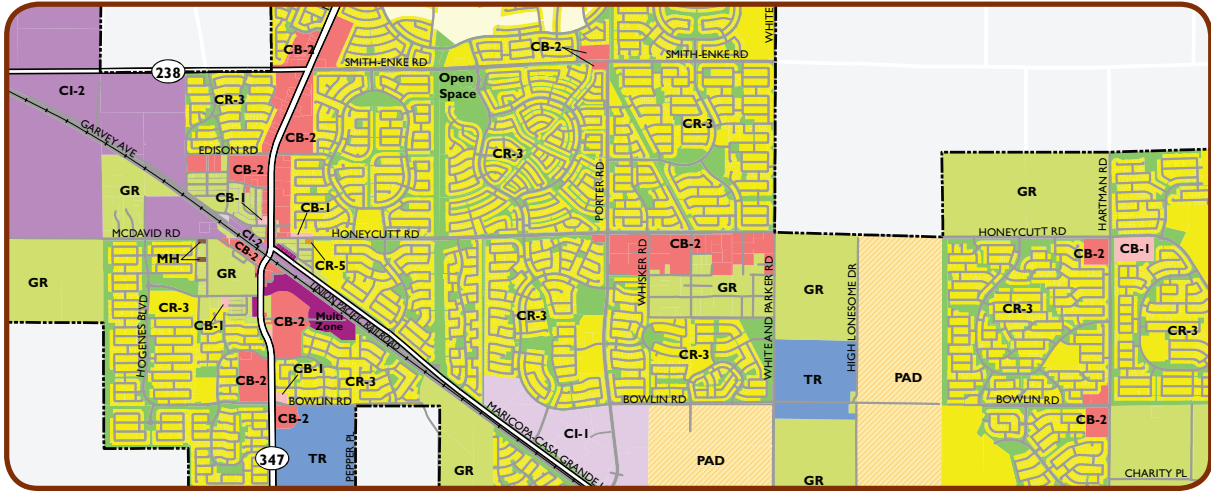


CITY OF MARICOPA®

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ZONING CODE REWRITE

*Diagnosis and Evaluation
Working Paper*

PREPARED FOR
CITY OF MARICOPA BY:

DYETT & BHATIA
Urban and Regional Planners

MARCH 22, 2013



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Contents

Executive Summary	1
Introduction	5
Approaches to Zoning	9
Recommendation No. 1: Making Zoning Easier to Understand and Use	17
Recommendation No. 2: Streamlining Development Review and Approval	21
Recommendation No. 3: Addressing Mixed Use and Other Development Opportunities	29
Recommendation No. 4: Achieving a High Level of Design Quality	33
Recommendation No. 5: Promoting Housing Variety and Choice	37
Recommendation No. 6: Supporting Economic Growth	41
Other Issues	45
Next Steps	55

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Executive Summary

The Zoning Code Rewrite project (Rewrite) was initiated to rewrite Maricopa's Zoning Code, which was largely carried forward from the County's ordinance at the time of incorporation in 2003. The objective for this project is to produce an innovative and integrated Zoning Code by expanding upon, modifying and deleting from existing documents as necessary within the restrictions of applicable State law and create a Maricopa Zoning Code that:

- Is progressive, utilizing best practices from other jurisdictions and codes, and intelligently integrates principles of balanced land use and orderly growth to promote a diverse economic base, livable neighborhoods, and sound resource management;
- Is consistent with the Maricopa General Plan of 2006, responsive to the City Council's Strategic Plan 2012-2015, and cognizant of anticipated amendments to the General Plan, including the potential for annexation;
- Provides for flexibility, where needed and appropriate, consistent with the City development policies;
- Is logically organized, easy to read and understand, and can be quickly updated to respond to changing market and socioeconomic conditions;
- Includes graphics and tables to illustrate key points and minimize the amount of text;
- Is consistent in terms of processes and requirements with the City Code and relevant provisions of Federal and State law, particularly Proposition 207 and related legislation;
- Is comprehensive;
- Is tailored to local and regional climate, ecology, history and culture;
- Is integrated with and cross-references other land use related ordinances and regulations, including but not limited to the Subdivision Ordinance, Heritage District Design Guidelines, and other policies;
- Applies overlay districts, where appropriate, to areas that warrant distinct treatment such as the Heritage District, Seven Ranches, and other areas with unique characteristics;
- Includes mixed use zoning districts and attendant regulations for both built-up areas of the city as well as lands at the urban edge; and
- Incorporates land use-based (Euclidean), incentive and performance-based, as well as form-based zoning provisions, where appropriate, that address land use and urban design standards (text and graphics) as deemed necessary, by the City.

The Rewrite project consists of three phases. Phase 1 will include all of the work needed to put in place a clearly defined application and project review process, with less reliance on case-by-case review, which is the case under current zoning. Depending on City direction, the Phase 2 work would expand on form-based standards in Phase 1 and include a regulating plan map for designated areas and more detail on physical parameters for streets and sidewalks, public landscaping and architectural design, block and lot patterns, pedestrian street designations, and standards for the public realm as well as private development standards,

incentives, standards and bonuses, to provide for more guidance than the existing zoning. Phase 2 will also include form-based overlay provisions for specific areas, which may include performance- and incentive-based zoning, integrated with the overall Code to facilitate administration and tailored to Maricopa's needs. Phase 3 consists of a web-based interactive zoning code and map.

As the first step of this effort, Maricopa's consultant team is evaluating the City's current approach to regulating development inherited from the County and determining if there are alternative approaches that would better implement the General Plan, attract high quality development meeting community needs, and respond to State and federal mandates.

The City's consultant team's work has included field reconnaissance of recent development in Maricopa; interviews with City staff and community stakeholders; a community meeting to identify residents' priorities and concerns for the Rewrite; an assessment of existing regulatory tools and design guidelines used by the City and "peer" communities in the metropolitan area; and preliminary recommendations for a new zoning framework.

This working paper summarizes the principal findings and conclusions of the consultant team's work and recommends a number of ways that the current ordinance could be improved to meet the overall objectives of the Rewrite. This paper is intended to form the conceptual framework for further discussion of these issues with the Task Force and City Council. After the Task Force and City Council review this paper, the consultant team will further refine the recommendations and prepare a final Annotated Outline to guide actual drafting of the new regulations, which will be reviewed in "modules" by the Task Force, and other interested committees and organizations.

PRINCIPAL CONCLUSIONS AND RECOMMENDATIONS

Overall, the administrative framework for Maricopa's zoning regulations and review procedures are sound. However, these regulations and procedures must be updated to reflect new land use regulations and development standards that are tailored to the City's needs and implement the General Plan. It should be noted that a wholesale restructuring of the City's review process or a major shift in approach is not necessary to achieve the policy objectives of encouraging desirable development. More delegation of responsibility from the City Council to the Planning & Zoning Commission (P&Z) and City staff, coupled with more "as of right" zoning may make sense. It could be advantageous for Maricopa to have an ordinance that combines different approaches to zoning to provide an effective tool to implement the General Plan. Instituting the changes that the following recommendations embody could help to accomplish Maricopa's goals and lead to greater ease of use, higher-quality design, clearer standards, and support for new types of development that will enhance and preserve the City's resources.

Recommendations

The recommendations proposed for City staff and Task Force review and City Council consideration are grouped into the six topical areas summarized below. These recommendations do not all carry the same weight; some are more important and will have more far-reaching effects than others. These differences are discussed in the body of the paper.

Recommendation No. 1: Making Zoning Easier to Understand and Use

- 1-A Develop a Consistent and Uniform Approach to Organizing and Displaying Use Regulations, Standards, and Review Procedures
- 1-B Consolidate Standards

- 1-C Simplify, Refine, or Eliminate Unnecessary Regulations and Procedures
- 1-D Add New Zoning Districts as Necessary to Implement General Plan Policies
- 1-E Integrate Components of the Subdivision Ordinance
- 1-F Use Graphics to Reduce Wordiness and Improve Clarity
- 1-G Tabulate and Cross-Reference Regulations

Recommendation No. 2: Streamlining Development Review and Approval

- 2-A Create a Set of Common Procedures for Zoning Administration
- 2-B Reduce Reliance on Council-Level Discretionary Review
- 2-C Clarify the Roles of the Planning & Zoning Commission and City Council
- 2-D Allow Additional Flexibility to Get Relief from Standards for Infill Development such as in the Heritage District
- 2-E Recognize Differences Among Nonconforming Uses and Structures
- 2-F Implement a Village Planning Committee Process to Provide Additional Opportunities for Public Input

Recommendation No. 3: Addressing Mixed Use and Other Development Opportunities

- 3-A Establish Standards and Incentives for Mixed Use, Urban Villages, and Infill Development
- 3-B Support Future Transit Corridors
- 3-C Rethink Buffering and Transitional Requirements to Avoid Constraining Development

Recommendation No. 4: Achieving a High Level of Design Quality and Sustainable Practices

- 4-A Create Design Standards for Residential and Non-Residential Development
- 4-B Require Landscaping that is Appropriate to Development Type and is Environmentally Sustainable
- 4-C Mandate Outdoor Living Area and Usable Open Space in Multi-family Residential Development
- 4-D Provide Incentives for Sustainable Design

Recommendation No. 5: Promoting Housing Variety and Choice

- 5-A Allow a Mix of Housing Types Where and When Appropriate
- 5-B Create a New Zoning District or New Regulations for Small-Lot Single-Family Development
- 5-C Create More Housing Choice with a Density Bonus Program
- 5-D Allow Upgrades to Older Residential Properties (Manufactured Homes/Trailer Parks)

Recommendation No. 6: Supporting Economic Growth

- 6-A Provide Incentives for Job-Generating Uses

- 6-B Allow Limited Commercial Development in Appropriate Residential Districts
- 6-C Create Mixed use Districts
- 6-D Create a Planned Development Base District
- 6-E Provide for the Adoption of Development Agreements for Large, Employment-Generating Uses

Introduction

Begun in December 2012, the Zoning Code Rewrite will evaluate Maricopa's regulation of land use and development, including design standards and related guidelines. A Rewrite is opportune because it will allow the City to adopt regulations affecting many issues that are not adequately addressed in the current Zoning Code, including incentives for job-generating development, provision for a variety of housing types, the way the City conducts design review, and protections on the unique character of the Heritage District. It also offers an opportunity to assess the permit process and see how it might be streamlined. Through the Rewrite, the City will ensure that its zoning provisions respond to community needs, implement General Plan policies, and reflect recent changes in State and federal law affecting land use regulations, including Proposition 207 and SB 1598 (Regulatory Bill of Rights).

OBJECTIVES OF THE ZONING CODE REWRITE

The Zoning Code Rewrite is taking a critical look at City policies to see how zoning can best provide a roadmap for future development and protection of resources. Overall, the revision will strive not only to ensure that regulations are relevant to today's concerns, but also to produce a code that is understandable and easy to use. The objective for this project, as defined by the City, is to produce an innovative and integrated Zoning Code by expanding upon, modifying and deleting from existing documents as necessary within the restrictions of applicable State law and create a Maricopa Zoning Code that:

- Is progressive, utilizing best practices from other jurisdictions and codes, and intelligently integrates principles of balanced land use and orderly growth to promote a diverse economic base, livable neighborhoods, and sound resource management;
- Is consistent with the Maricopa General Plan of 2006, coordinated with the WHICH General Plan and General Plan Progress Report, responsive to the City Council's Strategic Plan 2012-2015, and cognizant of anticipated amendments to the General Plan, including the potential for annexation;
- Provides for flexibility, where needed and appropriate, consistent with the City development policies;
- Is logically organized, easy to read and understand, and can be quickly updated to respond to changing market and socioeconomic conditions;
- Includes graphics and tables to illustrate key points and minimize the amount of text;
- Is consistent in terms of processes and requirements with the City Code and relevant provisions of Federal and State law, particularly Proposition 207 and related legislation;
- Is comprehensive;
- Is tailored to local and regional climate, ecology, history and culture;
- Is integrated with and cross-references other land use related ordinances and regulations, including but not limited to the Subdivision Ordinance, Heritage District Design Guidelines, and other policies;

- Includes mixed use zoning districts and attendant regulations for both built-up areas of the city as well as lands at the urban edge; and
- Incorporates land use-based (Euclidean), incentive and performance-based, as well as form-based zoning provisions, where appropriate, that address land use and urban design standards (text and graphics) as deemed necessary by the City.

The final code will improve procedures, introduce options, and create a more logical and transparent body of regulations. It will likely retain many of the prescriptive elements that are in the existing code, combined with form-based components that will be applied to specific portions of the city. The result will be a Zoning Code that creates certainty in terms of land uses and development but provides flexibility of built form and design. It will be tailored to the current needs of Maricopa while anticipating future growth and development. Most importantly, it will contain clear processes and standards for review. Because the goals are to improve procedures, introduce options, and create a logical and transparent body of land use regulations rather than imposing new limitations on land use and development, the outcome should not create any potential liability under Proposition 207 or any of the State’s previously adopted property rights provisions. Timelines and related provisions called for by SB 1598, which enacted the “Regulatory Bill of Rights”, also will need to be incorporated into the Rewrite.

ISSUES ADDRESSED IN THIS WORKING PAPER

The City of Maricopa’s existing regulatory framework may be interfering with the City’s ability to achieve its vision, implement the planning policies of the City’s General Plan, and get the highest and best type and quality of development. When the City was annexed from Pinal County in 2003, the Zoning Code was not updated to reflect the city’s future needs. Rather, it retained the County’s regulations, which dated from the 1960’s. Based on stakeholder and City staff and City leaders’ interviews, a community workshop, and the objectives noted above, the following themes provide a framework for the *Diagnosis and Evaluation Working Paper*—running through all of them is the idea of ensuring consistency with the General Plan:

- Making Maricopa’s regulatory tools easier to locate, use, and understand;
- Addressing infill development opportunities in the Heritage District and other special areas;
- Establishing expectations for high quality community design and pedestrian-oriented development to enhance the character of neighborhoods, corridors, and districts and to promote efficient development;
- Allowing a mix of uses to enhance urban vitality and support economic development;
- Promoting a range of housing types meeting the needs of all economic segments of the community;
- Reserving places for industry and commerce to support economic growth and diversity;
- Providing for the needs of individual neighborhoods and growth area;
- Conserving and enhancing historic resources and environmentally sensitive areas;
- Connecting people and places by improving the fit between land use and transportation systems and supporting transit-oriented development; and
- Streamlining development review and approval, while also continuing to provide a transparent and participatory process.

Each of these issues is addressed in subsequent sections of this Working Paper. Specific topical and technical issues, such as religious uses, housing for persons with disabilities, telecommunications facilities and Proposition 207 and SB 1598, also are discussed at the end of this paper.

