

Board of Supervisors Memorandum

November 17, 2015

Ordinance No. 2015-_____
Amending Pima County Code Title 2

Background

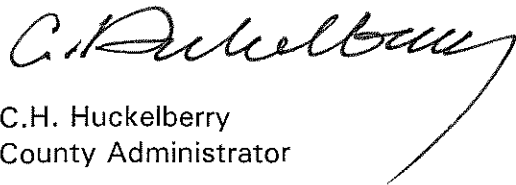
As discussed in my September 2, 2015 memorandum (Attachment 1), in the last session, the Arizona Legislature passed legislation that, in part, requires the County and the Regional Flood Control District to create procedures for adopting certain rules.

In order to comply with A.R.S. §§ 11-251.18, 48-3609.02, Ordinance 2015-_____ is proposed to amend Pima County Code Title 2, adding Chapter 2.32 – Rulemaking Procedure to the Code. A copy of the proposed ordinance is Attachment 2.

Recommendation

I recommend the Pima County Board of Supervisors and the Board of Directors of the Pima County Regional Flood Control District adopt Ordinance 2015-_____ to comply with A.R.S. §§ 11-251.18, 48-3609.02.

Respectfully submitted,


C.H. Huckelberry
County Administrator

CHH/mjk

Attachment

c: Suzanne Shields, Director, Regional Flood Control District
Lesley Lukach, Deputy County Attorney
Charles Wesselhoft, Deputy County Attorney

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ATTACHMENT 1



MEMORANDUM

Date: September 2, 2015

To: Elected Officials
Appointing Authorities

From: C.H. Huckelberry
County Administrator

A handwritten signature in dark ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **New State Legislation Requiring Inventory of Existing Policies and Procedures**

In the last legislative session, the State Legislature passed Senate Bill (SB) 1298, which, in part, requires the County and Regional Flood Control District (RFCD) to create procedures for adopting certain rules. "Rule" is generally defined to mean "a county [or RFCD] statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of a county [or RFCD]," though there are exceptions.

Starting December 31, 2015, the County and RFCD will be required to follow a rulemaking procedure before adopting and enforcing anything that qualifies as a rule and is not otherwise excepted from the statute. It is anticipated these procedures will be proposed as an amendment to the Pima County Code. Rules that are not adopted in accordance with that procedure will be unenforceable.

The legislation allows enforcement of existing rules as of December 31, 2015, but only if those rules were approved by the Board of Supervisors. In this language, the Legislature created an unfortunate uncertainty about policies and procedures that may have been validly in place before the statute's effective date but adopted pursuant to some other procedure not requiring express Board of Supervisors approval (for example, approval by a Department Director within his or her scope of authority). It is possible that, if challenged in court, any "rule" that was not specifically adopted by the Board of Supervisors before December 31, 2015 could become unenforceable under this new law.

Thus, to allow for continued enforcement of rules covered by the statute but not specifically approved by the Board, the County and RFCD must assemble all policies and procedures that might constitute "rules" under the statute and schedule those that have not been Board-approved for Board adoption before December 31, 2015. Therefore, I am directing that each department prepare a written inventory of all written rules, policies, and procedures currently in use that may fall under the definition of "rule" quoted above. The list must include an indication of whether staff believe the rule, policy, or procedure has been specifically adopted by the Board.

Appointing Authorities

Re: **New State Legislation Requiring Inventory of Existing Policies and Procedures**

September 2, 2015

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Once each department has completed the inventory, the Department Director or Deputy County Administrator, as applicable, must forward to me a memorandum containing a list of all documents that may constitute rules, along with a copy of each or a link to where it may be found on the public website. My office will then coordinate scheduling those that must be Board-approved for consideration by the Board of Supervisors.

Beyond the quoted definition of "rule" above, it is nearly impossible to provide a comprehensive list of the types of policies or procedures that might constitute "rules." However, certain documents are expressly exempt from the definition, including statements that are advisory only and merely inform the public of the current approach to interpreting legal authority; internal procedures that do not impose additional burdens on the public; and forms that have been prepared based on preexisting legal authority. If you have questions about whether specific policies or procedures qualify as "rules," please consult with your assigned Deputy County Attorney.

