



PLANNING COMMISSION

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

DATE: May 5, 2010

TO: Planning Commission

FROM: Ernie Duarte
Executive Secretary

SUBJECT: **Infill Improvement Land Use Code Text Amendments – Reductions in the Required Number of Motor Vehicle Parking Spaces, Urban Overlay District, Zoning Compliance for Existing Site Improvements, and Development Timelines & Expiration Dates**

Issue – This list of proposed text amendments is scheduled for a public hearing. On March 9, 2010, and March 23, 2010, the Mayor and Council directed staff to prepare the above text amendments so as to reduce obstacles to development proposals in the City’s Downtown and Midtown areas. The revisions mainly focus on regulatory changes that will help expedite development review. One change creates an enabling ordinance for an overlay district with the goal of encouraging transit and pedestrian oriented development.

Recommendation – Staff recommends that the Planning Commission forward these items to the Mayor and Council with a recommendation to approve. The Mayor and Council would like to hear these items no later than August 2010, with the exception of the “Zoning Compliance for Existing Development” item which they have requested be returned to them no later than June 22, 2010.

Background – The list of text amendments will all have an expiration date of January 31, 2012 unless they are renewed by the Mayor and Council. Below are descriptions of the proposed text amendments:

Reductions in the Required Number of Motor Vehicle Parking Spaces (Attachment A) - In May 2009, the Mayor and Council adopted several parking reduction strategies. The three parking reduction strategies are: 1) changes of use on non-conforming sites (LUC Sec. 3.3.3.11 Replacing Existing Uses); 2) a reduced parking formula for certain uses within existing development (Sec. 3.3.8.6 Existing Development Sites); and, 3) the individual parking plan (Sec. 3.3.8.7 Individual Parking Plan).

Because of the economic slowdown there have not been many projects to evaluate the success or failure of the changes in parking standards. However, based on comments from internal review staff and applicants, staff has identified two issues with Sec. 3.3.8.6 (Existing Development Sites) preventing it from being used as intended. No substantive changes to the Replacing Existing Uses and Individual Parking Plan provisions are recommended.

Two issues with Sec. 3.3.8.6 are: 1) the eligibility criteria are too restrictive; and, 2) the annual review of the parking mitigation plan is impractical and difficult to enforce.

Eligibility Criteria. 1) Shared Parking criterion - the shared parking provision unintentionally became a barrier for some applicants to use the option. This proposal clarifies the role of shared parking to apply only to multiple use sites. 2) Noise and Glare criterion – the parking reduction noise and glare criteria are too vague and should be re-worded to be better focused and clearer in intention. The proposed amendment prohibits site layout changes from creating greater amounts of light trespass onto adjoining single-family residential properties and restricts the placement of outdoor seating areas and loudspeakers or music from within 100 feet and 600 feet, respectively, from residentially zoned property. The latter standard is the same criterion required of liquor sales in conjunction with a Food Service use in a C-1 zone (Sec. 3.5.4.7.J).

Parking Mitigation Plans - In addition, there is an issue about monitoring parking mitigation plans over a three-year period. The parking mitigation plan is a standard that requires an applicant to explain that the parking reduction will not cause an off-site nuisance or safety hazard to adjacent properties. The current provision requires the City to review each plan annually for the first three years. Staff reviewed about 20 mitigation plans for C-1 zone restaurant/bars. None have had associated nuisance problems. Note the parking reduction concepts are not available to restaurant and bars. The parking mitigation plan requirement mainly applies to offices, furniture stores and general retail and service uses. These uses do not tend to cause nuisance parking problems. Staff recommends deleting this requirement for monitoring plans for three years as a regulation. The typical zoning enforcement process can address any complaints. The department can as a policy make spot checks on the effectiveness of mitigation plans.

Minor Issue – Staff also recommends eliminating the storage and wholesaling parking reduction because it is redundant with current standards.

Other Issue:

Loading Zone (Attachment B) – The LUC requires a dedicated area for loading zones. Staff recommends a small change to the loading zone standard regarding the maneuvering area. The proposed change (Attachment A) would create the needed flexibility in designing parking and loading areas together.

Urban Overlay District (Attachment C) – In September 2009, when the Mayor and Council adopted the modification of development regulation for the IID, it also changed the Planned Area Development District (PAD) provisions to better facilitate new infill areas like the Downtown Links study area which runs along the Downtown Links road alignment between I-10 and Euclid Avenue. The goal was to create a second zoning option allowing both

current zoning and optional zoning and design standards that encourage transit and pedestrian oriented development. This proposed overlay will provide a clear indication on the City's zoning map showing an infill overlay option with existing underlying zoning. A typical designation could be the added prefix of 'U', for example, C-3 in this overlay on the zoning map would show 'UC-3.'

