

## Enforcement, Amendments, and Penalties

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**Section 13-1** Enforcement

A. Building Permits

No structure shall be erected, added to, or structurally altered, until a permit therefore has been issued by the Building Official, as required by the Building Code of the Town of Clarkdale. All applications for such permits shall be in accordance with the requirements of this Ordinance.

B. Certificates of Occupancy, Non-Conforming Use:

1. No existing use of land, on the date this Ordinance becomes effective, shall be modified and no structure hereafter erected, altered or extended, shall be used or changed in use, until a Certificate of Occupancy shall have been issued by the Building Official certifying that the land and the structure or proposed use thereof complies with the provisions of this Ordinance.
2. No non-conforming use shall be maintained, renewed, changed, or extended without a Certificate of Occupancy having first been issued by the Building Official, therefore.
3. All Certificates of Occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within fifteen (15) days after the erection or alteration shall have been approved.
4. The Building Official shall maintain a record of all certificates. Copies shall be furnished, upon request and payment of a reasonable fee, to any person having a proprietary or tenancy interest in the structure or land affected.
5. No permit for excavation, erection, alteration, or repair for any structure shall be issued until an application has been made for a Certificate of Occupancy.
6. Under such conditions as set by the Board of Adjustment a temporary Certificate of Occupancy for not more than thirty (30) days for structures or land may be issued.
7. All appropriate certificates of use shall be issued for those uses in existence at the time this Ordinance was adopted or at the time any new use is established under this Ordinance.

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- C. Board of Adjustment: The Board of Adjustment shall have all the duties and powers as stated in Article 17-2-2 of the Town Code.

**Section 13-2 Procedure for Amendments**

- A. Purpose

The Council may, from time to time as public necessity, convenience, general welfare and good zoning practices requires, change the boundaries of zone districts, hereinafter referred to as zone changes or re-zoning or amend, change, repeal or supplement the regulations herein established. Zone changes or amendments may be initiated by the Town Council or by the Planning Commission on its own motion or by an application of the owner of any property within the area proposed to be changed or a request can be made by a citizen for an amendment.

- B. General Plan Conformance

All amendments which change the boundaries of any zoning district or change the text of the Zoning Ordinance must conform to the adopted General Plan of the Town of Clarkdale. Any re-zoning ordinance, if adopted, shall further the implementation of, and not be contrary to, the goals, policies, and applicable elements of the General Plan. A re-zoning conforms with the land use element of the General Plan if it proposes land uses, densities, or intensities within the range for the subject property as stated in the General Plan or any amendment thereto.

- C. Application (**Revised by Ordinance #366 on 3/10/15; Effective 4/10/15**)

Application for change of zone shall be made on a form provided by the Town of Clarkdale. Fees shall be paid for such application according to the adopted schedule for such requests. All applications will be available for public inspection upon submittal to the Community Development Department. The following information shall be included with all applications for a zone change amendment:

1. A detailed description of the proposed development plan for which the zone change is being requested including a specific schedule for proposed improvements. (A.R.S. 9-462.01.12.E). The development plan shall include a statement of intended use and a general layout of the property including proposed building placement, parking lot design and access.

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2. A draft site plan showing proposed building layout, parking and all proposed construction or modifications to an existing structure. Site plan shall include notation for any proposed dedication of public rights-of-way or drainage areas.
3. A narrative of how the requested zone change complies with the Clarkdale General Plan. (A.R.S. 9-462-01-12.F)
4. Completed application.
5. Legal description of the property.
6. Copy of property title or statement of letter of authorization from the property owner.
7. Proposed citizen participation plan to ensure the applicant pursues early and effective participation from the community regarding the proposed zoning amendment. This plan shall be implemented prior to the first public hearing. A summary of the neighborhood input shall be presented by the applicant to the Planning Commission.
8. The application shall be accompanied by maps showing the subject property as well as the surrounding area and a list of names and addresses of abutting property owners.

Town initiated zone changes and zone change applications originating from a transfer of development rights application shall be exempt from the requirement of providing a specific development schedule.

**D. Citizen Participation**

1. The legislative body of the Town of Clarkdale has adopted the following citizen review and participation process that applies to all re-zoning cases. By law and policy the re-zoning process is designed to give the greatest opportunity possible for citizen participation in such a public process. In the event of doubt regarding public participation, more, not less public participation, shall be the standard.

The purpose of the citizen participation process is to:

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- a. Ensure that applicants pursue early and effective citizen participation in conjunction with their application, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community;
  - b. Ensure that the citizens and property owners of Clarkdale have an adequate opportunity to learn about the applications that may affect them and to work with applicants to resolve concerns at an early stage of the process; and
  - c. Facilitate ongoing communications between the applicant, interested citizens and property owners, Town staff, and elected officials throughout the application review process.
2. The citizen participation plan is not intended to produce complete consensus on all applications but to encourage applicants to be good neighbors and to allow for informed decision making.

