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PETITION
TO THE MAYOR AND CITY COUNCIL
OF THE CITY OF PHOENIX, ARIZONA

CITY CLERK DEPT.

**Submitted December 4, 2019
Pursuant to Chapter 4, Section 22 of the Phoenix City Charter**

This Petition is submitted by Patrick McMullen, PhD, in his individual capacity as a citizen of Phoenix, and as Acting President of the Phoenix Mountain Preservation Council, Inc. (PMPC), regarding the Phoenix Water Services Department's proposed construction of a 66-inch water pipeline from the 24th Street Water Treatment Plant to 32nd Street and Bell Road, as part of its project to supplement the city water supply system ("the project"). While I appreciate the importance of investing in a reliable future water supply, I am concerned that the Water Services Department has exceeded their decision-making authority and are consequently denying the public and the Phoenix City Council their legal rights under the Phoenix City Charter to determine the fate of our Phoenix Mountains Preserves. This is outlined further in PMPC's letter to the Mayor and City Council dated November 19, 2019 attached here as Exhibit A.

Without providing specific details or properly considering a range of alternative alignments with the full involvement of the public, the Phoenix Water Services Department has independently selected a pipeline alignment for the project that will cut through the Phoenix Mountain Preserve near the Dreamy Draw Recreation Area. The Water Services Department is without legal authority to take this action.

The Water Department's selected alignment will, among other things, irreparably damage at least 13 acres of undisturbed Preserve lands; require the development of an approximate 1,000-foot tunnel to be bored through the mountain within the Preserve in order to accommodate a 66-inch water pipeline; cut through numerous washes and drainages within the Preserve; and harm recreational opportunities for the many Phoenix residents who use the Preserve. It will also substantially disrupt the neighborhood just north of Lincoln Drive for an extensive period of time, adversely affect local residents' quality of life, harm property, and threaten the safety of residents.

Voter Approval Is Required

Section 5 of Chapter XXVI of the Phoenix City Charter (Phoenix Mountain Preserves) states that no land within any Preserve shall be "sold, traded, alienated, redesignated, leased, or otherwise deleted or removed from the Mountain Preserve" without voter approval.

5. An initiative measure to prevent sale, trade, alienation, redesignation, lease or other deletion or removal of any City Mountain Preserve land without approval of a majority of electors voting thereon.

Notwithstanding any other provision of the Charter of the City of Phoenix, no land within any City Mountain Preserve, as that term is defined in Chapter XXVI of the Charter of the City of Phoenix, shall be sold, traded, alienated, redesignated, leased, or otherwise deleted or removed from the Mountain Preserve except by approval of a majority of electors voting thereon.
(Election of 12-9-1986)

The Water Services Department is obligated to secure public approval of their selected alignment alternative pursuant to Chapter XXVI of the Phoenix City Charter. They have failed to do this.

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In the event it is determined under the Charter that voter approval for this alignment is not required, at the very minimum, it is the City Council, not employees in the Phoenix Water Services Department, that must make the determination that an alignment that violates the Preserve is both “appropriate” and “necessary” pursuant to Section 3(c)(4) and Section 3(b) of the Charter, respectively. This must be done through a public and transparent vote by the City Council. Merely receiving approval for the project as general matter or for various budget aspects of the project, is insufficient to satisfy this requirement under the Charter. Thus, the Water Services Department has failed to obtain legal authority for their selected alignment.

This failure demonstrates disregard for the Charter, as approved by Phoenix voters, and deprives the public and the City Council of their right to be involved in certain decisions impacting the Phoenix Mountain Preserve. The future of the Phoenix Mountains Preserve, a valuable public resource, is a matter of concern for all Phoenicians.

Allowing a pipeline to be built within the Preserve without voter approval, or alternatively, without a Council vote under Section 3(b) and 3(c)(4), sets a dangerous precedent. If allowed to occur here, future developments, resignations, or other harmful activities within the Phoenix Mountain Preserve system may also be allowed to move forward without proper approval and the involvement of the public. This is contrary to the purpose of creating and protecting the Preserve system as acknowledged in the Charter.

