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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF ARIZONA**

12
13 **Mehmood Mohiuddin,**
14 **Hitching Post Pizza & Pub, LLC**
15
16 Plaintiffs,

17 v.

18 **City of Apache Junction,**
19
20 **Bryant Powell, City Manager in**
21 **his official and individual**
22 **capacities,**
23
24 **Matt Busby, Assistant City**
25 **Manager, in his official and**
26 **individual capacities,**
27
28 **Kathleen Connelly, City Clerk in**
her official and individual
capacities,

Case # CV-18-01180-PHX-GMS
FIRST AMENDED FCOMPLAINT
AND DEMAND FOR JURY TRIAL

1 **Larry Kirch, Development**
2 **Services Director, in his official**
3 **and individual capacities,**

4 **Rudy Esquivias, Senior**
5 **Planner/Zoning Administrator,**
6 **in his official and individual**
7 **capacities,**

8 **Joel Stern, City Attorney, in his**
9 **official and individual**
10 **capacities,**

11 Defendants.
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13 Plaintiff Mehmood Mohiuddin by and through Elizabeth D. Tate, his
14 undersigned attorney of record, submit this First Amended Complaint for
15 relief and Demand for Jury Trial pursuant to Federal Rules of Civil
16 Procedure ("FRCP"), Rules 3, 7(a)1, 8(a), and 38(a, b).
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20 **Plaintiff's Two Claims**

- 21 1. 42 U.S.C. 1983 – Violation of Fourteenth Amendment right to
22 equal protection of the law with respect to operation a business
23 establishment.
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25 2. 42 U.S.C. 1981 – Race discrimination in the making of a contract.
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27 **3. The Parties, Jurisdiction and Venue**
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1 **1.** Plaintiff Mehmood Mohiuddin is and has been always material to
2 this Complaint, an adult resident of Pinal County, Arizona.
3 Mohiuddin is of Pakistani national origin who emigrated to the
4 United States from Pakistan and then became a naturalized
5 citizen of the United States. Mohiuddin is the subject of
6 Defendant's racial slurs and discriminatory regulation and
7 interference with his LLC, Hitching Post Pizza & Pub.
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10 **2.** Plaintiff Hitching Post Pizza & Pub, LLC "Hitching Post",
11 operates a restaurant/bar in Apache Junction that provides food
12 and entertainment to its customers including bull-riding and
13 music. Hitching Post Pizza & Pub has been the target of
14 Defendant's discriminatory regulation of its business by requiring
15 a Conditional Use Permit, "CUP" that unreasonably restricts
16 Hitching Post's business operations and expansion.
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20 **3.** The Defendant the City of Apache Junction is and has been
21 always material to this Complaint, a City located in Pinal and
22 Maricopa Counties in Arizona with a population of about 35,840.
23 Most Apache Junction residents reside in Pinal County. The City
24 of Apache Junction operates its offices at 300 E. Superstition
25 Boulevard in Apache Junction, Pinal County, Arizona.
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1 **4.** Bryant Powell is Apache Junction's City Manager. Powell is the
2 head policy and decisionmaker for the Economic Development
3 Department that includes Zoning and Planning the implemented
4 discriminatory policies of the Economic Development
5 Department against Plaintiffs including the discriminatory CUP.
6 Powell was responsible for Cowboy's Up, Inc. CUP which only
7 had six reasonable condition. Powell provided Cowboy's Up,
8 Inc. a similarly situated business with a reasonable CUP while
9 Powell provided Plaintiffs with a discriminatory CUP with 14
10 arbitrary and capricious conditions, Powell deprived Plaintiffs of
11 equal protection of the law.
12

13 **5.** Matt Busby is the City of Apache Junction's Assistant Manager
14 who attends City Council meetings to assist Powell in managing
15 the day-to-day internal and external operations of Apache
16 Junction. Busby oversees the Economic Development
17 Department and helped to implement and approved the
18 discriminatory actions of Zoning and Planning who oversaw the
19 approval process for the expansion of Plaintiffs' business. Busby
20 assisted Powell to devise and enforce the Hitching Post's
21 discriminatory CUP.
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1 **6.** Kathleen Connelly is the City of Apache Junction's City Clerk
2 who is responsible for preparing and keeping minutes of City
3 Council and Committee meetings. Connelly oversees the City's
4 Public Record's request program. In 2015, Connelly conspired
5 with Former Mayor, John Insalaco, to launch a state tax audit of
6 Plaintiffs finances to find out the source of Plaintiffs' money to
7 purchase Plaintiffs' property located on N. Cortez Road that
8 serves a parking lot for Plaintiffs' business. Connelly is
9 responsible for denying Plaintiffs equal protection of the law and
10 discriminated in the making of a contract when she instructed
11 Deputy Clerk, Jan Mason to deny Mohiuddin a copy of town
12 council meetings and complaints against his business while
13 providing the same documents Mohiuddin requested to another
14 Caucasian resident.

15
16 **7.** Larry Kirch is the City of Apache Junction's Development
17 Services Director responsible for implementing the zoning
18 ordinances and CUP process that operates to discriminate
19 against Plaintiffs. Kirch played a role in developing the
20 discriminatory CUP for the Hitching Post.

1 **8.** Rudy Esquivias is the City of Apache Junction's Senior
2 Planner/Zoning Administrator whose responsibility is to present
3 and discuss proposed business plans submitted to the Economic
4 Development Department. Esquivias signed the CUP for
5 Cowboy's Up, Inc. which contained only six reasonable
6 conditions. Esquivias collected the discriminatory
7 requirements of the individually named City Defendants
8 added as 28 conditions to the Hitching Post's CUP that
9 Esquivias signed.
10

11 **9.** Joel Stern is the City Attorney responsible for enforcing the
12 Defendant's discriminatory policy and capriciously deciding on
13 June 9, 2018, a weekend, and communicating to Plaintiffs' land
14 use and zoning attorney that Plaintiffs' had "enough time" to
15 build the fence required by the CUP. Stern instructed Plaintiffs
16 not to use his parking lot on N. Cortez Rd or face penalties to
17 effectively shut down Plaintiffs' business by providing Plaintiffs'
18 patrons no place to park.
19

20 **10.** All events alleged herein occurred within Pinal County in
21 the State of Arizona.
22

23 **11.** This Court has subject matter jurisdiction for Plaintiff's
24 claim herein because it arises from federal law to-wit: 42 U.S.C.
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1 1983, as provided by 28 U.S.C. 1331 and 28 U.S.C.
2 1343(a)(3,4).

