

# ISSUES IN BRIEF

on behalf of Greater Phoenix Leadership

March 9, 1998

## Urban Growth Management in Arizona

### Purpose and Introduction

This paper presents brief background information on urban growth management and analyzes certain current and differing viewpoints on how best to accomplish this in Arizona. Two competing plans have emerged recently. One is a citizen initiative in signature-gathering stage for the November general election, while the other is a proposal in draft stage that could either be passed into law during the current legislative session or could be referred by the legislature to voters in November, effectively placing it in competition with the citizen initiative. The initiative has been finalized and cannot be amended at this time; the details of the legislative proposal concept are subject to amendment and compromise during the legislative process.

### Elements of Urban Growth Management

Urban growth management as it has evolved in the 1990s is not just about establishing "growth boundaries." Certainly, one significant feature of growth management in Oregon is the requirement to draw growth boundaries and implement land use policies consistent with state goals, policies, or criteria, rather than leaving such policies to the discretion of individual governing bodies. However, growth management in Oregon and elsewhere (including New Jersey, Vermont, Maryland, Washington, and cities in California and

Colorado) encompasses a number of elements designed to shape growth trends, mitigate development impacts, protect natural systems (land, air, and water), and preserve the quality of life for both urban and rural residents. In other words, growth management has emerged as a concept that can address a wide range of "quality-of-life" values.

According to a 1992 study by the Lincoln Institute of Land Policy, the following components are typically part of a growth management framework today:

- strategies to discourage sprawl and encourage compact urban development, in-fill, and revitalization
- the provision of infrastructure (roads, schools, water, parks, etc.) at the time of development
- economic development strategies including efforts to promote economic development in troubled or blighted areas
- urban design requirements that aim at aesthetically pleasant urban areas that combine moderate densities with people- and environment-friendly places
- policies and programs that protect rural areas, sensitive lands, and open spaces
- policies and programs to assure that affordable housing is a defined and major component of new development

## Arizona Trends

A number of factors have increased the sentiment and pressure to “do something” about urban growth and sprawl, both in Arizona and around the nation. For example, the population of Arizona has more than tripled since 1960 and is currently growing three times faster than the nation as a whole. The population of Maricopa County is expected to reach over 4 million by 2020, almost double what it was in 1990. But population growth itself is not the only contributor to the pressure to manage growth. Concerns over air quality, availability of recreational space, traffic congestion, and preservation of natural resources, among other things, are also factors.

Data indicate that this is clearly the case in Arizona. For example, a 1997 Morrison Institute/*Arizona Republic* survey found that nearly two-thirds of Greater Phoenix residents felt desert preservation efforts were fair or poor, 80% believe the region’s air pollution is dangerous to their health and getting worse; and, 65% perceived the freeway system to be fair or poor. A 1995 survey by *Tribune Newspapers* showed that close to half of Greater Phoenix residents believe the quality of life in the Valley has worsened in the past 10 years. And a 1998 Arizona Chamber of Commerce survey showed that more than a third of Arizona voters believe the state should restrict zoning changes and development.

Growth concerns have stimulated political responses, too. Scottsdale voters approved a funding plan to acquire and preserve “open spaces” within the city limits. Voters elsewhere (*e.g.*, Pima County, Gilbert, Peoria, North Phoenix) have elected candidates to city and county seats who were identified with growth management issues. Elected officials have also initiated growth mitigation measures such as the Arizona Preserve Initiative (a means by which municipalities or private groups can identify scenic state trust lands and apply to purchase them for preservation) and plans to fund and acquire open spaces for preservation (*e.g.*, Governor Hull, Mayor Rimsza). Pima county supervisors recently ordered staff to develop a comprehensive plan to address urban sprawl.

Taking matters a huge step further, the Arizona Center for Law in the Public Interest launched a petition drive to place the “Citizens Growth Management Act” (formerly the “Urban Growth Management Act”) on the November ballot. This proposal primarily calls for

each city and town of a certain size to draw growth boundaries and develop master plans for approval by citizen referendum. While appearing to have substantial support from voters, the proposal has stimulated considerable reaction from business interests, government leaders, and others. Representatives from these groups have joined efforts to develop an alternative approach to land use planning and growth management called the “Growing Smarter Initiative.” This approach is currently under serious consideration in the state legislature as a means of addressing acknowledged concerns over growth. In short, **the legislature could create urban growth laws or programs this session or could refer their approach to the voters in November, thus setting the stage for a competition between their approach and the citizens initiative.**

## Features of Current Growth Proposals

The “Citizens Growth Management Act” was written by David Barons, assistant director of the Arizona Center for Law in the Public Interest. This proposal is backed by Citizens for Growth Management, a coalition of neighborhood and environmental groups chaired by Peter Martori and is supported by the state Sierra Club, the Tucson chapter of the Audubon Society, local advocates for open spaces and growth management, and at least one elected official, according to Barons. A petition drive was launched March 2, 1998 to put this initiative on the November 1998 ballot.

