Item No. 7K

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and City Council

From: James B. Speed, (928) 779-7680
Flagstaff City Attorney's Office

Date: June 28, 2010

Meeting Date: August 3, 2010

Title: Consideration of Ordinance No. 2010-22: An ordinance transferring Flagstaff City Code Sections 9-02-001-0015, Damage to Sidewalks, 9-02-001-0019, Unnecessary Vehicle Noise, and 9-02-001-0020, Restriction of Trucks and Heavy Vehicular Traffic, to Chapter 9-01, Traffic Code; renumbering and renaming 9-02-001-0015, Damage to Sidewalks, as 9-01-001-0009, Repairing Vehicles on Sidewalks Prohibited; renumbering 9-02-001-0019, Unnecessary Vehicle Noise, as 9-01-001-0010, Unnecessary Vehicle Noise, and 9-02-001-0020, Restriction of Trucks and Heavy Vehicular Traffic, as 9-01-001-0011, Restriction of Trucks and Heavy Vehicular Traffic; and repealing Chapter 9-02, Miscellaneous Traffic Regulations.

Recommended Action:

At the Council Meeting of August 3, 2010:	Read Ordinance No. 2010-22 by title only.
At the Council Meeting of August 17, 2010:	Read Ordinance No. 2010-22 for the final time by title only and adopt.

ACTION SUMMARY:

The purpose of this ordinance is to transfer the three functional sections of Chapter 9-02, Miscellaneous Traffic Regulations, to Chapter 9-01, Traffic Code, and then repeal Chapter 9-02, Miscellaneous Traffic Regulations in its entirety.

DISCUSSION:

Background/History:

Pursuant to Arizona Revised Statutes § 28-626(B)(2) the City of Flagstaff may "adopt additional traffic regulations" that are not in conflict with chapters 3, 4 or 5 of Title 28 [Traffic and Vehicle Regulation, Driving Under the Influence and Penalties and Procedures for Vehicle Violations]. Although A.R.S. § 28-627 grants local authorities the power to enact additional, narrowly defined regulations governing the streets and highways under their jurisdiction, for purposes of regulating vehicles and the general movement of traffic the City can only adopt ordinances (i) if they are not in conflict with those statutes found in Chapter 3, 4 and 5 of Title 28; and (ii) only if they constitute "additional traffic regulations" that supplement those statutes currently found in chapters 3, 4 or 5 of Title 28.

Nine of the seventeen sections sought to be repealed were adopted on April 8, 1940 as one part of Ordinance No. 321, Traffic Regulations, an ordinance "regulating traffic and travel upon the public streets of the City of Flagstaff." The language of all the sections but one has remained unchanged since the day they were enacted. The exception, 9-02-001-0011, Racing, which presently applies only to vehicles, originally prohibited the "immoderate, riding, driving or racing of horses through or upon any street in the City." The remainder of the sections comprising Chapter 9-02 appear to have been added at various periods throughout Flagstaff's history. Section 9-02-001-0016, Train Obstructing Streets, has an "Ord. 1296, 2-7-84" attribution, which would lead one to believe that it was enacted on February 7, 1984 pursuant to Ordinance No. 1296. However, Section 9-02-001-0016 was actually adopted on May 7, 1913 as part of Ordinance No. 150. The remainder of the sections are almost all attributable to the "Municipal Code of the City of Flagstaff, 1960," the first codification of the City's laws, where pre-existing ordinances were merged with newly created ordinances to create the City's first comprehensive municipal code.

As mentioned above, local authorities are empowered to enact legislation regulating the control and movement of traffic within their jurisdiction if it is not in conflict with specific chapters of A.R.S. Title 28, and only if those regulations constitute additions or supplements to the State statutes currently in force. In the case of Chapter 9-02, Miscellaneous Traffic Regulations, the justification for repealing all but two of the ordinances is that, far from constituting additions or supplements to the State's Traffic Code, the regulations simply replicate the prohibitions already found in Title 28. For example, Section 9-02-001-0006, Driving through Safety Zone, states that "no vehicle shall at any time be driven through or within a safety zone." The corresponding State statute, A.R.S. § 28-734, Driving through Safety Zone, states "a person shall not drive through or within a safety zone." Apart from having the same title, both regulations prohibit the exact same conduct, driving through or within a safety zone. Another example, Section 9-02-001-0001, Limitation on Backing, states "the driver of a vehicle shall not back the same unless the movement can be made with reasonable safety and without interfering with traffic," while the State regulation, A.R.S. § 28-891, Backing Limitation, states that the "driver of a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic." Again, and as the attached chart amply demonstrates, the City's ordinances do not act as additions to what State statute currently prohibits. Instead, the City's ordinances simply imitate their better worded and more precise Title 28 counterparts.

