

CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

WORK SESSION
October 11, 2010
6:00 PM

CALL TO ORDER BY MAYOR ROGERS

1 ROLL CALL BY THE CITY CLERK

2 FIREWORKS ORDINANCE

City Council will receive information and give direction to staff regarding the development of a fireworks ordinance for the City of Avondale. For information, discussion and direction.

3 ANNEXATION REQUEST - WIGWAM CREEK SOUTH ANNEXATION

A group of Wigwam Creek South residents have requested that the City of Avondale consider annexing Wigwam Creek South. Staff will present the estimated costs and revenues associated with annexing this residential community. This item is for discussion and policy direction.

4 UPDATE ON THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II MS4 PERMIT

Staff will update the Mayor and City Council on the status of the NPDES Phase II MS4 Permit and the implementation of the Stormwater Management Plan (SWMP). For information, discussion and direction only.

5 ADJOURNMENT

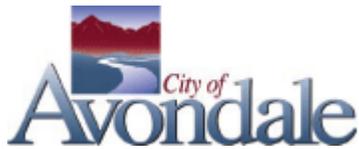
Respectfully submitted,

A handwritten signature in cursive script that reads "Carmen Martinez".

Carmen Martinez
City Clerk

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, o con necesidad de impresión grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta del Concejo.



CITY COUNCIL REPORT

SUBJECT:
Fireworks Ordinance

MEETING DATE:
October 11, 2010

TO: Mayor and Council
FROM: Paul Adams, Fire Chief (623) 333-6100
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will receive input from the Mayor and City Council with respect to development of a fireworks ordinance for the City of Avondale.

BACKGROUND:

To this point the sale or use of fireworks, with the exception of novelty items, have been illegal in the State of Arizona. However, in the last legislative session, HB-2246 (copy attached), which will allow the sale and use of certain consumer fireworks, was approved by the legislature and signed into law by the Governor. The law becomes effective on December 1, 2010.

DISCUSSION:

HB-2246 allows the sale and use of state-approved, non-aerial consumer fireworks as defined by the 2001 version of American Pyrotechnics Association Standard 87-1. The bill continues to prohibit the sale or use of firecrackers, items that report and aerial fireworks except by a qualified pyrotechnic expert (as determined by the local governing body). The sale of fireworks is limited to persons 16 years of age and older.

With respect to local ordinances HB-2246 states that "the regulation of permissible consumer fireworks pursuant to this article and their use is not subject to further regulation by a governing body, except that an incorporated city or town may regulate the use of permissible consumer fireworks within its corporate limits ..." - so Avondale would be able to regulate the use of fireworks but can in no way restrict the sale of permitted consumer fireworks within our city limits other than the restrictions permitted by the 2006 edition of NFPA 1124 which is required to be adopted by the State through the State Fire Marshal's office.

With that in mind Avondale has three basic options that could be pursued:
Option 1 - do nothing and allow unrestricted use within the City.

Option 2 - pass an ordinance prohibiting the use of fireworks at any time or place within the City. In this case the sale would be allowed but use would not.

Option 3 - adopt an ordinance that allows use during certain periods (July 4 and December 31 for example) and/or, at a minimum if there is not a desire to restrict use, creates a "stupid fireworks user" provision that provides penalties for injury, damage or emergency service response caused by an individual's misuse of fireworks. In this case the focus would be on consumer education relating to fireworks safety and proper use.

Option 2 is the direction that a majority of valley cities have indicated that they would pursue. A survey of fire code officials conducted by the automatic aid system with respect to their intent relating

a fireworks ordinance within their jurisdiction is attached. At this point only Goodyear has actually adopted an ordinance prohibiting use but other cities such as Scottsdale and Fountain Hills are in the process of developing a similar ordinance for consideration by their respective governing bodies. The League of Arizona Cities and Towns has developed a model ordinance with a variety of options (attached) that is available for local jurisdictions to use as a starting point should they wish to restrict fireworks use in some manner.

It is staff's opinion that an ordinance restricting use of fireworks would be very difficult to enforce and could result in a significant investment of time and manpower which could have a negative impact on other more critical duties. Since the possession of fireworks is permitted the enforcement officer would actually have to observe someone using fireworks in order for a citation to be issued.