The overlay can only be initiated by Mayor and Council. Similar to a PAD the zoning regulations can be different from the underlying zone. The background documents can be similar to those of a PAD or they could be very simply a set of urban design standards that Mayor and Council adopt to encourage transit and pedestrian oriented development in a given area. The process of notification, public hearing would follow the general steps of a typical rezoning.

Zoning Compliance for Existing Site Improvements (Attachment D) – The intent of this proposal is to create a simple method for new uses of existing development in nonresidential zones to achieve zoning compliance by streamlining zoning review and approval for Certificates of Occupancy (C of O). The key provisions are the following:

- Any permitted principal land use under the existing zoning is allowed so long as the improvements on the site remain unchanged from the May 2005 configuration.
- Only applies to nonresidential zoning that is not subject to an overlay zone, or any rezoning, variance, or special exception approved subject to conditions.
- Cannot be used for blood donor centers, correctional uses, restricted adult activities uses, or if there are unresolved zoning violations on the site.
- Food Service uses **greater than 2,400 square feet in gross floor area**, and Alcoholic Beverage Service uses, are not eligible to use the proposed zoning compliance process unless the use has been continuously licensed from May 1, 2005, to the present.
- A site inspection may be conducted at the discretion of the Planning and Development Services director.

The **highlighted** text above is included for review per direction of the Mayor and Council provided March 23, 2010, in response to input from the C of O stakeholder community. The addition of exemptions based on gross floor area will add significant complexity to the zoning review, contravening the original intent of the amendment. In addition, allowing food service uses less than 2,400 square feet to be granted zoning compliance under the proposed amendment is not consistent with Ordinance No. 10664 adopted by Mayor and Council May 5, 2009. Ordinance No. 10664 addressed allowable parking reductions and explicitly excluded Food Service uses. Should the Planning Commission wish to make a recommendation for approval, staff suggests the approval address the above noted items.

Development Timelines and Expiration Dates (Attachment E) – The basic purpose of these amendments is to lengthen development expiration dates. The proposed amendments to LUC Sections 4.1.6, 4.1.7 and 5.3.8 and to Section 23A-34(3)c will streamline the tracking of multiple expiration dates for tentative plats, final plats and development plans by extending the approval expiration dates of these documents from one (1) year to three (3) years.

The Community Design Review Committee (CDRC) is comprised of Planning and Development Services, other City departments, utility companies and other government agencies which regulate some feature of land use within the City limits. The CDRC performs formal technical review of all tentative and final plats and development plans, in accordance with applicable codes and ordinances.

If the proposed change allows a three year approval period, the department cannot ensure that all other CDRC review agencies will extend their approval period accordingly. At this writing, staff has notified all the agencies and no agency has expressed an objection. However, agencies where an assurance of service is given e.g., City Water and County Wastewater, these assurance may need to be renewed in a shorter time frame than three years.

Stakeholder Comments

Planning Commission: The Planning Commission discussed the proposed amendments during their Study Session on April 7, 2010. The discussion focused on the proposed Downtown Area Infill Incentive District (IID), Urban Overlay District (UOD), and Zoning Compliance for Existing Site Improvement amendments. Consideration of the proposed IID amendments has been postponed and will be processed separately from the other Infill Improvement text amendments.

Regarding the proposed UOD, the Planning Commission inquired whether the UOD could be used to consolidate the multiple downtown overlays into a single overlay and used a mechanism to implement the policies being developed for the Grant Road Project. Staff clarified that the proposed text amendment is enabling legislation allowing the creation of geographically-specific districts. No specific districts are being created by the proposed amendment. With that said, a UOD for the downtown area could consolidate the requirements and standards of the downtown overlays. The UOD can also be used to implement the Grant Road Project policies.

Regarding the proposed Zoning Compliance amendment, the Planning Commission asked if there was going to be anything built-in to the amendment that would address situations where an incompatible use already exists adjacent to residential neighborhoods. Staff responded that the proposed amendment does not allow any uses other than those already permitted under the existing zoning and that properties with unresolved zoning violations are not eligible. The question of disabled parking also came up. This proposed amendment to the Land Use Code

will not impact or supersede requirements for disabled parking in the building code. The site will be inspected for life safety issues by Fire Department personnel.

Land Use Code (LUC) Committee: The LUC Committee discussed the proposed amendments at several of their meetings and are in general support.

Ruth Beeker, member of the LUC Committee and President of the Miramonte Neighborhood Association, submitted a letter (Attachment F) stating her position regarding the proposed Zoning Compliance for Existing Site Improvements text amendment.

