

TITLE 14: DEVELOPMENT CODE ADMINISTRATION

14.01.010 Intent.

The purpose of this Title is to combine and consolidate the application, review, and approval processes for land development in the City of Airway Heights in a manner consistent with RCW Chapter 36.70B.

14.01.020 Rules of Interpretation.

A. All words in the development code shall have their normal and customary meanings, unless specifically defined otherwise.

B. Words used in the present tense include the future.

C. The plural includes the singular and vice-versa.

D. The words "**will**" and "**shall**" are mandatory.

E. The word "**may**" indicates that discretion is allowed.

F. The word "**used**" includes designed, intended, or arranged to be used.

G. Distances shall be measured horizontally unless otherwise specified.

H. The word "**building**" includes a portion of a building or a portion of the lot on which it stands.

I. It is the intent of the City Council that the provisions of this Title be liberally construed to carry out the intent.

J. It is not the intent of the City to create any special duty to an applicant, developer or other person who may benefit from this development code.

K. If any required notice, action or determination falls on a Saturday, Sunday or legal holiday, the time shall be extended to the close of business on the next scheduled workday.

14.01.030 Definitions.

The following definitions shall apply to this Title; other defined words may be found in Titles 15 through 18 of the Airway Heights Municipal Code.

City- means the City of Airway Heights.

City Council- means the City Council of the City of Airway Heights.

Closed record appeal- means an administrative appeal to the City Council or Hearing Examiner based upon the record developed at an open record hearing.

Comprehensive plan- means the adopted Airway Heights Comprehensive Plan, as amended.

Comprehensive plan amendment- means an amendment or change to the text or maps of the Comprehensive Plan.

Date of decision- means the date on which final action occurs and from which the appeal period is calculated.

Developer- means any person who proposes an action or seeks a permit regulated by Titles 14 through 18, Airway Heights Municipal Code ("AHMC"), inclusive.

Development- means any land use permit or action regulated by Titles 14 through 18, AHMC, including but not limited to subdivisions, binding site plans, manufactured (mobile) home parks, rezones, conditional use permits, or variances.

Development code- means Airway Heights Municipal Code Titles 14 through 18.

Director - means the Community Development Director of the City of Airway Heights or his/her designee.

Effective date- means the date a final decision becomes effective.

Final decision- means final action by the Director, City Planning Commission, hearing examiner, or City Council.

Hearing examiner- means a person appointed and confirmed by the City Council who may hear and decide land use matters as authorized herein and in Chapter 14.08, AHMC.

Minor Amendments- means adjustments or a variance from standards in the Development Code such as location/setback of building, accessory structures, driveway locations and landscaping.

Mitigation - means reasonable and necessary measures designed to minimize impacts as a result of development.

Open record hearing- means an open record public hearing for the purpose of receiving testimony, evidence and information that creates the record for a decision.

Party of record- means any person who has testified at a hearing or has submitted a written statement related to the development .”

Permit- means a land use permit required for a development.

Person- means any person, firm, business, corporation, partnership, organization, municipal corporation, or governmental agency.

Project- means a proposal for development.

Public hearing- means a public hearing following notice for the purpose of obtaining information, public comment, and evidence.

(C-442, Added, 04/04/2000)

Type I Application - means an application for project permit that may be approved by an administrative official of the City, as identified in Appendix I.

Type II Application - means an application for a project permit that requires, prior to approval, an open record or public hearing as identified in Appendix I.

14.02.010 Responsibility.

A. A developer is expected to read and understand the City development code and be prepared to fulfill the obligations placed on the development by Titles 14 through 18, AHMC. The City will promptly provide all necessary and relevant information.

14.02.020 Director/Building Official.

A. Authority. The Director or his/her designee is responsible for the administration of Titles 14, 16, 17 and 18 of the Airway Heights Municipal Code. The Building Inspector is responsible for the administration of Title 15 of the Airway Heights Municipal Code.

B. Administrative Interpretation. Upon request or when determined necessary, the Director or his/her designee shall interpret the meaning or application of the provisions of said Titles and issue a written administrative interpretation within thirty (30) days.

A request for interpretation shall: (i) be in writing; (ii) identify the issue/question or development code provision; and (iii) be accompanied with a fee determined by City Council Resolution.

C. Type I Applications. The Director or his/her designee or Building Official or his/her designee approves Type I applications.

14.02.030 City Council.

The City Council reviews and acts on the following:

A. Recommendations of the Planning Commission and decisions from the Hearing Examiner.

B. Preliminary plat approval and applications for final plats.

C. Comprehensive Plan, Development Code or Map changes.

D. Appeals of SEPA Threshold Decisions related to the above matters.

14.02.040 Planning Commission.

A. Type II Applications. The Planning Commission shall review and make recommendations to the City Council on the following Type II Applications:

1. Amendments to the Comprehensive Plan.

2. Amendments to the Subdivision Code, Title 16.

3. Amendments to the Development Code, Title 17, or the Zoning map.

4. Amendments to the Environment Code, Title 18.

5. Applications for preliminary plats containing more than 9 lots and manufactured (mobile) home parks.

6. Applications for site specific rezones and planned unit developments.

7. Other actions requested or remanded by the City Council.

14.02.050 Hearing Examiner.

The Hearing Examiner shall hear and decide the following open record matters:

- A. Applications for variances from the standards and dimensional regulations of the zoning code, official map or other regulatory ordinances.
- B. Application for conditional use permits.
- C. Appeals of decisions of administrative officials on the interpretation or application of the Development Code.
- D. Appeals of Threshold Determinations (SEPA) related to the above matters.