There is no doubt that fireworks can be dangerous if not handled properly - as is the case with any explosive or incendiary device, including matches. A sparkler for example can burn at a temperature in excess of 1200 degrees which will easily ignite clothing and most other natural products (wood, paper, etc.). While the sale of fireworks creates the opportunity for additional sales tax revenue and provides a new entertainment opportunity for residents there are negative impacts that should be considered as well. The city would be presented with the potential for fireworks related fires, injuries, vandalism, crime related to fireworks stands and potential noise and animal complaints. While it is true that the majority of fireworks related fires and injuries are attributed to misuse that misuse accounted for an estimated 22,500 fires, 40 injuries, 1 death and \$42 million in property damage nationally in 2008 according to the National Fire Protection Association (NFPA).

Staff is seeking Council direction as to whether or not an ordinance restricting fireworks use within the city limits should be developed and, if so, to what level and with what specific provisions.

RECOMMENDATION:

It is staff's recommendation that the use of consumer fireworks, as defined by HB-2246, not be restricted within the City of Avondale at this time but that an ordinance establishing penalties for misuse of fireworks be developed.

This item is for information, discussion and Council direction only. No action is required.

ATTACHMENTS:

Click to download

- [📄 HB-2246](#)
- [📄 League Implementation Guidelines](#)
- [📄 Valley Fireworks Survey](#)

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

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.

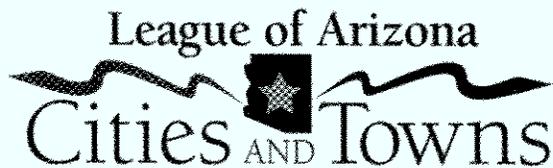
14 H. The state forester shall adopt rules for administering the wildland
15 fire suppression monies authorized under this section, subject to approval of
16 the governor.

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. ~~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.



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.

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

**VALLEY SURVEY
CONSUMER FIREWORKS ORDINANCE**

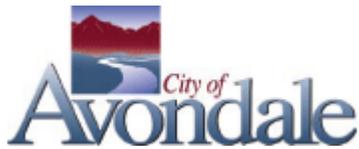
“Fire Code Official’s Opinion and Potential Recommendations”

Updated September 2, 2010

CITY	PROHIBIT USE	ALLOW USE	STATUS/COMMENTS
Apache Junction			
ASU	<u>X</u>		Not allowed on campus.
Avondale		X	During specific holidays / events
Buckeye			
Casa Grande	<u>X</u>		May recommend July 4 th holiday only.
Chandler	<u>X</u>		
El Mirage	<u>X</u>		
Fountain Hills	X		
Florence	<u>X</u>		
Gilbert	<u>X</u>		
Goodyear	X		
Glendale	<u>X</u>		
Maricopa		X	
Mesa			Awaiting City Council Direction.
Peoria			
Phoenix	<u>X</u>		
Queen Creek	<u>X</u>		
Scottsdale	<u>X</u>		
Sun City			Fire District has no control. Decision falls on County Board of Supervisors.
Sun City West			Fire District has no control. Decision falls on County Board of Supervisors.
Surprise	X		
Tempe	X		
Tolleson	X		
Youngtown		<u>X</u>	Allow use in 2 city parks, requires adult supervision.

X = confirmed with this update, on recommendation that will be given to policy-makers.

X = original intent, on recommendation that will be given to policy-makers.



CITY COUNCIL REPORT

SUBJECT:
Annexation Request - Wigwam Creek South
Annexation

MEETING DATE:
October 11, 2010

TO: Mayor and Council
FROM: Rogene E. Hill, Assistant City Manager
THROUGH: Charlie McClendon, City Manager

PURPOSE:

A group of Wigwam Creek South residents have requested that the City of Avondale consider annexing Wigwam Creek South. Staff will present the estimated costs and revenues associated with annexing this residential community. This item is for discussion and policy direction.

BACKGROUND:

In 2008, a group from the Wigwam Creek (WWC) South Community Association met with the City Manager and staff. The WWC South residents wanted to better understand the annexation process and determine what barriers might be encountered, if they wanted to pursue annexation.

The staff explained the annexation process and requested that the HOA obtain letters of support from a majority of homeowners to better assess the level of interest. The WWC South HOA Board recently submitted a formal letter requesting that their community be annexed, having obtained approximately 51% of the property owners' signatures in support of annexation. (See letter attached).