3 **12.** This Court (The U.S. District Court for Arizona) is the
4 proper venue for this action pursuant to 28 U.S.C. 1391(b)(1,2).

5 **4. General Fact Allegation**

6 **13.** Plaintiff Mehmood Mohiuddin operates a restaurant/bar
7 named "The Hitching Post" located at 2341 N. Apache Trail in
8 Apache Junction, AZ. The Hitching post is operated as
9 Hitching Post Pizza Pub, LLC. Plaintiffs employ 8 workers, 6
10 of whom are waitresses in the summer. During the winter
11 months Plaintiffs employ 25 people.
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14 **14.** In 2015, Mohiuddin expanded his business to offer bull-
15 riding on Thursdays and Saturdays which occurs on the
16 property located at 2341 N. Apache Trail. Mohiuddin modified
17 the Hitching Post's economic development plan to include bull-
18 riding. When Plaintiffs acquired the N. Cortez Road property
19 for parking, Defendant Kirch approached Mohiuddin to direct
20 him to lease the Cortez Road property from himself to the
21 Hitching Post to satisfy City requirements. On December 12,
22 2015, Mohiuddin honored Kirch's request and executed a
23 lease between himself and Hitching Post Pizza & Pub, LLC so
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1 the Cortez Road property could be utilized for parking. Kirch
2 later claimed that he did not know that a lease between
3 Mohiuddin and the Hitching Post Pizza & Pub even existed.
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5 **15.** Mohiuddin utilized the Cortez Road property for two
6 years without incident. In 2017, Larry Kirsch, Director of
7 Planning and Zoning informed Mohiuddin that to continue to
8 utilize the Cortez Road property for parking that he would have
9 to apply for a Conditional Use Permit "CUP". Kirsch claimed
10 that the reason he needed to apply for the CUP was that the
11 City received a valid complaint from neighbors adjacent to the
12 Hitching Post which was not true.
13
14

15 **16.** Mohiuddin's neighbors, led by the City Defendants,
16 have continually harassed him, including former Mayor
17 Insalako. The neighbors made numerous baseless
18 complaints with the Apache Junction Police Department, Pinal
19 County Health Department, Pinal County Dust Control &
20 Permits, Arizona Department of Liquor and Arizona
21 Department of Environmental Quality but none of those
22 agencies have ever found reason to cite Mohiuddin. Mohiuddin
23 has also learned that over the years, City officials referred to
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1 him as sand-nigger, camel jockey and terrorist including
2 Defendant Connelly. In fact, in 2015, Defendant Connelly
3 conspired with former Mayor Insalaco to have the state conduct
4 a tax audit of Plaintiff's revenue to find out the source of
5 Plaintiffs' funds used to purchase the N. Cortez Road property.
6 During his tenure, former Mayor Insalaco bluntly told Mohiuddin
7 that the "did not belong here" and that "this was their town"
8 and referred to Mohiuddin with racial epithets behind
9 Mohiuddin's' back.
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13 **17.** In December of 2017, Mohiuddin once again employed the
14 services of an attorney to submit the required CUP application.
15 City officials gave Plaintiffs a hard time. The attorney informed
16 Mohiuddin that city officials "did not like" Mohiuddin. The City
17 responded to Plaintiffs' application by placing 28 conditions on
18 Mohiuddin's CUP, 13 of which were arbitrary and capricious as
19 follows:
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- 22 a. Condition 1 requires that Mohiuddin construct, within six months,
23 a minimum of 12 foot wooden screen fence for parking that
24 violates City code that requires parking fences to be a minimum
25 of three feet or to a maximum of four feet high.
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1 b. Condition 2 requires that within 12 months, Mohiuddin
2 construct a 12 foot decorative wall around his property that
3 which also would violate City code which limits walls to an 8 foot
4 maximum.
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6 c. Condition 3 requires that Mohiuddin bear the cost of a traffic
7 study for all the businesses on Highway 88 without contribution
8 from the other businesses. Mohiuddin spoke to Arizona
9 Department of Transportation who informed him that the
10 Highway 88 does not have enough traffic to warrant a traffic
11 study.
12

13 d. Condition 4 requires Mohiuddin to install a septic system to be
14 inspected by City engineers that are not even in the City's
15 jurisdiction. Pinal County would be responsible for any
16 inspection.
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18 e. Condition 6 and 7 requires that concerts end on Mohiuddin's
19 property by 7 p.m. and that he must hire city police officers to
20 help with traffic and safety during the concerts. Plaintiffs informed
21 the City that his business will not offer concerts yet condition 6
22 and 7 are still required of him.
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- 1 f. Condition 8 requires that bull-riding begin a 7 p.m. and end at 9
2 p.m. when Mohiuddin had already been approved to operate bull-
3 riding from 8 p.m. to 10 p.m.
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- 5 g. Condition 9 requires that all similar or lesser intensity activities
6 take place during the new bull-riding hours that violate the
7 previous hours of operation that Mohiuddin had been granted
8 under his development agreement. Development agreements
9 are customarily modified by amendment not CUPs.
10
- 11 h. Condition 10 requires that all music and announcements end at
12 9 p.m. and lights turn off by 10 p.m. which violates the previous
13 hours of operation Mohiuddin had been granted.
14
- 15 i. Condition 12 requires that any activities in new areas where
16 Mohiuddin chooses to expand must end at 9 p.m. weekdays and
17 10 p.m. weekends in violation to his current development
18 agreement.
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- 20 j. Condition 13 prohibits Mohiuddin from using storage lot area for
21 overflow parking or employee parking when the City did not
22 prohibit previous Caucasian owners from using the area for
23 overflow parking.
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1 k. Condition 15 subjects Mohiuddin's business to arbitrary
2 supervision in the future.

