

A G E N D A

WORK SESSION OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD OCTOBER 12, 2010, AT 6 P.M., AT THE COTTONWOOD COUNCIL CHAMBERS BUILDING LOCATED AT 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

- I. CALL TO ORDER
- II. ROLL CALL
- III. ITEMS FOR DISCUSSION, CONSIDERATION, AND POSSIBLE DIRECTION TO STAFF:

Comments regarding items listed on the agenda are limited to a 5 minute time period per speaker.

1. POSSIBLE REGULATION OR BANNING THE USE OF CONSUMER FIREWORKS WITHIN THE CITY LIMITS. (Pages 2-17)
 2. DISCUSSION REGARDING PROPOSED AMENDMENTS TO THE ZONING ORDINANCE, SECTION 304 (DESIGN REVIEW) AND SECTION 404.H. PERTAINING TO HEIGHT REGULATIONS. (Pages 18-25)
- IV. ADJOURNMENT

Pursuant to A.R.S. § 38-431.03.(A) the Council may vote to go into executive session on any agenda item pursuant to A.R.S. § 38-431.03.(A)(3) Discussion or consultation for legal advice with the attorney or attorneys of the public body.

The Cottonwood Council Chambers is accessible to the disabled in accordance with Federal "504" and "ADA" laws. Those with needs for special typeface print or hearing devices may request these from the City Clerk (TDD 634-5526.) All requests must be made 24 hours prior to the meeting

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: October 12, 2010
Subject: Fireworks
Department: Fire
From: Fire Chief Mike Casson, Fire Marshal Rick Contreras

REQUESTED ACTION

Conduct a work session to review HB 2246 allowing the sale of and use of “permissible consumer fire works” in Arizona effective November 30, 2010. Consider staff options and recommendations to regulate or ban the use of consumer fire works within the city limits.

Staff is requesting direction from Council for staff to bring forth an ordinance regulating or banning the use of “permissible consumer fireworks” within the City limits of Cottonwood.

BACKGROUND

On May 10, 2010, the Governor signed into law, House Bill 2246 amending A.R.S. Sections §§36-1601, 36-1605, 36-1606, 37-623.02 and Title 36, Chapter 13, Article 1, and adding Sections 36-1609 and 36-1610 effective November 30, 2010 relating to Fireworks. This law allows for the sale and use of certain “permissible consumer fireworks”. This law also authorizes the State Fire Marshal to adopt rules regarding the sale of these fireworks and requires retailers to comply with those rules. Sales of such fireworks are prohibited to persons under the age of 16.

The kinds of consumer fireworks that can be sold and used under this new law include:

- Ground and hand-held sparkling devices
- Cylindrical fountains
- Cone fountains
- Illuminating torches
- Wire sparklers or dipped sticks
- Multiple tube fireworks devices and pyrotechnic articles
- Wheels
- Ground spinners
- Flitter sparklers
- Toy smoke devices

NOT included is anything designed or intended to rise into the air and explode or to fly above the ground, including such firework items commonly known as:

- Bottle rockets
- Sky rockets
- Missile-type rockets
- Helicopters
- Torpedoes
- Roman candles
- Jumping jacks

Items NOT regulated by this new law include:

- Toy pistols, toy canes or toy guns that use paper caps and paper caps themselves that contain less than 25/100 grains of explosive mixture
- Federally deregulated novelty items such as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices and sparklers.

Under this new law, cities and towns may regulate or prohibit the use of “permissible consumer fireworks” within their corporate limits by passing a local ordinance or resolution. The local regulation cannot prohibit the sale of such fireworks within the city or town, but it can prescribe requirements for their use or prohibit their use altogether within the city’s or town’s corporate limits. Considerations:

- Use limited to specific dates or special events; July 4th, New Years Eve, Super Bowl, etc, etc.
- Use limited to certain hours of the day or night
- Prohibition on use in public parks or other public space
- Prohibition during times of high fire danger
- Complete prohibition on use within the city limits

The Fire Chief and Fire Marshal recommend a complete prohibition on the use of consumer fireworks within the city limits for the following reasons:

- Community values at risk; Dangers to life, limb and property
- Perennial issues with dry vegetation, low humidity, winds and ease of ignition
- Rapid development and spread of fire caused by fireworks in our vegetative terrain

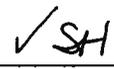
The proposed ordinance will bring the City’s fireworks provisions current with this new law, by permitting the sale of “permissible consumer fireworks” within the City subject to certain restrictions and limitations, as set forth in A.R.S. §§36-1605, 36-1306, 36-1609 and City Codes, and regulating or prohibiting the use of such fireworks within the City’s limits.

Other communities in the area, including Clarkdale, Jerome, Camp Verde, Sedona, Prescott, Prescott Valley, and Dewey-Humboldt, have or are expected to enact similar provisions regulating or prohibiting the use of “permissible consumer fireworks” within their corporate limits. Counties may regulate them in unincorporated areas during times of reasonable risk of wildfires in the immediate county.

COST/FUNDING SOURCE N/A

REVIEWED BY:

City Manager: 

City Attorney: 

ATTACHMENTS:

- League of Cities and Towns Implementation Guidelines
- NFPA Statistics Sheet
- House Bill #2246



2010 HB2246 Regulation of Fireworks, Chapter 286 Implementation Guidelines for Cities and Towns

Note: Check with your attorney for specific advice about your city or town

Introduction

HB2246 from the Second Regular Session of the 49th Arizona Legislature 2010 authorizes the sale of certain kinds of consumer and display fireworks in the state. It defines these fireworks and authorizes the State Fire Marshal to adopt rules regarding the sale of fireworks and requires retailers to comply with those rules. Fireworks sales are prohibited to persons under the age of 16.

The new law also allows city or town councils to regulate the use of some or all of these fireworks within their corporate limits; counties may regulate them in unincorporated areas. The bill is effective December 1, 2010.

