

REFERENCE TITLE: municipalities; local liberty charter.

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SB 1064

Introduced by
Senator Klein

AN ACT

AMENDING TITLE 9, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 13; RELATING TO
CITY AND TOWN FORMS OF GOVERNMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 9, Arizona Revised Statutes, is amended by adding
3 chapter 13, to read:

4 CHAPTER 13

5 ADDITIONAL FORMS OF GOVERNMENT

6 ARTICLE 1. GENERAL PROVISIONS

7 9-1401. Purpose; model local liberty charter

8 A. THE LEGISLATURE FINDS THAT THE TAXING, SPENDING, REGULATORY,
9 EMINENT DOMAIN AND PLANNING AND ZONING AUTHORITY GRANTED TO MUNICIPALITIES
10 MAY ENCOURAGE THE EXERCISE OF LOCAL GOVERNMENTAL POWER THAT IS THREATENING TO
11 GENUINE PUBLIC HEALTH, SAFETY AND WELFARE, FRUSTRATING TO ECONOMIC
12 DEVELOPMENT AND INIMICAL TO FISCAL RESPONSIBILITY AND MAY BE OVERLY
13 CENTRALIZED, BUREAUCRATIC, INTRUSIVE AND POLITICIZED. THE LEGISLATURE
14 FURTHER FINDS THAT PUBLIC HEALTH, SAFETY AND WELFARE JUSTIFIES GIVING
15 MUNICIPALITIES, LOCAL ELECTED OFFICIALS AND CITIZENS THE OPTION OF ADOPTING A
16 MODEL OF LIMITED LOCAL GOVERNANCE THAT IS FOUNDED ON POPULAR SOVEREIGNTY,
17 DEVOTED TO SECURING RIGHTFUL LIBERTY AND GEARED TO PREVENTING MISUSE OR ABUSE
18 OF GOVERNMENTAL POWER. THE LEGISLATURE INTENDS TO GRANT MUNICIPALITIES THE
19 LEGAL AUTHORITY TO ADOPT THE "MODEL LOCAL LIBERTY CHARTER" CONSISTING OF
20 SUBSTANTIAL AND LASTING LIMITATIONS ON THEIR TAXING, SPENDING, REGULATORY,
21 EMINENT DOMAIN AND PLANNING AND ZONING AUTHORITIES THAT COLLECTIVELY ARE
22 INTENDED TO MAXIMIZE INDIVIDUAL LIBERTY AND MUNICIPAL FISCAL RESPONSIBILITY.

23 B. THE MODEL LOCAL LIBERTY CHARTER GUARANTEES THE PEOPLE OF THE
24 ADOPTING MUNICIPALITY THE FOLLOWING RIGHTS:

25 1. THE RIGHT TO BE PRESUMED FREE TO ACT PEACEABLY AND HONESTLY WITHOUT
26 LEGAL RESTRAINT.

27 2. THE RIGHT TO BE FREE TO USE AND DEVELOP THEIR PROPERTIES AS THEY
28 SEE FIT SO LONG AS THEY DO NOT VIOLATE THE RIGHTS OF OTHERS.

29 3. THE RIGHT TO BE FREE FROM THE UNDIVIDED AND UNCHECKED COMBINATION
30 OF LEGISLATIVE, EXECUTIVE AND JUDICIAL AUTHORITY IN MUNICIPAL GOVERNMENT.

31 4. THE RIGHT TO BE FREE FROM CRIME. PREVENTING CRIME IS A MUNICIPAL
32 GOVERNMENT'S CORE FUNCTION AND THE PEOPLE HAVE A LEGITIMATE EXPECTATION OF
33 EFFECTIVE PROTECTION FROM CRIME BY THE MUNICIPALITY.

34 5. THE RIGHT TO FINANCIALLY SUSTAINABLE MUNICIPAL GOVERNMENT AND A
35 MUNICIPAL GOVERNMENT THAT IS NO LARGER THAN NECESSARY.

36 6. THE RIGHT TO LOCAL GOVERNANCE THAT DOES NOT GRANT ANYONE PRIVILEGES
37 OR IMMUNITIES NOT GENERALLY AVAILABLE ON EQUAL TERMS TO ALL AND THAT DOES NOT
38 SINGLE ANYONE OUT FOR SPECIAL PUNISHMENTS OR DISADVANTAGES EXCEPT AS REQUIRED
39 BY THE UNIFORM APPLICATION OF GENERAL LAWS.

40 7. THE RIGHT TO EFFECTIVE RECOURSE AGAINST UNELECTED MUNICIPAL
41 PERSONNEL FOR WRONGDOING IN THE COURSE OF PERFORMING OFFICIAL DUTIES.

42 8. THE RIGHT TO REQUIRE MUNICIPAL GOVERNMENT TO ACT AS AN AGENT OF
43 FEDERALISM UNDER THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION TO
44 PRESERVE LIBERTY AS A POLITICAL SUBDIVISION OF THE STATE.

1 DEADLINES FOR THE SHORTEST FEASIBLE PERIOD OF TIME GIVEN THE NATURE OF THE
2 REGULATORY APPROVAL SOUGHT AND THE RESOURCES AVAILABLE TO THE MUNICIPALITY.

3 B. THE MUNICIPALITY SHALL NOT PRESCRIBE A DEADLINE LONGER THAN ONE
4 HUNDRED TWENTY DAYS. IF THE MUNICIPALITY FAILS TO PRESCRIBE A DEADLINE AS
5 REQUIRED OR OTHERWISE FAILS TO APPROVE OR DENY ANY APPLICATION SEEKING
6 REGULATORY APPROVAL WITHIN THE PUBLISHED DEADLINE DATE THE AFFECTED
7 APPLICATION IS DEEMED APPROVED BY THE MUNICIPALITY AS OF THE DATE OF
8 SUBMISSION. THE MUNICIPALITY SHALL NOT SEEK A WAIVER OF ANY DEADLINE OR ANY
9 AUTOMATIC APPROVAL FROM ANY APPLICANT. THE MUNICIPALITY SHALL NOT CLAIM THAT
10 AN APPLICATION FOR REGULATORY APPROVAL IS INCOMPLETE UNLESS THE MUNICIPALITY
11 GIVES NOTICE OF THE INCOMPLETION TO THE APPLICANT NO LATER THAN THE MIDPOINT
12 OF THE APPLICABLE PROCESSING DEADLINE.

13 C. THE MUNICIPALITY SHALL GIVE THE APPLICANT TIMELY NOTICE OF THE
14 DENIAL OF ANY APPLICATION FOR REGULATORY APPROVAL OF ANY KIND IN WRITING AND
15 THE NOTICE SHALL INCLUDE A WRITTEN DISCLOSURE OF THE DISPOSITION OF ALL
16 APPLICATIONS FOR APPROVAL SUBMITTED TO THE MUNICIPALITY UNDER THE SAME
17 REGULATORY PROVISIONS WITHIN THE IMMEDIATELY PRECEDING ONE HUNDRED EIGHTY
18 DAYS.

19 9-1412. Prohibition on needless regulation

20 THE ADOPTING MUNICIPALITY SHALL NOT IMPOSE REGULATION ON ANY ACT,
21 ACTIVITY, OCCUPATION, PROFESSION, USE OF PROPERTY, CONDITION OR STATE OF
22 AFFAIRS THAT IS ORDINARILY PEACEFUL, NONVIOLENT AND NON-FRAUDULENT PURSUANT
23 TO SECTION 9-231, 9-234, 9-236, 9-240, 9-274, 9-276, 9-303, 9-441.02, 9-461,
24 9-461.05, 9-461.06, 9-461.07, 9-461.08, 9-461.10, 9-461.11, 9-461.12,
25 9-462.01, 9-462.03, 9-462.05, 9-462.06, 9-463.01, 9-463.06, 9-467, 9-468,
26 9-499.01, 9-500.05, 9-500.11, 9-806 OR 9-1301 OR ANY SIMILAR LAW PRESENTLY
27 EXISTING OR ENACTED AFTER THE EFFECTIVE DATE OF THIS CHAPTER UNLESS:

28 1. IT IS WITHIN THE POWER OF THE ADOPTING MUNICIPALITY TO REGULATE THE
29 TARGETED ACTIVITY OR CONDITION.

30 2. NEITHER THE PRIMARY PURPOSE NOR THE PREDOMINANT EFFECT OF
31 REGULATING THE TARGETED ACTIVITY OR CONDITION WILL PROTECT A DISCRETE
32 INTEREST GROUP FROM ECONOMIC COMPETITION, RESTRAIN COMPETENT ADULTS FOR THEIR
33 OWN GOOD OR OTHERWISE PROMOTE SOME PRIVATE INTERESTS TO THE DETRIMENT OR
34 DISADVANTAGE OF OTHERS.

35 3. THE TARGETED ACTIVITY OR CONDITION IS AN ACTUAL THREAT TO PUBLIC
36 HEALTH, SAFETY OR GENERAL WELFARE THAT IS VERIFIABLE, SUBSTANTIAL AND NOT
37 REMOTE OR DEPENDENT ON SPECULATION.