The process includes the following elements:

- a. A minimum of one (1) public hearing will be held on all re-zoning cases and proposed text amendments. The first hearing will be before the Planning and Zoning Commission. A second public hearing will be before the Mayor and Council if the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent in the rear or and side thereof extending one hundred fifty(150) feet therefrom, or of those directly opposite thereto extending one hundred fifty (150) feet from the street frontage of the opposite lots, file a protest in writing against a proposed amendment, it shall not become effective except by the favorable vote or three-fourths (3/4) of all members of the Council. The written protest shall be filed with the Clarkdale Town Clerk no later than ten (10) working days after the Planning Commission's decision on the amendment. If no written protest is filed, the amendment will be presented to the Town Council at a public meeting with opportunity for public comment.
- b. The Town shall notify all affected property owners within three hundred (300) feet of the subject site by first class mail no less

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than fifteen (15) days prior to the public hearing date.

- c. The notification above shall include date, time, and place for the public hearing as well as a description of the proposed change in land uses. A map of the site shall be included in the notification.
- d. Reference shall be made as to where comments can be made concerning the proposed zone change and when such comments are due prior to the public hearing.
- e. The affected property shall be posted fifteen (15) days in advance of the public hearing date so that the following are visible from a distance of one hundred (100) feet; the word “zoning”, the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.
- f. A notice shall be published at least once in a newspaper of general circulation at least fifteen (15) days in advance of the public hearing.
- g. In addition to notice by publication, mailed notices, and property postings, the Town of Clarkdale and the Planning and Zoning Commission reserve the right to give notice to the hearing in such other manner as it may be deemed necessary. The Commission always encourages any person proposing a re-zoning to contact surrounding property owners to ascertain and possibly address issues and concerns before the public hearings. Such contacts could include neighborhood meetings or other methods of addressing citizen comments.

**E. Public Hearings Required**

- 1. The Planning and Zoning Commission shall hold a public hearing on any re-zoning case. Notice of the time and place of the hearing including a general explanation of the matter to be considered and a general description of the area affected shall be given at least fifteen (15) days before the hearing in the following manner:
  - a. The notice shall be published at least once in a newspaper of general circulation.
  - b. In proceedings involving re-zoning of land which abuts other municipalities or unincorporated areas of the county or a

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combination thereof, copies of the notice of public hearing shall be transmitted to the planning agency or such governmental unit abutting such land.

- c. In proceedings that are not initiated by the property owner involving re-zoning of land which may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be re-zoned and all property owners, as shown on the last assessment of the property, within three hundred (300) feet of the property to be re-zoned.
- d. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing Land uses, notice shall be provided in the manner prescribed by Sub-Section e.
  - 1. A ten (10%) percent or more increase or decrease in the number of square feet or units that may be developed.
  - 2. A ten (10%) percent or more increase or reduction in the allowable height of buildings.
  - 3. An increase or reduction in the allowable number of stories of buildings.
  - 4. A ten (10%) percent or more increase or decrease in setback or open space requirements.
  - 5. An increase or reduction in permitted uses.
- e. In proceedings governed by Sub-Section d of this section, the Town shall provide notice to real property owners pursuant to at least one (1) of the following notification procedures:
  - 1. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by the changes.
  - 2. If the Town issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the Town shall include notice of such changes with such utility bills or other mailings.
  - 3. The Town shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation. The changes shall be published in a “display

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ad” covering not less than one-eighth (1/8) of a full page.

- f. If notice is provided pursuant to (2) or (3) of sub-section “e” above, the Town shall also send notice by first class mail to persons who register their names and addresses with the Town as being interested in receiving such notice.
- g. Notwithstanding the notice requirements set forth above, the Town may give notice of the hearing in such other manner as it may deem necessary or desirable.

**F. Procedure for Amendments - Recommendation of the Commission  
(Revised by Ordinance \$366 on 3/10/15; effective 4/10/15)**

The Planning Commission may consider the following when reviewing a zone change amendment request:

1. The amendment conforms to the Clarkdale General Plan, specifically the Land Use Element.
2. The amendment conforms to a Focus Area plan, if applicable.
3. The proposed development provides buffering to adjacent land uses.
4. The proposed development mitigates traffic impact.
5. The proposed development mitigates noise impact to surrounding properties.
6. The proposed development will conform to all existing zoning regulations, including the Outdoor Lighting Code and Landscape Design Standards.
7. The proposal provides community benefits such as:
  - a. Pedestrian connections
  - b. Vehicular connections
  - c. Improvement to public right-of-way
  - d. Installation of utility infrastructure
  - e. Improvement of public space
  - f. Protection of open spaces
8. Funding and installation of all required improvements as specified by the Town shall be the responsibility of the applicant.



