

RESOLUTION NO. 2112

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TOLLESON, ARIZONA, APPROVING THE CITY OF TOLLESON SENATE BILL 1598 COMPLIANCE REVIEW POLICY AND WAIVER, AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TOLLESON, ARIZONA, as follows:

Section 1. The City of Tolleson Senate Bill 1598 Compliance Review Policy is hereby approved as set forth in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. The immediate operation of the provisions hereof is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the Mayor and Council and it is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.


Section 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to proceed with implementation of the Senate Bill 1598 Compliance Review Policy and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and City Council of the City of Tolleson, Arizona, this 11th day of December, 2012.



Adolfo F. Gámez, Mayor

ATTEST:



Chris Hagen, City Clerk

APPROVED AS TO FORM:



Scott W. Ruby, City Attorney

**EXHIBIT A
TO
RESOLUTION NO. 2112**

[City of Tolleson, Arizona Senate Bill 1598 Compliance Review Policy and Waiver]

(See the following pages.)

City of Tolleson

Senate Bill 1598 Compliance Review Policy

PURPOSE

The Arizona Legislature, in 2011, codified Arizona Revised Statutes Section 9-831 *et seq.* that applies to all Arizona municipalities. The purpose of this Policy is to bring City of Tolleson development review and application processing procedures into compliance with applicable State law.

APPLICABILITY

- A. This Policy applies to the various City of Tolleson application review outcomes that qualify as “licenses,” defined in A.R.S. § 9-831(2) as “the whole or part of any municipal permit, certification, approval, registration, charter or similar permission required by law.”
- B. As required by A.R.S. § 9-831 *et seq.* this Policy supersedes over any timeline as outlined in our Building and/or Engineering standard development requirements, procedures, or guidelines, and/or our Zoning Ordinance in the event of a conflict.
- C. As required by A.R.S. § 9-833 inspections required for any regulated persons will be conducted only after proper identification, notifications, and documentation has been presented.

The procedures outlined below involve a variety of license application types. Some requirements are the same for all applications, and some application procedures have unique requirements. In addition, most procedures have detailed user guides prepared and provided by the Building and Engineering Departments. The procedures should be read carefully to ensure a complete application is prepared.

EXEMPTIONS – SHORT TERM EXEMPT LICENSES

A development review application or permit that is issued within 7 working days after receipt of application and that expires within 21 working days after issuance is exempt from the provisions of this Policy.¹

REVIEW OPTIONS

Two choices are available;

- Compliance policy (A.R.S. § 9-831 *et seq.*)
- Flexible policy (Tolleson’s alternative to A.R.S. § 9-831 *et seq.*)

¹ The statutory provision providing this exemption, A.R.S. Section 9-835(H), is unclear, so this interpretation is intended to apply this exemption in the most narrow way that can be derived from the wording of the Section.

The City has consistently supported and practiced expeditious review of all applications, and will continue to do so under the time frames set forth in this Policy. The Building and Engineering Departments will continue to engage in process improvement to review various applications in the most expeditious way possible and will continue to work with customers to review their applications in a manner that provides the following:

- Flexibility when needed;
- Assures the public health and safety; and,
- Allows a customer complying with the City's development regulations to achieve their permitting and development goals in a timely manner.

To further this goal and to provide applicants with additional flexibility and choice, the applicant will have the option of waiving the requirements of A.R.S. § 9-831 *et seq.* This option must be chosen and the waiver signed by the applicant or authorized agent at the time of submittal. Choosing this option affords the applicant and the City more opportunity to work through and resolve issues that may arise during the review process.

APPLICATION FORM CONTENTS

City of Tolleson development review applications shall include the following information as required by A.R.S. § 9-836:

- A. A list of all required steps in the application/approval process;
- B. Applicable time frames;
- C. Contact person (name and telephone. number) who can answer questions or provide assistance throughout the application process;
- D. Website address; and,
- E. Notice for opportunity to clarify ordinances/regulations, or "authorized substantive policy statements" as defined by A.R.S. Section 9-831.

