

# LOCAL AUTHORITY TO INTEGRATE WATER & LAND USE PLANNING IN ARIZONA

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Supplement to the  
Arizona Growing Water Smart Guidebook

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**BABBITT CENTER**  
FOR LAND AND WATER POLICY

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# ACKNOWLEDGEMENTS

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## LOCAL AUTHORITY TO INTEGRATE WATER & LAND USE PLANNING Supplement to the Arizona Growing Water Smart Guidebook

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### About This Document

This memorandum is an outcome of a 2021 initiative to clarify the legal authorities of local governments to manage land and water resources. This project was initiated as a result of a request from local government staff from various counties in Arizona and was informed by research conducted by the University of Arizona Water Resources Research Center. Culp & Kelly, LLP authored the report with the support of Gust Rosenfeld, P.L.C.

### Legal Disclaimer

The information provided in this memorandum is for general informational purposes only. This information does not, and is not intended to, constitute legal advice. Readers of this memorandum should contact their attorney to obtain advice with respect to how any particular matter or policy discussed in this memorandum or the *Growing Water Smart Guidebook* may relate to a particular town, city, or county.

### About Growing Water Smart

Growing Water Smart, a program of the Sonoran Institute and Lincoln Institute of Land Policy's Babbitt Center for Land and Water Policy, introduces communities to the full range of communications, public engagement, planning, and policy implementation tools to realize their watershed health and community resiliency goals. The Growing Water Smart workshop empowers local government leaders to adopt land use plans and policies that support water resilience. Interested individuals can learn more at [www.growingwatersmart.org](http://www.growingwatersmart.org).



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# INTRODUCTION

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There is increasing interest in moving away from the traditionally siloed land and water planning processes to more holistic, integrated management paradigms to reduce water demand, protect and improve the health of watersheds, and promote community health, safety, and welfare.



There is a common misperception in Arizona that counties, cities, and towns have little to no authority to manage local water resources. However, local jurisdictions already possess a broad set of authorities for addressing water resources. Many communities across Arizona are already undertaking various activities to address water resources and supply issues.

This memorandum describes the general authorities of Arizona counties and municipalities outside of active management areas to regulate land use and the extent to which counties and municipalities may incentivize and/or impose and enforce conditions related to water resources on proposed land uses.

This memorandum supplements the **Arizona Growing Water Smart: The Water-Land Use Nexus Guidebook** to provide additional information and resources about the existing authorities that Arizona's county and municipal governments may use to implement the policies and programs described in the Guidebook.

The information provided in this memorandum is for general informational purposes only. This information does not, and is not intended to, constitute legal advice. Readers of this memorandum should contact their attorney to obtain advice with respect to how any particular matter or policy discussed in this memorandum or the Guidebook may relate to a particular town, city, or county.

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# OVERVIEW OF LOCAL POWERS, AUTHORITIES, AND LIMITATIONS

## GENERAL AUTHORITIES OF ARIZONA TOWNS, CITIES, AND COUNTIES



Photo by J. Emanuel Stuart

Basic units of local government in Arizona include towns, cities, and counties. Towns possess all the powers and privileges granted to them generally by the Arizona Constitution and state laws.<sup>1</sup> Cities in Arizona may be either “general law” or “charter” (also called “home rule”) cities, described in more detail below.<sup>2</sup> The majority of municipalities in Arizona are general law cities, which derive their powers from the laws and the constitution of the state.<sup>3</sup> General law municipalities may only exercise those powers that are directly granted to them by the state legislature or that are necessarily implied from the specific powers granted by the state.<sup>4</sup> Charter cities are those cities that have adopted an individualized home rule charter under Article 13, Section 2 of the Arizona Constitution.<sup>5</sup> Charter cities may utilize the same powers granted to all municipalities in state statutes,<sup>6</sup> but may otherwise set their own rules on all matters that are not in conflict with state laws, even areas that may involve a statewide interest.<sup>7</sup> The adopted charter becomes the organic law of that city.<sup>8</sup> All counties in Arizona derive their powers by general Arizona law relating to counties.<sup>9</sup>

Questions of the scope of local authority often ultimately come down to whether a particular power has been granted either expressly or impliedly to a local jurisdiction by the state.<sup>10</sup> Arizona's approach and jurisprudence related to powers and authorities of local jurisdictions largely follow a combination of home rule and "legislative home rule" approaches.<sup>11</sup> Home rule generally means that cities are granted greater substantive lawmaking power in areas of local concern, often through the creation of charters.<sup>12</sup> In legislative home rule approaches, local jurisdictions are granted the "police power"—those powers related to protecting the public health, safety, and welfare – which the local entity may exercise so long as it is not in conflict with state law.<sup>13</sup> In Arizona, while the state is assumed to have a general police power, local authorities have only as much police power as has been granted to them,<sup>14</sup> which is important in determining the scope of local authority on a given issue, such as land- and water-related police powers.

Although the legal analysis applied in evaluating the appropriate scope of local authority may vary based on the particular jurisdiction, in practice, the considerations that a court will evaluate may be similar across towns, charter cities, general law cities, and counties. For charter cities, a court will look to the city charter in assessing the authority granted to the city by the state. Charter cities are also limited under the Arizona Constitution in

the powers that they may grant themselves via charter. These provisions have been interpreted by the courts to trigger what is in effect a three-part analysis when assessing whether a given ordinance or other local action was exercised under a proper grant of state power to a charter city: (1) is the authority to exercise the particular power granted by the charter (expressly or impliedly as discussed above); (2) is the matter in an area of purely municipal or of statewide concern; and (3) if the matter is in an area of statewide concern, is the power exercised by the local jurisdiction in conflict with other state law?<sup>15</sup>

In analyzing the powers of general law cities, towns, and counties, the only question is whether the jurisdiction has been granted a particular power by general laws. Many of the same considerations discussed above that are reviewed by a court in resolving questions regarding a city charter can also come up in the court's interpretation of whether a power has been granted by the general laws. That is, a statute will not be read to grant a power to a local authority if that interpretation appears to conflict with a broader regulatory scheme adopted by the legislature, or if the court finds that the power being exercised is not an appropriate subject of municipal concern.<sup>16</sup> The following sections describe key considerations and potential limitations on local authorities.

## AREAS OF STATEWIDE CONCERN / PREEMPTION CONSIDERATIONS

A key limitation on local authority can arise from state “preemption” – essentially, where the state legislature has ruled in such a manner that overrides local authority in the same area. Preemption is most frequently discussed in the context of federal and state relationships since the Supremacy Clause of the U.S. Constitution gives Congress power to preempt, or supersede, state law.<sup>17</sup> There are three types of preemption in the context of federal-state relationships: “express,” “conflict,” and “occupation of the field.”<sup>18</sup> “Intrastate” preemption doctrines usually resemble this federal structure,<sup>19</sup> with a similar doctrine applying to state versus local laws.

