adjacent to any land parcel owned by sponsor hosting property and submit U.S. Postal proof of mailing with application. In the case that the residential property triggering such a mailing requirement is a mobile**

home park occupied by resident-rented property only the applicant need only notify the registered agent and resident managers if both exist. The notice to property owners or agents/resident managers where applicable as above must contain a description of the proposed activity/event including the activity/event location, the fact that it will contain outside amplified music and/or P.A. System, beginning and ending date and hours and shall contain these words, "You have the right to voice your opinion about, objection to and/or appeal the decision of the city to approve this activity/event by contacting Development Services at XXX-XXX-XXXX (phone #).

(a) EXCEPTIONS. Any activity as described in (6) above which is to be held entirely within a mobile home park in such a location within said park having at least a 300 ft distance to any property border at which residential property exists not owned or managed by said park shall be exempt from notification mailing to surrounding property owners.

FOR-PROFIT ORGANIZATION. Any entity or corporation which has been established, maintained, or conducted for the purpose of making a profit.

NON-PROFIT ORGANIZATION. Any religious, social, fraternal or civic organization which has been designated as a 501C organization by the Internal Revenue Service and which has a valid operating license as provided for in Vol. I, Chapter 8 of the city code or the city tax code. Should questions as to form of business arise, interpretations of this section shall be based upon form indicia contained in the following:
Arizona Revised Statutes; Internal Revenue Code Rules and Regulations prescribed by the Internal Revenue Service.

CIVIC EVENT. An activity or gathering not exceeding 4 consecutive days in any calendar year which is conducted, organized and sponsored solely by the city or in conjunction with a non-profit organization, has been approved as such by the council during the annual budget process and which is open to all participants on an equal basis.

NEW- 8-8-3: Below sections get renumbered starting 8-8-4

REQUIREMENTS FOR APPLICATION APPROVAL. Zoning administrator shall consider the welfare of the public in accordance with ARS Section 9-462.01 and Apache Junction ordinance 1-16-12 (D)(3)(b&c) as criteria for and prerequisite to approving any activity or event which includes outside amplified music or P.A. system use, certify that applicant has made notification in accordance with section 8-8-2 (6) above, and if requested by any qualified property owner shall consider and address property owners concerns to their satisfaction by mutual agreement or implement the appeal process.

Joel. The appeal process wording should probably be the same as or similar to a CUP appeal except that the fee for it should be commensurate with the fee for the event application. Here, only the appeal process ordinance reference need be cited.

Joel. Where does Development Services sign off on the application? I see only P&Z as closely related, but no "DS."

Joel. Should the application form perhaps need to be amended to include right under the line about amplified music : "Notification verified..... Date..... Initials...." "Appeal Filed? Y/N

§ 8-8-3 CIVIC EVENT SPONSOR REQUIREMENTS.

(A) A non-profit sponsor of any civic event which includes vendors shall pay a fee of \$50 per

day. This fee shall be paid no later than 10 working days in advance of the first day of the event.

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A penalty of \$5 per day shall be assessed for each working day the initial payment is late beginning with the working day immediately following the initial deadline. The civic event fee shall not apply to those events which do not include vendors or city events.

(B) A non-profit sponsor of any civic event shall provide the city clerk with the name, address and telephone number of the event coordinator or contact person at least 30 working days in advance of the event.

(C) The sponsor of any civic event shall obtain a completed vendor application, on a form to be provided by the city, from each participating vendor and obtain a copy of the vendor's driver's license for any vendor(s) not already properly licensed with the city. The sponsor shall provide the city with these completed forms in addition to a complete list containing name, address and telephone number of each participating vendor no later than eight (8) working days following the last day of the event.

(D) Any food truck vendor, as defined in this chapter, that is present at a civic event shall follow the regulatory process in Article 8-10 of this chapter.

§ 8-8-4 CIVIC EVENT VENDOR REQUIREMENTS.

