



PLANNING COMMISSION

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

DATE: June 6, 2012

TO: Planning Commission

FROM: Ernie Duarte
Executive Secretary

SUBJECT: Land Use Code Simplification Project: Articles 1 (General Provisions); 2 (Review Authorities); 3 (General Procedures); 5 (Overlay Zones); 7 (Development Standards); 8 (Land Division and Subdivision Standards); 9 (Nonconformities); 10 (Enforcement and Penalties); and 11 (Definitions and Rules of Construction) of the Unified Development Code and the Administrative Manual and Technical Standards Manual.

Issue – This item is a continuation of the public hearing from April 4th and May 2, 2012.

The Unified Development Code (UDC) is a simplification and reformat of the City's Land Use Code (LUC).

The purpose of the Land Use Code Simplification Project is to simplify, reformat, and make more user-friendly the City's LUC, Development Standards, and Chapter 23A. The project has resulted in the development of three separate, but interrelated documents: the Unified Development Code (UDC), Administrative Manual, and Technical Standards Manual. A draft of each document has been completed. A more detailed summary of the project is provided below. To date, the Planning Commission has discussed each document at least one time.

The following articles of the UDC are currently under consideration:

- Article 1, General Provisions;
- Article 2, Review Authorities;
- Article 3, General Procedures;
- Article 5, Overlay Zones;
- Article 7, Development Standards;
- Article 8, Land Division and Subdivision Standards;
- Article 9, Nonconformities;
- Article 10, Enforcement and Penalties; and,
- Article 11, Definitions and Rules of Construction.

Additionally, the Administrative and Technical Standards Manuals are also under consideration.

A summary of each article and the manuals, the significant differences between the proposal and current code, changes, if any, made to the May 2012 drafts, and any outstanding issues with the articles are provided below.

Because drafts of each article was provided in previous months and only minor revisions have been made since then, replacement pages only are attached except as noted below. Complete drafts of the articles are available online here:

http://cms3.tucsonaz.gov/planning/prog_proj/projects/lucsimplication/

Recommendation – At the request of the Metropolitan Pima Alliance, the Southern Arizona Home Builders Association, and the Arizona Builders Alliance (see Attachment A), staff recommends continuing consideration of this item until July to allow stakeholders additional time to review and comment on the proposed documents.

Note: To be in compliance with the LUC's Section 5.4.2.1.E, Articles 1, 2, 5, 7, 8, 9, 10, and 11 of the proposed UDC must be closed as public hearing because by July 18th (the next scheduled Planning Commission meeting) these items will have been open more than 90 days.

Background

Land Use Code Simplification and Reformat Project. The project's goals are to:

- Consolidate procedures;
- Clarify vagueness;
- Emphasize simplicity;
- Reduce need for cross-referencing (i.e. reduce page flipping) and redundancy;
- Use a simplified numbering system;
- Replace the development designator system with simpler dimensions by zone;
- Provide new language necessary for the transition from LUC to UDC; and,
- Acknowledge that other items may require revision during the project.

Revised Zoning Code and Other Associated Documents. The Land Use Code Simplification and Reformat Project consists of the following three documents:

1. *Unified Development Code (UDC).* The UDC establishes, among other requirements, the zoning regulations and review and approval procedures applicable to development and uses of land within the City of Tucson. See Attachment A for a summary of the UDC's eleven articles).
2. *Administrative Manual.* The Administrative Manual includes application submittal requirements, development review fees, and the City Development Review Committee procedure. The contents of the Administrative Manual are primarily from the City's

Development Standards. The draft Administrative Manual was discussed by the Planning Commission in a study session at their meeting in December. No significant issues were raised.

3. *Technical Manual.* The Technical Manual includes Historic Preservation Zone design standards and engineering-related site standards, such as solid waste collection, street design, and detention/retention standards. It may also include various design guidelines in the future.

The UDC, Administrative Manual, and Technical Manual will eventually replace the codes currently in effect, i.e. the Land Use Code, Development Standards, and Chapter 23A, as the governing zoning regulations within the City of Tucson.