Attachments

- A – Parking Reduction Draft
- B – Loading Zone Draft
- C – Urban Overlay District Draft
- D – Zoning Compliance for Existing Site Improvements Draft
- E – Development Timelines and Expiration Dates Draft
- F – Position Paper on the draft Zoning Compliance for Existing Site Improvements amendment from Ruth Beeker

ATTACHMENT A

DRAFT AMENDMENTS TO THE REDUCTIONS IN REQUIRED NUMBER OF
MOTOR VEHICLE PARKING SPACES ORDINANCE

ADOPTED BY THE
MAYOR AND COUNCIL ON

ORDINANCE NO. _____

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE LAND USE CODE, CHAPTER 23, ARTICLE III, DEVELOPMENT REGULATIONS, DIVISION 3, MOTOR VEHICLE AND BICYCLE PARKING REQUIREMENTS, SECTION 3.3.3, GENERAL PROVISIONS; SECTION 3.3.8, REDUCTIONS IN REQUIRED NUMBER OF MOTOR VEHICLE PARKING SPACES; DIVISION 4, OFF-STREET LOADING, SECTION 3.4.4 DESIGN CRITERIA; 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 III, Division 3, Motor Vehicle and Bicycle Parking Requirements, Section 3.3.3, General Provisions, is hereby amended to read as follows:

3.3.3 GENERAL PROVISIONS:

* * *

3.3.3.11 Replacing Existing Uses. This section refers to nonconforming sites only. Whenever the use of an existing development is changed to a different use, parking spaces shall be provided for the replacement use as follows:

* * *

B. When the replacement use is different than the existing use, the replacement use must be a permitted use in the current zone.

* * *

3. Existing on-site parking, landscaping and screening may remain in their current configuration; however, the Planning & Development Services Director may require new improvements including paving and striping when a public safety hazard exists or may be created. The proposed use must comply with the Americans with Disabilities Act.

* * *

SECTION 2. The Tucson Code, Chapter 23, Land Use Code, Article III, Division 3, Motor Vehicle and Bicycle Parking Requirements, is hereby amended to read as follows:

3.3.8 REDUCTION IN REQUIRED NUMBER OF MOTOR VEHICLE PARKING SPACES:

* * *

3.3.8.6. Existing Development Sites.

A. Parking Reduction – A parking reduction plan may apply to existing development that existed prior to the adoption date of this ordinance and that meets the criteria listed below. A parking reduction plan may be approved by the Planning & Development Services Department Director (the Director). The parking lot for an existing development may be used in its current configuration, except if the Director requires improvements that are required where a public safety hazard exists or may be created.

1. Commercial service, retail and civic uses may request a parking reduction using an alternate parking calculation of three (3) spaces for each 1,000 square feet of gross floor area if the use meets all the criteria listed in Section 3.3.8.6.A.5~~4~~ below.
- ~~2. Storage and wholesaling uses may request a parking reduction using an alternate parking calculation of one (1) space for each 2,000 square feet of gross floor area if the use meets the criteria listed in Section 3.3.8.6.A.5.a.b and c below.~~
- ~~3~~2. Manufacturing, off-site service and repair and other industrial uses except salvaging and recycling may request a parking reduction using an alternate parking calculation of one (1) space for each 1,000 square feet of gross floor area if the use meets criteria listed in Section 3.3.8.6.A.~~4~~5.a,b, and c. below.
- ~~4~~3. Exception. The alternate parking reduction for existing development does not apply to uses with a parking formula of one (1) space for each 100 square feet of gross floor area or a more intense formula. Typical uses include restaurants and bars (Food Service and Alcoholic Beverage Service uses). This exception does not apply to religious and personal service uses. The number of accessible parking spaces required by the Americans with Disabilities Act and provided on the approved site plan shall not be reduced or eliminated.
- ~~5~~4. The following criteria apply to Sec. 3.3.8.6.A.1 ~~and 2, and 3~~ as noted in those sections:
 - a. For multiple use sites the site can accommodate shared parking arrangements for uses with alternate hours of operation or peak use times;
 - ~~b. The use will not cause a substantial increase in noise or glare from the site;~~
 - ~~eb. A site layout change to accommodate a parking reduction shall not allow a light source that creates greater amounts of trespass light onto an adjoining single family residential property. Nor shall such a site layout change add an outdoor seating area within one hundred (100) feet of residentially zoned property unless separated by a building, or loudspeakers or music, live or recorded, within six hundred (600) feet of residentially zoned property;~~
 - ~~dc. The use will not cause excessive drive-through traffic or habitual parking within the adjacent residential neighborhood or commercial development; and~~

ed. Existing development except industrial uses shall be located within 1,320 feet (1/4 mile) of an existing transit stop or public parking facility.

* * *

D. A parking mitigation plan must be submitted to the Director and shall be reviewed in accordance with Sec. 23A-50 and 23A-51 of the Tucson Code.

61. The mitigation plan shall include a compatibility analysis that addresses how the parking reduction will not cause a safety hazard or problem driving, noise or parking impacts on an adjacent existing neighborhood. The plan shall address the following:

- a. Methods to avoid potential increases in noise and glare as described in Sec. 3.3.8.6.A.4.b above;
- b. Methods to deter vehicular access into adjacent residential neighborhoods using signage or other means; and
- c. The prevention of excessive drive-through traffic or habitual parking within adjacent residential neighborhoods or commercial development; and
- d. Any other issues deemed appropriate by the Director.

72. In addition, the parking mitigation plan shall provide the following site inventory information, if applicable:

- a. A site plan indicating existing site conditions, including any available on-street parking;
- b. Hours of operation;
- c. Any existing shared parking agreements, if applicable;
- d. Proximity of the site to existing residential neighborhoods;
- e. Neighborhoods adjacent to the site using a Residential Parking Permit program;
- f. Existing site access and traffic circulation; and
- g. Any other information deemed appropriate by the Director.

~~8. The parking mitigation plan will be reviewed every year for the first three years the business is in existence to determine if changes to the plan are warranted. If changes are necessary, an amended mitigation plan must be submitted to the Development Services Department and approved by the Director. When a change of use occurs, a new mitigation plan is required. The Director may renew the existing mitigation plan for~~

~~a new use if the new use is determined to have an equivalent impact on its surroundings.~~

SECTION 3. The Tucson Code, Chapter 23, Land Use Code, Article III, Division 3, Motor Vehicle and Bicycle Parking Requirements, is hereby amended to read as follows:

3.3.8.7. Individual Parking Plan.

A. The Planning & Development Services Department Director (the Director) may approve an individual parking plan request for the following uses:

* * *

B. The following information shall be provided for review of an individual parking plan:

* * *

8. Existing and proposed shared parking agreements, if applicable. Proposed shared parking may be located within an existing parking location up to 600 feet away located in a more or less intense zone;

a.——A parking agreement must be prepared in a manner acceptable to the ~~Development Services Director~~.

SECTION 4. The provisions of this ordinance amending Sections 3.3.3.11, 3.3.8.6, and 3.3.8.7 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 the amended and added requirements or to revert to those existing prior to this ordinance.

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SECTION 5. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 6. 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:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

TM/tl
3/26/10

ATTACHMENT B

DRAFT AMENDMENTS TO THE OFF-STREET LOADING ORDINANCE

ADOPTED BY THE
MAYOR AND COUNCIL ON

ORDINANCE NO. _____

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE LAND USE CODE, CHAPTER 23, ARTICLE III, DEVELOPMENT REGULATIONS, DIVISION 4, OFF-STREET LOADING, SECTION 3.4.4 DESIGN CRITERIA; 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 III, Division 4, Off-Street Loading, Section 3.4.4 Design Criteria is hereby amended to read as follows:

3.4.4 DESIGN CRITERIA. All loading spaces shall comply with the requirements of Development Standard No. 3-05.0, Vehicular Use Area Design Criteria, and the following:

* * *

3.4.4.1 Locational Requirements. Loading spaces shall be located on the same site or lot as the use they serve, except on the following applications.

* * *

C. Loading zones may be co-located within the approach area for dumpster containers and the stacking spaces of drive-through aisles when safety and access issues are appropriately addressed.

SECTION 2. The provisions of this ordinance amending Section 3.4.4.1 of the Land Use Code shall cease to be effective on January 31, 2012, unless extended by

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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 the amended and added requirements or to revert to those 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:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

ATTACHMENT C

DRAFT AMENDMENT CREATING THE URBAN OVERLAY DISTRICT ZONE

ADOPTED BY THE
MAYOR AND COUNCIL

ORDINANCE NO. _____

RELATING TO PLANNING AND ZONING; AMENDING THE TUCSON CODE, CHAPTER 23, LAND USE CODE, ARTICLE II, ZONES, DIVISION 8, OVERLAY ZONES, BY ADDING A NEW SECTION 2.8.13, "UOD" URBAN OVERLAY DISTRICT ZONE (UOD); 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 II, Zones, Division 8, Overlay Zones, is hereby amended by adding a new Section "2.8.13" to read as follows:

2.8.13 "UOD" URBAN OVERLAY DISTRICT ZONE (UOD)

2.8.13.1 Purpose. The purpose of the Urban Overlay District (UOD) is to encourage:

- A. Comprehensively planned, pedestrian and transit-oriented, urban infill and mixed use areas;
- B. Site planning and architectural solutions appropriate for the Southwest;
- C. Safe urban neighborhoods;
- D. Urban design features that include sustainable solutions and a historic image without discouraging contemporary design;
- E. Reduced privacy intrusion into existing single family residential development; and,

- F. Responsive development review processes that address flexible solutions for obsolete regulations and accommodate desired urban trends.

2.8.13.2 Initiation

- A. An Urban Overlay District shall be initiated by the Mayor and Council.
- B. Planning and Development Services Department shall process the application. The UOD may include rights of way within and adjacent to the proposed site area.

2.8.13.3 Establishment

- A. The overlay shall be established through the Zoning Examiner Legislative Procedure, Sec.5.4.1 and 5.4.3. The Mayor and Council may adopt a rezoning ordinance for the overlay.
- B. Each Urban Overlay District shall be in compliance with the adopted General Plan and applicable sub-regional, area and neighborhood plans.
- C. The Urban Overlay District shall be identified on the City Zoning Maps by the prefix "U" followed by the assigned zoning designation, i.e., C-3 becomes UC-3. The UOD may have a specialized name, e.g. Downtown District.

2.8.13.4 Development Regulations

- A. The UOD may have land use regulations and procedures different from the zoning regulations applicable in another UOD or in the Land Use Code.
- B. An Urban Overlay District does not remove the zoning rights of any underlying zone but provides a development option that encourages well-designed infill projects subject to the regulations and guidelines provided in the UOD's development document.
- C. The UOD development document shall be adopted as part of the rezoning and govern development using the UOD development options instead of the regulations of the underlying zone.

2.8.13.5 Application

- A. An Urban Overlay District development document shall include maps regulations, guidelines and background materials in general conformance with the Planned Area Development (PAD) procedure

application including the exceptions for the Downtown Area Infill Incentive District (IID) in accordance with Section 2.6.3.6.

- B. The Mayor and Council may waive the requirement of the above development document. In its place Mayor and Council may approve an alternate urban design document which may contain maps, regulations, guidelines, and background materials as approved.

2.8.13.6 Development Review

- A. Unless a specific waiver procedure is approved as part of the rezoning, no development using the UOD regulations shall occur within a UOD unless or until a development plan or if applicable a subdivision plat is approved by the City.
- B. The City may require financial and other assurances to assure the installation of required streets, sewer, electric, and water utilities, drainage, flood control and other improvements of a property owner using the UOD regulations.

2.8.13.7 Enforcement. Regulations adopted for each UOD are enforced in the same manner as provided in Article V, Administration, Division 5, of the LUC.

2.8.13.8 Interpretation. The Zoning Administrator shall interpret a UOD.

2.8.13.9 Amendment Procedures

- A. An amendment to a UOD may be initiated by a property owner, the owner's agent, or the Mayor and Council upon submittal of a written application to amend one or more of the UOD regulations.
- B. Planning and Development Services Department must determine if the amendment would result in a substantial change in the UOD. An amendment shall be determined to be a substantial change pursuant to the criteria set forth for Planned Area Development Districts in Section 2.6.3.11 or may be determined to be a special procedure contained in the UOD's development or urban design documents.

2.8.13.10 Waiver: Execution of a waiver is required for any property owner using the urban design option of a UOD, in conformance with A.R.S. §12-1134(1). The owner of property requesting to exercise the UOD design option will be required to waive any and all claims for diminution of value that may be based upon action by the City in response to such a request by the Owner.

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SECTION 2. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 3. If any provision of this Ordinance or the application to any person or circumstance is invalid, the invalidity shall not affect other provision 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 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:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

TM/tl
3/26/10

ATTACHMENT D

DRAFT ZONING COMPLIANCE FOR EXISTING SITE IMPROVEMENT
AMENDMENT

ADOPTED BY THE
MAYOR AND COUNCIL ON

ORDINANCE NO. _____

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, 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 may 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 unresolved 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 greater than 2,400 square feet in gross floor area (GFA) unless continuously licensed through the Pima County Health Department from May 1, 2005, to the present.

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.

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.

April 28, 2010 DRAFT

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

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

GM/gm
3/30/10

ATTACHMENT E

DRAFT DEVELOPMENT TIMELINES & EXPIRATION DATE AMENDMENT

ADOPTED BY THE
MAYOR AND COUNCIL ON

ORDINANCE NO. _____

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE LAND USE CODE, CHAPTER 23, ARTICLE IV, SUBDIVISIONS, DIVISION 1, GENERALLY, SECTION 4.1.7, EXPIRATION DATES; ARTICLE V, ADMINISTRATION, DIVISION 3, SPECIAL DEVELOPMENT APPLICATIONS, SECTION 5.3.8, DEVELOPMENT PLAN; AND AMENDING CERTAIN PORTIONS OF THE DEVELOPMENT COMPLIANCE CODE, CHAPTER 23A, ARTICLE II, REVIEW PROCEDURES, DIVISION I, GENERAL ZONING REVIEW PROCEDURE, SECTION 23A-33.1, SUBDIVISION PLAT PROCESS, AND SECTION 23A-34, DEVELOPMENT PLAN REVIEW; 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 IV, Subdivisions, Division 1, Generally, Section 4.1.7, Expiration Dates, is hereby amended to read as follows:

4.1.7 EXPIRATION DATES. Expirations dates for all platting applications are as follows:

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4.1.7.1 Maximum Review Period. The subdivider has one (1) year from the date of application to obtain approval of a tentative plat which complies with requirements in effect at the time of application. If at the end of the one (1) year period the tentative plat does not comply with those requirements, the tentative plat must be revised and resubmitted in compliance with regulations in effect at the time of resubmittal. This resubmittal initiates a new one (1) year review period.

4.1.7.2 Tentative Plat Approval Period. Approval of a tentative plat is valid for a period of ~~one (1)~~three (3) years after the date of approval. (Ord. No. 9392, §1, 5/22/00)

A. The expiration date for the approval of a tentative plat being platted and recorded in phases is subject to the same ~~one (1)~~three (3) year period. Each phase shall be evaluated as per Sec. 4.1.7.4.

B. Changes in the Tucson Code which relate to requirements of platting that occur between the time the tentative plat is accepted for review and the expiration of the time period allotted to gain approval shall not apply to the application under review unless specifically stated in the adopting ordinance.

4.1.7.3 Final Plat Approval Period. A final plat must be approved and recorded within ~~one (1)~~three (3) years of the tentative plat approval date.

4.1.7.4 Tentative Plat Approval Extension. A subdivider may request an extension of the tentative plat approval period. The extension may be granted based on the following: (Ord. No. 9392, §1, 5/22/00)

A. Up to a one (1) year time extension to the ~~one (1)~~three (3) year tentative plat approval period, provided there have been no changes in City regulations applicable to the proposed subdivision since the approval of the tentative plat; or

B. Up to one (1) year periods of extension for each phase of a tentative plat being platted and recorded in phases, provided there have been no changes in City regulations applicable to the proposed subdivision since the approval of the tentative plat phase under consideration.

4.1.7.5 Resubmittal After Expiration of Approval. A proposed subdivision or a phase of a proposed subdivision for which the tentative plat approval period has expired shall be reconsidered as follows.

A. If the tentative plat, using the same design concept previously approved, is resubmitted within three (3) months of the date of

expiration of the approval, the resubmittal shall be considered a new application for review purposes; however, new application fees will not be required.

- B. If the tentative plat is designed differently from the design previously approved or is resubmitted more than three (3) months after the date of expiration of approval, the resubmittal shall be considered a new application, and appropriate application fees will be required.

SECTION 2. The Tucson Code, Chapter 23, Land Use Code, Article V, Administration, Division 3, Special Development Applications, Section 5.3.8 Development Plan, is hereby amended to read as follows:

5.3.8 DEVELOPMENT PLAN. A development plan is a drawing of a project site that provides detailed information as to how a proposed project will be developed in compliance with City ordinances and regulations. When a development plan is required to be processed in accordance with this Section, preparation, application, review, and approval shall be as follows.

5.3.8.1 Review Procedure. Preparation, application, review, and approval of development plans shall be in accordance with procedures established in Sec. 23A-34. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9967, §5, 7/1/04)

5.3.8.2 Expiration Dates. Expiration dates for development plans are as provided below. For the purposes of Sec. 5.3.8, "construction or building permits" are those permits issued for the construction of the project, such as, but not limited to, infrastructure improvements, building foundations, buildings, paving of vehicular use areas, or similar types of improvements related to the construction and implementation of the project. Permits for: a) clearing, grubbing, and grading of a site; b) construction of a section of sidewalk; c) installation of screening; d) paving of an access driveway but not the parking associated with the use; or e) any similar type of work are not considered "construction or building permits" for purposes of this Section, unless specifically stated otherwise by this Section or the process requiring the applicability of this Section.

- A. *Maximum Review Period.* Except in the case of a Protected Development Right Plan, Sec. 5.3.10, an applicant has one (1) year from the date of application to obtain approval of a development plan that complies with zoning and other development requirements in effect at the time of application, unless an ordinance adopted by Mayor and Council during this period states otherwise. A development plan application that has been in review for a period of one (1) year which has not been approved is considered denied. To continue the review of a development plan for the property, a new development plan which

complies with regulations in effect at that time must be submitted. The new submittal initiates a new one (1) year review period. (Ord. No. 9635, §2, 12/10/01)

B. *Development Plan Approval Period.* Except in the case of a Protected Development Right Plan, Sec. 5.3.10, an approved development plan remains valid for a period of ~~one (1)~~three (3) years from the date of approval. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9635, §2, 12/10/01)

1. If, at the end of ~~one (1)~~three (3) years, building permits have not been obtained, a new development plan application, in compliance with regulations in effect at the time of its resubmittal, is required.

2. If the project is being developed in phases and permits have not been issued for all phases within the ~~one (1)~~three (3) year period, developers of subsequent phases have one (1) additional year to obtain permits. If, at the end of the ~~two (2)~~four (4) year period, permits have not been issued, review and approval of a revised development plan for the undeveloped portion, in compliance with all regulations and/or ordinances in effect at the time of resubmittal, are required prior to the issuance of building permits.