The authority, review criteria and procedures for the hearing examiner are contained in Chapter 14.08, AHMC.

The decision of the hearing examiner shall be in the form of an administrative decision appealable to the City Council.

14.03.010 Application.

- A. The City shall integrate the development permit and environmental review process.
- B. All applications for development permits, design review approvals, variances, and other city approvals under the development code shall be submitted on forms provided by the Planning Department. All applications shall be signed and acknowledged by the property owner or designated agent.

14.03.020 Pre-application meetings.

A. Informal. Applicants for development are encouraged to participate in an informal meeting prior to the formal pre-application meeting. The purpose of the meeting is to discuss, in general terms, the proposed development, city design standards, design alternatives, environmental review process, and required permits and approval process.

B. Formal. Every person proposing a development, with the exception of building permits, in the City shall attend a pre-application meeting. The purpose of the meeting is to discuss the nature of the proposed development, application, and permit requirements, fees, review process, and schedule, applicable plans, policies, and regulations. In order to expedite development review, the City shall invite all affected jurisdictions, agencies, and/or special districts to the pre-application meeting.

14.03.030 Content of Applications.

A. All applications for approval under Titles 15 through 18 shall include information specified in the applicable title. Additional information as reasonably necessary to fully and properly evaluate the proposal may be requested.

B. At the time the application is submitted, the applicant shall identify all permits that may be applicable to the project.

14.03.040 Determination of Completeness.

A. Within twenty-eight (28) days of receiving a date-stamped application, the City shall review the application together with all required submittals and as set forth below, provide applicants with a written determination that the application is complete or incomplete.

B. A project application shall be declared complete only when it contains all of the following materials:

- 1. A fully completed, signed, and acknowledged development application and all applicable review fees.
- 2. A fully completed, signed, and acknowledged environmental checklist for projects subject to review under Chapter 18.01 of the AHMC.
- 3. The information specified for the desired project in the appropriate chapters of the Airway Heights Municipal Code and as identified in Section 14.03.030.

4. Any supplemental information or special requirements identified by the Director or his/her designee.

5. The designation of a single person or entity to receive determinations and other notices required by local, state, or federal law including address, phone number, and fax number, if available.

C. The City, in its sole discretion, may deem an application complete if it is sufficient to continue processing even though additional information or project modifications may be required.

D. For applications determined to be incomplete, the City shall identify, in writing, the specific requirements or information necessary to constitute a complete application. Upon submittal of the additional information, the City shall, within fourteen (14) days, issue a letter of completeness or identify what additional information is required.

E. The written determination required by this section shall be deemed given by the earlier of depositing the same in the U.S. mail, postage prepaid, or delivery to the applicant in person.

F. To the extent known by the City, the written determination shall identify other agencies of local, state, or federal government that may have jurisdiction over same aspect of the application. Failure to disclose such agency jurisdiction shall not be deemed a waiver of the requirement to comply with such agency's regulation.

14.03.050 Pre Development Committee.

A. Immediately following the issuance of a letter of completeness, the Director or his/her designee shall schedule a meeting of the pre development committee (PDC). The PDC may be composed of representatives of all affected city departments, utility districts, the fire department, and any other entities or agencies with jurisdiction.

B. The PDC shall review the development application and provide input to the Director or his/her designee regarding compliance with city plans and regulations, coordination of necessary permit reviews, potential environmental impacts and mitigating measures following review of the environmental checklist completed in accordance with Chapter 18.01 AHMC.

14.03.060 Environmental Review.

A. Developments and actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed in accordance with the policies and procedures contained in Chapter 18.01, AHMC.

B. SEPA review shall be conducted concurrently with development project review.

14.04.010 Notice of Application.

A. Within fourteen (14) days of issuing a determination of completeness under Chapter 14.03, the City shall issue a notice of application. The notice shall include, but not be limited to the following:

1. The name, address and telephone number of the applicant.
2. Date of application and date of Notice of Application.
3. The date of the Notice of Completeness.
4. The location of the project, including nearest intersection.
5. A project description, including zoning classification.
6. The requested approvals, actions, studies, and/or other requirements.
7. A public comment period not less than fourteen (14) or more than thirty (30) days after the date of the notice of application, including a statement of the right of any person to comment on the application, participate in hearings, receive a copy of the decision and any right to appeal.
8. Identification of other permits not included in the application to the extent known by the City.
9. Identification of existing environmental documents and location for review.
10. A city staff contact and phone number.
11. Any preliminary decision including an indication of preliminary threshold decision under SEPA, RCW 43.21C, by the responsible official if one has been made.
12. A statement that the decision on the application should be made within one hundred twenty (120) days of the date of the determination of completeness.
13. The date, time, place and type of hearing, if applicable.

B. For Type II applications, notice of application shall be posted on the subject property in accordance with Chapter 14.04, placed in least one newspaper that reports on the City, and posted at City Hall.