Article 1: General Provisions (Available Online)

Summary. Article 1 establishes:

- The UDC as the governing zoning code for the City of Tucson as granted by the Arizona Revised Statutes;
- That the provisions of the UDC apply to all development and uses of land within the City (except as provided for by Section 1.7: Transitional Regulations;
- A set of maps depicting all land use zoning boundaries within the City of Tucson;
- That the Zoning Administrator shall render decisions and interpretations of the UDC when questions occur concerning its content or application; and,
- Transitional regulations that clarify the applicability of the Land Use Code and UDC.

Significant Differences Between the LUC and the Proposed UDC. There are no significant changes to current code being proposed, with the following exceptions:

1. LUC Sections 1.1.4 (Violations) and 1.1.6 (Enumeration) are proposed for deletion because they are no longer required;
2. Section 1.4.1 (General Applicability and Compliance) – proposes a new subsection “E”, which was added to establish and clarify the role and connection of the Administrative and Technical Standards Manuals with the UDC;
3. Section 1.5.1.B.3 (Zoning Interpretations and Zoning Certifications) – the Zoning Administrator’s time frame for making a determination has been relocated to the SB 1598 policy in Section 3-02 of the Administrative Manual;
4. The notification of zoning determinations provision is proposed for revision to require notice to neighborhood associations registered with the City of zoning determinations that have citywide application; and,
5. The transitional regulations are included to establish when the LUC and UDC apply.

Significant Changes Made to the May 2012 Draft:

1. Section 1.7.4.E (Waiver of Potential Claims) – This section was revised to clarify that property owners waive potential Proposition 207 claims that may be claimed from any difference between the standards of the UDC and those of the LUC.

Issues: To the best of staff's knowledge, there are no issues with Article 1.

Article 2: Review Authorities and Powers (Available Online)

Summary. Article 2 describes the powers and responsibilities of the legislative and administrative bodies, appointive officers, municipal agencies, and boards and commissions involved in the planning, zoning, and division of land within the City.

Significant Differences Between the LUC and the Proposed UDC.

1. UDC Sections 2.2.9 and 2.2.10 reflect the recent reorganization and renaming of the Development Services Department (DSD) to the Planning and Development Services Department (PDSD) and the Department of Urban Planning and Design to the Housing and Community Development Department (HCDD);
2. Article 2 clarifies the HCDD and PDSD's responsibilities concerning specific plans (i.e. area and neighborhood plans) such that HCDD is responsible for developing and processing the adoption of specific plans and PDSD is responsible for processing amendments to and maintaining adopted specific plans;
3. The Design Review Board's quorum and voting requirements (Section 2.2.6.B.3) is proposed for revision to clarify when alternate members may vote and to stipulate that a majority vote of the DRB, not just those present, is required when making a decision on an appeal to the PDSD Director's decision on NPZ design review applications;
4. The provision requiring a recommendation from the Design Review Board on variances to the Gateway Corridor Zone requirements is proposed for deletion because this type of variance request is rarely, if ever, used;
5. Section 2.2.6.C.4, Environmental Resource Zone (ERZ) Mitigation Plan, Appeals – this section is proposed for deletion because it no longer applies given that projects within the ERZ and several other overlay zones would no longer be reviewed in accordance with the 300' Notice as proposed.
6. The Design Professional and the Design Examiner positions have been combined since the powers and duties of each are so similar; and,
7. The powers and duties of the City Development Review Committee (CDRC; formerly the Community Design Review Committee) section is proposed for relocation to the Administrative Manual primarily because the CDRC is not a decision-making body.

Significant Changes Made to the May 2012 Draft: None.

Issues. To the best of staff's knowledge, there are no issues with Article 2.

Article 3: General Procedures (Attachment B)

Summary: Article 3 describes the procedures for review of most applications for land use and development activity in the City, including zoning compliance review and procedures concerning appeals and variances, rezonings, land use plan amendments, text amendments to the UDC, and other miscellaneous permits and approvals.

Significant Differences Between the Current and Proposed Requirements: The following is a summary of the significant differences. These and other more minor changes have also been footnoted in the May 2012 Draft of Article 3 (Attachment A).

1. The procedural requirements from various sections of the LUC, Development Compliance Code Chapter 23A, and the Development Standards are being consolidated into Article 3.
2. The application completeness and review timelines for the following procedures have been relocated to the "Senate Bill 1598 'Regulatory Bill of Rights' Compliance Review Policy" located in the Administrative Manual, Section 3-02:
 - A. PDSD Director Approval Procedure;
 - B. 50' Notice Procedure;
 - C. 300' Notice Procedure;
 - D. Zoning Administrator Approval Procedure;
 - E. PDSD Director Approval in Certain Overlay Zones;
 - F. PDSD Director Special Exception Procedure;
 - G. Zoning Examiner Special Exception; and,
 - H. Mayor and Council Special Exception Procedures.
3. Sections 3.2 (General Requirements) – Application processing (including pre-application conference, neighborhood meeting, and application completeness standards) and public notice requirements have been standardized to the greatest extent possible to eliminate minor differences between the current standards;
4. Section 3.2.4.E.1 (Posted Notice) – Article 3 still requires mailed notice for 50' and 300' notice procedures, but proposes to delete the posting requirement.

5. Section 3.3.5 (50' Notice Procedure) – The latest versions of Article 3, and more fully described in Article 5 (Overlay Zones), proposes to process Rio Nuevo District (RND) Minor review applications in accordance with the PDSB Director Approval Procedure instead of the currently required 50' Notice Procedure. This revision would make the RND Minor Review Procedure the same as that used for projects within the Downtown Core Subdistrict of the Downtown Area Infill Incentive District.
6. Section 3.3.6 (300' Notice Procedure) – In discussions with the Planning Commission and the LUC Committee it was agreed the 300' Notice Procedure for the following overlays should not be required: Environmental Resource Zone; Hillside Development Zone; Historic Preservation Zone; Scenic Corridor Zone; and, the Watercourse, Amenities, Safety and Habitat. This process is very resource intensive and in the last seven years of experience using it suggests that there are no appeals. It will remain for several items including processing of projects within the Greater Infill Incentive Subdistrict of the Downtown Area Infill Incentive District and C-1 liquor license mitigation plans.
7. Section 3.6 (Land Use Plan Adoption and Amendment Procedures) – The three plan-related procedures (General Plan amendments, specific plan adoptions, and redevelopment plan adoptions) that use the Planning Commission Legislative Procedure have been consolidated into a single section (i.e. Section 3.6.1);
8. Sections 3.6 & 3.7 (Land Use Plan Adoption and Amendment & UDC Text Amendment Procedures) – The land use plan and text amendment procedures have their own sections to better distinguish the differences between the two procedures;
9. Section 3.11.1 (Design Development Option) – The two Design Development Option (DDO) provisions have been consolidated into a single DDO section in the draft UDC; and,
10. Section 3.11.1.B.4 (DDO – Applicability) – As recommended by staff and the Board of Adjustment, the proposal allows an application for structural setback and parking space length requirements for carports only in single-family and duplex development to be processed as a DDO rather than as a variance as currently required.
11. Section 3.11.1.D.2.d (DDO – Specific Findings for Setback and Wall Height) – The DDO finding is the same as the unique topographic hardship as a variance. This is a very restrictive provision and most DDO request should not be able to comply. DDOs should be a relief mechanism to waive a portion of a standard while not creating a negative impact, such as health or safety issue or a nuisance, on an adjoining property. The more restrictive criteria of a variance should not apply. The City regularly approves DDOs that fit this description. It is appropriate to have the standards reflect the practice. Staff would like to hear any experiences or insights the Commission might have on this issue.

Significant Changes Made to the May 2012 Draft:

1. *Sections 3.6. and 3.7 (Land Use Plan Adoption and Amendment Procedures and UDC Text Amendment Procedure, respectively)* – the public hearing and Planning Commission recommendation timeframes are proposed for revision to require that the public hearing and recommendation be issued within 180 days of the date of initial public hearing. This a change from the current regulation which requires the Planning Commission to close a public hearing within 90 days of the date of initial public hearing and to make a recommendation within 45 days of closing the public hearing. The proposed revision will allow additional time to consider items and greater flexibility to open and close public hearings as needed to request additional feedback from the public.
2. *Design Development Option (Section 3.11.1)* – 1) The Parking Design Modification Request (LUC Section 3.3.10) has been consolidated into the DDO procedure to reduce the number of administrative modification procedures by one; and, 2) The DDO has been revised to create a Minor and Major procedure.
3. *Protected Development Right (Section 3.12)* – has been expanded to include regulations from Section 2-17, Protected Development Right Plan Standard, of the current Development Standards.

