ORDINANCE NO. 2023-930

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ENACTING A NEW SECTION 14-02-080 "NON-SUBDIVISION RESIDENTIAL DEVELOPMENTS" IN ARTICLE 14-02 "PLATTING PROCEDURES AND REQUIREMENTS" IN CHAPTER 14 "SUBDIVISIONS" OF THE TOWN CODE TO FORMALIZE A POLICY OF REQUIRING NON-SUBDIVISION RESIDENTIAL DEVELOPMENTS THAT DO NOT OTHERWISE REQUIRE ISSUANCE OF CERTIFICATES OF ASSURED WATER SUPPLY (CAWS) BY THE ARIZONA DEPARTMENT OF WATER RESOURCES (ADWR) UNDER APPLICABLE STATE LAW AND REGULATIONS TO PLEDGE TO THE TOWN SUFFICIENT RIGHTS TO RENEWABLE OR IMPORTED WATER SUPPLIES AS WOULD OTHERWISE HAVE BEEN SUFFICIENT FOR ADWR TO ISSUE A CAWS IN THE PRESCOTT ACTIVE MANAGEMENT AREA (AMA), AS A CONDITION PRECEDENT FOR THE TOWN TO ISSUE ANY REQUIRED APPROVALS; PROVIDING THAT ALL OTHER CHAPTERS, ARTICLES, AND SECTIONS OF THE TOWN CODE, NOT HEREIN ENACTED OR AMENDED, SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING THAT, IF ANY PROVISION IN THIS ORDINANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, the Town of Prescott Valley (Prescott Valley) is located within the Prescott Active Management Area (AMA), 1 of 6 AMAs in Arizona subject to special regulation under the Arizona Groundwater Management Act (AGMA); and

WHEREAS, the Arizona Department of Water Resources (ADWR) administers under the AGMA an Assured Water Supply (AWS) Program that ensures new residential and commercial subdivisions in any AMA have a secure supply of water with adequate quality for at least 100 years. Pursuant to ARS §45-576, before land in an AMA may be subdivided the developer of the property must either obtain a Certificate of Assured Water Supply (CAWS) for the subdivision from ADWR, or a written commitment of water service from a city, town, or private water company with a Designation of Assured Water Supply (DAWS) from ADWR. Pursuant to rules governing the AWS program (AAC R12-15-701 et seq.), subdivision developers must prove that the supply of water is physically, legally, and continuously available for the 100-year period to meet the demands of the development subject to the CAWS or (in the case of a DAWS) to meet current and committed demands of the water provider; and

WHEREAS, under the AWS Program subdivision developers must also establish that projected water use will be consistent with AMA management goals; and

WHEREAS, Prescott Valley does not currently have a DAWS from ADWR. Therefore, in accordance with ARS §9-463.01(I) and Town Code §14-02-060(F)(6) the Prescott Valley Town Council (Council) may not approve a final subdivision plat unless it is accompanied by a CAWS issued by ADWR; and

WHEREAS, in AMAs that ADWR has declared to no longer be in a state of safe-yield, subdivisions may only be served with renewable or imported water supplies. On January 12, 1999, ADWR issued a report declaring the Prescott AMA to no longer be in safe yield. Legislation in 1998 (SB 1124) did allow new subdivisions to continue to be served with groundwater in the Prescott AMA if developers had filed complete and correct applications on or before August 20, 1998. But all new subdivisions thereafter could no longer be served with groundwater; and

WHEREAS, there are several exceptions to what constitutes a "subdivision" under Arizona statutes. ARS §32-2101(58) explains that industrial buildings, commercial buildings, offices, stores, hotels, and motels (as well as residential uses such as apartments, recreational vehicle communities, rental manufactured/mobile home communities, and leasehold offerings of 1 year or less) are not technically subdivisions. Similarly, Arizona statutes (and Prescott Valley Town Code provisions) allow large commercial developments (separate from planned residential communities) to be developed simply as overlay zoning districts with site plans. [see ARS §§9-462.01(C)(1) & (D) and 45-576(A); Town Code §§13-19-020(D) and 13-19-060(C)(3), (E)(3), (K)(3) & (P)] As a result, these commercial and residential developments are not currently required to obtain either a CAWS or a written commitment from an entity with a DAWS prior to approval in the Prescott AMA (or other AMAs); and