Consumer Fireworks Definition

The kinds of consumer fireworks that can be sold under this law include:

- Ground and hand-held sparkling devices
- Cylindrical fountains
- Cone fountains
- Illuminating torches
- Wheels
- Ground spinners
- Flitter sparklers
- Toy smoke devices
- Wire sparklers or dipped sticks
- Multiple tube fireworks devices and pyrotechnic articles
- Does NOT include:
 - Anything designed or intended to rise into the air and explode or to fly above the ground, such as:
 - Bottle rockets
 - Sky rockets
 - Missile-type rockets
 - Helicopters

- Torpedoes
- Roman candles
- Jumping jacks

See examples various kinds of consumer fireworks at:

http://www.fireworks.com/fireworks_gallery/

Note: Items not regulated by this law include:

- Toy pistols, canes or guns that use paper caps and paper caps themselves
- Federally deregulated novelty items such as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices and sparklers

Retail establishments that comply with the State Fire Marshal regulations may sell these kinds of consumer fireworks in Arizona.

Note: Display fireworks, authorized for sale in this law, are federally regulated and are for use only by professionals. Statutes authorizing their local regulation are found in ARS 36-1603 and 36-1604.

Municipal Regulation

A city or town may regulate the use of consumer fireworks within their corporate limits by passing a local ordinance or resolution (sample ordinance attached).

The local regulation cannot prohibit the sale of consumer fireworks within the city or town, but it can prescribe requirements for which items may be lawfully used and when they may be used including:

- Use may be limited only to specific dates or special events such as Fourth of July, New Year's Eve, Super Bowl Sunday, etc.
- Certain hours of the day or night
- Prohibition on use in public parks or other public space
- Prohibition during times of high fire danger
- Complete prohibition on use within the city or town limits

Additional Provisions

The bill permits counties to regulate the use of consumer fireworks during times of wildfire risk. It authorizes the State Fire Marshal to impose a fine of \$1,000 for each incident of prohibited use of fireworks on state land. Fines are to be deposited into the Fire Suppression Revolving Fund established by HB2246.



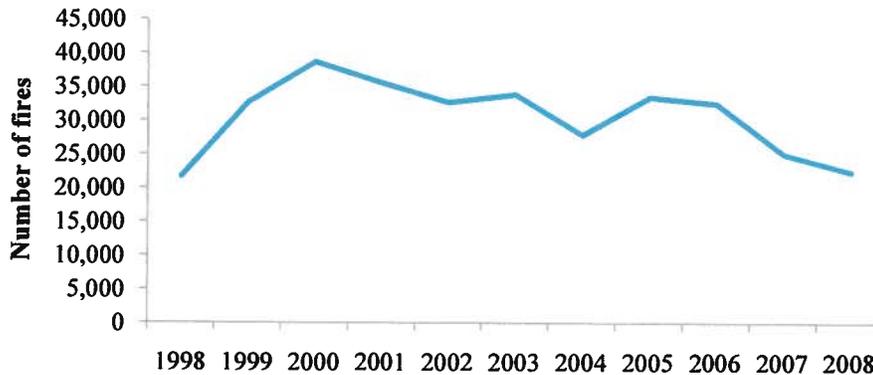
Fireworks

Size of the Fireworks Problem

On Independence Day in a typical year, far more U.S. fires are reported than on any other day, and fireworks account for more than half of those fires, more than any other cause of fires.

- In 2008, fireworks caused an estimated **22,500** reported fires, including **1,400** structure fires, **500** vehicle fires, and **20,600** outside and other fires.
- These fires resulted in an estimated **1** civilian death, **40** civilian injuries and **\$42 million** in direct property damage.

Reported Fires Associated with Fireworks, 1998-2008



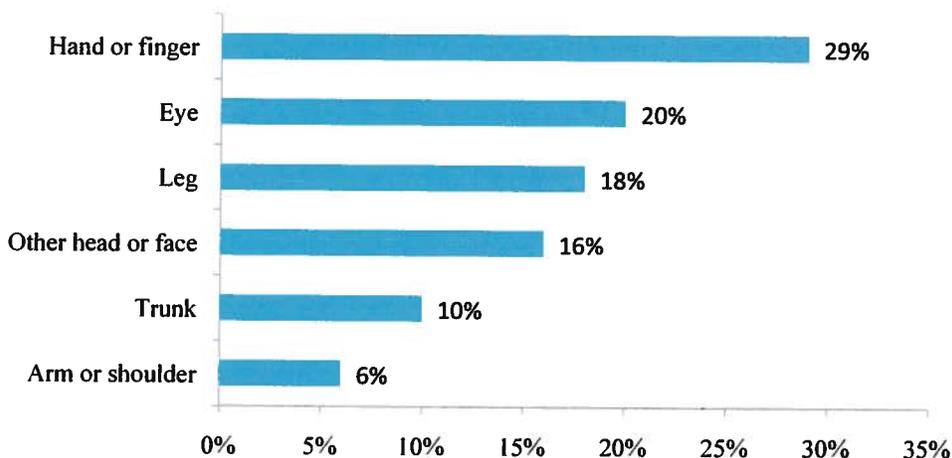
FACT: 900 home structure fires were caused by fireworks in 2008.

Characteristics of Fireworks Injuries

In 2008, U.S. hospital emergency rooms treated an estimated **7,000** people for fireworks related injuries.

- **53%** of 2008 emergency room fireworks-related injuries were to the extremities and **37%** were to the head.