In order to allow a package to be prepared for the December 1, 2015 Board of Supervisors meeting, please submit the memorandum described above to me by **October 9, 2015**.

CHH/mjk

Attachment

c: Thomas Weaver, Chief Civil Deputy County Attorney
John Bernal, Deputy County Administrator for Public Works
Tom Burke, Deputy County Administrator for Administration
Jan Leshner, Deputy County Administrator for Medical and Health Services

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

CHAPTER 86
SENATE BILL 1298

AN ACT

AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-251.18; AMENDING SECTIONS 11-1602, 11-1607 AND 11-1608, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-3609.02; AMENDING SECTIONS 48-3642, 48-3647 AND 48-3648, ARIZONA REVISED STATUTES; RELATING TO COUNTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 11, chapter 2, article 4, Arizona Revised Statutes,
3 is amended by adding section 11-251.18, to read:

4 11-251.18. Adoption of rules; procedures; exemptions;
5 definitions

6 A. THE BOARD OF SUPERVISORS SHALL ADOPT PROCEDURES FOR THE ADOPTION,
7 AMENDMENT, REPEAL AND ENFORCEMENT OF RULES.

8 B. THE PROCEDURES SHALL CONTAIN AT LEAST THE FOLLOWING PROVISIONS FOR
9 THE COUNTY DEPARTMENT THAT IS PROPOSING THE CHANGE:

10 1. THE DEPARTMENT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A
11 MEETING AT WHICH THE PUBLIC IS ABLE TO PROVIDE COMMENTS ON THE DRAFT LANGUAGE
12 OF THE PROPOSED RULE. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE DRAFT
13 PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. THE DEPARTMENT
14 SHALL ACCEPT WRITTEN OR VERBAL COMMENTS ON THE DRAFT LANGUAGE.

15 2. THE DEPARTMENT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A
16 MEETING AT WHICH THE FINAL TEXT OF THE PROPOSED RULE IS CONSIDERED BY THE
17 BOARD OF SUPERVISORS. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE FINAL
18 VERSION OF THE PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE
19 PUBLIC. AT LEAST ONE WEEK BEFORE THE MEETING, THE DEPARTMENT SHALL PROVIDE
20 THE PUBLIC WITH THE DEPARTMENT'S WRITTEN RESPONSES TO WRITTEN PUBLIC COMMENTS
21 AND MAY PROVIDE WRITTEN RESPONSES TO VERBAL COMMENTS.

22 3. THE DEPARTMENT SHALL PROVIDE THE BOARD OF SUPERVISORS WITH COPIES
23 OF THE PUBLIC COMMENTS AND THE DEPARTMENT'S WRITTEN RESPONSES TO THE PUBLIC
24 COMMENTS. IF AS A RESULT OF PUBLIC COMMENTS OR INTERNAL REVIEW, THE BOARD OF
25 SUPERVISORS DETERMINES THAT THE TEXT OF A PROPOSED RULE REQUIRES SUBSTANTIAL
26 CHANGE, THE BOARD OF SUPERVISORS SHALL ISSUE A SUPPLEMENTAL NOTICE CONTAINING
27 THE CHANGES TO THE PROPOSED RULE AND SHALL PROVIDE FOR ADDITIONAL PUBLIC
28 COMMENT BEFORE ADOPTION.

29 C. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE
30 ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE BOARD MAKES A
31 FINDING THAT AN EMERGENCY EXISTS AND ADOPTION OF THE RULE IS NECESSARY TO
32 PROTECT THE PUBLIC HEALTH, SAFETY OR WELFARE, TO AVOID AN IMMINENT BUDGET
33 REDUCTION OR TO AVOID SERIOUS PREJUDICE TO THE PUBLIC INTEREST. WITHIN A
34 REASONABLE TIME AFTER ADOPTING AN EMERGENCY RULE, THE BOARD OF SUPERVISORS
35 SHALL REVIEW THE EMERGENCY RULE TO DETERMINE WHETHER THE RULE SHOULD CONTINUE
36 IN EFFECT OR BE TERMINATED.

