



**CITY OF BUCKEYE**  
**PLANNING AND ZONING COMMISSION**  
**REGULAR MEETING AGENDA**  
**APRIL 28, 2015**

**NOTICE OF POSSIBLE QUORUM OF THE BUCKEYE CITY COUNCIL**

In accordance with Title 38, Chapter 3, Article 3.1, Arizona Revised Statutes, a majority of the City Council may attend the regular meeting of the Buckeye Planning and Zoning Commission but there will be no voting taking place by the City Council. Council members may participate in the discussion of any item on the agenda.

*Accessibility for all persons with disabilities will be provided upon request. Please telephone your accommodation request to (623)349-6911, 72 hours in advance if you need a sign language interpreter or alternate materials for a visual or hearing impairment. [TDD (623)234-9507]*

City of Buckeye  
 Council Chambers  
 530 East Monroe Avenue  
 Buckeye, AZ 85326

**Workshop: None**  
**Regular Meeting: 6:00 pm**

At Large	District 1	District 2	District 3	District 4	District 5	District 6
Jim Zwerg	Jeffrey Nagy	Preston Hundley	Carol Kempiak <i>Chairperson</i>	Clayton Bedoya	Reverend Gregory Clemmons	Nick Hudec <i>Vice Chairperson</i>
Thomas Marcinko <i>(Alternate)</i>	Jesse Knight <i>(Alternate)</i>	Richard Burrell <i>(Alternate)</i>	Deanna Kupcik <i>(Alternate)</i>	Vacant <i>(Alternate)</i>	Bill Elliott <i>(Alternate)</i>	Duane Mitry <i>(Alternate)</i>

**Council Liaison:** Councilmember Craig Heustis

<b>1.</b>	<b>CALL TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL</b>	
<b>2.</b>	<b>APPROVAL OF MINUTES FROM MARCH 10, 2014 PLANNING AND ZONING COMMISSION REGULAR MEETING</b>	<b>Action required:</b> <i>Motion</i>
<b>3.</b>	<b>CONSENT AGENDA</b> <i>No Items</i>	

<b>4.</b>	<b>CONTINUANCE AGENDA</b> <i>No Items</i>	
<b>5.</b>	<b>REGULAR AGENDA</b>	
<b>5A.</b>	<b>Subject:</b> Cancellation of the Planning and Zoning Commission Regular Meetings for July 14, 2015 and August 11, 2015.	<b>Action required:</b> <i>Discussion and motion</i>
<b>5B.</b>	<b>Subject:</b> DCA15-01 (PLZ-15-00060) Land Subdivisions Development Code Amendment <b>Applicant:</b> City of Buckeye <b>Recommendation:</b> Initiate <b>Presented by:</b> Ed Boik, AICP, Senior Planner	<b>Action required:</b> <i>Discussion and motion for initiation</i>
<b>5C.</b>	<b>Subject:</b> DCA14-03 (PLZ-14-00094) Tobacco Retailers Development Code Amendment <b>Applicant:</b> City of Buckeye <b>Presented by:</b> Ed Boik, AICP, Senior Planner	<b>Action required:</b> <i>Discussion only</i>
<b>5D.</b>	<b>Subject:</b> Parks and Recreation Trails Master Plan (P&RMP) <b>Summary:</b> Update on the City of Buckeye P&RMP <b>Presented by:</b> Robert Wisener, Conservation & Project Manager	<b>Action required:</b> <i>Discussion only</i>
<b>5E.</b>	<b>Subject:</b> Community Development Block Grant (CDBG) program <b>Summary:</b> Update on CDBG projects in Buckeye <b>Presented by:</b> Andrea Marquez, Planner II	<b>Action required:</b> <i>Discussion only</i>
<b>6.</b>	<b>COMMENTS FROM THE PUBLIC</b> Members of the audience may comment on non-agenda items. However, State Open Meetings Law does not permit the Commission to discuss items not specifically on the agenda.	<b>Action required:</b> <i>None</i>
<b>7.</b>	<b>REPORT FROM STAFF</b>	<b>Action required:</b> <i>None</i>
<b>8.</b>	<b>COMMENTS FROM THE PLANNING AND ZONING COMMISSION</b>	
<b>9.</b>	<b>ADJOURNMENT</b>	<b>Action required:</b> <i>Motion</i>



**CITY OF BUCKEYE**  
**PLANNING AND ZONING COMMISSION**  
**REGULAR MEETING MINUTES **DRAFT****  
**MARCH 10, 2015**

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City of Buckeye  
530 East Monroe Avenue  
Buckeye, AZ 85326

**1. CALL TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL**

Chairperson Carol Kempkiak called the meeting to order at 6:00 p.m.

Members present: Commissioner Jim Zwerg, Alternate Jesse Knight seated for District 1, Commissioner Preston Hundley, Chairperson Carol Kempkiak, Commissioner Clayton Bedoya, Alternate Bill Elliott seated for District 5, Vice Chairperson Nick Hudec, Alternate Thomas Marcinko, Alternate Deanna Kupcik

Members absent: Commissioner Jeff Nagy, Commissioner Gregory Clemmons, Alternate Richard Burrell, Alternate Duane Mity

Staff present: Planning Manager Terri Hogan, Senior Planner Ed Boik (left at 6:55pm), Senior Planner Adam Copeland, Conservation and Project Manager Robert Wisener, Economic Development Director Len Becker, Management Assistant Stephanie Wilson, City Attorney Gary Verberger

**2. APPROVAL OF MINUTES FROM FEBRUARY 10, 2015 PLANNING AND ZONING COMMISSION REGULAR MEETING**

A motion was made by Commissioner Zwerg and seconded by Commissioner Hundley to approve the minutes of the February 10, 2015 Planning and Zoning Commission Regular meeting as presented. Motion carried.

**3. CONSENT AGENDA**

No items

**4. CONTINUANCE AGENDA**

**4A. VERRADO MARKETSIDE DISTRICT (SP14-17)**

A motion was made by Alternate Elliott and seconded by Commissioner Hundley to continue to the March 24, 2015 Planning and Zoning Commission regular meeting. Motion carried.

**5. REGULAR AGENDA**

**5A. ECONOMIC DEVELOPMENT ACTIVITIES**

Economic Development Director Len Becker presented and was available to answer questions from the Commission. Vice Chairperson Hudec questioned the increased activity on the roadways. Mr. Becker indicated that it is generated by the jobs and development taking place in the west valley. Commissioner Zwerg asked if Economic Development is pursuing projects that would generate structure. Mr. Becker informed the Commission that the City has limited resources when it comes to

infrastructure. Chairperson Kempiak asked what type of marketing is used by Economic Development. Mr. Becker informed the Commission that the City of Buckeye is connected on social media.

#### **5B. TOBACCO RETAILERS DEVELOPMENT CODE AMENDMENT (DCA14-03)**

Senior Planner Ed Boik presented and was available to answer questions from the Commission. Commissioner Bedoya asked if the Development Code limits tobacco retailers. Mr. Boik stated that there is currently nothing in the code that identifies or defines tobacco retailers or use standards. Alternate Elliott asked if the grandfathered tobacco retailers came under new ownership, would that use still be in effect. Mr. Boik informed the Commissioners that the use would remain the same unless a certain amount of time lapsed, and the use would then have to be reestablished. Ms. Kempiak asked if the Commission can suggest to Council to levy a tax onto tobacco retailers. City Attorney Gary Verberger stated that an amendment to the uniform tax code would have to be created. Mr. Zwerg asked about merging the adult uses portion of the code. Mr. Boik stated that the parameters could be defined in the stipulations and motion. Mr. Knight asked if the concentration of tobacco retailers is outlined in the code. Mr. Boik informed the Commission that with this amendment, the concentration standards will be addressed. Ms. Kempiak if a location could be labeled a tobacco retailer based on the percentage of tobacco sales. Mr. Boik confirmed that this will be in alignment with the bill currently being processed through the legislature. Mr. Hundley asked if there is anything that addresses tobacco retailers in the code at this time. Mr. Boik informed the Commission that the tobacco retailer is not defined at this time, but once it is defined, it can then be regulated.

A motion was made by Vice Chair Hudec and seconded by Commissioner Hundley to initiate the amendment.

#### **5C. GILA RIVER RESTORATION**

Senior Planner Adam Copeland and Conservation and Project Manager Robert Wisener presented and were available to answer questions from the Commission.

#### **6. COMMENTS FROM THE PUBLIC**

None

#### **7. REPORT FROM STAFF**

None

#### **8. COMMENTS FROM THE PLANNING AND ZONING COMMISSION**

None

#### **9. ADJOURNMENT**

A motion was made by Vice Chair Hudec and seconded by Commissioner Bedoya to adjourn at 7:20 pm. Motion carried.

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**Carol Kempiak, Chairperson**

**ATTEST:**

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**Keri Hernandez, Administrative Assistant**

I hereby certify that the foregoing is a true and correct copy of the Planning and Zoning Commission Regular Meeting held on the 10<sup>th</sup> day of March, 2015. I further certify that a quorum was present.

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**Keri Hernandez, Administrative Assistant**



# DEVELOPMENT CODE AMENDMENT

## Report to the Planning and Zoning Commission

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CASE NUMBER: DCA15-01 (PLZ-15-00060)  
TITLE: Subdivision Process Streamlining Amendment  
MEETING DATE: April 28, 2015  
AGENDA ITEM: 5B

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Applicant: City of Buckeye  
Request: An amendment to Article 8 to revise the Subdivision Review Processes.  
Location: Citywide  
Public input: None Known  
Recommendation: No Action

### **BACKGROUND:**

1. As part of an effort to streamline review process staff is bringing forward a request to initiate an amendment to the subdivision review standards. Subdivision review standards include preliminary plats, minor land divisions, lot splits, and final plats. These processes are enabled by state statute.
2. Staff has noted that the adopted processes may be in conflict with state law, specifically final plat review process. State Statute notes that only the local legislative body (City Council) may accept right-of-way and final plats. Current process is administrative. Additionally much as it was with site plan review, the review process is not competitive with other neighboring cities.
3. Following this meeting, Staff will conduct at least one stakeholder meeting with the development community. Using the planning commission's and the stakeholder group's guidance, staff will formulate a draft code which will comply with state statute, place Buckeye in a strong competitive position and meet the intents, goals, and policies of the City of Buckeye General Plan.