38 4. EXISTING MARKET FORCES, COMMON LAW, ORDINANCES AND STATUTES ARE NOT
39 SUFFICIENT TO REASONABLY REDUCE THE THREAT POSED TO PUBLIC HEALTH, SAFETY OR
40 GENERAL WELFARE BY THE TARGETED ACTIVITY OR CONDITION.

41 9-1413. Least restrictive method of regulation required

42 A. IF THE ADOPTING MUNICIPALITY FINDS REGULATION OF A PEACEFUL
43 ACTIVITY OR CONDITION IS PERMISSIBLE, THE MUNICIPALITY MAY ONLY IMPLEMENT THE
44 LEAST RESTRICTIVE METHOD OF REGULATION CONSISTENT WITH REASONABLY REDUCING
45 THE THREAT POSED TO PUBLIC HEALTH, SAFETY OR GENERAL WELFARE.

1 B. THE ADOPTING MUNICIPALITY MAY ONLY REGULATE A PEACEFUL ACTIVITY OR
2 CONDITION PURSUANT TO THE FOLLOWING:

3 1. THE REGULATION MAY FURNISH ADDITIONAL OR AUGMENTED CIVIL REMEDIES
4 TO RENDER COMMON LAW OR STATUTORY CIVIL ACTIONS MORE EFFECTIVE.

5 2. ONLY IF FURNISHING MORE EFFECTIVE CIVIL REMEDIES DOES NOT
6 REASONABLY REDUCE THE THREAT POSED TO PUBLIC HEALTH, SAFETY OR GENERAL
7 WELFARE, THE REGULATION MAY ALSO IMPOSE CLEAR, OBJECTIVE LEGAL STANDARDS AND
8 ENABLE THE ENFORCEMENT OF VIOLATIONS BY INJUNCTIVE RELIEF.

9 3. ONLY IF THE FOREGOING MODES OF REGULATION DOES NOT REASONABLY
10 REDUCE THE THREAT POSED TO PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, THE
11 REGULATION MAY ALSO ENABLE THE ENFORCEMENT OF CLEAR, OBJECTIVE LEGAL
12 STANDARDS BY INSPECTIONS AND ENFORCEMENT OF VIOLATIONS BY CIVIL PENALTY AND
13 INJUNCTIVE RELIEF.

14 4. ONLY IF THE FOREGOING MODES OF REGULATION DOES NOT REASONABLY
15 REDUCE THE THREAT POSED TO PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, THE
16 REGULATION MAY ALSO ENABLE THE ENFORCEMENT OF CLEAR, OBJECTIVE LEGAL
17 STANDARDS BY PERMITTING, LICENSING OR OTHER REGULATORY PREAPPROVAL PROCESSES.

18 5. ONLY IF THE FOREGOING MODES OF REGULATION DOES NOT REASONABLY
19 REDUCE THE THREAT POSED TO PUBLIC HEALTH, SAFETY OR GENERAL WELFARE, THE
20 REGULATION MAY ALSO ENABLE THE ENFORCEMENT OF CLEAR, OBJECTIVE LEGAL
21 STANDARDS BY CRIMINAL SANCTIONS.

22 9-1414. Sunrise and sunset review required

23 ON AND AFTER THE EFFECTIVE DATE OF ADOPTING THE MODEL LOCAL LIBERTY
24 CHARTER, PROPOSED REGULATIONS OF PEACEFUL ACTIVITIES OR CONDITIONS SHALL NOT
25 BE CONSIDERED FOR ENACTMENT OR PROMULGATION UNLESS THE ADOPTING MUNICIPALITY
26 FIRST FINDS THAT THE PROPOSED REGULATION IS PERMISSIBLE UNDER THIS ARTICLE
27 AFTER A PUBLIC HEARING. ALL EXISTING LEGISLATION AND ADMINISTRATIVE RULES
28 AND POLICIES REGULATING PEACEFUL ACTIVITIES OR CONDITIONS THAT HAVE BEEN
29 ENACTED OR PROMULGATED BY THE ADOPTING MUNICIPALITY EXPIRE AND ARE REGARDED
30 AS REPEALED EITHER ON THEIR SPECIFIED EXPIRATION DATE OR, IF NONE, THE LATTER
31 OF FIVE YEARS AFTER THE EFFECTIVE DATE OF ADOPTING THE LOCAL LIBERTY CHARTER
32 OR FIVE YEARS FROM THEIR EFFECTIVE DATE, UNLESS EXTENDED FOLLOWING A PUBLIC
33 HEARING WHERE THE ADOPTING MUNICIPALITY FINDS THAT THE REGULATION HAS
34 FULFILLED THE CRITERIA PRESCRIBED IN THIS ARTICLE.

35 9-1415. Required judicial review

36 IF A REGULATION IS CHALLENGED ON THE BASIS THAT IT WAS ENACTED,
37 PROMULGATED OR EXTENDED WITHOUT FIRST COMPLYING WITH THIS ARTICLE, THE COURT
38 HEARING THE CHALLENGE SHALL RULE ON THE MERITS OF THE CHALLENGE WITHOUT
39 DEFERENCE TO ANY LEGISLATIVE, ADMINISTRATIVE OR EXECUTIVE FINDING CONCERNING
40 THE REGULATION.

41 ARTICLE 3. RIGHT TO PROPERTY

42 9-1421. Vested rights on purchase

43 THE MUNICIPALITY SHALL EXERCISE ITS ZONING AND LAND USE REGULATORY
44 AUTHORITY AS IF ALL LAWFUL USES OF REAL PROPERTY EXISTING AT THE TIME OF THE
45 EXERCISE ARE VESTED PROPERTY INTERESTS OF THE OWNER OF RECORD.

1 9-1422. Prohibition on covenants not to sue or advance waivers
2 of claims: exception

3 A MUNICIPALITY SHALL NOT SEEK ADVANCE WAIVER OF CLAIMS UNDER SECTION
4 12-1134 OR A SIMILAR LAW AND COVENANTS NOT TO SUE FROM ANY PERSON AS A
5 CONDITION OF APPROVING OR PROCESSING ANY APPLICATION SEEKING REGULATORY
6 APPROVAL. A MUNICIPALITY SHALL NOT ENFORCE AN ADVANCE WAIVER OF CLAIMS UNDER
7 SECTION 12-1134 OR A SIMILAR LAW OR A COVENANT NOT TO SUE WITHOUT PROOF
8 BEYOND A REASONABLE DOUBT THAT IT WAS SUPPORTED BY AN EXCHANGE OF VALUABLE
9 CONSIDERATION UNRELATED TO THE EXERCISE OR FORBEARANCE OF ANY REGULATORY
10 AUTHORITY.

11 9-1423. Limitations on power of eminent domain

12 A. IF EXERCISING ITS POWER OF EMINENT DOMAIN, THE MUNICIPALITY SHALL
13 PAY SUFFICIENT JUST COMPENSATION TO PLACE THOSE HAVING A PROPERTY INTEREST IN
14 THE CONDEMNED PROPERTY IN AS GOOD AN ECONOMIC POSITION AS THEY WOULD HAVE
15 BEEN IN HAD THE POWER OF EMINENT DOMAIN NOT BEEN EXERCISED.

16 B. AS COMPONENTS OF JUST COMPENSATION, THE MUNICIPALITY SHALL PAY
17 THOSE HAVING A PROPERTY INTEREST IN THE CONDEMNED PROPERTY:

18 1. AT LEAST ONE HUNDRED TEN PER CENT OF THE PROPERTY INTEREST'S FAIR
19 MARKET VALUE.

20 2. ALL REASONABLE RELOCATION EXPENSES PROXIMATELY CAUSED OR LIKELY TO
21 BE INCURRED BECAUSE OF THE MUNICIPALITY'S EXERCISE OF EMINENT DOMAIN.

22 3. ALL LOSSES IN PERSONAL OR BUSINESS INCOME PROXIMATELY CAUSED OR
23 LIKELY TO BE INCURRED BECAUSE OF THE MUNICIPALITY'S EXERCISE OF EMINENT
24 DOMAIN.

25 4. ALL REASONABLE ATTORNEY AND EXPERT FEES AND COSTS INCURRED BY THE
26 PROPERTY INTEREST HOLDER IN THE COURSE OF PRE-LITIGATION SETTLEMENT
27 NEGOTIATIONS OVER THE AMOUNT OF JUST COMPENSATION.

28 5. ALL LITIGATION EXPENSES INCURRED BY THE PROPERTY INTEREST HOLDER,
29 INCLUDING REASONABLE ATTORNEY AND EXPERT FEES AND COSTS, IF A CONDEMNATION
30 SUIT IS FILED AND EITHER:

31 (a) THE SUIT IS INVOLUNTARILY DISMISSED OR OTHERWISE ADJUDICATED
32 UNLAWFULLY OR UNCONSTITUTIONALLY FILED.

33 (b) THE ULTIMATE AWARD OF JUST COMPENSATION IS TWENTY PER CENT MORE
34 THAN THE MUNICIPALITY'S INITIAL OFFER.

35 9-1424. Limitations on impact fees

36 NOTWITHSTANDING SECTION 9-463.03 OR ANY SIMILAR LAW AND IN ADDITION TO
37 ANY OTHER LIMITATION IMPOSED BY LAW, A MUNICIPALITY MAY ONLY IMPOSE IMPACT
38 FEES AS A CONDITION OF PERMITTING OTHERWISE LAWFUL REAL ESTATE DEVELOPMENT
39 IF:

40 1. NEW DEVELOPMENT REQUIRES THE PROVISION OF NEW, AUGMENTED OR
41 ADDITIONAL PUBLIC FACILITIES OR SERVICES.