1. For Type II project permit applications, notice of application shall be mailed to all property owners whose property is located within a three-hundred (300) foot radius of any portion of the boundary, and where any portion of property abutting the subject property is owned, controlled or under the option of the applicant, then all property owners within a three-hundred foot radius of the applicants total ownership interest shall be notified by mail.

C. Notice shall be provided to the public and those departments and agencies with jurisdiction as provided under RCW Ch. 36.70C.

Whenever the City receives a development application where the project site is likely to affect a state highway, the Director or his/her designee shall give written notice of the application to the state Department of Transportation. The Director or his/her designee shall request that the Department submit any information that the Department deems to be relevant about the effect of the proposed project upon legal access to the state highway, the traffic carrying capacity of the state highway, and the safety of the users of the state highway.

D. The notice of application shall be issued prior to and is not a substitute for the required notice of a public hearing.

E. A notice of application is not required for permits categorically exempt from SEPA.

14.04.020 Notice of Administrative Approval.

Where required, notice of approval for Type I applications shall be made as follows:

A. The Director or his/her designee shall notify owners of property adjacent and contiguous to the development, by regular mail and addressed, pre-stamped envelopes shall be provided by the applicant. The notice shall include:

1. The approval, including any conditions.
2. The office where further information may be obtained.
3. A statement that an appeal may be filed in accordance with Section 14.06.030.

14.04.030 Notice of Public Hearing.

Notice of a public hearing for Type II development applications (except area-wide amendments to the Comprehensive Plan or Zoning Regulations) and all open record hearings shall be given as follows:

A. Time of Notices. Except as otherwise required, public notification of meetings, hearings, and pending actions under Titles 14 through 18, AHMC, shall be made by:

1. Publication at least fifteen (15) days before the date of the public hearing in a newspaper of general circulation in the City; and
2. Mailing at least fifteen (15) days before the date of a public hearing, to all property owners as shown on the records of the county assessor and to all street addresses of properties within three hundred (300) feet, not including street rights-of-way, of the boundaries of the property which is the subject of the meeting or pending action and any adjacent land owned by the applicant. Addressed, pre-stamped envelopes shall be provided by the applicant; and
3. Posting at least fifteen (15) days before the hearing in three public places where ordinances are posted, including City Hall, the public library and Department of Community Development. In addition, at least one notice shall be posted on the subject property and shall consist of a four (4) foot by four (4) foot all weather sign, with four (4) inch tall lettering with the phrase "NOTICE OF HEARING" as the first line. The posted sign shall clearly indicate the name and/or type of development proposed, file number, the developer or applicant's name, the time, date, and place of public hearing, the place where further information may be obtained, and an identification of the reviewing authority.
4. Agencies with jurisdiction (SEPA).
5. Other persons who the review authority believes may be affected by the proposed action or who request such notice in writing.

B. Content of Notice. The public notice shall include:

1. The application or project file number.
2. A project summary or description of each project permit application.
3. Designation of review authority.
4. The date, time and place of the hearing and a statement that the hearing will be conducted in accordance with the adopted rules of procedure for the hearing body or governing authority.
5. General project location, vicinity, addresses and parcel numbers, if applicable.
6. The name, address, and telephone number of the owner, applicant, and designated contact.
7. That a SEPA threshold determination or description thereof has been made, if a determination is other than a DS has been made, it shall be contained in the notice, and an appropriate statement regarding shared or divided lead agency status shall be included.

8. Deadline for a SEPA appeal, including a date, time and place.
9. A statement regarding the appeal process; including any SEPA appeal.
10. A date when the staff report will be available and where it can be viewed.

C. Continuations. If for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under this section is required.

D. Failure to properly post a site or complete the required notice may result in the re-initiation of the notice process.

E. Reviewing authority may require the applicant to provide a mailing packet consisting of a listing or property owners as described above along with a set of pre-addressed stamped envelopes.

14.04.040 Notice of Decision.

A written notice of a final decision shall be sent to the applicant, any party that requested the notice of the decision, and all parties of record. For development applications requiring Planning Commission review and City Council approval, the notice shall be the signed ordinance or resolution.

14.04.050 Contents of Decision

A written notice of a final decision shall include a statement of the decision, a SEPA determination made pursuant to RCW Ch. 43.21C, and that the decision is final, but may be appealed. The final date, location and procedure to file an appeal shall be stated.

14.05.010 Administrative Approval.

A. The Director or his/her designee may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this section on all Type I applications listed under Appendix I.

B. Final Administrative Approvals. Preliminary approvals under this section shall become final subject to the following:

1. If no appeal is submitted, the preliminary approval becomes final at the expiration of the appeal period.

14.05.030 Planning Commission Review.

A. The Planning Commission reviews Type II applications; notice of the Planning Commission hearing shall be in accordance with Section 14.04.030.

B. Staff Report. The planning department shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of city departments, affected agencies, and special districts, and evaluating the development's consistency with the City's development code, adopted plans and regulations. The staff report shall include findings, conclusions, and proposed recommendations for the development application.

C. Hearing. The Planning Commission shall conduct an open record hearing on development proposals for the purpose of receiving testimony, evidence, considering the information, and evaluating the proposal for consistency with the City's development code, adopted plans and regulations. D. Required Findings. The Planning Commission shall not approve or recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The development is consistent with the Comprehensive Plan and meets the requirements and intent of the Development Code.
2. The development makes adequate provisions for open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds, and other public utilities.
3. The development adequately mitigates adverse environmental impacts identified during environmental review under Chapter 18.01 AHMC.
4. The development is not harmful to the public health, safety and welfare and is in the public interest.
5. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan. If the development results in a level of

service lower than those set forth in the Comprehensive Plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development. For the purpose of transportation improvements, "**concurrent with the development**" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six years of approval of the development.