REVIEW TIME FRAME REQUIREMENTS

- A. A.R.S. § 9-835 requires the City to have in place an overall timeframe during which the City will either grant or deny license applications. A.R.S. § 9-835(C) provides for flexibility in structuring the license process for certain types of "licensing." The time frame requirements for application review under the statutory policy are listed in Tables 1 and 2 provided below.
- B. Existing applicable license application review provisions shall comply with the Policy by December 31, 2012.
- C. Any new applicable license application process shall comply with the law and this Policy.

NOTICE OF COMPLETENESS

The City shall review applications for administrative completeness. The City shall send notice to the applicant of the application's status within the applicable administrative completeness review timeframe. The notice shall cite a list of all deficiencies, if any, and inform the applicant that the City's administrative completeness and overall timeframes are suspended pending receipt of requested corrections or any missing information.

The Building and Engineering Departments will accept all applications upon submittal and evaluate each application for administrative completeness. An application shall contain an application form, the relevant checklist, any information specifically required by the City code, zoning ordinance, building code, city standard engineering notes and standard specifications, or such additional information specified by the Building Official or City Engineer as may be required by city code, rule, or compliance review policy, and applicable fee. An application must be made by the property owner or authorized agent.

An applicant will be notified in electronic or writing format if the application is incomplete and will be provided with a list of the specific deficiencies. Upon resubmission of the required materials the City will notify the applicant whether the application is complete or remains incomplete.

When an application is determined to be complete, and the notice of administrative completeness has been issued, the substantive review timeframe begins and the application will be scheduled for review by the City's Review Team or scheduled for a public hearing as required by the applicable code provision or ordinance.

TIME FRAME SUSPENSIONS

Overall time frames listed in Compliance Review Policy Tables 1 and 2 below may be suspended for the following time periods:

- A. From the date of issuance of the notice to the applicant of specific deficiencies in an application, whether on review for administrative completeness or substantive review, to the date that the City receives the missing information from the applicant.
- B. Time for completion of certain purposes, such as; public hearings, state, or federal licenses.
- C. During agreed upon supplemental information requests from the City during a substantive review timeframe.

TIME FRAME EXTENSION PROCESS

- A. During substantive reviews of license applications, the statute provides that the City shall request no more than one comprehensive request 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 a re-submittal after the one comprehensive request is still not in compliance, based upon the applicable statutes, City code, ordinances, regulations, or substantive policy statements, the application shall be denied. The City shall give notice of denial by

electronic or written format. The notice shall include citations of the pertinent provisions justifying an application denial and shall explain the applicant's rights to appeal, including the number of working days in which the applicant must file a protest challenging the denial and the name and telephone number of a municipal contact person who can answer questions regarding the appeal's process.

- C. Upon receiving an application denial, the applicant may submit a new application to the City.
- D. Under A.R.S. § 9-835(H), by mutual electronic or written agreement, the City and applicant may extend the substantive review time frame and the overall time frame. The extensions shall not exceed 25% of the overall time frame. Should agreement not be reached then the City may deny pursuant to A.R.S. §§ 9-834 and 9-835(I).
- E. Upon first review, if the review authority (Zoning Administrator, Building Official, City Engineer, Commission, Board, or City Council) determines additional information is required to adequately evaluate an application, any such additional information shall be submitted by the applicant not later than six (6) months from notification to the applicant. Failure to provide additional information in the time specified will result in the application being denied as incomplete under the applicable city provisions. No fees shall be refunded for an application that is denied.

REFUNDS

Pursuant to A.R.S. Section 9-835(J), if the City does not send notice to an applicant regarding approval or denial within the overall time frame or any mutually agreed extension thereof, the City 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.

WORKING DAYS

Working days as stated in this document refer to City of Tolleson working days excluding all observed holidays.

(TABLE - 1) REVIEW TIMEFRAME REQUIREMENTS

COMPLIANCE REVIEW TIMEFRAMES			
BUILDING AND ENGINEERING REVIEW TEAM APPROVAL PROCESS			
	MAXIMUM TIMEFRAMES**		
APPLICATION TYPE	Administrative Completeness Review	Substantive Review	OVERALL
Business License	1 st Review: 8 working days	1 st Review: 12 working days	36*** working days
Building Permit			
Variance	2 nd Review: 8 working days	2 nd Review: 8 working days	
Civil Engineering; Plans and Reports			
Temporary and Permanent Sign Permits	TOTAL: 16* working days	TOTAL: 20* working days	
Landscape Plans			

*Approval or denial notice.

**Timeframe suspended from notice to return of requested documentation.

***Overall timeframe is suspended for public hearings under A.R.S. § 9-835(C)(8)(c).

(TABLE – 2) REVIEW TIMEFRAME REQUIREMENTS

PUBLIC HEARINGS & CITY COUNCIL APPROVAL PROCESS			
	MAXIMUM TIMEFRAMES**		
APPLICATION TYPE	Administrative Completeness Review	Substantive Review	OVERALL
Use Permit	1 st Review: 8 working days	1 st Review: 12 working days	36*** working days
Site Plan Review			
Zoning Amendment	2 nd Review: 8 working days	2 nd Review: 8 working days	
Preliminary Plat			
Final Plat	TOTAL: 16* working days	TOTAL: 20* working days	
Lot Split			
Variance Appeal			

*Approval or denial notice

**Timeframe suspended from notice to return of requested documentation

***Overall timeframe is suspended for public hearings under A.R.S. § 9-835(C)(8)(c).

WAIVER OF CLAIM
TO
A.R.S. §9-831 ET. SEQ.

This agreement (“Agreement”) is entered into between _____, as the applicant (“Applicant”) seeking a license, permit, approval registration or approval (“License”) related to the use development of _____ (“Property”) Case No _____ as required by the City of Tolleson (“City”). Applicant hereby agrees to waive any and all claims as established by A.R.S. §9-831 et seq., in exchange for which the City agrees to process licensing under its flexible Application Process (“Process”).

The Applicant or authorized agent, has submitted an application to the City requesting that the City approve or permit a development plan, plat, contemplated use, development or action described in Exhibit A. Applicant is aware that under the Process, he/she may be afforded multiple opportunities to alter or amend application and to confer with city staff for advice without constraint of limited reviews or timeframe for approval imposed by the City pursuant to requirements of A.R.S. §9-831 et seq. The City’s procedures under the regulatory-limits process imposed by A.R.S. §9-831 et seq. are compared to the City’s alternative application process in Exhibit B. Applicant acknowledges prior receipt and review of Exhibit B. Applicant desires to be afforded an opportunity to adjust plans based on its own changing development circumstances over time or based upon suggestions by staff. Applicant believes and acknowledges that these benefits outweigh any rights or remedies that may be obtained under A.R.S. §9-831 et seq.

By signing this Agreement, Applicant waives any right or claim that may arise under A.R.S. §9-831 et seq., including any claim that an application must be deemed complete or that fees must be returned by the City pursuant to the requirements of A.R.S. §9-831 et seq.

This Agreement is entered into in Arizona and will be interpreted under the laws of the State of Arizona. The Applicant has agreed to the form of this Agreement provided and approved by the City Attorney. The Applicant has had the opportunity to consult with an attorney of the Applicants choice prior to entering this Agreement and enters it fully understanding that the Applicant is waiving the rights and remedies provided under as set forth herein.

The Applicant warrants and represents that the person or persons listed herein as the Applicant is/are the owner in fee title of any Property identified in Exhibit A. The Applicant further agrees to indemnify and hold the City, its officers, employees and agents harmless from any and all claims, causes of action, demands, losses, costs and expenses based upon any failure to comply with A.R.S. §9-831 et seq.

Dated this _____ day of _____, 20__

Applicant _____
(Name of individual, Corporation, Partnership,
or LLC, as applicable)

Applicant _____
(Name of individual, Corporation, Partnership,
or LLC, as applicable)

By: _____
(Signature of Applicant or Authorized Representative,
if applicable)

By: _____
(Signature of Applicant or Authorized Representative,
if applicable)

Its: _____
(Title of Individual Signing in Representative Capacity)

Its: _____
(Title of Individual Signing in Representative Capacity)

State of Arizona

County of _____

On this _____ day of _____, 20__, before me personally
appeared _____ on the basis of satisfactory evidence to be the
person who he/she claims to be, and acknowledged that he/she signed the
above/attached document.

Notary Public

My commission expires:

City of Tolleson, an Arizona Municipal Corporation:

By: _____
Building & Engineering Department

This form has been approved by the City Attorney.