42 2. THE MUNICIPALITY'S EXISTING GENERAL TAX REVENUES AND GENERALLY
43 IMPOSED FEES TOGETHER WITH REASONABLY ANTICIPATED GENERAL TAX REVENUES AND
44 GENERALLY IMPOSED FEES RESULTING FROM THE NEW DEVELOPMENT ARE NOT SUFFICIENT

1 TO PROVIDE FOR OR FURNISH THE NEW, AUGMENTED OR ADDITIONAL PUBLIC FACILITIES
2 OR SERVICES.

3 9-1425. Authority to transition to decentralized land use
4 regulation

5 A MUNICIPALITY MAY DESIGNATE ALL OR A PORTION OF THE AREA WITHIN ITS
6 JURISDICTION FOR DECENTRALIZED LAND USE REGULATION AND, WITH RESPECT TO THE
7 DESIGNATED AREA, TO ABANDON ITS PLANNING AND ZONING AUTHORITY UNDER CHAPTER
8 4, ARTICLE 6 OR 6.1 OF THIS TITLE, OR ANY SIMILAR STATUTE OR LAW, TO
9 UNILATERALLY WITHDRAW FROM ANY OBLIGATION TO EXERCISE PLANNING OR ZONING
10 AUTHORITY UNDER ANY INTERGOVERNMENTAL AGREEMENT AUTHORIZED BY SECTION
11 9-461.11 OR 9-461.12 OR ANY SIMILAR STATUTE OR LAW AND TO TRANSITION TO
12 DECENTRALIZED LAND USE REGULATION AS PROVIDED IN THIS ARTICLE.

13 9-1426. Exercise of right to transition to decentralized land
14 use regulation

15 A. THE RIGHT TO TRANSITION TO DECENTRALIZED LAND USE REGULATION
16 PURSUANT TO SECTION 9-1425 MAY BE EXERCISED THROUGH LOCAL MUNICIPAL
17 LEGISLATION OR LOCAL INITIATIVE. THE LEGISLATION OR INITIATIVE SHALL STATE
18 IN REASONABLY INTELLIGIBLE TERMS A CLEARLY DESIGNATED AREA WITHIN THE
19 MUNICIPALITY'S JURISDICTION THAT THE MUNICIPALITY IS ABANDONING ITS PLANNING
20 AND ZONING AUTHORITY IN PERPETUITY, WITHDRAWING FROM ANY INTERGOVERNMENTAL
21 AGREEMENT OBLIGING IT TO EXERCISE THE AUTHORITY AND TRANSITIONING TO
22 DECENTRALIZED LAND USE REGULATION BASED ON RESTRICTIVE COVENANTS AND THE
23 COMMON LAW OF NUISANCE.

24 B. THE PROCEDURES ESTABLISHED BY GENERAL LAW GOVERNING LOCAL
25 LEGISLATION OR LOCAL INITIATIVES SHALL BE APPLICABLE TO LOCAL LEGISLATION OR
26 LOCAL INITIATIVES THAT PROPOSE TRANSITION TO DECENTRALIZED LAND USE
27 REGULATION. IN ADDITION TO THESE PROCEDURES, THE PRIOR PUBLIC NOTICE
28 REQUIRED FOR PROPOSED LOCAL LAW SHALL BE AT LEAST AS EFFECTIVE AS THE PUBLIC
29 NOTICE REQUIREMENTS APPLICABLE TO MUNICIPAL REZONING UNDER SECTION 9-462.04.

30 9-1427. Procedure to transition to decentralized land use
31 regulation; implementation phases

32 A. TO EFFECTIVELY AUTHORIZE THE TRANSITION TO DECENTRALIZED LAND USE
33 REGULATION WITHIN THE DESIGNATED AREA BASED ON RESTRICTIVE COVENANTS AND THE
34 COMMON LAW OF NUISANCE, THE LOCAL LAW SHALL REASONABLY DETAIL TWO
35 TRANSITIONAL IMPLEMENTATION PHASES AS FOLLOWS:

36 1. A SUNSET REVIEW OF EXISTING PLANNING AND ZONING REGULATIONS
37 CONSISTING OF:

38 (a) A REQUIREMENT UNDER THE LOCAL LAW THAT THE MUNICIPALITY MODIFY OR
39 REPEAL ANY LAND USE RESTRICTION WITHIN THE DESIGNATED AREA THAT STEMS FROM
40 THE MUNICIPALITY'S EXERCISE OF ITS PLANNING OR ZONING AUTHORITY AND THAT
41 PROHIBITED OR CONDITIONALLY RESTRICTED PEACEFUL OR THE HIGHEST AND BEST USES
42 OF PRIVATE PROPERTY AND TO ALLOW THOSE USES UNLESS A PREPONDERANCE OF THE
43 EVIDENCE CONSIDERED AT A PUBLIC SUNSET REVIEW HEARING ESTABLISHES:

44 (i) OWNERS OF PROPERTIES LOCATED WITHIN THREE HUNDRED FEET OF THE
45 PROPERTY IN QUESTION REASONABLY AND DETRIMENTALLY RELIED ON THE RESTRICTION

1 IN PURCHASING OR IMPROVING THEIR PROPERTY AND THE FAIR MARKET VALUE OF THEIR
2 PROPERTY WOULD BE MEASURABLY AND MATERIALLY DIMINISHED BY THE MODIFICATION OR
3 REPEAL.

4 (ii) THE RESTRICTION IS ROUGHLY PROPORTIONAL TO THE COSTS THE
5 RESTRICTED LAND USE WOULD OTHERWISE IMPOSE ON PUBLIC INFRASTRUCTURE.

6 (iii) THE RESTRICTION IS ROUGHLY PROPORTIONAL TO THAT WHICH WOULD
7 RESULT FROM ENFORCING THE COMMON LAW OF NUISANCE TO PROTECT HEALTH AND
8 SAFETY.

9 (b) A PROCEDURAL REQUIREMENT IN WHICH OWNERS OF PRIVATE REAL PROPERTY
10 WITHIN THE MUNICIPALITY'S DESIGNATED AREA FOR DECENTRALIZED LAND USE
11 REGULATION ARE GIVEN A REASONABLE OPPORTUNITY AFTER PASSAGE OF THE LOCAL LAW
12 REQUIRING TRANSITION TO DECENTRALIZED LAND USE REGULATION TO FILE SUNSET
13 REVIEW APPLICATIONS WITH THE MUNICIPALITY SEEKING MODIFICATION OR REPEAL OF
14 ANY LAND USE RESTRICTION STEMMING FROM THE MUNICIPALITY'S EXERCISE OF ITS
15 PLANNING OR ZONING AUTHORITY THAT PROHIBITED OR CONDITIONALLY RESTRICTED THE
16 PEACEFUL OR HIGHEST AND BEST USES OF THE OWNER'S PRIVATE PROPERTY.
17 APPLICANTS FOR SUNSET REVIEW ARE RESPONSIBLE FOR COMPLYING WITH PUBLIC NOTICE
18 REQUIREMENTS APPLICABLE TO THE MOST ANALOGOUS PRIVATE REZONING APPLICATION
19 UNDER SECTION 9-462.04. THE LOCAL BODY RESPONSIBLE FOR REZONING SHALL
20 CONDUCT A PUBLIC HEARING ON EACH SUNSET REVIEW APPLICATION TO DETERMINE
21 WHETHER THE CHALLENGED LAND USE RESTRICTION MUST BE MODIFIED OR REPEALED
22 UNDER SUBDIVISION (a) OF THIS PARAGRAPH. ALL SUNSET REVIEW DECISIONS ARE
23 SUBJECT TO ADMINISTRATIVE REVIEW WITHOUT DEFERENCE TO THE LOCAL BODY'S
24 DETERMINATION. THE LOCAL LAW SHALL PRESCRIBE A REASONABLE DEADLINE FOR
25 INTERESTED PARTIES TO RECORD FINAL SUNSET REVIEW DECISIONS AGAINST TITLE TO
26 THE AFFECTED REAL PROPERTY. FAILURE TO TIMELY RECORD THE DECISIONS IS DEEMED
27 THE ABANDONMENT OF ANY SUCH SUNSET REVIEW APPLICATION.

28 2. CONCURRENTLY WITH THE SUNSET REVIEW PROCESS, AN AUTHORIZATION UNDER
29 LOCAL LAW TO ALLOW THE MUNICIPALITY TO RECORD ALL OR A PORTION OF ITS ZONING
30 MAP, AS IT PERTAINS TO THE DESIGNATED AREA OF DECENTRALIZED LAND USE
31 REGULATION, IN A FORMAT SUBSTANTIALLY EQUIVALENT TO PLATS OF SUBDIVISION,
32 TOGETHER WITH A PRINTED STATEMENT OF ALL RESTRICTIONS ON LAND USES ENTAILED
33 BY THE ZONING MAP THAT ALSO SPECIFIES THE OBJECTIVE FACTORS, IF ANY,
34 ESTABLISHED IN THE FORMERLY GOVERNING ZONING LAW ALLOWING FOR MODIFICATION OF
35 THE RESTRICTIONS OF THE SPECIFIED ZONING CLASSIFICATIONS BY SPECIAL
36 EXCEPTION, CONDITIONAL USE, VARIANCE OR REZONING. SUBSEQUENTLY RECORDED
37 SUNSET REVIEW DECISIONS SHALL:

38 (a) REFER TO THE DOCUMENT NUMBER OF THE RECORDED ZONING MAP.