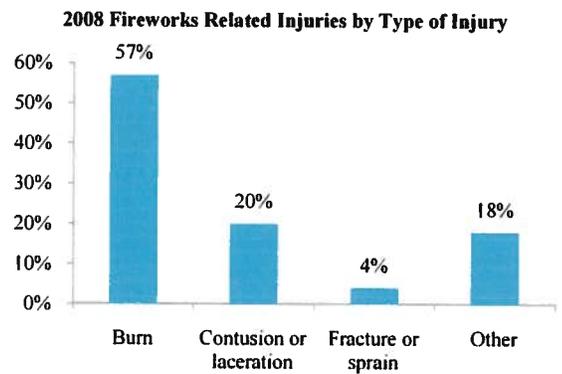
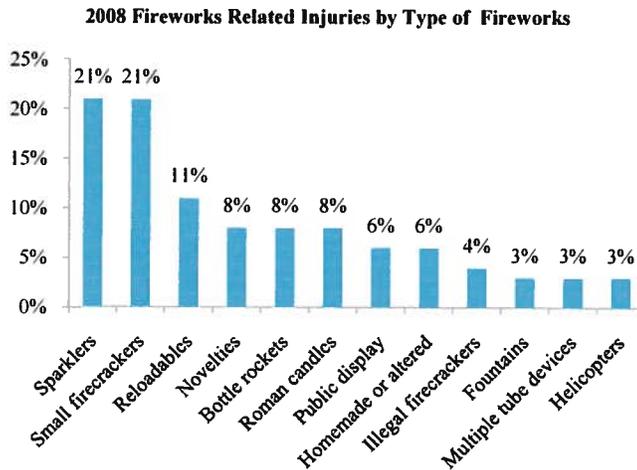
2008 Fireworks-Related Injuries, by Part of Body



FACT: Males accounted for **62%** of fireworks injuries in 2008.

Characteristics of Fireworks Injuries Continued

- 57% of the 2008 fireworks injuries were burns, while 20% were contusions and lacerations.
- Two of five (40%) people injured by fireworks were under the age of 15.
- The risk of fireworks injury was highest for teens ages 15-19 and children 5-9, both with at least 2-1/2 times the risk for the general population.
- Sparklers, fountains, and novelties alone accounted for 32% of the emergency room fireworks injuries in 2008.



FACT: 84% of the fireworks injuries treated in hospital emergency rooms involved fireworks that Federal regulations permit consumers to use.

Risk of Private Fireworks Use

The risk of fire death relative to time used shows fireworks as the riskiest consumer product.

- The risk that someone will die from fire when fireworks are being used is higher relative to exposure time than the risk of fire death when a cigarette is being smoked.
- The risks with fireworks are **not** limited to displays, public or private. Risks also exist wherever fireworks are **manufactured, transported, stored or sold**.
- **“Safe and sane”** fireworks are neither. Fireworks and sparklers are designed to explode or throw off showers of hot sparks. Temperatures may exceed 1200°F.



FACT: The following five states have banned access by the public to all fireworks: **Delaware, Massachusetts, New Jersey and New York**

NFPA encourages people to enjoy public displays of fireworks that comply with NFPA 1123. NFPA is strongly opposed to any consumer use of fireworks.

Senate Engrossed House Bill

FILED

KEN BENNETT

SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 286

HOUSE BILL 2246

AN ACT

AMENDING SECTIONS 36-1601, 36-1605 AND 36-1606, ARIZONA REVISED STATUTES;
AMENDING TITLE 36, CHAPTER 13, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTIONS 36-1609 AND 36-1610; AMENDING SECTION 37-623.02, ARIZONA REVISED
STATUTES; RELATING TO FIREWORKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-1601, Arizona Revised Statutes, is amended to
3 read:

4 36-1601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "CONSUMER FIREWORK" MEANS SMALL FIREWORK DEVICES THAT CONTAIN
7 RESTRICTED AMOUNTS OF PYROTECHNIC COMPOSITION DESIGNED PRIMARILY TO PRODUCE
8 VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION AND THAT COMPLY WITH THE
9 CONSTRUCTION, CHEMICAL COMPOSITION AND LABELING REGULATIONS PRESCRIBED IN
10 49 CODE OF FEDERAL REGULATIONS PART 172 AND 173, REGULATIONS OF THE UNITED
11 STATES CONSUMER PRODUCT SAFETY COMMISSION AS PRESCRIBED IN 16 CODE OF FEDERAL
12 REGULATIONS PARTS 1500 AND 1507 AND THE AMERICAN PYROTECHNICS ASSOCIATION
13 STANDARD 87-1, STANDARD FOR CONSTRUCTION AND APPROVAL FOR TRANSPORTATION OF
14 FIREWORKS, NOVELTIES AND THEATRICAL PYROTECHNICS, DECEMBER 1, 2001 VERSION.

15 2. "DISPLAY FIREWORK" MEANS LARGE FIREWORK DEVICES THAT ARE EXPLOSIVE
16 MATERIALS INTENDED FOR USE IN FIREWORKS DISPLAYS AND DESIGNED TO PRODUCE
17 VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION, DEFLAGRATION OR DETONATION AS
18 PRESCRIBED BY 49 CODE OF FEDERAL REGULATIONS PART 172, REGULATIONS OF THE
19 UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION AS PRESCRIBED IN 16 CODE OF
20 FEDERAL REGULATIONS PARTS 1500 AND 1507 AND THE AMERICAN PYROTECHNICS
21 ASSOCIATION STANDARD 87-1, STANDARD FOR CONSTRUCTION AND APPROVAL FOR
22 TRANSPORTATION OF FIREWORKS, NOVELTIES AND THEATRICAL PYROTECHNICS, DECEMBER
23 1, 2001 VERSION.

24 ~~1-~~ 3. "Fireworks":

25 (a) Means any combustible or explosive composition, substance or
26 combination of substances, or any article prepared for the purpose of
27 producing a visible or audible effect by combustion, explosion, deflagration
28 or detonation, ~~and toy cannons in which explosives are used, the type of~~
29 ~~balloon which requires fire underneath to propel it, firecrackers, torpedoes,~~
30 ~~skyrockets, roman candles, daygo bombs, sparklers or other fireworks of like~~
31 ~~construction, fireworks containing any explosive or combustible compound, and~~
32 ~~any tablet or other device containing an explosive substance THAT IS A~~
33 CONSUMER FIREWORK OR DISPLAY FIREWORK.

34 (b) Does not include:

35 (i) Toy pistols, toy canes, toy guns or other devices in which paper
36 caps containing not more than twenty-five hundredths grains of explosive
37 compound are used if constructed so that the hand cannot come in contact with
38 the cap when in place for the explosion.