(A) All civic event vendors who engage or attempt to engage in a sale at a civic event or who advertise or solicit services or products shall complete a civic event vendor application in order to participate in the event. The completed form shall be submitted to the event sponsor.

(B) Non-profit organizations which participate as vendors at civic events shall not be required to complete an event vendor application if their participation is limited to the distribution of literature or information relative to their organization.

(C) Massage therapists or healthcare professionals or any students in conjunction with a recognized school of massage or educational institution as allowable under A.R.S. Title 32 who wish to participate as a vendor at a civic event shall be permitted to do so as long as such service is provided by a person holding a valid city business license and who is authorized under A.R.S. Title 32 to perform massages.

(D) Any food truck vendor, as defined in this chapter, that is present at a civic event shall follow the regulatory process in Article 8-10 of this chapter.

§ 8-8-5 COMMUNITY EVENT SPONSOR REQUIREMENTS.

(A) The sponsor of any community event which includes vendors shall remit to the city a fee of \$15 per vendor for those vendors not already properly licensed for each event. The sponsor shall be responsible for collecting this fee from each participating vendor. These fees shall be paid in total to the city no later than 8 working days following the last day of the event. A penalty of \$5 per day shall be assessed for each working day that the total fee remains unpaid.

(B) The sponsor of any community event shall provide the city clerk department with the name, address and telephone number of the event coordinator or contact person at least 30 working days in advance of the event.

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(C) The sponsor of any community event shall obtain a completed vendor application, on a form to be provided by the city, from each participating vendor and obtain a copy of the vendor's driver's license for any vendor(s) not already properly licensed with the city. The sponsor shall provide the city with these completed forms in addition to a complete list containing name, address and telephone number of each participating vendor no later than eight (8) working days following the last day of the event.

(D) Any food truck vendor, as defined in this chapter, that is present at a special event shall follow the regulatory process in Article 8-10 of this chapter.

§ 8-8-6 COMMUNITY EVENT VENDOR REQUIREMENTS.

(A) All community event vendors who engage or attempt to engage in a retail sale or who solicit or advertise in any form at a community event shall complete a community event vendor application in order to participate in the event. The completed form shall be submitted to the event sponsor.

(B) Non-profit organizations who participate as vendors at community events shall not be required to complete a community event vendor application if their participation is limited to the distribution of literature or information relative to their organization.

(C) Vendors who have an appropriate license shall not be required to pay an additional vendor fee provided they are engaging in an activity covered by the license.

(D) Massage therapists or healthcare professionals or any students in conjunction with a recognized school of massage or educational institution as allowable under A.R.S. Title 32 who wish to participate as a vendor at a community event shall be permitted to do so as long as such service is provided by a person holding a valid city business license and who is authorized under A.R.S. Title 32 to perform massages.

(E) Any food truck vendor, as defined in this chapter, that is present at a special event shall follow the regulatory process in Article 8-10 of this chapter.

EXHIBIT B

JANUARY 11TH MEETING RECAP

Melissa Drake

From: Joel Stern
Sent: Wednesday, January 25, 2017 2:17 PM
To: 'pamchott@gmail.com'; 'znolat@yahoo.com'; 'jim.duncan@cox.net'; 'av8r08@aol.com'; 'cindynuttall48@gmail.com'
Cc: Bryant Powell; Matt Busby; Kathy Connelly; Al Bravo; Larry Kirch; Dave Zellner; Eric Yuva; Thomas Kelly
Subject: Apache Junction City Code, Chapter 8, Events Meeting Summary

Jim Duncan sent me an email on January 17th in an effort to capture the general concepts discussed at our January 11th meeting. I have made amendments to his version which in totality creates the following version:

Recap:

Apache Junction City Code, Chapter 8, Events meeting, January 11, 2017 from 4 p.m. – 5 p.m. City Complex, Development Services Conference Room.

