

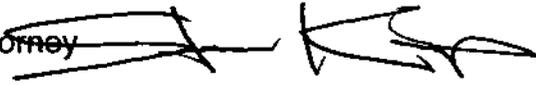
**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: 10R  
Amend No. \_\_\_\_\_

Date prepared: August 12, 2008

Council Meeting Date: August 26, 2008

TO: Honorable Mayor and Council

FROM: Steve Kemp, City Attorney 

SUBJECT: Litigation against Maricopa County

**SUMMARY:** The state enacted laws in 2000 and 2004 to protect Arizona's military facilities. These laws prohibited residential uses inside Accident Potential Zones, Clear Zones and certain High Noise Zones. The purpose of these laws is to ensure that development is compatible with the operations of these military facilities.

Arizona Cities such as Peoria have fully complied with these laws by submitting their general plans to the Arizona Attorney General for review. At the same time, the cities have complied with the law by not issuing residential permits inside the prohibited areas.

Unlike the Cities, Maricopa County has issued residential permits inside the accident potential zones and the high noise areas. The County's claimed reasons are: (i) that they believe the law is unconstitutional; (ii) the refusal to issue a permit constitutes an unlawful taking of property and (iii) that they are required to issue building permits, regardless of state law.

The County's claimed reasons are completely unsupported by the facts. The law has been on the books since 2000 for Luke and 2004, for Auxiliary fields, yet the County has never proceeded to Court to test the constitutionality of the statute. Perhaps more importantly when the 2004 legislation came before the legislature, the County never raised the issue of constitutionality of the legislation, rather they supported the legislation.

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business
- Public Hearing: No Action Taken

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# \_\_\_\_\_ LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

Contrary to the County's position, there is no basis for a federal takings claim. Property owners must show that they have exhausted all administrative remedies first, and that they had a reasonable expectation to use the property for a specific purpose. Finally, the right to a building permit only exists when the property is zoned according to law. If the use for which the property is zoned is removed, there is no right for a building permit for such use.

Repeated attempts to obtain compliance with the law by Maricopa County have been unsuccessful. We have worked with the cities of Glendale and Surprise and the Arizona Attorney General to obtain compliance without resorting to litigation with no success.

Arizona's military bases constitute a critical part of our state and local economy. Future uses such as the replacement for the F-16 fighter (Joint Strike Fighter) will impact the City if they are relocated to other jurisdictions.

We are working with Glendale, Surprise and other west valley cities on this issue. Based on the current legal status of this matter, it is my recommendation that the City proceed with litigation with the state and other interested parties to obtain compliance by Maricopa County with the provisions of state law.

**RECOMMENDATION:** That the Mayor and Council authorize the City of Peoria, Arizona to participate in litigation against Maricopa County to obtain compliance by the county with Arizona State Statutes prohibiting residential development in areas adjacent to military facilities and to authorize the City Attorney to enter into intergovernmental agreements with one or more cities or the State of Arizona pertaining to the conduct of such litigation and the retention of special counsel.