PROCESS – HOW THIS PAPER WAS PREPARED

The *Diagnosis and Evaluation Working Paper* is the culmination of the first stage of the Zoning Code Rewrite, which consisted of a background review of current City policy, goals, and needs. In January 2013, Maricopa’s consultant team, led by Dyett & Bhatia, Urban and Regional Planners, began this effort with a field reconnaissance, including a tour of Maricopa, and a series of interviews with stakeholders and City Officials intended to gather concerns and suggestions for the Zoning Code Rewrite. This task also involved a community workshop and interviews with City staff and officials, community leaders, developers, business owners, and private parties who make extensive use of the Zoning Code. The result of this research was the production of the *Community Kickoff Workshop and Stakeholders Interview Report* (January 2013), which put forward the overarching recommendations of residents participating in the workshop and Code users, organized thematically.

Ensuing conversations with City officials and staff, as well as detailed assessments of the General Plan, existing regulations, and case files, have led to the findings and recommendations presented in this Working Paper.

Relation to the General Plan

The strategies presented in this paper respond directly to the goals and policies of the General Plan, and all recommendations are intended to be consistent with it. Some suggestions for refinement of General Plan policy were noted separately, for City staff follow-up when the City begins the scheduled General Plan update in late 2013 or early 2014.

NEXT STEPS

This paper will be the basis for a kickoff meeting with the Task Force and then a study session with the City Council. Comments by the Task Force and Council members and further work with City staff will guide preparation of an Annotated Outline of the Zoning Code and initial drafts of preliminary regulations. They will be presented in “modules” for subsequent review, and additional workshops will be scheduled with the Task Force to review milestone products.

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Approaches to Zoning

American cities use zoning to accomplish a number of purposes. Some of these purposes are well established—such as the maintenance of stable residential areas and the prevention of health and safety hazards. Others—such as promoting transit-oriented development, maintaining aesthetic values, encouraging infill development, protecting historic areas, spurring job-generating development, achieving community benefits, and creating walkable communities—are newer. All of the purposes and powers of zoning are rooted in the police powers that the State grants to local governments.

Zoning, subdivision controls, and other regulations also are intended to implement City plans, visions, and goals. A zoning code, such as Chapter 16 of the Maricopa Municipal Code, translates the policies of a comprehensive land use plan into parcel-specific regulations. As such, zoning is used to implement land use, urban design, and open space plans, rather than to serve in itself as the primary planning tool to resolve local traffic circulation issues, provide services to seniors, implement parks master plans, protect sensitive habitat, or create new neighborhoods.

Zoning regulations traditionally have been used to separate incompatible land uses, minimize nuisance impacts and environmental harm, and coordinate or time development intensity with supporting public infrastructure. Zoning is also effective for dealing with the geographic location of activities and for regulating the three-dimensional aspects of development with height, bulk, setback, and architectural design standards. Zoning is a way to make explicit a City's policies for development, urban design, and resource management, to ensure fairness (so all lots in a given zone may be developed to similar intensities and are subject to similar restrictions and public contributions), and to avoid abuses of discretion.

In recent decades, zoning has been called on to address an increasingly diverse variety of public policy goals related to environmental protection, sustainability, economic development, historic preservation, neighborhood revitalization, aesthetics, public safety, and transportation mode choice. Cities and counties have also used zoning to address market issues (e.g., controls on “fast food” operations or large-format retail stores). While zoning can mandate the physical form and uses of land, it is not as effective in realizing public policy goals. Another limitation of zoning is that it works on an incremental basis, as individual parcels develop or redevelop. The General Plan, by contrast, can and should take the lead in providing guidance for citywide development patterns

In sum, a zoning code deals with two basic concerns:

- How to minimize the adverse effects that buildings or the use of a property can have on its neighbors; and
- How to encourage optimal development patterns and activities within a community, as expressed in General Plan policies.

TYPES OF ZONING

Three main types of zoning codes are in use in the U.S. today: Euclidean, performance-based, and physical form codes. The pros and cons of these basic types of zoning are summarized in the table on the following page. In this table, the term “prescriptive” describes a rule-making process and the degree to which clear and objective standards for land use and development provides certainty to landowners, developers and the general public.

Other types of zoning include:

- *Incentive zoning* involves trade-offs between the City and the developer/property owner: the City relaxes certain zoning requirements in exchange for providing particular amenities, such as public open spaces, or a public benefit, such as better transit station access or affordable housing. Incentive zoning is particularly effective in achieving community benefits defined in a General Plan.
- *Hybrid zoning* schemes such as contextual or character-based zoning, seek to integrate physical design (form-based) standards and performance regulations into otherwise conventional zoning codes, while often downplaying use-based regulatory strategies. Character-based zoning may offer particular promise for communities grappling with inappropriate development, and can be combined with other approaches that make sense in newly developing areas, where more flexibility may be appropriate.

TABLE 1: COMPARISONS OF TYPES OF ZONING CODES	
Type of Zoning Codes	Pro's and Con's
<p>Euclidean: Named after Euclid Ohio's zoning code, Euclidean zoning schemes divide jurisdictions into districts or zones, wherein certain types and intensities of uses are allowed. These districting schemes typically have separate zones for residential, commercial and industrial uses, and aim to segregate incompatible uses. More recently, Euclidean codes have been used to create mixed use zoning districts. Euclidean zoning codes typically specify allowed uses, maximum residential density limits, and bulk and dimensional standards.</p>	<p>Euclidean codes tend to be largely prescriptive and work best at preventing the basic problems or nuisances in a community. They are less effective in dealing with fine-grain neighborhood character and design issues that often arise in places where infill and redevelopment are most common.</p> <p>Within newly developing areas, Euclidean codes need to be linked to <i>land division or subdivision regulations</i>. These regulations often play a very important role in supporting zoning because they provide the statutory basis and standards for decisions on street networks, pedestrian connections, and the location of parks, open spaces, and civic facilities.</p>
<p>Performance-based: Performance-based codes include objective, quantifiable standards that are applied to uses to reduce impacts of development and to promote land use compatibility. The regulations and review procedures in these codes generally focus on how uses operate. These codes contain basic performance standards that directly limit impacts (e.g., noise and shading standards) as well as standards that control indirect impacts by constraining the intensity of operations (e.g., floor area, residential density).</p>	<p>Performance-based codes are somewhat less prescriptive than form-based codes in terms of design, and allow for more architectural creativity and context-based solutions. They may be more complicated to administer than conventional Euclid zoning or form-based codes, but can provide more certainty as to use and density/intensity. As such, they tend to be favored by the development community and neighborhood organizations over codes that prescribe architectural design or rely on discretionary procedures involving public hearings and conditions of approval to ensure land use compatibility.</p>
<p>Physical form-based: Form-based codes prescribe the design or type of building, street, or neighborhood subarea, with limited or no restrictions on use. They typically include generic design prototypes for housing and commercial buildings and their relation to the street and to each other. This approach may differentiate neighborhoods, districts, and corridors; provide for a mixture of land uses and housing types within each; and provide specific measures for regulating relationships between buildings and between buildings and outdoor public areas, including streets.</p>	<p>Form-based codes tend to be highly prescriptive and are therefore thought of as very predictable. They are a way to express what is desired rather than what is discouraged or prohibited. These codes address matters outside those traditionally thought of as zoning (e.g., street design, sidewalks, parks, and civic spaces), and are often portrayed as more "holistic" than conventional Euclid or performance-based zoning. They provide a way to bring planning and design considerations into zoning. These codes are effective where strong design guidance is needed and limitations on use and intensity are not critical.</p>

WHAT TYPE OF ZONING DOES MARICOPA HAVE?

Maricopa's Zoning Code primarily follows a Euclidean scheme which was the approach taken in the Pinal County's Code. The majority of use districts within Maricopa's zoning classification system separate types of uses (residential, commercial, rural, etc.), although the GR (General Rural) zones do allow for a mix of uses. The City also developed design guidelines and standards that apply to the Heritage District and cellular installations.

As part of the Zoning Code Rewrite, the City may want to consider adopting a more hybrid approach to zoning classification. Form-based districts may help implement certain General Plan goals and be particularly appropriate for the Heritage District and other special areas. For example, a district that allows a mix of uses with design standards to ensure pedestrian-friendly development may be appropriate around Central Arizona

College or in the Route 347/John Wayne Parkway and Maricopa-Casa Grande Corridors. Maricopa may also decide to adopt more contextual zoning as it attempts to preserve the unique character of the Heritage District.

THE BASIC DILEMMA: FLEXIBILITY VS. CERTAINTY

As Maricopa considers how to improve its zoning regulations, one issue will be how to find the right balance between flexibility and certainty that will best implement the General Plan. The dichotomy between these concepts creates tension, not only for City officials and staff who use the code on a day-to-day basis, but also for homeowners, business owners, and others who may only come into contact with zoning a few times over the years they may live or work in the City. Everyone wants to know what the rules and standards by which new development will be judged—how are decisions made to approve, conditionally approve, or reject applications? And, for many, knowing the timeframe as well as the criteria for approval also is important—who has appeal rights, and when is a decision final so a project can proceed.

For others, flexibility is important: the site or existing building(s) may be unique and require an individualized approach, or the design is innovative and contextual yet does not adhere to the requirements of the code. Conversely, the public benefits of a project are so great that they outweigh the impacts. All situations require flexibility and some relief from underlying requirements. Perspectives of code users may help inform the discussion about this issue.

Users' Perspectives

Expectations about what zoning should or should not do, and how far it should go, are different, depending on individual perspectives. Applicants view zoning differently than design professionals, and City planning staff perspectives are not always the same as those of residents or other City officials. At the risk of oversimplification, we offer the following set of expectations for different code users, which are based on the stakeholders' interviews, as a starting point for thinking about regulatory options.

Applicants

Individuals applying to the City for a zoning approval through a permit or land use review generally want to know:

- **What are the rules that the City follows for development review?** These include use regulations, design guidelines and standards, and development requirements, review procedures, and criteria for decision-making.
- **What is the timeframe for decision-making and when is a decision final?** Is it the day the approval is granted, or is there some stated time they have to wait before they know they can proceed with the next steps, refine an architectural design, solicit bids, and initiate construction? Users also need to know how much time they have to obtain a building permit or business license.
- **What relief can they request if a regulation or standard constrains a design solution or otherwise limits what they would like to do with their property or building?** In thinking about relief, it often is useful to distinguish concerns about what the allowable uses are (recognizing that use variances should not be granted, and the only way to accommodate different uses would be through a zoning code or zoning map amendment) from concerns about how to accommodate a building or landscape design or improvement on a lot. Relief may be needed from physical development standards (e.g., setbacks or height limitations) or from

performance requirements that relate primarily to the impact of a use or building design on an adjacent lot (e.g., on-site detention or screening of a cell tower).

- **How important are neighbor concerns in the decision-making process?** If an applicant follows the rules, including Citizen Participation Requirements and community meetings with neighbors, does the City have the right to require changes to a design solely because of a neighbor's objections? Are there limitations on conditions of approval or are all elements of a project "negotiable"? Does the City distinguish "as-of-right" development applications from those requesting exceptions to the standards in weighing how far to go to respond to community concerns?

Design Professionals

Architects and other design professionals typically want to know the answer to the same questions applicants pose, but because of their specific role in a project, they often want to know more specifically how much flexibility the code allows for site planning and architectural design. If the City wants to mandate certain design solutions, as opposed to "encouraging" a type of design, the code should say so to avoid misunderstandings during the development review process.

An example of a mandated design solution is a requirement for windows and transparency and a prohibition of blank walls on retail frontages. In this context, design professionals also want to know whether the mandate is a guideline or a regulation. If it's a regulation and the proposed building design doesn't benefit from adding windows and transparency, it will be necessary to request administrative relief, which could be a variance or a design modification, in order to deviate from the dimensional requirements. By contrast, if the mandate is a design guideline, it may be possible to propose an alternative design solution that meets the guideline's objective without applying for a variance or use permit to waive design standards if the Zoning Code provides for alternative ways to comply with a guideline. The current code does not contain these types of provisions.

The flexibility that a design professional typically seeks includes:

- Relief from prescriptive standards, including setbacks, building height, bulk and articulation, landscaping, parking, and design standards (e.g., colors, finishes, roof pitches, etc.);
- Relief for buildings with historic or architectural character; and
- Relief for uses or activities with unique needs (e.g., theater scenery lofts, Internet server farms, pharmacy drive-through windows, etc.).

Planning Staff and Officers

City planning staff also wants flexibility for a number of reasons:

- To respond to community concerns;
- To implement the General Plan and to further public policies;
- To reconcile competing priorities, as is frequently the case with a General Plan and a growing community;
- To facilitate the ease of review and approval of development projects; and
- To protect unique and special resources, which may range from environmental resources to historic buildings, Tribal lands, and special retail uses.

Maricopa Residents and Business Owners

While planners and City officials strive to respond to community concerns, residents and business owners don't always have the same perspective on zoning, particularly if they feel their self-interest is not served. Many critical issues were decided when the General Plan was prepared; however, as implementation details are worked out, community thinking about General Plan direction may evolve, and there may not be consensus on all of the regulatory solutions initially proposed to implement the plan.

Neighbors want to know with some certainty what can be built, so there are no surprises once construction begins. However, if they have concerns, they would like to know what the process is for community input – how much flexibility the City has to condition approval and what they can do to affect the final result.

Business owners likewise want to know whether they can expand or adapt space to new uses or activities. The ability to adaptively reuse historic buildings to current uses is needed. This was a particularly important issue in the Heritage District where there are a large number of vacancies and abandoned properties and where property owners have expressed concern about current zoning not really implement planning concepts for the area. Being able to respond quickly to changing markets is important, and lengthy review times are an anathema to that objective.

At the community workshop held in January 2013, residents of Maricopa expressed many priorities and concerns for the Zoning Code Rewrite. These recommendations generally fell into a number of topical areas, as listed below:

- Address lighting and light pollution.
- Adjust open space requirements for multi-family housing.
- Allow flexibility in the height of buildings.
- Amusement park – attract one and make it a destination!
- Balance density and open space.
- Bring jobs to Maricopa - High tech, industrial areas/manufacturing (as long as it's compatible).
- Continue cooperative effort with educational institutions, tribes, HOAs, service providers, companies.
- Develop an urban village around a college campus to draw the youthful crowd around the college (food, shopping, recreation, etc.)
- Develop different housing types.
- Diversity, Value, and Balance – we want to try and achieve all three as we progress.
- Expand use of solar.
- Inform and educate people about development projects.
- Locate hospitals and healthcare in appropriate areas; think of impacts (helicopters, ambulances) on adjacent neighborhoods.
- Make Maricopa a destination, not a bedroom community.
- Pay attention to diverse needs of our community.
- Provide and protect open spaces, including possibly a bird sanctuary.