3 l. Condition 17 prohibits Mohiuddin's CUP from being
4 transferable should he sell my business in the future which will
5 operate to deter others from purchasing his business.
6

7 m. Condition 18 grants Mohiuddin use of his economic development
8 plan until the City nullifies the economic development agreement
9 based on no objective standards.
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11 18. With the assistance of others who were outraged by the
12 blatant discrimination by the City Defendants, Mohiuddin
13 learned that in 2013, the City Defendants required Cowboys
14 Up, Inc. a similarly situated, Caucasian owned, restaurant/bar
15 to apply for a CUP. Cowboy Up, Inc. CUP only had 6
16 objective, reasonable conditions as follows:
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18 a. Condition 1 obtain proper building permits
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20 b. Condition 2 continue to use a freestanding sign on its property
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22 c. Condition 3 provide accent landscaping
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24 d. Condition 4 submit drawings for the restaurant
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26 e. Condition 5 take reasonable precautions to keep outside music
27 at a level that does not disturb neighbors
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1 f. Condition 6 the planning and zoning commission reserved the
2 right to reconsider the CUP for non-compliance with the CUP

3 **19.** Mohiuddin, suspecting that he was being discriminated
4 against, attempted to make a public request to learn whether
5 the City had issued any CUPs to other businesses in the City
6 and copies of complaints against his business. On January 9,
7 2018, Jan Mason, Deputy City Clerk under the direction of
8 Defendant Connelly refused to honor Mohiuddin's public
9 records request. Mason told Mohiuddin that she did not have
10 to respond to his public records request because it was for
11 "research". It was not. Defendant Connelly honored the same
12 public records requests for a Caucasian resident but denied
13 equal treatment to Mohiuddin.

14 **20.** In 2017, another business, Handlebar, also owned by a
15 Caucasian and similarly situated, purchased property for a
16 parking lot. The City did not require Handlebar to submit at
17 CUP but permitted Handlebar to utilize the parking lot with a
18 lease to satisfy City requirements. To this day, the City
19 Defendants permit Handlebar to lawfully operate its parking lots
20 with a lease between the business owner and its company.
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1 **21.** Confused by the arbitrary and capricious actions of the
2 City, Mohiuddin inquired of Defendant Powell, City manager of
3 his operating hours. On May 30, 2018, Powell responded to
4 Mohiuddin that he was free to operate his business under his
5 current economic development agreement but later changed
6 his mind. According to the proposed CUP, Mohiuddin has six
7 months to meet its conditions and to operate his business in the
8 meantime. The Hitching post CUP is scheduled to be approved
9 on June 11, 2018. There is no means for Plaintiffs to appeal.

10 **22.** On June 9, 2018, a weekend, Defendant Stern arbitrarily
11 and capriciously informed Plaintiff's land use/zoning attorney,
12 that Plaintiffs may no longer provide its patrons with parking park
13 on the Cortez Road property as previously permitted. Stern
14 claimed that the City finalized the provisions of the CUP and
15 had given Mohiuddin, "enough time" to construct a fence. The
16 CUP gave Mohiuddin 6 months to construct the fence, the time
17 for which had not passed at the time Stern told Mohiuddin not
18 use his parking lot. Mohiuddin estimates that to construct the
19 fences contemplated by the CUP and other requirements it would
20 cost Plaintiffs upwards of \$100,000.00. Without funds to make
21

1 the modifications, the Defendants will have shut the doors of the
2 Hitching Post for lack of parking which would cripple Plaintiffs'
3 business. Plaintiffs also fear that should it find the resources to
4 build the fence that the City Defendants will only at a later day
5 require Plaintiffs to tear it down because the fence as requested
6 violates City code.
7

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9 **23.** The City of Apache Junction has a policy or custom of
10 denying minorities equal protection of the law. To wit: a minority
11 business owner of an establishment called Cobbs was
12 compelled to enter into a hold harmless agreement concerning
13 fire department qualifications despite his business passing fire
14 department inspections. The City of Apache Junction also has a
15 policy of race discrimination with City employees freely using
16 racial epithets to refer to Mohiuddin.
17

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19 **24.** The City of Apache Junction by requiring Mohiuddin to
20 abide by a CUP under onerous terms while making no such
21 requirements for Caucasian business owners of similarly
22 situated businesses have denied Mohiuddin equal protection of
23 the law. The City of Apache Junction acted pursuant to its
24 policy of race discrimination.
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1 **25.** As the direct and proximate result of the Defendant City
2 of Apache Junction and Defendant Powell denying Mohiuddin
3 equal protection of the law, Mohiuddin and the Hitching Post
4 have suffered damages including, inter alia, the loss of the
5 operation of their business and resulting lost income, emotional
6 distress, sadness, loss of self-esteem, worry about how
7 Mohiuddin will support himself without being able to lawfully
8 operate the Hitching Post.
9

10 **26.** Each of the individually named Defendant's by approving
11 and/or placing onerous provisions on Plaintiffs' CUP have
12 discriminated because of national origin in the making of a
13 contract as prohibited by 42 U.S.C. 1981.
14

15 **27.** As the direct and proximate result of the individually
16 named Defendants' discrimination in the making of a contract,
17 Plaintiffs Mohiuddin and Hitching Post have suffered damages
18 including, inter alia, the loss of the operation of their business
19 and resulting lost income, emotional distress, sadness, lost of
20 self-esteem, worry about how Mohiuddin will support himself
21 without being able to lawfully operate the Hitching Post.
22

23 **28. Demand for Jury Trial**
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1 Plaintiff Mohiuddin demands a trial by jury pursuant to the Seventh
2 Amendment to the United States Constitution and FRCP Rule 38(a,b).

3 **29. Relief Requested**

4 Count One as to City of Apache Junction and Defendant Powell
5 42 U.S.C. 1983 – Violation of Fourteenth Amendment right to equal
6 protection of the law to operate a business establishment

- 7 1. Compensatory damages, including, inter alia, emotional distress
8 damages, harm to reputation, and other general tort damages.
9 2. Punitive damages as to Bryant Powell.
10 3. Preliminary and Permanent Injunctive relief to enjoin acts of
11 discrimination and to permit Mohiuddin to lawfully operate his business.
12 4. Reasonable attorney's fees and expert fees incurred herein,
13 pursuant to 42 U.S.C. 1988 (b)(c), and FRCP Rule 54(d)2.
14 5. Taxable costs incurred herein, pursuant to FRCP Rule 54(d)1, and
15 28 U.S.C. 1920.

