

RESOLUTION NO. 2013-48

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING AND ADOPTING THE TOWN OF FOUNTAIN HILLS LICENSING TIME FRAMES COMPLIANCE POLICY / PROCESS SUMMARY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Town of Fountain Hills Licensing Time Frames Compliance Policy / Process Summary, formerly called the SB 1598 Compliance Policy/Process Summary, is hereby amended and adopted in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. This Resolution shall become effective at 12:01 a.m. on September 20, 2013, or if the effectiveness of this Resolution is prohibited by Arizona law at such time, then this Resolution shall become effective at the earliest such later time as authorized by Arizona law.

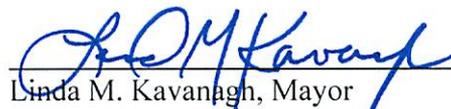
SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of the Town of Fountain Hills Licensing Time Frames Compliance Policy / Process Summary adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, September 19, 2013.

FOR THE TOWN OF FOUNTAIN HILLS:

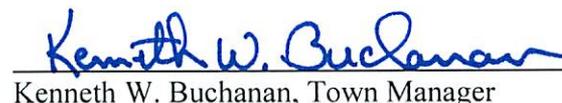
ATTESTED TO:


Linda M. Kavanagh, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Kenneth W. Buchanan, Town Manager

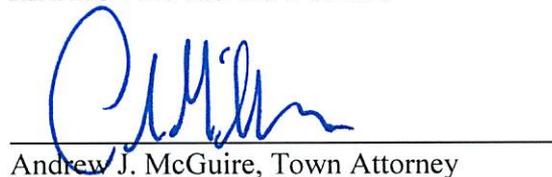

Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION NO. 2013-48

[Licensing Time Frames Compliance Policy/Process Summary]

See following pages.



Licensing Time Frames

COMPLIANCE POLICY/ PROCESS SUMMARY

PURPOSE

In July 2011, the Arizona State Legislature approved Senate Bill 1598, commonly referred to as the "Regulatory Bill of Rights" bill. The Legislature codified Arizona Revised Statutes Section 9-831 et seq. that applies to all Arizona municipalities and counties. The purpose of this policy is to bring Town development review and application processing procedures into compliance with applicable State law.

APPLICABILITY

This law grants to regulated private parties a series of rights in their dealings with cities, counties and flood control districts, and notably changes municipal procedures regarding applications for **permits and licenses**, as defined by the statute, as well as the conduct of compliance inspections.

The Town has determined that each of the application types listed in the tables below will be subject to a specific time period in which staff will verify if the submittal is '**administratively complete**' and then an additional time period of days of staff time to '**substantively review the submittal**'. This assures the applicant that he/she will be notified as to whether or not their submittal is administratively complete and that then staff will substantively review and either approve, or deny an application. The statute provides for opportunities to correct incomplete applications and submittals. The Town will comply with all statutory requirements.

As required by law, this compliance review policy supersedes over any timeline as outlined in any Development Services or Administrative standard review times, and/or our Zoning Ordinance in the event of a conflict.

DEFINITIONS

See A.R.S. Section 9-831 et seq. for all definitions associated with this policy.

REVIEW TIME FRAME REQUIREMENTS

A.R.S. Section 9-835 requires the Town to have in place an overall timeframe during which the Town will either grant or deny license applications. A.R.S. Section 9-835(C) provides for flexibility in structuring the license process for certain types of "licensing". The time frame requirements for application review on applicable procedures are listed in the tables provided below.

NOTICE OF COMPLETENESS/SUBSTANTIVE COMPLIANCE

The Town shall review applications for both **administrative completeness** and **substantive compliance**. The Town shall send notice to the applicant of the application's status within the applicable timeframes. The notice shall cite a list of all deficiencies and reference the applicable regulation or policy, inform the applicant that the Town's timeframe is suspended pending receipt of requested corrections or any missing information and note that if the Town fails to provide notice to the applicant during the administrative review timeframe, the application is then deemed complete in accordance with A.R.S. Section 9-835(F).

The Development Services will accept all permit applications and Administration Department will accept all license applications upon submittal and evaluate each application for administrative completeness. A Development Services application shall contain a planning, engineering, or building application form, the relevant checklist, any information specifically required by the zoning ordinance, building code, general

engineering requirements manual, or such additional information specified by the staff as may be required by Town code, rule, or compliance review policy, and fee. An Administration Department application shall contain an application including all requested information, any additional information specified by staff as may be required by Town Code, rule or compliance review policy, and fee. An application must be made by the property owner or authorized agent.

