

Draft Review and Approval Procedures for the Modification of Development Regulations

The draft Modification of Development Regulations amendment dated January 8, 2009 includes a review and approval procedure that follows existing procedures used for other types of development applications. The details of the procedures are provided below.

Note: This is a direct excerpt of Development Compliance Code Sections 23A-50 & 51 and has not been modified.

Sec. 23A-50. Application, notice, public comment and review.

An application for and review of a special zoning request that requires full notice procedure shall comply with the following.

- (1) Pre-application conference. A pre-application conference with city staff to review requirements for the proposal under this chapter, the LUC, development standards and other applicable policies and regulations is required on all full notice procedure applications.
- (2) Neighborhood meeting. The applicant shall offer to meet at a specified time and place to discuss the proposed project with the persons and entities entitled to notice of the application. The offer shall be made at least ten (10) days prior to the date of the meeting. The meeting shall occur at least fifteen (15) and not more than (60) days prior to the submittal of the application. The neighborhood meeting shall be held at a location near the property that is the subject of the application. Notice of the meeting shall also be provided by the applicant to the office of the council ward in which the subject site is located. Documentation of the offer to meet and a summary of the meeting shall be submitted with the application.
- (3) Application. Applications shall conform to the requirements set forth in the LUC, this chapter and appropriate development standards. An application is accepted or rejected within seven (7) days of the date of receipt unless the applicant consents to additional time. An application may, in the discretion of the director, be conditionally accepted.
- (4) Public notice of the application. Applications for full notice procedure shall be provide public notice as follows.
 - a. Mailed notice.
 1. Shall be sent to the applicant, public service agencies affected by the application, all property owners within the subject site and within three hundred (300) feet of the subject site, the neighborhood association(s) which includes or are within one (1) mile of the subject site, any person or organization that has filed a request and paid a fee to receive notification of

public meetings and hearings on a particular process and any other person the director determines has an interest in the matter.

2. Property owners shall be determined from the records of the Pima County Assessor that are available to the public no more than forty-five (45) days prior to the application or public hearing.
 3. Shall be provided to all parties of record on a previous hearing on the same application and to other affected property owners as required by each process.
 4. Shall be sent whether or not the properties are within the corporate limits of the city.
 5. Adjoining land under the same ownership as the subject site and public right-of-way abutting the site shall be included as part of the subject site in determining the boundaries from which the notice area is measured.
 6. For sites within the Airport Environs Zone (AEZ), notice shall be provided to the Tucson International Airport or to the Davis Monthan Airforce Base, whichever is applicable.
- b. Posted notice. Notice shall be posted in such locations on the subject property as to be visible to the public. The posted notice shall identify the request, the date, time and location of any public comment period or public hearings and a telephone number for the city and the applicant where further information may be obtained.

(5) Public comment period. There shall be a period of twenty (20) days following the date on which notice is mailed for submission of comments on the proposal to the development services department.

(6) Review process . Review is conducted by the development services department staff and other agencies, committees or advisory boards as specified in this chapter, the LUC and as may be deemed appropriate by the director.

(7) Denial of plan compliance appeal. if an application is rejected because it is not consistent with the general plan or any applicable specific plan, the rejection of the application may be appealed by the applicant to the mayor and council in accordance with [section] 23A-62.

(Ord. No. 9967, § 9, 5-17-04)

Sec. 23A-51. DSD full notice procedure.

This procedure applies to approvals within overlay zones, such as, but not limited to, the Hillside Development Zone (HDZ), Scenic Corridor Zone (SCZ), Environment Resource Zone (ERZ) and Historic Preservation Zone (HPZ). This section does not apply to applications for development subject to the Major Streets and Routes Setback Zone or the Gateway Corridor Zone, to the Rio Nuevo and Downtown Development (RND) Zone or the Drachman School Overlay (DSO) Zone. This procedure also applies to development applications subject to the watercourse, amenities, safety and habitat (WASH) regulations in section 29-12 et seq. and approvals of mitigation plans for certain restaurants serving alcohol.