City Staff Attendees:

City Clerk Kathy Connelly, Public Information Officer Al Bravo, Development Services Director Larry Kirch, Building Official Dave Zellner, City Attorney Joel Stern, City Prosecutor Eric Yuva and Police Chief Thomas Kelly.

Resident Attendees:

Cristina Driscoll, Cindy Nuttall, Patrick LeClair, Pam Chott and Jim Duncan.

- Roundtable introductions were made.
- City Clerk Kathy Connelly summarized Chapter 8 approval procedures and history of event regulations.
- There was a collective discussion on how recent Hitching Post events were brought to council, including the procedural steps and failed attempts of the past.
- Residential impacts on events city-wide were also discussed as well as the overlap of Department of Liquor License special events and extension of premises.
- The Duncan/Bowling proposals were discussed at length. Council response was communicated by City Attorney Joel Stern which included: the proposals could result in fewer applicants applying for events due to mailing/notice cost, as well as time consuming extra steps and proposed burdensome appeal processes. Also, City Attorney Stern commented on the difference between a Volume I and Volume II code provisions. (standard admin code v. zoning code).
- Downtown and mobile home park events were generally discussed.

- City Attorney Joel Stern advised a “redline” draft would be created and sent to the residents after fully disseminated to and reviewed by applicable staff. A 30-day very rough estimate was given for this process to be completed.
- Although the Duncan/Bowling concepts would be further considered, the draft would attempt to reflect:
 - 1) The zoning administrator would initially review the application for anticipated residential neighborhood impact. Noise would be one of the listed impacts that would be critical in the zoning administrator’s evaluation.
 - 2) Notice of some kind to residents of the filing of event applications and any approval would be considered (perhaps posting on city internet website/email notice to residents if city has current resident email list/press release).
 - 3) Appeal would be performed by city manager or his or her designee, rather than the city council.

New Version Draft Status:

PENDING

I will continue to update you on this effort. Please be patient as the draft needs to first be reviewed by staff with the goal of providing a version that meets the interests of the residents and the council. Please remember council is the final decision maker on any requested amendments.

R. Joel Stern

City Attorney
City of Apache Junction
300 E. Superstition Blvd.
Apache Junction, AZ 85119
(480) 474-5105

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EXHIBIT C

SUMMARY OF EVENTS PROCEDURE PROCESS

Short description of special event process:

An individual or a group who decide to have a special event in the city has several options. The most popular ones involve those held at city-run facilities, such as parks, or places of business within the city. The Apache Junction Parks and Recreation office handles all requests for events within their facilities, while the Public Information Office handles all others.

First, criteria has to be met to determine if the event falls within our definition of a special event. The main criteria involves the impact on any city street, sidewalk, alley or right-of-way area outside of the main event location. Also under consideration would be if the event is likely to draw attendance larger than usual that would call for special accommodations for traffic or public safety. The inclusion of vendors also could lead to a determination of an event.

The city further divides events into two categories – civic events, which are run by the city or in conjunction with city, and community events, which are run by non-profit or for-profit organizations and are open to everyone on an equal basis.

Once the event determination has been made, the individual or organization submits an event application to the corresponding area (Parks or PIO) to begin the approval process. That application details the event and its consequences. The application is reviewed by different areas of the city (public safety, development services, and public works) for possible concerns. Parallel to that would be any other regulatory review – the need for business licenses for the organizer or vendors. Also concurrent to those reviews would be any special considerations, such as a special event liquor license, which must be submitted to the clerk's office for review and placement on a city council regular meeting agenda for recommendation to the state liquor board. If any of these reviews results in the need for further discussion, the city can call for a brief meeting to discuss those specific issues (i.e. traffic, licensing, etc.)

Once all reviews have been made and licensing satisfied, the individual or organization can hold its event. The city does NOT issue a "special event" permit for an event or other documentation.