6. The area, location, and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development, and are proportional to the impacts created by the development.

E. Action. The Planning Commission's recommendation, approval, or disapproval of a development proposal or action shall include a resolution setting forth its findings and conclusions.

14.05.040 City Council Action.

A. Actions. Following a recommendation from the Planning Commission or decision by the hearing examiner, the matter shall be placed on the Council Agenda.

B. Decisions. The City Council shall make its decision by motion, resolution, or ordinance as appropriate.

1. A Council decision shall include one of the following actions:

a. Approve as recommended;

b. Approve with additional conditions;

c. Modify, with or without the applicant's concurrence, provided that the modifications do not:

(1) Enlarge the area or scope of the project,

(2) Increase the density or proposed building size,

(3) Significantly increase adverse environmental impacts as determined by the responsible official;

d. Deny (reapplication or resubmittal is permitted);

e. Deny with prejudice (reapplication or resubmittal is not allowed for one year);

f. Remand for further proceedings and/or evidentiary hearing in accordance with Section 14.05.080.

2. The City Council decision shall be based upon the record.

3. Appeals of environmental determinations shall be considered concurrently with the pending matter. Such an appeal is a closed record appeal.

14.05.050 Procedures for Open Record and Public Hearings.

Open record and public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create an evidentiary record for the decision. At an open record and public hearing, the following should occur:

A. Staff presentation, including submittal of any administrative reports. The hearing body may ask questions of the staff. The public file is considered part of the record.

B. Applicant presentation, including submittal of any materials. The hearing body may ask or authorize questions of the applicant or its agents.

C. Testimony or comments by the public germane to the matter. Questions from the public shall be addressed to the hearing body.

D. Rebuttal, response, or clarifying statements by the staff and the applicant.

E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter.

14.05.060 Procedures for Closed Record Appeals.

For closed record appeals to the City Council, the appeal shall be conducted in accordance with the City Council's rules of procedure and shall serve to provide argument and information for the decision. Closed record appeals shall be conducted generally as provided for public hearings. Unless otherwise allowed by law, no new evidence or testimony shall be given or received. The parties to the appeal may submit written statements or arguments. For closed record appeals to the hearing examiner, the appeal shall be conducted with rules of procedure established by the hearing examiner and shall conform with this section.

14.05.070 Reconsideration.

A party may seek reconsideration of a final decision by filing a written request for reconsideration with the Director or his/her designee within five (5) days of the announcement of the final decision. The request shall comply with Section 14.06.040. The request shall be heard without comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the hearing body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals.

14.05.080 Remand.

In the event the hearing body determines that the record is insufficient, the hearing body may remand the matter to receive evidence. The hearing body shall specify the items or issues to be considered and the time for completing the additional work.

14.05.090 Final Decision.

A. Time. The final decision on a development proposal should be made within one hundred twenty (120) days from the date of the determination of completeness, except for:

1. Amendments to the comprehensive plan or development code required by the project;
2. Any time required to correct plans, perform studies or provide additional information, provided that within fourteen (14) days of receiving the requested additional information, the Director or his/her designee shall determine whether the information is adequate to resume the project review;
3. Substantial project revisions made or requested by an applicant, in which case the one hundred twenty (120) days will be calculated from the time that the Director or his/her designee determines the revised application to be complete;
4. All time required for the preparation and review of an environmental impact statement;
5. Projects involving the siting of an essential public facility;
6. An extension of time mutually agreed upon by the City and the applicant;
7. All time required to obtain a variance;
8. Any remand to the hearing body;
9. All time required for the administrative appeal of a SEPA threshold determination.

B. Effective Date. The final decision of the hearing body shall be effective on the date stated in the decision, motion, resolution, or ordinance, provided that the date from which appeal periods shall be calculated shall be the date the hearing body takes action on the motion, resolution, or ordinance.

14.05.100 Interpretation.

To the extent the decision making authority and appeal process contained in Titles 15 through 18 is inconsistent with this Title, this Title shall control.

14.06.010 Appeal of Administrative Interpretations and Approval.

Administrative interpretations and administrative approvals may be appealed, by applicants or parties of record, to the Hearing Examiner.

14.06.020 Appeals--Time for Filing.

Every appeal authorized by this title shall be filed with the Director or his/her designee fourteen (14) days after the date of the recommendation or decision of the matter being appealed, except a judicial appeal.

14.06.030 Appeals--Contents.

A. Contents. The notice of appeal shall contain:

1. The decision being appealed;
 2. The name, address, signature of the appellant, and a statement regarding the legal standing of the appellant;
 3. The specific reasons why the appellant believes the decision to be wrong as a matter of fact or law; and
 4. The desired outcome or changes to the decision.
- B. The City shall require an appeal fee as set forth by resolution adopted by the City Council.