16
17 Count Two as to Defendants Powell, Busby, Connelly, Kirch, Esquivias and
18 Stern

19 42 U.S.C. 1981 – Discrimination in the making of a contract based on
20 national origin

- 21 1. Compensatory damages, including, inter alia, emotional distress
22 damages, harm to reputation and other general tort damages
23 2. Punitive damages
24 3. Preliminary and Permanent Injunctive relief to enjoin acts of
25 discrimination to prevent future national origin discrimination and to
26 permit Plaintiffs to lawfully operate their business.
27 4. Reasonable attorney's fees and expert fees incurred herein, pursuant
28

1 to 42 U.S.C. 1988 (b)(c), and FRCP Rule 54(d)2.

2 5. Taxable costs incurred herein, pursuant to FRCP Rule 54(d)1 and 28
3 U.S.C 1920.

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6 Dated this 11th day of June 2018.

Respectfully submitted,

7 /s/ Elizabeth D. Tate

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Elizabeth D. Tate

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RESOLUTION NO. 18-21

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING CASE CUP-9-17, AN APPEAL OF A CONDITIONAL USE PERMIT REQUEST BY MEHMOOD MOHIUDDIN TO CONDUCT VARIOUS OUTDOOR ENTERTAINMENT ACTIVITIES ON PROPERTY SURROUNDING THE HITCHING POST AND HP STEAKHOUSE RESTAURANTS, OWNED BY MR. MOHIUDDIN; ACTIVITIES MAY INCLUDE GAZEBO AND WATER FEATURE, EVENT AND CONCERT AREA (INCLUDING WEDDINGS, CONCERTS, CAR SHOWS, ART FAIRS, WRESTLING SHOWS, OTHER EVENTS), SAND VOLLEYBALL COURT, CORNHOLE GAMES, FIRE PITS, BULL-RIDING AND EVENT ARENA, PUTTING GREEN AND OTHER SIMILAR ACTIVITIES FOR HIS PATRONS, AS WELL AS PARKING ACCOMMODATION FOR THE ACTIVITIES AND EVENTS.

WHEREAS, on or about December 27, 2017, a Conditional Use Permit ("CUP") application was submitted to the City of Apache Junction ("City" or "Apache Junction") by Mehmood Mohiuddin ("property owner" or "applicant"), requesting approval to operate an outdoor entertainment venue and other outdoor activities on his property located at the southeast corner area of E. Lost Dutchman Boulevard and N. Apache Trail, addressed as 2341 N. Apache Trail (the "subject property"), and which is partially legally described as:

A part of the Northeast quarter of the Northeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona; and

WHEREAS, a complete metes and bounds legal description of the subject property is available at the City's development services department; and

WHEREAS, on March 13, 2018, the City's Planning and Zoning Commission held a work session discussion to discuss case CUP-9-17 with city planning staff; and

WHEREAS, on March 27, 2018, the City of Apache Junction Planning and Zoning Commission ("commission") held a public hearing on case CUP-9-17, wherein the commissioners heard the

staff evaluation and recommendations pertaining to the case, as well as the applicant's presentation and suggested conditions of approval; and

WHEREAS, on March 27, 2018, as part of public input, the commissioners viewed video presentations and heard testimony both in favor and against the request; and

WHEREAS, on March 27, 2018, the commission, after: 1) receiving satisfactory responses to the questions raised at the discussion meeting and public hearing; 2) hearing, considering and discussing all of the facts and comments presented by staff, applicants, neighbors and other interested parties; 3) reviewing the land use criteria relevant to the granting of a CUP, as contained in the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12(D)(3), and the evaluation of said criteria in the staff report dated March 27, 2018, voted 6-1 in favor of case CUP-9-17, citing specific findings relative to the case and prescribing conditions of approval as memorialized and enumerated in that document titled "Planning and Zoning Commission Resolution No. CUP-9-17", a copy of which is available at the city's development services department, contained in case file CUP-9-17; and

WHEREAS, on April 16, 2018, within the requisite time period, an appeal was filed in writing by attorney Evan Bolick on behalf of his clients, property owners and neighbors of the Hitching Post, James and Bambi Johnson, Mark and Kindra Theisman, Nick and Helen Funk, Rich and Kathy Beavers, and Patrick and Diana La Clair, accompanied by the appropriate fees, requesting that the commission-approved CUP be forwarded to the mayor and city council to be overturned due to both procedural and substantive deficiencies, or alternatively, be modified to ensure that the expanded use of the Hitching Post does not contribute to the deterioration of the neighborhood and is compatible with surrounding properties; and

WHEREAS, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Subsection 1-16-12(D)(7), Appeal and City Council Review: "The

approval or denial of a CUP by the commission shall be final unless, within 20 calendar days from the date of the commission's decision, the applicant or any persons aggrieved by the decision appeals the decision to the city council. The appeal shall be in writing, filed with the development services department, and shall indicate how the commission was in error. The appeal shall be accompanied by a fee equal to 50% of the original fil-ing fee. The appeal shall require a council public hearing and notification provided in the same manner as required for the planning and zoning commission hearing. The council, at its public hearing, shall uphold modify or overrule the decision of the commission. The decision of the council shall be final."; and

WHEREAS, on May 15, 2018, the mayor and city council conducted a new public hearing on the appeal of case CUP-9-17 and heard from the applicants, the appellants, the public and other interested parties, and made the following decision, with findings of fact, relative to the CUP appeal request, as follows:

"That the decision of the planning and zoning commission memorialized in Planning and Zoning Commission Resolution No. CUP-9-17, be modified with changes to some of the conditions based on the following findings:

That pursuant to Apache Junction City Code, Volume II, Zoning Ordinance, Section 1-16-12(D)(3), the uses covered by the conditional use permit, the manner of its conduct and any structure involved, will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood or to the public welfare in general.