An applicant will be notified in writing if the application is incomplete and will be provided with a list of the specific deficiencies. The administrative review time frame is suspended pending the Town's receipt of the missing information. Upon resubmission of the required materials the staff will notify the applicant whether the application is complete or remains incomplete. Pursuant to A.R.S. Section 9-835(F), if an applicant fails to supply documentation or information requested, or an explanation of why the information cannot be provided within fifteen (15) days after notice of deficiencies, the Town may consider the application withdrawn.

When an application is determined to be complete and the notice of administrative completeness has been issued, the substantive review timeframe begins and it will be scheduled for substantive review by the staff and/or scheduled for a public hearing as required by the applicable ordinance.

TIME FRAME SUSPENSIONS

Overall time frames listed in the table below are suspended for the following time periods:

- A. From the date of a notice to the applicant of specific deficiencies in an application, whether on review for completeness of application or substantive review, and the date that the Town receives the missing information from the applicant.
- B. Time for completion of certain purposes, such as; public hearings, state, or federal licenses.
- C. Upon supplemental information requests from the Town during a substantive review time period.

TIME FRAME EXTENSION PROCESS

- A. For substantive reviews of permit or license applications, the Town may request multiple comprehensive requests for additional materials and corrections. Said request will provide notice of possible denial of the application and any basis for that denial, in the event the request is not fully complied with.
- B. If re-submittal after the one comprehensive request is still not in compliance, based upon the applicable Town code, regulations, or policies, the applicant will be notified of the continuing deficiency.
- C. Upon receiving an application denial, the applicant may submit a new application to the Town.
- D. Under A.R.S. Section 9-835(G), the Town may extend the substantive review time frame and the overall time frame. The extensions shall not exceed 50% of the overall time frame to grant or deny the application.
- E. Upon first review, if the review authority (Development Review Team, Administrative staff, Commission, Board, or Town Council) determines additional information is required to adequately evaluate an application, any such additional information shall be submitted by the applicant not later than thirty (30) days from notification of the applicant. Failure to provide additional information in the time specified will result in the application being withdrawn as incomplete under the applicable statute. No fees will be refunded for an application that is withdrawn.

REFUNDS

If the Town does not send notice to an applicant regarding approval or denial within the overall time frame or any mutually agreed extension thereof, the Town shall refund the application fees within 30 days of the expiration of the overall time frame or any mutually agreed extension thereof and waive any additional fees for the application. A.R.S. Section 9-835(J)

WORKING DAYS

Working days as stated in this document refer to Town of Fountain Hills working days excluding all observed holidays.

The Town is committed to meeting the SB 1598 deadlines in all cases. The Town will continue its long-standing practice of processing all applications as quickly as possible, subject to workload and resource constraints. Senate Bill 1598 is a complex law with several areas that are left open to interpretation. The provisions in the law affect each Town department differently. After a review of our processes for permits, licenses and other approvals, the Town believes that the following processes are subject to SB 1598:

COMPLIANCE REVIEW TIMEFRAMES			
DEVELOPMENT/ADMINISTRATIVE TEAM APPROVAL PROCESS			
	TIMEFRAMES*		
APPLICATION TYPE	Administrative Completeness	Substantive review	OVERALL
Commercial Building Permit			
Site Plan/Design Review/Amendment	90 Town working days	180 Town working days	270 Town working days
Site Plan Extension			
Special Use Permit			
Encroachment Permits			
Commercial Plan Reviews			
Revision of Existing Permits			
New Commercial Construction			
Civil Engineering; Plans & Reports			
Non-conforming uses			
Seasonal Sales			
Tenant Improvements			
Wireless Communication Uses (that do not require CUP)			
Landscape Plans			

*Applicable unless otherwise exempt under A.R.S. Section 9-835(N).

PUBLIC HEARINGS & TOWN COUNCIL APPROVAL PROCESS			
	TIMEFRAMES*		
APPLICATION TYPE	Administrative Completeness	Substantive review	OVERALL
Conditional Use Permit	90 Town working days	180 Town working days	270 Town working days
Special Use Permit			
Preliminary Plat			
Final Plat			
Minor Land Division			
Zoning Extension			

*Applicable unless otherwise exempt under A.R.S. Section 9-835(N).

COMPLIANCE REVIEW TIMEFRAMES			
DEVELOPMENT/ADMINISTRATIVE TEAM APPROVAL PROCESS			
	TIMEFRAMES		
APPLICATION TYPE	Administrative Completeness	Substantive review	OVERALL
Sign Permits			
Animal License Tag Application			
	10 Town working days	10 Town working days	20 Town working days

COMPLIANCE REVIEW TIMEFRAMES			
DEVELOPMENT/ADMINISTRATIVE TEAM APPROVAL PROCESS			
	TIMEFRAMES*		
APPLICATION TYPE	Administrative Completeness	Substantive review	OVERALL
Temporary Use Permit			
Administrative Use Permit			
	30 Town working days	30 Town working days	60 Town working days

*Applicable unless otherwise exempt under A.R.S. §9-831 et seq.