EXHIBIT D

PROPOSED CHAPTER 8
EVENTS AMENDMENTS

DRAFT
2/28/17

§___ OUTDOOR ENTERTAINMENT EVENTS

Any civic or community event that proposes an outdoor entertainment component, shall be submitted to the city a minimum of forty-five (45) city working days before the planned event, and shall be subject to the following:

Upon receipt of event application, the development services director shall review the application and determine whether the selected location is within 500 feet of residentially used property. If it is, he or she shall cause the owners of such properties to be sent by first class certified U.S. mail a notice establishing an administrative hearing date to be held on city premises. The hearing shall be scheduled at least fifteen (15) city working days before the scheduled event. At such hearing, the applicant and the residential property owners shall be provided a reasonable opportunity to present their positions on the proposed event. The city public information officer shall also take into consideration any staff recommendations. At the conclusion of the hearing, the city public information officer shall either approve or deny the request. The hearing shall be audio-recorded. For the purposes of the notice required above, property ownership shall be determined from information available on the county assessor's website listing the last assessed owners of the affected properties. Applicant shall pay for the cost of notifying residential users.

§___ APPEAL

Any party may appeal the decision of the city public information officer to the city manager by filing a notice of appeal with the city clerk's office no later than three (3) city working days after the city public information officer has made his or her decision and which has been posted on the city website.

The city manager shall render his/her decision no later than three (3) city working days after the appeal has been filed with the city clerk and it shall be based on reviewing the audiotape of the hearing and any related application materials. The city manager's decision is final subject only to judicial review pursuant to applicable law.

The city manager or his/her designee shall notify the applicant and any interested property owners who register with the city's public information officer at the time of the hearing of his or her appellate decision, and shall post his or her decision on the city's website.

ADD TO DEFINITIONS:

"outdoor entertainment component" means: any civic or community event that proposes activity to take place outside of an enclosed building (one which has a roof, walls and doors) in a parking lot or vacant lot, which has the potential of creating noise, odor, dust, lighting, vibration, or proposes the use of amplified music in any form (recorded or live).

EXHIBIT E

EXISTING CHAPTER 8
EVENT CODE (*SEE* ARTICLE 8-8)
(ADOPTED NOVEMBER 2015)

ARTICLE 8-5: MASSAGE ESTABLISHMENTS

§ 8-5-5 PERMITTED LOCATIONS.

(A) A properly licensed massage therapist or health care professional shall only be permitted to provide massage therapy at the following business locations:

- (1) Full service beauty salon, spa, health club, fitness center or massage establishment;
- (2) Medical establishment of a health care professional; and
- (3) In the home or business location of a client by any massage therapist or healthcare professional having an appropriate license.

(B) A massage therapist or healthcare professional or any students in conjunction with a recognized school of massage or educational institution as allowable under A.R.S. Title 32, may perform massages during community and civic events as long as they meet the requirements set forth in A.J.C.C., Vol. 1, Article 8-8 and 8-9 of this code.

ARTICLE 8-8: REQUIREMENTS FOR COMMUNITY AND CIVIC EVENTS

§ 8-8-1 PURPOSE & INTENT. This article is intended to regulate community and civic events for the benefit of its citizens and visitors which enable the city to:

- (1) Protect life, health, property and general welfare of the city;
- (2) Minimize expenditures of public funds for community and civic events;
- (3) Minimize business interruptions during events while promoting business growth and economic development;
- (4) Implement a high profile, proactive approach to local economic development through public/private partnerships;
- (5) Provide a range of community and civic events open to everyone to improve the quality of life in the city;
- (6) Facilitate the redevelopment and revitalization of the downtown and older commercial areas;
- (7) Assist the city in implementing its overall economic development goals;
- (8) Provide a consistent set of standards for community and civic events;
- (9) Compete on an equal basis with other communities for tourism and other economic development projects.

§ 8-8-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMUNITY EVENT. An activity or gathering not exceeding 4 consecutive days in any calendar year which is conducted, organized and sponsored by non-profit organizations or for-profit organizations and is open to all participants on an equal basis.