WHEREAS, for various reasons (including efforts to address nationwide housing issues), non-subdivision residential developments have become increasingly popular throughout Arizona. At the same time, Arizona has experienced recent decades of unprecedented drought and related concern about sustainable growth. Therefore, increasing concern has been raised about the need to close this perceived "loophole" in Arizona water law that would allow these residential developments in the AMAs without meeting the same requirements of demonstrating non-groundwater supplies as similar developments. To date, however, legislation has not been adopted to close the loophole; and

WHEREAS, under the AGMA each AMA has been subject to periods of increasingly stringent regulation under successive management plans. The fifth and final period begins in 2025. Starting with the Third Management Plan, ADWR employed a Gallons Per Capita Day (GPCD) calculation as both a water conservation standard for water providers and for calculating groundwater demands for 100-year AWS. Those GPCD-based calculations for Prescott Valley during the late 1990s established an upper limit of allowable groundwater withdrawals to ensure Prescott Valley residents had a 100-year supply. In practice, this GPCD program calculated the quantity of water required by each resident (on average) for all needs. This included water used at home as well as water needed for commercial, retail, governmental, etc. services. In general, ADWR assigned a value of 120 GPCD for single-family residential use and 85 GPCD for multi-family use in the CAWSs it issued; and

WHEREAS, when ADWR declared the Prescott AMA to no longer be in safe-yield, approximately 12,900 total single- and multi-family lots existed within the Prescott Valley service area (including the original townsite, the ViewPoint and Pronghorn Ranch subdivisions, and Castle Canyon Mesa (CCM) and Prescott Country Club (PCC) located outside the Town limits). Most of the lots had been platted in the 1960s (well before the AWS rules had been approved in 1973).

The ViewPoint and Pronghorn Ranch subdivisions were required to obtain CAWSs prior to approval in 1995. Having been obtained prior to the safe-yield declaration by ADWR, the requirements for these CAWSs included proving that sufficient groundwater would be available for 100 years while maintaining the groundwater level above 1,000 feet below land surface. The analysis therefore "deducted" all existing and committed 100-year groundwater demands from the aquifer. This included the historic townsite and CCM and PCC. Thus, ADWR's approval of CAWSs for ViewPoint and Pronghorn Ranch also resulted in a "de facto" determination of a 100-year AWS for those areas platted in the 1960s; and

WHEREAS, the best data available for separately showing the estimated AWS is from the Yavapai County Geographic Information System (GIS) Database for year 2000. This GIS data is paired with the 2000 Arizona Department of Revenue data that describes the type of use for each parcel (see Table below).

AWS Groundwater Allocation Historic Platted Lots (2.51 Persons per Housing Unit)

Description	Number of Units	Committed Demand (GPCD)	Groundwater Allocation (AF/yr)
Historic Town (Year 2000			
Single-family Total Lots	8,226	120	2,775
Multi-Family Total Units	2,265	85	541
Outside Town PCC & CCM			
Single-family Total lots	2,186	120	738
Multi-Family Total Units	198	85	47
Single-family Total	10,412		3,513
Multi-Family Total	2,463		589
Total AWS Allocation			4,101

In the early 2000s, those subdivisions whose developers had submitted complete and correct applications for CAWSs prior to the safe-yield declaration also began to develop. The estimated AWS for those developments is shown in the Table below.