COMPLIANCE REVIEW TIMEFRAMES			
DEVELOPMENT/ADMINISTRATIVE TEAM APPROVAL PROCESS			
	TIMEFRAMES*		
APPLICATION TYPE	Administrative Completeness	Substantive review	OVERALL
Business License Applications			
Liquor License Application			
	20 Town working days	50 Town working days	70 Town working days

*Applicable unless otherwise exempt under A.R.S. §9-831 et seq.

SUMMARY OF REGULATORY BILL OF RIGHTS

General Plan

- Requires the general plan of each planning agency in a local government to include a land use element that includes sources of currently identified aggregates, policies to preserve currently identified aggregates sufficient for future development and policies to avoid incompatible land uses.
- States that this Act must not be construed to affect any permitted underground storage facility or limit any person's right to obtain a permit for an underground storage facility pursuant to statute.

General Plan – Adoption & Amendment

- Allows a person, after having participated in the public hearing process, to file a petition for special action in superior court to review the governing body's decision that does not comply with the mandatory land use requirement prescribed in this Act, within 30 days after the governing body has rendered its decision.
- Specifies that the court may affirm, reverse or remand to the governing body, in whole or in part, the decision reviewed for further action that is necessary to comply with the mandatory requirements prescribed in statute.

Public Works Project

- Requires a local government, in the design phase of a public works project, to provide notice and opportunity for comment to all utilities the Town or town believes may be impacted for the purposes of:
 - Eliminating or minimizing the need for relocation of aerial, surface and underground facilities of the impacted utilities and, if relocation is unavoidable, minimizing the relocation costs to the extent practicable relative to the cost of the public works project.
 - Minimizing subsequent reconstruction or modification of utility facilities after completion of the public works project.
- Clarifies that this Act does not alter the local government's duty to pay for the affected public service corporation's relocation costs pursuant to statute.

Regulatory Bill of Rights

- Establishes the regulatory bill of rights and states that to ensure fair and open regulation by local governments, a person:
 - Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against a local government in a court proceeding regarding a local government decision as provided in statute.
 - Is entitled to receive information and notice regarding inspections as provided in statute.
 - Is entitled to have a local government not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized as provided in statute.
 - May have a local government approve or deny the person's license application within a predetermined period of time as provided in statute.
 - Is entitled to receive written notice from a local government on denial of a license application that justifies the denial with references to the ordinance, code or authorized substantive policy statements on which the denial is based and that explains the applicant's right to appeal the denial as provided in statute.
 - Is entitled to receive information regarding the license application process at the time the person obtains an application for a license pursuant to statute.
 - May inspect all ordinances, codes and substantive policy statements of a local government, including a directory of documents, at the office of the local government as provided in statute.

- Unless specifically authorized, may expect local governments to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the maximum extent practicable as provided in statute.
- May file a complaint with the Town council concerning an ordinance, code or substantive policy statement that fails to comply with this Act.
- Allows electronic notice to be given to a regulated person or entity.
- Permits a person to inspect all ordinances, codes and substantive policy statements of a local government on the local government's website.

Inspections

- Requires a local government inspector or regulator who enters any premises of a regulated person for the purpose of conducting an inspection to do the following:
 - Present photo identification upon entering the premises.
 - State the purpose of the inspection and the legal authority for conducting the inspection, upon initiation of the inspection.
 - Disclose any applicable inspection fees.
 - Afford an opportunity to have an authorized on-site representative of the regulated person accompany the local government inspector or regulator on the premises, except during confidential interviews.
 - Provide notice of the right to have:
 - Copies of any original documents taken by the local government during the inspection if the local government is permitted by law to take original documents.
 - A split or duplicate of any samples taken during the inspection if the split of any samples, where appropriate, would not prohibit an analysis from being conducted or render an analysis inconclusive.
 - Copies of any analysis performed on samples taken during the inspection.
 - Inform each person whose conversation with the local government inspector or regulator during the inspection is tape recorded, that the conversation is being tape recorded.
 - Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.
 - Directs a local government inspector or regulator, on initiation of, or two working days before, an inspection, except for a food and swimming pool inspection that has up to one working day after an inspection, of any premises of a regulated person, to provide the following in writing:
 - The rights provided to a regulated person as described in this Act.
 - The name and telephone number of a contact person available to answer questions regarding the inspection.
 - The due process rights relating to an appeal of a final decision of a local government based on the results of the inspection, including the name and telephone number of a person to contact within the local government and any appropriate municipality, county or state government ombudsman.
 - A note stating that the regulated person or on-site representative was not at the site or refused to sign the writing prescribed above, if applicable.
- Requires a local government to provide electronic access to inspection reports and all subsequent documents.
- Requires a local government inspector or regulator to obtain the signature of the regulated person or on-site representative of the regulated person indicating they have read and are notified of their rights prescribed in this Act and the due process rights afforded to them relating to an appeal of a final decision of a local government.
- Provides that the local government must maintain a copy of the signature with the inspection report and must leave a copy with the regulated person or on-site representative of the regulated person.
- Directs a local government that conducts an inspection to give a copy of the inspection report to the regulated person or the on-site representative either at the time of inspection, within 30 working days after the inspection or as otherwise required by federal law.
- States that the inspection report must contain deficiencies identified during an inspection.
- Allows the local government to provide the regulated person an opportunity to correct the deficiencies unless the local government determines that the deficiencies are:

