

### **Exhibit 3**

## **Zoning Code Sections referenced in appellant's application**

### **§ 1-16-13 DEVELOPMENT AGREEMENTS.**

(A) *Intent and purpose.* A development agreement is a contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval and that the development will not be subject to subsequent changes in regulations. Development agreements must also benefit the local jurisdiction with sufficient legal consideration. The city may include conditions (mitigation measures) that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement may clarify how the project will be phased, the required timing of public improvements, the developer's contribution toward funding system-wide community improvements, economic incentives and other conditions. The agreement can also facilitate enforcement of requirements, since it is a contract that details the obligations of the developer and city.

(B) *Applicability.* The use of development agreements will be based on a case by case determination by city staff.

(C) *Administrative responsibility.* The city department responsible for administering development agreements will be assigned on a case by case basis. If the development agreement is focused on economic development incentives, the Economic Development Division will be responsible for administering the agreement. If, however, the development agreement is focused on land use, infrastructure and zoning requirements, the Development Services Department's Planning Division will be responsible for administering the agreement.

(D) *Legal review.* In all cases, the City Attorney shall be responsible for legal review and modification of the development agreement prior to City Council consideration.

(E) *City Council approval required.* The City Council has the final authority in approving or denying development agreements. Development agreements shall be presented to the Council for consideration at a public hearing.

### **§ 1-16-16 VIOLATIONS, PENALTIES AND ENFORCEMENT.**

(A) *Violations.* Any building, structure or improvement erected, built, moved or maintained, or any use of property contrary to the provisions of the Zoning Code is hereby declared to be unlawful and a public nuisance.

(B) *Remedies and enforcement powers.* Failure to comply with any provision of this Chapter is hereby declared unlawful. The following remedies and enforcement powers may be used to administer and enforce this Chapter.

(1) *Withhold permits.* The city may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements thereon upon which there is an uncorrected violation of a provision of this Chapter or of a condition or qualification of a permit, certificate, approval, or other authorization previously granted by

the city. This enforcement provision shall apply regardless of whether the current owner or applicant is responsible for the violation in question.

(2) *Permits approved with conditions.* Instead of withholding or denying a permit or authorization the city may grant such authorization subject to the condition that the violation be corrected.

(3) *Revoke permits.* Any AUP issued under this Chapter may be revoked when the Zoning Administrator determines any one of the following:

(a) That there is departure from the plans, specifications, or conditions as required under terms of the permit.

(b) That the development permit was procured by false representation or was issued by mistake.

(c) That any of the provisions of this Chapter are being violated. Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued, or shall be posted in a prominent location; and, thereafter, no such construction shall proceed.

(4) *Revoke plan or other approval.* Where a violation of this Chapter involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the City Council may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance with this Chapter, the provision of security to ensure that construction is completed in compliance with approved plans, or such other conditions as the City Council may reasonably impose.

(5) *Injunction and abatement.* The city may initiate injunction or abatement proceedings or other appropriate action in a court of competent jurisdiction against any person who fails to comply with any provision of this Chapter, or any requirement or condition imposed pursuant to this Code, to prevent, enjoin, abate, or terminate violations pursuant to A.R.S. § 9-462.05.B. The city may seek a court order in the nature of mandamus, abatement, injunction, special declaratory judgment or other action for proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

(6) *Criminal filings.* It is unlawful to erect, construct, reconstruct, maintain or use any land in any zoning district in violation of any regulation or any provisions of this Chapter. Any person, firm or corporation violating this Chapter or any part thereof, is guilty of a class one misdemeanor. Each and every day during which the illegal erection, construction, reconstruction, alteration, maintenance or use continues is a separate offense. The City Attorney shall have the sole authority to use his or her discretion in determining whether a criminal action should be filed. The penalty for a class one misdemeanor conviction can be up to 6-months jail time, up to \$2,500 fines or restitution, 3 years probation and other terms the court finds just.

(7) *Other powers.* In addition to the enforcement powers specified in this Article, the city may exercise any and all enforcement powers granted by Arizona law. If deemed necessary by the city for public health and safety reasons, the city may immediately commence all necessary actions or proceedings for the abatement, enjoinder and removal thereof in the manner provided by law, and may apply to such court or courts as may have jurisdiction to grant such relief as will abate, enjoin and remove the building or use and

restrain and enjoin any person, firm or corporation from setting up, erecting, building, moving or maintaining any such building or using any property contrary to the provisions of this Chapter.

