



PLANNING COMMISSION

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

DATE: July 18, 2012

TO: Planning Commission

FROM: Ernie Duarte
Executive Secretary

SUBJECT: LUC Simplification Project: Transitional Regulations

Issue – Pursuant to the proposed transitional 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. *Flexible Lot Development* – Article III, Development Regulations, Division 6, Development Incentives, Section 1 (Section 3.6.1); and,
3. *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.

Upon further consideration, staff has removed the Downtown Area Infill Incentive District (IID) as one of those items made no longer available in the LUC via the proposed Transitional Regulations ordinance. As a result, the IID will be available for use in the LUC and UDC. Note: to make the IID no longer available in the LUC would require notice to be sent to property owners in and within 300 feet of the IID and neighborhood associations in and within 1 mile of the IID.

Members of the development community object to the Transitional Regulations ordinance, because they believe it will result in a loss of flexibility for those individuals that opt to develop in accordance with the LUC.

See below for additional information on the Transitional Regulations.

Recommendation – Staff recommends keeping the public hearing open on this item until August to allow stakeholders additional time to review and comment on the proposed documents.

Additional Information on the Proposed Transitional Regulations

Under the proposed Transitional Regulations, the Land Use Code is available to the public 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. 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 text 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.

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

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

Attachments:

Attachment A – Article 1: General Provisions

Attachment B – Proposed text amendment

CITY OF TUCSON
UNIFIED DEVELOPMENT CODE

PRELIMINARY FINAL PUBLIC DRAFT – JULY 2012

Note: The underlines and comments in the margin indicate proposed revisions to the June 2012 draft.

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ARTICLE 1: GENERAL PROVISIONS¹

1.1. TITLE AND EFFECTIVE DATE²

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. AUTHORITY³

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

1.3. PURPOSE OF THIS CODE⁴

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 COMPLIANCE⁵

- A. The provisions of the UDC apply to all development and uses of land within the City.
- B. ~~Land shall not be divided into two or more parcels, except as allowed in accordance with Section 8.2, Land Division and Subdivision Standards, 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.

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¹ 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.

² Text from LUC Sec. 1.1.1.

³ Proposed new text.

⁴ Text from LUC Sec. 1.1.2.

⁵ 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.⁶
- 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.⁷
- 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.⁸

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.)

⁶ Text from LUC Sec. 1.1.5., with minor clarifications.

⁷ Text from 23A-4.

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

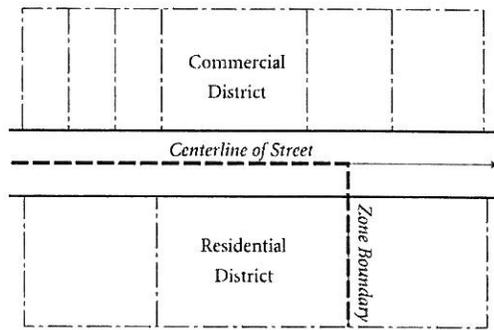
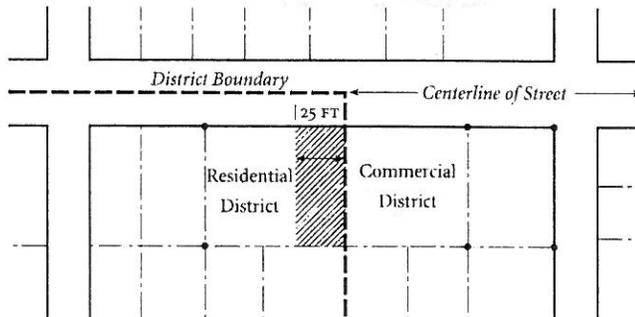


Figure 1.4-1: Determination of Zoning Boundaries

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*.

1.5.1 Zoning Interpretation and Zoning Certifications 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)⁹

1.5.1. ZONING INTERPRETATION AND ZONING CERTIFICATIONS BY THE ZONING ADMINISTRATOR

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A. General

The Zoning Administrator renders a final decision and interpretation in accordance with this Section when 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 is requested.

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B. Requesting a Zoning Interpretation or Certification

1. Requests for a written interpretation or certification must be made in writing to the Zoning Administrator. The request must include: the name and address of the person requesting a clarification or interpretation; the ordinance, code or part therefore, or substantive policy statement that requires interpretation or clarification; the requesting party's proposed interpretation or clarification; and whether the issue(s) are currently being considered by the City in connection with a pending application or request for approval and the identity of the proposed project or development; and,

Deleted: , 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.