EVENT. An activity or gathering with the purpose of promoting or benefitting the city and its residents and/or the sponsoring organizations. An application will be required for any activity or gathering which meets any of the following criteria:

- (1) Use of or impact/encroachment on any city street, sidewalk, alley or other right-of-way area (which includes any indirect impact that will affect the flow of typical vehicular or pedestrian traffic) that requires more than one city department approval, or will require the approval of more than one city department for inspections, assistance or permits.
- (2) Is likely to draw a crowd to a venue not properly suited and has the potential to require special accommodations, regulations, traffic control devices or public works or safety personnel;
- (3) Presence or participation of one or more for-profit or nonprofit vendors that intend to make a sale, advertise for sale, solicit sales, offer for sale, or provides a service or offer/advertise to provide a service. This provision does not apply to vendors already in possession of a valid city license issued under this code or city tax code;
- (4) Activities such as weddings, funerals, private yard sales, car shows or charity car washes shall not be considered an event.
- (5) A programmed event of a city department shall not be considered an event, however if the event includes vendors that are not already properly licensed with the city, then a fee of \$15 per vendor shall be collected for each event. The city department sponsoring the programmed event shall be responsible for collecting this fee from each participating vendor. These fees shall be paid in total to the city no later than 8 working days following the last day of the event.

FOR-PROFIT ORGANIZATION. Any entity or corporation which has been established, maintained, or conducted for the purpose of making a profit.

NON-PROFIT ORGANIZATION. Any religious, social, fraternal or civic organization which has been designated as a 501C organization by the Internal Revenue Service and which has a valid operating license as provided for in Vol. I, Chapter 8 of the city code or the city tax code. Should questions as to form of business arise, interpretations of this section shall be based upon form indicia contained in the following:

Arizona Revised Statutes; Internal Revenue Code Rules and Regulations prescribed by the Internal Revenue Service.

CIVIC EVENT. An activity or gathering not exceeding 4 consecutive days in any calendar year which is conducted, organized and sponsored solely by the city or in conjunction with a non-profit organization, has been approved as such by the council during the annual budget process and which is open to all participants on an equal basis.

§ 8-8-3 CIVIC EVENT SPONSOR REQUIREMENTS.

(A) A non-profit sponsor of any civic event which includes vendors shall pay a fee of \$50 per day. This fee shall be paid no later than 10 working days in advance of the first day of the event. A penalty of \$5 per day shall be assessed for each working day the initial payment is late beginning

with the working day immediately following the initial deadline. The civic event fee shall not apply to those events which do not include vendors or city events.

(B) A non-profit sponsor of any civic event shall provide the city clerk with the name, address and telephone number of the event coordinator or contact person at least 30 working days in advance of the event.

(C) The sponsor of any civic event shall obtain a completed vendor application, on a form to be provided by the city, from each participating vendor and obtain a copy of the vendor's driver's license for any vendor(s) not already properly licensed with the city. The sponsor shall provide the city with these completed forms in addition to a complete list containing name, address and telephone number of each participating vendor no later than eight (8) working days following the last day of the event.

(D) Any food truck vendor, as defined in this chapter, that is present at a civic event shall follow the regulatory process in Article 8-10 of this chapter.

§ 8-8-4 CIVIC EVENT VENDOR REQUIREMENTS.

(A) All civic event vendors who engage or attempt to engage in a sale at a civic event or who advertise or solicit services or products shall complete a civic event vendor application in order to participate in the event. The completed form shall be submitted to the event sponsor.

(B) Non-profit organizations which participate as vendors at civic events shall not be required to complete an event vendor application if their participation is limited to the distribution of literature or information relative to their organization.

(C) Massage therapists or healthcare professionals or any students in conjunction with a recognized school of massage or educational institution as allowable under A.R.S. Title 32 who wish to participate as a vendor at a civic event shall be permitted to do so as long as such service is provided by a person holding a valid city business license and who is authorized under A.R.S. Title 32 to perform massages.