14.06.040 Appeals--Cost.

The cost for transcribing and preparing the record, if desired by the appellant, shall be borne by the appellant. The appellant shall post with the Clerk-Treasurer prior to the preparation of the record an advance fee deposit in the amount specified by the Clerk-Treasurer. Any overage will be promptly returned to the appellant and any deficiency will be paid as a condition of delivery of the record if the deposit is insufficient to cover the cost.

14.06.050 Appeal--Standing.

Standing to appeal a decision is limited to the following:

1. The applicant or owner to which the permit decision is directed.
2. A person aggrieved or adversely affected by the permit decision, or who would be aggrieved or adversely affected by a reversal or modification of the permit decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
 - a. The permit decision has prejudiced or is likely to prejudice that person;
 - b. That person's asserted interests are among those that the decision maker was required to consider when the permit decision was made;
 - c. A judgment in favor of that person would substantially eliminated or redress the prejudice to that person caused or likely to be caused by the permit decision;
 - d. The petitioner has exhausted their administrative remedies to the extent required by law.

14.06.060 Judicial Appeal.

A. Appeals from the final decision of the City Council, hearing examiner or City Staff, involving Titles 14 through 18, AHMC, shall be served in the manner provided by law and filed with Spokane County Superior Court within twenty-one (21) days of the issuance of the decision as provided under the Washington Land Use Petition Act, RCW Chapter 36.70C.

B. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the Clerk-Treasurer prior to the preparation of any records an advance fee deposit in the amount specified by the Clerk-Treasurer. Any overage will be promptly returned to the appellant and any deficiency will be paid as a condition of delivery of the record if the deposit is insufficient to cover the cost.

14.07.010 General Penalty.

Compliance with the requirements of Titles 14 through 18, AHMC, shall be mandatory. The general penalties and remedies established at Chapter 1.16, AHMC, for such violations shall apply to any violation of those titles. The enforcement actions authorized under this chapter shall be supplemental to those general penalties and remedies.

14.07.020 Application.

A. Actions under this chapter may be taken as necessary or desirable by the Director or his/her designee to achieve the purpose of this chapter or of the development code.

B. Proof of a violation of a development permit or approval shall constitute prima facie evidence that the violation is that of the applicant and/or owner of the property where the violation exists. An enforcement action under this chapter shall not relieve or prevent enforcement against any other responsible person.

14.07.030 Civil Regulatory Order.

A. Authority. A civil regulatory order may be issued and served if any activity by or at the direction of that person is, has been, or may be taken in violation of the development code.

B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by mail or otherwise to the owner or other person having responsibility for the location.

C. Content. A civil regulatory order shall set forth:

1. The name and address of the person to whom it is directed;
2. The location and specific description of the violation;
3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
4. An order that the violation immediately cease, or that the potential violation be avoided;
5. An order that the person stop work until correction and/or remediation of the violation as specified in the order;
6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;
7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.

D. Remedial Action. The Director or his/her designee may require any action reasonably calculated to correct or avoid the violation, including but not limited to replacement, repair, supplementation, re-vegetation, or restoration.

E. Appeal. A civil regulatory order may be appealed to the hearing examiner.

14.07.040 Civil Fines.

A. Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit, or who fails to comply with a civil regulatory order may be subject to a civil fine as set forth in Section 1.16.020.

B. Amount. The civil fine assessed shall not exceed the dollar limit specified by city ordinance for each violation. Each separate day, event, action or occurrence shall constitute a separate violation.

14.07.050 Review of Approved Permits.

A. Review. Any approval or permit issued under the authority of the development code may be reviewed for compliance with the requirements of the development code, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or permit was obtained by fraud or deception.

B. Initiation of Review. The review of an approval or permit may be initiated by the City Manager, City Council or by petition of three property owners or three residents of separate dwelling units in the City, stating their belief as to the noncompliance, nuisance, or hazard of the permitted activity.

C. Director or his/her designee's Investigation. Upon receipt of information indicating the need for or upon receiving a request for review of permit or approval, the Director or his/her designee shall investigate the matter and take one or more of the following actions:

1. Notify the property owner or permit holder of the investigation; and/or
2. Issue a civil regulatory order and/or civil fine and/or recommend revocation or modification of the permit or approval; and/or
3. Refer the matter to the City attorney; and/or
4. Refer the matter to the City Council with a recommendation for action.

14.07.060 Revocation or Modification of Permits and Approvals.

A. Upon receiving a recommendation for revocation or modification of a permit or approval, the City Council shall review the matter at a public hearing. Upon a finding that the activity does not comply with the conditions of approval or the provisions of the development code, or creates a nuisance or hazard, the City Council may delete, modify or impose such conditions on the permit or approval it deems sufficient to remedy the deficiencies. If the

Council finds no reasonable conditions, which would remedy the deficiencies, the permit or approval shall be revoked and the activity allowed by the permit or approval shall cease.

B. Reapplication. If a permit or approval is revoked for fraud or deception, no similar application shall be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all of the requirements of the development code.

14.08.010 Hearing Examiner Appointment.

A. There is created the position of hearing examiner who shall be appointed by the City Manager and confirmed by the City Council.

1. Examiner Pro-Tem--Qualifications and Duties. The examiner pro-tem shall, in the event of the absence or the inability of the examiner to act, have all the duties and powers of the examiner.

2. Hearing Examiner--Conflict of Interest and Freedom from Improper Influence. The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might exert such influence upon the hearing examiner that might interfere with his or her decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. The hearing shall then be conducted by the examiner pro-tem.