4. At this time, staff is requesting the commission to discuss and initiate the amendment to the subdivision review process. This item will be scheduled for commission discussion and possible recommendation at future a future meeting.

**RECOMMENDATION:**

5. Motion to Initiate an amendment to the Development Code regarding all standards related to subdivision review process.

**EXHIBITS**

Exhibit A State Statute

Prepared By:  
Ed Boik, AICP, Senior Planner

Reviewed By:  
Terri Hogan, AICP, Planning Manager

9-463. Definitions

In this article, unless the context otherwise requires:

1. "Design" means street alignment, grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers and the arrangement and orientation of lots.
2. "Improvement" means required installations, pursuant to this article and subdivision regulations, including grading, sewer and water utilities, streets, easements, traffic control devices as a condition to the approval and acceptance of the final plat thereof.
3. "Land splits" as used in this article means the division of improved or unimproved land whose area is two and one-half acres or less into two or three tracts or parcels of land for the purpose of sale or lease.
4. "Municipal" or "municipality" means an incorporated city or town.
5. "Planning agency" means the official body designated by local ordinance to carry out the purposes of this article and may be a planning department, a planning commission, the legislative body itself, or any combination thereof.
6. "Plat" means a map of a subdivision:
  - (a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance.
  - (b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute.
  - (c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinance and other state statute.
7. "Right-of-way" means any public or private right-of-way and includes any area required for public use pursuant to any general or specific plan as provided for in article 6 of this chapter.
8. "Street" means any existing or proposed street, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement for public vehicular access or a street shown in a plat heretofore approved pursuant to law or a street in a plat duly filed and recorded in the county recorder's office. A street includes all land within the street right-of-way whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, bridges and viaducts.
9. "Subdivider" means a person, firm, corporation, partnership, association, syndicate, trust or other legal entity that files application and initiates proceedings for the subdivision of land in accordance with the provisions of this article, any local applicable ordinance and other state statute, except that an individual serving as agent for such legal entity is not a subdivider.
10. "Subdivision" means any land or portion thereof subject to the provisions of this article as provided in section 9-463.02.
11. "Subdivision regulations" means a municipal ordinance regulating the design and improvement of subdivisions enacted under the provisions of this article or any prior statute regulating the design and improvement of subdivisions.

9-463.01. Authority

A. Pursuant to this article, the legislative body of every municipality shall regulate the subdivision of all lands within its corporate limits.

B. The legislative body of a municipality shall exercise the authority granted in subsection A of this section by ordinance prescribing:

1. Procedures to be followed in the preparation, submission, review and approval or rejection of all final plats.
2. Standards governing the design of subdivision plats.
3. Minimum requirements and standards for the installation of subdivision streets, sewer and water utilities and improvements as a condition of final plat approval.

C. By ordinance, the legislative body of any municipality shall:

1. Require the preparation, submission and approval of a preliminary plat as a condition precedent to submission of a final plat.

2. Establish the procedures to be followed in the preparation, submission, review and approval of preliminary plats.

3. Make requirements as to the form and content of preliminary plats.

4. Either determine that certain lands may not be subdivided, by reason of adverse topography, periodic inundation, adverse soils, subsidence of the earth's surface, high water table, lack of water or other natural or man-made hazard to life or property, or control the lot size, establish special grading and drainage requirements and impose other regulations deemed reasonable and necessary for the public health, safety or general welfare on any lands to be subdivided affected by such characteristics.

5. Require payment of a proper and reasonable fee by the subdivider based upon the number of lots or parcels on the surface of the land to defray municipal costs of plat review and site inspection.

6. Require the dedication of public streets, sewer and water utility easements or rights-of-way, within the proposed subdivision.

7. Require the preparation and submission of acceptable engineering plans and specifications for the installation of required street, sewer, electric and water utilities, drainage, flood control, adequacy of water and improvements as a condition precedent to recordation of an approved final plat.

8. Require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

D. The legislative body of any municipality may require by ordinance that land areas within a subdivision be reserved for parks, recreational facilities, school sites and fire stations subject to the following conditions:

1. The requirement may only be made upon preliminary plats filed at least thirty days after the adoption of a general or specific plan affecting the land area to be reserved.

2. The required reservations are in accordance with definite principles and standards adopted by the legislative body.

3. The land area reserved shall be of such a size and shape as to permit the remainder of the land area of the subdivision within which the reservation is located to develop in an orderly and efficient manner.

4. The land area reserved shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

E. The public agency for whose benefit an area has been reserved shall have a period of one year after recording the final subdivision plat to enter into an agreement to acquire such reserved land area. The purchase price shall be the fair market value of the reserved land area at the time of the filing of the preliminary subdivision plat plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including the interest cost incurred on any loan covering such reserved area.

F. If the public agency for whose benefit an area has been reserved does not exercise the reservation agreement set forth in subsection E of this section within such one year period or such extended period as may be mutually agreed upon by such public agency and the subdivider, the reservation of such area shall terminate.

G. The legislative body of every municipality shall comply with this article and applicable state statutes pertaining to the hearing, approval or rejection, and recordation of:

1. Final subdivision plats.

2. Plats filed for the purpose of reverting to acreage of land previously subdivided.

3. Plats filed for the purpose of vacating streets or easements previously dedicated to the public.
4. Plats filed for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.

H. Approval of every preliminary and final plat by a legislative body is conditioned upon compliance by the subdivider with:

1. Rules as may be established by the department of transportation relating to provisions for the safety of entrance upon and departure from abutting state primary highways.
2. Rules as may be established by a county flood control district relating to the construction or prevention of construction of streets in land established as being subject to periodic inundation.
3. Rules as may be established by the department of health services or a county health department relating to the provision of domestic water supply and sanitary sewage disposal.

I. If the subdivision is comprised of subdivided lands, as defined in section 32-2101, and is within an active management area, as defined in section 45-402, the final plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. The legislative body of the municipality shall note on the face of the final plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply, pursuant to section 45-576, or is exempt from the requirement pursuant to section 45-576.

J. Except as provided in subsections K and P of this section, if the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the director of water resources has given written notice to the municipality pursuant to section 45-108, subsection H, the final plat shall not be approved unless one of the following applies:

1. The director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 and the subdivider has included the report with the plat.
2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

K. The legislative body of a municipality that has received written notice from the director of water resources pursuant to section 45-108, subsection H or that has adopted an ordinance pursuant to subsection O of this section may provide by ordinance an exemption from the requirement in subsection J or O of this section for a subdivision that the director of water resources has determined will have an inadequate water supply because the water supply will be transported to the subdivision by motor vehicle or train if all of the following apply:

1. The legislative body determines that there is no feasible alternative water supply for the subdivision and that the transportation of water to the subdivision will not constitute a significant risk to the health and safety of the residents of the subdivision.
2. If the water to be transported to the subdivision will be withdrawn or diverted in the service area of a municipal provider as defined in section 45-561, the municipal provider has consented to the withdrawal or diversion.
3. If the water to be transported is groundwater, the transportation complies with the provisions governing the transportation of groundwater in title 45, chapter 2, article 8.
4. The transportation of water to the subdivision meets any additional conditions imposed by the legislative body.

L. A municipality that adopts the exemption authorized by subsection K of this section shall give written notice of the adoption of the exemption, including a certified copy of the ordinance containing the exemption, to the director of water resources, the director of environmental quality and the state real estate commissioner. If the municipality later rescinds the exemption, the municipality shall give written notice of the rescission to the director of water resources, the director of environmental quality and the state real estate commissioner. A municipality that rescinds an exemption adopted pursuant to subsection K of this section shall not readopt the exemption for at least five years after the rescission becomes effective.

M. If the legislative body of a municipality approves a subdivision plat pursuant to subsection J, paragraph 1 or 2 or subsection O of this section, the legislative body shall note on the face of the plat that the director of water resources has reported that the subdivision has an adequate water supply or that the subdivider has obtained a commitment of water service for the proposed subdivision from a city, town or private water company designated as having an adequate water supply pursuant to section 45-108.

N. If the legislative body of a municipality approves a subdivision plat pursuant to an exemption authorized by subsection K of this section or granted by the director of water resources pursuant to section 45-108.02 or 45-108.03:

1. The legislative body shall give written notice of the approval to the director of water resources and the director of environmental quality.

2. The legislative body shall include on the face of the plat a statement that the director of water resources has determined that the water supply for the subdivision is inadequate and a statement describing the exemption under which the plat was approved, including a statement that the legislative body or the director of water resources, whichever applies, has determined that the specific conditions of the exemption were met. If the director subsequently informs the legislative body that the subdivision is being served by a water provider that has been designated by the director as having an adequate water supply pursuant to section 45-108, the legislative body shall record in the county recorder's office a statement disclosing that fact.

O. If a municipality has not been given written notice by the director of water resources pursuant to section 45-108, subsection H, the legislative body of the municipality, to protect the public health and safety, may provide by ordinance that, except as provided in subsections K and P of this section, the final plat of a subdivision located in the municipality and outside of an active management area will not be approved by the legislative body unless the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108. Before holding a public hearing to consider whether to enact an ordinance pursuant to this subsection, a municipality shall provide written notice of the hearing to the board of supervisors of the county in which the municipality is located. A municipality that enacts an ordinance pursuant to this subsection shall give written notice of the enactment of the ordinance, including a certified copy of the ordinance, to the director of water resources, the director of environmental quality, the state real estate commissioner and the board of supervisors of the county in which the municipality is located. If a municipality enacts an ordinance pursuant to this subsection, water providers may be eligible to receive monies in a water supply development fund, as otherwise provided by law.