37 D. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE
38 ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE RULE IS REQUIRED BY
39 STATE OR FEDERAL LAW OR REGULATION, AND THE BASIS FOR THE REQUIREMENT TO
40 ADOPT THE RULE IS NOT THE RESULT OF DELAY OR INACTION BY THE BOARD OF
41 SUPERVISORS.

42 E. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE
43 ALTERNATIVE PROCEDURES FOR THE EXPEDITED ADOPTION, AMENDMENT OR REPEAL OF A
44 RULE IF THE EXPEDITED RULEMAKING DOES NOT INCREASE THE COST OF REGULATORY
45 COMPLIANCE OR REDUCE THE PROCEDURAL RIGHTS OF REGULATED PARTIES.

1 F. A RULE CANNOT BE ENFORCED WITHOUT SUBSTANTIAL COMPLIANCE WITH THIS
2 SECTION, EXCEPT THOSE RULES THAT WERE APPROVED BY THE BOARD OF SUPERVISORS
3 BEFORE THE EFFECTIVE DATE OF THIS SECTION.

4 G. THE DEPARTMENT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON
5 THE DEPARTMENT'S WEBSITE.

6 H. THE DEPARTMENT MAY MEET INFORMALLY WITH ANY INTERESTED PARTY FOR
7 THE PURPOSE OF DISCUSSING ANY PROPOSED RULE.

8 I. THIS SECTION DOES NOT APPLY TO:

9 1. ORDINANCES ADOPTED OR AMENDED BY THE BOARD OF SUPERVISORS PURSUANT
10 TO SECTION 11-251.05, CHAPTER 6, ARTICLE 2 OF THIS TITLE, TITLE 42 OR
11 TITLE 43.

12 2. SUBSTANTIVE POLICY STATEMENTS.

13 3. PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF
14 THE COUNTY AND THAT DO NOT IMPOSE ADDITIONAL REQUIREMENTS, CONDITIONS OR
15 PENALTIES ON REGULATED PARTIES.

16 4. USE OR ADOPTION OF ANY FORM WHOSE CONTENTS OR SUBSTANTIVE
17 REQUIREMENTS ARE CONSISTENT WITH AN ORDINANCE OR STATUTE, AND ANY PROCEDURES
18 FOR THE EXECUTION OR USE OF THE FORM.

19 5. A COUNTY FUNCTION, POWER OR DUTY THAT IS ESTABLISHED PURSUANT TO
20 TITLE 49, CHAPTER 3, ARTICLE 3.

21 6. COUNTY SUBDIVISION REGULATIONS PURSUANT TO CHAPTER 6, ARTICLE 3 OF
22 THIS TITLE.

23 J. FOR THE PURPOSES OF THIS SECTION:

24 1. "DEPARTMENT" MEANS ANY COUNTY DEPARTMENT OR AGENCY OR ANY OTHER
25 UNIT OF COUNTY GOVERNMENT.

26 2. "RULE" MEANS A COUNTY STATEMENT OF GENERAL APPLICABILITY THAT
27 IMPLEMENTS, INTERPRETS OR PRESCRIBES LAW OR POLICY, OR DESCRIBES THE
28 PROCEDURE OR PRACTICE REQUIREMENTS OF A COUNTY. RULE INCLUDES PRESCRIBING
29 FEES OR THE AMENDMENT OR REPEAL OF AN EXISTING RULE BUT DOES NOT INCLUDE
30 INTRA-AGENCY MEMORANDA THAT ARE NOT DELEGATION AGREEMENTS.

31 Sec. 2. Section 11-1602, Arizona Revised Statutes, is amended to read:

32 11-1602. Regulatory bill of rights

33 To ensure fair and open regulation by counties, a person:

34 1. Is eligible for reimbursement of fees and other expenses if the
35 person prevails by adjudication on the merits against a county in a court
36 proceeding regarding a county decision as provided in section 12-348.

37 2. Is entitled to receive information and notice regarding inspections
38 as provided in section 11-1603.