39 (b) BE EFFECTIVE AS OF THE DATE THE ZONING MAP IS RECORDED.

40 (c) BE DEEMED TO MODIFY AND SUPERSEDE ANY CONTRARY PROVISION OR
41 CLASSIFICATION OF THE ZONING MAP AND ITS ACCOMPANYING STATEMENT.

42 B. ON RECORDATION, THE LAND USE RESTRICTIONS SPECIFIED IN THE ZONING
43 MAP AND RELATED STATEMENT, AS MODIFIED BY RECORDED SUNSET REVIEW DECISIONS,
44 BECOME RESTRICTIVE COVENANTS AGAINST TITLE TO THE BURDENED PRIVATE PROPERTIES
45 SPECIFIED IN THE ZONING MAP WITH THE RIGHT TO ENFORCE THE COVENANTS

1 PRESUMPTIVELY RUNNING WITH TITLE TO ALL PRIVATE PROPERTIES WITHIN THREE
2 HUNDRED FEET.

3 9-1428. Effect of exercise

4 THE GENERAL LAW APPLICABLE TO PRIVATE RESTRICTIVE COVENANTS APPLY TO
5 RESTRICTIVE COVENANTS CREATED BY SECTION 9-1427 EXCEPT THAT:

6 1. THE LOCAL LAW SHALL PROVIDE THAT OWNERS OF PROPERTIES BURDENED BY
7 THE RESTRICTIVE COVENANTS AND THEIR SUCCESSORS HAVE STANDING TO FILE A
8 SPECIAL ACTION IN ANY COURT OF COMPETENT JURISDICTION SEEKING A DECLARATORY
9 JUDGMENT GRANTING A SPECIAL EXCEPTION, CONDITIONAL USE, VARIANCE OR REZONING
10 UNDER THE OBJECTIVE FACTORS OF THE PREVIOUSLY GOVERNING ZONING LAW.

11 2. IN ORDER TO PERFECT THE RESTRICTIVE COVENANTS ESTABLISHED BY
12 SECTION 9-1427 AGAINST SUBSEQUENT PURCHASERS FOR VALUE, THE LOCAL LAW SHALL
13 PROVIDE FOR A REASONABLE DEADLINE BY WHICH PROPERTY OWNERS MUST RECORD THEIR
14 ENFORCEMENT RIGHTS AS RUNNING WITH TITLE TO THE BENEFITTED PROPERTIES AND
15 AGAINST TITLE TO ALL BURDENED PROPERTIES BY REFERENCE TO THE DOCUMENT NUMBER
16 OF THE RECORDED ZONING MAP. FAILURE TO TIMELY RECORD THE ENFORCEMENT RIGHTS
17 IS DEEMED THE ABANDONMENT OF ANY RELATED CLAIM OR RIGHT.

18 9-1429. Effect of exercise

19 A. A LOCAL LAW EFFECTIVELY EXERCISING THE LEGAL AUTHORITY GRANTED
20 PURSUANT TO SECTION 9-1425 HAS THE EFFECT OF:

21 1. GRANTING OWNERS AND SUBSEQUENT TRANSFEREES OF PRIVATE REAL PROPERTY
22 LOCATED WITHIN THE RESPECTIVE DESIGNATED DECENTRALIZED LAND USE REGULATION
23 AREA A VESTED PROPERTY INTEREST UNDER STATE LAW IN EVERY LAND USE NOT
24 PROHIBITED BY THE RESTRICTIVE COVENANTS ON TITLE GENERATED BY THE TRANSITION
25 TO DECENTRALIZED LAND USE REGULATION OR THE COMMON LAW OF NUISANCE TO PROTECT
26 HEALTH AND SAFETY.

27 2. PROHIBITING THE EXERCISE OF MUNICIPAL PLANNING AND ZONING POWERS
28 DIRECTLY OR INDIRECTLY WITH RESPECT TO PRIVATE REAL PROPERTY LOCATED WITHIN
29 THE DESIGNATED DECENTRALIZED LAND USE REGULATION AREA UNDER CHAPTER 4,
30 ARTICLE 6 OR 6.1 OF THIS TITLE OR A SIMILAR STATUTE OR LAW.

31 3. PROHIBITING THE EXERCISE OF PLANNING AND ZONING POWERS BY ANY STATE
32 AGENCY, POLITICAL SUBDIVISION OF THIS STATE, SPECIAL DISTRICT OR OTHER LOCAL
33 GOVERNMENT WITHIN THE DESIGNATED DECENTRALIZED LAND USE REGULATION AREA THAT
34 IS SIMILAR TO MUNICIPAL PLANNING AND ZONING POWERS UNDER CHAPTER 4, ARTICLE 6
35 OR 6.1 OF THIS TITLE.

36 4. PROHIBITING THE MUNICIPALITY FROM EXERCISING DEVELOPMENT MORATORIUM
37 AUTHORITY IN THE DESIGNATED DECENTRALIZED LAND USE REGULATION AREA UNDER
38 SECTION 9-463.06, OR A SIMILAR STATUTE OR LAW.

39 5. RELEASING THE RESPECTIVE MUNICIPALITY FROM ANY OBLIGATION TO
40 EXERCISE PLANNING OR ZONING AUTHORITY IN THE DESIGNATED DECENTRALIZED LAND
41 USE REGULATION AREA UNDER ANY INTERGOVERNMENTAL AGREEMENT AUTHORIZED BY
42 SECTION 9-461.11 OR 9-461.12 OR A SIMILAR STATUTE OR LAW.

ARTICLE 4. SEPARATION OF POWERS

9-1431. Powers of a municipality

THE POWERS OF THE MUNICIPALITY CONSIST OF THE LEGISLATIVE, INCLUDING THE QUASI-LEGISLATIVE, THE EXECUTIVE, INCLUDING THE ADMINISTRATIVE POWER AND THE JUDICIAL, INCLUDING THE QUASI-JUDICIAL. THE LEGISLATIVE POWER OF THE MUNICIPALITY CONSISTS SOLELY OF THE POWER TO DETERMINE GENERAL PUBLIC POLICY AND TO ENACT LAWS OF GENERAL EFFECT AND UNIFORM APPLICATION. THE EXECUTIVE POWER OF THE MUNICIPALITY CONSISTS SOLELY OF THE POWER TO ADMINISTER AND ENFORCE GENERAL LAWS. THE JUDICIAL POWER OF THE MUNICIPALITY CONSISTS SOLELY OF THE POWER TO ADJUDICATE DISPUTES OR CONTROVERSIES CONCERNING THE APPROPRIATE APPLICATION OF GENERAL LAWS TO SPECIFIC PERSONS AND CIRCUMSTANCES BASED ON PRINCIPLES OF LAW AND EQUITY.

9-1432. Municipal court jurisdiction over judicial action

A. THE MUNICIPAL COURT OF THE ADOPTING MUNICIPALITY, IF ANY, HAS CONCURRENT JURISDICTION OVER ANY DISPUTE OR CONTROVERSY ARISING WHENEVER THE LEGISLATIVE OR EXECUTIVE DEPARTMENTS OF THE MUNICIPALITY, OR ANYONE EMPLOYED, SUPERVISED, CONTROLLED OR APPOINTED BY THESE BRANCHES, OTHER THAN JUDICIAL OFFICIALS AND THEIR EMPLOYEES, EXERCISES OR PROPOSES TO EXERCISE THE MUNICIPALITY'S JUDICIAL POWER TO DETERMINE THE LEGAL RIGHTS, PRIVILEGES OR OBLIGATIONS OF SPECIFIC PERSONS UNDER GENERAL LAWS IF THOSE SPECIFIC PERSONS FILE A PETITION WITH THE COURT REQUESTING THE EXERCISE OF THE JURISDICTION AND NONE OF THE PERSONS WHO ARE THE SUBJECT OF THE ACTION HAS PREVIOUSLY FILED ANY OTHER ACTION RELATING TO THE SAME SUBJECT MATTER IN A DIFFERENT VENUE.

B. THE MUNICIPAL COURT SHALL CONDUCT PROCEEDINGS ON THE PETITION PURSUANT TO THE RULES OF PROCEDURE GENERALLY APPLICABLE TO MUNICIPAL COURT PROCEEDINGS OR, IF RULES HAVE NOT BEEN PROMULGATED, PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE. THE MUNICIPAL COURT IS ENTITLED TO ADJUDICATE THE DISPUTE AND ISSUE APPROPRIATE LEGAL OR EQUITABLE REMEDIES BASED ON DE NOVO CONSIDERATION OF THE RELEVANT LAW AND FACTS. THE DECISION OF THE MUNICIPAL COURT RELATIVE TO THESE DISPUTES IS FINAL AND APPEALABLE TO THE SUPERIOR COURT.