Wigwam Creek South (WWC South) developed in the County in early 2000 with the bulk of building completed in 2002-2003. According to the County Assessor's records there are 1266 SF Homes and one Apartment Complex with 300 units.

Number of Homes	1,266
Est. Population	4,051
Avg. Home Value	\$142,000
Est. Assessed Valuation	\$17,977,200

According to the real estate database staff uses to track foreclosures WWC South has a relatively low foreclosure rate of 1% and a rental rate of 22% (excluding the apartments).

As a county island, the residents purchase fire protection from Rural Metro and Police service is provided by the County Sheriff. Water and sewer is provided by Liberty Water and sanitation services are purchased from Waste Management and other private haulers.

Because the City of Litchfield Park has strip annexed around this residential community and secured the commercial corners, the City of Avondale cannot annex the residential community of Wigwam Creek South, unless Litchfield Park removes a portion of the strip annexation.

The Litchfield Park City Manager indicated a willingness to allow the residential community of

Wigwam Creek South to be annexed by Avondale. However, Litchfield Park would retain three commercial corners, one at Dysart and Indian School, the second at Camelback and Indian School and the third at El Mirage and Camelback. The final decision to allow WWC South to be annexed will be made by the Litchfield Park City Council.

Finance staff used the assessed valuations data from the county and rental data to prepare estimated revenues. Without the commercial corners, the revenue sources available for the City of Avondale to balance the cost of providing services to this community would be as follows:

Primary Property Tax	\$96,926
State Shared (GF) - \$444.8 per home	\$563,117
HURF - \$163.2 per home	\$206,611
Secondary Property Tax - \$92.60 per home	\$141,864
Sanitation - @\$20/month	\$303,840
Potential Annual Revenue	\$1,390,349

Only \$738,000 would be available for the General Fund.

The advantages the WWC South residents seek with the possible annexation are:

1. Securing Avondale Fire Protection
2. Securing Avondale Police Protection

DISCUSSION:

In looking at the costs involved with annexing this residential community, it became clear that neither the City nor the residents would be able to pay the cost of bringing this community onto the City's water/sewer system. The acquisition and improvement costs are estimated at \$6,000,000, at a minimum.

The Council will need to consider allowing WWC South to remain with Liberty Water. It has been a longstanding policy of the City to bring all annexed parcels onto the City's water/sewer system. If Wigwam Creek South is allowed to remain with Liberty Water, it will be an exception to this policy. Typically, annexation is sought to gain access to the City's water/sewer system. However, unlike other annexations, WWC South is served by a stable, functioning water company that provides service to Goodyear and Litchfield Park.

The costs of providing other services to this community have been estimated by the various departments.

Sanitation (No equipment required) one additional driver \$50,000

- Cans @ \$100 per household, which could be recovered from residents through the monthly billing process
- There are two gated communities with 234 units and privately held residential streets for which they are responsible.
- The ongoing sanitation costs will be paid through the monthly sanitation bill. The current rate is \$20 per month.

Police: Add WWC South to Beat 2

- First year costs onetime cost a patrol vehicle \$70,000
- Ongoing cost of two additional officers \$205,000

Engineering:

- Street Maintenance & Repair - paid by HURF revenues
- Street Lights - Currently paid by monthly assessment

Fire:

- The Northwest Fire Station staffing costs are estimated at \$1,700,000
- Completing the fire portion of the facility including FF&E estimated at \$2,000,000

The disadvantages of leaving WWC South with Liberty Water are that this group of residents would not have a stake in the water/sewer system and may not support future bond issues. Typically such bond issues are revenue bonds that are repaid through the water rates, in which case this community would not be impacted. The current HOA leadership has indicated a willingness to work with the City to prevent unwarranted opposition to future bond issues.

The annexation process requires a majority of property owners to agree to annexation. However, there will always be a minority of property owners who do not support annexation.

The advantages for the City are increased population and revenues estimated at nearly \$1.4 million annually. Furthermore, the City would gain a presence north to Camelback and an opportunity to accelerate staffing and opening the NW Fire Station.