The “Growing Smarter Initiative” was written by Steve Betts and associates of Gallagher and Kennedy. It is intended to guide the drafting of legislation on growth management as well as to establish a “Growing Smarter Commission” to study growth issues. At the same time, Representative Robin Shaw has introduced a bill in the state House of Representatives proposing to establish a “Growing Smarter Commission” (a study group essentially the same as in Steve Betts’ proposal) by voter referendum rather than by legislative passage. Both actions have a common goal—provide a growth management alternative to the Citizens Growth Management Act.

**The major differences between the two current growth management proposals is that the Citizens Growth Management Act mandates**

urban growth boundaries and requires voter approval of community general plans (and most subsequent changes), while the Growing Smarter Initiative strengthens zoning and planning, requires growth corridors be identified, and focuses on mechanisms for acquiring and funding open spaces including state trust land (and establishes a study commission to recommend further actions).

### **Key Features of Citizens Growth Management Act**

This is a proposed ballot initiative requiring voter approval that:

#### **Mandates Growth Management Plans**

- Requires each county and each city over 2,500 population to adopt, by January 1, 2001, a legally enforceable growth management plan that establishes an urban growth area with clear boundaries
- Subjects lands not within an urban growth area (and that are not part of a municipality under 2,500 population) to restrictions on new public services and “upzoning”
- Subjects counties and cities that fail to adopt an urban growth area to the same restrictions as lands outside growth areas

#### **Sets Specific Provisions for Growth Plans**

- Limits urban boundaries to 10 years’ growth based on DES projections; prevents boundaries from extending beyond a city’s limits or into unincorporated cities
- Discourages development outside of boundaries by allowing use of density limits, large-lot zoning, transferable development rights, subdivision controls, limits on new building permits, or other means
- Prohibits extension of municipal and private water and sewer services outside urban growth boundaries
- Requires developers to pay all new infrastructure costs to serve their new developments (*e.g.*, roads, water, sewer)
- Requires plan measures to protect environmental quality, neighborhoods, scenic vistas, open spaces, public preserves, and historic sites within boundaries and provide for affordable housing

#### **Requires Voter Approval for Plan Adoption**

- Automatically refers plans and amendments enacted by city and county governments to approval by voters at

the next election

- Allows plans and amendments proposed by citizens to be adopted directly through the initiative process

#### **Specifies Plan Enforcement**

- Requires state attorney general to enforce growth plan provisions
- Allows any person to address violations by filing a civil action in Superior Court

#### **Allows Exceptions to Growth Plans**

- Does not affect land use rights or public services in existence or vested before 2001
- Does not allow growth plans to cause a “taking” of private property
- Does not apply restrictions to extension of police protection or emergency services outside of growth boundaries
- Allows other exceptions for “extraordinary and compelling” reasons, but requires approval of 4/5<sup>ths</sup> of governing body (requires exceptions affecting over 20 acres to be referred to voters)

#### **Sets Interim Growth Regulations Until January 1, 2001**

- Requires a 4/5<sup>ths</sup> vote of the governing body for approval of all requests for new subdivisions and higher density or intensity zoning

#### **Tightens Subdivision Exemptions**

- Reduces the number of allowable lot splits exempt from subdivision regulations from 5 to 3
- Increases the threshold for large lot exemptions from subdivision rules from 36 acres to 160 acres

### **Key Features of Growing Smarter Initiative**

This is potential legislation that:

#### **Strengthens Community Planning Laws**

- Requires general plans be adopted by cities and towns every 10 years
- Requires all rezoning requests comply with general plan or be approved by “super-majority” (2/3<sup>ths</sup> vote) of governing body
- Requires general plans to identify growth and transportation corridors where future transportation/transit improvements will be made

- Requires general plans to identify environmental impacts of future development and propose mitigation measures

#### **Creates Land Use Plans for State Trust Lands**

- Funds a new planning division with up to \$5 million
- Requires conceptual land use plans for all state trust lands every 10 years
- Requires annual projection of five-year disposition and development plans for trust lands within urban areas

#### **Funds Acquisition/Renovation of Open Spaces**

- Immediately appropriates \$5 million as matching funds for purchase of state trust lands through the Arizona Preserve Initiative (API)
- Refers to voters an appropriation of \$200 million over 10 years (\$20 million per year) in matching funds for the same purpose
- Helps governments pay for the infrastructure and clean up costs incurred in redeveloping urban waterways by allowing partial use of new sales taxes derived from the area

