

ADOPTED BY THE
MAYOR AND COUNCIL

February 15, 2012

ORDINANCE NO. 10965

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE TUCSON CODE, CHAPTER 23, THE LAND USE CODE, CHAPTER 23, ARTICLE II, DIVISION 3, URBAN RESIDENTIAL ZONES, SECTIONS 2.3.2, 2.3.4, AND 2.3.5; ARTICLE III, DIVISION 5, PERFORMANCE CRITERIA, SECTION 3.5.7; AND ARTICLE VI., DIVISION 3, LAND USE GROUPS, SECTION 6.3.8; AND TUCSON CODE CHAPTER 16, NEIGHBORHOOD PRESERVATION, ARTICLE IV, SECTIONS 16-37 AND 16-38, ARTICLE VII, SECTIONS 16-70 AND 16-73; TO CLARIFY DEFINITION OF GROUP DWELLING USES; AMEND PARKING REQUIREMENTS RELATING TO FAMILY DWELLINGS; TREAT EXISTING GROUP DWELLINGS AS LAWFUL NONCONFORMING USES; PROVIDE FOR THE DESIGNATION AND ABATEMENT OF GROUP DWELLING PUBLIC NUISANCES; AND ESTABLISH APPEAL PROCEDURES; AND DECLARING AN EMERGENCY.

WHEREAS, on or about September 28, 2011, the City's Zoning Administrator issued a determination, finding therein that the occupancy of an R-1 lot by 5 or more unrelated persons is a Group Dwelling use; and

WHEREAS, the Zoning Administrator's determination was issued pursuant to the authority of Land Use Code (LUC) Section 6.3.2.3, under which the Zoning Administrator determines the most appropriate Land Use Class for a use that does not conform to the wording of any Land Use Class description or conforms to the wording of two (2) or more Land Use Class descriptions; and

WHEREAS, the Zoning Administrator's determination under LUC Section 6.3.2.3 is an administrative decision; and

WHEREAS, the Mayor and Council now desire to codify the Zoning Administrator's determination by clarifying certain provisions of the Land Use Code, in

order to provide notice to all persons of the application of the Code relating to Group Dwelling uses.

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

SECTION 1. The Mayor and Council find that the best interests of the City shall be served by approving clarifications to the City's Land Use Code provisions relating to definitions distinguishing between single family uses and group dwelling uses that are set forth in this Ordinance.

The Mayor and Council further find that it is equitable to apply the clarified provisions to uses established after the adoption of this Ordinance; and that existing uses are therefore to be treated as nonconforming uses with certain additional protections set forth herein.

The Mayor and Council further find that certain conflicts between group dwellings and single family residences have involved behavior by the tenants of group dwellings such as excessive noise, loud parties, unruly gatherings, parking congestion and other conduct that threatens the health and safety of neighborhoods and constitutes public nuisances. The Mayor and Council adopt the provisions of Sections 6 and 7 of this Ordinance to address this nuisance behavior.

SECTION 2. Current Tucson Code, Chapter 23, Articles II, III, and VI are amended as provided in this Ordinance. These amendments shall not affect any punishment or penalty incurred before the amendments take effect, nor any suit, prosecution or proceeding pending at the time of the amendments, for an offense committed under the amended code sections.

SECTION 3. The Tucson Code, Chapter 23, Land Use Code, Article II, Division 3, is amended to read as follows:

**ARTICLE II, ZONES
DIVISION 3, URBAN RESIDENTIAL ZONES**

* * *

2.3.2 "RX-1" RESIDENCE ZONE.

* * *

2.3.2.2 Permitted Land Uses. The following Land Use Classes are principal Permitted Land Uses within this zone, subject to compliance with the development and compatibility criteria listed for the Development Designator indicated and to any additional conditions listed for each use. The number or letter in quotation marks following the Land Use Class refers to the Development Designator provisions of 3.2.3.

A. Residential Use Group, Sec. 6.3.8

1. Family Dwelling "D", subject to: Sec. 3.5.7.1.F, H and .I.
2. Family Dwelling "FLD-2", subject to: the development regulations in Sec. 3.6.1 and Sec. 3.5.7.1.F, H and .I.
3. Residential Care Services: Adult Care Service or Physical and Behavioral Health Service "D", subject to: Sec. 3.5.7.8.B.1, .C.1, and .D.

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2.3.4 "R-1" RESIDENCE ZONE

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2.3.4.2 Permitted Land Uses. The following Land Use Classes are principal Permitted Land Uses within this zone, subject to compliance with the development and compatibility criteria listed for the Development Designator indicated and to any additional conditions listed after each use. The number or letter in quotation marks following the Land Use Class refers to the Development Designator provisions of Sec. 3.2.3.

A. Residential Use Group, Sec. 6.3.8

1. Family Dwelling "G", subject to: Sec. 3.5.7.1.E, .F, .G, .H, and .I
2. Family Dwelling "H", subject to: Sec. 3.5.7.1
3. Family Dwelling "FLD-4", subject to: the development regulations in Sec. 3.6.1 and Sec. 3.5.7.1.E, .F, .H, and .I
4. Residential Care Services: Adult Care Service or Physical and Behavioral Health Service "G", subject to: Sec. 3.5.7.8.B.1, .C.1, and .D

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2.3.5 "R-2" RESIDENCE ZONE.

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2.3.5.2 Permitted Land Uses. The following Land Use Classes are principal Permitted Land Uses within this zone, subject to compliance with the development and compatibility criteria listed for the Development Designator indicated and to any additional conditions listed for each use. The number or letter in quotation marks following the Land Use Class refers to the Development Designator provisions of Sec. 3.2.3.

- A. Residential Use Group, Sec. 6.3.8
1. Family Dwelling "I", subject to: Sec. 3.5.7.1.F, .I, and .J.
 2. Family Dwelling "K", subject to: Sec. 3.5.7.1.F, .I, and .J.
 3. Family Dwelling "FLD-6", subject to: the development regulations in Sec. 3.6.1 and Sec. 3.5.7.1.F, .I, and .J.

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SECTION 4. The Tucson Code, Chapter 23, Land Use Code, Article III, Division 5, is amended to read as follows:

ARTICLE III, DEVELOPMENT REGULATIONS DIVISION 5, PERFORMANCE CRITERIA

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3.5.7 RESIDENTIAL USE GROUP

3.5.7.1 Family Dwelling

* * *

- G. For any new single family dwelling in the R-1 zone with five (5) bedrooms, three (3) parking spaces are required. For every bedroom over five (5), one additional space is required for each bedroom. For all single family dwellings in the R-1 zone with five (5) or more bedrooms, and for all lots containing two (2) or more single family dwellings, with the second dwelling having more than one bedroom, all parking must be located on-site, either in a side or rear perimeter yard. Parking spaces may not be located in a vehicular use area in any front street perimeter yard. A parking area is not required to be developed to a commercial standard. A dustproof parking surface is required to at least a minimum of two inches of compacted pea gravel. An existing covered residential parking area may be used.
- H. If there is one or more dwelling(s) on a lot, all dwellings on a lot are considered to be one dwelling for the purpose of determining whether there is a group dwelling. If there are five (5) or more unrelated persons residing on the lot, it is a group dwelling that is not permitted.
- I. Subject to the requirements of this Section 3.5.7.1.I, any group dwelling use existing prior to February 15, 2012 shall be treated as a lawful nonconforming use and structure in accordance with LUC Sec. 1.2.7, and shall be subject to LUC Sec. 5.3.6, except as otherwise expressly provided in this Section and in Tucson Code Sec. 16-37. A protected development right plan approved by the Mayor and Council prior to the enactment of this Ordinance shall be treated as a nonconforming use for a maximum number of unrelated persons equivalent to the number of bedrooms on the approved plan.
 - 1. The right to treatment as a nonconforming use or structure under this Section shall be established by the following:
 - a. evidence that the property was registered as a rental property as required by A.R.S. §33-1902 on

or before February 15, 2012, otherwise timely registered as required by that statute; and

- b. evidence acceptable to the Zoning Administrator that establishes the maximum number of unrelated persons to whom the dwelling was leased pursuant to subsection (a) above. Such evidence may include executed leases, tax records, an approved protected development right plan as described in this section, or other documentation. An executed lease that was executed during the calendar year 2009, 2010, or 2011 shall be sufficient under this subsection to establish the number of persons to whom the dwelling was leased.
2. If a group dwelling is established for treatment as a lawful nonconforming use as provided in subsection (1) above, the maximum number of unrelated persons to whom the dwelling may be leased shall be that number established by the evidence provided under subsection (1)(b) above.
 3. Notwithstanding the provisions of LUC Section 5.3.6.1.A.2, an established nonconforming use under this Section 3.5.7.1.I shall not be deemed abandoned or lost based upon the leasing of the dwelling after February 15, 2012 to less than five unrelated persons, to related persons, or to a single family; or upon the failure to lease the dwelling, provided that it is continually registered as a rental property as described under A.R.S. §33-1902.
 4. The nonconforming use under this Section 3.5.7.1.I may be suspended or lost as provided in LUC §5.3.6.1.A.2 if it is declared a public nuisance by court order pursuant to Tucson Code §16-37.
 5. To the extent any of the provisions of Tucson Code Section 16-37 or this Section 3.5.7.1.I conflict with LUC Section 5.3.6 relating to the discontinuance or abandonment of a nonconforming use, the provisions of this Section and Tucson Code Section 16-37 shall control.

- J. Occupancy of a dwelling by five (5) or more unrelated persons is a group dwelling and is not permitted.

SECTION 5. The Tucson Code, Chapter 23, Land Use Code, Article VI., Division 3, is amended to read as follows:

**ARTICLE VI, DEFINITIONS
DIVISION 3, LAND USE GROUPS**

6.3.8 RESIDENTIAL USE GROUP

- 6.3.8.1 Purpose. The Residential Use Group includes Land Use Classes which are residential on a nontransient basis. The following Land Use Classes comprise the Residential Use Group.
- 6.3.8.2 Family Dwelling. Family Dwelling is the occupancy (habitation) of a permanent structure or structures on a lot or parcel by one (1) or more individuals holding the dwelling unit under common property rights, living together as a single household, and using common cooking facilities. Typical uses include attached or detached dwellings and single-family or multiple-family dwellings.
- 6.3.8.3 Group Dwelling. Group Dwelling is the residential occupancy of a permanent structure by five (5) or more unrelated persons or by one (1) or more individuals where the individual or group of individuals has the exclusive right of occupancy of a bedroom. Typical uses include fraternities; sororities; convents; dormitories; college student rentals; rooming and boarding; boarding houses, not primarily for travelers; and apartments where individual bedrooms are separately leased. Related persons include persons related by blood, marriage, domestic partnership as defined in Tucson City Code Chapter 17, Article IX or a legal custodial relationship.

SECTION 6. The Tucson Code, Chapter 16, Article IV, is amended to add new Sections 16-37 and 16-38, to read as follows:

ARTICLE IV. UNLAWFUL ACTS

Sec. 16-37. Group Dwelling Public Nuisance; Abatement.

- (a) Definition of a Group Dwelling Public Nuisance. A dwelling unit may be designated by the Code Official as a group dwelling public nuisance if all of the following apply:
- 1) the dwelling unit is treated as a lawful nonconforming group dwelling under LUC Section 3.5.7.1.1; and
 - 2) the dwelling unit is the location of a documented pattern of nuisance activity which shall consist of at least three incidents on separate dates within a two (2) year period resulting in criminal charges, or in civil infraction citations involving nuisance conduct; and
 - 3) at least one (1) of the violations is a criminal offense or a violation of Section 16-31 [excessive noise] or Section 16-32 [unruly gatherings] of this Code.
- (b) Maintaining a Group Dwelling Public Nuisance Unlawful. It is unlawful for a property owner to maintain a dwelling unit as a group dwelling public nuisance; and a group dwelling public nuisance shall be abated as provided in this Section.
- (c) Property Owner Notification. The code official shall first notify the property owner and an occupant that the dwelling unit may be designated as a group dwelling public nuisance. Such notice shall include the identification of the dwelling unit in violation; a description of the charges or citations upon which the designation is based; the address and phone number of a city representative to contact; and a description of the appeal rights that apply. The notice shall be delivered in the same manner as provided under Section 16-45(e) for notices of violation. The notice shall provide the property owner ten (10) working days to respond to the proposed designation or to submit to the code official a remediation plan that will voluntarily abate the alleged violation(s). Within ten (10) working days of the date of property owner responds to the notice, or in the absence of a response within ten (10) working days of the expiration of the response period, the code official shall notify the property owner of the decision as to whether the dwelling unit is a group dwelling public nuisance. A property owner may appeal a designation of a group dwelling as a public nuisance under this paragraph within thirty (30) days of the designation by filing an appeal in accordance with Section 16-73.

- (d) Abatement by Remediation Plan; and Appeal. Where the code official has designated a dwelling unit as a public nuisance as provided above, the nuisance shall be abated as follows:
1. The code official shall first attempt to consult with the property owner in which the dwelling unit is located to determine appropriate steps to abate the group dwelling public nuisance through a remediation plan. Within fifteen (15) working days, the code official shall determine the appropriate remediation plan to abate the group dwelling public nuisance. The code official may extend the time for completing the remediation plan by up to fifteen days. By the same date, the remediation plan shall be delivered to the property owner, and shall be effective for one (1) year. Within five (5) days of delivery to the property owner, the designation as a group dwelling public nuisance and the remediation plan shall also be delivered to property owners within fifty (50) feet of the subject site and mailed to any registered neighborhood association that includes the subject site. Failure to deliver the designation and/or remediation plan to these nearby property owners shall not affect the validity of the designation or remediation plan. The code official shall keep and maintain any nuisance designation or remediation plan issued under this section as a public record, and shall make such documents available to any person upon request.
 2. A property owner may file an administrative appeal to appeal the requirements of the remediation plan in accordance with Section 16-70 of this Chapter.
- (e) Subsequent Violations a Civil Infraction; Abatement by Court Order. If, within twenty-four (24) months of the designation of a dwelling unit as a group dwelling public nuisance and the issuance of a remediation plan, the dwelling unit is the location of an additional violation or violations of the City Code or of any criminal laws or statutes, the property owner is responsible for a civil infraction. Upon finding a property owner responsible for a violation under this subsection, the court shall order such person to correct and abate the violations. Such order may include an order to reduce or limit the number of unrelated tenants in the dwelling unit to not more than four (4), except that any order limiting occupancy in this manner can only apply for a time period not to exceed six (6) months. A reduction of the number of tenants as a result of a court order issued pursuant to this paragraph shall not terminate or discontinue the nonconforming use of the dwelling unit.

- (f) Subsequent Violations following Court Ordered Abatement; If, within twenty-four (24) months of court order issued pursuant to subsection (e) above, the dwelling unit is the location of an additional violation or violations of the City Code or of any criminal laws or statutes, the property owner is responsible for a civil infraction. Upon finding a property owner responsible for a violation under this subsection, the court shall order such person to correct and abate the violations. Such order may include an order to reduce or limit the number of unrelated tenants in the dwelling unit to not more than four (4) and such order may be effective for up to one (1) year. A reduction of the number of tenants for six months or more pursuant to a court order issued under this subsection shall terminate and discontinue the nonconforming use of the group dwelling unit if the order exceeds six months.

- g) Voluntary abatement. Where a property owner voluntarily reduces the number of occupants to whom a dwelling unit is leased and occupied to less than five unrelated persons for a period of not less than one year, the designation of the property as a group dwelling public nuisance shall be deemed abated. A subsequent determination that the dwelling unit is a group dwelling public nuisance after the period of voluntary abatement shall be based upon violations occurring after the voluntary abatement period. To qualify for the voluntary abatement in this subsection, the property owner shall provide written notice of the abatement and applicable lease period to the Code Official, property owners within 50 feet of the property to be abated, and the registered neighborhood association.

Sec. 16-38 Transfer of Group Dwelling Public Nuisance property after Remediation Plan or Court Order.

Fraudulent transfer as a misdemeanor. Any person who has been served with a remediation plan or court order and who then transfers an ownership interest in the real property against which the notice has been served is guilty of a misdemeanor if the transfer is made without first obtaining a written acceptance of responsibility from the new owner for the items listed in the remediation plan or court order.

* * *

SECTION 7. The Tucson Code, Chapter 16, Article VII, Sections 16-70 and 16-73, are amended to read as follows:

ARTICLE VII. ADMINISTRATIVE APPEALS

Sec. 16-70. Availability of administrative appeal.

The provisions of this article, which permit administrative review of a notice of violation, only apply to:

- (1) Violations of sections 16-4, 16-11, 16-12 and 16-14 of this chapter;
- (2) Designations of slum properties pursuant to section 16-24 of this chapter;
- (3) Violations of this chapter wherein the city seeks the recovery of costs through the imposition of an assessment as provided in sections 16-61(d), (e); and
- (4) Abatement of a group dwelling public nuisance pursuant to section 16-37.

No administrative appeal is available in a case involving a pending or adjudicated court proceeding.

* * *

Sec. 16-73. Appeals to the board of appeals.

- (a) An owner or responsible party who is not or was not a party to a pending or adjudicated court proceeding involving a request for court ordered abatement of the violation (hereinafter, the appellant) may appeal a notice of violation, slum designation described in section 16-70 or group dwelling public nuisance designation described in section 16-37 to the board of appeals (hereafter board) established in Tucson Code section 6-12 and section 204 of the Administrative Code, when it is claimed that:
 - (1) Substantive errors exist in the notice of violation, the slum designation or group dwelling public nuisance designation.
 - (2) The method or schedule for correcting the violation as set forth in the notice of violation, the slum designation or group dwelling public nuisance designation is unreasonable or arbitrary.
- (b) An owner or responsible party whose relationship with the property existed at the time of the recording of an assessment, and who is not or was not a party to a court proceeding which has established or

may establish the amount of an assessment, may appeal the amount of the assessment for abatement to the board.

- (c) In cases involving an order to vacate or suspend occupancy of a group dwelling public nuisance, any the property owner or a lawful tenant of the property that is the subject of the order to vacate may appeal that order to the board on the grounds that the order to vacate is unreasonable or arbitrary.
- (d) The appellant shall prepare the appeal in a written application as follows:
 - (1) The appellant shall file a written appeal on the forms provided by the code official and accompanied by a non-refundable fee, as determined by separate ordinance;
 - (2) The appellant shall provide adequate information to fully describe the conditions in question;
 - (3) The application for appeal shall contain each appellant's signature and mailing address to which the decision of the board may be mailed;
 - (4) The appellant shall provide a brief statement describing the legal interest of each of the appellants in the property involved in the proceeding;
 - (5) The appellant shall verify by declaration under penalty of perjury the truth of the matters stated in the application;
 - (6) The appeal shall be filed within thirty (30) days from the date of the service of the notice of violation or notice of designation as a slum property; provided, however, that if the building or structure is in such condition as to make it an imminent hazard and is posted and vacated in accordance with sections 16-63 and 16-64 of this chapter, an appeal shall be filed within ten (10) days from the date of the service of such notice.
- (e) Except for vacation orders made pursuant to sections 16-63 and 16-64, the timely filing of an appeal shall act as an automatic stay of enforcement of the notice of violation until the appeal is finally determined by the board. The filing of an appeal does not stay enforcement of any notice or order, or any provision thereof, where the notice or order includes an order to vacate.

- (f) As soon as practicable after receiving the written appeal, the board shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than ten (10) days nor more than sixty (60) days from the date the appeal was filed. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each appellant by the secretary of the board, either by causing a copy of the notice to be delivered personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.
- (g) Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of the right to a administrative hearing of the appeal and adjudication of the notice of violation or notice of designation as a slum, and such person shall be stopped to deny the validity of any order or action of the city which could have been timely appealed.
- (h) The board shall decide any appeal immediately after the hearing, or within a reasonable time thereafter, but in no event shall the board keep an appeal under consideration for more than five (5) days after the hearing. The board shall render its decision in writing, and the decision of the board shall be filed with the secretary of the board, with a copy to the appellant or applicant. The decision of the board is final. No further appeal is available to city or county boards or officials. In cases involving the designation of a property as a slum, persons aggrieved by decisions of the board may appeal the decision pursuant to A.R.S. Tit. 12, Ch. 7, Art. 6, or pursuant to successor provisions relating to judicial review of administrative decisions. In all other cases, persons aggrieved by decisions of the board may apply to Superior Court for relief in accordance with the Arizona Rules of Procedure for Special Actions. In the absence of a court order, the filing of an appeal or special action will not stay enforcement.

SECTION 8. One year after the adoption of this ordinance, staff shall review the amendments included within this Ordinance for their effectiveness and shall report their findings to the Mayor and Council.

SECTION 9. If any provision of this ordinance or the application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 10. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

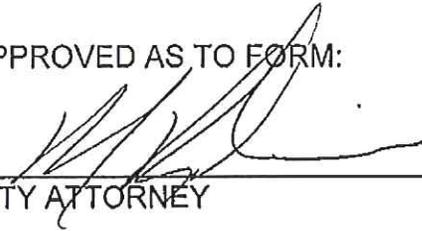
SECTION 11. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, February 15, 2012.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

MR/dc
1/19/12