P. Subsections J and O of this section do not apply to:

1. A proposed subdivision that the director of water resources has determined will have an inadequate water supply pursuant to section 45-108 if the director grants an exemption for the subdivision pursuant to section 45-108.02 and the exemption has not expired or if the director grants an exemption pursuant to section 45-108.03.

2. A proposed subdivision that received final plat approval from the municipality before the requirement for an adequate water supply became effective in the municipality if the plat has not been materially changed since it received the final plat approval. If changes were made to the plat after the plat received the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If the municipality approves a plat pursuant to this paragraph and the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat.

Q. If the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the municipality has not received written notice pursuant to section 45-108, subsection H and has not adopted an ordinance pursuant to subsection O of this section:

1. If the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or if the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108, the municipality shall note this on the face of the plat if the plat is approved.

2. If the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat if the plat is approved.

R. Every municipality is responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder.

S. Pursuant to provisions of applicable state statutes, the legislative body of any municipality may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.

T. The legislative bodies of cities and towns may regulate by ordinance land splits within their corporate limits. Authority granted under this section refers to the determination of division lines, area and shape of the tracts or parcels and does not include authority to regulate the terms or condition of the sale or lease nor does it include the authority to regulate the sale or lease of tracts or parcels that are not the result of land splits as defined in section 9-463.

U. For any subdivision that consists of ten or fewer lots, tracts or parcels, each of which is of a size as prescribed by the legislative body, the legislative body of each municipality may expedite the processing of or waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat and may waive or reduce infrastructure standards or requirements proportional to the impact of the subdivision. Requirements for dust-controlled access and drainage improvements shall not be waived.

#### 9-463.02. Subdivision defined; applicability

A. "Subdivision" means improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse or similar project containing four or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

B. The legislative body of a municipality shall not refuse approval of a final plat of a project included in subsection A under provisions of an adopted subdivision regulation because of location of buildings on the property shown on the plat not in violation of such subdivision regulations or on account of the manner in which airspace is to be divided in conveying the condominium. Fees and lot design requirements shall be computed and imposed with respect to such plats on the basis of parcels or lots on the surface of the land shown thereon as included in the project. This subsection does not limit the power of such legislative body to regulate the location of buildings in such a project by or pursuant to a zoning ordinance.

C. "Subdivision" does not include the following:

1. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots.
2. The partitioning of land in accordance with other statutes regulating the partitioning of land held in common ownership.
3. The leasing of apartments, offices, stores or similar space within a building or trailer park, nor to mineral, oil or gas leases.

#### 9-463.03. Violations

It is unlawful for any person to offer to sell or lease, to contract to sell or lease or to sell or lease any subdivision or part thereof until a final plat thereof, in full compliance with provisions of this article and of any subdivision regulations which have been duly recorded in the office of recorder of the county in which the subdivision or any portion thereof is located, is recorded in the office of the recorder, except that this shall not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with any law or subdivision regulation regulating the subdivision plat design and improvement of subdivisions in effect at the time the subdivision was established. The county recorder shall not record a plat located in a municipality having subdivision regulations enacted under this article unless the plat has been approved by the legislative body of the municipality.

#### 9-463.04. Extraterritorial jurisdiction

A. In any county not having county subdivision regulations applicable to the unincorporated territory, the legislative body of any municipality may exercise the subdivision regulation powers granted in this article both to territory within its corporate limits and to that which extends a distance of three contiguous miles in all directions of its corporate limits and not located in a municipality. Any ordinance intended to have application beyond the corporate limits of the municipality shall expressly state the intention of such application. Such ordinance shall be adopted in accordance with the provisions set forth therein.

B. The extraterritorial jurisdiction of two or more municipalities whose territorial boundaries are less than six miles apart terminates at a boundary line equidistant from the respective corporate limits of such municipalities, or at such line as is agreed to by the legislative bodies of the respective municipalities.

C. As a prerequisite to the exercise of extraterritorial jurisdiction, the membership of the planning agency charged with the preparation or administration of proposed subdivision regulations for the area of extraterritorial jurisdiction shall be increased to include two additional members to represent the unincorporated area. Any additional member shall be a resident of the three mile area outside the corporate limits and be appointed by the legislative body of the county in which the unincorporated area is situated. Any such member shall have equal rights, privileges and duties with the other members of the planning agency in all matters pertaining to the plans and regulations of the unincorporated area in which

they reside, both in preparation of the original plans and regulations and in consideration of any proposed amendments to such plans and regulations.

D. Any municipal legislative body exercising the powers granted by this section may provide for the enforcement of its regulations for the area of extraterritorial jurisdiction in the same manner as the regulations for the area within the municipality are enforced.

9-463.05. Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions

A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this section, including the relevant portion of the infrastructure improvements plan.

B. Development fees assessed by a municipality under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.
2. The municipality shall calculate the development fee based on the infrastructure improvements plan adopted pursuant to this section.
3. The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.
4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area.
5. Development fees may not be used for any of the following:
  - (a) Construction, acquisition or expansion of public facilities or assets other than necessary public services or facility expansions identified in the infrastructure improvements plan.
  - (b) Repair, operation or maintenance of existing or new necessary public services or facility expansions.
  - (c) Upgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.
  - (d) Upgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.
  - (e) Administrative, maintenance or operating costs of the municipality.
6. Any development for which a development fee has been paid is entitled to the use and benefit of the services for which the fee was imposed and is entitled to receive immediate service from any existing facility with available capacity to serve the new service units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.
7. Development fees may be collected if any of the following occurs:
  - (a) The collection is made to pay for a necessary public service or facility expansion that is identified in the infrastructure improvements plan and the municipality plans to complete construction and to have the service available within the time period established in the infrastructure improvement plan, but in no event longer than the time period provided in subsection H, paragraph 3 of this section.
  - (b) The municipality reserves in the infrastructure improvements plan adopted pursuant to this section or otherwise agrees to reserve capacity to serve future development.
  - (c) The municipality requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion and any of the following apply:

(i) The costs incurred or money advanced are credited against or reimbursed from the development fees otherwise due from a development.

(ii) The municipality reimburses the owner for those costs from the development fees paid from all developments that will use those necessary public services or facility expansions.

(iii) For those costs incurred the municipality allows the owner to assign the credits or reimbursement rights from the development fees otherwise due from a development to other developments for the same category of necessary public services in the same service area.

8. Projected interest charges and other finance costs may be included in determining the amount of development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued to finance construction of necessary public services or facility expansions identified in the infrastructure improvements plan.

9. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or updated pursuant to subsection D of this section shall be used to provide the same category of necessary public services or facility expansions for which the development fee was assessed and for the benefit of the same service area, as defined in the infrastructure improvements plan, in which the development fee was assessed. Interest earned on monies in the separate fund shall be credited to the fund.

10. The schedule for payment of fees shall be provided by the municipality. Based on the cost identified in the infrastructure improvements plan, the municipality shall provide a credit toward the payment of a development fee for the required or agreed to dedication of public sites, improvements and other necessary public services or facility expansions included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services or facility expansions are provided by the developer. The developer of residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to section 9-500.05. If a development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.

11. If a municipality requires as a condition of development approval the construction or improvement of, contributions to or dedication of any facilities that were not included in a previously adopted infrastructure improvements plan, the municipality shall cause the infrastructure improvements plan to be amended to include the facilities and shall provide a credit toward the payment of a development fee for the construction, improvement, contribution or dedication of the facilities to the extent that the facilities will substitute for or otherwise reduce the need for other similar facilities in the infrastructure improvements plan for which development fees were assessed.

12. The municipality shall forecast the contribution to be made in the future in cash or by taxes, fees, assessments or other sources of revenue derived from the property owner towards the capital costs of the necessary public service covered by the development fee and shall include these contributions in determining the extent of the burden imposed by the development. Beginning August 1, 2014, for purposes of calculating the required offset to development fees pursuant to this subsection, if a municipality imposes a construction contracting or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate imposed on the majority of other transaction privilege tax classifications, the entire excess portion of the construction contracting or similar excise tax shall be treated as a contribution to the capital costs of necessary public services provided to development for

which development fees are assessed, unless the excess portion was already taken into account for such purpose pursuant to this subsection.

13. If development fees are assessed by a municipality, the fees shall be assessed against commercial, residential and industrial development, except that the municipality may distinguish between different categories of residential, commercial and industrial development in assessing the costs to the municipality of providing necessary public services to new development and in determining the amount of the development fee applicable to the category of development. If a municipality agrees to waive any of the development fees assessed on a development, the municipality shall reimburse the appropriate development fee accounts for the amount that was waived. The municipality shall provide notice of any such waiver to the advisory committee established pursuant to subsection G of this section within thirty days.

14. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the municipality shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.

C. A municipality shall give at least thirty days' advance notice of intention to assess a development fee and shall release to the public and post on its website or the website of an association of cities and towns if a municipality does not have a website a written report of the land use assumptions and infrastructure improvements plan adopted pursuant to subsection D of this section. The municipality shall conduct a public hearing on the proposed development fee at any time after the expiration of the thirty day notice of intention to assess a development fee and at least thirty days before the scheduled date of adoption of the fee by the governing body. Within sixty days after the date of the public hearing on the proposed development fee, a municipality shall approve or disapprove the imposition of the development fee. A municipality shall not adopt an ordinance, order or resolution approving a development fee as an emergency measure. A development fee assessed pursuant to this section shall not be effective until seventy-five days after its formal adoption by the governing body of the municipality. Nothing in this subsection shall affect any development fee adopted before July 24, 1982.

