



**GOVERNING BOARD AGENDA ITEM FORM  
AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

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**DATE OF MEETING:** March 5, 2013

**TITLE:** Authority to Submit District Building Projects for Review by Pima County Development Services for Plan Review and Inspection

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**BACKGROUND:**

Historical Application of Building Permits and Fees to School Districts

A.R.S. § 34-461 has long required that all public buildings in the state be constructed in compliance with the state or local fire code and be constructed in compliance with local building, plumbing, electrical, fire prevention and mechanical codes. This same statute has also long provided that the owners of public buildings (governmental entities) are subject to the same permitting and inspection fees required of other persons, as well as subject to the same construction inspections under applicable codes for determination of compliance.

While one might have naturally expected such requirements to exist, the legal reality is that, in general, political subdivisions of the state do not have authority to regulate one another unless given that authority. This statute, therefore, served to establish the authority of counties, municipalities and other jurisdictions (typically political subdivisions themselves) to regulate other political subdivisions such as school districts.

2012 Change in Law; Exemption

During the last legislative session, House Bill 2561 was passed and signed into law, and it modified the provisions of A.R.S. §34-461 in significant and pertinent measure. It granted an exemption from some of the foregoing statutory requirements to school districts located in counties with populations exceeding 750,000 but less than 2,000,000 residents (effectively only Pima County). Specifically, Pima County school districts are no longer required to obtain local building permits for their construction projects nor are they subject to permitting fees that cover costs associated with plan review and compliance inspections.

Permitting fees can be substantial, so the exemption of school district projects from the fee requirement can create significant savings for a school district's construction budget. It is important to note, however, that the newly revised law does not mandate exemptions; school districts are still free to submit to the building permit and fees process if they choose to.

Amphitheater Response to Change in Law: Policy

In July of 2012, the Amphitheater Governing Board adopted a new policy in response to the changes made to §34-461. The new policy, "Attachment A" to this Agenda Item, directs the Superintendent to determine whether to submit District construction projects to local jurisdictions for permitting and inspections or, whether instead, to retain private and qualified

consultants (such as independent engineers, architects, or contractors) to provide plan review and code compliance inspections in lieu of the normal jurisdictional process.

Under the District policy, if the Superintendent determines to procure the services of a consultant to serve as a private code compliance inspector, the Superintendent must notify the local and applicable jurisdiction(s) of the determination not to utilize the jurisdiction's permitting process. Other conditions and requirements apply and are fully detailed in the attached policy.

### New Pima County Procedure

In response to the recent changes made to A.R.S. § 34-461, Pima County Development Services (the department within Pima County government responsible for permitting and inspection of construction projects), established a new Standard Operating Procedure ("SOP") in early January of this year. SOP 230.12 (see "Attachment B") allows school districts to retain the county department on a consultant basis to still perform plan review and code compliance inspection services in situations where the school district has elected not to submit to the building permitting process and fees of a local jurisdiction, including the County.

Pima County will perform these services on a consultant basis for an hourly fee (\$125 per hour for plan review/\$82 per hour for inspection services) or will do so on a "whole project basis", based upon a percentage of the amount normally charged under the permitting process (30% for plan review/40% for full inspection services). This would represent a considerable savings over what the District normally pays in building permit fees.

### Advantages of New County SOP

If the District determines not to submit its construction projects to a local jurisdiction for plan review and inspections and determines instead, as §34-461 allows, to hire a consultant to perform those services, the District will need to procure a consultant and pay fees to the consultant.

Pima County, through SOP 230.12, can serve as a consultant for this purpose and is uniquely qualified to provide the necessary services – the same services it typically provides in its governmental capacity anyway. By utilizing the County for these services, the District is able to rely upon the expertise of County Development Services officials to ensure the safety of all building projects, and can avoid the potentially difficult process of finding and vetting other qualified consultants.

The fee rates which SOP 230.12 describes are also very reasonable – obviously substantially less than typical permit fees would be, and beyond that, also extremely competitive with what market rates for independent consultants would be.

The County is also uniquely qualified to assist the District in this function because the District overlaps three separate jurisdictions: Pima County, the City of Tucson, and the Town of Oro Valley, all of which have their own permitting and inspection processes. The County's SOP enables "one stop" service, because the County covers the entire District.

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**RECOMMENDATION:**

The Administration recommends that the Superintendent be authorized to retain the Pima County Developmental Services Department on a consultant basis for plan review and code inspection services when the Superintendent has determined not to submit a project to the building permit process of a local jurisdiction.

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**INITIATED BY:**

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**Todd A. Jaeger, Associate to the Superintendent****Date: March 1, 2013**

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**Patrick Nelson, Superintendent**

## **“Attachment A”**

### **Compliance of District Construction Projects with Applicable Codes and Regulations**

The construction of new District facilities, as well as improvements to existing District facilities, shall be in compliance with the state fire code unless a fire code has been adopted by the city, town, county or fire district in which the building is located. In addition, all district facilities and improvements to the same shall be constructed in compliance with all current and applicable building, plumbing, electrical, fire prevention, and mechanical codes adopted by the city, town, county or fire district in which the facility is located. In addition, all state and federal laws and regulations shall be followed, including, but not limited to, laws and regulations requiring access to educational facilities by persons with disabilities.

To ensure compliance with applicable codes or regulations, all design and construction of District facilities shall be made under the direction and supervision of a qualified architect or engineer, as appropriate, and all construction services shall be provided by qualified contractors. The Superintendent shall specify the qualifications required for architects, engineers and contractors as those services are procured. Such qualifications shall include, at a minimum, the registration and good standing of architects and engineers with the Arizona Board of Technical Registration and the registration and good standing of contractors with the Arizona Registrar of Contractors.

Pursuant to A.R.S. 34-461, in order to ensure compliance with applicable codes, the Superintendent shall determine whether to submit any district construction project to the building permit and inspection process of the appropriate local jurisdiction(s) or to instead procure the services of a private code compliance inspector. If the Superintendent determines to submit any District construction project to the building permit and inspection process of any local jurisdiction(s), the District shall pay all appropriate fees and comply with all inspection requirements. If the Superintendent determines to procure the services of a private code compliance inspector, the following shall be observed:

- The Superintendent shall, by certified U.S. Mail, notify the local applicable jurisdiction(s) of the district's determination not to utilize the jurisdiction's permitting process and to use, instead, private code compliance inspection services for the particular construction project.
- The contractor providing construction services on a District project is prohibited from serving as the private code compliance inspector on the same District construction project. Nothing in this provision, however, shall be construed to excuse the contractor providing construction services from that contractor's independent and continuing obligation to construct the project in completed conformity with applicable codes.
- The architect for a District project shall be responsible for signing and providing the certificate of occupancy for the project whenever such a certificate is required for the particular project.
- The Superintendent shall permanently maintain in the records of the District all documents provided by architects, engineers and private code compliance inspectors memorializing or relating to the certificate of occupancy and the conduct of the inspections for District projects. The Superintendent shall require all project architects, engineers and private code compliance inspectors to provide these documents as a condition precedent for payment of contract retention amounts.

**Fire Code Compliance**

Notwithstanding any other provision in this or other policy, the District shall seek and obtain all appropriate permits from the local or state office having jurisdiction for the fire code applicable to any District project. In addition, the District shall pay any appropriate fees required by that jurisdiction.

“Attachment B”

(see next pages)