39 3. Is entitled to have a county not base a licensing decision in whole
40 or in part on licensing conditions or requirements that are not specifically
41 authorized as provided in section 11-1604.

42 4. May have a county approve or deny the person's license application
43 within a predetermined period of time as provided in section 11-1605.

44 5. Is entitled to receive written or electronic notice from a county
45 on denial of a license application that:

1 (a) Justifies the denial with references to the statute, ordinance,
2 regulation, delegation agreement or authorized substantive policy statements
3 on which the denial is based as provided in section 11-1605.

4 (b) Explains the applicant's right to appeal the denial as provided in
5 section 11-1605.

6 6. Is entitled to receive information regarding the license
7 application process at the time the person obtains an application for a
8 license as provided in section 11-1606.

9 7. May inspect all ordinances, regulations, RULES and substantive
10 policy statements of a county, including a directory of documents, at the
11 office of the county or on the county's website as provided in section
12 11-1607.

13 8. Unless specifically authorized, may expect counties to avoid
14 duplication of other laws that do not enhance regulatory clarity and to avoid
15 dual permitting to the maximum extent practicable as provided in section
16 11-1604.

17 9. May file a complaint with the board of supervisors concerning an
18 ordinance, regulation, RULE or substantive policy statement that fails to
19 comply with this section.

20 10. As provided in section 11-1604, is entitled to have a county not
21 request or initiate discussions about waiving any of the rights prescribed in
22 this section.

23 11. MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN
24 SECTION 11-251.18, INCLUDING PROVIDING WRITTEN OR VERBAL COMMENTS ON PROPOSED
25 RULES TO A COUNTY DEPARTMENT OR AGENCY AND HAVING THE AGENCY OR DEPARTMENT
26 ADDRESS COMMENTS AS PROVIDED IN SECTION 11-251.18.

27 Sec. 3. Section 11-1607, Arizona Revised Statutes, is amended to read:
28 11-1607. Directory of documents

29 The county shall publish, or prominently place on the county website,
30 at least annually a directory summarizing the subject matter of all currently
31 applicable ordinances, regulations, RULES, and substantive policy statements.
32 The county shall keep copies of this directory and all substantive policy
33 statements at one location. The directory, ordinances, regulations, RULES,
34 substantive policy statements and any materials incorporated by reference in
35 these documents shall be open to public inspection at the office of the
36 county or the county website.

37 Sec. 4. Section 11-1608, Arizona Revised Statutes, is amended to read:
38 11-1608. Complaints; procedures

39 A. The board of supervisors shall ~~receive~~ ESTABLISH A PROCEDURE FOR
40 RECEIVING complaints FROM AN ADVERSELY AFFECTED PERSON concerning ordinances,
41 RULES, regulations, substantive policy statements or county practices alleged
42 to violate this article OR SECTION 11-251.18. ~~The board of supervisors may~~
43 ~~review any ordinance, regulation, substantive policy statement or county~~
44 ~~practice alleged to violate this article and may hold hearings regarding the~~
45 ~~allegations. The board of supervisors may recommend actions to alleviate the~~

~~aspects of the ordinances, regulations, substantive policy statements or county practices alleged to violate this article.~~

B. THE BOARD OF SUPERVISORS MAY REQUIRE THE COMPLAINT TO BE MADE IN WRITING AND TO INCLUDE THE FOLLOWING INFORMATION:

1. THE NAME AND ADDRESS OF THE ADVERSELY AFFECTED PERSON MAKING THE COMPLAINT.

2. THE ORDINANCE, RULE, REGULATION, SUBSTANTIVE POLICY STATEMENT OR COUNTY PRACTICE ALLEGED TO VIOLATE THIS ARTICLE OR SECTION 11-251.18.

3. ANY FACTS RELEVANT TO, AND THE LEGAL BASIS FOR, THE COMPLAINT.

C. PROCEDURES ADOPTED BY THE BOARD OF SUPERVISORS PURSUANT TO THIS SECTION SHALL INCLUDE REASONABLE TIME FRAMES TO ADDRESS COMPLAINTS AND SHALL PROVIDE A PROCESS FOR APPEAL.