39 (ii) Toy pistol paper caps that contain less than twenty-hundredths
40 grains of explosive mixture, or fixed ammunition or primers therefor.

41 (iii) Federally deregulated novelty items THAT ARE known as snappers,
42 snap caps, party poppers, ~~or~~ glow worms, SNAKES, TOY SMOKE DEVICES AND
43 SPARKLERS ~~that contain less than twenty-five hundredths grains of explosive~~
44 ~~compound.~~

1 2- 4. "Governing body" means THE board of supervisors of a county as
2 to the area within the county but without the corporate limits of an
3 incorporated city or town,— and means THE governing body of an incorporated
4 city or town as to the area within its corporate limits.

5 5. "PERMISSIBLE CONSUMER FIREWORKS":

6 (a) MEANS THE FOLLOWING TYPES OF CONSUMER FIREWORKS AS DEFINED BY THE
7 AMERICAN PYROTECHNICS ASSOCIATION STANDARD 87-1, STANDARD FOR CONSTRUCTION
8 AND APPROVAL FOR TRANSPORTATION OF FIREWORKS, NOVELTIES AND THEATRICAL
9 PYROTECHNICS, DECEMBER 1, 2001 VERSION:

10 (i) GROUND AND HAND-HELD SPARKLING DEVICES.

11 (ii) CYLINDRICAL FOUNTAINS.

12 (iii) CONE FOUNTAINS.

13 (iv) ILLUMINATING TORCHES.

14 (v) WHEELS.

15 (vi) GROUND SPINNERS.

16 (vii) FLITTER SPARKLERS.

17 (viii) TOY SMOKE DEVICES.

18 (ix) WIRE SPARKLERS OR DIPPED STICKS.

19 (x) MULTIPLE TUBE FIREWORKS DEVICES AND PYROTECHNIC ARTICLES.

20 (b) DOES NOT INCLUDE ANYTHING THAT IS DESIGNED OR INTENDED TO RISE
21 INTO THE AIR AND EXPLODE OR TO DETONATE IN THE AIR OR TO FLY ABOVE THE
22 GROUND, INCLUDING, FOR EXAMPLE, FIREWORK ITEMS COMMONLY KNOWN AS BOTTLE
23 ROCKETS, SKY ROCKETS, MISSILE-TYPE ROCKETS, HELICOPTERS, TORPEDOES, ROMAN
24 CANDLES AND JUMPING JACKS.

25 3- 6. "Person" includes AN individual, partnership, firm or
26 corporation.

27 Sec. 2. Section 36-1605, Arizona Revised Statutes, is amended to read:
28 36-1605. Permitted uses

29 This article ~~shall not be construed to~~ DOES NOT prohibit:

30 1. The sale at wholesale by a resident wholesaler, dealer or jobber of
31 fireworks ~~which~~ THAT are not prohibited by this article.

32 2. The sale of fireworks ~~which~~ THAT are to be and are shipped directly
33 out of the state.

34 3. The use of fireworks by railroads or other transportation agencies
35 for signal purposes or illumination.

36 4. The sale or use of explosives for blasting or other legitimate
37 industrial purposes.

38 5. The use of fireworks or explosives, or both, by farmers, ranchers
39 and their employees, and by state and federal employees who manage wildlife
40 resources, to rally, drive or otherwise disperse concentrations of wildlife
41 for the purpose of protecting property or wildlife.

42 6. THE SALE OF PERMISSIBLE CONSUMER FIREWORKS BY A RETAIL
43 ESTABLISHMENT IF THE RETAIL ESTABLISHMENT COMPLIES WITH THE RULES ADOPTED
44 PURSUANT TO SECTION 36-1609.

1 7. THE USE OF PERMISSIBLE CONSUMER FIREWORKS BY THE GENERAL PUBLIC,
2 UNLESS THE USE IS PROHIBITED BY A GOVERNING BODY OF AN INCORPORATED CITY OR
3 TOWN.

4 Sec. 3. Section 36-1606, Arizona Revised Statutes, is amended to read:
5 36-1606. Consumer fireworks regulation; state preemption;
6 further regulation of fireworks by local
7 jurisdiction

8 THE SALE AND USE OF PERMISSIBLE CONSUMER FIREWORKS ARE OF STATEWIDE
9 CONCERN. THE REGULATION OF PERMISSIBLE CONSUMER FIREWORKS PURSUANT TO THIS
10 ARTICLE AND THEIR USE IS NOT SUBJECT TO FURTHER REGULATION BY A GOVERNING
11 BODY, EXCEPT THAT AN INCORPORATED CITY OR TOWN MAY REGULATE THE USE OF
12 PERMISSIBLE CONSUMER FIREWORKS WITHIN ITS CORPORATE LIMITS AND A COUNTY MAY
13 REGULATE THE USE OF PERMISSIBLE CONSUMER FIREWORKS WITHIN THE UNINCORPORATED
14 AREAS OF THE COUNTY DURING TIMES WHEN THERE IS A REASONABLE RISK OF WILDFIRES
15 IN THE IMMEDIATE COUNTY. This article ~~shall not be construed to~~ DOES NOT
16 prohibit the imposition by ~~municipal~~ ordinance of further regulations and
17 prohibitions ~~upon~~ ON the sale, use and possession of fireworks ~~within an~~
18 ~~incorporated city or town~~ OTHER THAN PERMISSIBLE CONSUMER FIREWORKS BY A
19 GOVERNING BODY. ~~No such city or town~~ A GOVERNING BODY shall NOT permit or
20 authorize the sale, use or possession of any fireworks in violation of this
21 article.