(C) *Civil enforcement procedures for emergency matters.* In the case of violations of this Chapter that constitute an emergency situation as a result of safety or public concerns or violations that will create increased problems or costs if not remedied immediately, the city may use the enforcement powers available under this Article without prior notice.

(D) *Enforcement procedures for non-emergency matters.* If after an inspection and informal attempts have failed to gain compliance with this Chapter in a non-emergency situation, the city shall serve the owner, owner's statutory or authorized agent, occupant, lessee or person in control of the property with a notice of violation. This notice shall contain the following:

- (1) Legal identification of property.
- (2) Statement of violations in sufficient detail to allow an owner or responsible party to identify and correct the problem.
- (3) The expected compliance deadline of at least 21 calendar days from the date of the notice.
- (4) A re-inspection date.
- (5) Address and telephone number of a city representative to contact.
- (6) A warning that failure to comply may result in the filing of a civil or criminal misdemeanor case, depending on whether this violation is the 1st, 2nd, 3rd or 4th violation over a 24-month consecutive period.
- (7) A warning that failure to comply may also result in an administrative or court abatement action by the city, which the owner or responsible person will be financially liable through a lien process that may include foreclosure of the property.
- (8) Appeal rights (Board of Adjustment and Appeals, the protocol thereunder and required fees).

(E) *Effective date.* Any notice issued under this Chapter shall be deemed effective on the date when written notice is hand-delivered or sent via first class U.S. certified mail, return receipt requested, to the individuals referenced above. Any recorded notice shall run with the land and shall constitute legal notice for all purposes of this chapter to all parties and entities thereafter acquiring an interest in the property. Officers may use their discretion in granting extensions for compliance with the code, depending on the violators' efforts to date.

(F) *Civil citations and complaints.* If the owner or other responsible party fails to comply with the notice of violation, and fails to appeal the notice, or loses the appeal hearing and fails to pursue other available appellate courses of action, a civil action to enforce the provision of this chapter may be commenced and a summons shall be issued in accordance with the procedures set forth in the Arizona Revised Statutes and applicable city ordinances. Jurisdiction of proceedings in this Chapter shall be in the Municipal Court of the City of Apache Junction. The City Manager and/or his or her designee shall be responsible for filing civil citations with the Apache Junction Municipal Court subject to the following:

- (1) *Penalties.*
  - (a) First offense during 24 consecutive month period: civil penalty of \$250;
  - (b) Second offense during 24 consecutive month period: civil penalty of \$500;
  - (c) Third offense during 24 consecutive month period: civil penalty of \$750.

(2) *Timing and fines.* The 24-month period shall be calculated from the dates the violations are first committed. The owner or responsible party shall receive the progressively higher civil penalty upon a finding of responsibility for any violation of this chapter which was committed within 24 months of the commission of another violation for which the owner or responsible party was found responsible. In no event shall the Court reduce the minimum dollar penalties referenced above. The dollar amounts noted above are the fines, exclusive of any other Court imposed penalties.

(3) *Separate offences.* Every day any violation of any provision of this Chapter continues shall constitute a separate violation or offense. The owner of record, as reflected in the Pinal or Maricopa County Recorder's Office, may be presumed to be a person having lawful control over the building, structure or parcel of land which is the subject of the violation. If more than 1 person is recorded as the owner of the property, the persons may be jointly and severally presumed to be the persons having lawful control over the building, structure or parcel of land.

(4) *Civil hearing procedure.* A person lawfully served with a civil citation or complaint shall appear at the time and place stated in the citation or summons, or may appear prior to the time and admit or deny the allegations of the complaint. Allegations not denied at the time of appearance are deemed admitted. If the allegations are admitted, the Court shall enter judgment for the city and impose the minimum dollar sanction as noted above, exclusive of any additional court fees and costs that the Court may or is obligated to impose. If the defendant denies the allegations, the Court shall set the matter for hearing. Civil hearings are to be held informally and held without a jury, and the city is required to prove the allegations by a preponderance of the evidence. Technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the defendant elects to be represented by counsel, the defendant shall so notify the Court at least 10 court days prior to the hearing date. Hearings shall be recorded by technological devices, including tape recording or by stenographer. If the Court finds in favor of the defendant, the Court shall enter an order dismissing the citation or complaint. If the Court finds in favor of the city, the Court shall enter judgment for the city and impose the minimum dollar sanction noted above, plus any additional court fees and costs that the Court is obligated to add.

(5) *Appeal of civil court hearing.* Any party may appeal the judgment of the Municipal Court to the Superior Court under A.R.S. § 12-124. Appeals from civil proceedings shall be in accordance with the Superior Court Rules of Appellate Procedure - Civil.

(G) *Validity of permit.* The issuance or granting of a building or use permit or approval of plans or specifications under the authority of this Chapter shall not be deemed or construed to be a permit for or an approval of any violation of any of the provisions of this Chapter or the amendments thereto or of any other ordinance or law. No permit presuming to give authority to violate or cancel any of the provisions of this Chapter or any existing law shall be issued, and if issued shall not be valid; except insofar as the work or use which it authorizes is lawful and permitted.

(H) *Enforcement by city officials.* It shall be the duty of the officers of the city charged with the enforcement of the law to enforce the provisions of the Zoning Code.

(I) *Remedies.* All remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve that person from the responsibility to correct prohibited conditions or to remove prohibited buildings,

structures or improvements, nor to prevent the enforcement, correction or removal thereof. In addition to other remedies provided in this Chapter, any adjacent or neighboring property owner who shall be especially damaged by the violation of any provision of this Chapter, may institute in addition to other remedies provided by law, injunction, mandamus, abatement or other appropriate action, proceeding or proceedings to prevent, abate or remove the unlawful erection, construction, reconstruction, alteration, maintenance or use.

## **ARTICLE 1-2: TYPES OF USES**

### **§ 1-2-1 USES PERMITTED BY RIGHT.**

Uses permitted by right are those uses that are specifically allowed or uses analogous to those specifically allowed by interpretation of the Zoning Administrator. A permitted use by right may be lawfully established in a particular district or districts, provided that they conform to all requirements of the regulations for the district in which such uses are located. See Vol. II, Tables 5-1 and 5-3.

### **§ 1-2-2 PROHIBITED USES.**

Prohibited uses are those uses that are not specifically permitted by right, by conditional use permit or by administrative use permit, and also include those uses that are listed as expressly prohibited in Vol. II, Tables 5-1 and 5-3.

### **§ 1-2-3 CONDITIONAL USES.**

Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but which require individual Planning and Zoning Commission review and conditional use permit ("CUP") approval for their location, design, operation and configuration along with the imposition of conditions in order to ensure the appropriateness of the use at a particular location. See Vol. II, Tables 5-1 and 5-3. The administrative process required for CUPs is provided in [Vol. II, § 1-16-12\(D\)](#).

### **§ 1-2-4 ADMINISTRATIVE USES.**

Administrative uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but which require Zoning Administrator review and issuance of an administrative use permit ("AUP") to ensure the use complies with Zoning Code standards. Uses requiring an AUP include, but are not limited to, temporary uses, cargo containers, fences, signs, outdoor events and home occupations. See Vol. II, Tables 5-1 and 5-3. The administrative process required for administrative use permit requests is provided in [Vol. II, § 1-16-12\(C\)](#).

### **§ 1-2-5 NONCONFORMING USES, STRUCTURES AND LOTS.**

(A) *Establishment and applicability.* Legal nonconforming uses, structures and lots are those uses, structures and lots that were legally in compliance before the adoption or amendment of this Chapter or previously adopted city ordinances or annexations into the city, but which are prohibited, regulated, or restricted differently under the terms of this Chapter or future amendments to the Chapter or the Zoning Map.

(1) Nonconforming status may result from any inconsistency with the requirements of this Chapter including, but not limited to, land use, setbacks, lot size, location, density, floor area, height, usable open space, buffering, screening, landscaping, provision of parking, performance standards, or the lack of an approved use permit or other required authorization.

(2) Any legally established use, structure or lot, or legal nonconforming use, structure or lot that is in existence on the effective date of this Chapter, or any subsequent amendment, but does not comply with all of the standards and requirements of this Chapter shall be considered legally nonconforming. Legally nonconforming uses, structures, and lots may only be continued subject to the following requirements of this Chapter.

(B) *Legal nonconforming uses.*

(1) *Expansion of legal nonconforming uses.* A legal nonconforming use shall not expand within an existing structure and shall not expand into any other structure or lot that it did not previously occupy, or within a federal patented easement.