Participants in the land use regulatory process have the right, insofar as possible, to have the hearing examiner free from personal interest or pre-hearing contacts on land use regulatory matters considered by him or her. It is recognized that there is a countervailing public right to free access to public officials on any matter. If such personal or pre-hearing interest contact impairs the hearing examiner's ability to act on the matter, such person shall so state and shall abstain therefrom to the end that the proceeding is fair and has the appearance of fairness.

3. Freedom from Improper Influence. No Council Member, City Official, or any other person shall attempt to interfere with, or improperly influence the hearing examiner in the performance of his or her designated duties.

B. The decisions of the hearing examiner shall be final. All decisions of the hearing examiner shall be in writing and shall include findings and conclusions based on the record to support the decision. Said findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the City's comprehensive plan and the City's development regulations. The final decision of the hearing examiner, unless a longer period is mutually agreed upon between the applicant and the hearing examiner, shall be rendered within ten working days following the conclusion of all testimony, hearings and continuances.

14.08.020 Conduct of Hearings.

All hearings of the hearing examiner shall be held in City Hall at such times as may be established by notice as set forth in Section 14.08.060. The Municipal Court Clerk shall act as the clerk and secretary of the hearing examiner.

14.08.030 Decision Powers.

A. The hearing examiner conducts Open Record hearings on matters set forth in Section 14.02.050, and other matters referred or delegated by the City Council.

14.08.040 Appeals of Building Administrative Codes or Fees.

Any appeal from the building code or other building administrative codes adopted by the City shall be first filed with the building official or his/her designee. The building official or his/her designee shall review the recommendation and make a decision thereon. The decision of the building official or his/her designee shall be final unless, within fourteen (14) days from the date of the decision, the applicant files a petition for review with the hearing examiner. Upon receipt of any petition for review of a decision of the building official or his/her designee, the hearing examiner shall determine whether or not the matter requires a public hearing either because of its nature (whether controversial or of major importance) or required by the provisions of a particular administrative code from which the appeal was taken, and if the hearing is to be held, the hearing examiner shall conduct a public hearing in the matter. The hearing and procedures shall be in the same form and manner as provided in Sections 14.08.060 and 14.08.070.

14.08.050 Applications to Hearing Examiner--Fee--Objections.

A. Persons desiring consideration by the hearing examiner shall apply to the planning department and shall supply such information as the hearing examiner and planning department may require to identify the land and determine the reason for the appeal.

B. Each application by a property owner shall be accompanied by a receipt for a fee, amount determined by City Council, to the Clerk-Treasurer to cover the City's costs of handling the application, no part of which fee is returnable.

C. Persons objecting to the relief sought by the applicant shall likewise set forth their views and actual evidence in writing and the same shall be signed by the objectors. The application or objection shall be submitted to the hearing examiner within the time provided in its rules or procedure.

D. The hearing examiner or planning department shall be responsible for assigning a date of public hearing for each application which date shall not be more than forty-five (45) working days after the applicant has complied with all requirements and furnished all necessary data to the planning department.

E. When such application has been set for public hearing, the planning department or hearing examiner shall coordinate and assemble the comments and recommendations of other city departments and governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the planning department's findings and supportive recommendations. At least seven working days prior to the scheduled hearing, the report shall be filed with the hearing examiner and copies thereof shall be mailed to the applicant and shall be made available for use by an interested party for the cost of reproduction.

14.08.060 Hearing Notice.

A notice of a pending hearing of the hearing examiner upon an application affecting the use of land or buildings shall be posted within the vicinity of the land or building in question at least fourteen (14) working days prior to the hearing. Additional advertisement may be made through the press at the discretion of the hearing examiner.

14.08.070 Hearing--Generally.

Before rendering a decision or recommendation on any matter, the hearing examiner shall hold at least one public hearing thereon. The hearing examiner shall examine official maps, photos, development plans, calculations, etc., relating to the conditions of the affected land or property. The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings under the ordinance codified in this chapter, including continuances, and also to administer oaths and preserve order.

14.08.080 Hearing Examiners--Findings and Decision.

A. When the hearing examiner renders a decision or recommendation, the hearing examiner shall make and enter written findings from the record and conclusions which support such decision, which decision shall be rendered on the tenth working day, or after continuances, following the conclusion of the hearing. The copy of such decision including findings and conclusions shall be transmitted by certified mail, return receipt requested, to the applicant and other parties of record requesting the same.

B. Reconsideration. Any aggrieved person feeling that the decision of the hearing examiner is based on erroneous procedures, errors of law or fact, error in judgment or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the hearing examiner within ten (10) working days of the date the decision or continuance is rendered. This request shall set forth the specific errors or new information relied upon by such appellant, and the hearing examiner may, after review of the record, take further action as he or she deems proper.

14.08.090 Appeals.

Any person aggrieved by the decision of the hearing examiner may appeal the hearing examiner's decision to the City Council fifteen (15) days after the date of the decision.

14.08.100 Records.

The hearing examiner shall keep a record of its proceedings, findings and action in each case, giving specific reasons for its action and for any deviation from policy which may have been established in past cases. All records of the hearing examiner shall be open to the public.

14.08.110 Stay.

During an appeal to the City Council, the applicant shall stay any grading, construction or alteration on the property.