When an issue affects both state and local interests, generally Arizona towns, cities, and counties may enact relevant laws unless preempted by state law.<sup>20</sup> The Arizona Court of Appeals in *Coconino County v. Antco, Inc.* stated, “[A] state law only preempts conflicting local ordinances when the subject matter of the legislation is of statewide concern and the state has appropriated the field.”<sup>21</sup> To determine whether a local law has been preempted, a court “must find a “clear manifestation of legislative intent to preclude local control” and an actual conflict between local regulation and governing state law.”<sup>22</sup> To determine whether an administrative body’s powers and responsibilities may be preempted, such as whether a county zoning ordinance may be preempted by a state law, a case-by-case analysis is required.<sup>23</sup>

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*Unless the state has preempted a matter, municipalities and counties in Arizona have fairly broad authority to implement policies and regulations to protect the health, safety, and welfare of residents.*

The 1980 Groundwater Management Act's well spacing and well impact provisions have raised preemption concerns related to exercising local authorities to manage water resources. Locations of wells are regulated for both water quality and water resource purposes in Arizona. While counties generally have broad authority to implement ordinances for sanitation purposes and to address threats to public health or the environment,<sup>24</sup> preemption concerns have been raised where counties have acted based on other water resource management purposes. Ariz. Rev. Stat. § 45-598(A) directs the Arizona Department of Water Resources (ADWR) director to adopt rules governing the location of new and replacement wells within the state's Active Management Areas "to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells."<sup>25</sup> Preemption issues would arise where a county takes an action specifically related to approving or denying a new or replacement well based on potential damage to surrounding land or other water users, because that is squarely within the authority granted to ADWR.<sup>26</sup> However, the scope of potential preemption outside of such specific well location decisions appears to be fairly narrow. Counties in Arizona can and do consider other factors related to well locations in various land use and building approvals, most often related to water quality and sanitation considerations.

Another area of state law that has raised preemption concerns related to exercising local powers to manage water resources is the Assured and Adequate Water Supply programs

administered by the ADWR. These programs are governed by ADWR rules and are the primary (and to a large extent, the only) statewide water management authorities for water availability planning for certain new developments.

However, the program might not be a "comprehensive statutory scheme" that precludes local government regulation or management of water resources. Towns, cities, and counties could potentially use their otherwise-existing police powers to manage water resources in a broad range of ways, provided those actions do not directly conflict with the Assured and Adequate Water Supply rules or propose to deny a subdivision on the basis of water availability. Even in that context, the state program does not concern itself with other important planning considerations such as water quality, public safety, infrastructure needs and costs, bond financing requirements, land use regulations, design criteria, and other elements that communities with growing populations and concerns over water supply and demand might wish to consider. As such, the likely scope of any state preemption appears to be narrow, and even with these limitations, there are several existing authorities through which cities and towns can engage in water management (described in more detail in the next section).

Unless the state has preempted a matter, municipalities and counties in Arizona have fairly broad authority to implement policies and regulations to protect the health, safety, and welfare of residents. Case law points to both

the unpredictability of a court’s assessment of local powers and the general ability of the state legislature to override local law. Speaking specifically of charter cities, the League of Arizona Cities and Towns states: “...the court has not followed a consistent pattern in its decisions, and apparently there is no way to anticipate what Arizona courts will do with questions regarding charter authority.”<sup>27</sup> However, broadly written grants of local authority in general, city charter provisions in particular, and the Supreme Court’s language requiring a clear policy in order to establish preemption, all afford an opportunity for local jurisdictions to exercise existing authorities in new ways or explore new authorities not clearly in conflict with other existing state law.



Photo by J. Emanuel Stuart

# UNCONSTITUTIONAL CONDITIONS DOCTRINE CONSIDERATIONS



Discussed in further detail below related to [Infrastructure Improvement Authorities](#), another key consideration and limitation on local authority is the “unconstitutional conditions” doctrine, which “prohibits government from requiring a person to give up a constitutional right in order to obtain a discretionary benefit unless the right and benefit are sufficiently connected.”<sup>28</sup> The doctrine becomes an important consideration when a dedication of land, development fees, or other requirements are imposed on a landowner as part of permit conditions or other development decisions.

The doctrine has classically arisen in the context of infrastructure exactions, such as conditioning development permits on the grant of a public easement across a portion of the property,<sup>29</sup> or requiring certain development or mitigation fees.<sup>30</sup> An exaction is only permissible if it has a nexus to the asserted governmental interest purportedly being served by the exaction,<sup>31</sup> and the degree of the exaction is roughly proportional to the impact of the use for which the approval/permit is issued (known as the *Nollan/Dolan* test).<sup>32</sup> No precise mathematical calculation is required, but a municipality or county must make some individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.<sup>33</sup>

Importantly, a court typically will not find an unconstitutional condition if at least one of the options available to the applicant passes the

*Nollan/Dolan* test.<sup>34</sup> This “one option” nuance comes from the U.S. Supreme Court’s *Koontz* decision, which involved a condition placed on a proposed development to mitigate its environmental impacts by either

(1) reducing the size of the development and deeding a conservation easement on the remainder of the property to the permitting District; or

(2) paying for offsite mitigation.<sup>35</sup>

The Court stated that “so long as a permitting authority offers the landowner at least one alternative that would satisfy *Nollan* and *Dolan*, the landowner has not been subjected to an unconstitutional doctrine.”<sup>36</sup> This lends support to the concept of integrating at least one option in permitting conditions that advances water-related goals and policies. If at least one option available to the applicant meets the *Nollan/Dolan* test, the other options could reach beyond typical development exactions.



Photo by Meritt Thomas

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# EXISTING LOCAL AUTHORITIES RELATED TO INTEGRATING WATER & LAND PLANNING

## WATER-RELATED POWERS & AUTHORITIES



The Arizona State Legislature has expressly delegated a series of water-related general “police powers” to counties and municipalities for a variety of water supply, water quality, wastewater management, floodplain, and other water- and infrastructure-related purposes.

These existing authorities provide many ways for local governments to manage local water supplies and could be even more powerful for achieving a community’s water-related goals, policies, and improved watershed and community health when planned and integrated together across planning authorities and government departments. For example, this might involve integrating planning and implementation authorities to achieve consistent goals and policies across land use plans, municipal system water plans, regional water quality plans, etc., all of which might be overseen by different departments within a county or municipality.