This finding is based on the following factors:

Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare; the applicant has agreed on the conditions for the dust control to minimize the dust and various items coming up from the ground;

Compatibility with surrounding uses and structures; that the Hitching Post is in B-1 zoning and that was not in dispute;

staff evaluation and recommendations pertaining to the case, as well as the applicant's presentation and suggested conditions of approval; and

WHEREAS, on March 27, 2018, as part of public input, the commissioners viewed video presentations and heard testimony both in favor and against the request; and

WHEREAS, on March 27, 2018, the commission, after: 1) receiving satisfactory responses to the questions raised at the discussion meeting and public hearing; 2) hearing, considering and discussing all of the facts and comments presented by staff, applicants, neighbors and other interested parties; 3) reviewing the land use criteria relevant to the granting of a CUP, as contained in the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12(D)(3), and the evaluation of said criteria in the staff report dated March 27, 2018, voted 6-1 in favor of case CUP-9-17, citing specific findings relative to the case and prescribing conditions of approval as memorialized and enumerated in that document titled "Planning and Zoning Commission Resolution No. CUP-9-17", a copy of which is available at the city's development services department, contained in case file CUP-9-17; and

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WHEREAS, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Subsection 1-16-12(D)(7), Appeal and City Council Review: "The

RESOLUTION NO. 18-21

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WHEREAS, on or about December 27, 2017, a Conditional Use Permit ("CUP") application was submitted to the City of Apache Junction ("City" or "Apache Junction") by Mehmood Mohiuddin ("property owner" or "applicant"), requesting approval to operate an outdoor entertainment venue and other outdoor activities on his property located at the southeast corner area of E. Lost Dutchman Boulevard and N. Apache Trail, addressed as 2341 N. Apache Trail (the "subject property"), and which is partially legally described as:

A part of the Northeast quarter of the Northeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona; and

WHEREAS, a complete metes and bounds legal description of the subject property is available at the City's development services department; and

WHEREAS, on March 13, 2018, the City's Planning and Zoning Commission held a work session discussion to discuss case CUP-9-17 with city planning staff; and

WHEREAS, on March 27, 2018, the City of Apache Junction Planning and Zoning Commission ("commission") held a public hearing on case CUP-9-17, wherein the commissioners heard the

Conformance with the general plan; that the Hitching Post is in fact in compliance with the general plan, that was not in dispute; and

Unique nature of the property, use and/or development's physical characteristics; the applicant has developed the area thus far with some very unique features.

The applicant has met the burden of proof on some factors mentioned under Finding B."

The following conditions of approval of the resolution are modified as follows: The 25 conditions of approval brought forth by the P&Z in Resolution No. CUP-9-17 be replaced as follows:

- 1) Within six (6) months of CUP-9-17 ("CUP") approval, the property owner shall construct a minimum 12-foot-high solid wood screen fence designed in the same "western town" theme as the existing fence to the south of the Hitching Post Restaurant. This fence shall be constructed along the east side of the bull-riding activity area and shall continue, trace and surround the proposed new activity areas easterly and southerly of the restaurants, as proposed under the CUP. No additional outdoor activities allowed by this CUP in the expansion area shall occur until said minimum 12-foot screen fence has been properly permitted, inspected and approved by the development services department.
- 2) Within one (1) year of CUP approval, a properly engineered and permitted 12-foot-tall western façade theme fence shall be constructed along the E. Lost Dutchman Boulevard and N. Cortez Road frontages of the east parking lot of the Hitching Post and along the north side of the property line where the house is. Said fence shall be set back 10 feet from the edge of the right-of-way and reserve a 20-foot by 20-foot cutoff corner for visibility. Outside of said fence facing Lost Dutchman and Cortez, within the 10-foot strip, the property owner shall install landscaping and irrigation improvements in compliance with the

city's "landscape code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-8, Landscape Regulations. Said landscape plan is subject to review and approval by the city's development services department planning division.

- 3) Within one year of CUP approval, the property owner shall have a traffic impact analysis prepared for his property, subject to review and approval by the city engineer, to determine proper access to said properties from N. Apache Trail and from E. Lost Dutchman Boulevard, including the possible construction of deceleration lanes and other traffic safety improvements.
- 4) Within six (6) months of CUP approval, the property owner shall hire an engineer to conduct a new septic system analysis of the Hitching Post property, based on plumbing fixture counts found in Table 2902.1 of the 2006 International Building Code. The expansion area shall not be used until the minimum number of fixtures and properly sized septic systems are installed/constructed.
- 5) Within six (6) months of CUP approval, all exterior lighting shall be brought into compliance with the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-10, Outdoor Lighting Regulations.
- 6) No more than six (6) concerts and/or other events with outdoor amplified music shall be held in the western town area south of the Hitching Post only and said events shall end by 7pm, local time. These events will be held only between October 15 and May 15 yearly. Other events in this area which do not involve any kind of amplified music or loud speakers are unlimited in number. Lights off for any events held in the western town area shall be 9pm.
- 7) For all outdoor concert (or similar) events held in the western town area, the venue operators shall hire

off-duty Apache Junction police officers to help with traffic control and safety. Should any of the uses under this CUP become a demonstrated traffic safety hazard, additional traffic safety improvements may be required of the venue operators if warranted.

- 8) New hours for bull-riding events under this CUP shall be 7pm to 9pm, Thursdays and Saturdays. Junior rodeo events may be held at the same time and in place of, or as part of normal bull-riding nights and hours.
- 9) Other events of similar or lesser intensity may also take place in the bull-riding arena, in place of and on the same days and times of normally allowed bull-riding events.
- 10) All music and/or announcer loudspeakers used for events held in the bull-riding arena shall be shut off at 9pm and arena lights shall be shut off no later than 10pm.
- 11) The owner of the property shall ensure and take reasonable precautions that any outside music or loudspeaker use from any of the outside activity areas is directed away from and is conducted in such a manner that minimizes disturbance of neighboring residential properties.
- 12) All activities held in the newly defined east expansion area shall end at 9pm, Sunday through Thursday; and 10pm on Fridays and Saturdays, including any ambient music.
- 13) The RV, boat and truck storage lot to the south of the CUP subject area is not a part of this CUP request and shall not be used for any employee and/or event or activity overflow parking at any time. Additionally, there shall be no parking allowed (related to activities and events at the Hitching Post) on Lost Dutchman, Cortez and N. Apache Trail.
- 14) This CUP approval incorporates by reference the submitted site plans date stamped 2-26-18, illustrating the proposed development and activity

areas of the property. The property owner shall not deviate from said plans without the development services director's approval for minor changes, or the Planning and Zoning Commission's approval for major changes through a CUP amendment process.