14.08.120 Severability.

The provisions of this chapter are declared to be severable. If any word, phrase, clause, sentence, paragraph, section or part in or of this chapter, or the application thereof to any person or circumstance, is declared invalid, the remaining provisions and the application of such provisions to other persons or circumstances shall not be affected thereby, but shall remain in full force and effect, the Mayor and City Council declaring that they would have ordained the remaining provisions of this chapter without the word, phrase, clause, sentence, paragraph, section or part, or the application thereof, so held invalid.

14.08.130 Computation of Time.

Computation of any period of time prescribed or allowed by these rules shall begin with the first calendar day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday or national or state holiday, the period shall run until the end of the next following business day.

14.09.010 Administration.

The Public Works Department shall provide the overall coordination of the concurrency test by notifying transportation facility providers of all applications subject to the requirements of this chapter. (Ord. C-612 § 2, 2005)

14.09.020 Applicability.

These rules and regulations shall apply to all developments and their impact to locally owned arterials and transit routes within the corporate limits of the city. (Ord. C-612 § 3, 2005)

14.09.030 Purpose and intent.

The purpose of this chapter is to set forth standards by establishing a transportation concurrency system to ensure that transportation facilities needed to maintain minimum level of service standards are in place at the time of development or within six years as required by the Growth Management Act. The intent of this chapter is to implement the goals, policies, and implementing programs of the City of Airway Heights Comprehensive Plan. (Ord. C-612 § 4, 2005)

14.09.040 Definitions.

A. "Adequate transportation facilities" means transportation facilities that meet or exceed the adopted level of service standards set forth in the City's Comprehensive Plan.

B. "Applicant" means any person, firm, agent, corporation, or entity who has applied for a development permit or approval.

C. "Available capacity" means the capacity for a transportation facility that is currently available for use.

D. "Capacity" means the maximum number of vehicle trips that can be accommodated during a specified travel period at a specified level of service. Capacity will be calculated according to the methodology used in the most current Highway Capacity Manual. Alternative methodology may be used only if it is pre-approved by the Public Works Director or his/her designee(s).

E. "Certificate of capacity" means a written document issued by the City of Airway Heights indicating the amount of available capacity for each facility that has been reserved for a specific development project on a specific parcel or lot. A certificate shall be in written form and may consist of a letter, finding of fact, acknowledgement on a building permit, or other similar method.

F. "Concurrency" means the provision for assuring that transportation improvements or strategies are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years so the levels of service do not fall below the level of service standards adopted in the Comprehensive Plan due to the impacts of new development.

G. "Department" means the Public Works Department.

H. "Development" means construction and/or modification of structures or improvements to land which will alter, modify, and/or expand a use of land.

I. "Development permit" means any land use approval or building permit.

J. "Director" means the Public Works Director or his/her designee.

K. "Facility provider" means the department or agency responsible for providing the transportation facility.

L. "Level of service standard (LOS)" means the number of units of demand per unit of capacity. The level of service standards used in concurrency tests are those standards specified in the capital facilities element of the Comprehensive Plan.

M. "Locally owned arterial" means all streets within the City of Airway Heights with a functional classification of minor or principal arterial, as identified in Table 14-1.

N. "Planned capacity" means the capacity for a transportation facility that is not yet available, but for which the necessary facility construction, expansion or modification project is contained in the current adopted capital facilities element and scheduled to be completed within six years.

O. "Transportation facility" means any improvement used for the movement of vehicles, including all locally owned arterials and transit routes as identified in Tables 14-1 and 14-2.

P. "Transportation strategies" means strategies to reduce vehicle trips including increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies (e.g., parking policies, trip shifting). (Ord. C-612 § 5, 2005)

14.09.050 Concurrency test.

A. Application. All development applications, unless exempted by AHMC 14.09.080, shall be subject to a test for concurrency as part of any development approval process, for those transportation facilities identified in Tables 14-1 and 14-2.

B. Procedures. The concurrency test shall be completed during the processing of any development permit application.

1. The Department shall provide the coordination of the concurrency test by notifying the facility providers of all applications subject to the requirements of this chapter, notifying the applicants of any test results; and notifying the facility provider of the final decision on the development or building permit;

2. A failure to comment on or review a development proposal by the notified facility provider shall not be construed to validate concurrency.

3. The facility provider shall be responsible for monitoring their available and planned capacity.

Table 14-1

Street Classification	Street Name
Principal Arterial	SR-2 (Fairview Heights Road – Flint Road) Hayford Road (Deno Road – McFarlane Road)
Minor Arterial	Deno Road (Craig Road – Hayford Road) Craig Road (Deno Road – McFarlane Road) 6th Avenue

	(Craig Road – Garfield Street) Garfield Street (6th Avenue – McFarlane Road) Lawson Street (6th Avenue – McFarlane Road) 21st Avenue (Lundstrom Street – Hayford Road) McFarlane Road (Craig Road – Hayford Road) Sprague Avenue (Russell Street – Hayford Road)
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Table 14-2

Local Transit Route	Street Name
Route 61	Hayford Road (McFarlane Road to Northern Quest Casino) SR-2 (Hayford Road to Craig Road) Garfield Street (SR-2 to McFarlane Road) McFarlane Road (Garfield Street to Lawson Street) Lawson Street (SR-2 to McFarlane Road) Sprague Avenue (Hayford Road to Airway Heights Correction Center)

C. Test.

1. Highway Capacity Manual methods selected by the Public Works Department shall be used to analyze project impacts to transportation facilities.

