



# PLANNING COMMISSION

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

**DATE:** April 4, 2012

**TO:** Planning Commission

**FROM:** Ernie Duarte  
Executive Secretary

**SUBJECT:** UDC Article 3 (General Procedures)/Administrative Manual/SB1598  
Coordination

**Issue** – This item is for discussion by the Planning Commission in a Study Session.

In July 2011, the State adopted legislation that mandates timeframes for municipal development review processes. This bill is called by its sponsors the “Regulatory Bill of Rights.” It requires that local governments set timeframes for application completeness and substantive reviews as well as an overall review time frame. If a local government does not meet the timeframe for a completeness review the application will be deemed complete even if it is missing essential items. If the local government does not meet the substantive review time frame it must return and development review fee and continue to process the application.

Staff recommends a two-tiered approach in response to SB1598:

1. Remove from Article 3 of the proposed Unified Development Code timeframes for application completeness review and substantive reviews for administrative approval procedures, such as the PDS Director Approval Procedure. They would be relocated in the Administrative Manual. As part of this process, staff recommends revising the timeframes to allow adequate review time and a standardization of the timeframes to remove the distinctions between the various timeframes (See Attachment A for details);
2. Allow applicants the option having their projects reviewed in accordance with one of the following processes (See Attachment B for details):
  - a. *Regulatory Limits Application Process (RLAP)* –
    - If the City fails to meet the established timeframes, an application may be deemed complete despite lacking essential materials;
    - Fees are refunded if an application is not timely approved or denied;
    - During the review period, the applicant may lose the opportunity to revise the plans to support permit approval or changes in circumstance during development; and,
    - If the permit is denied after the one-time request for more information (per SB1598), the applicant must reapply and pay a new fee.
  - b. *Flexible Application Process (FAP)* –
    - Applicants must waive any claims against the City pursuant to SB1598;

- There are no refunds if the review is longer than the established timeframe (Note: PDSD meets or exceeds the established review periods 85-90% of the time);
- Applicants may propose changes to support permit approval and substantial and multiple changes may be made during the review period without having to reapply and pay a new fee.

If the Planning Commission approves this approach, staff will commence appropriate revisions to Article 3 and the Administrative Manual. Staff will return to the Planning Commission with the revised Article 3 and Administrative Manual in May when these documents are scheduled for a public hearing.

**Recommendation** – Staff recommends that the Planning Commission approve the proposed SB1598 approach and direct staff to amend Article 3 and the Administrative Manual accordingly.

Attachments:

Attachment A – Approval Time Frames for Administrative Procedures in Article 3

Attachment B – Draft Agreement to Waive any Claims Against the City Pursuant to the Regulatory Bill of Rights (SB1598)

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**ATTACHMENT A**

**APPROVAL TIME FRAMES FOR ADMINISTRATIVE PURPOSES IN ARTICLE 3**

Below is a table of the time frames for the administrative review and approval procedures in Article 3. The following procedures are excluded by SB 1598 (as interpreted by the City Attorney’s Office); and, therefore, are not included in the tables below:

1. Pre-application requirements.
  - a. Pre-application conference
  - b. Neighborhood meeting
  - c. Time for the filing of an appeal for a denial
2. Rezoning
3. Plan amendments requests
4. Mayor and Council Special Exceptions
5. Appeals
  - a. DRB Appeal
  - b. Mayor and Council Appeal
  - c. Taking Appeal
  - d. Board of Adjustment Appeal
6. Variances
7. Any procedure, such as demolition of a historic property, landmark or structure, for which a public hearing is required.

All of the above procedures are either legislative, not administrative procedures or require a public hearing, such as the appeals, variance and demolition procedures.

Total times are maximum total review time; the actual time taken for an individual procedure may often be less.

|                               | <b>PROCEDURE</b>   | <b>ACCEPTANCE FOR REVIEW*</b> | <b>REVIEW/ DECISION TOTAL</b>   | <b>TOTAL TIME</b> |
|-------------------------------|--|-------------------------------|---|-------------------|
| <b>PDSD Director Approval</b> | Business licenses;<br>Changes of use;  | 15 days                       | 70 days   | 85 days           |
|                               | Downtown Area Infill Incentive District – projects within the Downtown Core Sub-district requesting a modification of development regulations ( <b>Note:</b> projects within the Greater Infill Incentive Sub district are processed in accordance with the 300’ Notice Procedure);<br>Electrical connections (certain types);<br>Expansion of existing premises;<br>Home occupations;<br>Individual Parking Plans for projects greater than 300’ from R-3 or more |                               | This time period includes a second review after return of comments on the first review.<br>Total time is less if only one review is needed. |                   |