D. Before the adoption or amendment of a development fee, the governing body of the municipality shall adopt or update the land use assumptions and infrastructure improvements plan for the designated service area. The municipality shall conduct a public hearing on the land use assumptions and infrastructure improvements plan at least thirty days before the adoption or update of the plan. The municipality shall release the plan to the public, post the plan on its website or the website of an association of cities and towns if the municipality does not have a website, including in the posting its land use assumptions, the time period of the projections, a description of the necessary public services included in the infrastructure improvements plan and a map of the service area to which the land use assumptions apply, make available to the public the documents used to prepare the assumptions and plan and provide public notice at least sixty days before the public hearing, subject to the following:

1. The land use assumptions and infrastructure improvements plan shall be approved or disapproved within sixty days after the public hearing on the land use assumptions and infrastructure improvements plan and at least thirty days before the public hearing on the report required by subsection C of this section. A municipality shall not adopt an ordinance, order or resolution approving the land use assumptions or infrastructure improvements plan as an emergency measure.

2. An infrastructure improvements plan shall be developed by qualified professionals using generally accepted engineering and planning practices pursuant to subsection E of this section.

3. A municipality shall update the land use assumptions and infrastructure improvements plan at least every five years. The initial five year period begins on the day the infrastructure improvements plan

is adopted. The municipality shall review and evaluate its current land use assumptions and shall cause an update of the infrastructure improvements plan to be prepared pursuant to this section.

4. Within sixty days after completion of the updated land use assumptions and infrastructure improvements plan, the municipality shall schedule and provide notice of a public hearing to discuss and review the update and shall determine whether to amend the assumptions and plan.

5. A municipality shall hold a public hearing to discuss the proposed amendments to the land use assumptions, the infrastructure improvements plan or the development fee. The land use assumptions and the infrastructure improvements plan, including the amount of any proposed changes to the development fee per service unit, shall be made available to the public on or before the date of the first publication of the notice of the hearing on the amendments.

6. The notice and hearing procedures prescribed in paragraph 1 of this subsection apply to a hearing on the amendment of land use assumptions, an infrastructure improvements plan or a development fee. Within sixty days after the date of the public hearing on the amendments, a municipality shall approve or disapprove the amendments to the land use assumptions, infrastructure improvements plan or development fee. A municipality shall not adopt an ordinance, order or resolution approving the amended land use assumptions, infrastructure improvements plan or development fee as an emergency measure.

7. The advisory committee established under subsection G of this section shall file its written comments on any proposed or updated land use assumptions, infrastructure improvements plan and development fees before the fifth business day before the date of the public hearing on the proposed or updated assumptions, plan and fees.

8. If, at the time an update as prescribed in paragraph 3 of this subsection is required, the municipality determines that no changes to the land use assumptions, infrastructure improvements plan or development fees are needed, the municipality may as an alternative to the updating requirements of this subsection publish notice of its determination on its website and include the following:

(a) A statement that the municipality has determined that no change to the land use assumptions, infrastructure improvements plan or development fee is necessary.

(b) A description and map of the service area in which an update has been determined to be unnecessary.

(c) A statement that by a specified date, which shall be at least sixty days after the date of publication of the first notice, a person may make a written request to the municipality requesting that the land use assumptions, infrastructure improvements plan or development fee be updated.

(d) A statement identifying the person or entity to whom the written request for an update should be sent.

9. If, by the date specified pursuant to paragraph 8 of this subsection, a person requests in writing that the land use assumptions, infrastructure improvements plan or development fee be updated, the municipality shall cause, accept or reject an update of the assumptions and plan to be prepared pursuant to this subsection.

10. Notwithstanding the notice and hearing requirements for adoption of an infrastructure improvements plan, a municipality may amend an infrastructure improvements plan adopted pursuant to this section without a public hearing if the amendment addresses only elements of necessary public services in the existing infrastructure improvements plan and the changes to the plan will not, individually or cumulatively with other amendments adopted pursuant to this subsection, increase the level of service in the service area or cause a development fee increase of greater than five per cent when a new or modified development fee is assessed pursuant to this section. The municipality shall provide notice of any such amendment at least thirty days before adoption, shall post the amendment on its website or on the website of an association of cities and towns if the municipality does not have a website and shall

provide notice to the advisory committee established pursuant to subsection G of this section that the amendment complies with this subsection.

E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall include:

1. A description of the existing necessary public services in the service area and the costs to upgrade, update, improve, expand, correct or replace those necessary public services to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards, which shall be prepared by qualified professionals licensed in this state, as applicable.

2. An analysis of the total capacity, the level of current usage and commitments for usage of capacity of the existing necessary public services, which shall be prepared by qualified professionals licensed in this state, as applicable.

3. A description of all or the parts of the necessary public services or facility expansions and their costs necessitated by and attributable to development in the service area based on the approved land use assumptions, including a forecast of the costs of infrastructure, improvements, real property, financing, engineering and architectural services, which shall be prepared by qualified professionals licensed in this state, as applicable.

4. A table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of necessary public services or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial.

5. The total number of projected service units necessitated by and attributable to new development in the service area based on the approved land use assumptions and calculated pursuant to generally accepted engineering and planning criteria.

6. The projected demand for necessary public services or facility expansions required by new service units for a period not to exceed ten years.

7. A forecast of revenues generated by new service units other than development fees, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions, and a plan to include these contributions in determining the extent of the burden imposed by the development as required in subsection B, paragraph 12 of this section.

F. A municipality's development fee ordinance shall provide that a new development fee or an increased portion of a modified development fee shall not be assessed against a development for twenty-four months after the date that the municipality issues the final approval for a commercial, industrial or multifamily development or the date that the first building permit is issued for a residential development pursuant to an approved site plan or subdivision plat, provided that no subsequent changes are made to the approved site plan or subdivision plat that would increase the number of service units. If the number of service units increases, the new or increased portion of a modified development fee shall be limited to the amount attributable to the additional service units. The twenty-four month period shall not be extended by a renewal or amendment of the site plan or the final subdivision plat that was the subject of the final approval. The municipality shall issue, on request, a written statement of the development fee schedule applicable to the development. If, after the date of the municipality's final approval of a development, the municipality reduces the development fee assessed on development, the reduced fee shall apply to the development.

G. A municipality shall do one of the following:

1. Before the adoption of proposed or updated land use assumptions, infrastructure improvements plan and development fees as prescribed in subsection D of this section, the municipality shall appoint an infrastructure improvements advisory committee, subject to the following requirements:

(a) The advisory committee shall be composed of at least five members who are appointed by the governing body of the municipality. At least fifty per cent of the members of the advisory committee must be representatives of the real estate, development or building industries, of which at least one member of the committee must be from the home building industry. Members shall not be employees or officials of the municipality.

(b) The advisory committee shall serve in an advisory capacity and shall:

(i) Advise the municipality in adopting land use assumptions and in determining whether the assumptions are in conformance with the general plan of the municipality.

(ii) Review the infrastructure improvements plan and file written comments.

(iii) Monitor and evaluate implementation of the infrastructure improvements plan.

(iv) Every year file reports with respect to the progress of the infrastructure improvements plan and the collection and expenditures of development fees and report to the municipality any perceived inequities in implementing the plan or imposing the development fee.

(v) Advise the municipality of the need to update or revise the land use assumptions, infrastructure improvements plan and development fee.

(c) The municipality shall make available to the advisory committee any professional reports with respect to developing and implementing the infrastructure improvements plan.

(d) The municipality shall adopt procedural rules for the advisory committee to follow in carrying out the committee's duties.

2. In lieu of creating an advisory committee pursuant to paragraph 1 of this subsection, provide for a biennial certified audit of the municipality's land use assumptions, infrastructure improvements plan and development fees. An audit pursuant to this paragraph shall be conducted by one or more qualified professionals who are not employees or officials of the municipality and who did not prepare the infrastructure improvements plan. The audit shall review the progress of the infrastructure improvements plan, including the collection and expenditures of development fees for each project in the plan, and evaluate any inequities in implementing the plan or imposing the development fee. The municipality shall post the findings of the audit on the municipality's website or the website of an association of cities and towns if the municipality does not have a website and shall conduct a public hearing on the audit within sixty days of the release of the audit to the public.

H. On written request, an owner of real property for which a development fee has been paid after July 31, 2014 is entitled to a refund of a development fee or any part of a development fee if:

1. Pursuant to subsection B, paragraph 6 of this section, existing facilities are available and service is not provided.

2. The municipality has, after collecting the fee to construct a facility when service is not available, failed to complete construction within the time period identified in the infrastructure improvements plan, but in no event later than the time period specified in paragraph 3 of this subsection.

3. For a development fee other than a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within ten years after the fee has been paid or, for a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within fifteen years after the fee has been paid.

1. If the development fee was collected for the construction of all or a portion of a specific item of infrastructure, and on completion of the infrastructure the municipality determines that the actual cost of construction was less than the forecasted cost of construction on which the development fee was based

and the difference between the actual and estimated cost is greater than ten per cent, the current owner may receive a refund of the portion of the development fee equal to the difference between the development fee paid and the development fee that would have been due if the development fee had been calculated at the actual construction cost.

J. A refund shall include any interest earned by the municipality from the date of collection to the date of refund on the amount of the refunded fee. All refunds shall be made to the record owner of the property at the time the refund is paid. If the development fee is paid by a governmental entity, the refund shall be paid to the governmental entity.

K. A development fee that was adopted before January 1, 2012 may continue to be assessed only to the extent that it will be used to provide a necessary public service for which development fees can be assessed pursuant to this section and shall be replaced by a development fee imposed under this section on or before August 1, 2014. Any municipality having a development fee that has not been replaced under this section on or before August 1, 2014 shall not collect development fees until the development fee has been replaced with a fee that complies with this section. Any development fee monies collected before January 1, 2012 remaining in a development fee account:

1. Shall be used towards the same category of necessary public services as authorized by this section.

2. If development fees were collected for a purpose not authorized by this section, shall be used for the purpose for which they were collected on or before January 1, 2020, and after which, if not spent, shall be distributed equally among the categories of necessary public services authorized by this section.

L. A moratorium shall not be placed on development for the sole purpose of awaiting completion of all or any part of the process necessary to develop, adopt or update development fees.

M. In any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.

N. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees for each service area. The annual report shall include the following:

1. The amount assessed by the municipality for each type of development fee.
2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.