NW Fire Station

The City has been unable to complete or staff this facility. In 2009 the City was awarded a SAFER grant to fund the staffing. However, because the 2009 grant had a match requirement, the City declined to accept the grant. The new SAFER grant does not have a match requirement. The City has applied for the new SAFER grant, which will be awarded April 2011. If this grant were awarded, it would fund staffing the NW Fire Station for the first three years and allow the City to use the Wigwam Creek revenues towards completing the Station and paying other one-time costs for bringing this community into Avondale. The City will eventually incur the cost of completing and staffing the NW Fire Station. Although, annexing Wigwam Creek South will not fully fund the ongoing staff costs, revenues could provide approximately \$750,000 of the \$1.7 required to staff the station. The remaining revenues would be dedicated to the ongoing cost of servicing this community.

BUDGETARY IMPACT:

For discussion and policy direction

RECOMMENDATION:

For discussion and policy direction

ATTACHMENTS:

Click to download

- 📄 [Wigwam Creek South Community Association Letter](#)
- 📄 [Rental Property Map](#)
- 📄 [Annexation Map](#)

**WIGWAM CREEK SOUTH HOMEOWNERS ASSOCIATION
C/O AAM LLC
7740 North 16th Street, Suite 300
Phoenix, Arizona 85020
602-957-9191/602-957-8802 (Fax)**

September 15, 2010

Mr. Charles McClendon, City Manager.
City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323

Dear Mr. McClendon:

I have been authorized by the Board of Directors to submit a request to the City of Avondale for annexation of our community on behalf of the Wigwam Creek South Community Association (WCS).

As you are aware, the community has been working on a grass roots effort over the past two years to obtain signatures from property owners in the community indicating their interest and support of annexation. The results of this effort has been presented to the WCS Board of Directors and reviewed at our Board meeting on August 25, 2010. The WCS Board voted to move forward with a request for annexation by the City of Avondale.

Based on the informal signatures received from property owners, approximately 51% of the property owners within Wigwam Creek South are in support of annexation. Additionally the Litchfield Park Elementary School District, which has the Wigwam Creek South Middle School in our community, has presented a letter supporting annexation.

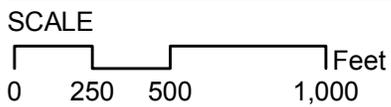
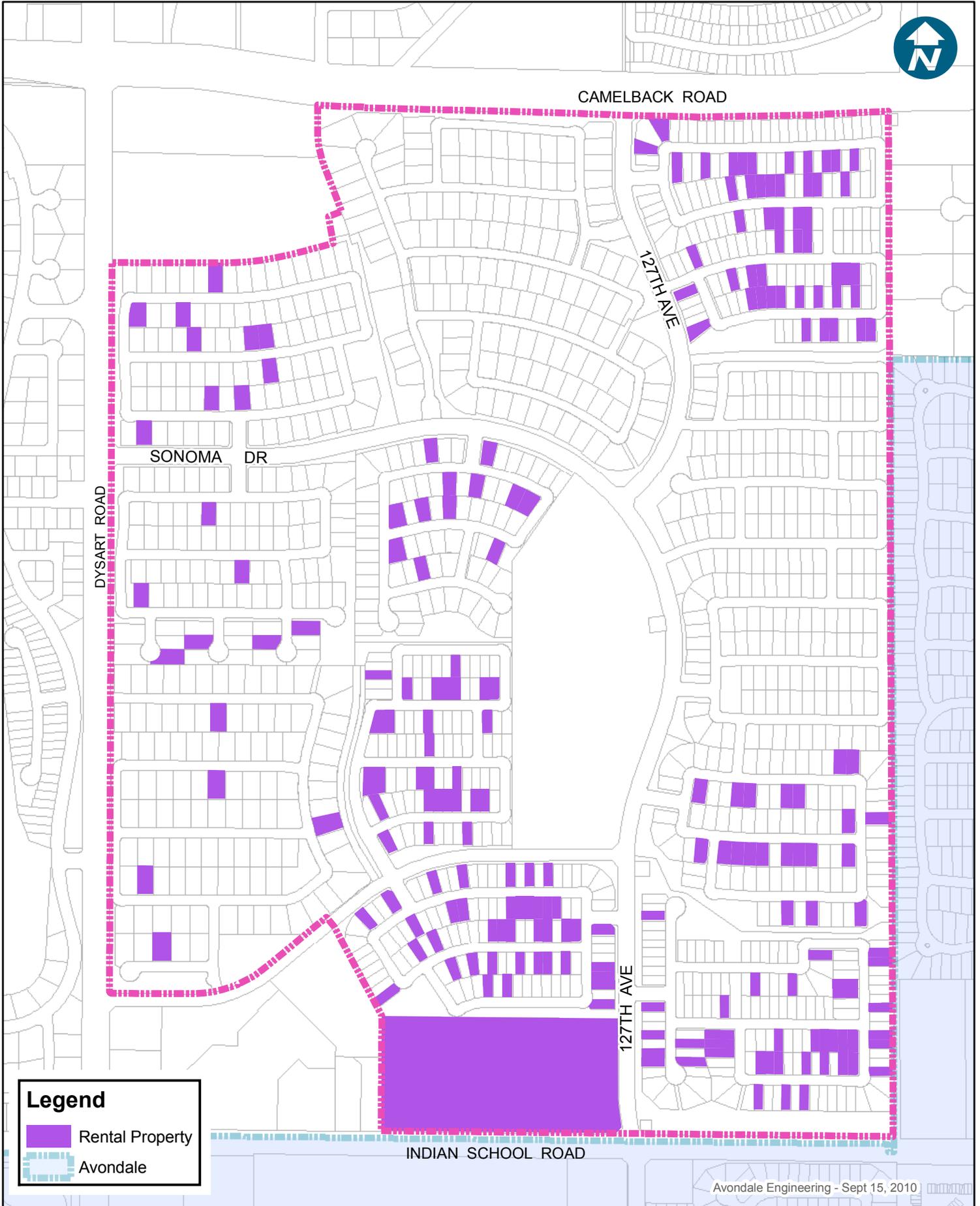
We understand that current City ordinance requires a fee deposit be paid at the time of requesting annexation to the City. However, during discussions in our informal meeting a couple of weeks ago, you advised us that there was a possibility that the City required fee deposit might be waived if the City Council would agree to a waiver. We would ask that a request for waiver of the fee deposit be presented to the City Council at the earliest appropriate opportunity.