- 15) Substantial increases in intensity and/or major changes to the CUP, in the opinion of the development services director, shall be defined as, but shall not be limited to: increases in traffic or traffic safety concerns; excessive noise; occupancy/capacity issues; further expansion of activity areas; increase in or violation of hours of operation; increase in the number of events or the hosting of incompatible events; the quality of the property or venue is diminished; the intent and character of the property or its operation is contrary to the intent and spirit of the CUP approval.
- 16) The operators of the outdoor entertainment venue may use the freestanding sign (with the reader board) in front of the Hitching Post to advertise special events on the larger property; or a new properly permitted free-standing monument sign may be placed on the property along E. Lost Dutchman Boulevard to replace the sign that is there now, in accordance with the city's "sign code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-11, Sign Regulations.
- 17) This CUP for an outdoor entertainment venue shall not be transferable upon sale of any part of the property.
- 18) All requirements and obligations pertaining to the separate economic development agreement and amendments thereto for the Hitching Post, Dash In and bull-riding venue remain in full force and effect until such time as the city council nullifies the agreements.
- 19) There shall be no direct access from the events center approved under this CUP to Cortez Road for traffic.

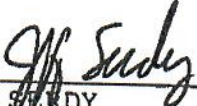
- 20) This CUP must be renewed no later than three years from the effective date of approval. Therefore, the property owner must file a timely and complete application to renew the CUP several months before the renewal date. Failure to renew the CUP shall cause all approvals under this CUP to expire.
- 21) Prior to the one-year anniversary date of this CUP approval, planning staff shall bring this item back for commission review of compliance with conditions and consideration of further commission requirements or actions.
- 22) If any condition of approval is not met in the time allowed, the P&Z Commission shall review the circumstances and determine what action is appropriate.
- 23) At such time as sewer service reaches the property, the entire facility shall become connected to the sewer district system.
- 24) All signage on the subject property, including signage for the Hitching Post/HP Steakhouse/Dash In and events areas, shall at all times be in compliance with the city's "Sign Code" (as referenced in 16 above), including free-standing signs, permanent attached signs, window signs and banners.
- 25) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, stages or scenery, announcer stands or bleachers, fire pits, signage or other property improvements which require permits, in accordance with the concept plans and narrative received for CUP-9-17.
- 26) All parking lots shall be treated for dust proofing in accordance with the options contained in the city's engineering guidelines for dust control mitigation, pursuant to Apache Junction City Code, Volume I, Chapter 9, Health and Sanitation, Section 9-1-3(B), Vehicles, Subsection 9-1-3(B)(6), or other solutions accepted by the development services engineer.

- 27) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Subsection 1-16-12(D)(5), Expiration, the applicants shall improve and begin operating the outdoor entertainment venue in accordance with the submitted drawings, narrative and prescribed conditions of approval, within 12 months of the granting of the CUP or else the CUP shall become void.
- 28) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Subsection 1-16-12(D)(6), Revocation, the planning and zoning commission shall reserve the right to reconsider the CUP approval for the outdoor entertainment venue, at a new public hearing, for noncompliance with any condition prescribed as part of said CUP permit approval, including sign violations or safety problems.

WHEREAS, on the same date, the mayor and city council decided that the previously stated findings and conditions be included in a resolution drafted by the development services department staff, approved as to form by the city attorney, signed by the mayor and attested to by the city clerk as soon as possible in the coming days.


PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS 15th DAY OF May, 2018.

SIGNED AND ATTESTED TO THIS 24th DAY OF MAY, 2018.




JEFF SEADY
Mayor

ATTEST:


KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

 5.23.18
RICHARD J. STERN
City Attorney



City of Apache Junction

Development Services Department

December 17, 2013

Cowboys Up, Inc.
c/o Jay E. Kassner, President
1408 W. 15th Lane
Apache Junction, AZ 85120

Subject: Approval of Case CUP-2-13

Dear Mr. Kassner:

In clearing out some of the files from my desk, I noticed that I had not sent you a follow up letter on the above Conditional Use Permit approval. Better late than never!

Please be advised that on September 24, 2013, the Planning and Zoning Commission approved case CUP-2-13. A request for a Conditional Use Permit by Cowboys Up, Inc., represented by Jay E. Kassner, President, to operate a bar and have live entertainment as ancillary uses to a proposed restaurant, subject to the following conditions of approval:

- 1) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, signage or other property improvements which require permits, in accordance with the submitted plans and narrative received for CUP-2-13 and in accordance with the building plans submitted to the city's Building Division.
- 2) The applicants may continue to use the freestanding sign on the property. Should the sign structure need to be dismantled or replaced, a new detached sign shall conform to the sign requirements of the CCD District. Reasonable maintenance and repairs of the existing sign is permitted. New signs on the building shall conform to the sign requirements of the CCD District.

- 3) Accent landscaping shall be provided on the westerly side of the building between the new walkway and the building wall for aesthetic purposes. A pony wall, no higher than three feet and which complements the architecture of the building, shall be constructed along the west property boundary to screen headlights from cars in the parking lot from shining into the right-of-way. Said landscape plans shall be reviewed and approved by Planning Staff, and said landscape improvements installed, prior to final certificate of occupancy for the restaurant.
- 4) The applicants shall develop and begin operating the restaurant and bar in accordance with the submitted drawings and narrative documents within 12 months of the granting of CUP-2-13, or else the CUP shall become void.
- 5) The owners and operators of the restaurant shall ensure and take reasonable precautions that any outside music is at a level which does not disturb neighboring properties and/or that outside music is not offered past 10:00pm, local time.
- 6) The Planning and Zoning Commission shall reserve the right to reconsider the Conditional Use Permit approval for Cowboys Up, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-2-13 permit approval.

It is good to see that work on the building is progressing nicely. Please call me with any questions or comments and have a wonderful Holiday Season!

Sincerely,



Rudy Esquivias

Senior Planner/Zoning Administrator
City Of Apache Junction
300 E. Superstition Blvd.
Apache Junction, AZ 85119
480.474.2645
resquivias@ajcity.net

SERVICE OVER AND ABOVE THE REST

(Development Services Department office hours: Monday through Thursday from 7:00am to 6:00pm, closed Fridays and Holidays.)