3. If construction permits are issued within the required time period, but the construction of the project has not commenced and the permit and development plan approval periods expire, the approval of the development plan is considered expired. Review and approval of a revised development plan, in compliance with regulations and ordinances in effect at the time of resubmittal, are required prior to the issuance of building permits.

4. If construction permits are applied for but not issued within the time period required by this Section, the time period is extended an additional three (3) months to allow for completion of the review and for the issuance of permits.

5. If the approval period has expired pursuant to Sec. 5.3.8.2.B.1, .B.2, .B.3, or .B.4 of this Section, the resubmittal to obtain approval of a new development plan initiates a new review period in accordance with Sec. 5.3.8.2.A.

5.3.8.3 Issuance of Building Permits. Review and approval for the issuance of permits for development plans shall be as follows.

A. *Approved Development Plan.* The approved development plan shall be filed with the official building records for the site and shall be the basis

for the issuance of building permits. Building permit applications shall include a copy of the approved development plan bearing the appropriate approval signature. (Ord. No. 9392, §1, 5/22/00)

B. *Change From, or Expiration Of, an Approved Development Plan.* Building permit applications involving construction which changes from the approved development plan or if the approval has expired shall be accompanied by a copy of an amended development plan bearing the Planning and Development Service Department's approval. (Ord. No. 9967, §5, 7/1/04)

1. The Planning and Development Services Department Director may approve minor changes from the approved plan without processing the plan through the entire review process. Determination as to whether the change is minor or major is made by the Planning and Development Services Department Director on a case-by-case basis. Changes in site design include, but are not limited to, building height, density, land use, parking, and traffic circulation. (Ord. No. 9967, §5, 7/1/04)

2. Major changes from the approved plan require review and recommendation of approval of the new plan by the review agencies. If the development plan is required as a special requirement imposed by the Mayor and Council, a major deviation shall require approval by the Mayor and Council prior to review of the revised plan. (Ord. No. 9392, §1, 5/22/00)

SECTION 3. The Tucson Code, Chapter 23A, Development Compliance Code, Article II, Review Procedures, Division 1, General Zoning review, Section 23A-33.1 Subdivision Plat Process, is hereby amended to read as follows:

Sec. 23A-33.1. Subdivision plat process.

The subdivision of land through the platting process as provided in LUC [section] 4.1.6 shall be reviewed and approved as follows.

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(2) Final plat review. All proposed subdivisions, including minor subdivisions, require the review and approval of a final plat. The final plat shall substantially conform to the approved tentative plat and be prepared in accordance with final plat requirements set forth in Development Standard No. 2-03.0.

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- c. Review. Final plats are reviewed by the community design review committee (CDRC) in conformance with Development Standards 1-03.0 and 2-03.0.

As provided by the Land Use Code (LUC), section 4.1.7, the applicant has ~~one (1)~~ three (3) years from the date of tentative plat approval to secure approval and have the final plat recorded. This time period provides the applicant ~~one (1)~~ three (3) years within which to complete the platting process under the regulations in place at the time of tentative plat approval. Should the approval not be secured within the required timetable, the tentative plat and final plat shall be revised to comply with regulations at the time of re-submittal. The re-submittal initiates a new one (1) year time period. Refer to the LUC, section 4.2.5, for expiration dates on minor subdivisions.

SECTION 4. The Tucson Code, Chapter 23A, Development Compliance Code, Article II, Review Procedures, Division 1, General Zoning review, Section 23A-34, Development Plan Review, is hereby amended to read as follows:

Sec. 23A-34. - Development plan review.

A development plan is a drawing of a project site that provides detailed information as to how a proposed project will be constructed in conformance with city ordinances and regulations. When a development plan is required to be processed in accordance with the Land Use Code (LUC), Chapter 23, Tucson Code, section 5.3.8, preparation, application, review, and approval shall be as follows.

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c. *Approval.* The Planning and Development Services Department (PDSD) director shall approve the development plan within five (5) days of receiving notification that all community design review committee (CDRC) members recommend approval, and it is confirmed that all conditions of approval as authorized by a rezoning, special exception land use, or other similar application have been met. This includes architectural review, dedication of right-of-way, building height, land use, or any other requirement pertinent to the individual case.

As provided by the Land Use Code (LUC), section 5.3.8.2.B, the approval is valid for three (3) years. The three (3) year time period provides the applicant the opportunity to secure permits and commence construction based on the regulations in effect during the review of the

development plan. Expiration of the three (3) year time period prior to obtaining permits or commencing construction requires re-approval of the development plan based on regulations in effect at the time the development plan is resubmitted for review.

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SECTION 5. The provisions of this ordinance amending Section 4.1.7 and 5.3.8 of the Land Use Code and Sections 23A-33.1 and 23A-34 of the Development Compliance 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 the amended and added requirements or to revert to those existing prior to this ordinance.