2. Level of service standards in the Comprehensive Plan shall be used as a starting reference to analyze project impacts.

3. Level of service standards shall be updated as necessary to account for traffic levels resulting from the following:

- a. Traffic from newly created projects;
- b. Projects for which traffic capacity has been tentatively reserved;
- c. Projects for which a concurrency certificate has been awarded; and

d. Nonproject, general background traffic increases. Level of service information shall also be updated as necessary as a result of any discontinued concurrency certificates, road projects or new level of service analysis.

4. Each transportation facility affected by a proposed project shall be reviewed and analyzed for concurrency. If the development permit is for a change of use for an existing structure, the concurrency test will be for the new increase only. The applicant may be required to provide a traffic analysis if existing information does not provide adequate information to determine the level of service impacts.

5. If the concurrency test results in a finding that adequate transportation facilities exist, a certificate of capacity will be issued pursuant to AHMC [14.09.070](#).

6. If the concurrency test results in a finding that the affected transportation facilities fall below adopted levels of service, the application for the development permit shall not be approved unless one of the following conditions are met:

a. LOS standards are met by the applicant/owner and mitigating measures, which may include transportation strategies, needed to meet such standards are identified in an approved traffic study or other approved document.

b. The applicant/owner reduces traffic impacts to achieve an acceptable LOS by scaling the project down to reduce the number of vehicle peak hour trips generated by the project.

c. Demonstrate to the transportation facility provider's satisfaction that the development will have lower than usual need for facilities, and therefore capacity is adequate.

D. Capital Facilities Plan. In determining capacity, consideration shall be made for transportation facilities or strategies proposed within the following six years as outlined in the capital facilities plan.

E. Additional Information. The Director may require additional information and/or traffic study(ies), at the applicant's expense, to support any decision issued under this chapter. (Ord. C-612 § 6, 2005)

14.09.060 Phased development.

When a project is proposed in phases, or construction is expected to extend over an extended period of time, the applicant may offer a schedule of completion/occupancy that will be used by the Department to determine the schedule of transportation improvements that must be completed, or financially guaranteed, prior to completion/occupancy of each phase. The required transportation improvements shall be determined by analyzing the traffic impacts to be generated by the fully completed project. (Ord. C-612 § 7, 2005)

14.09.070 Certificate of capacity.

A. Issuance. A certificate of capacity shall be issued by the Director concurrently with any development approvals (building permit, preliminary plat/binding site plan approval, etc.). A certificate of capacity shall be in written form and may consist of a letter, finding of fact, acknowledgement on a building permit, or other similar method.

1. A certificate of capacity shall apply only to the specific land use or development project as outlined in any development permit application.

2. A certificate of capacity is not transferable to other lots, tracts, or parcels, but may be transferred to other applicants/owners of the same lot, tract, or parcel for which the certificate was issued.

B. Certificate Expiration. A certificate of capacity shall expire if the accompanying development approval expires or is revoked. A certificate of capacity may be extended according to the same terms and conditions as the accompanying development approval. If the accompanying development permit does not expire, capacity shall be considered to be available for five years after issuance of the certificate of capacity.

C. Unused Capacity. Any capacity that is not used due to changes in the development shall be returned to the City and considered available capacity. (Ord. C-612 § 8, 2005)

14.09.080 Exemptions.

A. No Impact. Development applications for proposals which create no additional impacts on any transportation facility are exempt from the provisions of this chapter, including but not limited to:

1. A development which generates less than 25 vehicle trips in or out of the development in the p.m. peak hour, except if the transportation facilities are at or above 90 percent of their capacity, concurrency review is required.

B. Single-Family Dwellings and Duplexes. New single-family dwellings and duplexes located on lots created before the effective date of the ordinance codified in this chapter shall be exempt from the provisions of this chapter.

C. Accessory Dwelling Units. All accessory dwelling units, as defined in Chapter [17.04](#) AHMC, shall be exempt from the provisions of this chapter.

D. Accounting for Capacity. The capacity for development permits exempted under subsections (A), (B) and (C) of this section shall be considered when issuing a certificate of capacity. (Ord. C-612 § 9, 2005)

14.09.090 Application filed prior to the effective date of ordinance codified in this chapter.

A. Applications Filed. Complete development applications submitted prior to the effective date of the ordinance codified in this chapter shall be exempt from compliance with this chapter.

B. Preexisting Use. Development approvals issued prior to the effective date of the ordinance codified in this chapter shall be deemed to have adequate capacity so long as the accompanying development approval is valid. If the accompanying development permit does not expire, capacity shall be considered to be available for five years after the effective date of the ordinance codified in this chapter.

C. Change of Use. Development approvals issued prior to the effective date of the ordinance codified in this chapter which require a change of use permit or certificate of occupancy shall require a certificate of capacity. (Ord. C-612 § 10, 2005)

14.09.100 Appeals.

A. Procedure. The applicant may appeal the results of the concurrency test to the Hearing Examiner, consistent with the provisions set forth in Chapter [14.06](#) AHMC. (Ord. C-612 § 11, 2005)