- Committed intentionally.
 - Not correctable within a reasonable period of time as determined by the local government.
 - Evidence of a pattern of noncompliance.
 - A risk to any person, the public health, safety or welfare or the environment.
- Stipulates that the regulated person must notify the local government when the deficiencies have been corrected if the local government allows them an opportunity to correct the deficiencies.
- Directs the local government to determine if the regulated person is in substantial compliance and notify the regulated person whether or not they are in compliance within 30 days of receipt of notification that the deficiencies have been corrected.
- Mandates that a local government must determine if the regulated person is in substantial compliance with the corrected deficiencies, unless the determination is not possible due to conditions of normal operations at the premises.
- Permits the local government to take any enforcement action authorized by law for the deficiencies if the local government determines the deficiencies have not been corrected within a reasonable amount of time or the regulated person fails to correct the deficiencies and specifies that a local government's decision is not an appealable action.
- Requires a local government to provide a regulated person with an update on the status of any local government action resulting from an inspection of the regulated person at least once every month after the commencement of the inspection.
- Clarifies that a local government is not required to provide an update after the regulated person is notified that no local government action will result from the inspection or after the completion of local government action resulting from the inspection.
- Specifies that this Act does not authorize an inspection or any other act that is not otherwise permitted by law, but only applies to inspections necessary for the issuance of a license or to determine compliance with licensure requirements.
- States that this Act does not apply:
 - To criminal investigations and undercover investigations that are generally or specifically authorized by law.
 - If the inspector or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.
 - To inspections by a county board of health or a local health department pursuant to statute.
- Stipulates that the gathering of evidence in violation of this Act shall not be a basis to exclude the evidence in a civil or administrative proceeding, if the penalty sought is the denial, suspension or revocation of the regulated person's license or a civil penalty of more than \$1,000.
- Prescribes that the failure of a local government, board or commission employee to comply with this section constitutes cause for disciplinary action or dismissal and shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.
- Allows a local government to adopt rules or ordinances to implement this Act and specifies that this Act must not be used to exclude evidence in a criminal proceeding and does not apply to a local government inspection that is requested by the regulated person.

Local Governments – Prohibited Acts

- Prohibits a local government from doing the following:
 - Basing a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or code.
 - Adopt an ordinance or code under a specific grant of authority that exceeds the subject matter areas listed in the specific grant of authority.
 - Adopt an ordinance or code under a general grant of authority to supplement a more specific grant of authority.
- Clarifies that a general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes the requirement or condition.
- States that a local government must avoid duplication of other laws that do not enhance regulatory clarity and must avoid dual permitting to the maximum extent practicable, unless specifically authorized.

- Specifies that this Act does not prohibit local government flexibility to issue licenses or adopt ordinances or codes.

Directory of Documents

- Directs a local government to publish, or prominently place on their website, a directory summarizing the subject matter of all currently applicable ordinances, codes and substantive policy statements at least annually and further requires the local government to keep copies of this directory and all substantive policy statements at one location.
- Mandates that the directory, ordinances, codes, substantive policy statements and any materials incorporated by reference in the documents be open to public inspection at the office of the local government.

Governing Body – Complaints

- Allows the governing body to receive complaints concerning ordinances, codes, substantive policy statements or local government practices and review such that are alleged to violate this Act and hold public hearings regarding the allegations.
- Permits the governing body to recommend actions to alleviate the aspects of the ordinances, codes, substantive policy statements or local government practices that are alleged to violate this Act.