Sec. 5. Title 48, chapter 21, article 1, Arizona Revised Statutes, is amended by adding section 48-3609.02, to read:

48-3609.02. Adoption of rules; procedures; exemptions; definition

A. THE BOARD OF DIRECTORS SHALL ADOPT PROCEDURES FOR THE ADOPTION, AMENDMENT, REPEAL AND ENFORCEMENT OF RULES.

B. THE PROCEDURES SHALL CONTAIN AT LEAST THE FOLLOWING PROVISIONS:

1. THE DISTRICT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING AT WHICH THE PUBLIC IS ABLE TO PROVIDE COMMENTS ON THE DRAFT LANGUAGE OF THE PROPOSED RULE. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE DRAFT PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. THE DISTRICT SHALL ACCEPT WRITTEN OR VERBAL COMMENTS ON THE DRAFT LANGUAGE.

2. THE DISTRICT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING AT WHICH THE FINAL TEXT OF THE PROPOSED RULE IS CONSIDERED BY THE BOARD OF DIRECTORS. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE FINAL VERSION OF THE PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. AT LEAST ONE WEEK BEFORE THE MEETING, THE DISTRICT SHALL PROVIDE THE PUBLIC WITH THE DISTRICT'S WRITTEN RESPONSES TO WRITTEN PUBLIC COMMENTS AND MAY PROVIDE WRITTEN RESPONSES TO VERBAL COMMENTS.

3. THE DISTRICT SHALL PROVIDE THE BOARD OF DIRECTORS WITH COPIES OF THE PUBLIC COMMENTS AND THE DISTRICT'S WRITTEN RESPONSES TO THE PUBLIC COMMENTS. IF AS A RESULT OF PUBLIC COMMENTS OR INTERNAL REVIEW, THE BOARD OF DIRECTORS DETERMINES THAT THE TEXT OF A PROPOSED RULE REQUIRES SUBSTANTIAL CHANGE, THE BOARD OF DIRECTORS SHALL ISSUE A SUPPLEMENTAL NOTICE CONTAINING THE CHANGES TO THE PROPOSED RULE AND SHALL PROVIDE FOR ADDITIONAL PUBLIC COMMENT BEFORE ADOPTION.

C. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE BOARD MAKES A FINDING THAT AN EMERGENCY EXISTS AND ADOPTION OF THE RULE IS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY OR WELFARE, TO AVOID AN IMMINENT BUDGET REDUCTION OR TO AVOID SERIOUS PREJUDICE TO THE PUBLIC INTEREST. WITHIN A REASONABLE TIME AFTER ADOPTING AN EMERGENCY RULE, THE BOARD OF DIRECTORS SHALL REVIEW THE EMERGENCY RULE TO DETERMINE WHETHER THE RULE SHOULD CONTINUE IN EFFECT OR BE TERMINATED.

1 D. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE
2 ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE RULE IS REQUIRED BY
3 STATE OR FEDERAL LAW OR REGULATION, AND THE BASIS FOR THE REQUIREMENT TO
4 ADOPT THE RULE IS NOT THE RESULT OF DELAY OR INACTION BY THE BOARD OF
5 DIRECTORS.

6 E. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE
7 ALTERNATIVE PROCEDURES FOR THE EXPEDITED ADOPTION, AMENDMENT OR REPEAL OF A
8 RULE IF THE EXPEDITED RULEMAKING DOES NOT INCREASE THE COST OF REGULATORY
9 COMPLIANCE OR REDUCE THE PROCEDURAL RIGHTS OF REGULATED PARTIES.

10 F. A RULE CANNOT BE ENFORCED WITHOUT SUBSTANTIAL COMPLIANCE WITH THIS
11 SECTION, EXCEPT THOSE RULES THAT WERE APPROVED BY THE BOARD OF DIRECTORS
12 BEFORE THE EFFECTIVE DATE OF THIS SECTION.