9-1433. Alternative dispute resolution

IF A MUNICIPALITY DOES NOT MAINTAIN A MUNICIPAL COURT, THE CHECKS AND BALANCES PURSUANT TO THIS ARTICLE APPLY TO THE COMBINATION OF LEGISLATIVE, EXECUTIVE AND JUDICIAL POWERS. IF THE LEGISLATIVE OR EXECUTIVE DEPARTMENT, AND ANY COUNCIL MEMBER, PERSON, BOARD OR COMMISSION EMPLOYED, SUPERVISED, CONTROLLED OR APPOINTED BY THE DEPARTMENT EXERCISE OR PROPOSE TO EXERCISE THE MUNICIPALITY'S JUDICIAL POWER, PERSONS WHO ARE THE SUBJECT OF THE ACTION ARE ENTITLED TO COMPEL THE MUNICIPALITY TO RESOLVE ANY ACTUAL OR POTENTIAL CONTROVERSY OR DISPUTE OVER THE ACTION THROUGH BINDING ARBITRATION OR ADJUDICATIVE MEDIATION BY SERVING ON THE MUNICIPALITY A WRITTEN DEMAND FOR BINDING ARBITRATION OR ADJUDICATIVE MEDIATION.

1 9-1434. Demand for arbitration or mediation

2 A. A PERSON WHO DEMANDS ARBITRATION OR MEDIATION SHALL SERVE A WRITTEN
3 DEMAND FOR ARBITRATION OR MEDIATION ON THE CHIEF EXECUTIVE OFFICER OF THE
4 MUNICIPALITY WITHIN TEN DAYS OF DISCOVERY OF THE FACTS GIVING RISE TO THE
5 ACTUAL OR POTENTIAL CONTROVERSY OR DISPUTE. THE DEMAND MUST SPECIFY THE
6 ESSENTIAL NATURE OF THE DISPUTE, THE SPECIFIC REMEDY SOUGHT AND IDENTIFY A
7 REPUTABLE PRIVATE OR PUBLIC ALTERNATIVE DISPUTE RESOLUTION ORGANIZATION, SUCH
8 AS THE AMERICAN ARBITRATION ASSOCIATION OR ANY COMPARABLE ALTERNATIVE DISPUTE
9 RESOLUTION PROGRAM ORGANIZED BY THE JUDICIAL BRANCH OF THIS STATE. ON THE
10 MUNICIPALITY'S RECEIPT OF THE DEMAND, THE PARTIES SHALL DILIGENTLY
11 PARTICIPATE IN THE ARBITRATION OR MEDIATION PROCESS TO ENSURE THE PROCESS IS
12 COMPLETED WITHIN NINETY DAYS OF INITIATION, DURING WHICH TIME THE STATUS QUO
13 SHALL BE MAINTAINED AND THE MUNICIPALITY MAY NOT TAKE ADVERSE ACTION RELATING
14 TO THE SUBJECT MATTER OF THE DEMAND AGAINST THE PERSON SUBMITTING THE DEMAND.

15 B. THE PARTIES SHALL MUTUALLY AGREE IN GOOD FAITH ON ARBITRATORS OR
16 MEDIATORS WITHIN SEVEN DAYS OF RECEIPT OF A LIST OF AVAILABLE ARBITRATORS OR
17 MEDIATORS FROM THE ALTERNATIVE DISPUTE RESOLUTION ORGANIZATION. THE DISPUTE
18 SHALL BE SETTLED PROMPTLY BY ARBITRATION OR MEDIATION PURSUANT TO THE RULES
19 IN EFFECT AT THE TIME THE DEMAND IS MADE, SUBJECT TO THE PROVISIONS OF THE
20 ARIZONA UNIFORM ARBITRATION ACT. THE ARBITRATOR OR MEDIATOR SHALL CONDUCT
21 THE HEARING OUTSIDE OF THE MUNICIPALITY BUT WITHIN THE SURROUNDING COUNTY
22 UNLESS ALL PARTIES CONSENT TO A DIFFERENT LOCATION. THE DECISION OF THE
23 ARBITRATOR OR MEDIATOR IS FINAL AND BINDING. EACH PARTY SHALL INITIALLY BEAR
24 THEIR OWN ATTORNEY FEES AND COSTS OF ARBITRATION OR MEDIATION, EXCEPT THAT
25 THE PERSON MAKING THE DEMAND SHALL BE AWARDED REASONABLE ATTORNEY FEES AND
26 COSTS IF THE PERSON PREVAILS.

27 C. IF IT BECOMES NECESSARY FOR EITHER PARTY TO ENFORCE AN ARBITRATION
28 DECISION THROUGH COURT PROCESS, ADMINISTRATIVE AND OTHER COSTS OF ENFORCING
29 AN ARBITRATION DECISION, INCLUDING THE COSTS OF SUBPOENAS, DEPOSITIONS,
30 TRANSCRIPTS, WITNESS FEES, PAYMENT OF REASONABLE ATTORNEY FEES AND SIMILAR
31 COSTS SHALL BE AWARDED TO THE PREVAILING PARTY. ALL DOCUMENTS RELATING TO
32 THE ARBITRATION OR MEDIATION ARE PUBLIC RECORDS AND THE HEARING MUST BE OPEN
33 TO THE PUBLIC.

34 ARTICLE 5. FREEDOM FROM CRIME

35 9-1441. Police performance benchmarks

36 A. EACH FISCAL YEAR BEGINNING AFTER THE ADOPTION OF THE MODEL LOCAL
37 LIBERTY CHARTER, THE MUNICIPAL POLICE DEPARTMENT, IF ANY, SHALL ADOPT
38 PERFORMANCE BENCHMARKING THAT TARGETS AND MEASURES DESIRED CRIME RATES, CRIME
39 CLEARANCE RATES AND PUBLIC COMPLAINT RATES BOTH FOR INDIVIDUAL PRECINCTS AND
40 FOR THE MUNICIPALITY AS A WHOLE. THE PERFORMANCE STANDARDS FOR THE
41 BENCHMARKING SHALL PRESCRIBE AN ULTIMATE STATISTICAL FISCAL YEAR PERFORMANCE
42 GOAL FOR EACH BENCHMARKED STATISTIC FOR EACH PRECINCT AND THE MUNICIPALITY AS
43 A WHOLE BASED ON WHAT IS DETERMINED BY THE DEPARTMENT TO BE A REASONABLE
44 STATE OF SECURITY.

1 B. A MAJORITY OF THE ELECTED OFFICIALS WITHIN THE MUNICIPALITY'S
2 LEGISLATIVE DEPARTMENT SHALL APPROVE THE FISCAL YEAR PERFORMANCE GOALS.

3 9-1442. Publication of benchmarked standards, goals and
4 statistics

5 A MUNICIPALITY SHALL PUBLISH BENCHMARKED STANDARDS, GOALS AND
6 STATISTICS ONLINE AS SOON AS PRACTICABLE IN A CONVENIENTLY ACCESSIBLE AND
7 SEARCHABLE USER-FRIENDLY PUBLIC WEBSITE FORMAT THAT IS UPDATED FREQUENTLY AS
8 WELL AS MADE IMMEDIATELY AVAILABLE FOR INSPECTION AND COPYING BY THE GENERAL
9 PUBLIC.

10 9-1443. Police overtime

11 A MUNICIPALITY SHALL GIVE PRIORITY ACCESS TO OVERTIME BENEFITS TO
12 POLICE OFFICERS WHO WORK IN PRECINCTS WHERE PERFORMANCE STANDARDS HAVE BEEN
13 MET. POLICE OFFICERS WHO RECEIVE THE PRIORITY ACCESS TO OVERTIME SHALL
14 PERFORM OVERTIME SERVICES IN PRECINCTS WHERE PERFORMANCE STANDARDS HAVE NOT
15 BEEN MET.

16 9-1444. Failure to meet performance standards; managed
17 competition

18 A. IF THE MUNICIPAL POLICE DEPARTMENT FAILS TO MEET PERFORMANCE
19 STANDARDS IN THE MAJORITY OF PRECINCTS OR FOR THE MUNICIPALITY AS A WHOLE FOR
20 TWO CONSECUTIVE FISCAL YEARS, THE GOVERNING BODY FOR THE MUNICIPALITY SHALL
21 ENACT AN APPROPRIATE ORDINANCE OFFERING TAX CREDITS BY GENERAL LAW TO ANY
22 PERSON WHO FURNISHES QUALIFYING SECURITY SERVICES IN THE PRECINCTS IN WHICH
23 PERFORMANCE STANDARDS HAVE NOT BEEN MET IN PROPORTION TO THEIR PUBLIC BENEFIT
24 AS DETERMINED BY UNIFORM, OBJECTIVE AND QUANTIFIABLE STANDARDS.

25 B. IF THE MUNICIPAL POLICE DEPARTMENT FAILS TO MEET PERFORMANCE
26 STANDARDS IN THE MAJORITY OF PRECINCTS OR FOR THE MUNICIPALITY AS A WHOLE FOR
27 FIVE CONSECUTIVE FISCAL YEARS, MUNICIPAL POLICING SERVICES ARE SUBJECT TO
28 MANAGED COMPETITION.