22 Sec. 4. Title 36, chapter 13, article 1, Arizona Revised Statutes, is
23 amended by adding sections 36-1609 and 36-1610, to read:

24 36-1609. State fire marshal; adoption of code; sale of
25 permissible consumer fireworks

26 A. THE STATE FIRE MARSHAL SHALL ADOPT RULES PURSUANT TO TITLE 41,
27 CHAPTER 6 TO CARRY OUT THIS ARTICLE, INCLUDING A RULE THAT ADOPTS THE
28 NATIONAL FIRE PROTECTION ASSOCIATION CODE FOR THE MANUFACTURE,
29 TRANSPORTATION, STORAGE AND RETAIL SALES OF FIREWORKS AND PYROTECHNIC
30 ARTICLES, 2006 EDITION. A PERSON WHO SELLS PERMISSIBLE CONSUMER FIREWORKS TO
31 THE PUBLIC SHALL COMPLY WITH THOSE RULES RELATING TO THE STORAGE OF CONSUMER
32 FIREWORKS AND RELATING TO THE RETAIL SALES OF CONSUMER FIREWORKS BEFORE
33 SELLING PERMISSIBLE CONSUMER FIREWORKS TO THE PUBLIC.

34 B. A PERSON SHALL NOT SELL OR PERMIT OR AUTHORIZE THE SALE OF
35 PERMISSIBLE CONSUMER FIREWORKS TO A PERSON WHO IS UNDER SIXTEEN YEARS OF AGE.

36 36-1610. Prohibited use of fireworks on state land; civil
37 penalty

38 A. THE STATE FIRE MARSHAL MAY IMPOSE A CIVIL PENALTY OF ONE THOUSAND
39 DOLLARS FOR EACH INCIDENT OF PROHIBITED USE OF FIREWORKS ON STATE LAND IN
40 VIOLATION OF THIS ARTICLE.

41 B. THE STATE FIRE MARSHAL SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146
42 AND 35-147, CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION IN THE FIRE
43 SUPPRESSION REVOLVING FUND ESTABLISHED BY SECTION 37-623.02.

1 Sec. 5. Section 37-623.02, Arizona Revised Statutes, is amended to
2 read:

3 37-623.02. Emergencies; prohibiting fireworks; liabilities and
4 expenses; fire suppression revolving fund

5 A. On request of the state forester, the governor may authorize the
6 state forester to incur liabilities for suppressing wildland fires and
7 responding to other unplanned all risk activities from unrestricted monies in
8 the state general fund whether or not the legislature is in session.

9 B. The state forester has the authority to prohibit the use of
10 fireworks during times of high fire potential in the unincorporated areas of
11 the state.

12 C. The state forester or the state forester's designee shall review
13 all liabilities incurred and expenditures made under this section and shall
14 report the expenditures to the department of administration for audit
15 according to department of administration rules. The state forester shall
16 transmit a copy of the report to the state emergency council.

17 D. Liabilities incurred under this section are subject to the
18 following limitations:

19 1. Wildland fire suppression or other unplanned all risk emergency
20 liabilities shall not exceed three million dollars of state general fund
21 monies pursuant to subsection A of this section in a fiscal year for costs
22 associated with suppressing wildland fires, supporting other unplanned all
23 risk activities such as fire, flood, earthquake, wind and hazardous material
24 responses and preparing for periods of extreme fire danger and pre-position
25 equipment and other fire suppression resources to provide for enhanced
26 initial attack on wildland fires. The state forester shall not incur
27 nonreimbursable liabilities for support of nonfire all risk activities. The
28 governor shall determine when periods of extreme fire danger exist and must
29 approve any expenditure for pre-positioning activities.

30 2. If the funding authorization in paragraph 1 of this subsection is
31 exhausted, or if the nonreimbursable liabilities incurred exceed the cash
32 balance of the fire suppression revolving fund, the state forester shall not
33 incur additional liabilities without the consent of a majority of the state
34 emergency council as authorized by section 35-192.

35 E. The state forester shall process and pay claims for reimbursement
36 for wildland fire suppression services as follows:

37 1. Except as provided by paragraph 2 of this subsection, within thirty
38 days after receiving a complete and correct claim for wildland fire
39 suppression services, the state forester shall pay the claim from available
40 monies that have not been committed to the payment of other wildfire
41 expenses.

42 2. Within thirty days after receiving a complete and correct claim for
43 wildland fire suppression services on federal lands, the state forester shall
44 complete the processing of the claim and forward the claim to the appropriate
45 federal agency.

1 3. For any valid claim other than for federal reimbursement, if there
2 is insufficient funding in the fire suppression revolving fund, the holder of
3 the unpaid claim shall be issued a certificate pursuant to section 35-189.

4 F. No later than December 31 of each year the state forester shall
5 submit a report to the joint legislative budget committee and the governor
6 detailing the specific uses of all monies authorized to be expended from the
7 fire suppression revolving fund and any additional monies authorized by the
8 governor to prepare for periods of extreme fire danger and pre-position
9 equipment and other fire suppression resources to provide for enhanced
10 initial attack on wildland fires.

11 G. Monies received for suppressing wildland fires, pre-positioning
12 equipment and firefighting resources and other unplanned all risk activities
13 may be used for the purposes of section 37-623 and this section.

14 H. The state forester shall adopt rules for administering the wildland
15 fire suppression monies authorized under this section, subject to approval of
16 the governor.

17 I. The state forester may require reimbursement from cities and other
18 political subdivisions of this state and state and federal agencies for costs
19 incurred in the suppression of wildland fires, pre-suppression or unplanned
20 all risk activities. Reimbursement shall be based on the terms and
21 conditions in cooperative agreements, land ownership or negligence. The
22 state forester may require reimbursement from individuals or businesses only
23 for costs incurred in the suppression of wildland fires or unplanned all risk
24 activities caused by their negligence or criminal acts.

25 J. ~~A-~~ THE fire suppression revolving fund is established ~~for deposit~~
26 ~~of~~ CONSISTING OF CIVIL PENALTIES COLLECTED PURSUANT TO SECTION 36-1610 AND
27 monies received by the state forester for wildland fire suppression and
28 pre-positioning equipment and resources and for payment for activities
29 related to combating wildland fires and supporting other unplanned all risk
30 activities such as fire, flood, earthquake, wind and hazardous material
31 responses. The state forester shall not incur nonreimbursable liabilities
32 for support of nonfire all risk activities. The state forester shall
33 administer the fund, and all monies received for these activities shall be
34 deposited, pursuant to sections 35-146 and 35-147, in the fund. Monies in
35 the fire suppression revolving fund are continuously appropriated to the
36 state forester, except that if the unobligated balance of the fund exceeds
37 two million dollars at the end of any calendar year, the excess shall be
38 transferred to the state general fund. Monies in the fire suppression
39 revolving fund are otherwise exempt from the provisions of section 35-190
40 relating to lapsing of appropriations.