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After a public hearing, the Commission shall make a report and recommendation to the Town Council. This report shall be made by forwarding the application for amendment with the appropriate recommendations, unless the applicant shall request the application be withdrawn. The Commission recommendation shall be presented to the Council by the Community Development Department Staff in a public meeting at the next regularly scheduled Town Council meeting date.

**G. Council's Decision**

A decision by the Town Council involving re-zoning of land which is not owned by the Town and which changes the zoning classification of such land may not be enacted as an emergency measure and such change shall not be effective for at least thirty (30) days after final approval of the change in classification by the Council.

**H. Transfer of Development Rights (Created by Ord #386; Res 1547; Adopted 6/13/17; Eff 7/13/17)**

A Transfer of Development Rights shall comply with the following:

1. Right to Purchase: The Town may enter into agreements with private property owners to purchase development rights and hold them for resale or conservation purposes. The Town shall have a right of first refusal to purchase or exchange transferable development rights from the Sending Property to hold for resale, provided the purchase price or exchange rate offered by the Town shall be fair market value.
2. Interjurisdictional Transfers: The Town shall have the right at its discretion to enter into an intergovernmental agreement with another municipality or county for the transfer of development rights between jurisdictions.
3. Process: Private property owners may request a Transfer of Development Rights (TDR) by submitting a zone change application along with all appropriate fees to the Town of Clarkdale.
4. Notice Requirements: Transfers between private property owners shall be treated as a zone amendment and shall comply with the requirements of Sections 13-2.D & E of this code and shall be subject to a public hearing by the Planning Commission and Town Council.

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5. Development Rights: A transfer may include any and all of the development rights associated with a sending property including the zoning designation with associated lot coverage maximum.
6. Criteria for Application: Transfer of Development Rights application shall meet the following criteria:
  - a. Any prohibitions on the sending property shall transfer to the receiving property including any restrictions and guidelines from an overlay or special district.
  - b. Transfer of these prohibitions to a receiving property does not vacate the restrictions or guidelines from the sending property.
  - c. Any existing conditional use permit or site plan/development review approvals in good standing shall be transferred from the sending to the receiving property.
  - d. Final details of the status of the sending and receiving properties shall be stipulated in the required Agreement.
7. Criteria for Approval: A TDR request shall include:
  - a. A TDR may result in a reduction of density or lot coverage or increase in open space.
  - b. A TDR shall not result in an overall increase in density either in number of residential units or lot coverage of commercial development.
  - c. A TDR shall be consistent with the current Clarkdale General Plan.
  - d. A transfer of development rights shall include a community benefit such as:
    - i. preservation of open space
    - ii. protection of natural areas or environmentally sensitive areas
    - iii. reduction of current or future water use
    - iv. preservation of historically important areas
    - v. contribution towards road, water and wastewater infrastructure development
    - vi. installation of public art through a Town approved process
    - vii. enabling any adopted plans of the Town of Clarkdale
8. Status of Easements: Recorded ingress/egress or utility easements shall not be transferred and shall remain with the sending property.
9. Agreement: Upon approval of a TDR application, the Town shall record a development agreement with the Yavapai County Recorder's Office which includes the details and conditions of approval. The agreement shall contain the terms of the transferred development rights and limitations as permitted binding the owners of the Sending Property and the Receiving Property.

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10. Zoning Update: Thirty days after recording of the Development Agreement the Town of Clarkdale Zoning Map shall be updated to reflect the new zoning.
11. Binding Agreement: The stipulations of an approved TDR shall bind the landowner and every successor in interest to the landowner for both the sending and receiving properties.
12. Effective Date: The effective date of the severance of the transferable development rights from the Sending Property shall be the date of the recording of the Development Agreement. The effective date of the development rights transferred to the Receiving Property shall be ten (10) days following the recording of the Development Agreement.
13. Transferred Rights: The purchase, sale, exchange or other conveyance of transferable development rights shall become effective ten (10) days following the recording of the TDR Agreement, provided consideration has been made by the Receiving Property owner to the Sending Property owner. The TDR Agreement may be revoked by any of the participating parties up until end of business day on the 10<sup>th</sup> day through written notice to the Town.
14. Monitoring: The system for monitoring the severance, ownership, assignment and transfer of development rights shall be administered by the Community Development Director or designee.

**Section 13-3 Penalties (Revised 10/25/16; Resolution 1529; Ordinance 376; Effective 10/26/16)**

Any violation of this Ordinance shall be punishable under Article 1-8 of the Town Code; any civil sanction for a violation (as this term is defined by the Town Code) of this Ordinance shall not exceed three hundred dollars (\$300) and any penalty of imprisonment for a violation of this Ordinance shall not exceed ninety (90) days.

**Section 13-4 Separability**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions hereof.

**Section 13-5 Repeal**

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All Ordinances or part of Ordinances in conflict with provisions of this Ordinance are hereby repealed.