29 ARTICLE 6. FISCAL RESPONSIBILITY

30 9-1451. Core functions funded first

31 A MUNICIPALITY SHALL ADEQUATELY FUND MUNICIPAL FUNCTIONS WITHOUT WHICH
32 THE MUNICIPALITY WOULD CEASE TO EXIST AS A GOVERNMENTAL ENTITY BEFORE FUNDING
33 ANY OTHER MUNICIPAL FUNCTION OR SERVICE.

34 9-1452. Municipal expenditure limit

35 FOR PURPOSES OF CALCULATING THE MUNICIPALITY'S EXPENDITURE LIMITATION
36 UNDER ARTICLE IX, SECTION 20, CONSTITUTION OF ARIZONA, FOR THE FISCAL YEARS
37 BEGINNING AFTER THE ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER, ANY
38 AUTHORIZATION FOR THE PAYMENT OF MONIES, REVENUES, FUNDS, FEES, FINES,
39 PENALTIES, TUITION, PROPERTY AND RECEIPTS OF ANY KIND WHATSOEVER THAT IS
40 RECEIVED BY OR FOR THE ACCOUNT OF ANY SPECIAL DISTRICT, AS PRESCRIBED IN
41 SECTION 48-271, SUBSECTION B, THAT IS ORGANIZED ON OR AFTER THE FIRST FISCAL
42 YEAR AFTER ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER THAT EXISTS, FURNISH
43 SERVICES OR OPERATES PRIMARILY WITHIN THE MUNICIPAL BOUNDARIES, IS INCLUDED
44 AS A COMPONENT OF THE MUNICIPALITY'S EXPENDITURE PURSUANT TO ARTICLE IX,
45 SECTION 20, CONSTITUTION OF ARIZONA.

1 9-1453. Taxation limitation

2 THE MAXIMUM AMOUNT OF AD VALOREM TAXES THAT THE MUNICIPALITY LEVIES FOR
3 THE FISCAL YEARS BEGINNING AFTER THE ADOPTION OF THE MODEL LOCAL LIBERTY
4 CHARTER SHALL NOT EXCEED AN AMOUNT OF TWO PER CENT GREATER THAN THE
5 DIFFERENCE BETWEEN THE AMOUNT IN THE IMMEDIATELY PRECEDING FISCAL YEAR OF AD
6 VALOREM TAXES THAT THE MUNICIPALITY LEVIES AND AD VALOREM TAXES OR
7 ASSESSMENTS LEVIED BY ALL SPECIAL DISTRICTS, OR EQUIVALENT POLITICAL
8 SUBDIVISIONS, THAT ARE ORGANIZED ON OR AFTER THE FIRST FISCAL YEAR AFTER
9 ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER THAT EXISTS, FURNISH SERVICES OR
10 OPERATES PRIMARILY WITHIN THE MUNICIPAL BOUNDARIES.

11 9-1454. Managed competition; independent review board; members

12 A. AS SOON AS PRACTICABLE BUT NO LATER THAN THE SECOND FISCAL YEAR
13 AFTER THE ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER, THE MUNICIPALITY SHALL
14 FURNISH MUNICIPAL SERVICES, OTHER THAN CORE PUBLIC SAFETY SERVICES, THROUGH
15 TRANSPARENT, OPEN COMPETITIVE BIDDING FOR SERVICE CONTRACTS BY INDEPENDENT
16 CONTRACTORS AND MUNICIPAL DEPARTMENTS. A MUNICIPALITY MAY MAKE CORE PUBLIC
17 SAFETY SERVICES PROVIDED BY POLICE OFFICERS AND FIRE FIGHTERS SUBJECT TO
18 MANAGED COMPETITION IF THEY ARE APPROVED BY A MAJORITY OF THE ELECTED MEMBERS
19 OF THE MUNICIPALITY'S LEGISLATIVE DEPARTMENT. THE MUNICIPALITY'S CHIEF
20 EXECUTIVE OFFICER HAS THE SOLE RESPONSIBILITY FOR ADMINISTERING AND
21 MONITORING ANY AGREEMENTS WITH CONTRACTORS. THE MUNICIPALITY'S CHIEF
22 EXECUTIVE OFFICER IS REQUIRED TO PRODUCE ANNUAL PERFORMANCE AUDITS FOR
23 CONTRACTED SERVICES, THE COST OF WHICH MUST BE ACCOUNTED FOR AND CONSIDERED
24 DURING THE BIDDING PROCESS. THE MUNICIPALITY'S CHIEF EXECUTIVE OFFICER SHALL
25 SEEK AN INDEPENDENT AUDIT EVERY FIVE YEARS TO EVALUATE THE MUNICIPALITY'S
26 EXPERIENCE AND PERFORMANCE AUDITS. IF A SERVICE IS AWARDED TO AN INDEPENDENT
27 CONTRACTOR THROUGH MANAGED COMPETITION, IMPACTED MUNICIPAL EMPLOYEES ARE NOT
28 PRECLUDED OR HINDERED FROM ACCEPTING EMPLOYMENT WITH THE INDEPENDENT
29 CONTRACTOR.

30 B. AS SOON AS PRACTICABLE BUT NO LATER THAN THE SECOND FISCAL YEAR
31 AFTER THE ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER, THE MUNICIPALITY'S
32 LEGISLATIVE DEPARTMENT SHALL BY ORDINANCE PROVIDE FOR STANDARDS AND PROCESSES
33 ENSURING TRANSPARENT, OPEN COMPETITIVE BIDDING FOR CONTRACTS TO FURNISH
34 PUBLIC SERVICES. THE LEGISLATIVE DEPARTMENT SHALL ALSO ENACT ORDINANCES TO
35 SAFEGUARD AGAINST CORRUPTION AND CONFLICTS OF INTEREST.

36 C. AS SOON AS PRACTICABLE BUT NO LATER THAN THE SECOND FISCAL YEAR
37 AFTER THE ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER, THE MUNICIPALITY'S
38 CHIEF EXECUTIVE OFFICER SHALL APPOINT SEVEN MEMBERS TO THE MANAGED
39 COMPETITION INDEPENDENT REVIEW BOARD. FOUR OF THE MEMBERS SHALL BE PRIVATE
40 CITIZENS WHOSE APPOINTMENTS ARE SUBJECT TO COUNCIL CONFIRMATION. EACH OF THE
41 PRIVATE CITIZENS MUST HAVE PROFESSIONAL EXPERIENCE IN ONE OR MORE OF THE
42 FOLLOWING AREAS:

- 43 1. FINANCE.
- 44 2. LAW.
- 45 3. PUBLIC ADMINISTRATION.

- 1 4. BUSINESS MANAGEMENT.
- 2 5. THE SERVICE AREA UNDER CONSIDERATION FOR MANAGED COMPETITION.
- 3 D. THE REMAINING THREE MEMBERS OF THE MANAGED COMPETITION INDEPENDENT
- 4 REVIEW BOARD MUST BE MUNICIPAL STAFF INCLUDING A STAFF DESIGNEE, A MUNICIPAL
- 5 LEGISLATIVE DEPARTMENT STAFF DESIGNEE AND THE MUNICIPAL AUDITOR AND
- 6 COMPTROLLER OR STAFF DESIGNEE. THE MUNICIPAL STAFF APPOINTEES SHALL NOT HAVE
- 7 ANY PERSONAL OR FINANCIAL INTERESTS THAT WOULD CREATE A CONFLICT OF INTEREST
- 8 WITH THE DUTIES OF A BOARD MEMBER.
- 9 E. MEMBERS OF THE BOARD ARE PROHIBITED FROM ENTERING INTO A CONTRACT
- 10 OR ACCEPTING EMPLOYMENT FROM AN ORGANIZATION THAT SECURES A MUNICIPAL
- 11 CONTRACT THROUGH THE MANAGED COMPETITION PROCESS FOR THE DURATION OF THE
- 12 CONTRACT. THE TERM OF SERVICE FOR INITIAL MEMBERS OF THE BOARD SHALL NOT END
- 13 BEFORE THE THIRD FISCAL YEAR AFTER ADOPTION OF THE MODEL LOCAL LIBERTY
- 14 CHARTER, AND THEREAFTER SHALL BE DETERMINED BY ORDINANCE.
- 15 F. AS SOON AS PRACTICABLE BUT NO LATER THAN THE SECOND FISCAL YEAR
- 16 AFTER THE ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER AND THEREAFTER AS
- 17 DETERMINED BY ORDINANCE, THE MUNICIPALITY'S CHIEF EXECUTIVE OFFICER SHALL
- 18 PREPARE AN INITIAL PRELIMINARY WRITTEN STATEMENT OF WORK FOR EACH MUNICIPAL
- 19 SERVICE TO BE PUT INTO MANAGED COMPETITION. THE CHIEF EXECUTIVE OFFICER
- 20 SHALL TRANSMIT THIS REPORT TO THE MANAGED COMPETITION INDEPENDENT REVIEW
- 21 BOARD FOR ITS CONSIDERATION AND RECOMMENDATIONS RELATIVE TO THE REQUEST FOR
- 22 PROPOSAL AND CONTRACTUAL STANDARDS AND CONTRACTOR QUALIFICATIONS. IN
- 23 DETERMINING ITS RECOMMENDATIONS, THE BOARD SHALL CONSIDER SUCH FACTORS AS THE
- 24 TYPE OF SERVICE PROVIDED, THE ABILITIES OF THE CURRENT AND PROJECTED
- 25 COMPETITIVE MARKET, POTENTIAL EFFICIENCIES THAT COULD BE ACHIEVED AND THE
- 26 CAPACITY OF THE MUNICIPALITY TO DELIVER ESSENTIAL SERVICES IN THE EVENT OF
- 27 CONTRACTOR DEFAULT. THE BOARD SHALL ISSUE ITS INITIAL RECOMMENDATIONS AS
- 28 SOON AS PRACTICABLE AND NO LATER THAN THE THIRD FISCAL YEAR AFTER THE
- 29 ADOPTION OF THE MODEL LOCAL LIBERTY CHARTER, AND THEREAFTER AS DETERMINED BY
- 30 ORDINANCE.
- 31 G. IN ADDITION TO STANDARDS AND QUALIFICATIONS RECOMMENDED BY THE
- 32 MANAGED COMPETITION INDEPENDENT REVIEW BOARD, THE MUNICIPALITY'S CHIEF
- 33 EXECUTIVE OFFICER SHALL REQUIRE THAT ANY INDEPENDENT CONTRACTOR PROVIDING
- 34 SERVICES TO THE MUNICIPALITY MEET MINIMUM CONTRACT STANDARDS TO BE CONTAINED
- 35 IN THE SOLICITATION FOR SERVICES OR REQUEST FOR PROPOSAL. THE MINIMUM
- 36 CONTRACT STANDARDS SHALL INCLUDE:
- 37 1. THAT THE INDEPENDENT CONTRACTOR PROVIDES PROOF THAT IT MAINTAINS AN
- 38 ADEQUATE LEVEL OF LIABILITY INSURANCE CONSISTENT WITH MUNICIPAL RISK
- 39 MANAGEMENT REQUIREMENTS.
- 40 2. THAT THE INDEPENDENT CONTRACTOR HAS APPROPRIATE SAFETY POLICES AND
- 41 PROCEDURES IN PLACE TO PROTECT THE PUBLIC AND ITS EMPLOYEES IN PROVIDING THE
- 42 SERVICE.
- 43 3. THAT THE INDEPENDENT CONTRACTOR COMPLIES WITH ALL APPLICABLE
- 44 EMPLOYMENT AND LABOR LAWS.