**TABLE 1: EXAMPLES OF EXISTING LOCAL AUTHORITIES RELATED TO WATER\***

	CITIES & TOWNS	COUNTIES
<b>WATER SUPPLY, CONSERVATION</b>	<ul style="list-style-type: none"> <li>• Providing the town with water, constructing public wells, cisterns, and reservoirs, and supplying them with pumps and conducting pipes or ditches. Ariz. Rev. Stat. § 9-240(6).</li> <li>• Constructing, acquiring, or improving drinking water facilities with state financial assistance. Ariz. Rev. Stat. § 9-571.</li> <li>• Enforcing water conservation plumbing requirements. Ariz. Rev. Stat. § 9-500.08.</li> <li>• Ensuring an adequate water supply for new subdivisions by adopting an ordinance requiring that a final plat for approval be accompanied with a determination of adequate water supply from ADWR or a written commitment of water service from a water company designated as having an adequate water supply. Ariz. Rev. Stat. § 9-463.01(O).</li> <li>• Regulating subdivision of land and prescribing minimum requirements and standards for installation of water utilities and improvements as a condition of final plat approval. Ariz. Rev. Stat. § 9-463.01.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishing a program to provide financial assistance to eligible property owners to make improvements to an existing drinking water well or providing for a water delivery system for the residence, utilizing gifts, grants, and donations. Ariz. Rev. Stat. § 11-254.09.</li> <li>• Enforcing water conservation plumbing requirements. Ariz. Rev. Stat. § 11-251.09</li> <li>• Ensuring an adequate water supply for new subdivisions by adopting an ordinance requiring that a final plat for approval be accompanied with a determination of adequate water supply from ADWR or a written commitment of water service from a water company designated as having an adequate water supply. Ariz. Rev. Stat. § 11-823.</li> </ul>
<b>WASTEWATER, SEWERS, WATER QUALITY</b>	<ul style="list-style-type: none"> <li>• Constructing and maintaining sewers and drains. Ariz. Rev. Stat. 9-240(5)(a).</li> <li>• Regulating subdivision of land and prescribing minimum requirements and standards for installation of sewer utilities and improvements as a condition of final plat approval. Ariz. Rev. Stat. § 9-463.01.</li> <li>• Constructing, acquiring, or improving wastewater treatment facilities or nonpoint source projects with state financial assistance. Ariz. Rev. Stat. § 9-571.</li> </ul>	<ul style="list-style-type: none"> <li>• Making and enforcing sanitary and other regulations not in conflict with general law. Ariz. Rev. Stat. 11-251(31).</li> <li>• Implementing a local stormwater quality program and adopting ordinances and fees to do so. Ariz. Rev. Stat. § 11-251(66).</li> <li>• Constructing and improving wastewater treatment facilities or nonpoint source protection with state financial assistance. Ariz. Rev. Stat. § 11-671.</li> </ul>
<b>WATERCOURSES, FLOODPLAINS, DRAINAGE</b>	<ul style="list-style-type: none"> <li>• Changing the channels of natural watercourses and regulating them the same as sewers. Ariz. Rev. Stat. § 9-240(5)(b).</li> <li>• Preventing and punishing the filling up, altering, or changing of natural watercourses. Ariz. Rev. Stat. § 9-240(5)(c).</li> </ul>	<ul style="list-style-type: none"> <li>• Controlling flood waters or lessening their destructive effects by building dikes, levees, or other structures. Ariz. Rev. Stat. § 11-257.</li> <li>• Preventing erosion, flooding, and landslides by adopting and enforcing standards for excavation, landfill, and grading. Ariz. Rev. Stat. § 11-251(36).</li> <li>• Acquiring land for drainage ways and other public purposes. Ariz. Rev. Stat. § 11-251(44).</li> </ul>

\*Note: This is not a comprehensive list of all water-related local authorities but highlights just some of the explicit authorities legislatively granted to local governments. This table excludes those water-related components of land planning authorities (see discussion on next page).

A charter city has the advantage of being able to “create by charter the form of government that will best serve its particular needs,”<sup>37</sup> which for a few charter cities have included some limited authorities related to water. For example, Casa Grande, Douglas, Flagstaff, Peoria, Phoenix, and Scottsdale have charters that contain provisions allowing those cities to designate and regulate floodplains and floodways.<sup>38</sup> The charters of Casa Grande, Douglas, and Peoria allow those cities to provide remedies to prevent and abate water pollution.<sup>39</sup> Charter cities have the ability

to add provisions to their charters pursuant to their charter amendment procedures, which could add authorities to the specific city’s organic laws (so long as it is not preempted). However, a key consideration is simply that some of the water-related authorities for charter cities may be slightly different than the authorities granted to general law cities, so charter provisions should be carefully scrutinized when determining a given municipality’s scope of existing authority and potential limitations related to a proposed new policy.



# WATER-RELATED LAND USE POWERS & AUTHORITIES

## TABLE 2: PURPOSE OF GENERAL & COMPREHENSIVE PLANS

### CITIES & TOWNS

“The general plan shall consist of a statement of community goals and development policies. The plan shall include maps, any necessary diagrams and text setting forth objectives, principles, standards and plan proposals....”

Ariz. Rev. Stat. § 9-461.05(C).

### COUNTIES

“The comprehensive plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the area of jurisdiction pursuant to the present and future needs of the county. The comprehensive plan shall be developed so as to conserve the natural resources of the county, to ensure efficient expenditure of public monies and to promote the health, safety, convenience and general welfare of the public.”

Ariz. Rev. Stat. § 11-804(A).

Land use and zoning laws are considered to be inherent police powers for general law cities, towns, and counties.<sup>40</sup> Arizona’s charter cities have the same inherent powers, although some cities have included unique land use provisions in their charters.<sup>41</sup>

### PLANS

Generally, land use planning and regulation begins with high-level policy objectives established for specific areas or for the jurisdiction as a whole, which progress through increasingly detailed requirements covering all aspects of development on land. In Arizona, the foundational documents in local planning are general plans for municipalities and comprehensive plans for counties.

The Growing Smarter (1998) and Growing Smarter Plus (2000) Acts explicitly require cities, towns, and counties of certain sizes and rates of growth to consider available water supplies and demand for water in their long-term planning documents.<sup>42</sup> Similarly, for counties with populations greater than 125,000 people, their county plans must include planning for water resources.<sup>43</sup>

**For cities and towns over 2,500 residents, the general plan must include:**

- (1) an open space element;
- (2) a growth area element;
- (3) an environmental planning element;
- (4) a cost of development element; and
- (5) a water resources element.