Subject: Fwd: FW: Public Records Request dated 11/13/17

From: tmlovelady@msn.com

To: AttorneyElizabethTate@yahoo.com

Date: Sunday, June 10, 2018 11:15:44 AM MST

----- Forwarded message -----

From: Janet Mason <jmason@ajcity.net>

Date: Jan 9, 2018 10:38 AM

Subject: FW: Public Records Request dated 11/13/17

To: tmlovelady@msn.com

Cc:

Jan Mason

Deputy City Clerk

City of Apache Junction

300 E. Superstition Boulevard

Apache Junction, AZ 85119

(480) 474-5068

jmason@ajcity.net

From: Janet Mason

Sent: Monday, November 13, 2017 2:59 PM

To: 'tmlovelady@msn.com' <tmlovelady@msn.com>

Cc: Kathy Connelly <kconnelly@ajcity.net>

Subject: Public Records Request dated 11/13/17

Mo:

The public records request you filed 11/13/17 states "All the council meeting from 2010 to 2017 minutes of Mr. James Johnson, David Bowlings and Jim Duncan regarding the Hitching Post (2) All the complains files regarding noise and bull ring and parking and CUP hearing".

As you were advised earlier today after Dana checked with Kathy, this is a research request. State law regarding public records requests does not require that we compile statistics, prepare special reports, do

research or create records that do not already exist. You may find this law in writing on the website for the Arizona Revised Statutes. It is under Title 39, Section 121.01 A-E.

You may access the city council minutes to perform your own research and make your own copies at <https://apachejunction.legistar.com/Calendar.aspx>. This is the website where meeting information is stored and accessible to the public. You may change the THIS YEAR tab by pressing the drop down menu and selecting any year you wish or selecting ALL YEARS. Change the DEPARTMENTS tab by pressing the drop down menu to CITY COUNCIL MEETINGS. This will access on the city council meeting time frames you wish to search. In the SEARCH box you can type in the names of the people you are looking for or type in the Hitching Post, bull riding, etc. The minutes that contain those names/phrases will be listed and you can go through them for your information.

You can go over to development services and request to look at their complaint file regarding any complaints on the noise, bull ring, parking or the CUP. If you wish any copies from this file you will need to file a public records request listing each document by name.

Jan Mason

Deputy City Clerk

City of Apache Junction

300 E. Superstition Boulevard

Apache Junction, AZ 85119

(480) 474-5068

jmason@ajcity.net

Subject: Fwd: Enforcement of CUP Question this afternoon

From: tmlovelady@msn.com

To: AttorneyElizabethTate@yahoo.com

Date: Sunday, June 10, 2018 11:48:35 AM MST

----- Forwarded message -----

From: Bryant Powell <bpowell@AJCity.Net>

Date: May 30, 2018 6:04 PM

Subject: Enforcement of CUP Question this afternoon

To: "tmlovelady@msn.com" <tmlovelady@msn.com>

Cc: Joel Stern <jstern@ajcity.net>, Larry Kirch <lkirch@AJCity.Net>, Matt Busby <mbusby@AJCity.Net>, Rudy Esquivias <resquvias@ajcity.net>, Dave Zellner <dzellner@AJCity.Net>, Anna McCray <amccray@ajcity.net>, Al Bravo <abravo@AJCity.Net>, Jillian Miller <jmiller@AJCity.Net>, Thomas Kelly <tkelly@AJCity.Net>, Troy Mullender <tmullender@ajcity.net>

Dear Mo,

Thank you for calling me this afternoon to clarify the question on your current operating hours. Right now you are operating under the current Economic Development agreement. You are authorized to continue to operate your business as you have been under this agreement.

Tuesday night, the Mayor and City Council will be re-considering some or all of the conditions of the CUP, one of which deals with the hours of the bull riding.

Will you please respond back to me via email, that you have received this and understand? I want to make sure you received this email.

Thank you again for calling to clarify,



Bryant Powell

City Manager

City of Apache Junction



300 E. Superstition Blvd.
Apache Junction, AZ 85119

Office Number 480.474.5066

Follow Us On:



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image001.png
96.5kB

Fwd: Hitching Post CUP and Compliance Agreement

Ralph Pew <Ralph.Pew@pewandlake.com>

Sat 6/9/2018 5:12 PM

To: tmlovelady@msn.com <tmlovelady@msn.com>;

Hi Mo here is Joel's response to my email that I mentioned in my text message and email to you. Please call me if you have any questions.
. Thanks, Ralph

Sent from my iPhone

Begin forwarded message:

From: Joel Stern <jsstern@ajcity.net>
Date: June 9, 2018 at 3:59:39 PM MST
To: 'Ralph Pew' <Ralph.Pew@pewandlake.com>
Subject: RE: Hitching Post CUP and Compliance Agreement

Respectfully, I think your interpretation is incorrect. The compliance agreement was to give Mo an opportunity to avoid code citations while he applied for the CUP. He has applied, went through the public hearing process and now there has been a final disposition. He has been given time to build and get approval of the walls under the CUP resolution but during that building/approval time, he is not to continue to violate the code or the development agreement. Parking on the easterly lot associated with the bullriding activities is simply not allowed under the development agreement site plan. As soon as the walls are completed and approved by the city, he can then get the fruits of the CUP which do include parking in the easterly lot---but not until then. This is to protect the neighbors' reasonable use of their property.

The 7-9PM operational provisions for the bullriding do not kick in until Mo has also met the conditions of the CUP resolution. Mo cannot have it both ways (i.e.: have the generous development agreement allowable operation hours of 8-10pm while he is parking cars on the easterly lot which the CUP resolution only allows after all conditions are met).

I suggest you advise Mo the quicker he finishes the walls, the quicker he can resume parking in that lot. Until then, all parking must be on the west side of the restaurants directly south of the bullring.

I will confirm with Larry and Rudy, but I believe I am correct on this issue and I believe the neighbors expect the protection of the use of their property in this manner.

R. Joel Stern
City Attorney
City of Apache Junction
300 E. Superstition Blvd.
Apache Junction, AZ 85119

(480) 474-5105

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-----Original Message-----

From: Ralph Pew [<mailto:Ralph.Pew@pewandlake.com>]

Sent: Saturday, June 09, 2018 3:32 PM

To: Joel Stern <jsstern@ajcity.net>

Subject: Hitching Post CUP and Compliance Agreement

Good Afternoon Joel,

Sorry that I could not send this to you earlier, I was attending the funeral of a good friend.