1 4. PERFORMANCE STANDARDS AND CONSEQUENCES FOR NONPERFORMANCE,
2 INCLUDING TERMINATION OF THE CONTRACT.

3 5. THAT THE INDEPENDENT CONTRACTOR DESIGNATES APPROPRIATE PERSONNEL TO
4 MONITOR CONTRACT COMPLIANCE.

5 6. THAT IF BACKGROUND CHECKS ARE REQUIRED OF MUNICIPAL EMPLOYEES
6 PERFORMING A PARTICULAR SERVICE, THE INDEPENDENT CONTRACTOR PERFORMS
7 BACKGROUND CHECKS ON EMPLOYEES PERFORMING THOSE SAME SERVICES.

8 7. THAT THE MUNICIPALITY SHALL UNILATERALLY AND IMMEDIATELY TERMINATE
9 THE CONTRACT IF THE INDEPENDENT CONTRACTOR ENTERS INTO A CONTRACT WITH OR
10 EMPLOYS A MEMBER OF THE INDEPENDENT REVIEW BOARD DURING THE TERM OF THE
11 CONTRACT WITH THE MUNICIPALITY.

12 8. THAT THE MUNICIPALITY UNILATERALLY AND IMMEDIATELY TERMINATE THE
13 CONTRACT IF THE INDEPENDENT CONTRACTOR ENTERS INTO A CONTRACT WITH OR EMPLOYS
14 A FORMER MEMBER OF THE INDEPENDENT REVIEW BOARD DURING THE TERM OF THE
15 CONTRACT WITH THE MUNICIPALITY IF THAT FORMER BOARD MEMBER PARTICIPATED IN
16 THE SELECTION PROCESS FOR THAT CONTRACT.

17 ARTICLE 7. FREEDOM FROM FAVORITISM

18 9-1461. Subsidy to private enterprise

19 UNLESS OTHERWISE PROVIDED IN THIS ARTICLE, A SUBSIDY TO PRIVATE
20 ENTERPRISE IS A DIRECT OR INDIRECT ECONOMIC BENEFIT GRANTED BY THE
21 MUNICIPALITY WITH THE PRIMARY PURPOSE OR SUBSTANTIAL EFFECT OF ENCOURAGING OR
22 MAINTAINING PARTICULAR OR SPECIFIC CLASSES OF BUSINESS VENTURES IN WHICH
23 PRIVATE PERSONS HAVE A SUBSTANTIAL FINANCIAL OR OWNERSHIP INTEREST.

24 9-1462. Prohibition against subsidizing private enterprise

25 A MUNICIPALITY SHALL NOT SUBSIDIZE PRIVATE ENTERPRISE.

26 9-1463. Exception

27 THE FOLLOWING IS NOT CONSIDERED A SUBSIDY:

28 1. BENEFITS FROM THE MUNICIPALITY'S PERFORMANCE OF ESSENTIAL
29 GOVERNMENTAL FUNCTIONS, INCLUDING BENEFITS FROM:

30 (a) THE MUNICIPALITY'S PROVISION AND MAINTENANCE OF PUBLIC
31 INFRASTRUCTURE FOR GENERAL PUBLIC BENEFIT AND FOR ACTUAL PUBLIC USE.

32 (b) THE MUNICIPALITY'S PERFORMANCE OF FUNCTIONS WITHOUT WHICH THE
33 MUNICIPALITY WOULD CEASE TO EXIST AS A GOVERNMENTAL BODY.

34 (c) THE RETENTION OF PRIVATE ENTERPRISE TO PERFORM FUNCTIONS OF THE
35 TYPE WITHOUT WHICH THE MUNICIPALITY WOULD CEASE TO EXIST AS A GOVERNMENTAL
36 BODY AFTER A PROCESS OF TRANSPARENT AND OPEN COMPETITIVE BIDDING.

37 (d) THE PROCUREMENT OF SUPPLIES AND SERVICES FROM PRIVATE ENTERPRISE
38 FOR THE MUNICIPALITY'S ORDINARY BUSINESS OPERATIONS AFTER A PROCESS OF
39 TRANSPARENT AND OPEN COMPETITIVE BIDDING.

40 2. LOWER TAXES AND LESS REGULATION, INCLUDING BENEFITS FROM:

41 (a) THE GENERAL AND UNIFORM RELAXATION OR REPEAL OF REGULATIONS.

42 (b) THE GENERAL AND UNIFORM REDUCTION OR REPEAL OF TAXES, ASSESSMENTS
43 OR FEES.

44 (c) THE RELAXATION OR REPEAL OF SPECIAL REGULATIONS THAT, IF NOT
45 RELAXED OR REPEALED, WOULD OTHERWISE SUBJECT SPECIFIC INDIVIDUALS, ENTITIES

1 OR CLASSES OF INDIVIDUALS OR ENTITIES TO REGULATORY BURDENS IN EXCESS OF
2 THOSE IMPOSED GENERALLY AND UNIFORMLY.

3 (d) THE REDUCTION OR REPEAL OF SPECIAL TAXES, ASSESSMENTS OR FEES
4 THAT, IF NOT REDUCED OR REPEALED, WOULD OTHERWISE SUBJECT SPECIFIC
5 INDIVIDUALS, ENTITIES OR CLASSES OF INDIVIDUALS OR ENTITIES TO TAXATION,
6 ASSESSMENTS OR FEES IN EXCESS OF THOSE IMPOSED GENERALLY AND UNIFORMLY.

7 ARTICLE 8. ACCOUNTABILITY

8 9-1471. Accountability of employees

9 A. NOTWITHSTANDING ANY RULES PRESCRIBED BY THE CIVIL SERVICE BOARD,
10 ALL UNELECTED MUNICIPAL EMPLOYEES, APPOINTED OFFICERS AND DEPARTMENT HEADS
11 SHALL BE HELD PERSONALLY ACCOUNTABLE TO THE RESIDENTS OF THE MUNICIPALITY FOR
12 THEIR ACTIONS AND OMISSIONS AS DESCRIBED IN THIS SECTION. THE MUNICIPALITY
13 SHALL MAINTAIN PUBLIC RECORDS IN A CONVENIENTLY ACCESSIBLE AND SEARCHABLE
14 USER-FRIENDLY WEBSITE FORMAT FOR PUBLIC VIEWING OF FORMAL AND INFORMAL
15 WRITTEN COMPLAINTS BROUGHT OR SUBMITTED BY RESIDENTS OF THE MUNICIPALITY
16 AGAINST UNELECTED MUNICIPAL EMPLOYEES, MUNICIPAL OFFICERS AND DEPARTMENT
17 HEADS FOR THE DURATION OF THEIR EMPLOYMENT WITH THE MUNICIPALITY.

18 B. THE MUNICIPALITY SHALL MAINTAIN AN INTERACTIVE, CONVENIENTLY
19 ACCESSIBLE AND SEARCHABLE USER-FRIENDLY WEBSITE ALLOWING FOR RESIDENTS OF THE
20 MUNICIPALITY TO EVALUATE THE PERSONAL PERFORMANCE OF EACH UNELECTED MUNICIPAL
21 EMPLOYEE, MUNICIPAL OFFICER AND DEPARTMENT HEAD FOR THE DURATION OF THEIR
22 EMPLOYMENT WITH THE MUNICIPALITY.