**The general plan must, for cities and towns over 50,000 residents, and may, for cities and towns of fewer than 50,000 residents, include:**

- (1) a conservation element;
- (2) a recreation element;
- (3) a circulation element;
- (4) a public services and facilities element;
- (5) a public buildings element;
- (6) a housing element;
- (7) a conservation, rehabilitation and redevelopment element;
- (8) a safety element for the protection of the community from natural and artificial hazards;
- (9) a bicycling element; and
- (10) a neighborhood preservation element.<sup>44</sup>

Counties have similar requirements related to their comprehensive plans; notably, the water resources requirements applicable to counties with populations over 125,000 are identical to the provisions applicable to municipalities over 50,000 population.

**As part of the water resources element, the statute requires addressing:**

- (1) the known legally and physically available surface water, groundwater, and effluent supplies;
- (2) the demand for water that will result from future growth projected in the general plan, added to existing uses; and

- (3) an analysis of how the demand for water that will result from future growth projected in the general plan will be served by the identified water supplies or a plan to obtain additional necessary water supplies.<sup>45</sup>

This language, particularly when tied to other elements and local authorities, allows exploration of various approaches to securing and preserving water supplies. In particular, the third requirement presents an opportunity to bifurcate the demand analysis into a typical demand model and conservation model, each with different impacts on the ability to sustain existing residents and new growth.

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*A key benefit to incorporating water-related goals and policies in comprehensive and general plans is setting the legal foundation for carrying out those policies through the next tier of land use regulation, as any zoning on a property must be consistent with the adopted plan.<sup>46</sup>*

## ZONING

### Zoning regulations carry out the plan policies and goals by:

- (1) organizing the city, town, or county into zones that provide orderly development and promotion of health, safety, and welfare of the residents; and
- (2) providing detail for the requirements applicable to specific uses of land.

Cities, towns, and counties are permitted by statute to establish zoning regulations.<sup>47</sup>

Whether exercised by a general law city/town or charter city, the authority is the same, as zoning has been found to be a matter of statewide concern.<sup>48</sup> However, in exercising its authority, the city or town is required to strictly comply with the enabling act (the state laws authorizing zoning).<sup>49</sup> There are many examples of how zoning ordinances (and/or development reviews based on zoning ordinances) might integrate water and land use considerations to advance comprehensive and general plan goals and policies.

### TABLE 3: ZONING ORDINANCES FOR GENERAL WATER/LAND USE PLAN GOALS & POLICIES\*

#### PLANNED AREA DEVELOPMENTS

Some jurisdictions allow more customized zones than more traditional zoning.<sup>50</sup> The common thread in these various newer zones is flexibility. Instead of the traditional, Euclidian zoning categories like R1-6 (single-family residential, one home per 6,000 square feet) covering large areas, a Planned Area Development (PAD) might allow for a mix of housing types in that same area, so long as the mix is consistent with the general plan. A tradeoff to the municipality or county for granting the flexibility of a PAD or something similar is the ability to incentivize or negotiate other local government priorities. One example is a *Cluster Development Option*, which might allow smaller lot sizes than otherwise would be allowed in the zone, so long as the plan includes a certain amount of open space, protection of natural features, or other offset criteria. These flexible options might be integrated into the zoning code or might require a rezoning and an accompanying development agreement, which, when supported by the goals and policies of the general or comprehensive plan, provide powerful tools for integrating water and land considerations for new developments.

#### OVERLAY DISTRICTS

The Arizona enabling act permits cities, towns, and counties to “adopt overlay zoning districts and regulations applicable to particular buildings, structures and land within individual zones.”<sup>51</sup> The statute defines an “overlay zoning district” as “a special zoning district that includes regulations that modify regulations in another zoning district with which the overlay zoning district is combined.”<sup>52</sup> Care is required in drafting provisions for an overlay district, however, as the modifications cannot add use limitations to certain users within the district that would not be otherwise imposed against all users in the district.<sup>53</sup> For example, a municipality cannot require a use permit for a certain type of use that otherwise would not require a permit in the underlying zone.<sup>54</sup> But for uses permitted on a conditional basis in the underlying zone, additional requirements may be imposed.<sup>55</sup>

\*Note: Specific examples of how these options have been utilized by Arizona communities are described in the [Growing Water Smart Guidebook](#)

Table 3. cont.

## ZONING ORDINANCES FOR GENERAL WATER/LAND USE PLAN GOALS & POLICIES

### CONDITIONAL USE PERMITS AND USES PERMITTED WITH CONDITIONS

Many municipalities provide for specified uses to be permitted only under certain circumstances. The more traditional approach involves a body within the municipality (typically the city/town council or the planning and zoning commission) issuing a permit for specified uses upon a determination that the uses met an established set of criteria. This process, while common, leaves open the possibility for variation in the decisions by the approving body, whether due to changes in the membership of the body, or due to inconsistencies in interpretation as to whether the prescribed conditions have been met. Conditional use permits also involve an element of judicial uncertainty relating to mechanisms for challenges to their validity.<sup>56</sup> More recently, municipalities have identified certain uses as “permitted with conditions.” Unlike the conditional use permit, uses that are permitted with conditions do not require action by an elected or appointed body; if the conditions are met, the use is permitted. The permitted with conditions approach offers an opportunity to allow for expansion of uses within a particular zoning category for those meeting certain pre-set conditions. Most typically, the development community seeks either an increase in density or a decrease in infrastructure costs, which could provide an opportunity to create incentives that tie the jurisdiction’s water-related goals and the developer’s goals.

### TRANSFER OF DEVELOPMENT RIGHTS

Transfer of development rights (TDR) is a method for transferring the development rights from one property to another, typically allowing for more density and clustering of uses in order to achieve a desired outcome, such as protecting sensitive resources or other conservation value on the property from which the development rights were transferred. TDR can be an effective tool as a voluntary, incentive-based approach to achieving both the jurisdiction’s water-related goals and the developer’s goals. It is important to note that the transfer of development rights has not been determined, by itself, to represent just compensation for taking of property.<sup>57</sup> In particular, under the Arizona Constitution, TDR cannot be counted as a portion of just compensation; such damages must be paid in money.<sup>58</sup>

## SUBDIVISIONS

Land division and subdivision regulations are the next tier of land use regulations, providing the requirements applicable to dividing land into discrete lots or parcels for sale and the infrastructure required to serve those lots. Arizona municipalities and counties have the obligation to regulate subdivisions within their boundaries.<sup>59</sup> Despite having a statutory definition of “subdivision,”<sup>60</sup> the question of whether a property division fits within the definition is the subject of significant debate, particularly when the divisions occur between related entities over a very short period. This problem is especially prevalent in rural areas. Municipalities have fairly limited authority to regulate such lot splits within their jurisdictions.<sup>61</sup>

**Counties have slightly broader but still fairly limited authority to do so. Counties may adopt ordinances and regulations for staff review and approval of land divisions of five or fewer lots, parcels, or fractional interests, when any of which is ten acres or smaller.**<sup>62</sup> Applications to split a parcel of land must be approved by the county if it meets four criteria: (1) the lots each meet the minimum applicable zoning requirements of the applicable zoning designation; (2) the applicant demonstrates legal access to the lots; (3) the applicant states whether the lot has physical access traversable by a two-wheel drive passenger motor vehicle; and (4) the applicant reserves the necessary and appropriate utility easements to serve each lot.<sup>63</sup> **This ability to regulate potentially allows a county to incorporate water-related policies into its zoning requirements for**

**applicable zoning designations where lot splits are a development concern.** In practice, few municipalities and counties have well-developed policies for addressing these less formal land divisions.