13 G. THE DISTRICT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON
14 THE DISTRICT'S WEBSITE.

15 H. THE DISTRICT MAY MEET INFORMALLY WITH ANY INTERESTED PARTY FOR THE
16 PURPOSE OF DISCUSSING ANY PROPOSED RULE.

17 I. THIS SECTION DOES NOT APPLY TO:

18 1. SUBSTANTIVE POLICY STATEMENTS.

19 2. PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF
20 THE DISTRICT AND DO NOT IMPOSE ADDITIONAL REQUIREMENTS, CONDITIONS OR
21 PENALTIES ON REGULATED PARTIES.

22 3. USE OR ADOPTION OF ANY FORM WHOSE CONTENTS OR SUBSTANTIVE
23 REQUIREMENTS ARE CONSISTENT WITH AN ORDINANCE OR STATUTE, AND ANY PROCEDURES
24 FOR THE EXECUTION OR USE OF THE FORM.

25 J. FOR THE PURPOSES OF THIS SECTION, "RULE" MEANS A DISTRICT STATEMENT
26 OF GENERAL APPLICABILITY THAT IMPLEMENTS, INTERPRETS OR PRESCRIBES LAW OR
27 POLICY, OR DESCRIBES THE PROCEDURE OR PRACTICE REQUIREMENTS OF A DISTRICT.
28 RULE INCLUDES PRESCRIBING FEES OR THE AMENDMENT OR REPEAL OF AN EXISTING RULE
29 BUT DOES NOT INCLUDE INTRA-AGENCY MEMORANDA THAT ARE NOT DELEGATION
30 AGREEMENTS.

31 Sec. 6. Section 48-3642, Arizona Revised Statutes, is amended to read:
32 48-3642. Regulatory bill of rights

33 To ensure fair and open regulation by districts, a person:

34 1. Is eligible for reimbursement of fees and other expenses if the
35 person prevails by adjudication on the merits against a district in a court
36 proceeding regarding a district decision as provided in section 12-348.

37 2. Is entitled to receive information and notice regarding inspections
38 as provided in section 48-3643.

39 3. Is entitled to have a district not base a licensing decision in
40 whole or in part on licensing conditions or requirements that are not
41 specifically authorized as provided in section 48-3644.

42 4. May have a district approve or deny the person's license
43 application within a predetermined period of time as provided in section
44 48-3645.

45 5. Is entitled to receive written or electronic notice from a district
46 on denial of a license application THAT:

1 (a) ~~That~~ Justifies the denial with references to the statute,
2 ordinance, regulation, executive order, delegation agreement or authorized
3 substantive policy statement on which the denial is based as provided in
4 section 48-3645.

5 (b) ~~That~~ Explains the applicant's right to appeal the denial as
6 provided in section 48-3645.

7 6. Is entitled to receive information regarding the license
8 application process at the time the person obtains an application for a
9 license as provided in section 48-3646.

10 7. May inspect all ordinances, regulations, RULES and substantive
11 policy statements of a district, including a directory of documents, at the
12 office of the district or a district website as provided in section 48-3647.

13 8. Unless specifically authorized, may expect districts to avoid
14 duplication of other laws that do not enhance regulatory clarity and to avoid
15 dual permitting to the maximum extent practicable as provided in section
16 48-3644.

17 9. May file a complaint with the board of ~~review~~ DIRECTORS concerning
18 an ordinance, RULE, regulation or substantive policy statement that fails to
19 comply with this section.

20 10. As provided in section 48-3644, is entitled to have a district not
21 request or initiate discussions about waiving any of the rights prescribed in
22 this section.

23 11. MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN
24 SECTION 48-3609.02, INCLUDING PROVIDING WRITTEN OR VERBAL COMMENTS ON
25 PROPOSED RULES TO THE DISTRICT AND HAVING THE DISTRICT ADDRESS COMMENTS AS
26 PROVIDED IN SECTION 48-3609.02.

27 Sec. 7. Section 48-3647, Arizona Revised Statutes, is amended to read:
28 48-3647. Directory of documents

29 The district shall publish, or prominently place on the district
30 website, at least annually, a directory summarizing the subject matter of all
31 currently applicable ordinances, RULES, regulations and substantive policy
32 statements. The district shall keep copies of this directory and all
33 substantive policy statements at one location. The directory, ordinances,
34 regulations, RULES, substantive policy statements and any materials
35 incorporated by reference in these documents shall be open to public
36 inspection at the office of the district or the district website.