(D) Any food truck vendor, as defined in this chapter, that is present at a civic event shall follow the regulatory process in Article 8-10 of this chapter.

§ 8-8-5 COMMUNITY EVENT SPONSOR REQUIREMENTS.

(A) The sponsor of any community event which includes vendors shall remit to the city a fee of \$15 per vendor for those vendors not already properly licensed for each event. The sponsor shall be responsible for collecting this fee from each participating vendor. These fees shall be paid in total to the city no later than 8 working days following the last day of the event. A penalty of \$5 per day shall be assessed for each working day that the total fee remains unpaid.

(B) The sponsor of any community event shall provide the city clerk department with the name, address and telephone number of the event coordinator or contact person at least 30 working days in advance of the event.

(C) The sponsor of any community event shall obtain a completed vendor application, on a form to be provided by the city, from each participating vendor and obtain a copy of the vendor's driver's license for any vendor(s) not already properly licensed with the city. The sponsor shall provide the city with these completed forms in addition to a complete list containing name, address and

telephone number of each participating vendor no later than eight (8) working days following the last day of the event.

(D) Any food truck vendor, as defined in this chapter, that is present at a special event shall follow the regulatory process in Article 8-10 of this chapter.

§ 8-8-6 COMMUNITY EVENT VENDOR REQUIREMENTS.

(A) All community event vendors who engage or attempt to engage in a retail sale or who solicit or advertise in any form at a community event shall complete a community event vendor application in order to participate in the event. The completed form shall be submitted to the event sponsor.

(B) Non-profit organizations who participate as vendors at community events shall not be required to complete a community event vendor application if their participation is limited to the distribution of literature or information relative to their organization.

(C) Vendors who have an appropriate license shall not be required to pay an additional vendor fee provided they are engaging in an activity covered by the license.

(D) Massage therapists or healthcare professionals or any students in conjunction with a recognized school of massage or educational institution as allowable under A.R.S. Title 32 who wish to participate as a vendor at a community event shall be permitted to do so as long as such service is provided by a person holding a valid city business license and who is authorized under A.R.S. Title 32 to perform massages.

(E) Any food truck vendor, as defined in this chapter, that is present at a special event shall follow the regulatory process in Article 8-10 of this chapter.

ARTICLE 8-9: SALES WITHIN MOBILE HOME AND RECREATIONAL VEHICLE PARKS, MOBILE HOME AND RECREATIONAL VEHICLE SUBDIVISIONS AND ALL OTHER RESIDENTIAL SUBDIVISIONS

§ 8-9-1 PURPOSE & INTENT. This article is intended to regulate sales and events within Mobile Home and Recreational Vehicle Parks, Mobile Home and Recreational Vehicle Subdivisions and all other residential subdivisions for the benefit of residents and visitors and which enable the city to:

- (1) Protect life, health, property and general welfare of the city;
- (2) Enable residential areas, mobile home and recreational vehicle communities to host a range of events for community members whether open to the general public or not so as to improve the quality of life in the city;
- (3) Provide a consistent set of standards for sales and events within Mobile Home Parks, Recreational Vehicle Parks, Mobile Home Subdivisions, Recreational Vehicle Subdivisions and all other residential subdivisions.

§ 8-9-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MARKET DAYS, COUNTRY STORE, BAZAAR DAYS AND THE LIKE. An event at a temporary location not exceeding 1 day per week conducted within a mobile home park, travel trailer park, recreation vehicle park or mobile home, recreational vehicle or residential subdivision for the purpose of providing goods and services, ancillary retail sales and activities intended for residents and non-residents.

SPONSOR. Any non-profit organization, for-profit corporation, home owners association or any other entity which is legally formed and obligates itself to organize, operate and manage a market days event.

§ 8-9-3 VIOLATION AND PENALTY.

It is unlawful for any sponsor of a market days event to permit any vendor to set up at the event without the vendor having first met all city licensing requirements. Violations of this article are punishable under A.J.C.C., Vol. I, § 1-1-11.