Cities and towns are required to provide for a uniform process for subdividing property within their jurisdictions; counties are required to do the same for all lands within their jurisdiction except subdivisions regulated by municipalities.<sup>64</sup> Unlike zoning decisions, which are typically legislative in nature, subdivision regulations are typically administrative in nature. As a practical result of the distinction, subdivision regulations are more likely to be interpreted as “check-the-box” requirements; if an applicant meets all of the requirements, failure to approve might be considered arbitrary and capricious. Accordingly, most jurisdictions provide for substantial detail in their subdivision regulations to ensure any applicant meeting all the requirements will complete its project in a manner consistent with protecting public health, safety, and welfare. Such regulations offer an opportunity to address water-related goals and policies (e.g., water supply, sewer, and stormwater management infrastructure) as another box to be checked on the list.

## GUIDELINES & BUILDING CODES

Finally, design guidelines and building codes provide the detailed requirements of how buildings and other improvements upon the land are to be constructed. All local regulations, except for general plan requirements and

zoning ordinance provisions, are subject to the unconstitutional conditions doctrine discussed above, so care should be exercised in determining how best to integrate any requirements associated with water-related goals and policies. However, when used as part of an overall comprehensive scheme, such requirements may be more defensible.<sup>65</sup>

**There are many avenues to integrate water-related requirements, incentives, and guidance into design guidelines and building codes to advance comprehensive and general plan goals and policies. For example:\***

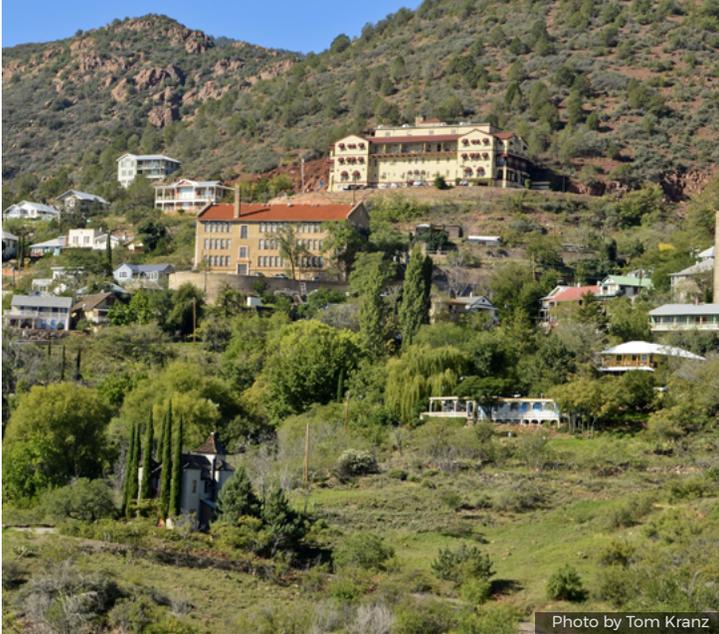
- Water conservation plumbing standards.
- Water-efficient landscaping design criteria.
- On-site water reuse guidance and policies.
- Rainwater harvesting guidance and policies.
- On-site stormwater capture requirements.
- Hill slope building standards.
- Septic and wastewater standards, including standards for distancing drinking water wells from septic systems.

\*Note that these examples may invoke other laws or regulations that will be important for a municipality or county to consider, such as federal and state water quality standards that might relate to on-site reuse of wastewater, federal and local floodplain management standards that might relate to stormwater capture, other authorizing legislation that may fix the standard or create a floor/ceiling, etc.



Photo by Meritt Thomas

# INFRASTRUCTURE IMPROVEMENTS



As noted above, local jurisdictions have several existing authorities related to water, wastewater, sewer, and other infrastructure. “Infrastructure” refers generally to the public facilities necessary to support development, such as roads, bridges, water and sewer lines, sewer treatment, flood control improvements, schools, parks, and healthcare services among other things.

To some degree, municipalities may require developers to help cover the costs to scale out infrastructure to meet new demand generated by the new development.<sup>66</sup>

To remedy the need to construct infrastructure to serve areas larger than a single development, some Arizona communities utilize “necessary public services” ordinances.<sup>67</sup> Authorized by state law, municipalities and counties may assess development fees to offset costs associated with providing necessary public services to a development, with “necessary public services” defined in statute as “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...; (b) Wastewater facilities...; (c) Storm water, drainage and flood control facilities...; (d) Library facilities...; (e) Street facilities; (f) Fire and police facilities; (g) Neighborhood parks and recreational facilities...”<sup>68</sup>

The ordinances that have been adopted vary in nature, scope, and duration. However, there is no Arizona case law providing guidance as to what is permissible under state law.

The simple concept behind the necessary public services ordinance—growth providing its own infrastructure—carries with it the underlying premise that development costs should be shouldered by those creating the need for the cost.<sup>69</sup> However, with certain types of infrastructure (like water resources), it may be in the municipality’s interest to regionalize the improvements to get maximum utility from the facilities. This may mean, for example, building a new wastewater treatment plant or making improvements to an existing plant to serve existing and future development across a large area. This often means it must be built at a location that is not near the development creating the need. The result could place a disproportionate fiscal impact on a development if it is many miles from the infrastructure (i.e., a sewer plant or water treatment facility), or a municipality incurring the costs of building infrastructure in advance of growth. Development fees assessed through necessary public services ordinances provide a mechanism for municipalities and counties to plan for infrastructure development and other capital improvements and ensure benefited developments pay a pro-rata cost share of the infrastructure.<sup>70</sup>

Pre-planning for infrastructure development and integrating infrastructure into county or municipal **capital improvement plans** is an important step to enable the move from policies laid out in the comprehensive or general plans to actual projects. Municipalities and counties are required to annually share capital improvement

plans “containing all public works projects scheduled to be constructed.”<sup>71</sup> Most capital improvement plans attempt to determine the infrastructure needs for decades to follow. As a result, adopted plans will have several items that are described in the plan that are not funded in the current fiscal year.