(2) *Abandonment of legal nonconforming uses.* No legal nonconforming use may be resumed, reestablished, or reopened after it has been abandoned, vacated or ceased to be used for a period of 12 or more continuous months, as determined by the Zoning Administrator. The owner/operator of the use may provide evidence of continual operation of the use, such as monthly business receipts or tax returns showing business activity during the time period in question. In cases of providing tax returns, the owner/operator shall waive all confidentiality rights set forth in Arizona law.

(3) *Termination of legal nonconforming use.* Failure of a nonconforming use to follow the regulations as prescribed in this Chapter shall be prima facie evidence of termination of the legal nonconforming use.

(C) *Legal nonconforming structures.*

(1) *Expansion of legal nonconforming structures.* Nonconforming structures shall only be enlarged, expanded or extended in accordance with the terms of this Chapter, or if the Zoning Administrator determines it necessary to meet city or state requirements and/or to meet current requirements of the zone in which the structure is located.

(2) *Structural alterations to nonconforming structures (50% rule).* Structural elements of nonconforming structures and buildings may be modified, altered, repaired or replaced subject to the cost not exceeding 50% of the value of the building or structure as determined by two competent Arizona certified/registered appraisers chosen by and at the expense of the owner/operator. Structural modifications, alterations, repairs or replacements shall not enlarge or expand the nonconforming structure or building. This paragraph does not include nonconforming signs which are separately regulated in [Vol. II, § 1-11-11](#).

(3) *Damaged or partially destroyed structures (50% rule).*

(a) A legal nonconforming building or structure that is damaged or partially destroyed may be restored or rebuilt if the cost of repair or reconstruction does not exceed 50% of the current construction value, exclusive of the foundation, of the building or structure as determined by two independent competent Arizona certified/registered appraisers chosen by and at the expense of the owner/operator. Replacement or restoration of the damaged portions of the building shall not exceed the size, extent, and configuration that previously existed, and shall be subject to Building Code requirements.

(b) If the cost of repair or reconstruction of a legal nonconforming building or structure exceeds 50% of the construction value, exclusive of the foundation, of the building or structure replacement, the land and building shall be subject to all of the requirements of this Chapter.

(D) *Legal nonconforming lots.* Legal nonconforming lots shall be allowed to exist and continue but shall not be reduced in size.

(E) *Certificate of legal nonconformity.*

(1) No permit or license shall be issued for a nonconforming use or structure until a certificate of legal nonconformity ("certificate") has been issued by the Zoning Administrator. It shall be the burden of the property owner to provide the following information and evidence to establish legal nonconformity:

(a) Such non-conforming use or structure did legally exist on the adoption date of this Chapter;

(b) Such use or structure was not used, operated or maintained in violation of any local, state or federal law; and

(c) Such use or structure is in compliance with applicable federal, state or local laws, regulations or the other requirements, and has not, as of the effective date of this Chapter, been abandoned or vacated for a period of 12 or more continuous months.

(2) The Zoning Administrator shall review and examine the information and evidence provided by the property owner in support of the certificate. If the Zoning Administrator believes that any information set forth by the property owner is incorrect, does not contain substantial competent evidence that the non-conformity was legally established and lawfully maintained prior to the effective date of this Chapter or any amendment thereto creating the non-conformities, the Zoning Administrator may deny the certificate along with a statement of the reasons for the denial. In order that the exact nature and extent of such non-conforming use, structure or lot may be determined, the Zoning Administrator may require at the expense of the owner/operator a survey map prepared by an Arizona registered engineer or registered surveyor showing the location of structures, buildings and property lines. The surveyor or engineer may be chosen by the property owner.

(3) Upon a showing of necessary and sufficient evidence, the Zoning Administrator shall issue a certificate of legal nonconformity which shall be proof that the use, structure and/or lot described therein is lawful and may continue subject to the regulations of this Chapter.

(4) An appeal to the Board of Adjustment may be taken pursuant to [Vol. II, § 1-16-5](#) by any person aggrieved by the decision of the Zoning Administrator.