- Streamline the review process.

Tradeoffs

As the City considers the next steps for regulatory reform, discussion of choices could address these basic philosophical issues:

- **Flexibility vs. predictability:** Is the zoning ordinance intended as a rule of law or a rule of individuals? Should the area for negotiation be wide or narrow? To what extent should this be determined by the Ordinance or by practice?
- **Flexibility vs. administrative cost:** What are the costs to the applicant, to opponents, and to the City's interest in providing a streamlined process?
- **Development cost vs. quality:** Standards should be written with an understanding of their effect on developers' and consumers' costs and on the quality of the environment for both user and community at large.
- **Preservation vs. development:** Will a particular regulation stimulate or dampen change in uses, users, or appearance? A related issue is whether adopting a new standard will result in a proliferation of nonconforming situations, which could also discourage investment.
- **Under-regulation vs. over-regulation:** How does the city accommodate and facilitate new development with the adequate amount of review? Is there a risk of impeding development through overly strict regulations and procedures or are the risks of inappropriate development through lax regulations too great?

Striking the right balance will not be easy, and lessons from similar communities that have recently amended their zoning and design guidelines can enable the City to avoid mistakes others have made.

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Recommendation No. 1: Making Zoning Easier to Understand and Use

The need to make Maricopa’s Zoning Code more user-friendly and concise was one common observation noted during interviews with stakeholders and at the community workshop. Many code users commented that the text of the code is complex and hard to interpret, largely because it was adapted from the County when the city was incorporated in 2003; others said that the document is difficult to navigate and the new Code should rely more extensively on helpful examples and have clear references that direct users to appropriate regulations. This section contains general observations about the code’s organization, format, and usability, as well as strategies for improving them.

EXISTING ORGANIZATION AND STYLE

The City of Maricopa’s Zoning Code comprises numerous articles of nearly equal importance, with no clear structure tailored to the City’s needs. These chapters follow an organizational logic similar to the zoning codes of most counties. The text first discusses general zoning regulations and standards and allowable uses in the traditional base zoning districts—agricultural, residential, commercial, and industrial. The district chapters are followed by supplementary zoning provisions and specific provisions for parking and loading, sign, and finally administration.

The code has few features that enhance its usability. The text is careful to provide cross-references so that County regulations apply within the City. However, none of these regulations have been supplemented with graphics in order to provide greater clarity, and few include tables that present requirements in a format that allows fast and easy access to information.

Overall, the structure of Maricopa’s Zoning Code is poor. The Rewrite should address the organizational problems with a comprehensive restructuring. As part of this effort, the City also may wish to consider a number of specific structural changes to enhance usability. These issues and recommendations are outlined below.

THE ISSUES

The following observations summarize the concerns raised by Maricopa staff, frequent code users, and community members, as well as independent evaluations made by the consultant team.

Organizational Irregularities

Although the original organization of the County’s ordinance was generally consistent and logical, as adapted by the City, it does not always present information where users may expect to find it. In particular, the first chapter of the ordinance contains a number of detailed items that are not typically found in introductory provisions, including amendments to Planned Area Developments (PAD) zoning for specific projects—sections that are typically found in a separate article or are included in conditions of approval of a planned development map. The introductory chapter also contains a number of rules and definitions, yet the list is not comprehensive. Further, definitions are found in various other sections of the ordinance and have not been systematically compiled. Because definitions are scattered throughout the Code text, users may have to look in a number of places before finding the meaning of a particular term. This creates confusion and can result in errors of implementing code provisions.

Other organizational aspects may also be impeding usability. Maricopa's zoning contains a number of regulations that apply differently to geographic areas and PADs. Most code users turn to the ordinance only to find applicable regulations for a particular zoning district. A more user-focused approach would place these standards in the district chapters where they apply, so that users can access a more comprehensive list of applicable regulations without having to turn to other parts of the ordinance. Finally, a comprehensive table of contents and index are needed to facilitate smooth navigation of ordinance sections.

Specification of "Permitted" Uses and Cumulative Zoning

The way that Maricopa defines allowable uses in each of its zoning districts, with cumulative provisions (e.g., CR-5 incorporates use regulations of CR-4 and CR-3) has the potential of leading to unnecessary confusion regarding development possibilities. Cumulative zoning provisions are no longer "best practices", and the majority of zoning codes in the country list out all permitted uses and uses requiring a conditional use permit or special permit in a table, using a classification system allowing for flexibility in actual uses to respond to changes in the market or introduction of new technologies. The City's inherited approach to use regulations also does not facilitate distinctions based on scale or location, which can be helpful in urban settings.

Underutilized Table Organization

As described above, Maricopa's zoning regulations contain few tables to help users identify applicable regulations quickly and easily. Tables greatly enhance the code's usability, and they should be used extensively to organize the information presented in the code. Places where tables may be of particular help include lists of allowed uses across all districts and lists of numerical standards (e.g. maximum height and required building setbacks) in the zoning district regulations and in supplementary provisions, among others.

Standards of Measurement

The physical standards for development (e.g., height, setbacks, distance between buildings) within Maricopa's Zoning Code generally are expressed in appropriate units (lineal feet or square feet). Problems can occur when height limits, for example, are listed as both a measurement in feet and a maximum number of stories (e.g., two stories or 30 feet). Although the two measurements are not equal, they are roughly equivalent and may unnecessarily restrict design innovation when one standard alone could adequately achieve the City's goals. Wherever possible, measurements should be standardized.

More Graphics Needed

The current Zoning Code contains a minimum number of graphics that illustrate development standards. None show examples of good design. Illustrations can be extensively used to convey concepts and aid usability. Sections where graphics could be particularly helpful include supplementary provisions and design standards; they may also be useful in illustrating standards of measurement, certain definitions, and other ordinance provisions difficult to describe clearly through words. The City should aim to incorporate a number of new graphics in order to clarify ordinance elements.

RECOMMENDATIONS

The City should consider the following strategies to make the Zoning Code easier to understand and use.

1-A Develop a Consistent and Uniform Approach to Organizing and Displaying Use Regulations, Standards, and Review Procedures

The City can improve the organization of its Zoning Code in a variety of ways. First, the code should include a comprehensive index and table of contents to allow users to quickly find the code sections that apply. Provisions regulating nonconforming uses and enforcement procedures should be in appropriate location in the administrative section, for example. A final chapter at the end of the code can group all definitions together, so that users have access to a comprehensive reference section in an easily located place.

1-B Consolidate Standards

Where standards apply differently to each set of base districts, for instance, required setbacks for each category of uses from neighboring district lines, they should be grouped immediately following the standards for this set of districts. Rules governing the construction of language, interpretation of code provisions, and standards of measurement should similarly be grouped together to serve as a reference section that can be turned to in the event of uncertainty regarding code provisions. Consolidating these rules into one section will help to ensure that standards are logical and consistently interpreted and applied.

1-C Simplify, Refine, or Eliminate Unnecessary Regulations and Procedures

Maricopa should ensure that its Zoning Code functions as efficiently and with the fewest number of provisions necessary to achieve its goals. To this end, unnecessary sections of the code should be removed in order to avoid ambiguity and reduce the sheer bulk of the code. For example, districting chapters need only list permitted uses and uses requiring a conditional use permit or other form of discretionary review. Similarly, where code regulations list two standards of measurement, such as a maximum height and a maximum number of floors, one standard should be chosen and applied consistently.

As a part of this Rewrite, Maricopa should give considerable attention to how to address design guidelines and standards. The code should clearly distinguish and separate those elements that are mandated (standards) and those that are flexible (guidelines) in order to improve the clarity of the City's design expectations. Furthermore, these elements should be reformulated to give more specific direction based on building types (e.g., apartments or multi-tenant commercial buildings), geographic location, and the needs of particular uses. By making design guidelines more sensitive to context and use, the City can ensure that the regulations enhance—not interfere with—development possibilities.

1-D Add New Zoning Districts as Necessary to Implement General Plan Policies

The City should consider adopting a number of new districts to implement the goals of the General Plan. New classifications may include base districts aimed at mixing uses, accommodating “Urban Villages” or larger-scale “Planned Communities”, or providing for small-lot residential development. Overlays may include a flood hazard overlay, Tribal Lands referral area, transit-oriented development (TOD) district or a district aimed at improving development along Route 347/John Wayne Parkway and the Maricopa-Casa Grande Highway. Finally, the City should consider creating a number of special area districts to address the needs of different neighborhoods or growth areas, such as those

created for the Heritage District. These could apply to the Seven Ranches and other areas. Each of these new district types is discussed in greater detail in the subsequent recommendations of this Working Paper.

1-E Integrate Components of the Subdivision Ordinance

In 2006, Maricopa's Subdivision Ordinance went into effect, regulating all changes in ownership or land uses throughout the City. The document contains many aspects of a zoning code, such as definitions, procedures, and regulations. It has design and performance standards, which regulate items such as open space, fencing and walls, landscaping, and access. There are provisions for Master Plan and Planned Development areas as well as for individual land uses. It is a more comprehensive document than Maricopa's existing Zoning Code and was cited by city staff for its ease of use and detailed regulations. The revised Zoning Code will incorporate many of these components and ensure that there is consistency between regulations and definitions in both documents. This will prevent multiple interpretations, regulations, and processes from being applied to the same project or parcel and create a consistent land use regulatory system.

1-F Use Graphics to Reduce Wordiness and Improve Clarity

The Code Rewrite should add a graphic inventory in order to further strengthen code provisions. In many instances, graphics can communicate development regulations more clearly and in less space than written standards. For example, images can clearly depict standards for measuring building or sign heights or yard setbacks, while verbal equivalents are prone to misinterpretation and uncertainty. Graphics should be used throughout the code to strengthen written provisions and to provide visual examples of both lawful and unlawful development. With visual clarification, fewer sections of the zoning code will be subject to competing or incorrect interpretations, and regulations can be cleared of much of the jargon, which can obscure the code's intent.

1-G Tabulate and Cross-Reference Regulations

The Zoning Rewrite should revisit all textual cross-references to ensure that each provision refers to all additional relevant regulations, and to avoid unnecessary repetition of provisions. Where appropriate, the code can rely more extensively on tables to convey development standards, as they greatly improve the readability of complex regulations. One new place where tables might be useful is when specifying allowed uses in each district, subject to various permits and reviews.

When the web-based document is created in Phase 3 of the Rewrite, these cross-references and tables could take the form of HTML links to relevant sections in the text for rapid navigation. Many other cities across the United States have begun to incorporate their zoning ordinances into city websites as easily navigable and searchable texts. Monterey, Chicago, and Pasadena have all incorporated HTML links into their use regulations to achieve this purpose, but the links work differently. While Monterey and Pasadena's links move the user to the referenced section, Chicago's links provide a pop-up window with only the requested information. While the latter is helpful because it allows a side-by-side comparison of standards and definitions with the tables that reference them, the feature may create some frustration for users whose web browsers automatically block pop-up windows. Specific choices will be reviewed with City staff as part of Phase 3 work.

Recommendation No. 2: Streamlining Development Review and Approval

Zoning provisions governing development review and other administrative matters create the procedural environment through which the City can achieve the goals and policies laid out in its General Plan and other adopted policies. At their best, development review provisions can promote the type of development a community wants by providing a clear, predictable path to project approval; conversely, vague review processes with unclear requirements can cause developers a high level of anxiety, frustrate community residents, and severely dampen a City's ability to attract desirable growth. Unclear regulations also cost the developer/property owner and the City both time and money. A well-organized and clear code can eliminate these problems.

While the City has a "one-stop" shop system, it does require all discretionary approvals to go to the City Council, which introduces additional steps and makes the process longer than if the review and approval of certain types of permits were delegated to the P&Z and city staff. Generally, prospective developers value three central qualities in any administrative ordinance: certainty in the requirements, timelines, and structure of the review process, built-in flexibility to adjust development standards to the needs of individual projects, and opportunities to request relief from requirements that constitute a substantial burden. Certainty about the types of development they can expect to see in their community is also important to residents. The degree to which Maricopa can incorporate these qualities into its zoning code will help improve its ability to compete for development in the near future.

The flexibility of a zoning code is largely defined by its hierarchy of uses and their required permits. This hierarchy establishes the different levels of review the code requires to make various types of zoning decisions. These decisions typically range from a relatively informal counter staff review at the planning counter prior to the issuance of a building permit to more formal and complex procedures requiring public notice and a hearing before the P&Z and/or the City Council.

The primary factor influencing a project's place in the hierarchy of uses is whether the proposed use is permitted "as of right", allowed subject to certain conditions, or requires a Conditional Use Permit or Temporary Use Permit. This determination is a reflection of community issues and concerns that should be embodied in the General Plan. Decisions about where an application fits in the hierarchy may also, however, be influenced by how a jurisdiction selects and designs administrative techniques. It is often possible, for example, to reduce the review threshold for a particular type of application (i.e., place it lower in the hierarchy with only P&Z or Staff approval), by increasing the specificity of development standards and performance-based criteria, along with a related increase in one or more of the following:

- Scope of public notice for neighborhood input;
- Length of time for public review; and
- Opportunities for informal public review and consultation with community organizations.

The Rewrite should set forth clear administrative procedures to be followed for all types of zoning decisions. The level and extent of administrative process required for different types of decisions will vary.

EXISTING ADMINISTRATIVE PROCEDURES

Decision-Making Bodies

Maricopa’s Zoning Code specifically creates a Planning & Zoning Commission and adopted, by reference, the County’s Code provisions for the Board of Adjustment. Responsibilities for a “zoning administrator” are not defined in the Code itself, nor are there provisions for a Hearing Officer.

Board of Adjustment

The Board of Adjustment is a quasi-judicial body that interprets the Zoning Code, authorizes variances and parking reductions, acts on disputes about Temporary Use Permits, and hears appeals of decisions by the Zoning Administrator. The Board can reverse, affirm, or modify any of these decisions. Much of its work has dealt with height variances.

Planning & Zoning Commission

The Planning & Zoning Commission is the planning agency for the City and also, in an advisory role, recommends actions to the City Council regarding land use and development, including amendments to the Zoning Map, Zoning Code, and General Plan or Specific Area Plans. Additionally, the scope of the Planning & Zoning Commission’s review includes requests for Conditional Use Permits; protected development rights plans, subdivision preliminary plats, and other permits and approvals to ensure compatibility with the General Plan and surrounding uses. When considering the approval of a rezoning or Use Permit, the Commission may include site plan review.

Permits and Approvals

Table 2-1 summarizes the types of discretionary land use and development permits and approvals that the current code authorizes, and lists the authorities that can issue these approvals.