Including projects in the capital improvement plan provides the foundation for carrying them through to an **infrastructure improvement plan**, which must be adopted before development fees may be assessed (in some cases the infrastructure improvement plan may be the same as the capital improvement plan).<sup>72</sup> Unlike general capital improvement plans, the facilities included in the infrastructure improvement plan are primarily related to new growth.<sup>73</sup> Accordingly, creating the infrastructure improvement plan requires careful allocation of the benefits of the capital facilities to new and existing residents.<sup>74</sup>

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*Pre-planning for infrastructure development and integrating infrastructure into county or municipal capital improvement plans is an important step to enable the move from policies laid out in the comprehensive or general plans to actual projects.*

Arizona’s development fee statutes contain a series of provisions that guarantee the compliance of development fee collections and expenditures with general constitutional principles. **Important limitations on the practical use of development fees in the water resource development context include:**

- Development fees can only be expended on certain capital items, not as general revenues.
- Developments that pay fees must benefit from fee expenditures.
- Development fees are limited to the proportional share of the cost of new infrastructure that is attributable to the new development and increasing the level of service (via development fees) that is provided to existing residents is prohibited. Development fees are also required to be assessed in service areas within which there is a substantial nexus between the necessary public service and new growth.
- Development fees may only be collected, in relevant part, to pay for water infrastructure, including the supply, transportation, treatment, water treatment and distribution facilities; wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities; and stormwater, drainage, and flood control facilities, including any appurtenances for those facilities.<sup>75</sup>

As noted above, exactions (including development fees) are only permissible under the unconstitutional conditions doctrine if they have a nexus to the asserted governmental interest purportedly being served by the exaction,<sup>76</sup> and the degree of the exaction is roughly proportional to the impact of the use for which the approval/permit is issued.<sup>77</sup> The statutory elements of Arizona’s development fees requirements—ensuring that a sufficient relationship exists between the impact created by a new development, the fees charged to the development, and the benefit received by the development—effectively embody the dual rational nexus test.<sup>78</sup> Compliance with these provisions, therefore, limits the possibility of any successful constitutional challenge to a development fee program.

Another manner that infrastructure is constructed in municipalities is through development exactions that require new development to construct basic infrastructure in and around the project, like streets (or portions thereof) adjacent to the project and connections to water and sewer infrastructure. Like development fees and other exactions, development exactions must comply with the unconstitutional conditions doctrine. As noted above, no precise mathematical calculation is required, but a municipality or county must make some individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.<sup>79</sup>



# SUMMARIZING THE SCOPE OF LOCAL AUTHORITIES

**Arizona communities have been granted a broad set of water-related powers and authorities by the state legislature, and there are several ways that those direct and implied powers, together with communities' inherent powers to regulate land use, can be utilized to achieve water-related and watershed health goals and policies.**

Setting the foundation for those goals and policies in the general or comprehensive plan and drawing a clear nexus from those through land use and other regulations provides support for the regulation being an appropriate subject of municipal concern.

Integrating goals and policies across a given jurisdiction's planning and regulatory authorities provides another significant opportunity to de-silo planning efforts for a more holistic approach to local resources management.

**Some examples of places to crosswalk goals and policies and build in deliberate intersections and references include:**

- System Water Plans  
(local public or private water utilities).
- Adequate Water Supplies  
(local public or private water utilities, subdivisions).

- Floodplain Regulations.
- Stormwater Management Plans and Regional Water Quality Plans.
- Water Resources or other Watershed Planning/Study Committees and Partnerships.

Unless the state has preempted a matter, municipalities and counties in Arizona have fairly broad authority to implement policies and regulations to protect the health, safety, and welfare of residents. Case law points to both the unpredictability of a court's assessment of local powers and the general ability of the state legislature to override local law. Speaking specifically of charter cities, the League of Arizona Cities and Towns states: "[T]he court has not followed a consistent pattern in its decisions, and apparently there is no way to anticipate what Arizona courts will do with questions regarding charter authority."<sup>80</sup> However, broadly written grants of local authority in general, city charter provisions in particular, and the Supreme Court's language requiring a clear policy in order to establish preemption, all afford opportunity for local jurisdictions to exercise existing authorities in new ways or to explore new authorities not clearly in conflict with other existing state law.

## NOTES & REFERENCES CITED

- [1] Ariz. Rev. Stat. § 9-137 (“Cities and towns incorporated pursuant to the provisions of this article shall have all the powers, duties, rights and privileges granted to incorporated cities and towns under the laws and constitution of this state”).
- [2] See *generally*, Toni McClory, *Understanding the Arizona Constitution*, 155 (2001).
- [3] Ariz. Rev. Stat. § 9-137.
- [4] Courts narrowly construe these powers, particularly the implied powers.
- [5] There are currently 20 charter cities in Arizona (Avondale, Bisbee, Casa Grande, Chandler, Douglas, Flagstaff, Glendale, Goodyear, Holbrook, Mesa, Nogales, Peoria, Phoenix, Prescott, Scottsdale, Tempe, Tombstone, Tucson, Winslow, and Yuma).
- [6] Ariz. Rev. Stat. § 9-499.01.
- [7] *Union Transportes v. City of Nogales*, 195 Ariz. 166, 985 P.2d 1025 (1999).
- [8] Ariz. Const. Art. XIII, §2.
- [9] A 1992 constitutional amendment empowers counties with populations of over 500,000 to adopt home rule charters; however, no counties in Arizona have adopted charters.
- [10] See, e.g., *City of Phoenix v. Arizona Sash, Door & Glass Co.*, 293 P.2d 438, 439 (Ariz. 1956). The Arizona Supreme Court has stated with regard to charter cities: “The powers derived by a municipality from its charter are three-fold: those granted in express words, those fairly implied in the powers expressly granted, and those essential to the accomplishment of the declared objects and purposes of the corporation--not simply convenient, but indispensable.” *City of Phoenix v. Williams*, 361 P.2d 651, 654 (Ariz. 1961). (A similar statement has been made by the appeals court about municipal corporations generally. See *Maricopa County v. Maricopa County Municipal Water Conservation District No. 1*, 171 Ariz. 325, 328 (Ariz. App. 1991)). In the context of general law cities, the Court has stated, “Municipalities have only such legislative powers as have been expressly, or by necessary implication, delegated to them by the legislature.”<sup>192</sup> *City of Flagstaff v. Associated Dairy Products*, 255 P.2d 191, 192 (Ariz. 1953).
- [11] See *generally* Paul Diller, *Intrastate Preemption*, 87 B.U.L. Rev. 1113 (2007).
- [12] *Id.*
- [13] *Id.*
- [14] *Clayton v. State*, 38 Ariz. 135, 297 P. 1037 (1931).
- [15] See, e.g., *Jett v. City of Tucson*, 882 P.2d 426 (Ariz. 1994) (inquiring, after concluding that the city charter purported to authorize a particular action, whether it was in conflict with the constitution, whether it is a subject of statewide concern, and whether state legislation had appropriated the field); *Arizona v. Jacobson*, 588 P.2d 358 (Ariz. 1978) (inquiring whether an action purportedly authorized by a charter was a subject of statewide concern, and, concluding that there was no direct conflict between the ordinance and the general law, inquiring whether the state legislation had occupied the field); *City of Casa Grande v. Arizona Water Co.*, 20 P.3d 590 (Ariz. App. 2001) (inquiring whether a matter was strictly local, whether it conflicted with a general state statute, and because it did, finding that there was no need to inquire whether the legislature had otherwise preempted the field).
- [16] See, e.g., *Associated Dairy Products*, 255 P.2d at 260 (holding that the ordinance and resolution in question were invalid “for the reason that public health is of statewide concern and that this state has appropriated the field to the exclusion of municipal regulation.”)
- [17] U.S. Const. Art. IV § 3 cl. 2.
- [18] Congress *expressly* preempts state regulation by explicitly defining the extent to which it intends to do so. A court finds *conflict* preemption when it concludes state law contradicts the edicts of federal law – either because compliance with both laws would be physically impossible or whether state law impedes the accomplishment of an objective of federal law. A court may find that Congress has displaced state regulation entirely by indicating its intent to *occupy an entire field* of regulation. See *generally*, American Jurisprudence 2d §§ 229-233; Corpus Juris Secundum, States §§ 46-52.
- [19] Diller, *supra* note 11.