The two ordinances whose justification for repeal differs from the rationale provided above are Section 9-02-001-0007, Parking near Curb, and 9-02-001-0016, Train Obstructing Streets. The former requires that no vehicle shall be parked on a City street "unless the wheels of such vehicle nearest the curb or curb line are not more than twelve inches (12") distant from such curb or curb line." A.R.S. § 28-874, Additional Parking Rules, states that any person who "parks a vehicle on a roadway where there are adjacent curbs shall stop or park the vehicle with its right-hand wheels parallel to and within eighteen inches of the right-hand curb." As the City regulation directly contradicts State statute in regard to the proximity a parked vehicle needs to be in relation to the curb, twelve inches versus eighteen inches, the City ordinance conflicts with a provision of Title 28 and is therefore of no force and effect. The second ordinance 9-02-001-0016, Train Obstructing Streets, states

> Any conductor, engineer, brakeman, trainman, or other person employed on or about a railroad train who shall cause or commit a train, car, locomotive, or coach on or about which he or they may be employed to obstruct any street within the limits of the City in

> such manner as to interfere with the ordinary travel or use of such street for more than five (5) minutes shall be responsible for a civil traffic violation.

As mentioned above, this regulation was enacted in May of 1913, and in 1913 it is possible that the Town had the authority to regulate locomotives in such a manner. Presently, however, the City lacks such authority and, as a result, this ordinance is of no legal effect. It should also be noted that this ordinance conflicts with the State statute governing obstruction of highway crossings by locomotives, A.R.S. § 40-852 making it a class two misdemeanor for "an engineer, conductor or other employee or officer of a railroad company" to permit a locomotive to "remain upon the crossing of a public highway ... so as to obstruct travel over the crossing for a period exceeding fifteen minutes ...." As the City ordinance directly contradicts a key provision of the State statute, an obstruction lasting five minutes versus fifteen minutes, it is void and should be repealed.

The remaining three ordinances to be renumbered and transferred to Chapter 9-01, Traffic Code, are still viable and, at least in theory, are capable of providing the Police Department and the Transportation Commission with an effective tool for regulating traffic on City streets.

Key Considerations:

Should Council vote to repeal this ordinance Flagstaff Police Officers will be instructed that they should continue to cite the applicable A.R.S. statute when they observe a person committing one of the traffic infractions currently located in Chapter 9-02.

The Police Department has reviewed this Staff Summary, the attached Ordinance and Chart, and is in favor of repealing the ordinances referenced in the attached chart.

The Traffic Engineer and the Transportation Commission have reviewed this Staff Summary, the attached Ordinance and Chart, and are both in favor of repealing the ordinances referenced in the attached chart.

Community Benefits and Considerations:

Removing superfluous prohibitions that have no legal effect from the Flagstaff City Code results in a clearer, more accessible code.

Community Involvement:

The proposed Ordinance and Staff Summary will be posted in accordance with law, and interested persons are invited to comment at the City Council meetings at which the Ordinance will be under consideration.

Financial Implications:

Violations of F.C.C. §§ 9-02-001-0001 through 9-02-001-00014 and 9-02-001-0016-0018 are all class one misdemeanors. A class one misdemeanor's maximum fine is $2500.00 plus surcharges. All but two of the A.R.S. statutes that parallel the ordinances put forth for repeal are civil traffic offenses. Civil traffic offenses carry a civil penalty in an amount not to exceed $250.00, plus surcharges. The counterpart to F.C.C. 9-02-001-0011, Racing, A.R.S. § 28-708,

Racing on Highway, is a class one misdemeanor. The counterpart to F.C.C. 9-02-001-0013, Stopping for Repairs, A.R.S. § 28-7053(A)(6), Works on Vehicle other than Temporarily Disabled on Highway, is a petty offense with a maximum fine of $300.00. As the only violation put forth for repeal that has historically resulted in a substantial fine, Racing, is being replaced by another class one misdemeanor, the City can realistically expect to see no change in the fines imposed and collected by the City Court. The remainder of the sections to be repealed, including that offense being supplanted by a petty offense, would rarely, if ever, result in a fine in excess of the maximum fine that could be imposed pursuant to their A.R.S. counterpart.

