



MAYOR & COUNCIL COMMUNICATION

July 7, 2010

Subject: **PUBLIC HEARING - C8-10-05 Land Use Code (LUC)**
 Amendment – Zoning Compliance for Existing Improvements
(City-Wide)

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Issue – Amending the Land Use Code (LUC), by adding a new section allowing new uses in existing buildings without meeting all current zoning requirements, so long as the new use is permitted under the current zoning of the property and existing improvements are maintained.

City Manager’s Office Recommendation – It is recommended that the Mayor and Council adopt the attached ordinance. If adopted, this ordinance will sunset January 31, 2012. It is further recommended that Mayor and Council direct staff to return to the Planning Commission 12 months after the ordinance’s adoption in order to provide the Planning Commission with an opportunity to review the impact of the ordinance and make further recommendations to Mayor and Council.

Planning Commission Recommendation – The Planning Commission voted 7 to 2 to forward this item to Mayor and Council with a recommendation for approval. Three changes which the Planning Commission suggested to the ordinance, as presented to the Commission, have been incorporated. A copy of the recommendation letter from the Chairman of the Planning Commission is provided as Attachment A.

Background – On January 26, 2001 Mayor and Council directed staff to explore methods to provide prompt regulatory relief for persons applying for Certificates of Occupancy (C of O) for existing buildings. On March 23, 2010, Mayor and Council further directed staff to review a C of O regulatory relief amendment prepared by the C of O stakeholder community. On May 5, 2010, at a Planning Commission public hearing, staff presented a proposed ordinance to the Planning Commission. The Planning Commission voted 7-2 to recommend approval of the proposed ordinance with three changes. The changes recommended by the Planning Commission have been incorporated into the attached ordinance and are discussed in the section titled ‘Changes Recommended by the Planning Commission’ below.

Present Consideration – There are a significant number of older commercially zoned buildings in Tucson that are currently vacant or underutilized. Many of these buildings are either nonconforming (because of changes to the LUC or acquisition of public right-of-way) or in violation of the LUC (due to un-permitted improvements). Some of these nonconformities or violations have existed for many years. Nonetheless, establishment of a new use, permitted under existing commercial zoning, must meet all of the requirements of the LUC in order to receive a Certificate of Occupancy. Consequently, buildings which might be made safe, habitable and otherwise eligible for a Certificate of Occupancy, may become obsolete from a zoning standpoint. These buildings do not generate income to cover the cost of maintenance or for reinvestment, they do not provide any services to nearby neighborhoods, and they may present a blight to the community.

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The proposed amendment encourages reuse and reinvestment in such older buildings by allowing existing, developed, properties to be used for most, but not all, principal permitted land uses enumerated in their respective zones without full compliance with current development criteria so long as existing improvements are retained. Development criteria include things like site area, floor area, building height, perimeter yards, vehicular and pedestrian access, lot coverage, parking, loading, landscaping, and native plant preservation. Existing site improvements must stay the same as they appear on the May 2005, aerial photography administered by the Pima Association of Governments (PAG). The building(s) cannot be made bigger or taller, moved closer to the property line, or expanded into landscaping. Parking spaces cannot be removed. All loading and access must be retained.

Parking required by the LUC is one of the biggest obstacles to reuse of older buildings. Establishing existing parking as the minimum permitted parking for a site, will allow additional buildings to be put to productive use. Logically, parking may be seen as self regulating. If the actual parking demand for a new use exceeds parking available on-site, a business owner will be incentivized to provide alternative parking or risk a decline, or failure of, the business. Eliminating the requirement that existing buildings fully comply with current parking regulations will encourage entrepreneurs to find creative solutions that the LUC currently discourages or prohibits. Possible creative solutions include, but are not limited to: shared parking between commercial uses, on-street parking, and staggered hours of operation. New use of an existing building should not be allowed to negatively impact surrounding neighborhoods through unwanted spillover parking on residential streets. Undesirable spillover parking on residential streets may be addressed through an effective self-funding street improvement and parking management program on an as-needed and where-needed basis. Such programs could be directed to areas as small as single blocks where appropriate.

The proposed ordinance recognizes that some uses allowed by right within a zone could nonetheless cause conflicts and such uses have been identified as exceptions in the draft ordinance. These exceptions include billboards, correctional uses, and restricted adult activities. Furthermore, all uses requiring a special exception have been excluded. Notable among such special exception uses are large bars, blood donor centers, large retail establishments, cell towers, and household goods donation centers. Food service uses (restaurants) and alcoholic beverage service uses (bars) are permitted only as continuing uses. Properties within an overlay zone, or which were the subject of a rezoning or variance and therefore subject to conditions, or the subject of an unabated zoning violation, are not eligible under the proposed amendment.

Planning Commission Public Hearing – At the Planning Commission public hearing, two persons spoke in favor of the proposed amendment, and eight spoke in opposition. Those speaking in favor noted that compliance with all Code required improvements on an existing site can be impossible, that the big chains can do it but that local small businesses cannot, and that small businesses may have insufficient resources, capital and time to support a lengthy review process and that this option will promote local flavor in Tucson, and promote activity in proximity to neighborhoods thereby preventing deterioration.

Persons speaking in opposition stated that the proposal was contrary to the purpose of the LUC, will allow for further impact on neighborhoods, that it allows developers to do what ever they

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want, to build as high as they want in the Scenic Corridor Zone or the Hillside Development Zone, that staff's explanation was not consistent with what happened, that its not a complete ordinance, that it creates division, distrust, and fear. Some characterized it as 'amnesty' for 50 percent of the businesses in Tucson. One speaker said that changes to the LUC need to be deliberate and prudent, that anything called a "quick fix" was a red flag. One person referred to it as a Band-Aid to fix what should never have been adopted in the first place. One person characterized it as an extreme blanket amnesty for zoning violations. Several folks expressed concern over parking, including a statement that a \$48 residential parking permit is not fair.

Discussion by the Planning Commission centered on a proposed 2400 square foot exemption for restaurants, noting that there are things that can be done without such a broad brush, specifically regarding parking and unpaved parking lots and nighttime businesses. The chair expressed discomfort with using aerial photographs to establish existing improvements, and a desire for additional information. Following discussion, the Planning Commission voted 7 to 2 to recommend approval of the item with three changes. Commissioners Eddy, Maher, Michal, Podolski, Rex, Saylor-Brown, and Whistler voted yes, Commissioners Williams, and Lavaty voted no.

Changes Recommended by the Planning Commission – The Planning Commission recommends three changes to proposed amendment prepared by staff, discussed below.

The Planning Commission recommended that staff review the language within the proposed amendment relating to zoning violations. The original wording was "unresolved." The language of the text has been re-written to prohibit properties with "unabated" zoning violations from using this option. "Unabated" was chosen because it reflects current usage by the Zoning Enforcement staff of the Housing and Community Development Department (see Section 5.4.3.12.1).

The proposed amendment presented to the Planning Commission incorporated language prepared by staff to allow restaurants with a gross floor area equal to, or less than, 2400 square feet to use this option. This was specifically requested by the C of O stakeholder community. This 2400 square foot threshold adds complexity that could contravene the original intent of providing a simple way to allow re-use of existing development. The proposal to allow food service uses less than 2,400 square feet to be granted zoning compliance under this option also represents a shift in Mayor and Council policy as established by the adoption of Ordinance No. 10664 adopted May 5, 2009. That ordinance addressed allowable parking reductions and explicitly excluded Food Service uses without any distinction based upon the gross floor area of the establishment. The Planning Commission recommends deleting the allowance for restaurants under 2400 square feet to utilize this option (see Section 5.3.12.4.e).

The Planning Commission recommends adding residential uses to the list of uses to be prohibited from using this option. The intent of the proposed ordinance is directed toward commercial use of properties and staff supports this change. In the attached ordinance the following have been added to the list of prohibited uses: Family Dwelling, Group Dwelling, Mobile Home Dwelling, and Residential Care Services (see Section 5.3.12.4.f, .g, .h, and .i).

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Technical Consideration – Following the Planning Commission public hearing, staff identified two revisions that are appropriate to ensure the proposed amendment can be administered as intended. First, the intent of this ordinance is to address C of O applications, however the original text of the amendment was not sufficiently specific in that regard. Language has been added to clarify that requests to use this amendment must be submitted concurrently with an application for a Certificate of Occupancy. This change is reflected in Section 5.3.12 of the proposed amendment.

Second, additional clarification is desirable to stress that existing site improvements cannot be modified after zoning compliance has been granted. Therefore a new section 5.3.12.11 has been added. This new section states that subsequent changes to the site will void zoning compliance granted per the proposed amendment. In other words, a property owner granted zoning compliance under the proposed amendment who subsequently wishes to build an addition to a development site, would be required to go through standard zoning review.

Financial Considerations – N/A

Operating Cost and Maintenance Input – N/A

Legal Considerations – The City Attorney's Office has reviewed the proposed text amendment.

Respectfully submitted,



Richard Miranda
Deputy City Manager

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Planning & Development Services Department

Attachments:

A – Planning Commission Recommendation letter dated June 1, 2010
Ordinance

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