

Article 5.9: Protected Development Right Plan

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5.901 Purpose and Applicability

The purpose of this article is to provide procedures consistent with applicable State law by which a plan may be designated as a Protected Development Right Plan. Except as provided in Section 5.903C: Subsequent Designation, only a plan submitted to the Town that is designated as a Protected Development Right Plan at the time of submittal shall be processed as a Protected Development Right Plan.

A protected development right is the right to undertake and complete the development and use of property under the terms and conditions of a Protected Development Right Plan without compliance with subsequent changes in zoning regulations and development standards, and precludes the enforcement against the development of any legislative or administrative land use regulation of the town or an initiated measure that would change, alter, impair, prevent, diminish, delay or otherwise impact the development or use of the property as set forth in the approved Protected Development Right Plan. Upon approval of a Protected Development Right Plan, the owner has a protected development right to undertake and complete the development only to the extent of the specific elements and details shown on the plan without compliance with subsequent changes in zoning regulations and development standards.

This article sets forth the procedures for two classifications of Protected Development Right Plans: non-phased developments and phased developments.

5.902 Procedures

- A. ***Application.*** Applications shall be filed in accordance with application procedures set forth in Article 5.2: Common Procedures and additional application requirements set forth in this article. Applications may be filed for non-phased development right plan, or phased development right plan.
 - 1. ***Non-Phased developments.*** Non-phased developments are developments that are constructed in one phase. Applications for Protected Development Right Plan for non-phased developments shall comply with the application requirements for final subdivision plat approval as set forth in Chapter III: Subdivision Regulations.

2. *Phased developments.* An application for a Protected Development Right Plan for phased developments shall comply with the application requirements set forth in this article and Article 3.1: Planned Area Development Overlay Zoning District. The application shall identify all improvements required to be constructed for each phase.

B. *Application Content.*

1. *All Applications.* All applications for a Protected Development Right Plan shall include all of the following:
 - a. The proposed uses of the property;
 - b. The boundaries of the property;
 - c. Significant topographical and other natural features affecting development of the property;
 - d. The location of all existing and proposed utilities and provisions for other infrastructure on the property, including water, sewers, road and pedestrian walkways; and
 - e. All other studies and reports required by the Zoning Code, the Subdivision Regulations and other codes of the Town, including traffic reports, drainage reports, master street plans, development phasing schedules and phased public infrastructure schedules.
2. *Non-Phased Developments.* In addition to the requirements of Section 5.902B.1: All Applications, an application for a Protected Development Right Plan for a non-phased development shall be submitted either as a final subdivision plat application or as a Planned Area Development Overlay district application and shall:
 - a. Designate the plan as a non-phased Protected Development Right Plan at the time of submittal;
 - b. Include the general location on the property of the proposed buildings, structures and other improvements; and
 - c. Include the number of dwelling units and the square footage and height of the proposed buildings and other structures.
3. *Phased Developments.* In addition to the requirements of Section 5.902B.1: All Applications, an application for a Protected Development Right Plan for a phased development shall:

- a. Designate the plan as a phased Protected Development Right Plan at the time of submittal;
- b. Be submitted as a Planned Area Development Overlay zoning district;
- c. Include the proposed phasing plan, the boundaries of each phase, and the schedule of development of each phase;
- d. Include the general location on the property of the proposed buildings, structures and other improvements for the first phase;
- e. Include the number of dwelling units proposed for all phases of the development; and
- f. Include the square footage and height of the proposed buildings and other structures for the first phase.

5.903 General Provisions

- A. ***Final Subdivision Plat Protected Development Right Plan.*** The Protected Development Right Plan for a non-phased development shall be the final subdivision plat approved by the Town Council.
- B. ***Planned Area Development Protected Development Right Plan.*** The Protected Development Right Plan for a phased development shall be the Planned Area Development Overlay zoning district approved by the Town Council for that phase. Approval of a Protected Development Right Plan for one phase of a phased development is not approval of a Protected Development Right Plan for any other phase.
- C. ***Subsequent Designation.*** The Town Council may designate by ordinance or resolution a development plan that is not identified as a Protected Development Right Plan at the time it is submitted, as a Protected Development Right Plan upon a finding that granting a protected development right to undertake and complete the development shown on the plan will promote reasonable certainty, stability and fairness in the land use planning and regulatory process and secure the reasonable investment-backed expectations of the owner.
- D. ***Variances.*** A Protected Development Right Plan approved with a condition that a variance be obtained does not confer a protected development right until the variance is granted. Approval of a Protected Development Right Plan does not guarantee approval of a variance.
- E. ***Enforcement of Subsequent Land Use Regulations.*** A protected development right does not preclude enforcement of land use regulations that would change,

alter, impair, prevent, diminish, delay or impact the development or use of the property as approved in the Protected Development Right Plan under any of the following circumstances:

1. Changes agreed to in writing by the owner.
2. Declaration by the Town Council by resolution after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as approved in the Protected Development Right Plan.
3. Declaration by the Town Council by resolution after notice and a public hearing that the owner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval of the Protected Development Right Plan by the Town.
4. The enactment of a state or federal law or regulation that precludes development as approved in the Protected Development Right Plan, in which case the Town Council, after notice and a public hearing, may modify the affected provisions, on a finding that the change in state or federal law has a fundamental effect on the Protected Development Right Plan.

F. ***Overlay Zoning, Development Fees, Building Codes.*** A protected development right does not preclude the enforcement of a subsequently adopted:

1. Overlay zoning classification that imposes additional requirements and that does not affect the allowable type or density of use, or ordinances or regulations that are general in nature and that are applicable to all property, so long as the overlay zoning classification does not affect the allowable type or density of use.
2. Development fees applicable to similar properties in the town adopted pursuant to ARS § 9-463.05.
3. Building, fire, plumbing, electrical, or mechanical code or other ordinance or regulation general in nature and applicable to all property subject to land use regulation by the Town.

G. ***Non-Conforming Uses and Structures.*** A protected development right does not preclude, change, or impair the authority of the Town to adopt and enforce zoning ordinance provisions governing non-conforming uses or structures on the property.

- H. **Development Agreements.** Nothing in this article shall preclude, change, or limit the authority of the Town to enter into a Development Agreement pursuant to ARS § 9-500.05.

5.904 Expiration Date and Extensions; Revocation

A. **Expiration.**

1. **Non-Phased Development Right Plan.** A Protected Development Right Plan for a non-phased development is valid for 3 years. In its sole discretion, the Town Council may extend this time period for a maximum of 2 additional years if it determines such extension is warranted by all relevant circumstances, including the size and type of the development, the level of investment of the landowner, economic cycles, and market conditions. If no building permit has been issued prior to expiration, no construction shall commence under the plan.
2. **Phased Development Right Plan.** A Protected Development Right Plan for a phased development is valid for 5 years. In its sole discretion, the Town Council may extend this time period for a maximum of 2 additional years if it determines such extension is warranted by all relevant circumstances, including the size, type and phasing of the development, the level of investment of the landowner, economic cycles, and market conditions. No construction shall take place on the property for any phase for which a building permit has not been issued.

- B. **Compliance.** After the approval of a Protected Development Right Plan, the Director of Planning shall monitor the progress of the development to ensure compliance with the terms and conditions of the original approval or any development agreement applicable to the property. If the development is not progressing in compliance with the original approval or any development agreement applicable to the property, the Director of Planning shall prepare a report and recommendation to the Town Council. The report and recommendation shall contain the following:

1. The Protected Development Right Plan to be revoked;
2. The property to which the right applies; and
3. The reason or reasons for the proposed recommendation.

- C. **Revocation.** A Protected Development Right Plan may be revoked by the Town because of failure to comply with the applicable terms and conditions of the Protected Development Right Plan or development agreement.

1. *Initiation of Revocation.* The report and recommendation of the Director shall be submitted to the Town Council. The Director shall set a date for a public hearing on the proposed revocation.
2. *Notice of Public Hearing on Revocation.*
 - a. Notice of the public hearing shall be given by first class mail at least 15 days prior to the hearing as follows:
 - (1) To the property owner of record;
 - (2) To the property address; and
 - (3) To the business address.
 - b. Notice of the public hearing shall be published at least 15 days prior to the date of the hearing at least once in a newspaper of general circulation published or circulated within the Town of Gilbert.
 - c. Notice of the public hearing shall be posted at least 15 days prior to the date of the hearing at 4 public places within the Town designated by Town Council resolution for posting of public notices.
3. *Public Hearing.* The public hearing shall be held in accordance with the procedures for public hearing set forth in Section 5.206: Public Hearing Procedures.
4. *Required Findings.* In order to revoke the Protected Development Right Plan, the Town Council shall find that one or more of the terms of conditions of the Protected Development Right Plan have been violated or there has been a violation of other applicable laws or regulations; and
5. *Action.* Upon revocation of the Protected Development Right Plan, the Director of Planning shall set forth the decision in a Notice of Decision describing the Town Council's decision, with its findings. The Notice of Decision shall be mailed to the applicant by first class mail and to:
 - a. To the property owner of record;
 - b. To the property address; and
 - c. To the business address.

- D. **No Vested Rights.** Where a Protected Development Right Plan has been created, development of property without complying with the Protected Development Right Plan is not a legal use of that property. Therefore, there shall be no vested right to use property in accordance with a Protected Development Right Plan where the Protected Development Right Plan has been revoked, pursuant to Section 5.904C: Revocation.