41 Sec. 6. Effective date

42 This act is effective from and after November 30, 2010.

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE [CITY/TOWN] OF _____, ARIZONA, AMENDING THE CITY/TOWN CODE CHAPTER _____, “_____” BY ADDING REGULATIONS FOR THE USE OF FIREWORKS.

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the [City/Town] of _____ and its residents, and

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial and industrial dwellings,

WHEREAS, due to the [dry/desert like conditions, risk of wildfires,] and terrain of the community there is a danger of fire with the use of consumer fireworks in the community that can cause significant harm to the community and its residents.

NOW THEREFORE, BE IT ORDAINED by the Council of the City/Town of _____, Arizona, as follows:

Section 1. Article I of Chapter _____, “_____” of the City/Town Code is hereby added:

ARTICLE I. FIREWORKS.

Sec. 1-1 Definitions.

(A) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Consumer firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.
- (2) *Display firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.
- (3) *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601.

- (4) *Novelty items* means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statute 36-1601.
- (5) *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the [City/Town] even where the use of those items has been prohibited.
- (6) *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the [Fire Marshall/Fire Chief] or his designee.

Sec. 1-2 Fireworks prohibited; exceptions.

(A) The use, discharge or ignition of fireworks within the [City/Town] is prohibited. [If no exceptions are listed, then the municipality is banning the use of all fireworks, however, exceptions can be made for limited uses such as:] except as provided for in this section: [The use, discharge or ignition of fireworks within the City/Town is limited to (i.e. Fourth of July and New Year's Eve) between the hours of (i.e. 4:00 p.m. and 10:00 p.m.) or [The use, discharge or ignition of fireworks is prohibited on all public property including in all public parks and public right of way] or [The use, discharge or ignition of fireworks is prohibited on days specified by the Fire Marshall/Chief as presenting a high fire danger as identified by (i.e. posting on the City/Town website)] or [Permissible consumer fireworks may only be used with a permit issued by the [Fire Marshal/Fire Chief], or his designee. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The [Fire Marshal/Fire Chief] has authority to impose conditions on any permits granted].

(B) Nothing in this section or article shall be construed to prohibit the use, discharge or ignition of novelty items or the occurrence of a supervised public display of fireworks.

(C) Permits may be granted by the [Fire Marshal/Fire Chief] or designee for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The [Fire Marshal/Fire Chief] has authority to impose conditions on any permits granted.

(D) Failure to comply with any permit requirements issued by the [Fire Marshal/Fire Chief] is a [civil/criminal] offense punishable by [flat civil fine for each violation or schedule of progressive fines for multiple permit violations].

Sec. 1-3 Sale of Fireworks.

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age.

(B) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law.

Sec. 1-4 Posting of signs by persons engaged in the sale of fireworks; civil penalty.

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

- (1) The use of fireworks, except novelty items as defined by [City/Town] Code, including permissible consumer fireworks is prohibited.
- (2) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

(B) Signs required under this section shall be placed at each cash register and in each area where fireworks are displayed for sale.

(C) The Fire [Marshall/Chief] or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be posted on the [City's/Town's] website and filed with the Clerk's office.

(D) Failure to comply with subparts A and B of this section is a [civil/criminal] offense punishable by [civil fine of \$_____]

Sec. 1-5. Authority to enforce violations of this article; means of enforcement.

(A) The [Fire Chief/Fire Marshal] or designee, a [City/Town] police officer or marshal, or the [City/Town Attorney] may issue civil complaints to enforce violations of this article designated as civil offenses.

(B) Any person authorized pursuant to this section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil or criminal complaint.

(C) A [City/Town] police officer or marshal or the [City/Town Attorney] may issue criminal complaints to enforce this article.

Sec. 1-6 Liability for emergency responses related to use of fireworks; definitions

(A) A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this article is prima facie evidence of liability under this section.

(B) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subpart A of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The person's liability for the expense of an emergency response shall not exceed [Dollar Amount] for a single incident. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

(C) For the purposes of this section:

- (1) "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.
- (2) "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

Sec. 1-7. Penalty.

The penalty for violating any prohibition or requirement imposed by this article is a class three misdemeanor unless another penalty is specifically provided for.

PASSED AND ADOPTED by the [City/Town] Council of _____ this _____ day of _____, 2010.

ATTEST:

CITY/TOWN OF _____, an Arizona municipal corporation

" _____ "
City/Town Clerk

" _____ "
Mayor

APPROVED AS TO FORM:

" _____ "
City/Town Attorney

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: October 12, 2010

Subject: Discussion Regarding Proposed Amendments to the Zoning Ordinance, Section 304 (Design Review) and Section 404.H. Pertaining to Height Regulations.

Department: Community Development

From: Charlie Scully, AICP, Long-Range Planner

REQUESTED ACTION

Discussion Item. Provide direction to staff regarding proposed ordinance amendments.

BACKGROUND

The Planning and Zoning Commission considered the proposed amendments at their September 9, 2010 meeting and recommended approval with several changes as included. The proposed amendments to Section 404 (General Provisions) and Section 304 (Design Review) of the Cottonwood Zoning Ordinance are intended to update the height regulations for various types of structures which are not covered by the existing ordinance. It is in the interest of the City of Cottonwood to provide regulations for the height of various types of structures so as to protect scenic views, protect property values and protect the public health, safety and general welfare. The proposed amendments do not apply to any specific development proposal at this time.