CAWS Allocation Master Planned Communities

Project Name	Original CAWS Number	Water Use Type	Number of Units	GPCD	Allocation at Buildout (AF/yr) in CAWS
Quailwood Meadows	27-300521	Single-family	1,012	120	418.10
Stoneridge	27-300483	Single-family	2,309	120	744.90
		Multi-Family	744	74	148.80
Granville	27-401475	Single-family	2,456	120	989.77
		Multi-Family	112	120	22.58

Viewpoint	27-300183	Single-family	488	120	168.60
Viewpoint	27-300019	Single-family	112	120	38.08
Viewpoint North	27-300434	Single-family Multi-Family	843 1,143	120 120	286.00 389.00
Pronghorn	27-400416	Single-family Multi-Family	1,102 338	90 85	318.00 74.00
Mingus West	27-300225	Single-family	465	100	145.80
Single-family Total*			8,787		3,109
Multi-Family Total*			2,337		634
Total*			11,124		3,744

*values rounded

Thus, based on the GPCD analysis, the sum totals of the 2 tables result in a 100-year AWS groundwater "allocation" available for the Prescott Valley service area of 7,845 acre-feet per year; and

WHEREAS, ongoing conservation efforts (particularly since the safe-yield declaration in the late 1990s) have resulted in average at-home potable water use by Prescott Valley residents steadily declining. Currently, that number is approximately 62 GPCD. Another 38 GPCD was estimated at the time to be needed for community services (for a total, on average, of 100 GPCD). Since the late 1990s, it has therefore been understood that the extra "buffer" water beyond actual usage in the GPCD calculations for CAWSs already issued could be considered a basis for approving needed community services that technically are not subdivisions…so long as the per capita usage remained within conservation requirements in the AMA management plans; and

WHEREAS, over the past 25 years or so, new commercial, retail, industrial, and governmental projects have either been approved or constructed by the Town within the framework of this buffer water under the GPCD analysis. During that same period, residential uses that are not technically subdivisions (i.e., apartment complexes and related residential developments only offering leasehold interests) have also been approved; and

WHEREAS, more recently AMA management plans have begun moving away from the GPCD approach to a Non-Per Capita Conservation Program (NPCCP) that is performance-based. Under the NPCCP, additional Best Management Practice (BMP) points must be reported in annual Conservation Efforts Reports (CERs). One of those BMPs (7.3 "Integrated Long-Range Planning") seeks to ensure that long-range planning activities take water resource availability and sustainability into account; and

WHEREAS, over time Prescott Valley staff has become increasingly concerned that the "buffer" amount intended for new commercial, retail, industrial, and governmental uses for existing residents is increasingly being used, instead, for new residential uses not technically subdivisions; and

WHEREAS, in December 2022 staff attempted an accounting of the buffer water still available under the GPCD analysis. It began with a calculation of groundwater demand in relation to the 7,845 acre-feet of AWS allocation from the late 1990s based on a 3-year average of groundwater pumping (2019-21) minus effluent credits being delivered through the system. Prescott Valley tracks withdrawals and deliveries to several customer types (including single-family, multi-family, commercial, turf, and construction users). Users other than single- and multi-family users are combined into a single "Commercial and Community" classification for ease of analysis. Since current demand is a direct measurement of system deliveries, a percentage of Commercial and Community water and System Losses was calculated in relation to single- and multi-family users (to calibrate the earlier estimate of water needed in addition to in-home use). Thus, that portion of the AWS allocation estimated as still available as a buffer was calculated as 1,904 acre-feet (see Table below).

Groundwater Pumping (Average 2019-2021)

Description	Water Demand 3yr avg (AF/yr)	Cumulative Demand (AF/yr)	Percent of Cumulative Demand
Current SF Customers	3,650	3,650	
Current MF Customers*	517	4,168	
Commercial and Community	1,292	5,460	31%
System Losses	481	5,941	8.9%
Total Groundwater Pumped	5,941		
Groundwater Allocation Remaining	1,904		

But committed demand includes approved uses not yet constructed. Many of the single- and multi-family units for which CAWSs based on groundwater had been approved about the time of the safe-yield declaration in the late 1990s have still not been fully constructed. If that obligation were removed, 697 acre-feet of the AWS allocation was estimated as still available as a buffer (see Table below).