3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.

4. The amount of development fee monies used to repay:

- (a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment, including the amount needed to repay the debt service obligations on each facility for which development fees have been identified as the source of funding and the time frames in which the debt service will be repaid.

- (b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment, the total amount advanced by the municipality for each facility, the source of the monies advanced and the terms under which the monies will be repaid to the municipality.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.

6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

O. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk and post the report on the municipality's website or the website

of an association of cities and towns if the municipality does not have a website. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

P. A municipality that fails to file the report and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website as required by this section shall not collect development fees until the report is filed and posted.

Q. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.

R. A municipality may continue to assess a development fee adopted before January 1, 2012 for any facility that was financed before June 1, 2011 if:

1. Development fees were pledged to repay debt service obligations related to the construction of the facility.

2. After August 1, 2014, any development fees collected under this subsection are used solely for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued before June 1, 2011 to finance construction of the facility.

S. Through August 1, 2014, a development fee adopted before January 1, 2012 may be used to finance construction of a facility and may be pledged to repay debt service obligations if:

1. The facility that is being financed is a facility that is described under subsection T, paragraph 7, subdivisions (a) through (g) of this section.

2. The facility was included in an infrastructure improvements plan adopted before June 1, 2011.

3. The development fees are used for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued to finance construction of the necessary public services or facility expansions identified in the infrastructure improvement plan.

T. For the purposes of this section:

1. "Dedication" means the actual conveyance date or the date an improvement, facility or real or personal property is placed into service, whichever occurs first.

2. "Development" means:

- (a) The subdivision of land.

- (b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure that adds or increases the number of service units.

- (c) Any use or extension of the use of land that increases the number of service units.

3. "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

4. "Final approval" means:

- (a) For a nonresidential or multifamily development, the approval of a site plan or, if no site plan is submitted for the development, the approval of a final subdivision plat.

- (b) For a single family residential development, the approval of a final subdivision plat.

5. "Infrastructure improvements plan" means a written plan that identifies each necessary public service or facility expansion that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.

6. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least ten years and pursuant to the general plan of the municipality.

7. "Necessary public service" means any of the following facilities that have a life expectancy of three or more years and that are owned and operated by or on behalf of the municipality:

(a) Water facilities, including the supply, transportation, treatment, purification and distribution of water, and any appurtenances for those facilities.

(b) Wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.

(c) Storm water, drainage and flood control facilities, including any appurtenances for those facilities.

(d) Library facilities of up to ten thousand square feet that provide a direct benefit to development, not including equipment, vehicles or appurtenances.

(e) Street facilities located in the service area, including arterial or collector streets or roads that have been designated on an officially adopted plan of the municipality, traffic signals and rights-of-way and improvements thereon.

(f) Fire and police facilities, including all appurtenances, equipment and vehicles. Fire and police facilities do not include a facility or portion of a facility that is used to replace services that were once provided elsewhere in the municipality, vehicles and equipment used to provide administrative services, helicopters or airplanes or a facility that is used for training firefighters or officers from more than one station or substation.

(g) Neighborhood parks and recreational facilities on real property up to thirty acres in area, or parks and recreational facilities larger than thirty acres if the facilities provide a direct benefit to the development. Park and recreational facilities do not include vehicles, equipment or that portion of any facility that is used for amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, zoo facilities or similar recreational facilities, but may include swimming pools.

(h) Any facility that was financed and that meets all of the requirements prescribed in subsection R of this section.

8. "Qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of the person's license, education or experience.

9. "Service area" means any specified area within the boundaries of a municipality in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the infrastructure improvements plan.

10. "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

9-463.06. Standards for enactment of moratorium; land development; limitations; definitions

A. A city or town shall not adopt a moratorium on construction or land development unless it first:

1. Provides notice to the public published once in a newspaper of general circulation in the community at least thirty days before a final public hearing to be held to consider the adoption of the moratorium.

2. Makes written findings justifying the need for the moratorium in the manner provided for in this section.

3. Holds a public hearing on the adoption of the moratorium and the findings that support the moratorium.

B. For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of essential public facilities that would otherwise occur during the effective period of the moratorium. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. A showing of the extent of need beyond the estimated capacity of existing essential public facilities expected to result from new land development, including identification of any essential public facilities currently operating beyond capacity and the portion of this capacity already committed to development, or in the case of water resources, a showing that, in an active management area, an assured water supply cannot be provided or, outside an active management area, a sufficient water supply cannot be provided, to the new land development, including identification of current water resources and the portion already committed to development.

2. That the moratorium is reasonably limited to those areas of the city or town where a shortage of essential public facilities would otherwise occur and on property that has not received development approvals based upon the sufficiency of existing essential public facilities.

3. That the housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining essential public facility capacity.

C. A moratorium not based on a shortage of essential public facilities under subsection B of this section may be justified only by a demonstration of compelling need for other public facilities, including police and fire facilities. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. For urban or urbanizable land:

(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.

(b) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city or town are not unreasonably restricted by the adoption of the moratorium.

(c) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.

(d) That the city or town has determined that the public harm that would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands and the overall impact of the moratorium on population distribution.

(e) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

2. For rural land:

(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.

(b) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.

(c) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium.

(d) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

D. Any moratorium adopted pursuant to this section does not affect any express provision in a development agreement entered into pursuant to section 9-500.05 or as defined in section 11-1101 governing the rate, timing and sequencing of development, nor does it affect rights acquired pursuant to a

protected development right granted according to chapter 11 of this title or title 11, chapter 9. Any moratorium adopted pursuant to this section shall provide a procedure pursuant to which an individual landowner may apply for a waiver of the moratorium's applicability to its property by claiming rights obtained pursuant to a development agreement, a protected development right or any vested right or by providing the public facilities that are the subject of the moratorium at the landowner's cost.

E. A moratorium adopted under subsection C, paragraph 1 of this section shall not remain in effect for more than one hundred twenty days, but such a moratorium may be extended for additional periods of time of up to one hundred twenty days if the city or town adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

1. Verify the problem requiring the need for the moratorium to be extended.
2. Demonstrate that reasonable progress is being made to alleviate the problem resulting in the moratorium.

3. Set a specific duration for the renewal of the moratorium.

F. A city or town considering an extension of a moratorium shall provide notice to the general public published once in a newspaper of general circulation in the community at least thirty days before a final hearing is held to consider an extension of a moratorium.

G. Nothing in this section shall prevent a city or town from complying with any state or federal law, regulation or order issued in writing by a legally authorized governmental entity.

H. A landowner aggrieved by a municipality's adoption of a moratorium pursuant to this section may file, at any time within thirty days after the moratorium has been adopted, a complaint for a trial de novo in the superior court on the facts and the law regarding the moratorium. All matters presented to the superior court pursuant to this section have preference on the court calendar on the same basis as condemnation matters and the court shall further have the authority to award reasonable attorney fees incurred in the appeal and trial pursuant to this section to the prevailing party.

- I. In this section:

1. "Compelling need" means a clear and imminent danger to the health and safety of the public.

2. "Essential public facilities" means water, sewer and street improvements to the extent that these improvements and water resources are provided by the city, town or private utility.

3. "Moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or construction on, any land. It does not include denial or delay of permits or authorizations because they are inconsistent with applicable statutes, rules, zoning or other ordinances.

4. "Rural land" means all property in the unincorporated area of a county or in the incorporated area of the city or town with a population of two thousand nine hundred or less persons according to the most recent United States decennial census.

5. "Urban or urbanizable land" means all property in the incorporated area of a city or town with a population of more than two thousand nine hundred persons according to the most recent United States decennial census.

6. "Vested right" means a right to develop property established by the expenditure of substantial sums of money pursuant to a permit or approval granted by the city, town or county.



# DEVELOPMENT CODE AMENDMENT

## Report to the Planning and Zoning Commission

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**CASE NUMBER:** DCA14-03 (PLZ-14-00094)  
**TITLE:** Tobacco Retailers Amendment  
**MEETING DATE:** April 28, 2015  
**AGENDA ITEM:** 5C

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**Applicant:** City of Buckeye  
**Request:** An Amendment to Article 3 & Article 10 to establish use standards for Tobacco Retailers and Define the use  
**Location:** Citywide  
**Public input:** None Known  
**Recommendation:** No Action

### **PROJECT DESCRIPTION**

1. The purpose of this amendment is to establish standards to regulate the location of Tobacco Retailers (smoke shops, cigar bars, hookah lounges and other similar uses) with respect to public schools, private schools, charter schools, and potentially other uses which substantially involve children.
2. Tobacco Retailers are “retail commercial” and unless the code and/or findings defines specific characteristics or impacts of tobacco related uses which create a compelling interest, the regulations should be the same as other retail uses.
3. Knowing that tobacco consumption is a habit forming and poses significant health risks, there is a desire to limit the exposure of children and other sensitive populations from these businesses.
4. Tobacco retailers typically dedicate a significant percentage of their floor area to tobacco and tobacco related accessories. This could include pipes, papers, loose tobacco, cigars, cigarettes, flavored herbs, lighters and other accessories. State law loosely defines tobacco retailers and allows smoking within tobacco retailers through the Smoke Free Arizona Act.

5. Some valley communities have taken steps to define tobacco retailers to include all tobacco related uses including smoke shops, cigar lounges, hookah bars, and other retailers that derive a significant portion of their sales from cigarettes. These codes exempt gas station/convenience stores, drug stores, grocery & department stores and other retailers which do not primarily engage in tobacco sales.

### **BACKGROUND:**

6. The topic was introduced at the March 10, 2015 Planning and Zoning Commission meeting. The Commission initiated the amendment and recommended staff to explore other uses similar to tobacco retailers and recommend regulations common to all uses.
7. Staff also informed the Commission of a House Bill (HB 2579) which was being considered at State legislature which would restrict cities and counties from adopting ordinances which allowed tobacco retailers within 300-feet of day care facilities, public playgrounds, schools, or recreational facilities. The bill was not voted on and did not go into effect before the legislative session ended.