Existing Height Regulations:

Height regulations for buildings and structures are found in several sections of the Zoning Ordinance:

- Each Zoning District section includes maximum building height limits under the property development standards.
- Section 404. (General Provisions) H. Building Height Requirements, lists exceptions and includes a reference to residential accessory structures.
- Also, Section 304. Design Review includes consideration of height in terms of scale and placement on a case by case basis.

JUSTIFICATION/BENEFITS/ISSUES

Analysis of Specific Standards for Height:

The following section includes review of proposed amendments to the Zoning Ordinance, Section 404. (General Provisions) regarding Height Regulations.

- a. **Architectural Embellishments:** *spires, cupolas, chimneys, or similar architectural or ornamental structures.*
 - Allows certain rooftop and building features as a matter of right when considered through the Design Review process as part of the overall building design.
- b. **Non-Habitable Rooftop Structures:** *flues, vents, poles, beacons, mechanical towers, or other similar non-habitable structures extending above the highest point of the roof.*
 - Also allows small exceptions as a matter of right where integrated into the overall design.
- c. **Industrial Structures:** *chimneys, derricks, conveyors, cooling towers, elevator bulkheads, fire towers, storage tanks, water towers, or similar structures.*
 - Allows relatively tall structure where part of an approved use in Industrial District.
- d. **Monuments, Memorials, Statues:** *Freestanding monuments, memorials, symbolic representations, statues, art installations or similar structures.*
 - Monuments, memorials and art installations would be required to be designed in a manner that recognizes the location and the surrounding context. For commercial development, monuments and statues would be limited to the human-scale. The details of a monument or statue, including its placement and scale, would be designed to recognize the specific location in which it is placed. The purpose of limiting the height would be to ensure the object or installation fits the scale of the development and does not adversely impact the aesthetic quality of surrounding properties. These types of features can be positive amenities that enhance a development site and should be allowed subject to meeting certain standards to ensure they fits into the context and do not adversely impact other properties or streets.
- e. **Flags and Flagpoles:** *Political and non-political flags.*
 - Flagpole height is intended to ensure the fall zone is within the subject property.
- f. **Wireless Communication Facilities:** *cell towers, equipment arrays.*
 - The proposed standards in this ordinance are intended to cover maximum heights so as to protect both neighborhood quality and scenic view resources. Establishing more detailed wireless facility guidelines to cover additional site location issues should be considered at some point but for now this approach covers the height issue in terms of neighborhood scale and scenic resources.

g. **Solar, Wind and Energy Devices:**

- Local and personal energy production devices are becoming more cost-effective, readily available and common. Regulations are intended to ensure such devices and facilities allow reasonable use of property without adversely impact surrounding properties:

1) **Solar Devices:** The proposal would make it easier to install solar panels on roofs by allowing certain height exceptions as a right.

2) **Wind Energy Devices:** There is a lot of debate and disagreement regarding the impacts of the noise from wind turbines. Some reports indicate there are minimal problems with turbine noise. Other reports indicate that wind devices can become extremely disruptive to surrounding properties. Proposed regulations are intended to address both visual and aesthetic issues, as well as proximity to adjacent uses so as to address potential noise impacts. Until such time as assurances can be provided regarding turbine noise, the proposal is to limit such devices to larger properties so as to provide adequate setback. Exceptions could be made based on verifiable third party documentation.

h. **Airport Height Restrictions:** Development around the airport is already subject to certain height restrictions based on proximity to the runway. This section identifies those rules for the convenience of developers and reviewers.

REVIEWED BY:

City Manager: _____



City Attorney: _____



ATTACHMENTS

- **Proposed Ordinance Amendments to Section 304. (Design Review) and Section 404. H. (General Provisions) Height Regulations.**
- **Existing Section 404. H. Height Regulations.**

**DRAFT AMENDMENTS TO THE COTTONWOOD ZONING ORDINANCE
SECTION 404. (GENERAL PROVISIONS):**

DELETE existing Section 404. (General Provisions) H. Building Height Requirements., and **REPLACE** in its entirety with new Section H. Height Regulations.

H. HEIGHT REGULATIONS.

- 1. Purpose:** Height regulations for buildings and structures are established for the City of Cottonwood to protect scenic view resources, promote compatible development and ensure development occurs in a manner that protects the health, safety and general welfare of the citizens of Cottonwood.
- 2. Applicability:** No building or structure shall be erected, reconstructed or structurally altered to exceed the height limit designated for the Zoning District in which such building or structure is located, except as otherwise specifically provided in this Section, and provided such exceptions are in conformance with all other applicable City codes, ordinances, and regulations.
- 3. Procedures:** In addition to certain exceptions to the height regulations which may be permitted as a matter of right, the following regulations shall apply:
 - a. Administrative Decisions:** Exceptions to height requirements may be approved administratively, as per the criteria and procedures described in this Ordinance, including as applies to Design Review.
 - b. Design Review:** Exceptions to height requirements may be approved through the Design Review process, as per the criteria and procedures described in this Ordinance.
 - c. Planned Area Development Zoning:** The allowable height of buildings or structures may be modified through the Master Development Plan, as approved through the PAD Zoning process.
- 4. Architectural Embellishments:** Except as described for Industrial Zoning Districts, the height limitations for each Zoning District may be exceeded by no more than ten (10) feet for spires, cupolas, domes, pediments or similar architectural or ornamental structures integrated directly into the design of the building, provided such elements occupy no more than ten percent (10%) of such roof area in total measured in plan view and provided the design is subject to review and approval through the Design Review process.
- 5. Non-Habitable Rooftop Structures:** Except as described for Industrial Zoning Districts, the height limitations for each Zoning District may be exceeded by no more than ten (10) feet for flues, vents, poles, beacons, enclosed mechanical towers, or other similar non-habitable structures extending above the roof of a building provided such structures occupy no more than ten percent (10%) of such roof area in total measured in plan view.