#### **Addresses Arizona Preserve Initiative and Land Exchanges**

- Merges Arizona Preserve Initiative (API) program with state land department’s disposition and development program to identify open spaces as part of new development on trust lands
- Refers to voters a constitutional amendment to permit state land exchanges with federal or local government agencies for the protection of sensitive lands and open spaces

#### **Creates Study Commission (“Growing Smarter Commission”)**

- Studies whether to set aside some trust lands for long-term conservation matched by an equal amount for development
- Studies whether to allow state land exchanges with private parties
- Studies whether to reform municipal and county open space statutes to allow a subdivision’s creation of regional open spaces to reduce open space requirements within the subdivision
- Studies whether to use state funds or incentives to obtain development rights or conservation easements from productive agricultural lands

- Studies effects of growth and whether to create regional planning authorities and new laws governing impact fees

### **Prominent Issues Surrounding the “Citizens Growth Management Act”**

#### **Comprehensiveness of Act**

- Opponents say that metro Portland, Oregon area, which is often held up as a model of urban boundary success, employs a comprehensive set of laws and regulations to make growth boundaries work. For example, development standards are fixed across municipalities, development approval is quick and efficient, citizen appeals are limited, and a dedicated land-use court expedites decisions. The “Citizens Growth Management Act” makes none of these provisions.
- Proponents say that any laws and regulations necessary to make the act more effective may be passed by the state legislature or local governments.

#### **Effects on Business**

- Opponents say the provisions of the “Citizens Growth Management Act” are too extreme and will stymie land development, hinder reasonable growth, and disrupt business.
- Proponents say that in 1973 Portland, Oregon business interests also feared economic disaster, but now support growth management there.

#### **Zoning by Election**

- Opponents say that the “Citizens Growth Management Act” leaves too much of the planning and zoning process to the electoral process, which is neither timely nor appropriate for debating and negotiating complex issues. Furthermore, voters may fail to study and understand the issues, thereby denying due process to private property owners.
- Proponents say that most, if not all, growth plans will be drafted by local governing bodies—voters will only approve or reject the plans—therefore it is up to the governing bodies to ensure that plans provisions are adequate. Because the plans will be subject to numerous public hearings before adoption, and because they are written to span 10 years, revisions should be infrequent. Any exceptions that must go before voters will be relatively rare.

## Litigation

- Opponents say that “harmed” interest groups may sue to prevent the act from going into effect. If the act does become law, civil suits by those alleging violations of the act may proliferate.
- Proponents say that growth boundaries have withstood court challenges elsewhere. Allowing civil suits simply gives citizens a voice in government.

## Special Information

Facts Concerning Passage of the “Citizens Growth Management Act” by Initiative:

- By state law, voting on initiatives can only take place during general elections.
- Statutory initiatives require 112,961 valid signatures of registered voters for 1998.
- Verification by random selection typically turns up 25-30 percent invalid signatures.
- Petitions must be filed by July 2, 1998 for the next general election, Nov. 3, 1998.

Facts Concerning a Legislative Proposal:

- A legislative proposal must first be converted to legislative language and then undergo the legislative process during which it could be passed substantially as written, changed significantly, or rejected.
- If passed during the current legislative session, the “Growing Smarter Initiative” could be in effect **before** voters decide on the Citizens Growth Management Act.
- The “Growing Smarter Initiative” (or aspects of it) could be placed before the voters in November by the legislature (*i.e.*, referendum).

## Prominent Issues Surrounding Growth Boundaries

### Cost of Housing

- Opponents say that the cost of housing rises when boundaries are imposed because they restrict the amount of developable land. They point to steep increases in housing costs in Portland, Oregon.
- Proponents say that housing costs should not be affected because boundaries allow for 10 years of growth and do not limit supply, only location. They contend that Portland’s increase in housing costs occurred because

the city is viewed as a desirable place to live and work—in part because of growth management.

### Takings and Private Property Rights

- Opponents say that boundary laws take away personal rights to develop private property outside designated urban growth areas.
- Proponents say that boundary laws do not preclude development outside growth areas, they simply protect urban residents from having to pay for infrastructure improvements to those areas.

### Density of Development

- Opponents say that boundaries increase population densities inside growth areas thereby aggravating traffic congestion and air pollution, and reducing quality of life. Increased densities also change the nature of existing neighborhoods.
- Proponents say that increased densities would alleviate traffic congestion and air pollution by making public transit feasible and road repairs more financially viable (with dollars saved from unnecessary road construction). They say that higher density developments also save on infrastructure costs and provide the opportunity for more affordable housing.

### Image

- Opponents say that growth boundaries give a state, metropolitan region, or city a “black eye” in the business world and undermine economic growth.
- Proponents say polls show that most people want to live in a place that protects its environment and quality of life. They say that many industry sectors, such as high tech, actively choose to locate in states with strong growth management because their employees want to live there.

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