As President of the Board, I am happy to present this request for annexation to you and the City of Avondale. The Board, our committee members that worked very hard gathering signatures, and other members of the WCS community are ready to assist the City in moving this process forward.

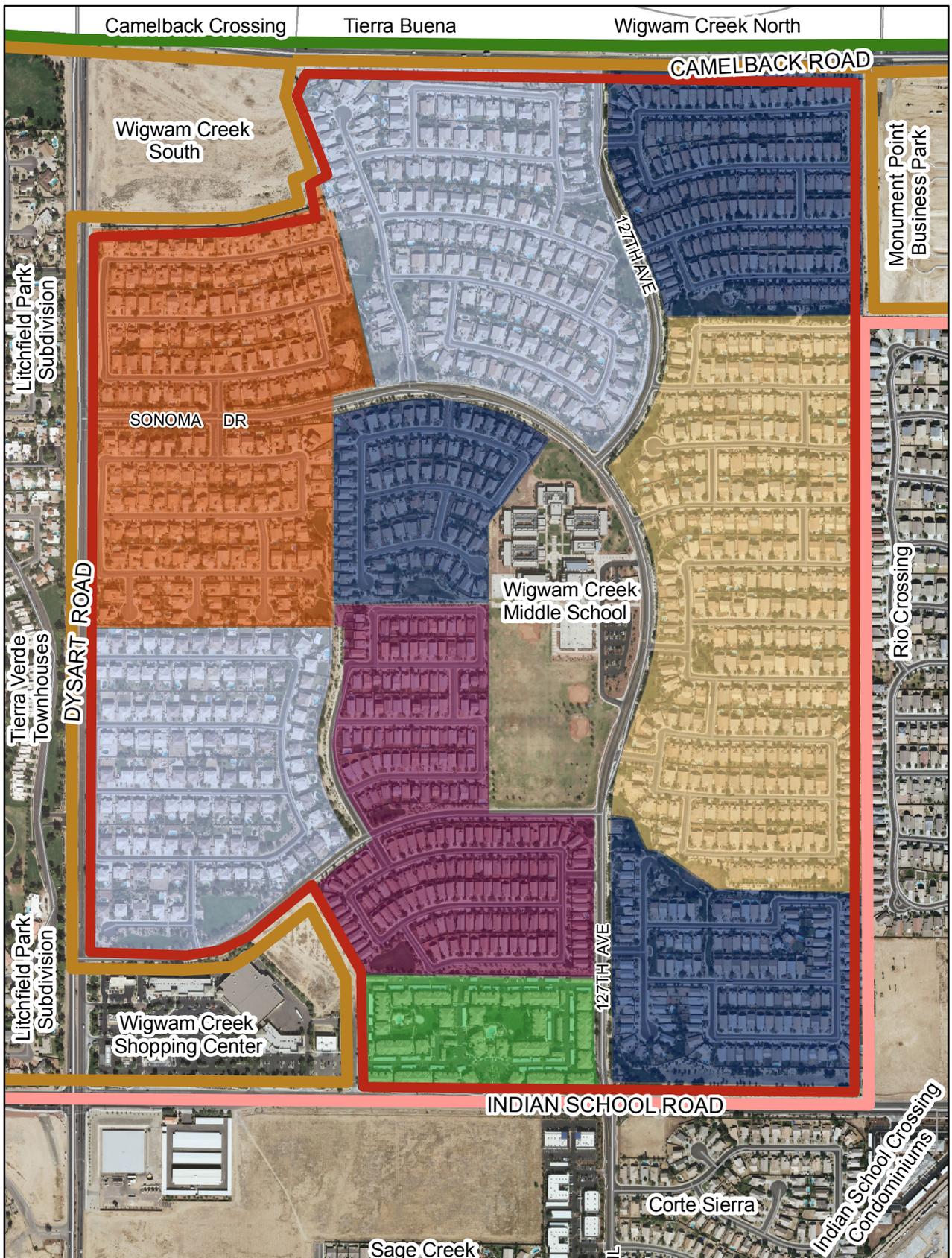
Sincerely,



James Senner, President
Wigwam Creek South Community Association
12735 W. Campina Drive
Litchfield Park, AZ 85340
Phone 623-533-4040



**WIGWAM CREEK
REGISTERED RENTAL PROPERTY**



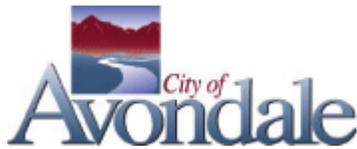
Wigwam Creek South Annexation

Jursidiction Boundaries

- Proposed Annexation Area
- City of Litchfield
- Maricopa County
- City of Avondale

Wigwam Creek South RUPD Zoning Districts

- | | | |
|---|--|--|
| CS | R1-10 | R1-8 |
| R-3 | R1-6 | |
| R-5 | R1-7 | |



CITY COUNCIL REPORT

SUBJECT:

Update on the National Pollution Discharge Elimination System (NPDES) Phase II MS4 Permit

MEETING DATE:

October 11, 2010

TO: Mayor and Council

FROM: Sue McDermott, P.E., Director of Development Services and Engineering, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will update the Mayor and City Council on the status of the NPDES Phase II MS4 Permit and the implementation of the Stormwater Management Plan (SWMP).

BACKGROUND:

In 1987, Congress amended the Clean Water Act (CWA) to add Stormwater Pollution Prevention, into the National Pollution Discharge Elimination System (NPDES) program. The Arizona Department of Environmental Quality (ADEQ) worked with the United States Environmental Protection Agency (USEPA) to develop a program to include storm drains in Arizona municipalities.

Under this program all municipalities which have storm drains must apply for a NPDES Phase II Municipal Separate Storm Sewer System (MS4) permit.

DISCUSSION:

Avondale received a NPDES Phase II MS4 permit in March of 2003. The permit must be renewed, and if necessary, updated every 5 years. As a requirement of the permit Avondale generated a Stormwater Management Plan (SWMP). Avondale's SWMP consists of six (6) Minimum Control Measures (MCM's), each of which consists of a group of Best Management Practices (BMP's). The BMP's are measurable and must be reported annually to ADEQ. The City has reported annually every year since 2003, and has not received any concerns from ADEQ.

The City's current NPDES Phase II MS4 permit was due for renewal in 2008; however ADEQ has been working on revisions to the Phase II MS4 permit for the last few years. As directed by ADEQ, the City has been awaiting the reissuance of the revised permit, so it may submit for renewal. During the revision period, all municipalities previously covered under a NPDES Phase II MS4 permit are still covered so long as they remain in compliance and continue to report annually.