[20] *Coconino Cnty. v. Antco, Inc.*, 148 P.3d 1155, 1163 (Ariz. Ct. App. 2006) (citing *Wonders v. Pima County*, 89 P.3d 810, 813 (Ariz. Ct. App. 2004)).

[21] *Id.* (citing *Winkle v. City of Tucson*, 949 P.2d 502, 505 (Ariz. 1997)); *Scottsdale v. Scottsdale Associated Merch., Inc.*, 583 P.2d 891, 892 (Ariz. 1978) (“When the subject of legislation is a matter of statewide concern the Legislature has the power to bind all throughout the state”).

[22] *Id.* (citing *Wonders v. Pima County*, 89 P.3d 810, 813 (Ariz. Ct. App. 2004)); *Babe’s Cabaret v. City of Scottsdale*, 3 P.3d 1018, 1022 (Ariz. Ct. App. 1999) (“Mere commonality of some aspect of subject matter is insufficient”) (quoting *City of Prescott v. Town of Chino Valley*, 790 P.2d 263, 271 (Ariz. Ct. App. 1989), *vacated on other grounds*, 803 P.2d 891 (Ariz. 1990)).

[23] *Coconino Cnty. v. Antco, Inc.*, 148 P.3d 1155, 1163 (Ariz. Ct. App. 2006) (citing *Madsen v. W. Am. Mortgage Co.*, 694 P.2d 1228, 1235 (Ariz. Ct. App. 1985)).

[24] Counties are granted a broad authority to regulate sanitation under Ariz. Rev. Stat. § 11-251(31). They are also authorized by Ariz. Rev. Stat. § 49-112 to adopt rules, ordinances, or regulations that are more stringent than or in addition to ADEQ’s general authorities in Title 49 if certain conditions are met. Relevant state-level standards derive from: (1) Arizona Department of Environmental Quality general authorities and regulations, which relate to siting on-site wastewater treatment systems including septic systems and their proximity to property boundaries and drinking water wells, among other things, and (2) the 1980 Groundwater Management Act and Arizona Department of Water Resources regulations, which require new and replacement wells to be at least 100 feet away from septic tank systems, sewage disposal areas, landfills, hazardous waste or material sites.

[25] Ariz. Rev. Stat. § 45-598(A). The Department’s rules adopted pursuant to this provision are set forth in A.A.C. R12-15-1301 through R12-15-1307.

[26] Cases have arisen in Arizona on this or related questions; however, the cases were described anecdotally to the authors and the relevant court clerk’s office was unable to locate the case documents. Anecdotally, at least one case found that the 1980 Groundwater Management Act preempted the action of a county to deny approval for a new well outside of an Active Management Area based on concerns that the new well would create drawdown impacts to neighboring wells. Personal communication with William Towler, October 29, 2021.

[27] League of Arizona Cities and Towns, *Exploring Charter Government For Your City* (2020), <https://www.azleague.org/ArchiveCenter/ViewFile/Item/417> (last visited Jan. 5, 2022).

[28] Daniel L. Siegel, *Exactions After Lingle: How Basing Nollan and Dolan on the Unconstitutional Conditions Doctrine Limits Their Scope*, 28 Stan. Envtl. L.J. 577 (2009) (citing *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005)).

[29] See, i.e., *Nollan v. Cal. Coastal Com.*, 483 U.S. 825 (1987) (holding that the California Coastal Commission’s imposition of a condition requiring a public access easement across a portion of landowner’s property violated the Takings Clause of the Fifth Amendment because the condition did not serve public purposes related to the permit requirement); *Dolan v. City of Tigard*, 512 U.S. 74 (1994) (holding that the City Planning Commission’s imposition of a condition requiring dedication of a portion of landowner’s property as a public greenway and pedestrian/bicycle pathway violated the Fifth Amendment because the City did not demonstrate a reasonable relationship between the easement and the proposed building.)

[30] See, i.e., *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013) (confirming that “monetary exactions” must satisfy the nexus and proportionality requirements of *Nollan* and *Dolan* in analyzing a Water Management District condition that landowner either dedicate a conservation easement or pay for offsite mitigation to mitigate the environmental effects of a proposed development).

[31] See, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

[32] See, *Dolan v. City of Tigard*, 512 U.S. 74 (1994).

[33] *Id.*, at 395.

[34] *Koontz v. St. John’s River Management District*, 570 U.S. 595 (2013).

[35] *Id.*

[36] *Id.*

[37] League of Arizona Cities and Towns, *Exploring Charter Government For Your City* (2020), <https://www.azleague.org/ArchiveCenter/ViewFile/Item/417> (last visited Aug 22, 2021).

[38] League of Arizona Cities and Towns, *Charter Government Provisions in Arizona Cities* (2015), <https://www.azleague.org/ArchiveCenter/ViewFile/Item/250> (last visited Aug 22, 2021).

[39] *Id.*

[40] Julian C. Juergensmeyer & Thomas E. Roberts, *LAND USE PLANNING AND CONTROL LAW*, 45 (1998).