- 6. Industrial Structures: In Industrial Zoning Districts, chimneys, derricks, conveyors, cooling towers, elevator bulkheads, fire towers, storage tanks, water towers, or similar accessory structures necessary and integral to the industrial process may extend to a height of sixty (60) feet above grade, provided that such structures shall be so located and constructed that if it should collapse, its reclining length would still be contained on the property on which it was constructed. The Planning and Zoning Commission may approve additional height for accessory industrial structures where it is determined that the location does not adversely impact scenic views from other properties and provided it meets safety standards and is not in conflict with any other codes, ordinances and regulations of the City of Cottonwood.**
- 7. Monuments, Memorials, and Statues: Height limits for freestanding or attached monuments, memorials, symbolic representations, statues, art installations or similar structures shall be subject to the following:**

 - a. Review and approval through the Design Review process which shall consider the height and size of a proposed structure in terms of scale, proportion and relationship to the surrounding context, including buildings, site plan layout, landscape features, streets and pedestrian areas, and which may limit such height to lower than the maximum allowed by this Section based on the specific considerations of the site so as to achieve an integrated design for the development;**
 - b. Shall not exceed 25 feet in height above the prevailing finished grade; and**
 - c. All such structures or installations must meet the setback standards for the underlying zoning district.**
- 8. Flagpoles: A flagpole shall be located so that if it should collapse, its reclining length would be contained on the property on which it was installed.**
- 9. Wireless Communication Facilities: So as to ensure the protection of scenic view resources in and around Cottonwood, which otherwise define a significant and valued aspect of the character of the city, the following regulations shall apply to new and expanded wireless communication facilities:**

 - a. The regulations contained in this Ordinance are intended to be in compliance with the Federal Telecommunications Act of 1996, which shall supersede any regulations contained herein;**
 - b. The overall height of any wireless communications structure, antenna and/or antenna array shall not be greater than a maximum of sixty (60) feet from the ground to the highest physical point on the structure;**
 - c. Encourage the location and collocation of wireless communications equipment on existing structures thereby minimizing adverse visual, aesthetic and public safety impacts, and effects upon the natural environment and wildlife, and to reduce the need for additional antenna-supporting structures;**

- d. **Wireless communication facilities shall be discouraged within any Historic District or in proximity to any historic properties in the City of Cottonwood unless designed in a manner that avoids adversely impacting such historic resources through the use of design techniques that minimize or hide the facility; and**
- e. **Such structure shall be located and constructed so that if it should collapse, its reclining length would be contained on the property on which it was installed.**

10. Solar, Wind and Energy Devices:

- a. **Solar Devices: Solar energy equipment mounted on rooftops may exceed the maximum allowable height for the zoning district by up to five (5) feet.**
- b. **Wind Energy Devices: In Industrial, Agricultural Residential or Community Facility zoning districts with a minimum five (5) acre site no more than one accessory wind energy device per parcel or development site may be installed on a freestanding pole or support structure, not to exceed 60' in height at its highest point above grade and subject to obtaining a building permit. Such structure shall be located and constructed so that if it should collapse, its reclining length would be contained on the property on which it was installed.**

11. Airport Height Restrictions:

- a. **No building or structure shall be erected, altered, or maintained within any existing or proposed portions of Cottonwood Airport property, Cottonwood Industrial Airpark or any related airspace that has a height in excess of the height limitations established by that zoning district or as per any special restrictions for such established by the FAA, the Cottonwood Airport Master Plan or any other related regulations, including Building Restriction Lines or Runway Protection Zones, so as to protect the safety and integrity of the airport functions.**

DELETE existing section to Section 404. (General Provisions) H. 3. Residential Accessory Buildings; and

ADD new Sub-Section (7) to Section 404. (General Provisions) G. 6. c. "Detached Accessory Buildings in Residential Zones":

(7) Residential Accessory Buildings: No building which is accessory to any residential building shall be erected to a height greater than one (1) story or sixteen (16) feet to the peak or highest point of the roof.

The following amendments to Section 304. Design Review provide a manner to allow height exceptions subject to review so as to ensure the structure or feature is integrated into the overall development context:

ADD Amendments "n.," "o.," "p.," and "q." to Section 304. Design Review, Sub-Section E. Criteria, as follows:

n. Architectural Embellishments: The design and placement of architectural embellishments shall be subject to the standards for Design Review as described in Section 404. H. "Building and Structure Height Regulations."

o. Non-Habitable Rooftop Structures: The design and placement of non-habitable rooftop structures shall be subject to the standards for Design Review as described in Section 404. H. "Building and Structure Height Regulations."

p. Monuments, Memorials and Statues: The design and placement of freestanding or attached monuments, memorials, statues, art installations or similar structures shall be subject to the standards for Design Review as described in Section 404. H. "Building and Structure Height Regulations."

q. Wireless Communications Facilities: The design and placement of wireless communication facilities shall be subject to the standards for Design Review as described in Section 404. H. "Building and Structure Height Regulations."

**EXISTING REGULATIONS -
COTTONWOOD ZONING ORDINANCE
SECTION 404. (GENERAL PROVISIONS)**

H. BUILDING HEIGHT REQUIREMENTS.

1. Application: No building shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the zone in which such building is located, except as otherwise specifically provided.
2. Exceptions: Height regulations established elsewhere in this Ordinance shall not apply:
 - a. In any district, to church spires, belfries, cupolas and domes not for human occupancy; monuments; water towers; flagpoles; provided that such structures shall be so located and constructed that if it should collapse, its reclining length would still be contained on the property on which it was constructed.
 - b. In any district, to noncommercial radio or television antennas.
 - c. In industrial districts, to chimneys, smokestacks, derricks, conveyors, grain elevators or similar structures wherein the industrial process involved customarily require a height greater than otherwise permitted, provided that such structures shall be so located and constructed that if it should collapse, its reclining length would still be contained on the property on which it was constructed.
 - d. In any district to solar heating or cooling apparatus, the plans of which have been approved by the Zoning Administrator.
3. Residential Accessory Buildings: No building which is accessory to any residential building shall be erected to a height greater than one (1) story or sixteen (16) feet to the peak or highest point of the roof, except as otherwise may be permitted by a conditional use permit.