Single- and Multi-Family Units Received Groundwater CAWS

Description	Number of Units	Committed Demand (GPCD)	Groundwater Allocation at Buildout (AF/yr)
Single-family CAWS issued, not constructed	2000	120	675
Multi-family CAWS issued, not constructed	2225	85	532
Total Committed Demand			1,207
Groundwater Allocation Remaining			697

and

WHEREAS, on July 17, 2006, ADWR had issued to Prescott Valley Physical Availability Demonstration No. 20-402187.0000 (PAD) that determined (among other things) a minimum of 2,724 acre-feet per year of "effluent" that Prescott Valley expected to receive, recharge, and recover based on existing and committed demand. Effluent is treated wastewater that has been recharged into the aquifer under a State-regulated process (with the recharged volume carefully quantified by ADWR as long-term storage credits). The effluent would be physically available for 100 years for AWS purposes. ADWR subsequently issued a letter opinion on August 10, 2007, explaining how CAWSs could be issued based on the PAD effluent. As owner of the long-term storage credits, Prescott Valley could withdraw a volume of groundwater equivalent to those credits from approved recovery wells. In issuing the PAD, ADWR agreed with Prescott Valley estimates that it would produce 3,890 acre-feet of effluent based on existing and committed groundwater demand in the service area. Of those, approximately 1,180 acre-feet were already committed to uses like golf course irrigation (leaving a balance of 2,710 acre-feet). Those 2,710 acre-feet were added to 14 acre-feet already in a Prescott Valley Long-Term Storage Account (LTSA) to equal the 2,724 acre-feet in the PAD. As part of ADWR's calculation, it found that in 2005 Prescott Valley was actually recharging 1,103 acre-feet (1,089 plus 14) (Credited Effluent). The Town expected (at that time) to receive, recharge, and recover the remaining 1,621 acre feet on or before December 31, 2014 at a rate of at least 200 acre-feet per year (Annual Effluent Additions); and

WHEREAS, on October 29-30, 2007, Prescott Valley sold by auction the sole and exclusive contractual right and interest to sell or pledge the effluent as an AWS through applications for CAWSs from ADWR (or through separate Town approvals of defined "alternative uses"). The contractual right and interest included: (i) all right and interest in the Credited Effluent and any first-generation effluent approved by ADWR that might be produced from on-site use of the Credited Effluent pursuant to a specific development plan (collectively Credited Effluent Interests), and (ii) some or all right and interest in the Annual Effluent Additions and any first-generation effluent approved by ADWR that might be produced from on-site use of the Annual Effluent Additions pursuant to a specific development plan (collectively Annual Effluent Additions Interests) under a purchase option (Credited Effluent Interests plus Annual Effluent Additions Interests collectively Offered Effluent Interests). Water Property Investors, LLC (Buyer) purchased the Offered Effluent Interests for $24,650.00 per acre-foot and entered into a November 19, 2007 Effluent Water Auction Agreement (Agreement) with Prescott Valley. Under the Agreement, Prescott Valley and the Buyer intended that any Offered Effluent Interests actually purchased by Buyer (Effluent Interests) could, in turn, either be directly used by the Buyer or sold to third-party developers as a renewable water supply available for development (subject to the terms and conditions of the Agreement); and

WHEREAS, under the PAD, CAWSs issued by ADWR based on Effluent Interests sold to third-party developers are not required to include additional AWS for water demands created by the developments outside their boundaries (i.e., Commercial and Community). They have, however, incorporated water system losses in the demand calculations. Thus, the buffer water under the GPCD analysis has also been needed as Commercial and Community water for residents in the developments for which these CAWSs were issued. The calculation for Commercial and Community is currently 33.8% (0.31 x 1.089). Thus, the estimated buffer amount used by these developments to-date is 102 acre-feet (leaving 595 acre-feet of AWS allocation) (see Table below).