Accordingly, this Petition is submitted to respectfully request the following:

- 1. Oversight Hearing.** I respectfully request that the Mayor and Phoenix City Council hold an open and transparent oversight hearing to review the actions of the Phoenix Water Services Department regarding (a) their selection of the current alignment for the project; (b) their lack of communication with the public at large about the various alignment options; (c) the project’s adverse impacts on the Preserve and nearby residents; and (d) their disregard for the requirements of the Phoenix City Charter generally, and their usurpation of authorities more appropriately vested in the voters or, alternatively, the City Council, under Chapter 26 of the Charter.
- 2. Full Evaluation of All Alternatives.** I respectfully request that the Mayor and Phoenix City Council conduct a full evaluation of all project alignment alternatives. This analysis should be conducted in a transparent manner, with full input from the public.
- 3. Halt Project Development Until Resolution.** I respectfully request that further development of the project and investment of taxpayer dollars be halted immediately until all alignments are fully evaluated and the requests set forth in this petition have been met.

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4. **Comply with the Requirements of Chapter XXVI of the Phoenix City Charter.** In the event an alignment is selected pursuant to the process described above that results in the redesignation and use of lands within the Preserve, then the alignment must be

approved by a majority of the voters, or if such a vote is not required by law (a question that should be submitted to the City Attorney), then by a full vote of the City Council, considering all appropriate alternatives, reasonable mitigation actions for the Preserve, and all necessary steps to protect the health and safety and property of affected residents of the area.

I look forward to the Phoenix City Council taking action on this petition within fifteen (15) days, in accordance with Chapter 4, Section 22 of the Phoenix City Charter.

Submitted December 4, 2019

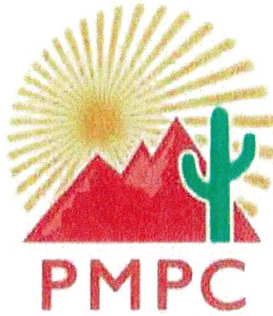


Patrick McMullen, PhD
Resident
City of Phoenix

Acting President,
Phoenix Mountains
Preservation Council, Inc. (PMPC)



EXHIBIT A



November 19, 2019

Via Certified U.S. Mail, Return Receipt Requested

The Honorable Kate Gallego, Mayor
City Council
CITY OF PHOENIX
City of Phoenix, Mayor's Office
200 W. Washington St., 11th Floor
Phoenix AZ 85003

***Re: Oversight Hearing Requested for City of Phoenix Water Services
Department Project No. WS85100047-2, Drought Pipeline Project***

Dear Honorable Mayor Gallego and City Councilmembers:

On behalf of the Phoenix Mountain Preservation Council, Inc. (PMPC) I write to express PMPC's objection to construction of a 66" water pipeline alignment by Phoenix Water Service's Department through the Phoenix Mountain Preserve near the Dreamy Draw Recreation Area, Project No. WS85100047-2.

While PMPC appreciates the importance of investing in a reliable future water supply, we have become increasingly concerned that the Water Services Department and its Director, Kathryn Sorensen, have exceeded their decision-making authority and are consequently denying the public and the City Council their legal rights under the Phoenix City Charter to determine the fate of our Phoenix Mountains Preserves. As discussed below, because the pipeline alignment violates the Preserve, the Water Services Department cannot begin construction of the project without the approval of the voters under Chapter XXVI, Sections 3 and 5, or alternatively, upon a demonstration and the approval of the City Council that this alignment (as opposed to other alignments that do not violate the Preserve) is both appropriate and necessary as expressly required by Chapter XXVI, Section 3(b) and Section 3(c)(4).

