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ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. JEFFREY T. BERGIN

CASE NO. C20261327

DATE: April 30, 2026

ARIZONANS FOR RESPONSIBLE DEVELOPMENT, ET AL.
Plaintiff,

vs.

TOWN OF MARANA, ET AL.
Defendant(s)

UNDER ADVISEMENT RULING

IN CHAMBERS RE: APPLICATION FOR WRIT OF MANDAMUS, ETC.

The Court has considered Plaintiff's Application for Writ of Mandamus and for Preliminary and Permanent Injunction/Order to Show Cause, Defendant's response in opposition, and the arguments presented at the April 7, 2026 hearing. For the reasons set forth below, the Court concludes that controlling Arizona case law requires denial of the motion.

Background

Arizonans for Responsible Development and Jordan Greenslade ("Plaintiffs") seek to compel the Town of Marana and Jill McCleary ("Defendants") to process a referendum petition challenging Marana Town Council Resolution No. 2025-121 ("the Resolution"). The Resolution authorizes the mayor to execute a lease and development agreement for approximately 19 acres of Town-owned property. The agreement qualifies as a "development agreement" under A.R.S. § 9-500.05.

Plaintiffs contend that the Resolution is legislative in nature and therefore subject to referendum. In the alternative, they argue that A.R.S. § 9-500.05 renders all development agreements subject to referendum.

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Defendants respond that the Resolution is administrative, not legislative, because it implements long-standing land-use policy adopted in 2008 through Ordinance 2008.14, which created the "Downtown Marana" plan. Defendants further argue that A.R.S. § 9-500.05 does not make all development agreements referable; it merely prohibits their adoption as emergency measures.

Analysis

To obtain a preliminary injunction, Plaintiffs must demonstrate:

1. a strong likelihood of success on the merits;
2. the possibility of irreparable harm not remediable by damages;
3. a balance of hardships favoring the plaintiff; and
4. in appropriate cases, advancement of the public interest.

TPT Racing, L.L.L.P. v. Simms, 232 Ariz. 489, 307 P.3d 56 (App. 2013).

Because Plaintiffs cannot satisfy the first factor, the Court need not reach the remaining elements.

Likelihood of Success on the Merits

Whether the Resolution is legislative or administrative is governed by the three-part test articulated in *Wennerstrom v. City of Mesa*, 169 Ariz. 485 (1991). The Court must consider whether the challenged action is:

1. permanent or temporary;
2. general or specific in application; and
3. a creation of new policy or an implementation of existing policy.

The third factor — whether the action creates policy or merely implements it — is the most significant in this case.

Legislative acts "make new law," establish new policy, or declare a public purpose and provide the means for achieving it. Administrative acts, by contrast, "execute law already in existence," "pursue a plan

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already adopted," or "merely carry out the policy or purpose already declared by the legislative body." *Id.* at 489.

Workers for Responsible Development v. City of Tempe

Plaintiffs argue that *Workers for Responsible Development v. City of Tempe*, 254 Ariz. 505 (App. 2023), controls because it involved a development agreement for City-owned property that was held subject to referendum. But the factual posture in *Workers* is materially different.

In *Workers*, the development agreement itself functioned as the primary policy-setting instrument; it operated independently and was not tethered to any previously adopted legislative framework. The ordinance authorizing the agreement therefore created new policy.

Here, by contrast, the Resolution does not establish new development policy. It implements the zoning, land-use vision, and development parameters adopted in 2008 through Ordinance 2008.14, which created the "Downtown Marana" plan. The Resolution is thus an execution of existing policy, not the creation of new policy.

Under *Wennerstrom*, this makes the Resolution administrative.

Voice of Surprise v. Hall

The facts here align more closely with *Voice of Surprise v. Hall*, 257 Ariz. 101 (App. 2024). There, the Court held that an ordinance challenged as referable merely implemented parameters and policies adopted years earlier. Because the ordinance executed existing policy, it was administrative and not subject to referendum. The same reasoning applies here. The Resolution implements the development framework established in Ordinance 2008.14. It does not alter that framework or create new policy. Accordingly, it is administrative in nature and not subject to referendum.

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A.R.S. § 9-500.05

Plaintiffs' alternative argument—that A.R.S. § 9-500.05(G) categorically subjects all development agreements to referendum—has already been rejected by the Court of Appeals. As *Workers* explained:

"While [Plaintiffs] make a persuasive argument that the legislature may have intended to subject development agreements to referenda through the thirty-day effective-date limitation in A.R.S. § 9-500.05(G), the statutory text does not go so far."

This Court is bound by that interpretation. Section 9-500.05(G) prevents adoption of development agreements as emergency measures; it does not transform all such agreements into legislative acts. Because the Resolution is administrative and because § 9-500.05 does not independently create referendum rights, Plaintiffs cannot show a likelihood of success on the merits.

Conclusion

IT IS ORDERED DENYING Plaintiffs' Application for Writ of Mandamus and for Preliminary and Permanent Injunction/Order to Show Cause.

/s/
HON. JEFFREY T. BERGIN
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