37 Sec. 8. Section 48-3648, Arizona Revised Statutes, is amended to read:
38 48-3648. Complaints; procedures

39 A. The board of ~~review~~ DIRECTORS shall ~~receive~~ ESTABLISH A PROCEDURE
40 TO RECEIVE complaints FROM AN ADVERSELY AFFECTED PERSON concerning
41 ordinances, RULES, substantive policy statements or district practices
42 alleged to violate this ~~article~~ CHAPTER. ~~The board of review may review any~~
43 ~~ordinance, regulation, substantive policy statement or district practice~~
44 ~~alleged to violate this article and may hold hearings regarding the~~
45 ~~allegations. The board of review may recommend actions to alleviate the~~

1 ~~aspects of the ordinances, regulations, substantive policy statements or~~
2 ~~district practices alleged to violate this article.~~

3 B. THE BOARD OF DIRECTORS MAY REQUIRE THE COMPLAINT TO BE MADE IN
4 WRITING AND TO INCLUDE THE FOLLOWING INFORMATION:

5 1. THE NAME AND ADDRESS OF THE ADVERSELY AFFECTED PERSON MAKING THE
6 COMPLAINT.

7 2. THE ORDINANCE, RULE, REGULATION, SUBSTANTIVE POLICY STATEMENT OR
8 DISTRICT PRACTICE ALLEGED TO VIOLATE THIS ARTICLE OR SECTION 48-3609.02.

9 3. ANY FACTS RELEVANT TO, AND THE LEGAL BASIS FOR, THE COMPLAINT.

10 C. PROCEDURES ADOPTED BY THE BOARD OF DIRECTORS PURSUANT TO THIS
11 SECTION SHALL INCLUDE REASONABLE TIME FRAMES TO ADDRESS COMPLAINTS AND SHALL
12 PROVIDE A PROCESS FOR APPEAL.

13 Sec. 9. Applicability; county population

14 This act applies:

15 1. For a county with a population of three hundred seventy-five
16 thousand persons or more, from and after December 31, 2015.

17 2. For a county with a population of less than three hundred
18 seventy-five thousand persons, from and after December 31, 2016.

APPROVED BY THE GOVERNOR MARCH 30, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2015.

ATTACHMENT 2

ORDINANCE 2015- _____

AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS AND THE BOARD OF DIRECTORS OF THE PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT AMENDING TITLE 2 OF THE PIMA COUNTY CODE TO ADD CHAPTER 2.32 – RULEMAKING PROCEDURE. (ALL DISTRICTS)

THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA AND THE BOARD OF DIRECTORS OF THE PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT, FIND THAT:

This ordinance is adopted to comply with A.R.S. §§11-251.18, 48-3609.02.

IT IS ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY AND THE BOARD OF DIRECTORS OF THE PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT AS FOLLOWS:

SECTION 1. Pima County Code Title 2 is amended to add Chapter 2.32 – Rulemaking Procedure:

CHAPTER 2.32 RULEMAKING PROCEDURE

2.32.010 - Definitions

For purposes of this chapter:

- A. "Board" means the County Board of Supervisors acting in its own capacity or as the District Board of Directors.
- B. "County" means Pima County.
- C. "District" means the Pima County Regional Flood Control District.
- D. "Proponent" means any unit of the County or the District proposing a Rule.
- E. "Rule" means a statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the County or the District. Rule includes prescribing fees or the amendment or repeal of an existing rule but does not include inter-agency memoranda that are not delegation agreements.

2.32.020 – Exceptions.

This chapter does not apply to:

- A. Rules adopted under A.R.S. § 11-251.05, A.R.S. Title 11, Chapter 6, Article 2 (County Zoning), and Article 3 (County Subdivision Regulation), A.R.S. Title 42 (Taxation), A.R.S. Title 43 (Taxation of Income), or A.R.S. Title 49, Chapter 3, Article 3 (County Air Pollution Control).
- B. Rules adopted under Title 11, Chapter 6, Article 1 (County Planning) provided that the proposed rule is noticed as required by Pima County Code Title 18, Chapter 18.89, that the planning and Zoning Commission holds a hearing on the proposed rule, and that Development Services responds to public comments in its written report to the Board of Supervisors.
- C. Substantive policy statements, as defined in A.R.S. § 11-1601.
- D. Procedural documents that only affect the internal procedures of the County or District and do not impose additional requirements, conditions, or penalties on regulated parties.
- E. Use or adoption of any form or procedures for execution or use of a form whose contents or substantive requirements are consistent with an ordinance or statute.

2.32.030 – Public Notice and Meeting

- A. Before any rulemaking, including the amendment or repeal of any existing Rule, the Proponent will file a notice of the proposed action with the Clerk of the Board. The notice will include:
 - 1. The exact wording of the proposed Rule.
 - 2. The date and location of scheduled public meetings on the proposed Rule.
 - 3. The closing date of the public comment period.
 - 4. The address for submission of public comments.
- B. The Clerk of the Board will post the notice of proposed action on the County website.
- C. The public comment period will begin the date the notice of proposed action is posted on the County website and will close seven calendar days following the last public meeting required by A.R.S. § 11-251.18(B)(1) or A.R.S. § 48-3609.02(B)(1).

- D. Not less than fourteen calendar days following posting of the notice of proposed action on the County website, the Proponent will conduct one or more public meetings to receive public comment on the proposed Rule.
- E. The Proponent may, with fourteen calendar days' notice, schedule additional public meetings or may extend the public comment period.
- F. The Proponent may meet informally with any interested party for the purpose of discussing any proposed Rule.

2.32.040 – Response to Public Comment

- A. The Proponent will evaluate all public comments received before the close of the public comment period and will respond, in writing, to all written comments.
- B. The Proponent may respond to verbal comments received prior to close of the public comment period.
- C. Proponent's written response to public comments will be provided to the Board and will be posted on the County website at least seven calendar days prior to the date of the meeting at which the final text of the proposed Rule is considered by the Board.

2.32.050 – Rule Adoption

- A. The Proponent will provide at least fourteen calendar days' notice on the County website and other required locations of any meeting at which the Board will consider the final text of a proposed Rule.
- B. If, during consideration of the final text of the proposed Rule, the Board determines the proposed Rule is adoptable but requires substantial change, it will issue a supplemental notice of the proposed changes and establish an additional public comment period.
- C. Upon closure of the additional comment period, the Board may consider the proposed Rule at a subsequent meeting.
- D. No Rule is enforceable without substantial compliance with this chapter.

2.32.060 – Adoption of Emergency and Required Rules

- A. Notwithstanding this chapter, the Board may, upon a finding that an emergency exists and adoption of the Rule is necessary to protect the public health, safety or welfare, to avoid an imminent budget reduction or to avoid serious prejudice to the public interest, adopt a Rule without complying with the public notice requirements of this chapter. Within a reasonable time after adopting an emergency rule, the Board shall review the emergency rule to determine whether the rule should continue in effect or be terminated.
- B. Notwithstanding this chapter, the Board may, upon a finding that a Rule is required by state or federal law or regulation and, provided the requirement to adopt the Rule on an expedited basis is not the result of delay or inaction by the Board, adopt a Rule without complying with the public notice requirements of this chapter.

C. Notwithstanding this chapter, the Board may adopt, amend, or repeal Rules that do not increase the cost of regulatory compliance or reduce the procedural rights of regulated parties by complying with A.R.S. Title 38, Chapter 3, Article 3.1.

SECTION 2. This ordinance is effective 30 days after its adoption.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona,
this _____ day of _____, 2015.

Chair, Pima County Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

PASSED AND ADOPTED by the Board of Directors of the Pima County Flood Control
District, this _____ day of _____, 2015.

Chair,
Pima County Flood Control District Board of
Directors

ATTEST:

Clerk, Board of Supervisors

APPROVED AS TO FORM



Civil Deputy County Attorney