TABLE 2-1: DISCRETIONARY APPROVALS AND ISSUING AUTHORITIES		
<i>Permit Type</i>	<i>General Purpose</i>	<i>Issuing Authority</i>
Conditional Use Permit (CUP)	Required for some uses to establish conformance with the Zoning Code, General Plan, or other plans and policies, as well as compatibility with adjacent properties.	City Council, through consultation with the Planning & Zoning Commission
Site Plan Review	Insures compliance with the zoning code and may specify necessary conditions to minimize land use conflicts.	City Council, through consultation with the Planning & Zoning Commission and if property is located within the Heritage District, through consultation with the Heritage District Advisory Committee
Variance	Allows the modification of one or more site development standards that cause unnecessary hardship.	Board of Adjustment
Comprehensive Sign Plan	Provides for the establishment of signage criteria that are tailored to a specific development location, and which may vary from specific Ordinance provisions.	Planning & Zoning Commission

TABLE 2-1: DISCRETIONARY APPROVALS AND ISSUING AUTHORITIES		
<i>Permit Type</i>	<i>General Purpose</i>	<i>Issuing Authority</i>
Temporary Use Permit	Allows uses on a temporary basis or for a fixed amount of time.	City Staff
Subdivision Application	Required for the division of land into separate lots, tracts, parcels, or condominiums, cooperative, and other forms of ownership.	City Council, through consultation with Subdivision Technical Advisory Committee.

The City also has created a “One-Stop Shop” process for permits, as illustrated in the flow chart on the following page.

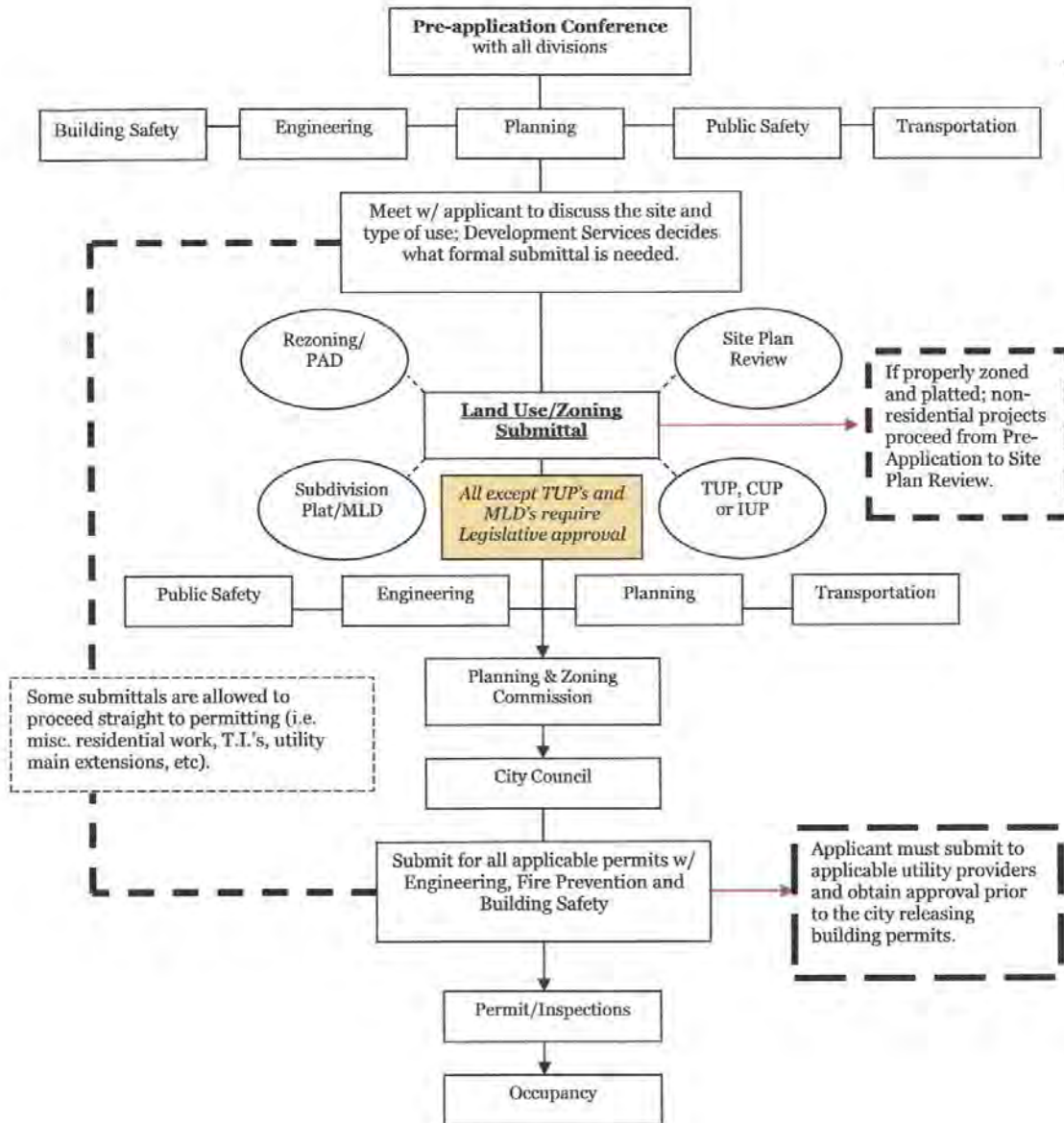
Nonconforming Uses and Structures

Currently, Maricopa’s Zoning Code regulates nonconformities, that is uses or structures that do not comply with current regulations and standards, in a traditional way. The code prohibits the expansion, enlargement, extension, or replacement of any nonconforming use and requires that all changes to nonconforming structures bring the site into full compliance with code provisions. Nonconforming uses abandoned for one year, or uses or structures suffering damage over 50 percent of their value, may not be restored without being brought into full compliance.

Citizen Participation Provisions

The City has adopted “Citizen Participation requirements” in Article 16-4 of the Zoning Code. Every permit application that requires a public hearing must submit a Citizen Participation Plan detailing the proposed methods and schedule of citizen notification, the citizen review process, and opportunities for discussion. At least 15 days before the first public hearing, the applicant must submit a Citizen Participation Report, which summarizes the implementation of the plan. The code states that failure to comply with the citizen participation requirements may result in postponement, rescheduling or denial of an application. These procedures have proven to be an effective way of gaining public input into the process.

One-Stop Shop Flowchart



THE ISSUES

Uses that Appear to be Permitted by Right, but Actually Require Review

The current code permits a wide variety of uses and development projects “as of right” in the zoning district regulations, but requires many of those projects to undergo discretionary site plan review and, in some cases, to secure approval of a Conditional Use Permit. As a result, requirements for Council approval of projects may seem contradictory where district regulations state that such uses are permitted by right.

Many jurisdictions have been able to reduce the number of uses that require discretionary review by amending their ordinances to include carefully crafted standards and restrictions that are specific to particular uses and then have a ministerial (e.g. “as of right”) administrative process for zoning clearances, mainly to check that development plans meet specified standards and use regulations. No public hearings or discretionary review with case-by-case conditions of approval then occurs. Standards can also be specific to zoning districts or clearly defined physical locations (e.g., arterial streets, locations within 100 feet of a residential zoning district, sites subject to flood hazards, sites adjacent to the Union Pacific Railroad line or the airport, or within a specified distance of Tribal Lands, etc.).

There are a variety of approaches the City could use to reduce the number of uses requiring review, including permitting more uses by right subject to:

- Compliance with development and design standards that could be added to the ordinance based on the General Plan’s policies;
- Compliance with new standards and requirements that reflect “standard conditions” that are typically imposed when such uses have been conditionally approved by the P&Z or a Hearing Officer (a new position); and
- Compliance with specific limitations on location, floor area, hours of operation, vehicle access, and similar features that are the source of potential adverse impact.

The incorporation of “limited uses” makes it possible to eliminate discretionary review for those uses that meet specific standards and limitations and do not exceed specified threshold criteria. The code could offer a discretionary option (using a Conditional Use Permit) to applicants who can demonstrate that the proposed use is consistent with the purposes of the district and would be compatible with surrounding uses, even though it does not meet all of the standards and limitations. This would allow needed flexibility and allay concerns that may arise from those who think the proposed standards are too rigid. Conditional Use Permits would be reserved for uses that pose potential or significant land use compatibility issues.

No Differentiation between Nonconforming Uses and Structures

Legal nonconforming uses and structures that do not comply with existing land use regulations could be a problem if Maricopa tries to promote more specific design standards. The code does not allow a nonconforming structure to be altered unless the entire building is upgraded to comply with existing codes and standards. Similarly, a building with a nonconforming use can only be altered as long as it does not exceed fifty percent of the area of the use. With Maricopa’s current regulations regarding the alteration of nonconforming uses and structures, it hinders properties from being upgraded and adaptively reused. This is particularly acute in the Heritage District, but after incorporation certain exceptions were established for the Heritage District. These rules place undesirable pressure on uses that do not fit new code regulations but are otherwise well established, benign, or even beneficial to the surrounding neighborhood.

The City may want to consider a tiered system that distinguishes between those nonconforming uses and structures that are small and relatively benign and those that are detrimental to surrounding owners and residents. This approach would provide more flexibility than the current requirements. The code could be changed to make it easier to upgrade those nonconforming properties that do not substantially conflict with General Plan policies, are located within the Heritage District (and other specified areas if desired), and to eliminate those activities and structures that are clearly incompatible with and detrimental to surrounding uses. A tiered system could include a procedure for licensing nonconforming uses that grants property owners the privilege of continuing nonconforming activities subject to certain requirements.

RECOMMENDATIONS

There are a wide variety of options that Maricopa could consider for revising its current regulations to streamline the decision-making process.

2-A Create a Set of Common Procedures for Zoning Administration

Maricopa should create a common set of streamlined administrative procedures in order to clarify the development process and to provide applicants with consistent expectations for project review. A set of common procedures would improve code usability by helping applicants to understand the general review process more easily. This also would be a logical place to respond to the timelines and related requirements of SB 1598, Arizona's Regulatory Bill of Rights. More detailed procedures could be consulted, depending on the specific permit application. Elements of a standard set of common administrative procedures include the following:

- A clear and consistent authority for determining whether an application is complete;
- Clear procedures and timelines for handling appeals;
- Requirements for more advanced public notification for all types of public hearings; and
- Standards for the conduct of public hearings.

2-B Reduce Reliance on Council-Level Discretionary Review

The Zoning Code should allow more uses and other approvals "by right" or subject to appropriate and suitable locational, developmental, and operational standards and limitations and without review by the City Council of building and site design but delegate this review and approval to the appropriate commission or city agency. This recommendation also applies to those uses that appear permitted in district provisions but, in fact, are subject to discretionary review. By allowing these uses by right or as "limited" uses subject to specified standards, Maricopa will not only speed the permit and development process, but also provide additional certainty to prospective developers that their projects are allowed and encouraged.

The successful implementation of this procedural strategy would require the City to create a category of allowed uses in each district between those that are permitted and those subject to review. This set of "limited" uses would function as permitted uses so long as they conform to certain development standards or do not exceed threshold intensities (one example might be multifamily developments with fewer than 10 units, or a similarly moderate number). Uses that exceed threshold intensities or otherwise do not conform to the stated limitations would then require a Conditional Use Permit.

With a greater number of uses allowed by right, Maricopa may also want to consider instituting a "petition review" system through which a project that is allowed by right can become discretionary if

neighbors file their opposition; that is, to have the P&Z review the application and take the community concerns into consideration before approval. The City might either require an applicant for a Use Permit to submit signatures from neighbors as part of the application process, or the City could mail neighbors and post notice of a pending application and then give opportunity for appeal. These procedural safeguards can help to ensure that only controversial projects of otherwise permitted uses require discretionary review.

2-C Clarify the Roles of the Planning & Zoning Commission and City Council

The resolution of the roles of these bodies is a necessary element in streamlining Maricopa's development process. This goal might be accomplished in a variety of ways, and the City should consider how to best align this procedural structure with its development vision. At the very least, the Rewrite should clarify the authority of the P&Z to have the ability to conduct design review and to take final action on certain types of applications. Similarly, the code could enable the Zoning Administrator authority to review land use, site layout, building form and architectural detail, landscaping, and other aesthetic elements for certain types of projects. The following are two specific ways that the City could rethink the roles of decision-making bodies, each representing a different degree of intervention:

- Rewrite the Code to clearly define the role and scope of authority among the respective decision-makers, but retain Council authority for specified types of projects; or
- Rewrite the Code to give the P&Z final authority, subject to appeal, for "major" Use Permits, with "minor" Use Permits, site plan review and related approvals to be granted by a Zoning Administrator, acting as a Hearing Officer, if specified findings can be made or the project is modified through conditions of approval.

2-D Allow Additional Flexibility to Get Relief from Standards for Infill Development such as in the Heritage Districts

There are several incentive programs that the city and state offer to promote the development and upgrades of property. Programs such as the Façade Improvement Program, Green Business Incentive Program, and Fast Track Permitting all utilize different methods and incentives to promote development. Specific permit approval procedures, enabling relief from standards and incentives for infill development and property upgrades, could promote redevelopment and reuse of nonconforming and older structures. Additional standards that could be modified by such a permit process could also be listed in the code itself. Maximum height and densities might be particularly appropriate for consideration, as well as operational requirements in some commercial and industrial development such as minimum ceiling heights or loading docks.

2-E Allow Flexibility for Nonconforming Uses

The City could adopt a new approach to regulating nonconforming uses that would allow it to distinguish among categories of nonconforming uses that should be regulated differently. Benign uses would be treated differently from potentially harmful or detrimental nonconforming uses. Such a system could apply different rules to:

- Benign nonconforming uses that could remain indefinitely, as determined by the P&Z or Board of Adjustment, and subject to conditions or limitations, with provisions for revoking its "benign" status if new nuisances arise;

- Uses that should be replaced at some time in the future in order to implement the General Plan's long term objectives where redevelopment and/or reuse is unlikely in the near term because of economic or market considerations; and
- Uses that are inconsistent with the General Plan and zoning regulations, will impede implementation of the Plan, and are detrimental because of health, safety, or substantial aesthetic impacts, such as towing yards and unscreened outdoor storage.

In this classification system, benign uses are those that do not have the potential to adversely impact surrounding properties. A small grocery store or office could be classified, for example, as benign, while an engine rebuilding business, auto body shop, smoke shop, or adult bookstore could not. The Rewrite would include the formulation of test parameters to classify a nonconforming use as benign, which may include the following:

- Does not generate noise or odors or visual nuisances incompatible with surrounding uses;
- Does not create significant traffic; and
- Does not involve activities or processes that are potentially harmful or dangerous.