23 C. THE MUNICIPALITY SHALL IMMEDIATELY TERMINATE THE EMPLOYMENT OF ANY
24 UNELECTED MUNICIPAL EMPLOYEE, APPOINTED OFFICER AND DEPARTMENT HEAD FOUND BY
25 A COURT OF LAW OR IN A FINAL ARBITRATION OR MEDIATION DECISION TO HAVE
26 TORTIOUSLY OR OTHERWISE UNLAWFULLY CAUSED SUBSTANTIAL HARM TO ANY PERSON ON
27 THREE OR MORE OCCASIONS IN THE COURSE OF PERFORMING THEIR OFFICIAL DUTIES.

28 ARTICLE 9. LOCAL SOVEREIGNTY

29 9-1481. Local sovereignty

30 A. AN INTERGOVERNMENTAL CONTRACTUAL RELATIONSHIP SHALL NOT BE ENTERED
31 INTO OR BE BINDING ON THE MUNICIPALITY UNLESS THE MUNICIPALITY RETAINS THE
32 RIGHT TO RESCIND THE CONTRACT ON NO MORE THAN SIXTY DAYS BEFORE WRITTEN
33 NOTICE.

34 B. IF THIS STATE OR THE UNITED STATES OR ANY DEPARTMENT OR AGENCY OF
35 THIS STATE OR THE UNITED STATES PROPOSES OR ACTS TO IMPLEMENT, ENFORCE,
36 EXPAND OR EXTEND ANY REGULATION OR REGULATORY POLICY WITHIN MUNICIPAL
37 BOUNDARIES, THE MUNICIPALITY SHALL EXERCISE ALL LAWFUL MEANS OF DEMANDING THE
38 ACTION BE COORDINATED WITH LESS RESTRICTIVE MUNICIPAL PLANS AND POLICIES.

39 ARTICLE 10. TRANSPARENCY

40 9-1491. Public online posting of municipal expenditures

41 IN ADDITION TO ANY OTHER TRANSPARENCY REQUIREMENTS ESTABLISHED BY LAW,
42 A MUNICIPALITY SHALL NOT MAKE AN EXPENDITURE BY CASH, CHECK, PROMISSORY NOTE,
43 WARRANT OR OTHER SIMILAR MEANS UNLESS THE AMOUNT OF THE EXPENDITURE, THE
44 PURPOSE OF THE EXPENDITURE AND THE IDENTITY OF THE RECIPIENT OF THE

1 EXPENDITURE IS CONCURRENTLY PUBLISHED ONLINE IN A CONVENIENTLY ACCESSIBLE AND
2 SEARCHABLE USER-FRIENDLY PUBLIC WEBSITE FORMAT.

3 9-1492. Publicity of records

4 ALL RECORDS AND ACCOUNTS OF EVERY OFFICE, DEPARTMENT OR AGENCY OF THE
5 MUNICIPALITY SHALL BE OPEN FOR INSPECTION BY ANY CITIZEN, ANY REPRESENTATIVE
6 OF A CITIZEN'S ORGANIZATION OR ANY REPRESENTATIVE OF THE PRESS AT ALL
7 REASONABLE TIMES AND UNDER REASONABLE REGULATIONS ESTABLISHED BY THE
8 MUNICIPALITY'S LEGISLATIVE DEPARTMENT PURSUANT TO TITLE 39, CHAPTER 1. THE
9 MUNICIPALITY SHALL RESPOND TO ALL WRITTEN PUBLIC RECORDS REQUESTS IN WRITING
10 AND WITH SPECIFIC REFERENCE TO EACH RECORDS REQUEST. THE MUNICIPALITY SHALL
11 FULLY COMPLY WITH ANY WRITTEN PUBLIC RECORDS REQUEST WITHIN THE COMPLIANCE
12 DEADLINE SPECIFIED IN THE REQUEST. IF THERE IS A LAWFUL BASIS FOR EXTENDING
13 THE TIME OF COMPLIANCE, PARTIAL COMPLIANCE OR NONCOMPLIANCE, THE MUNICIPALITY
14 SHALL WITHIN THE DEADLINE SPECIFIED IN THE REQUEST, IF ONE IS SPECIFIED,
15 FURNISH A WRITTEN STATEMENT TO THE REQUESTOR SIGNED BY THE MUNICIPALITY'S
16 CHIEF EXECUTIVE OFFICER OR AUTHORIZED DESIGNEE DETAILING THE REASONS FOR THE
17 MUNICIPALITY'S PARTIAL COMPLIANCE, NONCOMPLIANCE OR REQUESTED COMPLIANCE
18 DEADLINE EXTENSION THAT SPECIFIES A REASONABLE ALTERNATIVE DEADLINE WITH
19 SPECIFIC REFERENCE TO EACH RECORDS REQUEST.

20 ARTICLE 11. RECONSTITUTE GOVERNMENT

21 9-1501. Right to vote for none of the above

22 WITHIN ONE ELECTION CYCLE AFTER THE ADOPTION OF THE MODEL LOCAL LIBERTY
23 CHARTER, THE MUNICIPALITY SHALL ENACT A LOCAL LAW ALLOWING RESIDENTS TO VOTE
24 FOR "NONE OF THE ABOVE" IN ADDITION TO QUALIFIED CANDIDATES RUNNING FOR
25 OFFICE WITHIN ITS LEGISLATIVE DEPARTMENT. THE LOCAL LAW SHALL PROVIDE THAT
26 IF "NONE OF THE ABOVE" RECEIVES MORE VOTES THAN ANY OTHER CANDIDATE, THE
27 COMPETING CANDIDATES ARE DISQUALIFIED FROM TAKING OFFICE DURING THE CURRENT
28 ELECTION CYCLE AND THE MUNICIPALITY SHALL CALL FOR A SPECIAL ELECTION WITH
29 NEW CANDIDATES REQUIRED TO QUALIFY AND STAND FOR ELECTION.

30 9-1502. Mandatory bankruptcy filing

31 A. IF ANY OF THE FOLLOWING OCCURS, THE MUNICIPALITY MUST CURE THE
32 CONDITION WITHIN THIRTY DAYS OR WITHIN THE SAME PERIOD, FILE FOR BANKRUPTCY
33 PROTECTION UNDER CHAPTER 9 OF THE UNITED STATES BANKRUPTCY CODE TO
34 RESTRUCTURE ITS FINANCES:

35 1. THE MUNICIPALITY HAS ONE OR MORE CREDITORS WITH UNDISPUTED CLAIMS
36 THAT HAVE BEEN UNPAID SIX OR MORE MONTHS AFTER THEIR DUE DATE THAT, IN THE
37 AGGREGATE, EXCEED TEN PER CENT OF THE MUNICIPALITY'S ANNUAL GENERAL FUND
38 BUDGET.

39 2. THE MUNICIPALITY RECEIVES WRITTEN NOTIFICATION FROM THE TRUSTEE,
40 ACTUARY OR AT LEAST TEN PER CENT OF THE BENEFICIARIES OF ANY PENSION, HEALTH
41 OR OTHER BENEFIT FUND THAT THE MUNICIPALITY HAS NOT TIMELY DEPOSITED ITS
42 MINIMUM OBLIGATION PAYMENT AS REQUIRED BY LAW.

43 3. MUNICIPAL EMPLOYEES HAVE NOT BEEN PAID UNDISPUTED COMPENSATION DUE
44 IN CASH OR CASH EQUIVALENTS AND IT HAS BEEN AT LEAST FOURTEEN DAYS AFTER THE
45 SCHEDULED DATE OF PAYMENT.

1 4. THE MUNICIPALITY RECEIVES WRITTEN NOTIFICATION FROM A TRUSTEE,
2 PAYING AGENT OR BONDHOLDER OF A DEFAULT IN A BOND PAYMENT OR A VIOLATION OF
3 ONE OR MORE BOND COVENANTS.

4 5. THE MUNICIPALITY HAS VIOLATED THE CONDITIONS OF ANY LAW GOVERNING
5 THE ISSUANCE OF BONDS OR NOTES.

6 6. A COURT HAS ORDERED AN ADDITIONAL TAX LEVY WITHOUT THE PRIOR
7 APPROVAL OF THE MUNICIPALITY'S LEGISLATIVE DEPARTMENT.

8 B. IF THE MUNICIPALITY FAILS TO COMPLY WITH THIS SECTION, RESIDENTS
9 COMPRISING TEN PER CENT OF THE ELECTORATE OF THE MUNICIPALITY IN THE MOST
10 RECENT PRECEDING CITYWIDE ELECTION MAY FILE AN APPROPRIATE PETITION TO
11 ENFORCE THIS PROVISION IN MUNICIPAL COURT OR BY SPECIAL ACTION IN THE
12 SUPERIOR COURT.

13 Sec. 2. Severability

14 If a provision of this act or its application to any person or
15 circumstance is held invalid, the invalidity does not affect other provisions
16 or applications of the act that can be given effect without the invalid
17 provision or application, and to this end the provisions of this act are
18 severable.