2. Any person, including those affected by the proposed development may request a written interpretation or certification. For the purposes of this Section, a person affected by the proposed development is the applicant, owners or residents of property within 300 feet of the site, any neighborhood association within one mile.

Deleted: 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.

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C. Decision and Notice of Decision

1. The Zoning Administrator shall make a final, written, zoning interpretation and mail notice of the interpretation or certification to the applicant and all parties of record within the time frames set forth in Section 3-02, Compliance Review Timeframes Policy, of the Administrative Manual.¹⁰ The applicant or the Zoning Administrator may place other parties on notice of the interpretation or certification 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. The Zoning Administrator may include as a party of record a person(s) affected by the proposed development as provided in Section 1.5.1.B.2 and any person as determined by the Zoning Administrator who may be personally affected by the proposed development

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⁹ Text from LUC Sec. 1.2.1, including both editor's notes, and Section 23A-31 of the Tucson Code.

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

in a manner that is beyond the impact of the development on the general public;

2. The Zoning Administrator shall provide the applicant with an opportunity to meet with designated City staff to discuss the Zoning Administrator's written interpretation;
3. The Zoning Administrator shall rely on the purpose of the UDC section in question when making a zoning interpretation;
4. The zoning administrator may designate certain decisions as precedent for future decisions. Any decision so designated shall be binding upon future cases unless reversed on appeal. One (1) copy of all precedent decisions shall be maintained by the zoning administrator and one (1) copy shall be maintained by the city clerk for public review and inspection;
5. All zoning interpretations shall be posted to the City website; and,
6. The zoning administrator's interpretation shall be binding upon the applicant and all parties of record unless appealed;

D. Substantive Policy Statements

The Zoning Administrator may, in his sole discretion, also issue substantive policy statements. Such written, substantive policy statements will be advisory in nature, providing information regarding the City's policies and current practices, procedures, methods of action and approach to implementing the stated policy and the UDC and the Administrative and Technical Standards Manuals.

No less than annually, the City shall publish on its website a directory summarizing any Substantive Policy Statements and maintain a copy of the directory and policy statements at the office of the Planning and Development Services Department, where they will be available for public inspection.

E. Appeals to the Zoning Interpretation

1. A party of record to the zoning interpretation can appeal the interpretation;
2. Appeals are considered by the Board of Adjustment in accordance with Sections 3.10.1 and 3.10.2, Board of Adjustment Appeal Procedure; in accordance with Sections 3.10.1 and 3.10.2, Board of Adjustment Appeal Procedure;
3. Notice of intent to appeal, including a statement explaining the reason for the appeal, must be filed with the Planning and Development Services Department no later than 14 days after the effective date of the zoning interpretation¹⁵;

¹⁵ Section 23A-31 currently states that appeals must be filed within 30 days. For consistency with the appeal procedures for other application types, staff proposes adding a notice of intent to appeal requirement.

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Deleted: <#>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: ¶

<#>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.¶

<#>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.¶

<#>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.¹¹ ¶

<#>Notification of the final zoning determination or certification shall be sent to the following persons:¶

<#>The Applicant;¶

<#>All parties of record;¶

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1.5.2 Interpretations of Graphics and Captions

4. The complete appeal application is due no later than 30 days after the effective date of the zoning interpretation.

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, unless specified otherwise.

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 PROVISIONS¹⁵

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.

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.

¹⁴ The regulation pertaining to the restoring unsafe structures has been moved to Section 9.16.

¹⁵ Text from LUC Sec. 1.2.2, 1.2.3, and 1.2.4.

1.7. TRANSITIONAL REGULATIONS¹⁶

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 ~~does not classify 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*.

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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 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.

¹⁶ 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

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 one year.
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.

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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 Code¹⁷

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,¹⁸ 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.¹⁹

Deleted: Downtown Area Infill Incentive District,

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

¹⁷ 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. Developers object to making no longer available the FLD, DDO, and the PDMR in the LUC on the grounds that it will reduce flexibility and raise Prop 207 concerns. Note: the FLD, DDO, and the PDMR will be maintained in the UDC. Staff thinks Prop 207 concerns are minimized or eliminated by maintaining these modification processes in the UDC.

¹⁸ Staff recommends maintaining the IID in the LUC because to make it no longer available in the LUC would require notifying property owners in and within 300 feet of the IID and neighborhood associations in and within 1 mile of the IID – a total of 3,000+ notices – for each public hearing with the Planning Commission and M&C. As a result, the LUC Project would likely be delayed and potentially create additional issues.

¹⁹ 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.

1.7.4 Applications Commenced or Approved Under Previous Ordinances

value of his property that may be claimed from any difference between the requirements and standards of this code and those of the LUC.

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.²⁰

²⁰ Text from LUC Sec. 1.2.11

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:

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.

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.

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.¹

Notification of the final zoning determination or certification shall be sent to the following persons:

The Applicant;

All parties of record;

Any Person who requests to be notified; and

For zoning determinations that have citywide application, to neighborhood associations registered with the City

¹ The review time frame has been relocated to the Administrative Manual per the proposed SB 1598 policy. .

ADOPTED BY THE
MAYOR AND COUNCIL

ORDINANCE NO. _____

RELATING TO PLANNING AND ZONING: AMENDING THE TUCSON CODE BY ADDING A NEW CITY OF TUCSON UNIFIED DEVELOPMENT CODE, CHAPTER 23B, AND PROVIDING FOR THE REPEAL OF THE LAND USE CODE, CHAPTER 23 AS WELL AS A TRANSITION PERIOD DURING WHICH DEVELOPMENT MAY BE PURSUED SUBJECT TO THE PROVISION OF EITHER THE CITY OF TUCSON LAND USE CODE OR THE CITY OF TUCSON UNIFIED DEVELOPMENT CODE.

WHEREAS, the City of Tucson acting through public hearings, citizen participation and in conjunction with the Land Use Code Committee, the Planning Commission and City Staff and its consultants have conducted a complete review, amendment and recodification of the City of Tucson Land Use Code (LUC), Development Compliance Code and Development Standards over a period of several years to create the Unified Development Code (UDC) which is effective _____; and

WHEREAS, It is desirable to provide for the enactment of the LUC in a single Ordinance to establish the relationship of the LUC to the UDC and to provide for a delayed date of enactment for the UDC as well as a date of repeal for the LUC and a transition period during which either code may be used;

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

SECTION 1. The City of Tucson Unified Development Code (UDC) as attached hereto as Exhibit A, is hereby adopted, effective _____.

SECTION 2. Chapter 23, the Tucson City Land Use Code (LUC) is hereby repealed effective _____. Subject to the transition provisions established herein, all provisions of the LUC, Chapter 23, effective prior to _____ shall cease to have any effect as of _____, except such effect as may be necessary for the interpretation or application of other ordinances, resolutions, agreements or other legal documents which are in effect on _____.

SECTION 3. Chapter 23 of the Tucson Code as adopted and amended prior to the adoption of the Unified Development Code is repealed effective _____ except that the same is continued in full force and effect as necessary to the final determination and disposition of, or the prosecution or litigation of any claim or complaint that has been made or may be made in the future alleging a violation of any prior provision of Chapter 23 based upon acts occurring prior to the repeal of any such provision.

SECTION 4. All pending applications, development requests and Board of Adjustment cases that are based upon the LUC at the time of repeal of that code on _____ shall continue subject to the LUC and the Development Compliance Code until there is a final disposition.

SECTION 5. Any person wishing to develop real property which would be governed by the provisions of this ordinance, where such development occurs between the effective date of the UDC, _____ and the date of repeal of the LUC, _____ shall have the option of proceeding under the

provisions of either code. Once an election is made, the code chosen shall be the only code applicable to the subject development except as provided by Section 7 herein.

SECTION 6. If any provisions 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 circumstance, and to this end the provisions of this Ordinance are severable.

SECTION 7. In the event that any provision of the UDC is hereafter declared to be invalid for any reason, the prior, comparable provision of the LUC, Chapter 23, Development Compliance Code, Chapter 23A or Development Standards shall be in effect, in place of any invalid provisions, as if those sections had not been repealed. The comparable provision of the LUC shall include all subsidiary LUC sections that are necessary to implement and enforce the LUC provision.

SECTION 8. Any dispute or question of interpretation or implementation of this transition ordinance shall be submitted to the Zoning Administrator as set forth in UDC Section 1.5.1 and shall be subject to appeal to the Board of Adjustment as provided in UDC Section 3.10.2. [UDC citations?]

SECTION 9. Three copies of the Unified Development Code shall be filed with the City Clerk's Office and maintained as public records of the City of Tucson. The Unified Development Code shall be published separately from the Tucson Code.

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, _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

TM/tl
5/9/12