Options and Alternatives:

Do not adopt Ordinance No. 2010-22

Attachments/Exhibits:

Chart comparing Chapter 9-02 offenses and their A.R.S. counterparts

Ordinance No. 2010-22

Patricia J Boomsma

Division Director *(Acknowledgment that all reviews have been completed and required approvals initialed below.)*

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
	BIDS/PURCHASES			FINANCE/BUDGET	
	GRANTS			CONTRACTS	
	LEGAL			IGAS	

DATE OF COUNCIL APPROVAL: _____

ORDINANCE NO. 2010-22

AN ORDINANCE TRANSFERRING FLAGSTAFF CITY CODE SECTIONS 9-02-001-0015, DAMAGE TO SIDEWALKS, 9-02-001-0019, UNNECESSARY VEHICLE NOISE, AND 9-02-001-0020, RESTRICTION OF TRUCKS AND HEAVY VEHICULAR TRAFFIC, TO CHAPTER 9-01, TRAFFIC CODE; RENUMBERING AND RENAMING 9-02-001-0015, DAMAGE TO SIDEWALKS, AS 9-01-001-0009, REPAIRING VEHICLES ON SIDEWALKS PROHIBITED, RENUMBERING 9-02-001-0019, UNNECESSARY VEHICLE NOISE, AS 9-01-001-0010, UNNECESSARY VEHICLE NOISE, AND 9-02-001-0020, RESTRICTION OF TRUCKS AND HEAVY VEHICULAR TRAFFIC, AS 9-01-001-0011, RESTRICTION OF TRUCKS AND HEAVY VEHICULAR TRAFFIC; AND REPEALING CHAPTER 9-02, MISCELLANEOUS TRAFFIC REGULATIONS.

WHEREAS, since at least 1913 the Town and then City Council of Flagstaff has enacted a variety of ordinances governing the movement of vehicular traffic within the City limits; and

WHEREAS, since at least statehood, the Arizona Legislature has adopted statutes governing the movement of vehicular traffic on thoroughfares within the State; and

WHEREAS, through the years the number of State statues governing vehicular traffic has increased, to the point where there are now multiple statutes that proscribe the same conduct as many of the ordinances found within Chapter 9-02, Miscellaneous Traffic Regulations, often using the exact same language; and

WHEREAS, the City's ability to adopt ordinances related to the movement of traffic on City thoroughfares is confined to legislation that supplements, not simply parrots, State statute, it is necessary to repeal those ordinances within Chapter 9-02, Miscellaneous Traffic Regulations, that have direct counterparts in the Arizona Revised Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Flagstaff City Code Section 9-02-001-0015, Damage to Sidewalks, is transferred to Chapter 9-01, Traffic Code, and renumbered and renamed as 9-01-001-0009, Repairing Vehicles on Sidewalks Prohibited.

SECTION 2. That Flagstaff City Code Sections 9-02-001-0019, Unnecessary Vehicle Noise, and 9-02-001-0020, Restriction of Trucks and Heavy Vehicular Traffic, are transferred to Chapter 9-01, Traffic Code, and renumbered as 9-01-001-0010, Unnecessary Vehicle Noise, and 9-01-001-0011, Restriction of Trucks and Heavy Vehicular Traffic.

SECTION 3. That Flagstaff City Code Chapter 9-02, Miscellaneous Traffic Regulations, is repealed.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2010.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

FLAGSTAFF CITY CODE	ARIZONA REVISED STATUTES
SECTION 9-02-001-0001 Limitations on backing: The driver of a vehicle shall not back the same unless the movement can be made with reasonable safety and without interfering with other traffic.	**28-891 Backing limitations:** A. The driver of a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic. B. The driver of a vehicle shall not back the vehicle on any access road, exit or entrance ramp or roadway of a controlled access highway
SECTION 9-02-001-0002 Riding on motorcycles: A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.	**28-892 Riding on motorcycle or all-terrain vehicle:** A person operating a motorcycle or all-terrain vehicle shall ride only on the permanent and regular seat attached to the motorcycle or all-terrain vehicle. The operator of a motorcycle or all-terrain vehicle shall not carry any other person and any other person shall not ride on a motorcycle or all-terrain vehicle unless the motorcycle or all-terrain vehicle is designed to carry more than one person. On a motorcycle or all-terrain vehicle designed to carry more than one person, a passenger may ride on the permanent and regular seat if it is designed for two persons or on another seat firmly attached to the motorcycle or all-terrain vehicle at the rear or side of the operator.
SECTION 9-02-001-0003 Obstruction to driver's view or driving mechanism: A. No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle. B. No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.	**28-893 Obstruction to view; interference with driving:** A. A person shall not drive a vehicle when the vehicle's load or passengers obstruct the driver's view to the front or sides of the vehicle or interfere with the driver's control over the vehicle's driving mechanism. B. A passenger in a vehicle shall not ride in a position that interferes with the driver's view ahead or to the sides or that interferes with the driver's control over the vehicle's driving mechanism.
SECTION 9-02-001-0004 Crossing fire hose: No vehicle shall be driven over any unprotected hose of the Fire Department when laid down on any street or private driveway to be used at any fire or alarm of fire without the consent of the Fire Department official in command.	**28-897 Crossing fire hose:** A person shall not drive a vehicle over an unprotected hose of a fire department if the hose is laid down on a street or private driveway to be used at a fire or alarm of fire. This section does not apply if a fire department official in command at the fire or alarm of fire directs traffic to drive over the hose.
SECTION 9-02-001-0005 Placing glass or other objects on roadway: A. No person shall	**28-898 Objects on roadway; prohibition:** A. A person shall not throw or deposit on a