- (1) Application, notice, public comment and review. The pre-application conference, neighborhood meeting, application, notice, public comment, review and denial of plan appeal shall be in conformance with section 23A-50.
- (2) Maintenance and protection. Prior to approval of a subdivision plat or issuance of building permits, such measures as covenants, assurances, or homeowners' associations, as may be necessary to ensure the long-term maintenance and control measures, may be required.
- (3) Alteration of the property prohibited . No grubbing, grading, excavation or construction shall occur nor shall the city issue any approval or permit for grubbing, grading, excavation or construction on any lot or parcel subject to the overlay zone unless and until the city approves a plat or plan in conformance with this chapter, the LUC and the development standards.
- (4) WASH development. Development subject to the watercourse, amenities, safety and habitat (WASH) regulations in section 29-12 et seq. shall be subject to review and approval in accordance with the DSD full notice procedure, section 23A-51, and to the standards for review set forth in section 29-17.
- (5) Time for issuance of decision . The director shall not make any decision prior to the expiration of the twenty (20) day period for public comment. The director shall make a decision on applications no later than twenty (20) days after the expiration of the comment period or five (5) days after the latest recommendation from a city advisory board, whichever is later.
- (6) Notice of decision. Notice of the decision on an application shall be mailed within three (3) days of the decision to all persons entitled to notice of the application.
- (7) Appeal. The decision of the director may be appealed to the mayor and council on the grounds that the decision is not in conformance with the criteria established by the LUC. The notice of intent to appeal shall be in accordance with section 23A-62 and shall be filed with the city clerk no later than fourteen (14) days after the date of the decision.

The complete appeal materials must be filed within thirty (30) days of the decision. A copy of the appeal shall be provided to the director at the time it is filed.

(8) Site inspection. Prior to the issuance of an occupancy permit, the site will be inspected by the development services department (DSD) for compliance with the plans approved for the issuance of building permits and any changes authorized by the DSD director to those approved plans during construction.

(Ord. No. 9967, § 9, 5-17-04; Ord. No. 10387, § 4, 4-10-07)

Sec. 23A-62. Mayor and council appeal procedure.

Appeals to the mayor and council may be made from decisions by the development services director on Hillside Development Zone, Scenic Corridor Zone, Environmental Resource Zone and Historic Preservation Zone applications, on certain special exception land uses and such other matters as are designated in this chapter and in the LUC. The mayor and council shall consider the appeal following a public hearing in accordance with this section. The mayor and council may affirm, reverse or modify the decision that is appealed and may establish such conditions as are appropriate to implement the LUC and other pertinent regulations.

(1) Filing of an appeal . Appeals shall be filed with the city clerk with a copy to DSD within the time provided by the procedure from which the decision is appealed. The filing of an appeal stays the issuance of any permits or development approvals based on the decision and all formal land use action on the development proposal subject to the appeal.

(2) Limitation on contact with the mayor and council . No person shall contact or discuss the merits of any appeal with the members of the mayor and council between the filing of the appeal and the final determination by the mayor and council.

(3) DRB Review . Appeals from decisions on SCZ, ERZ and HPZ applications shall be forwarded to the DRB for review and recommendation if such review and recommendation has not occurred.

(4) STAC Review . Appeals from decisions on ERZ and WASH applications shall be forwarded to the stormwater technical advisory committee (STAC) for review and recommendation if such review and recommendation has not occurred.

(5) City manager's communication. The DSD director shall forward the appeal, any additional materials provided by the appellant, the recommendations of the applicable advisory body(ies), any materials provided by any other party and the city manager's report and recommendation to the mayor and council no later than five (5) days prior to the scheduled meeting.

(6) Public notice. Public notice of the mayor and council public hearing shall be provided not less than fifteen (15) days and not more than thirty (30) days prior to the hearing. Public notice shall be in accordance with section 23A-50.

(7) Mayor and council public hearing. The mayor and council may hold a study session and shall hold a public hearing on the appeal in accordance with the rules and regulations of the mayor and council. The mayor and council shall reach a decision following the close of the public hearing. The mayor and council may continue the public hearing for up to forty-five (45) days. The public hearing shall not be continued for more than forty-five (45) days without the consent of the property owner of the subject site.

(8) Mayor and council decision. Mayor and council shall decide the appeal based upon the application, testimony, evidence and other materials considered in the prior proceeding, the city managers communication and the testimony and evidence presented in the public hearing. Mayor and council shall consider the provisions, purpose and intent of the plans and regulations that apply to the appeal.

(9) Notice of the decision. The decision by the mayor and council shall be announced and shall be final at the time the decision is made following the public hearing. Written notice of the decision shall be provided within three (3) days of the date of decision to all parties of record.

(10) Issuance of permits and approvals. No permits or development approvals based on the decision shall be issued, or other formal action taken, while the appeal is pending before the mayor and council or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the mayor and council.

(Ord. No. 9967, § 9, 5-17-04)