The process of determining a benign nonconforming use would allow for public comment; it also would provide authority to impose conditions to ensure that uses deemed benign do not change their operations in a way that may adversely affect neighbors (e.g., a condition limiting hours of operation or prohibiting alcohol sales or smoke shops). Enforcement provisions for violations of standards or conditions also will need to be established.

2-F Implement a Village Planning Committee Process to Provide Additional Opportunities for Public Input

As the City looks ahead to growing to be well over 100,000 in population, Maricopa could consider the creation of village or sub-area planning committees who would then be responsible for sending advisory recommendations to the P&Z. While this option need not be implemented now, enabling provisions could be included in the code so such committees could be created in the future, if needed. These committees would allow additional opportunities for public input on projects proposed within their area boundaries, and could meet prior to a board hearing to discuss the hearing agenda items and forward recommendations, allowing the public the opportunity for closer scrutiny of proposals before they are formally considered. They would not be HOAs, although membership might come from HOA leadership. The Heritage District Committee could fulfill this role for the Heritage District.

Recommendation No. 3: Addressing Mixed Use and Other Development Opportunities

Nearly all of the new residential development in Maricopa has occurred in Master Planned Development(s) with single-family homes being the predominant housing type. Some large-scale plans have included a mix of uses, but most of the City has a fairly homogenous character, reflecting its family orientation.

Like many American cities, Maricopa also contains a number of older neighborhoods, called ‘Old Town’ in the General Plan and currently named Heritage District. These areas have small or irregularly shaped properties that have never been developed, as well as vacant buildings that persist despite all efforts to encourage their reuse. Residents have voiced concern over the number of vacant lots and properties that are not well maintained in these older areas of the city.

The Seven Ranches is another unique area, where many residents value their rural lifestyle, but with City Hall and other new uses in the vicinity, change is expected over the longer term. Maricopa has problems attracting development to these areas due to rural character, disparate ownership, and zoning standards inherited from the Pinal County. As a result, small or otherwise substandard lots cannot feasibly be used, so developers turn to “greenfield” areas where there is vacant land—leaving old neighborhoods on their own. A priority in the Rewrite should be to reverse this trend and encourage more mixed use development and reinvestment in old neighborhoods where residents and owners desire it.

EXISTING POLICY

The City of Maricopa has a vested interest in promoting development in all areas of the city and, in the Heritage District, on lots that have been bypassed by development. This interest is best illustrated in the various policies in the General Plan, as follows:

- Allow flexibility for mixed commercial and residential uses.
- Study the redevelopment and preservation potential of the Maricopa Old Town area.
- Identify and develop distinct ‘Maricopa’ design theme(s) that can be marketed to and be built upon by the business community for both the Old Town area and the community at-large.

The City could create a Development Incentive Program (DIP) to partially achieve these policies. Through this program, incentives could be offered for development on “by-passed” property, provided that it is smaller than 2.5 acres, has access to utility lines, and is surrounded by property that is mostly developed. Once obtained, the permits allow a limited number of development incentives, such as:

“Development incentives that may be granted by the DIP may include modifications to building setbacks, landscaping design, onsite parking, building height, right-of-way dedication, and other site development provisions contained in this Ordinance.”

ISSUES

Physical design standards and limited infrastructure in mostly built-out areas may tend to discourage mixed use and infill development. Many remaining parcels in the Heritage District, for example, are small or irregularly shaped, and current requirements for setbacks, density, or overall lot size do not reasonably permit development on them. The Heritage District Design Guidelines address mixed uses, but no zoning has been

adopted to accomplish this. Although the new code could state that small lots and parcels created prior to the code's adoption are to be considered as conforming to setback requirements, this exception alone may not prove sufficient to promote mixed use and redevelopment in the Heritage District. Rural front and side yard requirements, grandfathered on incorporation, and height limits may limit design flexibility for infill housing and mixed use projects.

Some community members have pointed to these regulatory obstacles as preventing the City from accommodating development in the Heritage District at urban—instead of rural—scales, which could have the double benefit of revitalizing older neighborhoods and increasing the stock of affordable housing.

The proposed DIP could be a way for the City to help guide design solutions. Providing “context sensitive” criteria would aid in developing better designs, and may be able to reduce the demand for case-by-case reviews and the uncertainty of a hearing process, a concern of stakeholders interviewed.

RECOMMENDATIONS

3-A Establish Standards and Incentives for Mixed Use, Urban Villages, and Infill Development

State law authorizes cities to allow mixed use development and also to adopt infill districts for sites meeting specific criteria, and Maricopa should take advantage of this initiative to encourage growth and investment in the Heritage District and in Urban Villages in appropriate neighborhoods. Among other cities, Tucson has successfully implemented a Downtown Infill Incentive district under this authorization, and Mesa has an active Development Incentive Program (DIP) for older areas. Allowing mixed use and infill by right in particular districts, instead of through a public hearing and discretionary permit process, will help to promote this type of development. However, the City chooses to codify its infill policy, the regulations should include adequate incentives to encourage such development and design standards that will ensure that its form is pedestrian-friendly.

The City has a variety of options to provide incentives for mixed use, Urban Villages, and infill. In addition to the exceptions to development standards that it could provide through a DIP (i.e., heights and setbacks), the City could permit exceptions to design standards and density requirements. The degree to which jurisdictions typically relax these standards varies; while some simply increase the allowed building envelope by a set percent, others choose to eliminate nearly all restrictions on building envelope size and replace them with strict design standards that ensure pedestrian-friendly development, as discussed below. In addition to flexible design and development standards, the City may wish to offer as-of-right incentives, such as further density bonuses, in exchange for desired amenities, including public plazas and community facilities. Priority processing of mixed use, Urban Villages, and infill permit applications is another benefit to consider.

Maricopa has a number of options for methods to implement these policies. For example, the City could establish a system in which developers are given “points” for providing public amenities and community benefits that could then be traded for specific concessions. The City of Chicago has adopted a point-trading system that illustrates how this process might work, and the City of Santa Monica, California is currently considering the adoption of a similar system. Chicago's code lists a variety of specific amenities that developers may choose to provide, including through-block pedestrian connections, water features, and green roofs, in exchange for specified increases in floor area through a formula or an as-of-right density bonus. The ordinance also establishes maximum bonuses that may be accrued. In Santa Monica's proposed community benefits program, the City would grant a certain number of points to developers for providing amenities, such as additional landscaping, public plazas, and outdoor living space. Developers can then “trade-in” these points for

a certain percent density bonus or additional floor area that would be proportional to the number of points accrued. If Maricopa does not want to establish a point system, the City could also simply list a menu of public amenities that each entitles a project to a specified bonus.

3-B Support Future Transit Corridors

Maricopa should reevaluate its density standards in areas that might benefit from increased building bulk and higher intensities of use, including the future transit-oriented areas. Higher density allowances will make these areas more attractive to potential developers and it will further differentiate the areas that Maricopa chooses to promote as urban through increased activity and visual prominence. The City should also promote mixed use by requiring ground-floor commercial uses, where appropriate. Mixed use around transit centers, such as the relocated Amtrak station, is especially important to encourage ridership and to support the investment that the City has made in these networks. In combination with higher density residential development, appropriate ground-floor commercial uses can turn transit centers into popular destinations.

3-C Rethink Buffering and Transitional Requirements to Avoid Constraining Development

The City will need to reduce its buffering requirements in desired infill areas to make more intense development possible. The existing requirements not only constrain the dimensions of development but also interfere with the City's ability to create walkable streets and viable commercial development in these areas. While Maricopa should require some buffers for commercial properties that abut single-family residential districts, it could decrease the required buffers around other types of properties—particularly in areas where the City envisions infill.

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Recommendation No. 4: Achieving a High Level of Design Quality

Maricopa places a premium on design excellence as a standard for new residential development. The City's existing policies and procedures have ensured to a large degree that new growth is visually appealing and fits well into surrounding communities. This effort is most pronounced in the master planned communities, where extensive landscaping, community amenities, and attractive architecture have been included in project approvals. In the rest of the city, landscaping requirements have transformed the feel of shopping centers and parking lots, and site plan review has helped to ensure that typically dull buildings—such as those for shopping centers uses—incorporate attractive details and varied materials to provide appealing public facades. In the Heritage District, the City's Façade Improvement Program helps to facilitate façade improvements.

Despite these positive elements, Maricopa will face a number of design challenges as it becomes an increasingly urbanized city. One of the primary goals for Maricopa's future will be to set design standards for non-residential development, and to recognize differences in design standards to achieve a diversity in housing and a unique sense of place. Much of the suburban-scale housing has been relatively homogenous in character. Development along the 347/John Wayne Parkway Corridor and along the Maricopa-Casa Grande Highway continues to be unfriendly to pedestrians, with large expanses of blank walls and frontages, poorly defined street corners, and buildings that are oriented away from sidewalks. In some areas, fostering a pedestrian-oriented environment with active and transparent retail frontages that offer views into shops and displays that engage shoppers is more important than landscaping in a front setback area. Balancing these needs, as well as others outlined in this chapter, will be a crucial element in the creation of a coherent design vision for the Rewrite.

THE ISSUES

Mixing of Urban, Suburban, and Rural Scales

Maricopa's Zoning Code should clearly distinguish among urban, suburban, and rural scales of development. In PAD projects, for example, the predominant character is suburban, with buildings and surface parking lots separated from the street by lush planting.

Although the City's goal for development is to create an attractive, vital environment, with opportunities for mixed use development and destination uses, such as hotels and resorts, the code continues to mandate minimum—and not maximum—setbacks for most types of development. In the 347/John Wayne Parkway Corridor, this is particularly problematic. There also are no requirements for buildings to be located along a sidewalk or for building entries to face the street. These are a few examples of how design guidance can assist in quality design and create a strong sense of place.

Zoning also has allowed auto-oriented commercial uses along the State highways, including car sales and drive-through restaurants, to follow suburban designs that place parking and display areas between buildings and the sidewalk. As a result, these corridors have become a mixture of incompatible urban and suburban types of growth with few buffers to resolve resulting nuisances. Single-family detached housing continues to exist directly adjacent to large structures, and commercial uses with generous setbacks compromise the walkability created by neighboring businesses. Without changes to development policy to address these problems, the City will be unable to achieve its goal of having a vibrant city.

Similarly, suburban scale development is beginning to invade rural enclaves, such as Seven Ranches, that some residents may want to retain as less developed until sewer infrastructure issues can be resolved. This mixture not only compromises the rural feel of these areas and detracts from their historical character, but also creates physical incompatibilities between properties. Many features of these areas are suitable for rural and equestrian uses with large setbacks, but have the potential to become problematic when mixed with suburban-scale homes that occupy larger portions of lots and are closer to the street.

Compatibility issues are also likely to arise from the development of suburban-scale single-family homes next to properties with large animal enclosures and next to active farming operations. As part of this Rewrite, the City could establish performance standards for agricultural activities within the City limits to minimize adverse impacts on neighbors and also revisit its density and setback standards for designated rural areas in order to avoid the further development of these types of incompatibilities in the future. Retaining a GR General Rural district also was a request of several stakeholders interviewed.

Insufficient Incentives for Environmentally Sensitive and Sustainable Development

Many cities around the United States are taking measures to encourage sustainable development because its benefits are numerous, affecting not only the environment but also residents' quality of life and business productivity. The City does provide incentives for installing solar panels through the Solar Rebate Program and does require landscaping in certain types of development. There should be additional sustainable incentives in the code. Maricopa has many options when considering a sustainability initiative, ranging from the simple encouragement of more useable open space, to requiring permeable landscaping, and to incentives for adherence to the standards of larger national movements, such as the Leadership in Energy and Environmental Design (LEED) green building certification program. The City also could build on Pinal County's recently completed Sustainable Pinal plan, which many Maricopa stakeholders applauded as a good initiative. Approaches to sustainable design are discussed more thoroughly in the recommendations, below.

By way of example, the City of Santa Monica is on the forefront of the municipal green building movement. The city ordinance requires that all new commercial buildings and large residential projects follow energy performance targets that go beyond California's requirements. Programs are in place, such as a priority plan check system, that encourage all new residential development and redevelopment to follow prescriptive energy-saving measures. The city guides developers through the process with their comprehensive Green Building Program, which offers an extensive database of information, including a web based guide on the City's Green Building requirements, guidelines, case studies, and resource links.

RECOMMENDATIONS

4-A Establish Design Standards for Residential and Non-Residential Development

The Rewrite could include formulation of design standards for residential and non-residential development that foster the type of character desired within various areas of the City. In urban and mixed use areas, the objective should be to have buildings enclose a street to provide an interesting and engaging front, and to make walking and shopping pleasurable. In suburban areas, by contrast, development has more of an auto-orientation, and landscaping would be important to screen parking areas and buffer pedestrian walkways from parking lots and from the street. Finally, in rural areas, the built form is much more informal, with deep setbacks and in some areas, stables and paddocks. Specific design controls that may be used for non-residential development include:

- Location of a building on a lot;

- Orientation of building entries;
- Transparency – pedestrian level windows offering views into buildings and displays;
- Requirements for architectural modulation to promote a variety of building forms;
- Limitations on blank walls;
- Screening of outside storage;
- Number of stories; minimum building height;
- Transitional requirements to improve the relation to adjoining sites;
- Pedestrian amenities and public gathering areas;
- Standards for drive-up and drive-through facilities;
- Connectivity within the site and to adjoining areas; and
- Location and screening of parking.

For larger projects, the City should require developers to submit plans showing how individual buildings within subdivisions, for example, will have a variety of housing types and how details on street-facing facades, front doors, porches, stoops and verandas, windows, roofs, landscaping, building materials and color will be addressed. Design guidelines also may be required for land development where buildings may be constructed by others to ensure a proper arrangement of buildings and sensitive site planning and architectural design.

4-B Require Landscaping that is Appropriate to Development Type and is Environmentally Sustainable

A ‘one-size-fits-all’ rule of landscape requirements may not be the best option for Maricopa. Perimeter landscaping and foundation planting requirements should vary depending on the character or type of development proposed. There could be alternative landscape requirements each with specified standards for percentage of landscaped area and plant quantities, sizes and types. Further, the code should retain sufficient flexibility for the creative use of native or drought-tolerant planting, and have permeability requirements to ensure the long-term health and upkeep of landscaped areas.

4-C Mandate Outdoor Living Area(s) and Usable Open Space in Multi-family Residential Development

Instead of listing outdoor space as a design option, the City should require usable outdoor living area in all multi-family development, consistent with the Parks and Open Space policies of the General Plan. Providing balconies or patios or usable common open space with resident amenities can meet this requirement. The numerical standard can vary according to the density of development and whether the outdoor living area is private or shared, possibly ranging from 200 square feet per unit in a low- to medium-density project to 60 square feet per unit in a high-density project in the town center. Excessive open space requirements, mentioned by stakeholders, should not be imposed.