#### **§ 1-2-6 USES NOT LISTED.**

*Determination.* A land use that is not listed as a permitted use, conditional use or administrative use in the tables and text of the Zoning Code shall not be allowed within the city unless the Zoning Administrator determines that a non-listed proposed use is similar to and compatible with a listed use. Such determination shall be based on the following findings:

(A) The characteristics of, and activities associated with the use are similar to one or more of the listed uses, and will not involve a greater intensity than the uses listed in the zone.

(B) The use will be consistent with the purposes of the applicable zone.

(C) The use will be consistent with the General Plan.

(D) The use will be compatible with the other uses allowed in the zone.

#### **§ 1-5-3 NON-RESIDENTIAL USE REGULATIONS.**

[Table 5-3](#) illustrates the use regulations for all non-residential zoning districts.



**TABLE 5-3: NON-RESIDENTIAL USE REGULATIONS**

<b>Misc. Uses, Structures &amp; Installations</b>	Solar Panels <sup>3</sup>	YES	YES	YES	YES	YES	YES
	Alternate Energy Production Facilities <sup>3</sup>	CUP	CUP	CUP	CUP	CUP	CUP
	Waste Tire Collection and/or Storage	NO	NO	NO	CUP	CUP	CUP
	Adult Oriented Uses	NO	NO	NO	CUP	CUP	NO
	Outdoor Activities	CUP	CUP	CUP	CUP	CUP	CUP
	Helipads	CUP	CUP	CUP	CUP	CUP	CUP
	Temp. Uses/Structures	See <a href="#">Vol. II, § 1-6-23</a>					
	Signs	See <a href="#">Vol. II, Article 1-11</a>					
	Lighting	See <a href="#">Vol. II, Article 1-10</a>					
	Landscaping	See <a href="#">Vol. II, Article 1-8</a>					
	Parking	See <a href="#">Vol. II, Article 1-7</a>					
	Solar Panels	See <a href="#">Vol. II, § 1-6-16</a>					
	Fences/Walls	See <a href="#">Vol. II, § 1-6-3</a>					
	Mobile Food Services	See <a href="#">Vol. II, § 1-6-23</a>					
	Cargo Containers	See <a href="#">Vol. II, § 1-6-8</a>					
	Outdoor Storage and Outdoor Activities	See <a href="#">Vol. II, § 1-6-9</a>					

**YES = Permitted use by right. A Yes indicates that the listed use is permitted by-right within the respective zoning district.**

CUP = Conditional use permit. A CUP indicates that the listed use is permitted within the respective zoning district only after review and approval of a conditional use permit, in accordance with the review and approval procedures of [Vol. II § 1-16-12\(D\)](#).

AUP = Administrative use permit. An AUP indicates that the use and/or structure is permitted within the respective zoning district following review and approval of an administrative permit by the Development Services Director or designee in accordance with [Vol. II § 1-16-12\(C\)](#).

NO = Prohibited uses. A No indicates that the listed use type is expressly not allowed within the respective zoning district.

Footnotes from Table 5-3:

1. Definitions and/or descriptions of these uses are provided in the North American Industry Classification System ("NAICS"). The city will use the NAICS classification system



to assist with defining and interpreting non-residential uses. Where NAICS definitions are not provided or unclear, the Zoning Administrator shall be responsible for interpretation.

2. An ancillary manufacturing use is a subsidiary or secondary use or operation connected to the main use of a building. Ancillary manufacturing uses identified in manufacturing sectors 31-33 of the 2012 North American Industry Classification System ("NAICS") shall be allowed in the B-1, B-2 or B-3 zoning districts if incidental and subordinate to the primary retail, office, public or quasi/public use, provided that not more than 50%, up to a maximum of 1,500 square feet, of the floor area of the business is engaged in these ancillary manufacturing activities. No outside manufacturing, processing, repair or equipment/inventory storage shall be allowed for ancillary uses (see [Vol. II, § 1-6-26](#)). Ancillary manufacturing uses proposed to be greater than 1,500 square feet and/or 50% of the total floor area may be approved as a conditional use by the Planning and Zoning Commission (see [Vol. II, § 1-6-26](#)).

3. See [Vol. II, § 1-6-16](#) (B) for alternate energy production regulations.

4. Land uses listed in the B-4 and B-5 district that propose outdoor assembly, repair, manufacturing, processing and/or storage shall require conditional use permit approval even if identified in [Vol. II, Table 5-3](#) above as a permitted use by right.

5. See [Vol. II, § 1-6-15](#) for adult oriented business regulations.