

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF COCONINO

3 NORTHERN ARIZONA
4 HEALTHCARE CORPORATION; W.
DOUGLAS LOWDEN,

5 Plaintiffs,

6 v.

7 CITY OF FLAGSTAFF; STACY
8 SALTZBURG,

9 Defendants,

10 FLAGSTAFF COMMUNITY FIRST,

11 Real Party in Interest.

Case No.: CV2023-00397

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

12
13 Plaintiffs, Northern Arizona Healthcare Corporation and W. Douglas Lowden,
14 challenge the validity of a referendum petition pursuant to A.R.S. § 19-122(C) by way of
15 their Verified Complaint for Declaratory and Injunctive Relief (“Complaint”) and
16 Application for Order to Show Cause filed on July 25, 2023. The Real Party in Interest,
17 Flagstaff Community First, filed an Answer to the Complaint and Response to the
18 Application for Order to Show Cause on July 27, 2023, and August 1, 2023, respectively.
19 The Court heard oral arguments from the parties on August 3, 2023. Defendants, the City
20 of Flagstaff and Stacy Saltzburg, in her official capacity as the City Clerk, (jointly “City
21 Defendants”) appeared as nominal parties under A.R.S. § 12-348(H)(4).

1 Pursuant to Rule 52 of the Arizona Rules of Civil Procedure (ARCP), the Court
2 now makes the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT**

4 1. On June 6, 2023, the Flagstaff City Council passed Ordinance No. 2023-
5 11 (the “Ordinance”), amending the City’s Zoning Map for purposes of rezoning.

6 2. The Ordinance’s official title is:

7 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
8 FLAGSTAFF, AMENDING THE FLAGSTAFF ZONING MAP TO
9 REZONE APPROXIMATELY 98.39 ACRES OF REAL PROPERTY
10 FROM RURAL RESIDENTIAL (40.47 ACRES) AND ESTATE
11 RESIDENTIAL (57.92 ACRES) TO HIGHWAY COMMERCIAL (63.18
12 ACRES) AND PUBLIC FACILITIES (35.21 ACRES) AND ADDING
THE RESOURCE PROTECTION OVERLAY TO APN 112-10-036, 112-
10-037, AND 112-05-125 GENERALLY LOCATED AT 1120 W
PURPLE SAGE TRAIL PROVIDING FOR SEVERABILITY,
AUTHORITY FOR CLERICAL CORRECTIONS, AND
ESTABLISHING AN EFFECTIVE DATE

13 3. On June 7, 2023, Real Party in Interest, Flagstaff Community First (the
14 “Committee”), challenged the Ordinance by filing an Application for Serial Number with
15 the Clerk of the City of Flagstaff seeking to refer the Ordinance.

16 4. The Application included the required description of the measure as
17 follows:

18 Ordinance No. 2023-11 amends the Flagstaff Zoning Map to rezone
19 approximately 98.39 acres of real property from rural residential and estate
20 residential to highway commercial (63.18 acres)--permitting, for example,
21 retail trade businesses or establishments engaged primarily in selling or
offering for sale personal property to the public--and public facilities (35.21
acres) and adds the resource protection overlay to areas generally located at
1120 W Purple Sage Trail, providing for severability, authority for clerical
corrections, and establishing an effective date. Northern Arizona Healthcare

1 Corporation ("Corporation") applied for the amendment. The Flagstaff City
2 Council approved this amendment. The amendment is conditioned upon the
3 Corporation satisfying several conditions including: constructing all
4 intersections as "protected intersections," providing a 60-foot front landscape
5 buffer from Beulah Boulevard and that requirements of the Zoning Code and
6 other City codes, ordinances, and regulations will be met by the proposed
7 development as amended within the NAH Health Village Phase 1 Specific
8 Plan.

9 5. The Committee then circulated petition sheets to obtain a sufficient number
10 of signatures from qualified electors to place the referendum on the ballot.

11 6. The petition sheets included the above-stated description as well as the full
12 title and text of the Ordinance.

13 7. On July 6, the Committee submitted its signatures to the City Clerk.

14 8. The City Clerk conducted the required review under A.R.S. § 19-121.01,
15 and the County Recorder conducted the required review under A.R.S. § 19-121.02.

16 9. On July 20, 2023, the City Clerk issued its certification establishing that
17 the Committee turned in 4,574 valid signatures, which exceeded the required 2,607
18 signatures for placement on the November 7, 2023 ballot as Proposition 480.

19 10. On July 25, 2023, Plaintiffs filed their Complaint and supporting papers.

20 11. Plaintiffs alleged that the 200-word description required by A.R.S. § 19-
21 101(A) was deficient, and therefore all signatures were invalid, in two ways: (1) the
description failed to mention that the purpose of the zoning change was to facilitate
building a hospital, and (2) the description improperly described the Highway
Commercial zoning category as it related to the Ordinance.

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1 **CONCLUSIONS OF LAW**

2 12. Referendum proponents, like the Committee, must strictly comply with
3 “the constitutional and statutory requirements for the referendum process.” [A.R.S. § 19-](#)
4 [101.01.](#)

5 13. Among those statutory requirements is that the petition signature sheets
6 must include:

7 **Referendum Description**

8 (Insert a description of not more than two hundred words of the principal provisions of
9 the measure sought to be referred.)

10 Notice: This is only a description of the measure sought to be referred prepared by the
11 sponsor of the measure. It may not include every provision contained in the measure.
12 Before signing, make sure the title and text of the measure are attached. You have the
13 right to read or examine the title and text before signing.

14 A.R.S. § 19-101.

15 14. The Committee satisfied this requirement as explained further below.

16 15. The Committee was not required to include the purpose of the zoning
17 ordinance (e.g., the specific word “hospital”), but rather the Ordinance’s “‘most
18 important,’ ‘consequential,’ or ‘primary’ provision[s] that must be described to alert
19 prospective petition signatories to the measure’s key operative provisions.” *Molera v.*
20 *Hobbs*, 250 Ariz. 13, 21, 474 P.3d 667, 675 (2020).

21 16. By detailing the changes that the zoning amendments make, namely that
the amendments rezoned Rural Residential and Estate Residential land to Highway
Commercial and Public Facilities, as well as stating that conditions had to be met by the

1 sponsor to effectuate the Ordinance, the Committee provided in the description the most
2 important, consequential and primary provisions of the referred measure, which were the
3 changes made by the zoning amendments – Rural/Estate Residential to Highway
4 Commercial and Public Facilities.

5 17. Further, the example of permitted uses under the Highway Commercial
6 zoning category was not false or misleading.

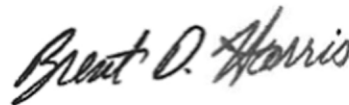
7 18. Nor, by failing to include every possible example of permitted uses, did the
8 Committee act in a fraudulent or misleading manner or promote a falsehood upon the
9 voting public that may choose to weigh in on the referendum.

10 19. Providing the example of permitted uses did not “render the description
11 fraudulent or misleading.” *Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz.
12 145, 152, 291 P.3d 342, 349 (2013).

13 20. The proponents of Proposition No. 480 have submitted sufficient signatures
14 to be placed on the ballot as determined by the City Clerk and have strictly complied with
15 all statutory and constitutional requirements.

16 21. Proposition 480 shall remain on the November 7, 2023, ballot for the City
17 of Flagstaff.

18 DATED this 4th of August 2023,

19 

20 eSigned by BRENT HARRIS, 08/04/2023 14:08:03 714n18Sq

21 Honorable Brent D. Harris