Committed Demand Commercial and Community Water Issued Effluent CAWSs

CAWS Application	PAD Effluent (AF)	Total Effluent Demand including System Losses (AF/yr)	Additional Commercial and Community Water (31% additional) (AF/yr)
Jasper Phase 1		148.74	50
Lake Valley Condos		1.00	0
Jasper Phase 2		108.74	37
Jasper Phase 5		43.93	15
Total		302.41	102
Groundwater Allocation Remaining			595

At the time, approximately 1,260 acre-feet of Effluent Interests remained available for the Buyer to use directly or sell to third-party developers. If all these Effluent Interests were used to obtain CAWSs (accounting for the First-Generation On-site Effluent that would also be involved), the estimated buffer amount for the related Commercial and Community water was 529 acre-feet (arguably leaving just 66 acre-feet of the AWS allocation) (see Table below).

Effluent CAWS Impact on Groundwater Allocation

Effluent Commitments	Volume (AF/yr)
Total Effluent Interests	1483.5
Effluent Interests Used Issue CAWSs	223.17
Remaining Effluent Interests*	1,260
Estimated Additional due to First Generation on-site Effluent	447
Total Effluent Commitment	1,708
Commercial and Community Water Demand	529
Groundwater Allocation Remaining	66

*values rounded

and

WHEREAS, at the time of this accounting certain non-subdivision residential developments were in various stages of consideration. If all of them were to be approved by the Town (presuming 85 GPCD that includes an estimate of needed Commercial and Community water plus System Losses, and 2 persons per household), the buffer would be gone based on the AWS allocation being overcommitted by approximately 237 acre-feet (see Table below).

Demand Non-Subdivision Residential Development

Name	Units	Developed	GPCD	Groundwater Demand (AF/yr)
Sungate Villa Senior Community II	72	Starting	85	13.7
Crown Pointe Lofts	96	NO	85	18.3
Valley Vista	198	NO	85	37.7
Village Way Bungalows	169	Starting	85	32.2
Jasper Multi-Family	240	YES	85	45.7
Market Street Bungalows	112	NO	85	21.3
Lagado	329	Starting	85	62.6
Crossings at Windsong	152	NO	85	28.9
Baja Apartments	140	NO	85	26.7
Crownpoint Apartments	84	NO	85	16.0
Total Demand*				303
Groundwater Allocation Remaining				-237

*values rounded

and

WHEREAS, though it was unlikely that all the non-subdivision residential developments then under consideration would ultimately be approved (and the estimated percentage needed for Commercial and Community water for current committed demand was subject to further refinement), it was felt the time had come for Prescott Valley to consider employing mechanisms to require non-subdivision residential developments to obtain commitments for renewable water supplies (i.e., Effluent Interests, available extinguishment credits, etc.) or imported water supplies as a condition precedent for any Town approvals (similar to what residential subdivisions are required to obtain in order to receive CAWSs from ADWR); and

WHEREAS, new non-subdivision residential developments typically require legislative actions by the Council for approval. The authority to condition such approvals (as well as other express and implied statutory and inherent authority under the police power) is a basis for general law communities like Prescott Valley to enforce a policy that results in reserving the remaining buffer of AWS allocation for true commercial, retail, industrial and governmental services; and

WHEREAS, in considering the balances required under the Arizona Property Rights Protection Act (ARS §12-1134) it is understood that protection of public health and safety is involved in requiring non-subdivision residential developments to comply with the safe-yield declaration in the Prescott AMA, and that expectations of residential subdivisions previously required to obtain CAWSs in Prescott Valley are also being protected; and

WHEREAS, it is anticipated that Prescott Valley will need to enforce such a policy at least until such time as Arizona statutes and/or regulations and policies are adopted to address this issue statewide; and

WHEREAS, the Council hereby finds that adoption of this Ordinance No. 2023-930 implementing this policy is in the best interests of the community and is designed to further the health, safety and welfare of its citizens;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

SECTION ONE. That a new Section 14-02-080 "Non-Subdivision Residential Developments" in Article 14-02 "PLATTING PROCEDURES AND REQUIREMENTS" in Chapter 14 "SUBDIVISIONS" of the Town Code of the Town of Prescott Valley, be hereby enacted to read as follows:

14-02-080 Non-Subdivision Residential Developments.

