

SUMMARY OF AGENDA ITEM

DATE: September 18, 2008
TO: Mayor and Council
FROM: Legal Department
SUBJECT: Ordinance 748/Resolution 2416 (Technical and Conforming Changes Relating to Water Conservation and the Timing of Impact Fee Payments)

PURPOSE:

In the last 20+ years, the Town has enacted various water conservation and water impact fee requirements. Over the years, conflicts have arisen between various Town Code provisions and between the Town Code and the Unified Development Code. Ordinance 748 and Resolution 2416 remove these various conflicts and make conforming changes.

SUMMARY OF CHANGES:

Below is an explanation of the changes made by each section of Resolution 2416:

Section 1 Because of changes to the Town's organizational structure, all references to the 'Public Works Director' are being replaced with 'Water Superintendent.' Although the Town does not currently have a person whose sole responsibility is 'Water Superintendent,' the Assistant Public Works Director or the Town Manager would assign an existing employee the responsibilities of the Water Superintendent.

Note - the term 'reserved' in the Code is used to delete the provision without requiring a renumbering of all of the surrounding sections.

Sections 2&4 The provision for the deferred payment of fees was adopted in Ordinance 481 (October 17, 1996) and later codified under the 'Water Storage' section. This amendment moves the deferred payment provision to the 'Time of Payment' section and removes the interest provisions.

Section 3 Language defining what qualifies as an 'apartment, townhouse, or condominium' has been added assuring that large Condos and Townhomes are paying the appropriate water development fee.

Section 5 Subsection (E) previously required quarterly reports to the Council. Such reports have not been used for several years.

- Section 6 This purely technical correction clarifies what ‘this Article’ refers to.
- Section 7 This is a technical correction. When the number of conservation levels was reduced from four to three, this reference was not changed.
- Section 8 This section originally required a ‘Certificate of Compliance’ from the contractor that all construction met the water conservation standards. This requirement has not been used because a final certificate of occupancy is not issued unless the water conservation standards are met.
- Section 9 During the most recent amendments of the Water Conservation provisions (May 2008), subsections 4-6 were inadvertently eliminated from this section. Those sections have been returned to the Code.
- Additionally, (1) the prohibition of flood irrigation has been added; (2) clarifying language that *above or below grade* outdoor swimming pools are prohibited has been added; and (3) the requirement of ‘drip irrigation’ has been moved over from the Unified Development Code.
- Section 10 This section of the Unified Development Code contained provisions that have since been superceded by the Water Conservation provisions of Chapter 50.
- Section 11 The provisions regarding ‘Oasis Areas’ and the use of turf have been superceded by the Water Conservation Ordinance. The other changes are conforming changes.
- Section 12 This section is being removed. The updated requirements for commerical irrigation systems are covered under section 50.83 of the Water Conservation portion of the Town Code. See Section 9 above.
- Sections 13&14 These are purely conforming amendments. These two provisions have been superceded by Sections 50.82 and 50.83 of the Water Conservation portion of the Town Code.

ORDINANCE NO. 748

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADOPTING TECHNICAL AND CONFORMING CHANGES TO VARIOUS CODE PROVISIONS RELATING TO WATER CONSERVATION AND THE TIMING OF IMPACT FEE PAYMENTS.

WHEREAS, dating back to 1982, the Town has approved numerous Ordinances addressing Water Supply Requirements and Water Development Fees; and

WHEREAS, in 1996, the Town approved the Unified Development Code regulating development within the Town; and

WHEREAS, in January of 2003, the Town enacted a comprehensive Water Conservation Ordinance that has been amended from time to time; and

WHEREAS, it is the desire of the Mayor and Common Council to make technical and conforming changes to these various enactments to eliminate actual or potential conflicts,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY ORDAIN AS FOLLOWS:

- Section 1. That the amendments to Sections 50.03, 50.57, 50.59, 50.78, 50.79, 50.82, and 50.83 of the Code of the Town of Payson; and Sections 15-03-001 and 15-03-002 of the Code of the Town of Payson relating to Water Conservation and the timing of Impact Fee payments set forth in Resolution 2416 were heretofore declared to be a public record by such Resolution, and that such amendments are hereby referred to and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance Number 748.
- Section 2. That at least three copies of the amendments to Sections 50.03, 50.57, 50.59, 50.78, 50.79, 50.82, and 50.83 of the Code of the Town of Payson; and Sections 15-03-001 and 15-03-002 of the Code of the Town of Payson relating to Water Conservation and the timing of Impact Fee payments, as adopted by this Ordinance Number 748 shall be filed in the Office of the Clerk of the Town of Payson and the same shall be maintained and kept available for public use and inspection.
- Section 3. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance Number 748 are hereby repealed to the extent of such conflict.
- Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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

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portions of this Ordinance. The Town Council of Payson declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

**RESOLUTION NO. 2416 IS
PROVIDED FOR INFORMATION
ONLY
AT THE 9/18/08 COUNCIL MEETING.**

**RESOLUTION NO. 2416 WILL
BE AGENDIZED AS AN ACTION ITEM
AT THE 10/2/08 COUNCIL MEETING.**

RESOLUTION NO. 2416

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADOPTING TECHNICAL AND CONFORMING CHANGES TO VARIOUS CODE PROVISIONS RELATING TO WATER CONSERVATION AND THE TIMING OF IMPACT FEE PAYMENTS, AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD.

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, it is the intention of the Town of Payson to amend Sections 50.03, 50.57, 50.59, 50.78, 50.79, 50.82, and 50.83 of the Code of the Town of Payson; and Sections 15-03-001 and 15-03-002 of Payson's Unified Development Code relating to Water Conservation and the timing of Impact Fee payments; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. All references in Chapter 50 WATER to the "Public Works Director" and "the Director" are amended, and as amended shall read the "Water Superintendent."

Section 2. Section 50.03(H) of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

50.03 WATER SUPPLY AND STORAGE REQUIREMENTS
(H) Reserved.

Section 3. Section 50.57(B) of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

§ 50.57 EQUIVALENT RESIDENTIAL UNIT.

(B) Each of the following shall be deemed to use one Equivalent Peak Residential Unit, excluding swimming pool and spa installations, and subject to the actual proposed use and landscaping employed:

- (1) 1.5 for apartment, townhouse or condominium units having two or less bathrooms and two or less rooms that may be used as a bedroom;
- (2) 2.2 motel rooms (without spas);
- (3) 3 nursing home beds;

- (4) 5,000 square feet of professional office space; or
- (5) 7,500 square feet of retail merchandising space.

Section 4. Section 50.59 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

50.59 TIME FOR PAYMENT

- (A) Except as set forth in subsection B below, the Water Development Fee required under this section shall be paid at the time when construction permits are issued.
- (B) At the sole discretion of the Water Superintendent, the Town may elect to enter into an agreement for the collection of Water Development Fees over a period of time not to exceed 60 months from the original due date of said fees.

Section 5. Section 50.78(E) of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

50.78 RESTRICTIONS DURING WATER SHORTAGE

- (E) Reserved.

Section 6. All references in Section 50.79 of the Code of the Town of Payson to 'this Article 2' and 'this Article' are amended and as amended shall read 'the Water Conservation provisions of Chapter 50.'

Section 7. The reference in Section 50.79(C) of the Code of the Town of Payson to 'Water Conservation Level III or IV' is amended and as amended shall read 'Water Conservation Level II or III.'

Section 8. Section 50.82(G)(3) of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

50.82 WATER CONSERVATION PLUMBING STANDARDS

- (G) Installation.
 - (3) Reserved.

Section 9. Sections 50.83(C) and (J) of the Code of the Town of Payson are hereby amended, are declared to be a public record, and as amended shall read as follows:

50.83 OUTDOOR CONSERVATION.

- (C) Prohibitions.
 - (1) Artificial water features. New artificial water features such as ponds, lakes, water courses, and other types of water features larger than 50 gallons capacity are prohibited. Water features less than 50

gallons capacity must be equipped with a recirculating pump.

- (2) **Spray Irrigation:** Spray irrigation is prohibited except for existing turf or plants that have been spray irrigated prior to March 1, 2003. Flood irrigation methods are prohibited.
- (3) **Use of misters.** The use of misters is prohibited.
- (4) **Swimming pools.** The construction of new outdoor swimming pools (above or below grade) is prohibited.
- (5) **Spas.** The construction or installation of new spas in or adjacent to motel, hotel, and bed and breakfast rooms is prohibited.
- (6) **Evaporative coolers.** The use of evaporative coolers in buildings larger than three thousand square feet is prohibited, except as otherwise authorized by the Water Superintendent when appropriate to maintain adequate health and manufacturing standards.

J. **Irrigation systems shall be of the drip irrigation type and smart controllers (programmable, climate based) must be installed on all new commercial landscape irrigation projects.**

Section 10. Section 15-03-001(B)(3) of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

15-03-001 Purpose & Applicability

B. Applicability

3. Reserved.

Section 11. Section 15-03-002(A) of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

15-03-002 Landscaping Requirements

A. Use of Low Water Use Vegetation

Except as otherwise provided by this section, all plant material used for landscaping shall be selected from the Town of Payson Water Department Native and Low Water Use Plant List ~~Low Water Use Plant List in Development Bulletin 15-1~~. Development projects will be required to use mulch, rocks, art and other non-plant materials that do not use water and/or help to prevent evaporation.

1. Plants not listed on the Town of Payson Water Department Native and Low Water Use Plant List ~~Low Water Plant List~~ may be used as follows:
 - a. Existing Plants. Existing trees and shrubs may be incorporated in a landscaped area.
 - b. Playing areas of a golf course (with the use of reclaimed water).
 - c. Plant and tree species not listed on the above list (15-1) may be substituted with the approval of the ~~Public Works Director~~ Water Superintendent or his/her designee
 - d. ~~Within an Oasis Area. An Oasis Area shall not exceed 1,000 square feet or 3% of the entire development site or parcel, whichever is less.~~
2. ~~Use of Turf~~
~~Turf areas or lawn areas are only permitted when reclaimed water is used for irrigation or within an Oasis Area.~~

Section 12. Section 15-03-002(B)(3) of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

- 15-03-002 Landscape Requirements
 B. Landscaping/Screening Maintenance
 3. Reserved.

Section 13. Section 15-03-002(D) of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

- 15-03-002 Landscape Requirements
 D. Reserved.

Section 14. Section 15-03-002(F) of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as follows:

- 15-03-002 Landscape Requirements
 F. Reserved.

Section 15. If any section, subsection, sentence, clause, phrase or portion of Resolution Number 2416 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 of Resolution Number 2416 The Town Council of Payson declares that it would have adopted Resolution Number 2416 and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the

fact that any one (1) or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2008, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney