



CITY OF  
TUCSON

PLANNING &  
DEVELOPMENT  
SERVICES  
DEPARTMENT

PLANNING  
COMMISSION

June 1, 2010

The Honorable Mayor and  
Members of the Council  
City of Tucson  
P. O. Box 27210  
Tucson, Arizona 85726-7210

Subject: Land Use Code Amendment – Zoning Compliance for Existing  
Improvements

On May 5, 2010, a public hearing was held before the Planning Commission to consider a proposed amendment to the Land Use Code (LUC) adding a new section that allows most new uses to move into existing structures without having to meet all of the zoning requirements, so long as the new use is permitted under the current zoning of the property.

#### PUBLIC HEARING

At the public hearing, staff presented an overview of the proposed amendment. Two persons spoke in favor of the proposed amendment, and eight spoke in opposition. Those speaking in favor noted that fitting all the Code required improvements on an existing site can be impossible, that the big chains can do it but that local small businesses cannot, small businesses are under-capitalized and didn't have the time to go through lengthy review processes. It was further noted that this option will promote local flavor in Tucson, lead to creation of small business, that activity next to neighborhoods will stop deterioration, and that small buildings were not full even in good times.

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 whatever they want, because it waives the expansion rules, and that its not a complete ordinance. One speaker said it will create division, distrust, and fear in the community. Some characterized it as amnesty for 50 percent of the businesses in Tucson. One person characterized it extreme blanket amnesty for zoning violations that would bless illegal expansions. One speaker said that changes to the LUC need to be deliberate and prudent, that anything called a "quick fix"

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was a red flag. One person said it was using a Band-Aid to fix what should never have been adopted in the first place. Several folks expressed concerns regarding parking and parking related issues, including a statement that a \$48 residential parking permit is not fair.

#### PLANNING COMMISSION DISCUSSION

The staff proposal included a provision that would allow restaurants less than 2400 square feet in size to use the proposed amendment. Much of the discussion centered on this aspect of the proposed amendment. One commissioner stated that there are things that can be done without such a broad brush, specifically dealing with parking and unpaved parking lots, and nighttime businesses. One member suggested that the amendment should not be available for residential uses. One member expressed frustration and said that something had to be done to be able to deal with unique properties, and that with the sunset clause the proposed amendment was appropriate. One member noted there are a lot of prime buildings vacant and that he didn't understand the need to address substandard buildings when such good buildings are available. Another commissioner countered that the prime properties are the most expensive. There was discussion of the meaning of the word "unresolved" in the context of an "unresolved zoning violation." Staff explained the use of the word and that it would be clarified in the final ordinance as appropriate. There was also discussion of what type of improvements could be modified. Staff responded that only parking lot striping could be changed and only if the required elements were retained.

#### RECOMMENDATION

Following the discussion, the Planning Commission voted 7 to 2 to forward the item to Mayor and Council with a recommendation for approval subject to the findings provided at the end of this letter and the following three conditions:

1. Find the meaning of "unresolved" zoning violation.
2. Exclude residential development.
3. Delete the reference to restaurants under 2400 square feet.

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The Commission also requests that staff be directed to provide a report to the Planning Commission after 12 months worth of data have been gathered to review the impact of the amendment. Commissioners Eddy, Maher, Michal, Podolski, Rex, Sayler-Brown, and Whistler voted yes, Commissioners Williams, and Lavaty voted no.

FINDINGS

- 1) This item is brought forward to Mayor and Council to allow something to happen, good or bad, as a means of requesting guidance and leadership from Mayor and Council as we review future ordinances that come before the Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rick Lavaty', written in a cursive style.

Rick Lavaty, Chair  
Planning Commission

RL/ed/gm

ADOPTED BY THE  
MAYOR AND COUNCIL ON

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ORDINANCE NO. 10815

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE LAND USE CODE, CHAPTER 23, ARTICLE V, ADMINISTRATION, DIVISION 3, SPECIAL DEVELOPMENT APPLICATIONS, ADDING SECTION 5.3.12, ZONING COMPLIANCE FOR SITE IMPROVEMENTS IN EXISTENCE ON MAY 1, 2005; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 23, Land Use Code, Article V, Administration, Division 3, Special Development Applications, is hereby amended to add Section 5.3.12, Zoning Compliance For Site Improvements In Existence on May 1, 2005, to read as follows:

**5.3.12 ZONING COMPLIANCE FOR SITE IMPROVEMENTS IN EXISTENCE ON MAY 1, 2005.**

The owner of property, at the time of a request for a Certificate of Occupancy may concurrently request that site improvements, including outdoor activity areas, in existence as of May 1, 2005 (“existing site improvements”) be granted zoning compliance subject to the following:

5.3.12.1 This Section 5.3.12 shall only apply to developed property with nonresidential zoning that is not subject to Article II Division 8 Overlay Zones, or any change of zoning (rezoning), variance, or special exception approved subject to conditions, or the subject of an unabated zoning violation.

5.3.12.2 Existing site improvements shall be determined by referring to May 2005 aerial photography administered by the Pima Association of Governments (PAG) and available on the PAG website.

5.3.12.3 Existing site improvements are not subject to compliance with Section 3.2.3, 3.2.5, 3.2.6, 3.2.7, 3.2.8, 3.2.9, and 3.2.11; 3.3; 3.4; 3.7; and 3.8.

5.3.12.4 Properties granted zoning compliance under the provisions of this Section 5.3.12 may be used for all principal Permitted Land Uses based on the zoning of the site subject to the applicable General Restrictions in each zone, except for the following prohibited uses:

- a. Section 6.3.4.4 Correctional Use
- b. Section 6.3.5.6 Billboard
- c. Section 6.3.9 Restricted Adult Activities Use Group
- d. Section 6.3.5.3 Alcoholic Beverage Service uses unless continuously licensed through the Arizona Department of Liquor Licenses and Control from May 1, 2005, to the present.
- e. Section 6.3.5.13 Food Service uses unless continuously licensed through the Pima County Health Department from May 1, 2005, to the present.
- f. Section 6.3.8.2 Family Dwelling
- g. Section 6.3.8.3 Group Dwelling
- h. Section 6.3.8.4 Mobile Home Dwelling
- i. Section 6.3.8.5 Residential Care Services

5.3.12.5 Required drop-off areas may not be deleted.

5.3.12.6 Use of the property shall be in compliance with all applicable performance criteria enumerated in Article III, Division 5 of the Land Use Code.

5.3.12.7 This Section 5.3.12 shall be applied to single or multiple parcels of land but may not be applied to partial parcels.

5.3.12.8 Changes to parking lot striping, maintaining the same number of parking spaces, or increasing the number of parking spaces, are permitted in compliance with Section 3.3.7 so long as no existing elements such as loading zones or dumpsters are deleted except as permitted under current regulations.

5.3.12.9 The owner of the property shall:

- a. submit a sworn affidavit that the use of the property will be in compliance with this Section 5.3.12, or
- b. include the following in any lease/rental agreement for the property: "Tenant shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation.

Notwithstanding any contrary provision of this lease agreement, any occupancy or use of the premises in violation of this paragraph shall constitute a material breach of this lease agreement entitling Lessor to invoke all remedies provided hereunder including termination.”

5.3.12.10 A site inspection to verify that the use of the property is in compliance with this Section 5.3.12 may be conducted at the discretion of the Planning and Development Services Director.

5.3.12.11 Zoning compliance granted pursuant to this section shall be valid only so long as the property and site improvements thereon remain in the same condition as on the date zoning compliance is granted. Any subsequent development or modification to the property or site improvements will render zoning compliance under this section void and of no effect. Any modification or improvement not shown on May 2005 aerial photography administered by the Pima Association of Governments (PAG) will be considered a subsequent development of the property.

Requests for zoning compliance pursuant to this Section 5.3.12 must be submitted to the City of Tucson Planning & Development Services Department, and all applicable fees paid, prior to the expiration date of this Section 5.3.12, as provided herein.

SECTION 2. The provisions of this ordinance adding Section 5.3.12 of the Land Use Code shall cease to be effective on January 31, 2012, unless extended by the Mayor and Council by a separate ordinance. If not extended, the sections shall revert to the language as it existed prior to this amending ordinance. The purpose of this sunset clause is to give the City the opportunity to decide whether to continue to implement Section 5.3.12, as added or to revert to those provisions existing prior to this ordinance.

SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, \_\_\_\_\_.

\_\_\_\_\_  
MAYOR

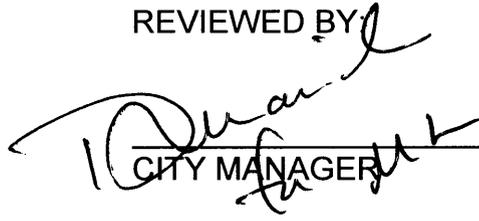
ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

REVIEWED BY:

  
\_\_\_\_\_  
CITY MANAGER

  
TM/tl  
6/17/10