Due to these concerns, PMPC respectfully requests that you (1) hold an open and transparent oversight hearing to review the actions of the Phoenix Water Services Department regarding the potential usurpation of authority pursuant to the Phoenix City

Charter, and (2) conduct a full evaluation of all project alignment alternatives to be made available to the public.

PMPC further requests that you halt further development of this alignment and investment of taxpayer dollars until this matter is resolved.

BACKGROUND

For almost 50 years, PMPC members have worked tirelessly to preserve and protect our precious Mountain Preserve system and to monitor and address the rapid population that surrounds these important public resources, through advocacy, education, political action and collaboration with citizens, the City of Phoenix and other like-minded organizations and agencies.

As you may be aware, as part of the City of Phoenix's project to supplement its water supply system through the installation of a 60 MGD booster pump station, the Water Services Department has independently selected an alignment for the proposed pipeline that will connect the 24th Street Water Treatment Plant with a delivery point at 32nd Street and Bell Road. The selected alignment will damage 13 acres of previously undisturbed areas of the Preserve, require an almost 1,000-foot tunnel for its 66-inch pipeline through the mountain, and cut through numerous washes and other areas within the Preserve. It will also disrupt the neighborhood just north of Lincoln Drive for an extensive period of time, affecting the quality of life, and potential safety of residents due to limitations associated with access and the types of heavy equipment required for the project.

PMPC has voiced our concerns for the Preserve directly to the Water Services Department and the City of Phoenix, both in writing and in the handful of public meetings that have only recently been held to discuss the Water Services Department's selection of the current alignment. Nevertheless, the Water Services Department has decided to ignore concerns raised by PMPC, and indeed the many hundreds of neighborhood residents in the area of the alignment, concluding on its own that the Charter allows for them to construct the 66" pipeline. This is inconsistent with the Charter and ignores the value of the Preserve to Phoenix residents who are entitled to have a say in the pipeline's alignment where it goes through the Preserve, either through a public vote or, if appropriate, through the vote of their elected Council members.

PMPC is disturbed by the inadequate level of detail that has been made available by the Water Services Department regarding how and why it selected this particular alignment. In fact, important details about other alternative alignments considered by the Water Services Department were not shared with the public until our attorneys requested a copy of an Alignment Study prepared by Department consultants, under Arizona's public records law. While the Study we received was heavily redacted, what we could read did not provide a complete description of the reasoning behind selection of the current pipeline alignment over other available options that do not violate the Preserve. The Water Services Department's claim in a recent letter to PMPC that the project has been explained to the public at "more than 50 community meetings" is incorrect and

misleading. From what we have seen, none of these meetings actually discussed the specific project alignment alternatives in any detail, including the current alternative through the Preserve. Rather, these meetings addressed budgets, design contract approvals, and the general need for water reliability for Phoenix. Where there was discussion about impacts on the Preserve, these were limited, with few details, and public handouts were not provided.

For these reasons, PMPC is concerned by the lack of transparency around the alignment selection. The Water Services Department is obligated to secure public approval of their selected alignment alternative pursuant to Chapter XXVI of the Phoenix City Charter. They have failed to do this. This failure demonstrates disregard for the Charter and deprives the public and the City Council of their right to be involved in certain decisions impacting the Phoenix Mountain Preserve. The future of the Phoenix Mountains Preserve, a valuable public resource, is a matter of concern for all Phoenicians, who are legally entitled to a vote.

1. **The Water Services Department overstepped its authority by approving a pipeline alignment alternative that should have been decided by the voters or by the Phoenix City Council, as our duly elected representatives.**

Chapter XXVI of the Phoenix City Charter requires a public vote or in certain limited instances, authorization by the City Council to make certain alterations to the Phoenix Mountain Preserve; neither of these actions have yet taken place for the pipeline alignment.

Thus, PMPC urges you to immediately hold an oversight hearing to review the actions of the Phoenix Water Services Department and to clarify decision-making authority under the Charter.