### **ANALYSIS:**

#### *Request to Review Other Similar Use*

8. Staff explored the options of including other uses with this amendment and recommends that they not be included. Other similar uses could include liquor stores, bars, taverns, medical marijuana facilities, adult-oriented businesses, or other uses which are age-restricted. Each of these uses is unique and has their own unique impacts. Each of the uses is also regulated by separate statutes and in many cases the statute restricts location. The City has established use standards for medical marijuana facilities and adult uses. Lastly, staff reviewed other community's developments codes and found no consistency in standards or application.
9. Staff strongly recommends that each use be reviewed and regulated through separate actions so as to not conflate the impacts and standards of each use. Staff will continue research best practices and prepare to discuss the "other similar uses" with the commission as part of future development code amendment work plans.

#### *Tobacco Retailers*

10. Staff considered all the above and researched nearby communities to determine best practices and industry standards.
  - **Goodyear:** No specific use definitions or separation requirements.

- **Surprise:** No specific use definitions or separation requirements.
- **Glendale:** No specific use definitions or separation requirements.
- **Peoria:** Tobacco Retailer is a permitted use in all commercial zoning districts.

*DEFINITION: Tobacco Retailer means a business which allows for the smoking of tobacco on premise and sells tobacco and/or tobacco accessories. These businesses are also subject to the Smoke Free Arizona Act, A.R.S. § 36-601.01 and R9-2-101 of the Arizona Administrative Code. Hookah, Tobacco, Cigar, and Shisha Lounges or Bars are considered Tobacco Retailers for the purposes of the Zoning Ordinance.*

- **Phoenix:** Tobacco Oriented Retailers are Permitted Uses in the C-2 district but subject to use standards. They must be at least 500-feet from another tobacco retailer, public, private or charter school, parks/playgrounds, or licensed day care facilities. The separation distance is measured from property line to property line.

*DEFINITION: A Tobacco Oriented Retailer is an establishment engaged in the sale and/or display of tobacco related products, including, but not limited to: cigarettes, chewing and dipping tobacco, cigarette papers, or any other instrument or paraphernalia for the smoking or ingestion of tobacco and products prepared from tobacco. This includes uses such as, but not limited to, a cigar store, head shop or hookah lounge. A tobacco oriented retailer shall not include any establishment over 10,000 square feet in gross floor area, or any establishment devoting less than 15 percent of its floor space to the sale/display of tobacco related products.*

- **Avondale:** Tobacco Uses are Conditional Uses in the C-2 (Community Commercial) and C-3 (Freeway Commercial) districts. They must be at least ¼ mile from another tobacco retailer, tattoo parlor, body piercing studio, plasma center, liquor store, or non-chartered financial institution (payday loan), or sexually-oriented business. The separation distance is measured from property line to property line and applies to businesses within or not within Avondale.

*DEFINITION: Cigar Bar/Tobacco Lounge/Smoke Shop: An establishment that specializes in the sale of cigars and other tobacco-related paraphernalia, and allows patrons to smoke tobacco products on-site. The consuming of tobacco products on-site shall conform to the Arizona law.*

*Recommended Code*

11. The best practices from the above communities along with consideration of local needs has led staff to propose the following:

- **Definition:** *A Tobacco Oriented Retailer is an establishment engaged in the sale and/or display of tobacco related products, including, but not limited to: cigarettes, chewing and dipping tobacco, cigarette papers, or any other instrument or paraphernalia for the smoking or ingestion of tobacco and products prepared from tobacco. This includes uses such as, but not limited to, a cigar store, head shop or hookah lounge. A tobacco oriented retailer shall not include any establishment over 10,000 square feet in gross floor area, or any establishment devoting less than 15 percent of its floor space to the sale/display of tobacco related products.*
- **Use:** Tobacco Oriented Retailers is permitted in the Community Mixed Use (CMU), Regional Mixed Use (RMU), Commercial Center (CC), General Commerce (GC), Community Commercial (C-2), and Regional Commercial (C-3) districts. They are Conditional in Downtown Commercial (DC), Neighborhood Commercial (C-1), and Neighborhood Mixed Use (NMU) districts. In all cases they are subject to the use/separation standards.
- **Use Standards:** Must be at least 500-feet from another tobacco retailer, public, private or charter school, parks/playgrounds, or licensed day care facilities. The separation distance is measured from property line to property line.

**RECOMMENDATION:**

12. This item has been prepared for discussion only. It will be scheduled for the next available public hearing for formal recommendation.

**EXHIBITS**

Exhibit A      Draft Code Changes

Prepared By:  
Ed Boik, AICP, Senior Planner

Reviewed By:  
Terri Hogan, AICP, Planning Manager

# ARTICLE 3: USE REGULATIONS

## 3.1. TABLE OF ALLOWED USES

Table 3.1-1 lists the principal uses allowed within all base zoning districts. Each of the listed uses is defined in Article 10, *Definitions*.

### 3.1.1. Explanation of Table Abbreviations

- A. **Permitted Uses**  
 “P” in a cell indicates that the use is allowed by right. Permitted uses are subject to all other applicable regulations of this Development Code, including the use-specific standards in Section 3.2, the dimensional standards in Article 4, and the requirements of Article 5, *Development and Design Standards and Guidelines*.
- B. **Conditional Uses**
  1. “C” in a cell indicates that in the respective zoning district the use is allowed only if reviewed and approved in accordance with the procedures of Section 8.7, *Conditional Use Permits*. Conditional uses are subject to all other applicable regulations of this Development Code, including the use-specific standards in Section 3.2, the dimensional standards in Article 4, and the requirements of Article 5, *Development and Design Standards and Guidelines*.
  2. The “C” designation in Table 3.1-1 in a given district does not constitute an authorization or an assurance that such use will be permitted. Rather, each conditional use permit application shall be evaluated as to its probable effect on adjacent properties and surrounding areas, among other factors, and may be approved or denied pursuant to the procedures in Section 8.7, *Conditional Use Permits*.
- C. **Prohibited Uses**  
 A blank cell indicates that the use is prohibited in the respective zoning district.
- D. **Use-Specific Standards**  
 Regardless of whether a use is allowed by right or as a conditional use, there may be additional standards that are applicable to the use. Use-specific standards are noted through a cross-reference in the last column of the table. Cross-references refer to Section 3.2, *Use-Specific Standards*. These standards apply in all districts unless otherwise specified.

### 3.1.2. Table Organization

In Table 3.1-1, land uses and activities are classified into general “use categories” and specific “use types” based on common functional, product, or physical characteristics such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions. This classification provides a systematic basis for assigning present and future land uses into appropriate zoning districts. This classification does not list every use or activity that may appropriately exist within the categories. Certain uses may be listed in one

category when they may reasonably have been listed in one or more other categories. The use categories are intended merely as an indexing tool and are not regulatory.

**3.1.3. Use for Other Purposes Prohibited**

Approval of a use listed in Table 3.1-1, and compliance with the applicable use-specific standards for that use, authorizes that use only. Development or use of a property for any other use not specifically allowed in Table 3.1-1 and approved under the appropriate process is prohibited.

**3.1.4. Classification of New and Unlisted Uses**

When application is made for a use category or use type that is not specifically listed in Table 3.1-1, the following procedure shall be followed:

- A.** The Director shall provide an interpretation as to the use category and/or use type into which such use should be placed. In making such interpretation, the Director shall consider its potential impacts, including but not limited to: the nature of the use and whether it involves dwelling activity; sales; processing; type of product, storage and amount, and nature thereof; enclosed or open storage; anticipated employment; transportation requirements; the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated; and the general requirements for public utilities such as water and sanitary sewer.
- B.** Appeal of the Director's decision may be made to the Planning Commission following procedures under Section 8.13, *Appeals of Administrative Decisions*, of this Development Code.

3.1.5. Table of Allowed Uses<sup>1</sup>

Table 3.1-1: TABLE OF ALLOWED USES																						
P=Permitted C=Conditional Use																						
Use Category	Use Type	RESIDENTIAL											MIXED-USE				NON-RESIDENTIAL					Use Standards
		A G	SF 43	SF 18	SF 10	SF 6	SF 3	SF 1	M F 1	M F 2	M H	N M U	C M U	R M U	D C	P O	C 1	C 2	C 3	B P	I 1	
<b>RESIDENTIAL USES</b>																						
<b>Household Living</b>	Dwelling, duplex						P	P	P				P									
	Dwelling, multi-family								P	P			P	P	P	P						
	Dwelling, single-family attached				P	P	P	P	P				P	P	P	P						
	Dwelling, single-family detached	P	P	P	P	P	P	P	C													
	Dwelling, mfd. home	P	P	C	C	C	C	C			P										3.2.1.A	
	Dwelling, mobile home	C									P										3.2.1.B	
	Dwelling, zero lot line					P	P	P	P	P				P								
	Mobile home park										P											
	Mfd. home subdivision										P											
<b>Group Living</b>	Assisted living, commercial								P	P			P	P	C		P	P	P			
	Assisted living, residential	P	P	P	P	P	P	P	P	P			C	C	C		C	C	C			
	Boarding house/guest room	P			C	C	C		C	C					P							
	Group home	C	P	C	C	C			C	C			C	C	C	C		C	C	C		
	Group recovery home	C	C	C	C				C	C			C	C	C	C		C	C	C		
	Nursing home								C	C			C	C	C	C		P	P	P		3.2.1.C
	Shelter care facility	P	P	P	P	C			C	C			C	C	C	C		P	P	P		
	Shelter care facility, homeless	C	C	C	C	C			C	C			C	C	C	C		C	C	C		P

