



City of Peoria • 8401 West Monroe Street • Peoria, Arizona 85345
OFFICE OF THE CITY ATTORNEY

CIVIL
PROSECUTOR
FACSIMILE

602-412-7330
602-412-7335
602-412-7043

OPINION NO. 99-02

TO: Chad Daines, Senior Planner
FROM: Stephen M. Kemp, City Attorney
DATE: January 22, 1999
SUBJECT: Sand and Gravel Land Uses

QUESTION:

You have inquired as to the applicable provisions of the City Zoning Code as it pertains to Sand and Gravel uses.

OPINION:

There are a number of relevant provisions of the City Zoning Ordinance applicable to Sand and Gravel Uses. For purposes of reference they are attached as Appendix A.

The pertinent sections of the Zoning Code are as follows:

Page 1-1	Section 14-1-5.B.	Statutory Exemptions
Page 2-10	Section 14-2.56	Mining Definition
Page 20-1	Section 14-20-3.D.	Sand and Gravel C.U.P.
Page 20-5	Section 14-20-D.11.	Sand and Gravel Exemption FP District

It should be noted that unlike counties, cities have the ability to enact zoning legislation pertaining to sand and gravel operations as part of their general zoning powers.¹

Under the City Zoning Ordinance (hereinafter the Ordinance) Mining is exempt from regulation. The definition of Mining in Section 14-2-65 of the Ordinance includes:

65. Mining means the extraction from the earth of gravel, stone, sand and metallic or non-metallic ore, and the crushing, washing, grading, storage and loading for transportation thereof. [emphasis added]

¹ A.R.S. §11-830 sets the regulatory scheme that Arizona Counties must comply with in order to regulate Sand and Gravel operations.

Based on this definition and Section 14-1-5.G of the Ordinance, Sand and Gravel Operations are exempt from the City's Ordinance. Although Section 14-20-3.D purports to grant authority to regulate Sand and Gravel operations. The provision is in direct conflict with the application provision where they are declared to be exempt. It would lead to absurd results, if the city attempted to enact regulations on uses where the code determines that the use is exempt from regulation.

Statutes and this Ordinance may not be interpreted to create absurd results. State v. Baca, 187 Ariz. 61, 926 P.2d 528 (App. 1996) Further, zoning statutes are to be interpreted in favor of the property owner. Robinson v. Lintz, 101 Ariz. 448, 420 P.2d 923 (1966). In this case, Section 14-1-5.G and 14-20-3 are in direct conflict. Having renounced the power to regulate in the Code, the City can not then enact regulations. For this reason, it is our opinion that Section 14-20-3 as currently written is unconstitutional, as the statute attempts to regulate an area that the city has disclaimed the ability to regulate.

The City has the same difficulty in applying its landscaping, parking, setbacks and zoning requirements. Having disclaimed the authority to regulate sand and gravel operations, these provisions must be interpreted consistent with the exemption to give full effect to both. Resolution Trust Corp v. Foust, 177 Ariz. 507, 869 P.2d 183 (App. 1993). In this case, to do so requires that we find that the landscaping, site plan, parking and setback provisions in the ordinance as currently written do not apply to Sand and Gravel Operations.

It should be understood that this opinion only applies to this provision within the Ordinance, not to other code provisions under the City's police power. In light of this opinion, Section 14-20-6D.11 pertaining to Floodplain regulation would appear to be constitutional. This provision does not assert regulatory or zoning authority over Sand and Gravel uses, but attempts to regulate their impact on the floodplain, an area that the City is granted authority pursuant to A.R.S. §48-3601, et.seq. Therefore, Section 14-20-6-D.11 would be enforceable.

Currently, the provisions in the Zoning Code are in conflict and can be described as confusing at best. We would strongly recommend revision of all four sections and the development of a regulatory scheme for sand and gravel operations, if the city desires to regulate them. If this office can be of assistance to you in this process, we would be pleased to do so.

cc: Honorable Mayor and Council
Terry Ellis, City Manager
Meredith R. Flinn, Deputy City Manager (DS)
Debra Stark, Community Development Director