Recognizing the importance of Phoenix Mountains Preserves to the public, the Charter makes clear that the City Council (and not Water Services Department staff) is responsible for making a determination that the selected alignment is both "appropriate" and "necessary" under the circumstances. See Charter, Chapter XXVI, Section 3(c)(4) (City Council shall have the authority to "[d]evelop to the extent necessary City-owned... water treatment facilities located with a City Mountain Preserve area."); See also Section 3(b) ("[t]he Mountain Preserves shall not be used except for a permitted use established by the City Council pursuant to this Section."

Allowing a pipeline to be built within the Preserve sets a dangerous precedent that future development for utility placement or other unauthorized use may proceed without a vote of the City Council or the voters.

Accordingly, unless the City Council determines in an open and transparent way and through a public vote of the Council that the 66" pipeline is both appropriate and necessary under the Charter, (a point PMPC currently has insufficient evidence to

support), it is PMPC's position that the current alignment through the Preserve must be put to public vote. Furthermore, any vote of the Council should include an analysis of what actions and funding may be necessary to mitigate to the fullest extent possible those short and long terms impacts on the habitat, resources, and recreational uses of the Preserve resulting from the construction of the alignment within the Preserve.

PMPC further requests that you halt further development of this alignment and investment of taxpayer dollars until this matter is resolved.

2. The Water Services Department should provide a complete and transparent analysis of all pipeline alignment alternatives to the public.

As previously discussed, the Water Services Department has failed to provide any detailed rationalization for why it selected this particular alignment through the Preserve over other alignments, and PMPC has been unable to locate any documentation showing that the public was provided with a full and detailed description of each alternative, including their advantages and disadvantages. Rather, in correspondence to PMPC dated October 21, 2019, the Water Services Department asserted that its staff and consultants have "conclude[d] that the route through the Preserve...was optimal." This is not a conclusion that the Water Services Department is entitled to make on its own. Furthermore, the critical decision to violate the Preserve requires full analysis of each alignment alternative – analysis that must be provided to the public, and the final selection must be made by the voters, or if appropriate, the City Council – not Department staff.

Further, part of the Preserve's value, and the purpose in setting it aside for preservation in the first place, was to maintain a piece of untouched and undeveloped Sonoran Desert within Phoenix for our residents today, and in the future. Disturbing previously undisturbed lands and tunneling through a mountain to build infrastructure are entirely contrary to this purpose. While drought concerns are serious and require innovative problem-solving, these concerns do not justify this particular alignment over other alignments or options. The Water Services Department's rejection of a routing closer to an existing 40-inch water pipeline on Dreamy Draw land managed by the Flood Control District of Maricopa County and Army Corps of Engineers was, according to them, to avoid a lengthy permitting process, not because it was not feasible. Electing to simply avoid necessary permitting has nothing to do with drought preparedness or necessity. Their rejection of other more viable options is similarly unjustified and yet unexplained.

Thus, the Phoenix Water Services Department must consider each alternative, including routing outside the preserve or closer to Route 51, in detail and its analysis must be made available to the public prior to a final decision by the voters or Council, if appropriate.

CONCLUSION

PMPC urges you to (1) hold an open and transparent oversight hearing to review the actions of the Phoenix Water Services Department regarding the potential usurpation

of authority pursuant to the Phoenix City Charter, and (2) conduct full evaluations of all alignment alternatives.

The City is required to comply with the requirements under Chapter XXVI of the City Charter. Nothing less will preserve the integrity of the Phoenix Mountain Preserve and by correlation, our community's own values that have long recognized and appreciated our natural landscapes, historic sites, parks, and recreational facilities.

Your immediate response is respectfully requested.

Yours Truly,

A handwritten signature in cursive script that reads "Robin Salthouse".

Robin Salthouse, President

Phoenix Mountain Preservation Council, Inc.

CC: Executive Board, Phoenix Mountain Preservation Council, Inc.
Susan B. Montgomery, Esq.