SECTION 6. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 7. 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:

April 28, 2010 DRAFT

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

TM/tl
3/8/10

ATTACHMENT F

Elimination of Motor Vehicle and Bicycle Parking Requirements

Included in Land Use Code Amendment—

Zoning Compliance for Existing Site Improvement

Scheduled for Planning Commission Public Hearing, May 5, 2010

A Position Paper

by Ruth Beeker

On May 5, 2010, the Planning Commission will be holding its public hearing on six Land Use Code Amendments. As a member of the Land Use Code Citizens Committee and the Parking Code Revision Subcommittee, I have had an opportunity to give input on all but one of the proposed amendments. The one which by-passed the committee structures in its present form is Land Use Code Amendment—Zoning Compliance for Existing Site Improvements; this appears to be a new title for what was former called Certificate of Occupancy Relief Amendment.

If passed, this provision would enable the property owner and/or the tenant to avoid compliance with a number of Land Use requirements when obtaining a new Certificate of Occupancy. The only requirements are that the site be essentially the same as it was in May 1, 2005 and that the new use be allowed in that particular zone. The proposed LUC sections for which the property need not comply include: 3.2.3 Principal Structures; 3.2.5 Accessory Uses and Structures; 3.2.6 Perimeter Yards; 3.2.7 Structure Height Measurements; 3.2.8 Access Provisions; 3.2.9 Lot Coverage; 3.2.11 Floor Area Ration Calculations; 3.3 Motor Vehicle and Bicycle Parking Requirements; 3.4 Off-Street Loading; 3.7 Landscaping and Screening Regulations; and 3.8 Native Plant Preservation. Building standards which address safety concerns would still be enforced.

The one topic which I believe could most negatively impact neighborhoods is the “relief” sought from Motor Vehicle and Bicycle Parking Requirements. In recent ordinances that ease the parking requirements on non-residential properties, two exceptions which generate the most need for parking were retained: **Bars** at 1 space per 50 sq. ft. of gross floor area and **Restaurants** at 1 space per 100 sq. ft. of gross floor area. In this amendment, the bar exception is retained but only restaurants greater than 2400 sq. ft. are being held to the current standard of 1 space per 100 sq. ft. Other zoned uses, including restaurants less that 2400 sq. ft., would be allowed to utilized the May 2005 parking arrangements, even if there were none, regardless if they are free-standing or part of a commercial strip. This could result in spill-over parking into adjoining residential areas as well as create parking problems for adjoining businesses.

While I question the wisdom of removing Section 3.3 Motor Vehicle and Bicycle Parking Requirements for all Certificate of Occupancies, I am going to address specific concerns about the small restaurant inclusion. The Land Use Code defines a restaurant as, *A Food Service use. A restaurant by any other name, such as, but not limited to, coffee shop, cafeteria, fast food restaurant, or diner, shall be regulated as a restaurant.....*

Land Use Code, Sec. 6.2.18, p. 449. Restaurants can serve liquor under certain conditions and there are no restrictions on their hours of operation.

Questions and concerns which come to mind when considering the desirability of eliminating the 1 space per 100 sq. ft. traditional restaurant parking requirement for the smaller establishments fall into 2 categories: Assessing the context of the specific site and the potential problems which spill-over parking could create for adjoining residents.

I. Assessing the context of the proposed restaurant

- What type food service will it be? What operating hours? Liquor service?
- How many existing restaurants are in proximity to this proposed site?
- If it is not stand-alone, what other uses are already in this commercial strip?
- How will the introduction of a new restaurant with high parking needs impact its neighboring businesses' ability to accommodate its potential customers?
- At the present time, how many of Tucson's existing food service establishments are smaller than 2400 sq. ft.? In other words, what could be the potential impact of this feature in the ordinance?

II. Assessing the potential problems associated with spill-over parking into residential areas

Many older neighborhoods do not have transition zones between the commercial edge and the residential areas which are required by code today. Only an easement or street separates the two. How will business parking affect those adjoining neighbors' quality of life? Are the areas constructed with sidewalks and lighting to safely accommodate commercial pedestrian traffic? If neighborhood streets are to become defacto parking lots for adjoining businesses, will these businesses be required to extend ADA safety and access features within these neighborhoods? How can the noise generated by people and vehicles coming and going be eliminated?

One suggestion has been that neighbors initiate "No Parking" signage if a problem arises. This solution raises a new series of questions:

- Why should a problem generated by a business owner become a neighborhood problem?
- Why should a resident be unable to self park or have visitor parking on the street in order to accommodate a business's bottom line?
- How much does such signage cost? Who pays?
- How does one get enforcement?

Clearly, there are issues which need to be addressed before this "relief" ordinance is approved. The Land Use Code must provide protection for all its citizens, preventing practices which are short-sighted, even in times of economic stress.