§ 8-9-4 MARKET DAYS SPONSOR REQUIREMENTS.

- (A) The sponsor of any market day events shall apply for and obtain a transaction privilege tax license from the city clerk prior to conducting or allowing ancillary retail sales (e.g., market days, craft/art sales, fundraisers and temporary food vendors).
- (B) The sponsor shall comply with required sales tax administration and collection processes and shall be responsible for the collection and remittance of city sales tax on market days sales.
- (C) Any food truck vendor, as defined in this chapter, that is present at a market days event shall follow the regulatory process in Article 8-10 of this chapter.

§ 8-9-5 MARKET DAYS VENDOR REQUIREMENTS.

- (A) Shall apply to vendors participating in market days if there is not a market days sponsor as set forth in section 8-9-4.
 - (1) All vendors who engage or attempt to engage in a sale at a market days event or who advertise or solicit services or products shall complete the city license application and pay the required fee in accordance with this chapter and the city tax code in order to participate in the event.
 - (2) Non-profit organizations who participate as vendors at market days shall not be required to complete a city application if their participation is limited to the distribution of literature or information relative to their organization and they have the required city license.
 - (3) Any vendor who conducts business activity at a market days event shall obtain the appropriate license and pay the applicable license fee as set forth in the city tax code.
 - (4) Any vendor who conducts business activity at a market days event shall always be in possession of an appropriate license, and such license, or a copy thereof, shall be produced upon the request of any city official or the market days sponsor or coordinator.

(B) Any food truck vendor, as defined in this chapter, that is present at a market days event shall follow the regulatory process in Article 8-10 of this chapter.

ARTICLE 8-10: MOBILE AND TEMPORARY FOOD AND BEVERAGE VENDORS

§ 8-10-1 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MOBILE FOOD VENDING VEHICLE. A licensed concession trailer or motorized vehicle suitable for use on a public highway which is equipped and primarily used for the sale of food and beverage of any kind including prepared, pre-packaged or unprepared, unpackaged food and non-food sundries specifically related to the mobile food vendor's business.

FOOD VENDING CART. Any wheeled device moved by human power.

MOBILE FOOD VENDOR. Any person or entity, as defined in this chapter, who:

- (a) owns, controls, manages, operates and/or leases a mobile food vending vehicle or food vending cart;
- (b) contracts or employs any person to drive, operate, prepare foods, and/or vend from a mobile food vending vehicle or food vending cart.

OPERATOR. Any person who prepares food and/or sells food, beverages or sundries from a mobile food vending vehicle or food vending cart or any individual that operates such a vehicle or cart.

§ 8-10-2 PERMIT.

(A) *Required.* It is unlawful for any mobile food vendor to conduct business without first obtaining and maintaining a mobile food vendor permit and all other required licenses, including a privilege tax license, a county environmental health services permit, current food handler's card and identification cards as may be required by this chapter. If a mobile food vendor has more than one food vending vehicle or food vending cart, multiple permits shall be required. There shall be no application fee for a mobile food vendor permit.

(B) *Application.* In addition to the requirements set forth in this chapter and the Apache Junction Tax Code, applicants for a mobile food vendor permit shall include the following information with the permit application:

- (1) A description of the goods to be sold;
- (2) If the applicant is an agent of the business for which the permit will be issued, the name and address of the agent, if different from the business address, together with credentials establishing the exact relationships with the mobile food vendor;
- (3) A description, license plate number and photograph of the vehicle or cart;

- (4) All location(s) from which the applicant intends to conduct business and a permanent address to which notifications may be sent;
- (5) A valid driver's license;
- (6) A mobile food vendor shall provide proof of vehicle liability insurance which shall be maintained during the term of the permit and shall have at least the minimum limits required by law;
- (7) A mobile food vendor who conducts business on public property or city right-of-way shall provide: a) a certificate of insurance naming the "City of Apache Junction" as an additionally insured party; and b) a signed indemnification and duty to defend and hold harmless commitment.