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|   | <p>restrictive zoning districts;</p> <p>New construction;</p> <p>Nonconforming same Land Use Class substitution;</p> <p>Nonconforming parking areas;</p> <p>Parking Design Modification Requests (except requests to modify the number of bicycle or motor vehicle parking spaces);</p> <p>Projects within certain overlay zones;</p> <p>Restricted adult activities;</p> <p>Temporary uses or structures;</p> <p>Tenant improvements;</p> <p>Wireless Communication uses (certain types);</p> <p>RND Zone Minor Modifications of Development Regulations (MDR)</p> <p>Zoning Compliance for Site Improvements in Existence on May 1, 2005 and,</p> <p>Other applications, such as blood donor centers and circus, carnival and tent shows.</p> <p>Site plans<br/>(Site plans in Overlay Districts require additional time for review)</p> <p>Subdivision tentative plat</p> <p>Subdivision final plat</p> |         |         |         |
| <b>PSDS Director Approval 50' Notice Procedures</b> | <p>Design Development Options (DDO) in accordance;</p> <p>Parking Design Modification Requests to the required number of bicycle and motor vehicle parking spaces;</p> <p>PSDS Director Special Exception applications;</p> <p>Approval of resident artisan uses in the Historic Preservation Zone;</p> <p>Certain wireless facilities;</p> <p>Requests for demolition of contributing, non historic structures in HPZ;</p>  | 15 days | 40 days | 55 days |
| <b>PSDS Director Approval 300' Notice</b>           | <p>Mitigation plans for certain restaurants serving alcohol</p> <p>Projects within the Greater Infill Incentive Sub district of the Downtown Area Infill Incentive District requesting a Modification</p>  | 15 days | 45 days | 60 days |

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|  | of Development Regulations; and,<br>Individual Parking Plans for projects within 300' of R-3 or more restrictive zoning districts. |  |  |                 |
| <b>ZA Approval</b>                                     | Compliance with certification of existing premises.<br>Interpretations of the UDC.   | 15 days  | 10 days  | 25days          |
|  | PAD interpretations.<br><br>Zone boundary conflicts.   | Complex Issues requiring additional research or legal opinion from City Attorney | 30 days  | 45 days         |
| <b>PDSD Director Approval in Certain Overlay Zones</b> | HPZ Design Review  | 15 days  | <b>Full Review:</b><br>40 days or less                 | 55 days or less |
|  |  |  | <b>Minor</b><br>20 days                                | 35 days         |
|  | NPZ Design Review  | 15 days  | 25 days  | 35 days         |
|  | RND Design review  | 15 days  | <b>Major Review:</b><br>70 days                        | 85 days         |
|  |  |  | <b>Minor Review:</b><br>55 days                        | 70 days         |
|  | <b>PDSD Special Exceptions</b>   | Special Exceptions   | 15 days  | 30 days         |
| <b>ZE Special Exceptions</b>                           | Special Exceptions requiring ZE decision.  | 15days   | Administrative review:<br>45 days                      | 55 days         |
|  | Expansion of nonconforming uses<br><br>Substitution of nonconforming uses (uses not in the same land use class)                    |  | ZE Public hearing:<br>Exempt from SB 1598 requirements |                 |
| <b>M/C Special Exception</b>                           | Special Exceptions requiring Mayor and Council decision.   | 15 days  | Administrative review<br>45 days                       | 55 days         |

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|  |  |  | ZE hearing<br>and M/C<br>hearing:<br>Exempt from<br>SB1598<br>requirements |  |
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# ATTACHMENT B

## AGREEMENT TO WAIVE ANY CLAIMS AGAINST THE CITY PURSUANT TO THE REGULATORY BILL OF RIGHTS ARIZONA REVISED STATUTES § 9-831 ET. SEQ.

This agreement ("**Agreement**") is entered into between \_\_\_\_\_, as the applicant ("**Applicant**") seeking a licensing, permit, approval registration or approval ("**Licensing**") related to the use or development of \_\_\_\_\_ ("**Property**") Case No. \_\_\_\_\_ as required by the City of Tucson and the City of Tucson ("**City**"). Applicant hereby agrees to waive any and all claims for any failure of the City of Tucson to comply with Licensing timeframes in conformance with the provisions of the Regulatory Bill of Rights, A.R.S. §9-831 et. seq., in exchange for which the City of Tucson ("**City**") agrees to process licensing under its Flexible Application Process ("**Process**").

The Applicant or authorized agent of the Applicant, has submitted an application to the City requesting that the City approve or permit a development plan, plat, contemplated use, development or action described in Exhibit A. Applicant is aware that the under the Process, he/she may be afforded multiple opportunities to alter or amend his application and to confer with city staff for advice without constraint of limited reviews or timeframes for approval imposed by the City pursuant to the requirements of A.R.S. §9-831 et. seq. The City's procedures under the regulatory-limits process imposed by A.R.S. §9-831 et. seq. are compared to the City's alternative flexible application process in Exhibit B. Applicant acknowledges prior receipt and review of Exhibit B. Applicant desires to be afforded an opportunity to adjust plans based on his own changing development circumstances over time or based upon suggestions by staff. Applicant believes and acknowledges that these benefits outweigh any rights or remedies that may be obtained under A.R.S. §9-831 et. seq.

By signing this Agreement, the Applicant waives any right or claim that may arise under The Regulatory Bill of Rights, A.R.S. §9-831 et. seq., including any claim that an application must be deemed complete or that fees must be returned by the City pursuant to the requirements of A.R.S. §9-831 et. seq.

This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. The Applicant has agreed to the form of this Agreement provided and approved by the City Attorney. The Applicant has had the opportunity to consult with an attorney of the Applicant's choice prior to entering this Agreement and enters it fully understanding that the Applicant is waiving the rights and remedies provided under as set forth herein.

The Applicant warrants and represents that the person or persons listed herein as the Applicant is/are the owner in fee title of any Property identified in Exhibit A. The Applicant further agrees to indemnify and hold the City of Tucson, its officers, employees



**EXHIBIT A**  
**CASE NO. \_\_\_\_\_**

Address or Description of Property:

License sought: (Insert brief description of approval, permit or authority sought. Alternatively a proposed plat, development plan or other documentation describing the approval sought may be attached and identified as EXHIBIT A)

**EXHIBIT B**  
**CASE NO. \_\_\_\_\_**

**SB 1598 REQUIREMENTS AND  
CITY OF TUCSON PDSD FLEXIBLE OPTION PROPOSAL**

In 2011 the Arizona Legislature passed a “Regulatory Bill of Rights” (SB 1598) requiring municipalities to establish and adhere to time frames in a broad range of permitting processes. Under the law cities must create an overall permitting time frame for each process, consisting of an “administrative completeness” time frame and a “substantive review” time frame. The aim of this bill was to create faster, more uniform, and more transparent processes, goals which the City of Tucson Planning and Development Services Department share. However, the implementation of these time frames may have unforeseen consequences.

Under the SB 1598 regulatory-limits process, the city must determine whether a permit application is complete or not during the administrative completeness time frame. If the city fails to make this determination within established time limits, the permit is deemed complete regardless of deficiencies. Similarly during the substantive review period an application must be denied or approved within the established time frame or the permit fee will be refunded.

The SB 1598 regulatory-limits process offers applicants very limited opportunities to supplement their application with additional material after submission. Moreover, changes to a permit application are limited to responses to a PDSD request. Development changes proposed by the applicant do not appear to be allowed. Upon proper denial, during either review period, applicants must reapply with new plans and pay another permit fee.

PDSD is committed to customer service and recognizes that applicants may not wish to be locked into formulaic standards which do not provide an adequate opportunity to submit additional requested materials and desired plan changes. Thus, PDSD offers applicants the opportunity to make permit applications according to either the SB 1598 regulatory-limits process or the more flexible process City of Tucson PDSD customers are familiar with.

Under the flexible application process, applicants have multiple opportunities to alter or amend their application and to confer with city staff for advice. This allows the applicant to adjust plans based on their own changing development

circumstances over time or on suggestions by staff. Additionally, applicants may alter their permit applications as many times as necessary during the process.

Applicants are encouraged to carefully consider which application process best meets their needs. Staff can explain the processes in more detail upon request as well as provide you a copy of SB 1598. The following points outline some of the highlights of each process:

### **“Regulatory Limits Application Process”**

- A limited number of opportunities to confer with staff and supply necessary information and materials. PDSD may request additional information only once after the application is deemed administratively complete
- If city fails to meet established timeline for review, an application may be deemed complete although lacking essential materials. If an application is not timely approved or denied fees are refunded to the applicant.
- During review period applicant may lose opportunity to propose alterations to support permit approval or changes in circumstance during development.
- If permit properly denied after PDSD one-time request for more information, applicant must reapply and pay new fee.
- Denials must be explained and the applicable code provisions identified
- Applicant may request code clarification.

### **“Flexible Application Process”**

- Multiple application conferences available before submittal and during process.
- During review period applicant may propose changes to support permit approval and substantial and multiple changes may be made without reapplication.
- No refund for a review period longer than the established timeline. However, PDSD meets or exceeds established permit review period in 85-90% of applications. Complex applications or substantial changes may take longer.
- Denials will be explained and the applicable code provisions identified
- Applicant may request code clarification.