EXHIBIT A

CASE NO. _____

Address or Description of Property:

License sought: (Insert brief description of approval, permit or authority sought. Alternatively a proposed plat, development plan or other documentation describing the approval sought may be attached and identified as EXHIBIT A)

EXHIBIT B

CASE NO. _____

A.R.S. §9-831 REQUIREMENTS AND
CITY OF TOLLESON BUILDING AND ENGINEERING
FLEXIBLE OPTION PROPOSAL

A.R.S. §9-831 requires municipalities to establish and adhere to time frames in a broad range of permitting processes. Under the law cities must create an overall permitting time frame for each process consisting of an “administrative completeness” time frame and a “substantive review” time frame. The aim of this statute was to create faster, more uniform, and more transparent processes, goals which the City of Tolleson Building & Engineering Departments share. However, the implementation of these time frames may have unforeseen consequences.

A.R.S. §9-831 states the city must 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.

A.R.S. §9-831 offers applicants very limited opportunities to supplement their application with additional material after submission. Moreover, changes to a permit application are limited to responses to a Building & Engineering (B&E) request. Development changes proposed by the applicant do not appear to be allowed. Upon proper denial, during either review period, applicants must reapply with new plans and pay another permit/submittal fee.

B&E is committed to customer service and recognizes that applicants may not wish to be locked into formulaic standards which do not provide an adequate opportunity to submit additional requested materials and desired plan changes. Thus, B&E offers applicants the opportunity to make permit applications according to either A.R.S. §9-831 process or the more flexible process City of Tolleson B&E customers are familiar with.

Under a *flexible application* process, applicants have multiple opportunities to alter or amend their application and to confer with city staff for advice. This allows the applicant to adjust plans based on their own changing development circumstances over time or on suggestions by staff. Additionally, applicants may alter their permit applications as necessary during the process.

Applicants are encouraged to carefully consider which application process best meets their needs. Staff can explain the process in more detail upon request as well as provide you a copy of A.R.S. §9-831 et seq. The following points outline some of the highlights of each process.

“A.R.S. §9-831 et seq.”

- A limited number of opportunities to confer with staff and supply necessary information and materials. The City may request additional information only once after the application is deemed administratively complete.
- If the City fails to meet established timeline for review, an application may be deemed complete although lacking essential materials. If an application is not timely approved or denied fees are refunded to the applicant.
- During review period applicant loses the opportunity to propose alterations to support permit approval or changes in circumstances during development.
- If permit is properly denied after City’s one-time request for more information, applicant must reapply and pay new fee.
- Denials must be explained and the applicable code provisions identified.
- Applicant may request code clarification.

“Flexible Application Process”

- Multiple application conferences available before submittal and during process.
- During review period applicant may propose changes to support permit approval and substantial and multiple changes may be made without reapplication.
- No refund for a review period longer than the established timeline. However, City meets or exceeds established permit review period in >98% of applications. Complex applications or substantial changes may take longer.
- Denials will be explained and the applicable code provisions identified.
- Applicant may request code clarification.
- Review timeframes listed below in Tables 1 and 2.

(TABLE - 1) FLEXIBLE REVIEW TIMEFRAME REQUIREMENTS

FLEXIBLE APPLICATION APPROVAL PROCESS*			
	MAXIMUM TIMEFRAMES²		
APPLICATION TYPE	First Review	Second and Subsequent Reviews	OVERALL
Business License	12 working days	8 working days	44 working days**
Building Permit			
Variance			
Civil Engineering; Plans and Reports			
Temporary and Permanent Sign Permits			
Landscape Plans			

*Must sign waiver to qualify
**Maximum 5 (five) total reviews

(TABLE – 2) FLEXIBLE REVIEW TIMEFRAME REQUIREMENTS

PUBLIC HEARINGS & CITY COUNCIL APPROVAL PROCESS*			
	MAXIMUM TIMEFRAMES³		
APPLICATION TYPE	First Review	Second and Subsequent reviews	OVERALL
Use Permit	12 working days	8 working days	44 working days**
Site Plan Review			
Preliminary Plat			
Final Plat			
Lot Split			
Variance Appeal			

*Must sign waiver to qualify
**Maximum 5 (five) total reviews

² Timeframes are estimates based upon existing and historical applications. Under this City process, the actual timeframes may vary.

³ Timeframes are estimates based upon existing and historical applications. Under this City process, the actual timeframes may vary.