§ 8-10-3 MOBILE FOOD AND VENDING OPERATING CONDITIONS.

Mobile and temporary food and beverage vendors who have obtained a permit shall be subject to the following limitations and conditions:

- (A) Mobile vending shall only be permitted to operate on developed, commercially zoned property and shall not be authorized to operate on vacant lots and shall not impede access to adjacent businesses;
- (B) There shall be an open and operating permanent business on the site in order to accommodate the sanitary facilities access requirement of the Building Code (i.e, restrooms, trash, recycling, food waste and grease disposal). The temporary food and beverage vendor must also be able to use these facilities;
- (C) The hours of operation for the vendors shall be limited to the hours that the on-site, permanent business is open;
- (D) The vendor shall secure the permission of the sponsoring business owner;
- (E) Vendors/operators of food vending vehicles shall arrange for trash receptacles and will dispose of all trash during operations and shall keep the area surrounding the mobile food vending vehicles free of debris, litter and waste;
- (F) The temporary food and beverage vendors shall not store the vehicle or cart when the permanent on-site business is not open unless the operator has the sponsoring business owner's permission;
- (G) Mobile food vending vehicles or carts shall not be stored on the sponsoring business' property, when not in use, in lieu of placing it in a storage lot or similar facility regardless of the sponsoring business owner's permission;
- (H) Mobile food and beverage vending shall be limited to 96 consecutive hours maximum at each temporary location;
- (I) Signage attached to a mobile food vending vehicle shall not require a sign permit, but must conform to the signage regulations in the City of Apache Junction Zoning Ordinance. One A-frame sign or menu board per vehicle or cart is also permitted;
- (J) A mobile food vendor or operator shall carry at all times proof of liability insurance, mobile food vendor permit, county health department permit, food handling card and proof of property owner approval to be on a given property;

(K) A mobile food vendor or operator may operate on city-owned or leased property, public right-of-way or city park as part of a civic event;

(L) Mobile food vending shall not be permitted on any city street or public right-of-way unless it is part of a civic event;

(M) Mobile food vendors shall be permitted to operate on private property at any location within the city when catering a private function and shall not stage the vehicle on public property or right-of-way.

(N) If the mobile food vendor is charged a fee for the food truck space, the sponsoring business owner shall comply with city tax code requirements.

§ 8-10-4 PERMIT REVOCATION AND APPEALS.

(A) A mobile food vendor permit shall be revoked by the city clerk's office for any of the following reasons:

(1) The permittee notifies the city in writing with appropriate signature that the business has been closed, sold or is no longer operating in the city; or

(2) Fraud, misrepresentation or false statement contained in the application for a permit;

(3) Any violation of this chapter or the City Tax Code; or

(4) Conducting a business activity in violation of the Arizona Revised Statutes.

(B) Revoked permits may be reinstated only after the cause of such revocation has been fully corrected;

(C) A person whose permit has been revoked shall be issued a notice to cease mobile food vending operations within the city;

(D) Any person aggrieved by the city's decision to revoke a permit pursuant to subsection (A) above shall have the right of appeal to a hearing officer designated by the city manager. The appeal shall be filed with the city manager within 14 working days after receipt of the city's decision. The appeal shall contain a written statement setting forth fully the grounds for the appeal. The hearing officer shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant. The decision and order of the hearing officer shall be final and conclusive, except any person aggrieved may pursue any proper judicial proceedings;

(E) No person may reapply for any permit after revocation unless the cause for such revocation has been corrected.

§ 8-10-5 PENALTIES.

Any person violating any of the provisions of this chapter, shall be deemed guilty of a class one misdemeanor and, shall upon conviction, be punished pursuant to the provisions of the Apache Junction City Code, Vol. I, Chapter 1: General, Article 1-1: General, § 1-1-11 Penalty.