4-D Provide Incentives for Sustainable Design

The County recently completed a report on *Sustainable Pinal – Its Where You Want to Be*, containing a broad range of recommendations, including energy conservation in new homes and

commercial/office/industrial projects, green electricity production, water conservation and heat island management. Green building performance standards, water conservation and building criteria, parking design standards and landscaping provisions could be integrated into Maricopa's Zoning Code. Whether the City wants to establish specific requirements that are keyed to LEED standards or other third-party certification programs, or have a more general approach, possibly integrated with a bonus/incentive program or priority processing based on compliance with a LEED rating (e.g., "Silver" or higher) or alternatives could be explored. The County's work is an excellent starting point.

Scottsdale offers some good models on promoting green buildings that may be worth emulating. Marin County, in California, has become a national leader in promoting sustainability through energy efficient building, and its experience is exemplary of one way that Maricopa might envision such a program. Marin County has established the BEST program,¹ which exists to enhance energy efficiency and conservation in residential, commercial, and community facilities. Under the BEST program an extensive database of green building resources is available and building checklists and technical assistance for residents and businesses is offered at no cost. The County has established an Energy Efficient Building Incentive Program that includes waivers of fees, fast track permit processing, design review waiver opportunities, and over the counter permitting approval for solar installations. Additionally, Marin County has adopted a Single Family Dwelling Energy Efficiency Ordinance, which requires dwellings greater than 3,500 square feet to meet specific energy efficiency standards.

¹ Marin County also has the Solar Energy Project and the Green Business Project run by their Sustainability Team, more information on these programs can be found at <http://www.co.marin.ca.us/depts/CD/main/comdev/advance/sustainability.cfm>.

Recommendation No. 5: Promoting Housing Variety and Choice

The future of Maricopa is closely tied to the type and quality of housing that is developed in the coming years. The 2006 General Plan anticipated a 2025 population of 350,000. New residents will require the creation of more than 130,000 new housing units, a substantial increase over the current stock. One of the greatest challenges for Maricopa in the following decades will be to provide enough housing to meet these needs without compromising the quality and cohesiveness of its residential neighborhoods. Through design and development standards and incentives targeted to attract diverse and well-designed projects, Maricopa can ensure that its housing stock is sufficient and meets the needs of all segments of its population.

CURRENT HOUSING POLICY

Maricopa's Zoning Code establishes six base residential districts, but only four are shown on the zoning map. Less than one acre is zoned for multi-family residences; all of the other residential land is designated for single-family residential or rural uses. The non-residential zones do not permit housing, nor do they include mixed use development options. Of the residential districts, three are single-family zones with varying minimum lot sizes (from 7,000 to 20,000 square feet). The multifamily zones do not include densities; in the CR-4 zone, the limit is four family units per lot, while in the CR-5 zone, the density is limited for all practical purposes by building height (30 feet), and includes required parking and yards. Single-family uses are permitted in the multifamily zones, but all multifamily development, including duplexes and town homes, is prohibited in single-family zones. Additionally, limited residential uses are permitted in the agricultural and general rural zones.

Maricopa's existing housing stock offers no diversity in building type(s). Nearly all of the current residential units are single-family detached, with some attached homes in PADs and some manufactured homes. This very limited distribution of housing types does not provide the framework for housing for all segments of the community that the City wishes to promote. Lastly, there are no incentives for affordable housing, and the inclusion of this type of housing will help attract development to Maricopa.

THE ISSUES

This section describes how current zoning regulations present obstacles to achieving Maricopa's housing goals delineated in the General Plan.

Lack of Housing Variety

Maricopa's current housing regulations generally do not allow for a mixture of different scales of housing in appropriate locations, nor do they facilitate the development of certain types of housing that contribute to affordability. Because Maricopa's residential districts are of only two types—single-family and multifamily—there is no district for a transitional scale that would allow single-family units mixed with lower density multifamily units. This type of district is important not only for ensuring smooth transitions in physical bulk, but also for providing opportunities for multifamily housing at lower costs.

The current code also does not provide sufficient opportunity for alternative housing design. With a minimum lot size of 7,000 square feet for the CR-3 single-residence zone, the code does not expressly permit small-lot or zero lot line development, although these types of developments are sometimes approved

through a PAD. As its housing needs grow, the City may wish to encourage this type of design more aggressively in order to accommodate increased spatial demands as well as market demands.

Aging Stock of Residential Buildings

The aging of Maricopa's older homes, including manufactured homes, will continue to cause a number of problems for the City if no steps are taken to rehabilitate them. As these units continue to age, they will be subject to further deterioration. The code prevents the rehabilitation and upgrade of older homes because it requires them to comply with all current zoning and building code requirements (e.g. sprinkling and fire safety). Currently, variances can be granted to allow deviations from standard requirements, particularly where modern standards create nonconforming site conditions (e.g., parking requirements or setbacks). While a variance resolves the legal status of these buildings, however, it does not materially improve site conditions and provides a disincentive to their upkeep due to the money and time involved to perform even minor alterations. The City should consider adopting regulations that encourage appropriate physical improvements to manufactured homes while continuing its practice of granting variances to avoid the creation of nonconforming sites.

RECOMMENDATIONS

5-A Allow a Mix of Housing Types Where and When Appropriate

Maricopa can take a variety of steps toward promoting a greater mix of housing types at all densities. One way to accomplish this is to allow more flexibility in density in transitional areas, a policy that Portland, Oregon has successfully implemented. Portland permits duplexes on corner lots in single-family zones as long as each unit faces a different street, and it also allows one additional unit on any residential lot abutting a commercial lot. Portland also promotes development of live/work units. By creating a framework for flexibility in housing size and design, Portland has been able to supplement its housing supply with a diverse range of typologies while maintaining the prevailing characteristics of its existing residential areas.

Austin, Texas, has implemented a more permissive policy for mixing housing types through its recent infill initiative. In a few specified residential zoning districts, this provision allows the creation of additional units within the existing residential fabric where space permits. The ordinance permits infill development to take a variety of forms, including single-family houses, duplexes, and multifamily buildings, and even allows a handful of small-scale commercial activities as long as those businesses are limited to 1,000 square feet per acre of infill development. There are specific development standards for each of these allowed infill uses, including adjusted setbacks and density standards, in order to ensure that the development is compatible with the surrounding neighborhood. There are requirements for infill projects to promote pedestrian activity, include "high quality" public open space, and distribution of bulk so that the new buildings are compatible with any adjacent single-family residential uses.

Maricopa should consider adapting these peer city policies as appropriate to its individual needs in order to meet the General Plan's goal of encouraging diverse types of housing, including live/work opportunities.

5-B Create a New Zoning District or New Regulations for Small-Lot Single-Family Development

The City also should consider adopting a residential small-lot development district or include specific provisions for small-lot development within single residence zones. While the PAD option has been

used to allow this type of development, Maricopa should consider incorporating these provisions more formally into the code in order to encourage their development on a wider scale and to streamline the review process for it. This type of housing has become a standard option in the Phoenix metropolitan area. The code could allow subdivision to enable small-lot development, as in the City of Los Angeles, where lots as small as 600 square feet are allowed under this provision. Small-lot development could be especially useful in areas with an abundance of irregular lots, including long, narrow lots or other odd shapes. The code's development standards might provide the option of consolidating long narrow lots with a joint setback as a unified development and to allow zero setbacks between individual units in a townhouse style.

5-C Create More Housing Choice with a Density Bonus Program

The City should consider adopting additional regulations to promote the creation of more housing choice with a density bonus program. At the moment, the City does not provide any voluntary program for the creation of a diverse range housing with density bonuses. The City may wish to adopt an incentive program to ensure that local development is satisfying the need for a range of housing units.

Several incentives might be included in a voluntary program. The typical incentive involves a density and/or height concession in proportion to the number of units provided at various density ranges or for a range of housing types. Density bonuses could be given for the creation of senior housing or for people with special needs. In addition, fast track processing of applications could be offered for projects with a minimum number of attached units. The City might also consider identifying other development standards, such as required parking, that could be reduced as part of an incentive package, provided transit or para-transit services were available or the community was walkable, and the need for two cars was reduced as a result.

5-D Allow Upgrades to Older Residential Properties (Manufactured Homes/Trailer Parks)

The deterioration of older residential areas, including manufactured homes and trailers, will be a problem for Maricopa in the near future. Without the proper maintenance and upgrades the deterioration of these structures can contribute to decreased property values. As these structures continue to grow older, the City needs to find the right balance between encouraging maintenance and physical upgrades and not imposing undue cost burdens on the residents of these areas. Maricopa should consider encouraging upgrades to units through a staff-level review process, while balancing these changes with the option of granting variances to avoid nonconformities where upgrades are not possible.

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Recommendation No. 6: Supporting Economic Growth

Ensuring the long term economic growth and employment opportunities is of primary importance to Maricopa. In order to secure continuing economic vitality, regulations should promote the steady creation of new jobs to maintain a strong and diversified economy and to allow residents better access to local employment. This section discusses current challenges facing economic development and presents strategies for encouraging new industry, “non-traditional” and targeted commercial growth.

Maricopa’s economy holds a great deal of promise for the future. The City has two key factors that enhance its attractiveness to business: a swiftly growing population—contributing to a sizeable work force—and large amounts of available land in growing areas of the city, including the Williams Gateway area and the rapidly expanding northeast corner near Loop 202. In addition to the town center’s envisioned urban village, these elements provide the framework for healthy economic growth as the City continues to expand. Through well-crafted regulations, the zoning code can maximize the City’s economic development potential and ensure that growth does not create undue impacts on its neighbors.

EXISTING REGULATION OF ECONOMIC ACTIVITY

Currently, Maricopa has three commercial districts (CB-1 Local Business Zone, CB-2 General Business Zone and the CI-B Industrial Buffer), two industrial districts (CI-1 Light Industrial and Warehouse Zone and CI-2 General Industrial Zone) and the TR Transitional Zone, which provide the framework for all economic activity in the City. These districts are cumulative (e.g., CB-2 incorporates use regulations of CB-1) and follow a hierarchy of allowed uses, with the most intense uses allowed in the CI-2 zone.

Because of the limited number of local jobs available, many residents continue to commute outside of Maricopa for their jobs. A key goal to ensure economic health and future development of Maricopa will be to provide appropriate incentives for job-generating uses and encouraging the most productive use of economically productive land. The City’s General Plan outlines a number of strategies for carrying out its economic development policies, reflecting the following recommendations:

- Creating a balanced and diverse economy is a central theme. Among preferred economic activities are research and development, manufacturing, biotech industries, alternative energy research and development, and tourism. Developing alternative technologies, including geothermal and solar energy applications for agriculture, may be well suited to Maricopa.
- Economic development efforts should include manufacturing and more. Any activity, which brings new money into the community, is an appropriate focus for economic development. “Non-traditional” options include tourism and retirement.

THE ISSUES

Maricopa’s Bedroom Community

The number and type of jobs in Maricopa is a matter of concern among many residents and city officials. Currently, Maricopa has a much higher concentration of residential uses than employment and tax-generating uses. This fact has led to the common observation that the city is primarily a bedroom community, with residents commuting to other Valley cities to work. Beyond the missed economic opportunities inherent in this situation, the city is hurt by this trend in a number of ways. It hinders small business development in the

area, because workers frequent restaurants and shops in other cities near their places of employment. The daily outflow of population further complicates the creation of an urban environment, because the city lacks the critical mass of people necessary during the day to populate its streets and neighborhoods.

A Lack of Real Mixed Use

Maricopa's Zoning Code provides few opportunities for true mixed use development. In commercial zones, residential uses are not allowed, and no standards for mixed use development are established. The Heritage District design guidelines envision a mix of residential and small office uses, but "by right" zoning has not been established in the area. Further, no provisions exist for neighborhood-scale mixed uses in the code.

RECOMMENDATIONS

6-A Provide Incentives for Job-Generating Uses

In order to help bring the City's total jobs into balance with its housing, Maricopa should take steps to attract businesses and industry with a high ratio of employees to floor space. The City could provide incentives for this type of use by allowing targeted industry to receive priority application processing or set time limits that the City can spend considering applications for this type of development. A more comprehensive approach might include creating a general "employment" use classification that includes targeted industries. The code would then permit this use wider freedom in location, design, and development standards. By doing this, Maricopa will increase its ability to compete with other regional cities for jobs.

6-B Allow Limited Commercial Development in Appropriate Residential Districts

Many neighborhoods in Maricopa could benefit from small-scale commercial development and neighborhood-serving uses that serves local needs, such as day care facilities and local schools. Currently, these types of land use are not allowed in residential zones, but Maricopa should consider allowing low-intensity commercial and institutional uses in some of these districts. Commercial activity might be limited to edges of neighborhoods or in villages, or on corner lots on collector or arterial roads with appropriate buffering requirements to ensure that it will be a good neighbor to surrounding properties.

By allowing small commercial development in these districts, Maricopa could both provide a new avenue for economic growth and enhance the accessibility of commercial properties for many residents in the area. Highway commercial frontage then can be reserved for retail space. Day care centers and schools do not belong in shopping centers. Small-scale, local-serving commercial properties are ideal for small businesses, so mixed use zoning would expand income opportunities for the City's residents. Local-serving commercial uses would also allow residents and employees to walk or bike to their destinations more often, having a beneficial impact on local traffic and environmental conditions.

6-C Create Mixed use Districts

In addition to the low-intensity mix of uses described in the previous recommendation, the City should create a true mixed use district outside of the Heritage District that allows ground floor retail with residential uses above. To ensure that mixed use development actually occurs, the City could impose additional standards in this district requiring ground floor retail. This mixed use district would allow "by right" development with site plan review; PAD zoning would not be required.

6-D Create a Planned Development Base District

While the subdivision ordinance has detailed requirements for PADs, the PAD overlay district in the Zoning Code may not be allowing the level of flexibility or creativity that is desirable in a planned development district. The City has a policy of applying the more restrictive requirements, which may not always be appropriate, or offer desired flexibility. Because the overlay must be applied to an existing base district, the underlying regulations of that base district still apply. Maricopa could create a new “floating zone” – a planned development base district and, for larger sites, a planned community district, in order to allow for additional flexibility in land use and site planning. Such a district(s) would have no specific use or design standards, but would allow for innovative design proposals approved through a Conditional Use Permit. The City could then apply this district to areas of strategic importance or to larger sites with special needs to encourage integrated, well-designed projects. This would be an option for those with existing PAD zoning, but not a requirement. Maricopa could make the adoption of this provision a priority in order to facilitate major upcoming projects, where pre-2008 PAD approvals may not fit with current market demands for housing.

6-E Provide for the Adoption of Development Agreements for Large, Employment-Generating Uses

Although Arizona law authorizes municipalities to establish procedures for the adoption of specific plans that include strategies for providing necessary infrastructure and to enter into development agreements that entitle a property owner to development consistent with a specific plan in exchange for the provision of infrastructure and other benefits. Maricopa does not currently incorporate these procedures into its Zoning Code. It does have provisions in the subdivision regulations for Planned Area Development (PADs), which are quite detailed. At the minimum, Maricopa should clearly specify in the zoning ordinance rewrite that development agreements can establish separate development standards for specific plan areas. Development agreements and specific plans can play a significant role in attracting large employers to the City, as they allow greater development flexibility in exchange for the provision of basic public amenities such as roads, infrastructure, and community benefits. These requirements also will need to be coordinated with annexation procedures.

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Other Issues

In addition to the broad categories covered in previous sections, the Zoning Code Rewrite can address a number of narrower concerns raised by the needs of particular areas, uses, and segments of the population. This section looks at how the Rewrite can integrate policies that support efficient transit systems, address environmental quality, and ensure adequate provisions regarding State and federally protected uses. Although these issues did not fall within the scope of the previous sections, the concerns raised here are important for ensuring that the revised zoning code meets all goals of the General Plan and is equitable, legally sound, and consistent with applicable regional policies.

ENVIRONMENTAL QUALITY

Light Pollution

The City adopted a Light Pollution Code shortly after incorporation. Most stakeholders applauded these controls but requested that some provisions be re-considered in the context of emerging technologies, crime prevention and safety, and specific needs in mixed use districts.

The Light Pollution Code has eliminated the spillover of light from new development onto adjacent properties to the greatest extent possible. Specific numerical limits are placed on exterior illumination levels to aid enforcement and ensure consistent application in all areas of the city.

The rationale for having a “dark sky” program to regulate maximum light levels throughout the city is straightforward. A dark sky program can have many desirable effects, including the following:

- Control of glare that can create safety hazards or nuisances;
- Preservation of a visible night sky;
- Maintenance of conditions that do not interfere with wildlife navigation and reproduction; and
- Conservation of energy.

As communities have learned from adopted versions of these ordinances, the International Dark-Sky Association (IDA) has generated a number of helpful policy recommendations regarding the regulation of illumination levels and many jurisdictions in Arizona have refined them to meet their local needs. In general, the IDA recommends five lighting zones with gradations of luminance standards. The most restrictive zone, reserved for wildlife habitats, rural areas, and other “intrinsically dark landscapes,” is subject to rigid lighting controls, including strict maximum output levels² and “light curfews.” In the least restrictive zone, reserved for major urban areas, it may be appropriate to remove or relax some or all of these regulations. Maricopa may want to make minor technical refinements of its light pollution control program, which would still preserve the natural character of its rural and undeveloped areas, while also providing security lighting as needed for crime prevention and community safety.

² Output levels may be regulated in lumens or watts per square foot of lighted area. The IDA notes that watts are a more commonly understood and more easily measured—and thus more easily enforceable—standard. However, when using watts as a standard of measurement, resulting illumination levels may vary considerably with the energy efficiency of individual bulbs. It thus may be advisable to regulate in lumens per square foot to achieve consistent results.

Solar Technology

The use of solar technology for the generation of electricity, lighting, and heating buildings is a central principle of green building. Incorporating solar technology can help implement sustainability goals as well. The City is fairly permissive, but the current Zoning Code does not have detailed provisions to regulate the installation of solar panels and other technology systems nor does it recognize that these systems may need to project above height limits in some cases. Standards for a “right to light” and solar easement rules also could be incorporated. . The Zoning Code should include regulations to allow the incorporation of solar panels into development plans without height variances.

PROTECTED USES

Arizona law grants cities and counties relatively broad discretion in the regulation of land uses and development, and the Federal courts and United States Congress have, for the most part, left land use and environmental regulation up to state and local government. There are, however, some important exceptions to this approach. If local regulations conflict with federal law, pursuant to the supremacy clause of the United State Constitution, then local laws are preempted. In some cases, both Congress and the State have identified matters of critical concern that limit the authority of local Arizona municipalities.

This section discusses some of these protected uses, applicable rules, and potential issues that should be addressed as part of the Zoning Code Rewrite Project.

- *Religious uses* (Federal Religious Land Use and Institutionalized Persons Act of 2000, ARS 41-1493 et. seq.)
- *Housing for persons with disabilities* (Federal Fair Housing Act Amendments of 1988, Americans with Disabilities Act, Arizonans With Disabilities Act of 1992, ARS 9–499.02; 41–1492 et seq.)
- *Telecommunications* (Federal Communications Act of 1996)
- *Educational Institutions* (ARS 9-461.05.E.5)

Religious Uses

The Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) requires public agencies to demonstrate a compelling government interest and to use the least restrictive means when making a land use decision that imposes a substantial burden on religious exercise. The Federal Courts have ruled that requiring a church to apply for a conditional use permit, submit information needed to conduct zoning review, or obtain a rezone is, in most cases, not considered to be a “substantial burden” on religious exercise. Local agencies that impose limitations on where religious uses may locate or impose requirements that the applicant considers “burdensome” may, however, be sued in Federal court and, if found in violation of the law, subject to financial penalties. The enactment of RLUIPA followed a decision by the United States Supreme Court ruling that a previous Federal law, the Religious Freedom Restoration Act of 1993, exceeded Congress’ power to enforce the Constitution. In the wake of this decision, Arizona and several other states adopted their own statutes to protect religious uses from burdensome state and local laws.

The Arizona Free Exercise of Religion Act State law imposes comparable restrictions on local agencies requiring a determination that laws, rules, and other actions that substantially burden the exercise of religion further a compelling governmental interest and represent the least restrictive means of furthering that interest. (ARS 41-1493.01) Like RLUIPA, which Congress adopted following the Supreme Court decision, the State statute provides a judicial remedy to obtain relief. The State law appears, however, to require a lower

threshold than RLUIPA. It states that, “Free exercise of religion is a fundamental right that applies in this state even if laws, rules or other government actions are facially neutral.” Moreover, because one of the most difficult aspects of regulating religious uses is determining whether the adoption or application of a regulation imposes a substantial burden, the Arizona statute also attempts to clarify its intent by explaining “the term substantially burden is intended solely to ensure that this article is not triggered by trivial, technical or de minimis infractions.” (ARS 41-1493.01(E)). In contrast, Federal courts have ruled that to impose a substantial burden under RLUIPA a government action “must place more than inconvenience on religious exercise...[F]or a land use regulation to impose a ‘substantial burden,’ it must be ‘oppressive’ to a ‘significantly great’ extent. That is, a ‘substantial burden’ on ‘religious exercise’ must impose a significantly great restriction or onus upon such exercise.” *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir.2004))

Maricopa’s current code permits religious assembly uses in all districts subject to compliance with applicable design guidelines, landscaping and screening requirements, and setback standards. Accessory religious uses are permitted on the same lot as a church or on a contiguous parcel. The code defines “church” to include “limited accessory uses generally associated” with buildings and structures intended for conducting organized religious services. The code stipulates that a Conditional Use Permit is required for athletic facilities and daycare centers operated in conjunction with a church but does not explicitly exclude some other activities that churches may operate such as schools and social service programs.

By defining homeless shelters, charity dining facilities, and rescue missions as “social service facilities”, the existing code suggests, but does not explicitly state, that the operation of such uses within church premises are not considered religious activities and would require separate approval. It is important to ensure that the City makes adequate provision for social and community services such as homeless shelters and food programs because some religious organizations and their supporters have argued that these activities, which have been traditionally provided by religious institutions, are also protected by the Federal law. The City must also ensure that it complies with RLUIPA’s equal terms provision by treating religious uses and secular uses with similar land use characteristics, such as other membership assemblies for private schools, in the same manner. See *Centro Familiar v. City of Yuma*, 651 F.3d (9th Cir.2011).

Local agencies must also be wary of requirements or conditions that restrict the number of worshippers, hours of operation or otherwise “burden” religious practice. Design review requirements should also not be applied to religious uses in a way that may conflict with religious values or precepts that are embodied in certain symbols or designs. The current code’s exceptions to height limits minimize potential conflicts by exempting church spires but require Design Review Board approval for granting exceptions for other features such as domes or cupolas.

Housing for Persons with Disabilities

Various provisions in both Federal and State law limit the authority of local agencies to regulate facilities for mentally and physically handicapped persons. In 1988, Congress extended the 1968 Fair Housing Act’s prohibitions against housing discrimination to include discrimination on the basis of handicap or familial status (families with children). The Federal Fair Housing Act Amendments (FHAA) defined "handicapped" to include persons with physical or mental disabilities and recovering alcoholics and drug addicts. The FHAA not only prevents communities from discriminating against handicapped individuals but also requires "reasonable accommodations in rules policies, practices, or services, when such accommodations are necessary to afford [handicapped persons an] equal opportunity to use and enjoy a dwelling." The Arizona Fair Housing Act brought the State law into conformance with the Federal Fair Housing Amendments Act of

1988. Similarly, the Arizonans with Disabilities Act of 1992 (ARS 9-499.02; 41-1492 et seq.) reinforces provisions of the comparable federal statute.

The U.S. Supreme Court has ruled that a zoning ordinance that defined a “family” to exclude a group of more than five persons who are not related by genetics, adoption, or marriage was an unreasonable restriction on maximum occupancy that could not be used to exclude a group home for 10 to 12 recovering alcoholics and drug addicts from a single-family residential zone. *City of Edmonds v Oxford House, Inc.* 514 US 725, 131 L Ed 2d 801, 115 S Ct 1776(1995).

Maricopa’s existing code allows residential facilities for developmentally disabled persons and licensed and unlicensed group homes for the disabled with up to ten residents plus staff in all residential districts as long as they are separated from an existing group home by 1,200 feet or a significant physical feature such as an arterial street or park. While the spacing requirements may limit housing choices, they support the objective of dispersing housing throughout the community. There are no cases in Arizona that found a city in violation of the FHAA because of spacing requirements for group homes. Courts in other states have, however, found the refusal of a local community to grant an exception to this spacing requirement to be a violation of the reasonable accommodation requirements of the FHAA.

Maricopa’s Zoning Code currently allows larger group homes, assisted living facilities, hospitals, and convalescent homes in multi-family districts with a Conditional Use Permit. Supervised living facilities and substance abuse treatment facilities may be established in multi-family districts subject to approval of a Council Use Permit. Residential facilities for the developmentally disabled, group homes for the disabled, and adult care homes are also permitted in the Town Center residential districts.

The code’s definition of “group home for the handicapped” includes adult care homes, homes for the chronically mentally ill, and similar residential living arrangements for disabled persons but does not include homes for the developmentally disabled, nursing homes, and substance abuse facilities. The code also includes a definition for “assisted living facility”, which does not include group homes for the disabled or adult care homes. Maricopa’s provisions regarding such facilities appear to conform to both Federal and state law but may be confusing to all but the most well-informed code-users because of terminology. Ideally, the code should use the same terminology and definitions as the State statute and provide whatever clarification may be needed to demonstrate compliance with the Federal law as well. The City should also be aware of the potential for conflict with Federal law when a facility protected by the FHAA is subject to the City’s citizen participation process. While neighbors’ comments about the future residents of a facility are protected by the First Amendment of the U.S. Constitution, the City’s denial of a discretionary permit may be subject to challenge if it can be shown that the action was a result of such comments. *White v. Lee*, 227 F3d 1214 (9th Cir 2000).

State law distinguishes between licensed residential facilities serving developmentally disabled persons and other types of group homes and supervisory care facilities requiring local agencies to regulate licensed residential facilities serving up to six developmentally disabled persons plus support staff necessary to assist residents as a single family residential use. (ARS 36-582) The Federal law, however, provides broader protection. Under the FHAA, in-patient and out-patient facilities licensed to treat persons with mental disabilities or substance abuse problems must be regulated in the same manner as properties used for treatment of general medical patients.

The Federal and State requirements for accommodating individuals with disabilities also dictate that municipalities establish procedures to allow modification of setback requirements and other standards that may preclude alterations to make buildings accessible. Rather than requiring a property owner to go through the process of obtaining a variance, the code should explicitly state that an administrative waiver or

modification of such standards is available based on a determination of necessity under Federal and State disability laws. Like the Federal ADA, the Arizona act requires public agencies to make “reasonable modifications” to its policies, practices, and procedures when necessary. This might, for example, require modification to setbacks to allow a ramp to extend closer to the front property line than would otherwise be permitted.

Telecommunications

Federal law imposes constraints on the ability of local agencies to use zoning and building regulations to regulate wireless telecommunications facilities on private property and in the public right-of-way and expressly preempts any state or local law that has the effect of prohibiting telecommunication. The Federal Telecommunications Act of 1996 preserves local zoning authority over decisions regarding the placement, construction, and modification of wireless facilities so long as it does not (1) unreasonably discriminate among providers of functionally equivalent services, or (2) prohibit or have the effect of prohibiting the provision of personal wire services and subject to a number of procedural requirements. Since 1996, the Federal courts have clarified the meaning of these provisions in scores of cases, which have, in some instances, further limited local regulation of telecommunications uses but in others have reinforced the regulatory role of local agencies. While some rulings have focused on HOW agencies implemented their regulations, rather than the content of the local ordinance, they suggest that incorporating more detailed procedural requirements could help to make the application of the local ordinance less susceptible to legal challenge.

In what was probably its most important recent decision on the issue, the court ruled against a provider who challenged San Diego County’s complex regulatory scheme on the grounds that it could potentially prohibit the provision of telecommunications services. The Federal court decided that the ordinance was not preempted because it did not expressly or in effect prohibit wireless services. *Sprint Telephony PCS v. County of San Diego* 543F3d 571 (9th Cir.2008) In another case, however, the same court found that a city improperly denied an application for a special use permit to construct a monopole because it failed to rebut the provider’s showing that its proposal constituted the least intrusive means of remedying a service gap as required by the Act. *T-Mobile USA, Inc. v. City of Anacortes* 572 F3d 987 (9th Cir.2009).

Maricopa’s Zoning Code permits non-commercial communication towers in agricultural and residential districts as long as they are not located in the front yard and comply with height and setback requirements. Commercial towers require approval of a Conditional Use Permit in agricultural and residential districts and to exceed permitted heights in the Town Center Business, Public Facilities, Commercial, and Industrial districts.

The code requires a finding that the approval of the proposed permit is compatible with surrounding uses and applicable plans and policies and provides for the imposition of conditions to ensure compatibility. The code itself does not establish any standards but refers the user to the Commercial Communication Tower Guidelines that the City adopted in 1997.

The Code Rewrite will provide an opportunity to review the guidelines, codify appropriate provisions, and develop additional standards and criteria to regulate telecommunications facilities. The ordinance could include incentives for co-location and “stealth” facilities and provisions that allow modification or waiver of standards when necessary to meet documented service needs. The codification of existing guidelines will also allow for review of provisions to ensure compliance with the body of case law that has accumulated during the decade since the City adopted the guidelines.

Several of the most recent court decisions regarding telecommunications facilities involve regulation of installations in the public right-of-way, a subject that the existing ordinance does not address but is likely to become relevant as wireless technology continues to change. After overturning one ordinance intended to protect the aesthetic character of public streets (*Sprint v. La Cañada Flintridge*, 435 F.3d 993 (9th Cir. 2006)), the same court upheld a similar regulation in another California city ruling finding that its consideration of aesthetics in denying a provider's application to construct two facilities in the public rights of way did not violate either Federal or state law *Sprint PCS Assets, LLC v. Palos Verdes Estates, et al.*, 583 F3d 716 (9th Cir. 2009).

Charter Schools and Community Colleges

As provided by State law, the City of Maricopa's General Plan 2006 includes a public buildings element "showing locations of civic and community centers, public schools, libraries...and other public buildings" as part of the mandated general plan (ARS 9-461.05.E.5). The Plan proposes coordination with the public school districts that serve Maricopa as well as Central Arizona College "to ensure land use compatibility surrounding existing and planned school sites." (*General Plan 2006*, p. 70).

Although the Plan does not specifically address charter schools, City staff anticipates that these facilities, which are a type of public school that can be sponsored by the State Board of Education, the State Board for Charter Schools or any local school district, will be an increasingly important component of Maricopa's educational infrastructure. Arizona has seen considerable growth in charter schools since the State adopted enabling legislation in 1994 (ARS 15-181 et seq.) Now, some municipalities and counties have expressed concern that charter schools may be locating in areas that are not appropriate for this type of use.

Existing State law requires that charter schools be considered public schools for the purposes of zoning and the assessment of zoning and other development review fees. (ARS Sec. 15-189.01 et seq.) The statute also stipulates that municipalities and counties must allow a charter school to be established and operate at any location or in any facility in which schools operated by school districts are not prohibited by the zoning regulations, with the exception that the ordinance may prohibit a charter school from operating in an existing single family residence that is located on property of less than an acre. State law also prohibits charter schools from operating within a quarter mile of agricultural land where toxic pesticides are applied.

State law does allow municipalities and counties to require charter schools to comply with the same requirements that would be applicable to a school that is operated by a school district. Some jurisdictions, including Mesa and Gilbert, have adopted zoning regulations applicable to public schools. Gilbert, for example, classifies both public and private schools as a Public Facility/Institutional (PF/I) use and requires a Conditional Use Permit for a school to locate at any site that is not on a collector or arterial. Schools may not be established in any single-family residential structure. Schools occupying five or more acres are subject to approval of a Conditional Use Permit (CUP) in any Commercial District and prohibited in Office Districts but smaller schools that meet the code's development standards may be established on collector or arterial streets in both districts by right. (Gilbert Land Development Code Table 2.303) Schools are prohibited in all Employment Districts Although the Gilbert Code, updated in 2005, does not make specific reference to charter schools, it defines schools, public or private, to encompass all public or private educational institutions offering a general course of study at primary, middle, or high school levels,

In contrast, the Flagstaff zoning code³, adopted in November, 2011, specifically defines charter school as “a public school established by contract with a district governing board, the state board of education or the state board for charter schools” to provide learning that will improve pupil achievement. For purposes of regulation, however, Flagstaff refers to “Schools-Public & Charter” as a single land use. Flagstaff permits public, charter, and private schools in all commercial districts but only allows public and charter schools in industrial zones.

SB 1103, introduced in the State legislature early in 2013, would specifically prohibit a municipality or county from enforcing any ordinance, procedure or process against a charter school that cannot legally be enforced against a school district. It would also state that voluntary compliance of a school district in the zoning regulations of a municipality or county would not give the jurisdiction the authority to apply the same zoning regulations to a charter school.

The League of Arizona Cities and Towns expressed concern that the bill as originally drafted would have eliminated public involvement and review but, as a result of an amendment adopted by the Senate Education Committee, is now neutral on the proposed legislation since the Senate Education Committee amended the bill to address the League’s chief issue about eliminating public involvement and review.⁴

Although there are some differences among municipalities as to how their zoning regulations address both public and charter schools, review of their ordinances suggests some approaches that should work for Maricopa:

- Classify schools as a type of public, semi-public, and/or institutional use;
- For purposes of regulation (e.g. in base district use and development regulations tables and schedules) identify “Schools, Public and Charter” as a distinct type of public/semi-public use;
- To encourage cooperation and compliance, provide sufficient appropriate locations for public and charter schools to operate;
- Impose development standards that are similar to or the same as those applicable to other public/semi-public uses in the same district but provide flexibility to allow construction that will meet the needs of educational institutions based on size and level of enrollment;
- Impose performance standards, including parking, that recognize the unique operating characteristics of schools;
- When discretionary review is necessary, provide for review at the staff level with expanded additional public notice.

Issues concerning the applicability of municipal zoning to public community colleges are similar to those regarding charter and public schools. State law requires State departments, agencies, boards or commissions intending to buy or develop land within a municipality to notify the affected municipality and “cooperate to the fullest extent possible to insure conformity with the adopted general plan”. (ARS Sec. 9-461.12) This provision establishes a basis for the City to adopt zoning regulations that would, at a minimum, identify areas where development of community college facilities would be appropriate.

³ City of Flagstaff, Zoning Code Home Page <http://www.flagstaff.az.gov/index.aspx?nid=1416> viewed 12 March 2013

⁴ League of Arizona Cities and Towns website <http://www.azleague.org/index.aspx?NID=157> viewed 12 March 2013.

PROTECTION OF PRIVATE PROPERTY RIGHTS

State law imposes a number of requirements on local agencies that augment Federal and state constitutional protections of the rights of property owners. The most important of these is probably the Private Property Rights Protection Act, which was enacted by Arizona voters in 2006 as Proposition 207 and has been codified as ARS 12-1134. The initiative amended State law to provide that a property owner is entitled to just compensation when a land use law approved by the state or a local jurisdiction reduces the fair market value of her property. The Act exempts a variety of laws intended to protect public health and safety, such as solid and hazardous waste regulations and regulation of alcohol sales and adult business, but is generally understood to apply to general and specific plans, zoning and subdivision regulations, designation of historic properties, and other legislative and adjudicative actions.

Prior to the enactment of the Act, existing law reaffirmed the U.S. Supreme Court's decisions in several key takings cases (ARS 9-500.13) and established provisions for challenging the adoption or amendment of any zoning regulation on the grounds that it violates those decisions and related State case law (ARS 9-500.12). Previously, Arizona courts balanced the various implications of a land use regulation, including economic impact, the type of regulation, public policies, and other relevant facts and circumstances, to determine whether a taking had occurred and compensation was owed. Arizona's Proposition 207 narrowed the definition of what constitutes a public purpose for eminent domain actions, and requires state and local governments to compensate landowners whenever land use regulations diminish property values and provides an additional means for property owners to obtain relief from local land use and development regulations. (ARS 12-1131 et. seq.) Because the act requires compensation for *any* (emphasis added) reduction in value, it goes farther than the series of Supreme Court decisions, which found that under Federal law, as a general rule, reductions in value that do not deny all economic use do not constitute a taking. See *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978) et al.

The full implications of the Private Property Rights Protection Act are, as of yet, unclear. It is likely, however, that they will affect the zoning Rewrite process in at least two ways: (1) if any proposed revisions to the City's zoning ordinance trigger claims for compensation because of their potential to reduce property value, and (2) how the City should handle such claims as well as reduce its liability to future claims that may arise from implementation of the ordinance following adoption. Because the statutory changes give local agencies only 90 days to respond should a challenge arise, it is important that Maricopa use the Rewrite process to, at least, identify the key features of an appropriate procedure.

The question of whether future implementation of the ordinance could make the City susceptible to claims may be the more difficult of the two issues because it is difficult to anticipate market conditions over the life of the ordinance following adoption. Although it seems likely that property owners who believe the proposed enactment of the ordinance would reduce their property values will raise such concerns prior to adoption, giving the City an opportunity to make appropriate revisions to the draft, an owner who doesn't object could still file a claim, there may be future claims. Under the law, the statute of limitations on claims expires three years from the effective date of the law or its application to the property, whichever occurs later (ARS 12-1134 (G)). The law could also apply to the imposition of conditions through an adjudicative process such as approval of a land division, use permit, or variance. A property owner may file a demand for compensation if she believes that such action would diminish the value of her property. The landowner does not, however, need to submit a land use application, such as a request for a variance, in order to claim compensation. The new law further gives a landowner a cause of action if a land use law is still in place 90 days after the landowner makes a written demand for compensation. Moreover, the waiver is not personal to the owner who first challenged the regulation and, once approved, runs with the land.

The City may wish to consider procedures for granting additional forms of relief when necessary to reduce liability under these property rights provisions as well as other Federal and Arizona statutes intended to protect certain types of uses. Some jurisdictions have taken advantage of the provision allowing a government to reach agreements with property owners “to waive a claim for diminution in value regarding any proposed action by [the government] or action requested by the property owner” (ARS 12-1134 (I)). Phoenix, Scottsdale and Tempe have adopted ordinances that require owners applying for land use approval to sign an agreement stating that application of the jurisdiction’s land use laws will not reduce their properties’ value and acknowledging that as a condition of approval the city may impose requirements such as dedications and other conditions. The Arizona League of Cities and Towns has also recommended the use of waivers when property owners apply for rezoning or other actions requiring a legislative decision. Tempe also requires owners applying to designate their properties as historic to sign a waiver to avoid any potential for argument that the application of this zoning overlay to their property would constitute a “diminution in value” of the property as defined by the state law (Tempe City Code Chapter 14A) Such waivers must be used with caution because they seek a broad waiver for future land use actions that could possibly be characterized as a violation of the U.S. Supreme Court’s essential nexus test since they seek indemnity from all future rights under the State law, which would probably not be deemed proportional to the jurisdiction’s potential liability.⁵

REGULATORY REFORM

Improving local regulations to clarify permit requirements and streamline the permit review and approval process is an objective common to most zoning update projects. For Arizona cities and counties, as a result of legislation enacted during the 2011 session, such improvements are now a legal obligation as well.

SB 1598, codified as ARS Section 11-1602 in Title 41 of the Arizona Revised Statutes, created a “regulatory bill of rights” that requires local governments to establish and meet time frames for its permits and licenses, fully inform applicants of the requirements for obtaining approval, and comply with State-mandated rules for code compliance enforcement. Especially with respect to the time limits and notification requirements, the new requirements are similar to the State of California’s Permit Streamlining Act (California Government Code Section 65920 et seq.), which was originally enacted more than 30 years ago and is generally considered to have contributed to improvements to procedures in California. SB 1598 is based on similar set of requirements approved in the 1990’s that are applicable to State agencies.

The State law will primarily affect the administrative procedures of the Rewrite focusing on (1) licensing time frames; (2) additional licensing protections; and (3) inspection protocols.

Local governments are required to act on license applications within a predetermined time frame that must be divided into two consecutive phases:

- “Administrative review” segment to determine whether the application is complete, and
- “Substantive review” segment to determine whether to approve the license.

The State law does not specify the time allowed to process the application but only required each local government to establish such deadlines by December 30, 2012.

⁵ For further discussion on the use of waivers see Jeffrey L. Sparks, *Land Use Regulation in Arizona after the Private Property Rights Protection Act*, 51 Arizona Law Review: 211.

Cities must notify applicants of all procedural requirements at the start of the process. If the city denies the application it must provide written notification specifying the legal basis for the decision and advising the applicant of the procedures for appeal.

Issues and Options

The statute requires a city to determine whether a permit application is complete or not during the administrative completeness time frame. If the city fails to make this determination within established time limits, the permit is deemed complete regardless of deficiencies. Similarly during the substantive review period an application must be denied or approved within the established time frame or the permit fee will be refunded. The statute offers applicants only limited opportunities to supplement applications with additional material after submission and restricts changes to a permit application to responses made at the jurisdiction's request. Moreover, it appears that the law doesn't even allow changes proposed by an applicant. The result is that in order to change an application after it has been accepted the city must deny it and the applicant must reapply and pay another permit fee.

To address some of these issues, the City of Tucson has adopted an alternative so-called "Flexible Application Process" that allows applicants to sign an agreement waiving the right to claims against the City for violating the deadlines established in conformance with the law. The alternative process provides for multiple application conference and allows the applicant to propose multiple changes to facilitate permit approval without reapplication. The City still provides a written determination of the basis for denial and identifies applicable code provisions as required. Applicants also retain the right to request code clarification.

Another approach that some cities employ is to include a code provision that authorizes the Planning Director to issue interpretations of zoning requirement subject to appeal to the Planning Commission. In addition to complying with the State law, such a procedure would provide an opportunity to clarify issues that arise after the Rewrite is completed and establish a body of interpretations that could provide a basis for a more orderly approach to future updates when needed.

OTHER ISSUES

Community members have identified a number of specific uses, including adult businesses, alcohol sales, check cashing businesses, fast food restaurants, off-track betting, and smoke shops, that may be causing local problems due to inadequate design or performance standards to ensure land use compatibility. In the Rewrite, the City should consider adopting additional standards applicable to each of these uses in order to reduce their possible negative impacts on neighboring uses and better integrate them into the urban fabric. With some types of development, this may include limiting hours of operation, specifying minimum separations between individual establishments (e.g., check cashing businesses) or from sensitive receptors (e.g., alcohol sales near schools or parks). In other situations, the development problem might be adequately solved through heightened levels of community notification before the project is begun.

Next Steps

This *Diagnosis and Evaluation Working Paper* will serve as the starting point for the next phase of the Zoning Code Rewrite. Following the Planning & Zoning Workshop, an annotated outline of the new zoning code will be prepared. This document will have a very specific focus on the elements and structure of the new code, with particular attention to the following items:

- The proposed number, types, and purposes of new base zoning districts;
- The proposed overlay and special districts;
- The general purpose sections of the revised code, including definitions, supplemental standards applying in some or all districts, administration, and enforcement;
- The overall organization and numbering system, and procedures for amendments; and
- Graphic illustrations of selected standards and guidelines and review procedures (by title only).

The annotated outline will serve as the final preparatory document before the actual restructuring and revision of the zoning code begin.

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DYETT & BHATIA
Urban and Regional Planners

755 Sansome Street, Suite 400
San Francisco, California 94111
☎ 415 956 4300 📠 415 956 7315