Would it be possible for us to talk on Monday before the City Staff finalizes its opinion / position regarding the relationship between the Compliance Agreement (CA) and the approved CUP? After reviewing paragraph 4 of the CA and the language of Condition #1 of the CUP it may be a good idea to talk through the language and meaning of Condition #1 before a final interpretive decision is made by the staff.

Condition # 1 seems very clear to me that Mo has 6 months to complete the 12' wall in the location and as described in the condition #1 and that " No ADDITIONAL outdoor activities in the EXPANSION area " can be implemented until the wall is finished. The words additional and expansion area do not relate to the bull riding because bull riding is neither an additional nor expansion area of the CUP. This additional and expansion area seems to me to relate to the area directly behind the restaurant where the volleyball, cornhole, weddings, fire pits etc are planed as additional activities in this expansion area.

Hopefully we can talk about this Monday when you have a few minutes of time available.

Thanks, Ralph

Sent from my iPad

ARTICLE 1-2: TYPES OF USES

Sections

- 1-2-1 Uses Permitted by Right
- 1-2-2 Prohibited Uses
- 1-2-3 Conditional Uses
- 1-2-4 Administrative Uses
- 1-2-5 Nonconforming Uses, Structures and Lots
- 1-2-6 Uses Not Listed

1-2-1 USES PERMITTED BY RIGHT

- A. Uses permitted by right are those uses that are specifically allowed or uses analogous to those specifically allowed by interpretation of the Zoning Administrator. A permitted use by right may be lawfully established in a particular district or districts, provided that they conform to all requirements of the regulations for the district in which such uses are located. See Tables 5-1 and 5-3.

1-2-2 PROHIBITED USES

- A. Prohibited uses are those uses that are not specifically permitted by right, by Conditional Use Permit or by Administrative Use Permit, and also include those uses that are listed as expressly prohibited in Tables 5-1 and 5-3.

1-2-3 CONDITIONAL USES

- A. Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but which require individual Planning and Zoning Commission review and Conditional Use Permit ("CUP") approval for their location, design, operation and configuration along with the imposition of conditions in order to ensure the appropriateness of the use at a particular location. See Tables 5-1 and 5-3. The administrative process required for CUPs is provided in § 1-16-12 (D).

1-2-4 ADMINISTRATIVE USES

- A. Administrative uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but which require Zoning Administrator review and issuance of an Administrative Use Permit ("AUP") to ensure the use complies with Zoning Code standards. Uses requiring an AUP include, but are not limited to, temporary uses, cargo containers, fences, signs, outdoor events and home occupations. See Tables 5-1 and 5-3. The administrative process required for administrative use permit requests is provided in § 1-16-12 (C).

TABLE 6-2: NON-RESIDENTIAL DISTRICT REGULATIONS FOR FENCES AND WALLS

<i>Type of Fence or Wall</i>	<i>Height of Fence or Wall</i>	<i>Setback Requirement</i>	<i>Design</i>
Parking Screen Wall ¹	3 foot minimum to 4 foot maximum	Front Setback: 10 feet.	Decorative wall.
Patio Enclosure	4 foot maximum in front yard. 8 foot maximum in side and rear yard.	Front Setback. 10 feet in B-1 and B-4 districts; no minimum setback in B-2 and B-3 districts. Side or Rear Setback. No minimum required.	Decorative wall or fence.
Front Yard Screen Wall ¹	4.1 foot minimum to 8 foot maximum	Front Setback. Subject to main structure's minimum requirements.	Decorative wall.
Side and Rear Yard Screen Wall ¹	6 foot minimum to 8 foot maximum Higher than 8 feet	Side or Rear Setback. No minimum required. Side or Rear Setback. Subject to main structure's minimum requirement.	Opaque wall shall be required and shall be painted or stained with an earth tone color.

1-6-3 FENCES AND WALLS

- A. Fence and Wall Requirements. Table 6-1 specifies the requirements for fences and walls in residential zoning districts, and Table 6-2 specifies the requirements in non-residential districts.

TABLE 6-1: RESIDENTIAL DISTRICT REGULATIONS FOR FENCES AND WALLS

Height of Fence or Wall	Setback Requirement	Design
0 to 4 feet	No minimum front, side or rear setback is required.	See Section 1-6-3(B)
4.1 to 6 feet	<p><u>Front Setback</u>. No minimum front setback is required if the portion of the fence or wall between 4 and 6 feet is transparent. If the portion of the fence or wall above 4 feet is not transparent, the zoning district's minimum front setback for main structures is required.</p> <p><u>Side and Rear Setback</u>. No minimum side or rear setback is required for either transparent or non-transparent fences/walls between 4 and 6 feet in height.</p>	See Section 1-6-3(B)
6.1 to 8 feet	Subject to main structure's minimum front, side and rear setback.	See Section 1-6-3(B)
Above 8 feet	Fences and walls higher than 8 feet are not allowed.	See Section 1-6-3(B)

LEASE AGREEMENT

1-PRINCIPALS

LESSOR: MEHMOOD MOHIUDDIN

LESSEE: HITCHING POST PIZZA & PUB LLC

PARCEL # 10025043A

2- LOCATION: THE VACANT PROPERTIES THE STORAGE LOT PARCELL NUMBERS AS FOLLOW. 100250030, 10025001E, 10025001C.

3-LEASE FEE: THE LESSEE WILL PAY \$ 1.00 PER YEAR FOR NEXT 10 YEARS BEGINNING 12-01-2014 TO THE LESSOR INDECATED ABOVE EACH YEAR PAYABLE IN DECEMBER NO LATER THEN DECEMBER 31ST.

4- RESPOSNSIBILITIES: WITH THIS AGREEMENT THE LESSEE WILL ASSUME RESPONSIBILITY FOR DUST CONTROLAND ANY OTHER CITY CODE COMPLIANCE ISSUES ATTRIBUTED TO THE PROPERTY.

THE AGREEMENT WILL BE RENEWED EVERY 10 YEARS.

6- WITH THE REPRESENTATIVE SIGNATURES AFFIXED BELOW ALL PRINCIPALS ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTAND AND WILL ABIDE BY THE STIPOLATIONS OF THIS DOCUMENT.

SIGNATURES:

LESSEE..........DATE...12/8/15.....

LESSOR..........DATE...12/8/15.....