[41] For example, Scottsdale, Bisbee, Casa Grande, Douglas, Goodyear, Peoria, and Tempe require the dedication of lands or fees from developers to support essential city services. In Bisbee, Casa Grande, Douglas, Goodyear, Holbrook, Peoria, and Scottsdale, architectural and site plan approval may be required prior to construction. Prescott has a provision that requires the City to prohibits the sale of Watson Lake, Willow Lake, and Acker Park, requiring tit to retain them in open space in perpetuity. League of Arizona Cities and Towns, *supra* note 36.

[42] Ariz. Rev. Stat. § 9-461.05(D)(5).

[43] Ariz. Rev. Stat. § 11-804(B)(3).

[44] Ariz. Rev. Stat. § 9-461.05.

[45] Ariz. Rev. Stat. § 9-461.05(D)(5) (cities and towns); § 11-804(3) (counties).

[46] Ariz. Rev. Stat. § 9-461.05(E)(1) (cities and towns); § 11-811(A) (counties).

[47] Ariz. Rev. Stat. § 9-462.01, et seq. (cities and towns), § 11-811 et seq. (counties).

[48] See *City of Scottsdale v. Scottsdale Assoc. Merchants, Inc.*, 583 P.2d 936 (Ariz. 1978) (City's failure to follow the procedural requirements of the Urban Environment Management Act rendered sign provisions invalid; charter authority did not create separate zoning authority).

[49] *Id.*

[50] The Arizona enabling act does not specify the types of land uses that may be established within a municipal zoning ordinance. Instead, it requires that 'all zoning regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulations in one type of zone may differ from those in other types of zones ...' Ariz. Rev. Stat. §9-462.01(C) (related to cities and towns). Over time, the phrase "type of zone" has been transformed from more tradition zoning to more customized 'zones' found in larger master plans, which are referred to by several different names: Planned Area Development; Community Plan; Planned Unit Development.

[51] See Ariz. Rev. Stat. § 9-462.01(D) (cities and towns); § 11-811(B) (counties).

[52] *Id.*

[53] See, *Jachimek v. Superior Court In and For County of Maricopa*, 819 P.2d 487 (Ariz. 1991).

[54] In *Jachimek*, the Arizona Supreme Court invalidated a city ordinance that imposed a requirement that pawn shops obtain a use permit within a certain district, when pawn shops otherwise would not be required to obtain a use permit in the underlying zone. The Court noted that "Section 9-462.01(C)(1) [which provides in part that: "Within individual zones, there may be uses permitted on a conditional basis under which additional requirements must be met..."], when read in context with § 9-462.01(C), authorizes the City to uniformly require use permits for specified uses within a zone. It does not authorize the City to require use permits for property in one part of a zone but not for property in another part of the same zone." *Id.*

[55] Ariz. Rev. Stat. § 9-462.01(C)(1).

[56] Contrast *Redelsperger v. City of Avondale*, 87 P.3d 843 (Ariz. App. 2004) (issuance of a conditional use permit deemed to be an administrative act), with *Bartolomeo v. Town of Paradise Valley*, 631 P.2d 564 (Ariz. App. 1981) (issuance of a special use permit deemed to be a legislative act). A thorough discussion of the significance between finding that an act is legislative or administrative is beyond the scope of this document. However, it is important to note that the discretion afforded in approving a conditional use permit leaves open the possibility of a challenge by voters via referendum, whereas uses permitted with conditions are clearly administrative in nature, shielding such uses from referendum.

[57] See, *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

[58] The Arizona Constitution requires that any development rights taken from one parcel of land must be compensated in money; the transfer of those rights to another parcel (thereby increasing its value) is not considered compensation, in Arizona. Under the U.S. Constitution, TDR can be part of the value given to a property owner in exchange for the value lost due to a regulation, it just has not been found to be sufficient to completely compensate the owner for the loss due to the regulation. See, *Corrigan v. City of Scottsdale*, 720 P.2d 513 (Ariz. 1986) (the City of Scottsdale's program for hillside preservation-which required preservation of hillsides over a certain elevation-struck down despite the landowner's ability to transfer all of the lost density to a lower elevation).

[59] See Ariz. Rev. Stat. § 9-463.01, et seq. (cities and towns); § 11-821 (counties).

[60] Ariz. Rev. Stat. § 9-463.02(A) related to cities and towns provides: “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.

[61] Ariz. Rev. Stat. § 9-463.01(T) (authorizing cities and towns to regulate determination of division lines, area and shape of the tracts or parcel).

[62] Ariz. Rev. Stat. § 11-831.

[63] *Id.*

[64] Ariz. Rev. Stat. § 9-463.01(A) (cities and towns); § 11-821(A) (counties)

[65] While a robust and comprehensive regulatory scheme is helpful in defending the reasonableness of a regulation, such schemes are not certain protection. For example, the City of Tigard had a robust transportation regulatory scheme, which scheme was consistently implemented from the statutory mandate through the local development regulations, but the U.S. Supreme Court still found the conditions on the particular developer failed to meet the Unconstitutional Conditions Doctrine. See, *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

[66] DANIEL P. SELMI, JAMES A. KUSHNER & EDWARD H. ZIEGLER, *LAND USE REGULATION: CASES AND MATERIALS*, 165-166 (4th ed. 2012).

[67] Ariz. Rev. Stat. § 9-463.05 (cities and towns); § 11-1102 (counties).

[68] Ariz. Rev. Stat. § 9-463.05.

[69] See, *i.e.*, *Senate Government Reform Committee*, Fiftieth Arizona Legislature – First Regular Session (2/9/2011) (committee hearing and discussion of S.B. 1525 making changes to the statutes governing municipal development fees and infrastructure improvement plans).

[70] Ariz. Rev. Stat. § 9-463.05 (cities and towns); § 11-1102 (counties).

[71] Ariz. Rev. Stat. § 9-461.14 (cities and towns); § 11-809 (counties).

[72] Ariz. Rev. Stat. § 9-463.05 (cities and towns); § 11-1102 (counties).

[73] *Id.*

[74] *Id.*

[75] Ariz. Rev. Stat. § 9-463.05(T)(7) (cities and towns); § 11-1102 (counties); see also *Home Builders Ass’n v. City of Scottsdale*, 187 Ariz. 479 (1997).

[76] See, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

[77] See, *Dolan v. City of Tigard*, 512 U.S. 74 (1994).

[78] *Scottsdale*, 187 Ariz. at 1000 (“The Dolan standard of rough proportionality is already applicable in Arizona through the reasonable relationship requirement of § 9-463.05(B)(4)”).

[79] See, *Dolan v. City of Tigard*, 512 U.S. 74 (1994).

[80] League of Arizona Cities and Towns, *supra* note 27.



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