BUDGETARY IMPACT:

There is no immediate financial impact. This is an unfunded federally mandated program. The City has programmed and allocated \$8,710 annually to run the program.

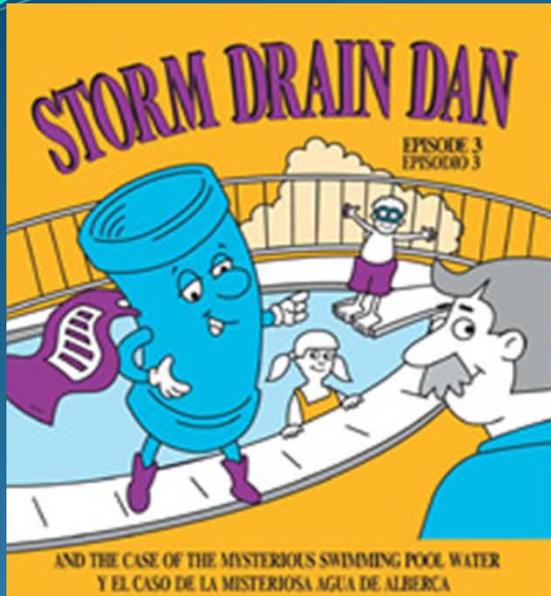
RECOMMENDATION:

This item is presented for information, discussion and Council direction.

ATTACHMENTS:

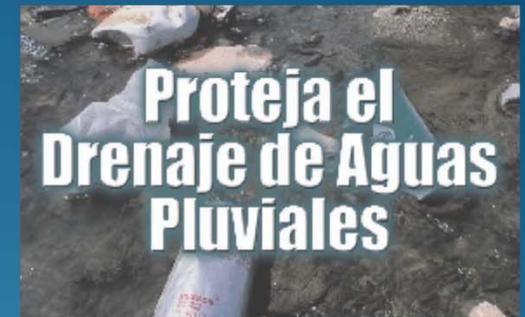
[Click to download](#)

2010 NPDES Program Update



Draining my Pool What do I do?

Did you know that it is violation of City Code to drain, backwash or empty your pool water into the public right of way. Visit www.avondale.org/engineering or call the City Engineering Department at 623-333-4200 to get information on proper discharge procedures.



Proteja el Drenaje de Aguas Pluviales

¿Sabía usted que es contra la ley descargar sustancias contaminantes como pintura o aceite en las calles y que también es contra la ley descargar el agua de su alberca en la calle? Estas leyes son para ayudarnos a proteger nuestro sistema de drenaje de aguas pluviales – básicamente las calles y alcantarillas – de descargas ilícitas que pueden contaminar los ríos y otros cuerpos de agua.

GUIA DEL CIUDADANO PARA PREVENIR LA CONTAMINACION DEL SISTEMA DE AGUAS PLUVIALES:

- ▶ Ponga bandejas debajo de carros que estén goteando aceite y planee llevarlos a arreglar
- ▶ Use los fertilizantes y pesticidas como se dirige en el envase
- ▶ Cubra y guarde apropiadamente todos los materiales peligrosos
- ▶ No descargue el agua de alberca en la calle. El agua de la alberca debe descargarse en el desagüe sanitario usando la válvula de limpieza. Cantidades pequeñas de agua pueden descargarse en su jardín trasero.
- ▶ Deshágase de la suciedad de los animales poniéndola en una bolsa de plástico y tirándola a la basura
- ▶ Recoja y deshágase apropiadamente de la basura. No barra la basura, incluyendo desechos de jardinería, en la calle. La basura y los desechos pueden tapar el alcantarillado causando problemas y condiciones peligrosas.

¡POR FAVOR – SOLAMENTE LA LLUVIA EN EL SISTEMA DE AGUAS PLUVIALES!

Para más información o para reportar descargas no autorizadas o descargas de sustancias contaminantes en el sistema de alcantarillado, por favor llame al 623-333-1601 o por correo electrónico a: emailpublicinformation@avondale.org

La Ciudad de Avondale es miembro de Stormwater Outreach for Regional Municipalities (S.T.O.R.M.)