<sup>1</sup> ORD. 06-13; 5/21/2013

**Table 3.1-1: TABLE OF ALLOWED USES**

P=Permitted C=Conditional Use

Use Category	Use Type	RESIDENTIAL											MIXED-USE				NON-RESIDENTIAL						Use Standards	
		A G	SF 43	SF 18	SF 10	SF 6	SF 3	SF 1	M F 1	M F 2	M H	N M U	C M U	R M U	D C	P O	C 1	C 2	C 3	B P	I 1	I 2		
<b>PUBLIC/INSTITUTIONAL USES</b>																								
<b>Community Service</b>	Assembly hall, public		C	C	C	C	C	C	C	C	C		C	C	P	P		P	P	P	P	C		3.2.2.G
	Cemetery	P	C	C	C	C			C	C			P	P	P		P	P	P	P	P		3.2.2.C	
	Community recreation center		P	P	P	P	P	P	P	P	P		P	P	P	C		P	P					
	Crematorium or funeral parlor												P	P	P		P	P	P	P	P			
	Government admin. and civic buildings												P	P	P	P		P	P	P	C	C		
	Government maint. & operations yards/buildings	C	C																		P	P		
	Public safety facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	3.2.2.F	
	Religious assembly		C	C	C	C	C	C	C	C			C	C	P	P		P	P	P	P	C	3.2.2.G	
	Social service facility								C	C			P	P	P	P	P	P	P	P				
<b>Cultural Facility</b>	Art gallery or museum, public											P	P	P	P	C	P	P	P	P		3.2.2.B		
	Library, public			P	P	P	C	C	C	C		C	P	P	P	C	P	P				3.2.2.E		
<b>Child Care Facility</b>	Day care, commercial								C	C		P	P	P	P	P	P	P	P	P	C			
	Day care, residential	P	P	P	C	C	C	C	P		P	P	P	P										
<b>Education</b>	College or university											C	C	P	P		C	C	P	P		3.2.2.H		
	Private elementary or middle school		P	P	P	P	P	P	P	P			C	P	C		C	C	C			3.2.2.H		
	Private high school		P	P	P	P	P	P	P	P			C	P	C		C	C	P			3.2.2.H		
<b>Health Care Facility</b>	Medical office or clinic								C	C		P	P	P	P	P	P	P	P	P				
	Hospital											C	C	C	C		C	P	P	P		3.2.2.D		
<b>Medical Marijuana Dispensary</b>	Medical Marijuana – ARIZ. REV. STAT. §36-2801 et seq.																				P	P	3.2.3.K	



**Table 3.1-1: TABLE OF ALLOWED USES**

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		A G	SF 43	SF 18	SF 10	SF 6	SF 3	SF 1	M F 1	M F 2	M H	N M U	C M U	R M U	D C	P O	C 1	C 2	C 3	B P	I 1	I 2		
<b>Animal Sales and Services</b>	Animal hospital												P	P	P		P	P	P	P	P			3.2.3.B
	Animal pet shop, retail												P	P	P	P		P	P	P	P			
	Animal training school	C	C										P	P	P			P	P	P				3.2.3.B
	Kennel, indoor only	P	P										P	P				P	P	P				3.2.3.B
	Kennel, indoor/outdoor	P	P																P					3.2.3.B
	Veterinary clinic	P	P								C		P	P	P	P		P	P	P	P			3.2.3.B
<b>Assembly</b>	Assembly hall, private								C	C		C	C	P	P		P	P	P	P				3.2.2.G
	Auditorium, private												P	P	P			P	P	P				3.2.2.G
	Fraternal or social club, nonprofit								C	C			P	P	P		P	P	P	P				3.2.2.G
	Country club, private membership		P	P	P	P	P	P	P	P														
<b>Financial Service</b>	Check Cashing																C	C	C	C	P			3.2.3.C
	Financial institution, with drive-thru												P	P	C		P	P	P	P				
	Financial institution, without drive-thru									C		P	P		P	P	P	P	P					



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		A G	SF 43	SF 18	SF 10	SF 6	SF 3	SF 1	M F 1	M F 2	M H	N M U	C M U	R M U	D C	P O	C 1	C 2	C 3	B P	I 1	I 2				
<b>Recreation and Entertainment, Indoor</b>	Art gallery or museum, private										C	C		P	P	P	P	C	P	P	P	C				
	Fitness and recreational sports center										C	C		P	P	P	P	P	P	P	P	C	C			
	General indoor recreation, commercial													C	P	P	P		P	P	P	C	C			
	Major entertainment facility, indoor														C	P	P		P	P	P	C	C			
	Movie theater														C	P	C		P	P	P	C				
<b>Personal Services</b>	Dry cleaning and laundry service										C	C		P	P	P	C	P	P	P	P	P	C			
	General personal services										C	C		P	P	P	P	P	P	P	P	P				
	Instructional services or trade school													C	P	P	P	P	P	P	P	P	P	P		
<b>Retail (Sales)</b>	Alcoholic beverages, retail sale													C	P	P	P		P	P	P					
	Convenience store with gas sales										C	C		C	P	P	P		P	P	P	C	P	C		
	Feed store	P	C																	P	P		P			
	General retail														P	P	P	P	P	P	P	P			3.2.3.D	
	Large retail																P	C		C	P	C			3.2.3.F	
	Open-air market or flea market	P	P																				C			
	Nursery and plant sales, wholesale	P	P																		C	P	P			
	Plant sales, retail	P	P												P	P		C		P	P	P				
	Sexually oriented business																					C		C	C	3.2.3.J
	<u>Tobacco Oriented Retailer</u>														C	P	P	C		C	P	P				3.2.3.L
<b>Vehicles and Equipment</b>	Boat, RV storage																				C		P	P		
	Boat, RV sales and rental																				P	P	P			
	Car wash														P	P	P		P	P	P	P	P			

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		A G	SF 43	SF 18	SF 10	SF 6	SF 3	SF 1	M F 1	M F 2	M H	N M U	C M U	R M U	D C	P O	C 1	C 2	C 3	B P	I 1	I 2			
	Gasoline sales	C	C											C	C	C	P		P	P	P	C	P		
	Parking structure								C	P				C	P	P	P	P	P	P	P	P	P		
	Truck stop	C																				C	P	3.2.3.I	
	Truck repair and overhaul	C																				C	P		
	Vehicle sales and rental													C	C	P				P	P	P	P	C	
	Vehicle service and repair, major													C	P	P	C			P	P		P	P	
	Vehicle service and repair, minor													P	P	P	C			P	P	P		P	P
	Vehicle storage																			C			P	P	
Visitor Accommodation	Bed and breakfast	C	C	C	C	C	C	C	C	C				P	P	P			P	P					
	Hotel or motel									C				C	P	P	P	C	P	P	P	P			
	Resort													C	P	P				P	P				
<b>INDUSTRIAL USES</b>																									
Industrial Service	Building materials sales, indoor retail														P	P				P	P	P	P		3.2.4.A
	Building material sales, outdoor or wholesale														C	C					P		P	P	
	Drilling company, no outside storage																						P	P	
	Drilling company, with outside storage																							P	
	Resource extraction	C																							C
	General industrial service																							P	P
Manufacturing and Production	Assembly, light																					P	P	P	
	Mfg., heavy																								P
	Mfg., light																					P	P	P	
Warehouse and Freight Movement	Mini-storage, indoor													C	C					P	P	P	P	P	

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		A G	SF 43	SF 18	SF 10	SF 6	SF 3	SF 1	M F 1	M F 2	M H	N M U	C M U	R M U	D C	P O	C 1	C 2	C 3	B P	I 1	I 2		
	Mini-storage, outdoor																	C	C	C	P	P		
	Motor freight terminal																				C	P		
	Storage yard																				C	P		
	Office warehouse																			P	P	P		
	Warehouse																			C	P	P		
	Wholesale establishment																	C	P	P	P	P		
<b>Waste and Salvage</b>	Auto wrecking and salvage yard																					P		
	Recycling center outdoor																						P	
	Recycling center indoor																			C	P	P		
	Landfill																					C	3.2.4.C	



## 3.2. USE-SPECIFIC STANDARDS

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### 3.2.3. Commercial Uses

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#### J. Sexually-Oriented Business

All sexually-oriented businesses shall comply with the regulations provided in Chapter 8 of the City Code in addition to this Code.

#### K. Medical Marijuana Uses<sup>2</sup>

The following minimum requirements shall apply to all medical marijuana dispensary and medical marijuana cultivation location uses permitted under ARIZ. REV. STAT. § 36-2801 *et seq.* (the "Act") and Section 3.1.5, Table of Allowed Uses, and Section 10.3.3.Q, Medical Marijuana Uses:

1. In addition to any other application requirements, an applicant for any medical marijuana dispensary or medical marijuana cultivation location use shall provide the following:
  - a. A notarized authorization, executed by the property owner, acknowledging and consenting to the proposed use of the property as a medical marijuana dispensary or medical marijuana cultivation location.
  - b. The legal name of the medical marijuana dispensary or medical marijuana cultivation location.
  - c. If the application is for a medical marijuana cultivation location, the name and location of the medical marijuana dispensary with which it is associated and, in addition, in the case of designated caregivers or qualifying patients, the name of qualifying patients for which the marijuana is being cultivated.
  - d. The name, address, and birth date of each officer and board member of the nonprofit medical marijuana dispensary agent.
  - e. The name, address, birth date, and valid registry identification card number of (a) each medical marijuana dispensary agent if the application is related to a medical marijuana dispensary or a related medical marijuana cultivation location and (b) each designated caregiver and qualifying patient if the application is related to a medical marijuana cultivation location associated with such qualifying patient and designated caregiver.
  - f. A copy of the operating procedures adopted in compliance with ARIZ. REV. STAT. § 36-2804(B)(1)(c).
  - g. A notarized certification that none of the medical marijuana dispensary officers or board members has been convicted of any of the following offenses:

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<sup>2</sup> ORD 04-11, RES 17-11; 2/14/2011





day and the medical marijuana dispensary or cultivation location shall illuminate all areas of the premises, including adjacent public sidewalks so that the areas are readily visible by law enforcement personnel. Twenty-four (24) hours each day, the medical marijuana dispensary or cultivation location shall illuminate the entire interior of the building, with particular emphasis on the locations of any counter, safe, storage area and any location where people are prone to congregate. The lighting must be of sufficient brightness to ensure that the interior is readily visible from the exterior of the building from a distance of 100 feet.

- c. Not have drive-through service.
  - d. Not emit, dust, fumes, vapors or odors into the environment.
  - e. Not provide offsite delivery of medical marijuana, except to a medical marijuana dispensary served by the medical marijuana cultivation location.
  - f. Have no on-site sales of alcohol or tobacco, and no on-site consumption of food, alcohol, tobacco or medical marijuana.
  - g. Not have outdoor seating areas.
  - h. Display a current Town of Buckeye business license, and a State of Arizona tax identification letter.
  - i. Provide law enforcement and all interested neighbors with the name and phone number of an on-site community relations staff person to notify if there are operational problems with the establishment.
  - j. The exterior appearance of the structure shall be compatible with structures already constructed or under construction within the immediate neighborhood, to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the vicinity.
  - k. City code enforcement officers, police officers, or other agents or employees of the City requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access.
  - l. Comply with all other applicable property development and designs standards of the City of Buckeye.
8. In addition to the requirements set forth in Paragraph 7 above, and to ensure that the operations of medical marijuana dispensaries are in compliance with Arizona law and to mitigate the adverse secondary effects from operation of dispensaries, medical marijuana dispensaries shall operate in compliance with the following additional standards:
- a. Security guards shall be provided at the main entrances and exits during all hours of operation. Detailed internal security measures will be identified and maintained after consultation with the Buckeye Police Department. For the purposes of the Section, "security guard" shall mean licensed and duly bonded security

personnel registered pursuant to ARIZ. REV. STAT. § 32-3601 *et seq.* Prior to opening for business, the medical marijuana dispensary shall provide all property owners with a 500 foot radius of the medical marijuana dispensary location with written notification via first class U.S. mail of the security company responsible for providing its security services.

- b. If determined necessary by the City Manager at any time, medical marijuana dispensaries shall provide a neighborhood security guard patrol for a two-block radius surrounding the medical marijuana dispensary during all or specified hours of operation.
- c. No doctor shall issue a written certification on-site for medical marijuana.
- d. Medical marijuana dispensaries shall only dispense medical marijuana to qualified patients and their designated caregivers as defined in the Act.
- e. Medical marijuana dispensaries shall notify patrons of the following verbally and through posting of a sign in a conspicuous location at the medical marijuana dispensary:
  - (i) Use of medical marijuana shall be limited to the patient identified on the doctor's written certification. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.
  - (ii) Patrons must immediately leave the site and not consume medical marijuana until at home or in an equivalent private location. Medical marijuana dispensary staff shall monitor the site and vicinity to ensure compliance.
- f. Medical marijuana dispensaries shall not provide marijuana to any individual in an amount not consistent with personal medical use, or in violation of state law and regulations related to medical marijuana use.
- g. Medical marijuana dispensaries shall not store more than two hundred dollars (\$200.00) in cash overnight on the premises.
- h. Any qualifying patient under eighteen (18) years of age shall be accompanied by a parent or legal guardian. Except for such parent or legal guardian, no persons other than qualifying patients and designated caregivers shall be permitted within a medical marijuana dispensary premises.
- i. No signs, advertising, or any other advertising matter used in connection with the medical marijuana dispensary shall be of an offensive nature and shall in no way be contrary to the City code, or obstruct the view of the interior of the premises viewed from the outside.

**L. Tobacco Oriented Retailers**

Applications for tobacco oriented retailers shall comply with and show the method of complying with the following standards:

1. This use shall be at least 500-feet from another tobacco retailers, public, private or charter school, parks/playgrounds, or licensed day care facilities.
2. The separation distance shall be measured in a straight line from the property line of the tobacco oriented retailer use to the nearest property line of the other listed uses.

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## ARTICLE 10: DEFINITIONS

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### 10.3. DEFINITIONS OF GENERAL USE CATEGORIES AND SPECIFIC USE TYPES

This section defines the general use categories and specific use types listed in Table 3.1-1, *Table of Allowed Uses*.

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#### 10.3.3. Commercial Uses

##### J. Retail (Sales)

Retail (Sales) firms are involved in the sale, lease, or rent of new or used products to the general public. No outdoor display is permitted unless specifically authorized by this Development Code. Accessory uses may include offices, parking, storage of goods, and assembly, repackaging, or repair of goods for on site sale. Specific use types include, but are not limited to:

##### 1. Alcoholic Beverages, Retail Sales

A retail establishment, such as a liquor store, licensed to sell alcoholic beverages such as beer, wine, and liquor. No on-site consumption is allowed.

##### 2. Convenience Store with Gas Sales

An establishment with a gross floor area of less than 5,000 square feet engaged in the sale of convenience goods, such as pre-packaged food items, tobacco, over-the-counter drugs, periodicals, and other household goods; and which also provides the retail sale of petroleum products that are dispensed through gasoline pumps and other supplies for motor vehicles.

##### 3. Feed Store

An establishment engaged in the retail sale of supplies directly related to ranching or dairy operations.

##### 4. General Retail

A commercial enterprise that provides goods directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the consumer. Examples include, but are not limited to: apparel shops, appliance sales, auto parts store, bait shop, bakeries, bookstores, convenience stores without gas pumps, department stores, factory outlet stores, and florists.

##### 5. Large Retail

A building that meets the definition of “general retail” and is 75,000 square feet or greater, but not including a building materials sales establishment.

- 6. Plant Sales, Retail**  
Land or greenhouses used for retail sale of flowers, shrubs, and plants.
- 7. Nursery and Plant Sales, Wholesale**  
The use of land, buildings or structures for the production of flowers, shrubs, and plants and their sales at wholesale. Incidental retail sales are allowed.
- 8. Open-Air Market or Flea Market**  
An indoor or outdoor premises where the main use is the sale of new or used household goods, personal effects, tools, art work, appliances, and similar merchandise, objects, or equipment in small quantities, in stalls, lots, parcels, or in bulk, for the use, sale or consumption by the immediate purchaser in a building, open air, or partly enclosed booths or stalls not within a wholly enclosed building. This definition does not include retail sidewalk sales or garage sales.
- 9. Sexually Oriented Business**  
Shall be as defined in Chapter 8 of the City Code. In addition, all use standards adopted by Ordinance 72-04 shall remain in full force and effect.
- 10. A Tobacco Oriented Retailer**  
An establishment engaged in the sale and/or display of tobacco related products, including, but not limited to: cigarettes, chewing and dipping tobacco, cigarette papers, or any other instrument or paraphernalia for the smoking or ingestion of tobacco and products prepared from tobacco. This includes uses such as, but not limited to, a cigar store, head shop or hookah lounge. A tobacco oriented retailer shall not include any establishment over 10,000 square feet in gross floor area, or any establishment devoting less than 15 percent of its floor space to the sale/display of tobacco related products.

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## APPENDIX C: OBSOLETE DISTRICTS PERMISSIBLE USES

Note: Conditional Uses are designated with a “C” all other permitted uses are designated with a “P”.

PRINCIPAL USE	ZONING DISTRICT						
	RR	PR	MR	PC	CC	GC	SU
Airport and Related Uses						C	C
Amusement Facility						C	C
Animal Processing/Breeding	P						P
Automotive Service/Repair					P	P	
Bar, lounge, or tavern					C	C	
Bed and Breakfast	C		C				
Boarding house	C		C				
Bowling alley					P	P	
Building material sales (outdoor)						P	
Cabinet making/woodworking	P				P	P	
Campgrounds, overnight	C						C
Cellular/radio tower	C					C	C
Cemetery	C				C		C
Clinic/health care facility	P				P	P	
Club, private nonprofit					P		P
Commercial Ranch	P						P
Convenience storage					P	P	
Crop production	C	P		P		P	P
Dairy	C						P
Day care center	C		C		C	C	
Equipment and tool rental					P	P	
Feed store	P				P	P	
Funeral home					C	C	
Golf course/resort	C	P	P			P	P
Group home			P		P		
Guest room	P				P		
Home occupation	P	P	P		P		
Hospital					C	C	
Hotel/motel					P	P	
Kennel	C						
Liquor store					C	C	
Machine shop						P	
Machinery and equipment storage						P	
Machinery sales and service						P	
Manufactured home park			C		C		
Manufactured home subdivision	C	C					
Manufacturing, custom	P				P	P	

PRINCIPAL USE	ZONING DISTRICT						
	RR	PR	MR	PC	CC	GC	SU
Manufacturing, general						P	
Master Planned Community				P			D
Meat processing, commercial						C	D
Multiple family dwelling			P		P		D
Museum					P	P	P
Nursing home			C		C		
Office building			P		P	P	
Place of public assembly					P	P	P
Places of worship		P	P		P		
Plant nurseries, retail					P	P	
Plant nurseries, wholesale	P					P	
Quarters for caretaker	P				P	P	P
Recreational vehicle park	C				C		C
Residential facility	P	P	P	P	P		
Residential ranch	P	P					
Retail, convenience establishment					P	P	
Retail, general establishment					P	P	
Riding stables and corral	P						P
Roadside stand	P						
Rodeo arena						P	P
Satellite earth station	C					C	C
Schools, public and private			P		P		
Service establishment					P	P	
Shopping center/plaza mall					P	P	
Single family dwelling	P	P	P	P	P		
Social service facility			C				
Swap meet						P	P
<u>Tobacco Oriented Retailer*</u>					<u>P</u>	<u>P</u>	
Truck repair and overhaul						P	
Truck stop						P	
Vehicle and RV sales/service						P	
Vehicle storage						P	
Veterinary clinic					P	P	
Veterinary hospital					P	P	
Warehousing, retail					P	P	
Warehousing, wholesale						P	
Zoo, private or public	C					C	C

\* Tobacco Oriented Retailers are subject to the use standards in Section 3.2.3.L