



CITY OF PRESCOTT

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Recently a question was asked whether City Charter Art. VI, Section 16 (Voter Protection Initiative/Prop 401) is triggered by the AED Pre-Annexation Development Agreement.

After careful review and study of the plain language of this Charter provision, it is the opinion of the City Attorney that the section does not apply to the agreement. In short, the provisions of the development agreement do not meet the definition of the term "project" as set forth in the Charter section.

The central tenet of this Charter section is that the City may not, without prior voter approval enter into one or more agreements or contracts relating to a single "project" that either (i) authorizes or otherwise obligates payment of city funds or (ii) conveys city property, all of which have a threshold of \$40 million adjusted by CPI (now roughly \$50 million). *City Charter Art. VI, Section 16(B)(1)*.

The key terms of the voter approval requirement are the words "City" and "project".

The term "City" is defined as the "City of Prescott". *Id. At Section 16(A)(1)*.

Defining the term "project" requires a look at each part of the definition found in Section (B)(1).

First, "project" is defined as "a group of related activities undertaken for the purpose of performing a discrete function or set of functions or creating interrelated infrastructure".

The City requirements set out in the development agreement are not undertaken for the purpose of the City design or construction of interrelated infrastructure. Design and construction of infrastructure is the responsibility of the developer AED.

"Projects" include:

The "acquisition of land and the design and construction of transportation infrastructure". Section 16(B)(1)(a).

This section does not apply because the City's acquisition of land through the development agreement is not for the purpose of building transportation infrastructure. The City is not designing or constructing transportation infrastructure.

The “acquisition of land and the design and construction of infrastructure to accomplish withdrawal and transportation of water from a remote location”. Section 16(B)(1)(b).

This section does not apply because the City’s acquisition of land is not for the purpose of withdrawal and transportation of water from a remote location. The City is not designing or constructing infrastructure to withdraw and transport water from a remote location.

The transfer or sale of assets related to the design or construction of infrastructure. Section 16(B)(1)(c).

This section does not apply because the City is not transferring or selling assets for the purpose of creating interrelated infrastructure. Providing water to a development is not the transfer or sale of assets; it is the provision of municipal services. Moreover, the actual water provided will be through a series of hundreds of individual transactions when the builder or owner gets the water meter. Also, that transaction requires the payment of water resource development impact fees, meaning that the homeowner pays for the provision of water. The providing of a City service is not the sale of a City asset.

The design and construction of a single physical facility or complex. Section 16(B)(1)(d).

This section does not apply because the City is not designing or constructing a single facility or complex of interrelated infrastructure. The developer AED builds all internal and external infrastructure.

Based on the plain language in Art. VI, Section 16 of the City Charter, the subject development agreement is not a contract to design or construct a “project” – the City of Prescott is not doing a “project” as a function of the development agreement. As such because the development agreement is not an agreement related to a “project”, the voter approval requirement does not apply.

As an additional part of the analysis, we asked the question, what if, by some stretch of the imagination, the development agreement were to be deemed a “project”? Even if that were the case, none of the individual undertakings the City is making relates to the type of “project” defined in the Charter (i.e. expenditures related to interrelated infrastructure).

The definition of “project” in the Charter Art. VI, Sec. 16 (A) (2) and the definition’s several components describe capital improvement projects in the City’s annual budget and CIP, in the City’s customary expenditure planning for capital improvements and projects, in the financing mechanisms relied upon

for constructing capital projects, and in the budgeting and accounting conventions utilized by the City.

Additionally, a Project must have a clearly identifiable element of singularity or discreteness, not merely some relationship or even infrastructure interconnection.

When completed, a Project must perform or enable a function or operation on a stand-alone basis. It must involve a specific plan or design to accomplish a government goal through a planned capital or infrastructure improvement.

The determination of what is a Project must focus on the capital facility, infrastructure, or functionality that will be constructed or achieved. As used within the definition of Project in the Charter, in which the transfer or sale of “assets” may be considered a project, “Assets” must be considered capital assets or a transaction for transfer of assets that is treated as a capital expenditure in the accounting and budgeting standards and conventions used in the adopted annual budget and City financial reports.

The following is a list of City activities related to the development agreement and a brief explanation as to why none constitute a “project” expense or obligation as defined in the City Charter.

- Acquisition of 474 acres – for open space and recreation
- Acquisition of 270 acres – for open space and airport protection
- Purchase of 131 acres for airport expansion – already a planned purchase to extend runway; ancillary to the purpose of the development agreement; City would acquire regardless of development agreement; unrelated to streets and roads (i.e. transportation as intended by the section)
- Purchase of the W parcel and additional 43 acres – purchased for economic development purposes
- Granite Creek Crossing – an already planned project funded by DIFs
- Peavine Trail Extension – an already planned project; for recreation purposes; not for street or road transportation
- Building Granite Creek Trail – for recreation purposes
- Building Gateway Park – for recreation purposes
- Building Library and Learning Center – for educational purposes
- Building of grade separated crossing – might be considered “transportation” infrastructure; if funded by CFD, this section does not apply; if funded by street sales tax, cost is under \$2 million, so it is well below \$50 million threshold
- Acquisition of County bridge – primarily for recreation purposes; transportation aspect is ancillary; cost to acquire and re-furbish is *de minimis*

- Acquisition of land for enviro library and learning center – for educational purposes and a project that is separate from and not dependent on the development agreement

In the end, a thoughtful and careful reading of City Charter Art. VI, Section 16 (i.e. Prop 401 - the Voter Protection Initiative) tells us that the development agreement falls squarely outside that section's purview and is not subject to any voter approval requirements.