A. Non-Subdivision Residential Developments (as defined in this Section) that are otherwise exempt from the requirement in ARS §§9-463.01(I) and 45-576(A), and Town Code §14-02-060(F)(6) of being accompanied by a Certificate of Assured Water Supply (CAWS) issued by the Director of the Arizona Department of Water Resources (ADWR) in order to receive Town approvals, shall nonetheless comply with the requirements of Subsection (B) herein prior to any Town approvals (said approvals to include, but not necessarily be limited to, issuance of any required General Plan Amendment, Zoning Map Amendment, Final Development Plan, and/or Building Permit).

B. Non-Subdivision Residential Developments (as defined in this Section) shall obtain and pledge to the Town (using forms approved by the Town Attorney) sufficient rights to use renewable or imported water supplies in amounts sufficient to obtain a CAWS from ADWR (or a written commitment of water service from a city, town, or private water company with a Designation of Assured Water Supply (DAWS) from ADWR) if the Non-Subdivision Residential Development had otherwise been required to obtain a CAWS or written commitment from an entity with a DAWS under Arizona law and/or regulation. Said amounts shall be determined by reference to the same statutory and regulatory requirements and forms as ADWR would have used for determination of water rights required for a CAWS or written commitment from an entity with a DAWS.

1. The determination of the amount of renewable or imported water supplies to be included in the right pledged to the Town shall be made by the Town Manager (or designee) as set forth above. Documentation of the forms and calculations supporting said determination shall be timely provided in full to any duly authorized Non-Subdivision Residential Development representative or agent upon request.

2. In the event any duly authorized Non-Subdivision Residential Development representative or agent disputes in writing the amount of renewable or imported water supplies required pursuant to this Section within ten (10) working days after receipt in writing of the Town Manager's (or designee's) final determination, an appeal may be made to an independent Hearing Officer designated by the Town in accordance with the same procedures set forth from time to time in the Town's current policy manual for formal appeals of personnel matters (including, but not limited to, the right to bring a Special Action in the Yavapai County Superior Court from the final ruling of the Hearing Officer).

3. In the event Effluent Interests are obtained from WPI, LLC (or its successor) under the November 19, 2007 Effluent Water Auction Agreement (or any extension thereof) (Agreement) between the Town and WPI, LLC (or its successor) as a renewable water supply for purposes of complying with this Subsection (B), the transaction by which the Effluent Interests are obtained shall comply in all material respects with the requirements for alternative uses of said Effluent Interests as set forth in said Agreement. It is expressly understood that such Effluent Interests do not refer to (and shall not be deemed to include) any first-generation effluent for purposes of complying with this Subsection (B).

4. As part of its annual reporting to ADWR under the Arizona Groundwater Management Act, designated Town staff shall notify ADWR in writing of the rights to renewable or imported water supplies pledged to the Town pursuant to this Section.

C. As used in this Section, "Non-Subdivision Residential Developments" are those residential uses listed as exceptions to the definition of "subdivision" in ARS §32-2101(58) (as amended), including leasehold offerings of one year or less, apartments, pads or similar spaces within apartment buildings, rental recreational vehicle communities, rental manufactured home communities, or rental mobile home parks. Improved or unimproved land divided for the purpose of financing, sale, or lease (whether immediate or future) that is not a subdivision under Town Code §14-01-010(A)(39) simply because it has fewer than four (4) lots, tracts, or parcels (or, if a new street is involved, any single lot, tract, or parcel) is not considered a "Non-Subdivision Residential Development" for purposes of this Section.

(Ord. No. 2023-930, Enacted, 01/11/24)

SECTION TWO. That all other Chapters, Articles, and Sections of the Town Code, not herein enacted or amended, shall remain in full force and effect.

SECTION THREE. That, if any provision in this Ordinance is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

SECTION FOUR. That this Ordinance shall be effective thirty (30) days after its passage and approval according to law.

PASSED AND APPROVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 11th day of January, 2024.

Kell Palguta, Mayor

ATTEST:

Fatima Fernandez, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney