



# PLANNING COMMISSION

Planning & Development Services Department • 201 N. Stone Ave. • Tucson, AZ 85701

**DATE:** June 6, 2012

**TO:** Planning Commission

**FROM:** Ernie Duarte  
Executive Secretary

**SUBJECT:** LUC Simplification Project: Transition Regulations

**Issue** – Pursuant to the proposed transition regulations as provided in Section 1.7 of the Unified Development Code (UDC), this item is a public hearing on a proposed text amendment to the City of Tucson Code, Chapter 23, Land Use Code (LUC) to no longer make available the following provisions in the LUC only upon the effective date of the UDC:

1. *Design Development Option* – Article V, Administration, Division 3, Special Development Applications, Sections 4 and 5 (Sections 5.3.4 and 5.3.5);
2. *Downtown Area Infill Incentive District Zone* – Article II, Zones, Division 8, Overlay Zones, Section 12 (Section 2.8.12);
3. *Flexible Lot Development* – Article III, Development Regulations, Division 6, Development Incentives, Section 1 (Section 3.6.1); and,
4. *Parking Design Modification Request* – Article III, Development Regulations, Division 3, Motor Vehicle and Bicycle Parking Requirements, Section 10 (Section 3.3.10)

These provisions are included in the proposed UDC and will be available for use upon the effective date of the UDC.

See below for additional information on the transition regulations.

**Recommendation** – At the request of the Metropolitan Pima Alliance, the Southern Arizona Home Builders Association, and the Arizona Builders Alliance, staff recommends keeping the public hearing open on this item until July to allow stakeholders additional time to review and comment on the proposal (see Attachment A for the request).

## **Additional Information on the Proposed Transition Regulations**

Under the proposed transitional regulations, for a period of three years after the effective date of the UDC, an applicant who was the landowner of record prior to the effective date of this UDC may choose to be governed by the provisions of the UDC or those of the Land Use Code (LUC) in effect on the date the UDC becomes effective. During this three-year transition period, the landowner may elect to comply with all provisions of the UDC or LUC, without exception. Applicants electing to be governed by the LUC during this period would not have the ability to seek modifications or exceptions pursuant to the provisions below.

A LUC amendment is necessary to implement this portion of the transitional regulations. Accordingly, the proposed text amendment revises the LUC to no longer make available the abovementioned provisions in the LUC only upon the effective date of the UDC.

These provisions are all discretionary administrative procedures that allow modifications to certain zoning regulations in the LUC. By no longer making these provisions available, applicants will more likely utilize the UDC (the eventual replacement of the LUC) rather than the LUC.

These provisions are included in the proposed UDC and will be available for use upon the effective date of the UDC.

Attachments:

- Attachment A – Request from MPA, SAHBA, and ABA for additional time to review and comment on the UDC
- Attachment A – Article 1: General Provisions
- Attachment B – Proposed text amendment

# ATTACHMENT A

**From:** Jim Mazzocco  
**To:** Duarte, Ernie; Smith, Adam  
**Date:** 05/29/2012 2:00 PM  
**Subject:** Fwd: Request for Additional Time

>>> Amber Smith <[ambersmith711@gmail.com](mailto:ambersmith711@gmail.com)> 05/29/2012 11:19 AM >>>  
Jim- Per our conversations in our stakeholder meetings, on behalf of MPA, SAHBA and ABA, we request an extension of time for the Land Use Code to not be approved by Council prior to September. In creating a structured timeframe, we believe this time will be adequate to continue addressing any potential concerns that we have. As several organizations, we represent hundreds of companies that will be impacted by this extremely important code. Presently, our members with the appropriate expertise are reviewing the draft sections. Since the new document is entirely new from the former document, it takes a much greater amount of time to compare the former draft to the new draft. Additionally, the individuals reviewing the document are all volunteers with full-time professional jobs so this time extension will allow a more in depth review process. Since the individuals reviewing the document will be the same individuals that will be designing and constructing based off the new Code, we believe this additional time will help to mitigate some unintended consequences. We agree that the January 1, 2013 date is still an appropriate time to launch the new Code and this request will not hinder that implementation.

Thank you for your consideration.

--

Amber Smith, MPA

Executive Director

Metropolitan Pima Alliance <<http://www.mpaaz.org/>>

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ATTACHMENT B

CITY OF TUCSON  
UNIFIED DEVELOPMENT CODE

PRELIMINARY FINAL PUBLIC DRAFT – JUNE 2012

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# ARTICLE 1: GENERAL PROVISIONS<sup>1</sup>

## 1.1. TITLE AND EFFECTIVE DATE<sup>2</sup>

This ordinance is enacted as Chapter 23 of the Tucson Code and may be cited as the "Unified Development Code" or "UDC" of the City of Tucson.

### COMMENTARY

For a detailed account of where the current LUC and Development Standards have been relocated in the draft UDC, please refer to the separate Disposition Report that provides a section-by-section list of where each existing major section has been moved.

## 1.2. AUTHORITY<sup>3</sup>

This UDC is adopted pursuant to the powers granted by the Arizona Revised Statutes (A.R.S.).

## 1.3. PURPOSE OF THIS CODE<sup>4</sup>

The provisions of the UDC are established to protect and promote the general health, safety, and welfare of all present and future residents of Tucson and more specifically:

- To implement the General Plan;
- To guide new growth and redevelopment of the community in accordance with the policies of the General Plan;
- To encourage the most efficient use of land through site sensitive design;
- To reduce potential hazards to the public that may result from incompatible land uses or from the development of environmentally hazardous or sensitive lands;
- To protect and enhance the City's natural, cultural, historical, and scenic resources; and
- To promote the economic stability of the community.

## 1.4. APPLICABILITY AND JURISDICTION

### 1.4.1. GENERAL APPLICABILITY AND COMPLIANCE<sup>5</sup>

- A. The provisions of the UDC apply to all development and uses of land within the City.
- B. No land shall be divided into two or more parcels or be used or occupied, no site modification or construction started, and no existing use or structure expanded, reconstructed, changed, or otherwise altered until compliance with the provisions of the UDC have been certified.
- C. The Planning and Development Services Department shall not issue approvals or permits for, nor shall any person commence excavation, grubbing, grading, paving, demolition, or construction of any sort before compliance with UDC standards has been certified.

<sup>1</sup> This brief article is based generally on current Article 1 in Chapter 23 (Art. I. Div. 1; Sec. 1.2.1 to 1.2.4; Sec. 2.1.9; and Sec. 3.1.3) and Article 1 in Chapter 23A (Sec.23A-1 to 23A-5; and Sec. 23A-8 to 23A-10), each with a number of proposed changes. While not read frequently, this article serves as an important legal foundation for the entire document.

<sup>2</sup> Text from LUC Sec. 1.1.1.

<sup>3</sup> Proposed new text.

<sup>4</sup> Text from LUC Sec. 1.1.2.

<sup>5</sup> Text for proposed Sec. 1.4.1A through C are from LUC Sec. 1.1.3.

- D. All provisions of the UDC shall be consistent with, and conform to, the General Plan and other related plans and policies adopted by the Mayor and Council.<sup>6</sup>
- E. The certification of zoning compliance as provided in Section 1.5.1.B, *Zoning Interpretations and Zoning Certifications*, shall consist of the certification that proposed development and construction are in conformance with the UDC prior to final development approval.<sup>7</sup>
- F. The Administrative and Technical Standards Manuals are companion documents to the UDC and require additional criteria, standards, and requirements that support the implementation of the UDC.<sup>8</sup>

#### 1.4.2. ZONING MAPS

- A. **Title**  
A set of maps depicting all zoning boundaries within the city of Tucson is established and entitled "City of Tucson Zoning Maps."
- B. **Purpose**  
The city is divided into zoning districts, and the establishment of the zoning maps is for the purpose of graphically indicating the locations of all land use zoning boundaries within the corporate limits of the city, facilitating the application of the UDC on each individual piece of property.
- C. **Applicability**  
The City of Tucson Zoning Maps, as part of the UDC, depict the land use regulations applicable on each individual property within the city limits by identifying the zoning classification that applies on each property. Maps are added to the set upon the adoption of original city zoning for land annexed into the city.
- D. **Determination of Zoning Boundaries**  
Zoning boundary lines are intended to follow lot lines to the centerlines of streets, alleys, railroad rights-of-way, or extensions of such rights-of-way, except where referenced to a street line or other designated line. (See Figure 1.4-1.)

<sup>6</sup> Text from LUC Sec. 1.1.5., with minor clarifications.

<sup>7</sup> Text from 23A-4.

<sup>8</sup> This is new text intended to clarify the connection and authority of the Administrative and Technical Standards Manuals.

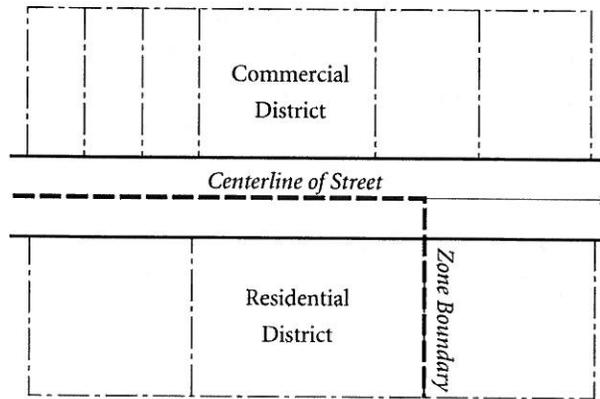
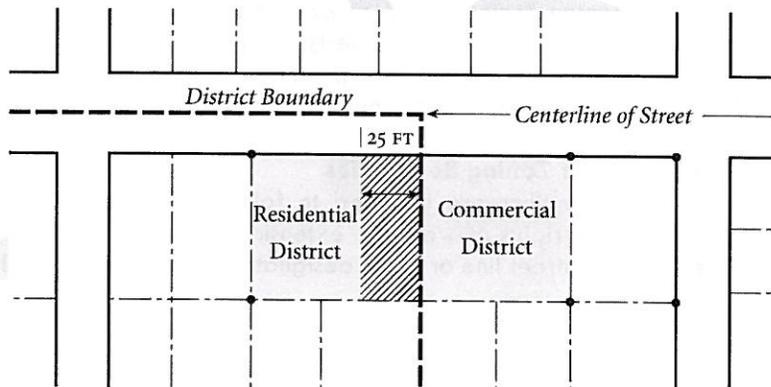


Figure 1.4-1: Determination of Zoning Boundaries

**E. Zoning Boundaries Dividing a Lot**

On any lot that was under single ownership and of record on September 20, 1948, and divided by a zoning boundary into two (2) or more separate zoning categories, the permitted uses and accessory uses allowed in one zone may encroach twenty-five (25) feet into the other zone if such zone is more restrictive and the encroaching use is not permitted in the more restrictive zone. (See Figure 1.4-2)



Permitted and accessory uses in one district may encroach 25 FEET into other district.

 Lot under single ownership on September 20, 1948

Figure 1.4-2: Zoning Boundaries Dividing a Lot

**F. Zoning Boundary Conflict**

If any question arises concerning the location of a land use zoning boundary, the Zoning Administrator renders a final decision and interpretation on the matter in conformance with Sec. 1.5.1, *Interpretation by the Zoning Administrator*.

**G. Zoning of Right-of-Way**

Zoning is applicable on all property, except street rights-of-way. Use of street rights-of-way for other than public street purposes requires approval by the Zoning Administrator and the Department of Transportation. The Zoning Administrator may allow, within the right-of-way, only those uses or structures that are permitted on the property immediately abutting the right-of-way.

**1.5. INTERPRETATIONS OF THE UNIFIED DEVELOPMENT CODE (UDC)<sup>9</sup>**

**1.5.1. INTERPRETATION BY THE ZONING ADMINISTRATOR**

**A.** When questions occur concerning the content or application of the UDC, the Zoning Administrator shall render a final decision and interpretation on the matter in accordance with Section 1.5.1.B, *Zoning Interpretations and Zoning Certifications*. In making a determination, the Zoning Administrator shall rely on the purpose of the section in question. Zoning Administrator interpretations can be appealed in accordance with Sections 3.10.1 and 3.10.2, *Board of Adjustment Appeal Procedure*. Appeals must be filed within 30 days of the date of decision. The Board of Adjustment, under extenuating circumstances, may extend the 30-day appeal period.

**B. Zoning Interpretations and Zoning Certifications**

For any development reviewed in accordance with this Section that involves an interpretation of the substantive provisions of the UDC or the application of substantive zoning provisions in the zoning certification of a site plan, tentative plat, or final plat, a request for a written interpretation or certification may be submitted to the Zoning Administrator in the following manner:

1. A person affected by the proposed development, as defined in subsection 2 below, may request in writing that any decision requiring an interpretation of substantive zoning regulations be reviewed and decided by the Zoning Administrator. The applicant or the Zoning Administrator may place other parties on notice of the determination by providing a copy of the application to such parties at the time it is submitted to the Zoning Administrator and listing such persons as a party of record in the application.
2. A person affected by the proposed development shall include the applicant, owners or residents of property within 300 feet of the site, any neighborhood association within one mile and any person who may be personally affected by the proposed development in a manner that is beyond the impact of the development on the general public.
3. The Zoning Administrator shall make the final zoning determination and mail notice of the determination or certification to the applicant and all parties of record within the time frames set forth in the City of Tucson Development Review Time Frame Policy, Section 3-02 of the Administrative Manual.<sup>10</sup>
4. Notification of the final zoning determination or certification shall be sent to the following persons:

<sup>9</sup> Text from LUC Sec. 1.2.1, including both editor's notes.

<sup>10</sup> The review time frame has been relocated to the Administrative Manual per the proposed SB 1598 policy.

**1.5.2 Interpretations of Graphics and Captions**

- a. The Applicant;
  - b. All parties of record;
  - c. Any Person who requests to be notified; and
  - d. For zoning determinations that have citywide application, to neighborhood associations registered with the City.<sup>11</sup>
5. The Zoning Administrator's determination shall be binding upon the applicant and all parties of record unless appealed in accordance with Sections 3.10.1 and 3.10.2, *Board of Adjustment Appeal Procedure*.

**1.5.2. INTERPRETATIONS OF GRAPHICS AND CAPTIONS**

All graphics and captions included in the UDC are for illustrative purposes and do not have legal status.

**1.5.3. REFERENCES TO OTHER CODES AND LAWS**

Section references to codes and laws other than in the UDC, such as the Arizona Revised Statutes (A.R.S.) or other chapters in the Tucson Code, are generally provided for the reader's convenience. Since these codes and laws are adopted separately from the UDC, the references are administratively amended as needed to assure that correct references are maintained. These administrative amendments do not affect the substantive application of the UDC.

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**1.5.4. TERMS**

For purposes of the UDC, the terms regulations, standards, and requirements all refer to regulatory provisions of the UDC.

**1.6. CONFLICTING PROVISIONS<sup>13</sup>**

**1.6.1. CONFLICT WITH ORDINANCES, REGULATIONS, OR PERMITS**

If any provisions within the UDC conflict, the most restrictive as determined by the Zoning Administrator shall apply, unless otherwise provided.

**1.6.2. EFFECT ON OTHER PROVISIONS**

The provisions of the UDC do not abrogate any other ordinance, statute, regulation, private covenant, agreement, or contract that is more restrictive or that requires greater performance in the regulation of any land use or development within the City.

<sup>11</sup> The provision has also been revised to require notification to neighborhood associations when the determination will be applied citywide.

<sup>12</sup> The regulation pertaining to the restoring unsafe structures has been moved to Section 9.1.6.

<sup>13</sup> Text from LUC Sec. 1.2.2, 1.2.3, and 1.2.4.

### **1.6.3. NO RELIEF FROM OTHER PROVISIONS**

Except as otherwise specifically provided, no provision of the UDC shall be construed as relieving any party, to whom UDC compliance approval is issued, from any other provision of county, state, or federal law or from any provision, ordinance, or regulation of the City of Tucson requiring approval, license, or permit to accomplish, engage in, carry on, or maintain a particular business, enterprise, occupation, transaction, or use.

## **1.7. TRANSITIONAL REGULATIONS<sup>14</sup>**

### **1.7.1. PURPOSE**

The purpose of transitional regulations is to clarify the status of properties with pending applications or recent approvals, as those terms are used below, and properties with outstanding violations, at the time of the adoption of this UDC.

### **1.7.2. VIOLATIONS CONTINUE**

Any violation of the previous Land Use Code (LUC) shall continue to be a violation under this UDC and shall be subject to the penalties and enforcement in Article 10: *Enforcement and Penalties*; except when a use, structure, or lot not lawfully existing at the time of the adoption of this UDC is deemed lawful and conforming as of the effective date of this UDC if it conforms to all of the standards of this UDC. Payment shall be required for any civil penalty assessed under the previous code, even if the original violation is no longer considered a violation under this UDC.

### **1.7.3. NONCONFORMING USES, STRUCTURES, AND LOTS**

- A.** When a building, structure, or lot is used for a purpose that was a lawful use before the effective date of this UDC, or before the adoption of original City Zoning for an annexed property, and this UDC no longer classifies such use as an allowed use in the zoning district in which it is located, such use shall be considered nonconforming and shall be controlled by Article 9: *Nonconforming Uses, Buildings, and Structures*.
- B.** Where any use, building, structure, or lot that legally existed on the effective date of this Code does not meet all standards set forth in the UDC, such use, building, structure, or lot shall be considered nonconforming and shall be controlled by Article 9: *Nonconforming Uses, Buildings, and Structures*.

### **1.7.4. APPLICATIONS COMMENCED OR APPROVED UNDER PREVIOUS ORDINANCES**

#### **A. Pending Applications**

- 1.** Any complete application that has been submitted for approval, but upon which no final action has been taken by the appropriate decision-making body prior to the effective date of this UDC, shall be reviewed in accordance with the ordinance in effect on the date the application was deemed complete. If the applicant fails to comply with any applicable required period for submittal or other procedural requirements, the application shall expire and subsequent applications shall be subject to the standards of this

<sup>14</sup> Section is proposed new text. This section was added to provide greater clarity on the status of development applications that are pending when the new UDC is adopted.

**1.7.4 Applications Commenced or Approved Under Previous Ordinances**

UDC. Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.

2. An applicant with a complete application that has been submitted for approval, but upon which no final action has been taken prior to the effective date of this UDC, may request review under this UDC by a written letter to the Planning and Development Services Department.

**B. Tentative and Final Plats**

1. Tentative plat approvals granted prior to the effective date of this UDC may be extended no more than once, and for no longer than six months.
2. A final plat application, for which the tentative plat was approved prior to the effective date of this UDC, may be processed pursuant to the applicable terms of the ordinance in place at the time of tentative plat approval, even if the application does not comply with standards set forth in this UDC.

**C. Approved Projects**

1. Approvals and permits that are valid on [--- insert effective date] shall remain valid until their expiration date. Projects with valid approvals or permits may be completed in conformance to the regulatory provisions in effect at the time of approval.
2. Any building or development for which a building permit was granted prior to the effective date of this UDC may be permitted to proceed to construction. If the development for which the building permit is issued prior to the effective date of this UDC fails to comply with the time frames for development established for the building permit, the building permit shall expire and future development shall comply with the standards of this UDC.

**D. Choice of Code<sup>15</sup>**

For a period of three years after the effective date of this UDC, an applicant who was the landowner of record prior to the effective date of this UDC may choose to be governed by the provisions of this UDC or those of the Land Use Code (LUC) in effect on the date this UDC becomes effective. During this three-year transition period, ending [insert date], the landowner shall comply, without exception, with all provisions of either the UDC or LUC selected by that landowner. Applicants electing to be governed by the LUC during this period will not have the ability to seek modifications or exceptions pursuant to: Flexible Lot Development, Design Development Option, Downtown Area Infill Incentive District, and Parking Design Modification Request. The selection shall be made and communicated to the City on a form provided by the City prior to acceptance of any development applications on the subject property. The landowner shall not be permitted to alternate compliance between the previous LUC and current UDC during the three-year transition period. At the expiration of the three-year transition period, the LUC will be repealed.<sup>16</sup>

<sup>15</sup> This is a new proposed section that addresses staff's desire to allow (temporary) flexibility for landowners to choose to continue to be governed by the current LUC (to address Prop. 207 issues) or by the new UDC.

<sup>16</sup> In the ordinance adopting the UDC and repealing the LUC the ordinance language must make clear that the LUC will remain in effect for a three year period under the conditions specified.

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**1.7.4 Applications Commenced or Approved Under Previous Ordinances**

**E. Waiver of Potential Claims**

By electing to proceed under this code, the property owner waives any and all potential claims that may arise under A.R.S. 12-1134 et. seq. for any diminution in the value of his property that may be claimed from any difference between the requirements and standards of this code and those of the LUC.

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**1.8. SEVERABILITY**

If any section, subsection, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional, such findings do not affect the validity or constitutionality of the remaining portions of the ordinance.<sup>17</sup>

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<sup>17</sup> Text from LUC Sec. 1.2.11