throw or deposit upon any roadway any glass bottle, glass, nails, tacks, wires, cans or any other substance likely to injure any person, animal or vehicle upon the roadway. B. Any person who drops or permits to be dropped or thrown upon any roadway any destructive or injurious material shall immediately remove the same or cause it to be removed. C. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from the vehicle.	roadway any glass bottle, glass, nails, tacks, wire, cans or other substance likely to injure a person, animal or vehicle on the roadway. B. A person who drops or permits to be dropped or thrown on a roadway any destructive or injurious material shall immediately remove the material or cause it to be removed. C. A person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped on the highway from the vehicle.
SECTION 9-02-001-0006 Driving through safety zone: No vehicle shall at any time be driven through or within a safety zone. (Ord. 321, 4-8-40)	**28-734 Driving through safety zone:** A person shall not drive a vehicle through or within a safety zone.
SECTION 9-02-001-0007 Parking near curb: It shall be a civil traffic violation for the driver of any vehicle to stop the same or cause or permit the same to be stopped in or upon any street unless the wheels of such vehicle nearest the curb or curb line are not more than twelve inches (12") distant from such curb or curb line; provided, however, that the provisions of this Section shall not apply when such stop is made for the purpose of allowing another vehicle or a pedestrian to pass in front of such vehicle so stopping, or when in compliance with a signal or order of a police officer. (Ord. 1296, 2-7-84)	**28-874 Additional parking rules:** A. Except as otherwise provided in this section, a person who stops or parks a vehicle on a roadway where there are adjacent curbs shall stop or park the vehicle with its right-hand wheels parallel to and within eighteen inches of the right-hand curb.
SECTION 9-02-001-0008 Driving on sidewalks: No person shall in any manner operate any vehicle upon or along any sidewalk of the City.	**28-904 Driving on sidewalk:** A. A person shall not drive a vehicle on a sidewalk area except on a permanent or duly authorized temporary driveway. B. This section does not apply to a motorized wheelchair, electric personal assistive mobility device, authorized emergency vehicle, security vehicle owned by this state or small service vehicle owned by this state or a political subdivision of this state.
SECTION 9-02-001-0009 Warning signals: Every person operating a motor vehicle shall sound the bell, gong, horn, whistle or other device whenever necessary as a warning of danger, but not at other times, or for any other purpose.	**28-794 Drivers to exercise due care:** Notwithstanding the provisions of this chapter every driver of a vehicle shall: 1. Exercise due care to avoid colliding with any pedestrian on any roadway. 2. Give warning by sounding the horn when necessary. 3. Exercise proper precaution on observing a child or a confused or incapacitated person on a roadway. **28-954 Horns and warning devices:** A. A motor vehicle when operated on a highway shall be equipped with a horn that is in good

	working order and that is capable of emitting sound audible under normal conditions from a distance of at least two hundred feet. Any horn or other warning device shall not emit an unreasonably loud or harsh sound or a whistle. B. If reasonably necessary to ensure the safe operation of a motor vehicle, the driver shall give an audible warning with the driver's horn but shall not otherwise use the horn when on a highway. C. A vehicle shall not be equipped with and a person shall not use on a vehicle a siren, whistle or bell, except as otherwise permitted in this section.
SECTION 9-02-001-0010 Mufflers: Every motor vehicle must have devices in good working order which shall be at all times in constant operation to prevent excessive or unusual noise, annoying smoke and escape of gas, steam or oil as well as the failing out of residue from fuel, and all exhaust pipes carrying exhaust gasses from the engine shall be directed parallel to the ground or upward. Devices known as "muffler cutouts" shall not be used within the limits of the City.	**28-955 Mufflers; noise and air pollution prevention; emissions control devices; civil penalty; exception:** A. A motor vehicle shall be equipped at all times with a muffler that is in good working order and that is in constant operation to prevent excessive or unusual noise. B. A person shall not use a muffler cutout, bypass or similar device on a motor vehicle on a highway. C. The engine and power mechanism of a motor vehicle shall be equipped and adjusted to prevent the escape of excessive fumes or smoke. D. Beginning with motor vehicles and motor vehicle engines of the 1968 model year, motor vehicles and motor vehicle engines shall be equipped with emissions control devices that meet the standards established by the director of environmental quality. E. A person who violates this section is subject to a civil penalty of at least one hundred dollars. F. This section does not apply to an electrically powered motor vehicle.
SECTION 9-02-001-0011 Racing: The immoderate riding, driving or racing of vehicles through or upon any street in the City is hereby prohibited.	**28-708 Racing on highways; classification; exception; definitions:** A. A person shall not drive a vehicle or participate in any manner in a race, speed competition or contest, drag race or acceleration contest, test of physical endurance or exhibition of speed or acceleration or for the purpose of making a speed record on a street or highway.
SECTION 9-02-001-0012 Backing from alley: In no instance shall any vehicle be backed out of an alley. (1960 Code)	**28-856 Emerging from alley, driveway or building:** The driver of a vehicle emerging from an alley, driveway or building within a business or residence district shall: 1. Stop the vehicle immediately before driving onto a sidewalk or onto the sidewalk area

	extending across any alleyway or private driveway. 2. Yield the right-of-way to any pedestrian as necessary to avoid collision. 3. On entering the roadway, yield the right-of-way to all closely approaching vehicles on the roadway.
SECTION 9-02-001-0013 Stopping for repairs: No person shall leave standing or cause or permit to be left standing upon any public street a vehicle undergoing repair or which has been stopped for the purpose of having repairs made thereon, or for storage; provided, however, that this provision shall not apply to a vehicle which shall be disabled while on such street in such a manner and to such extent that it shall be impossible to avoid stopping such vehicle on such street and impracticable to remove the same until repairs shall have been made.	**28-7053 Misuse of public highway or airport; violation; classification; injunction; definition:** A. A person who commits or causes to be committed any of the following acts is guilty of a petty offense: 6. Knowingly stores, services, repairs or otherwise works on a vehicle wholly or partly within a highway other than on a vehicle that is temporarily disabled.
SECTION 9-02-001-0014 Condition of vehicles: No vehicle shall be operated on any public street unless it is so constructed as to prevent its contents from dropping, sifting, leaking or otherwise escaping from such vehicle. (Ord. 321 , 4-8-40)	**28-921 Applicability of equipment requirements:** A. A person shall not: 1. Drive or move and the owner shall not knowingly cause or permit to be driven or moved on a highway a vehicle or combination of vehicles that: (a) Is in an unsafe condition that endangers a person. (b) Does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this article. (c) Is equipped in any manner in violation of this article.
SECTION 9-02-001-0016 Train obstructing streets: Any conductor, engineer, brakeman, trainman, or other person employed on or about a railroad train who shall cause or commit a train, car, locomotive, or coach on or about which he or they may be employed to obstruct any street within the limits of the City in such manner as to interfere with the ordinary travel or use of such street for more than five (5) minutes shall be responsible for a civil traffic violation. (Ord. 1296, 2-7-84)	**40-852 Allowing engine or car to remain upon public crossing; classification:** An engineer, conductor or other employee or officer of a railroad company who permits a locomotive or cars to be or remain upon the crossing of a public highway over such railway so as to obstruct travel over the crossing for a period exceeding fifteen minutes, except in cases of unavoidable accident, is guilty of a class 2 misdemeanor.
SECTION 9-02-001-0017 Door as traffic obfuscations: No person shall open the door of a motor vehicle on the side adjacent to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle adjacent to moving traffic for a period of time	**28-905 Opening vehicle door:** A person shall not open a door on a motor vehicle unless it is reasonably safe to do so and can be done without interfering with the movement of other traffic. A person shall not leave a door open on a side of a motor vehicle exposed to moving traffic for a period of time longer than

longer than necessary to load or unload passengers.	necessary to load or unload a passenger.
SECTION 9-02-001-0018 Avoiding traffic regulations: No person shall drive upon or through any property such as a service station, parking area, vacant lot or similar property to avoid obedience to traffic regulations or traffic-control devices.	**28-651 Use of private property to avoid traffic control device prohibited:** A person shall not drive on or through any private property, road or driveway to avoid obedience to traffic rules or traffic control devices.