Stormwater Pollution Prevention Begins with YOU!



STORMWATER POLLUTION PREVENTION FOR CONSTRUCTION SITES

Preserve our Environment! PREVENT STORMWATER POLLUTION

- Pick up pet waste
- Use "non-toxic" cleaners
- Save hazardous waste for City collection events
- Use kitty litter to absorb oil and grease on pavement

What goes into the ground and down the drain winds up in our drinking water!

City Council October 11, 2010



City of Avondale Storm Water Management Program (SWMP)

MCM1: Public Education and Outreach



MCM2: Public Involvement and Participation

MCM3: Illicit Discharge Detection and Elimination

MCM4: Construction Site Runoff Control

MCM5: Post Construction Runoff Control

MCM6: Good Housekeeping



MCM 3: Illicit Discharge Detection & Elimination

Process:

- Incident Logged & Dispatched
- Investigation Conducted
- Evidence Collected
- First Offense: Certified Letter
- Repeat Offenders: Citation

City Code Under Review



MCM 3: Illicit Discharge Detection & Elimination – FY09/10

> 50 Illicit Discharge Calls, > 30 Certified Letters Mailed

- 11 Oil Discharges
- 12 Pool Discharges
- 1 Paint
- 8 Other



Commercial Discharge

- 1 Commercial Spill - 107th Ave S/O I-10
- Discharge Cleaned Within 6 Hours of Notification
- Violator Not Identified



MCM 4: Construction Site Runoff Control

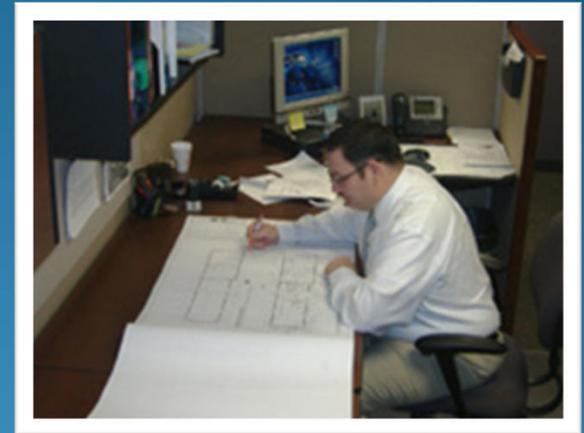
Tools Developed & Available For Use:

- SWPPP Template
- Allowable Best Management Practices (BMPs)
- Internal Checklists & Tools for SWPPP Review
- SWPPP Inspection Policies
& Procedures
 - 1 Inspection/Month or After Each 0.5" of Rain



MCM 4: Construction Site Runoff Control - FY09-10

- **Trained Plan Review and Inspection Staff on Policies & Procedures**
- **7 SWPPPs Approved**
- **>40 Inspections Completed; 25 Required Corrective Action; All Complied**
- **SWPPP Plan Review Fees Developed**





Additional Program Highlights

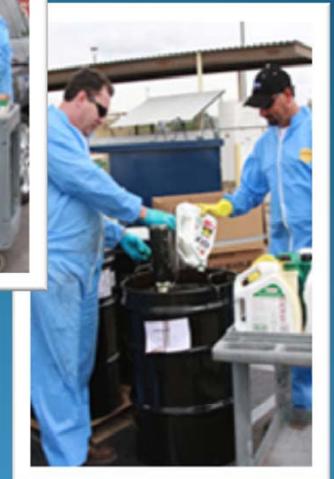
MCM1: Public Notification

- Many Departments Helped Spread the Message
 - Police
 - Parks & Rec
 - Public Information
 - Public Works
 - Engineering
 - City Managers
- ~**3,500** Residents Received **Educational Handouts**
- ~**30,000** Residents Reached Through the **WVV**
- ~**9,800** Subscribers Reached on **Avondale 11**
- **>4 Million** Listeners Reached Through **STORM Campaign (Radio and Television)**

Additional Program Highlights

MCM2: Public Involvement & Participation

- PW Hosted Annual “Household Hazardous Waste Day” on 4/24/10
- Tres Rios Cleanup Event on 2/20/10



MCM6: Good Housekeeping

- Inventory of City Stormwater Inlets & Drywells Underway
- 222 Catch Basins Maintained
- A Maintenance Plan will be Developed



Questions???