Issue Requiring Further Consideration: To the best of staff's knowledge, there are no issues with Article 3 to report; however, the most recent changes to the DDO have not yet been discussed with stakeholder groups.

Article 5: Overlays (Available Online)

Summary. Article 5 establishes overlays that impose standards and procedures that are in addition to those required under base zoning standards. Where there is a conflict between the standards of a base district and an overlay district, the standards of the overlay district shall apply, except for the Urban Overlay District (UOD) and the Downtown Area Infill Incentive District (IID), which provide flexible development options to landowners rather than mandatory requirements.

Significant Differences Between the LUC and the Proposed UDC. There are no significant changes to current code being proposed, with the following exceptions:

1. *Hillside Development Zone (Section 5.2), Scenic Corridor Zone (Section 5.3), Environmental Resource Zone (Section 5.7), & the Historic Preservation Zone (Section 5.8; Full HPZ Review)* – Staff proposes amending the procedure from the 300' Notice to the PDSD Director Approval Procedure for the following reasons: 1) the current process requires notice which the public often misperceives as an opportunity to influence whether the project gets approved or denied, when in fact, the plans are reviewed for

compliance with specific code requirements. This invariably leads to a frustrated constituent who questions why notice was mailed at all; 2) the current process unnecessarily adds time (e.g. a neighborhood meeting is required prior to submittal) and money to the preparation and review of proposals; and, 3) sending out multiple notices for each project is a strain on staff resources.

2. *Appeals of the PDS Director's Decision on Environmental Resource Zone (ERZ) applications* – this section is proposed for deletion because it no longer applies given that projects within the ERZ and several other overlay zones would no longer be reviewed in accordance with the 300' Notice as proposed;
3. *Gateway Corridor Zone, Variance (Section 5.5)* – The variance section is proposed for deletion because it is rarely, if ever, requested;
4. *Historic Preservation Zone (Section 5.8)* – Staff recommends relocating the San Xavier Environs Historic District standards to the Technical Manual. This provision reads more like a design guideline. Other historic overlay guidelines are in the Technical Manual;
5. *Neighborhood Preservation Zone, Applicability (Section 5.10.3.A)* – Currently, the Design Professional makes this determination. To date, most of the projects within the two adopted NPZs have been very minor and would have been unnecessarily delayed awaiting the Design Professional's determination whether a project met the applicability requirements of the NPZ. This delay is due to the fact the Design Professional is an outside consultant who does not work in the PDS office. Staff is capable of making these initial determinations. In addition, the proposal would improve customer service without compromising the intent and applicability of the NPZs;
6. *Neighborhood Preservation Zone, NPZ Design Review – Submittal (Sec. 5.10.3.B.1)* – The current 2-day completeness deadline has been changed to seven days to make it consistent with the general procedures in UDC Article 3;
7. *Rio Nuevo District (Section 5.11)*: 1) Staff proposes revising the Minor Project Design Review procedure from a 50' Notice to PDS Director Approval Procedure; 2) The Full Project Design Review procedure is proposed for consolidation into the Major Project Design Review Procedure to remove the fine distinctions between the two procedures; and, 3) A revision to the Modification of Development Requirements (MDR) is proposed that allows modifications to the vehicular circulation and parking requirements to be processed as a Minor MDR, rather than a Major MDR as currently required.

Significant Changes Made to the May 2012 Draft:

1. *Hillside Development Zone:– Table 5.2-1: Development Standards Based on Average Cross Slope (Section 5.2.5)* – The minimum site area requirement for development between 16% and 16.9% slope is proposed for revision from 1 acre to 1.12 acres to be consistent with Pima County's hillside standards.

Issues. To the best of staff's knowledge, there are no issues with Article 5.

Article 7: Development Standards (Available Online)

Summary. Article 7 sets forth the general development standards that apply to principal and accessory structures and uses in the City. The standards are intended to encourage high-quality development to enhance the safety, aesthetics, character, and environmental quality of the community and to minimize negative impacts between developments.

Significant Differences Between the LUC and the Proposed UDC.

1. *Motor Vehicle and Bicycle Parking: Exceptions to the Minimum Number of Bicycle Parking Spaces [Section 7.4.8.B.1.a(4)] & Location of Short-Term Bicycle Parking [Section 7.4.9.C.2.a(1)]* – The proposed revision to these sections allows a designee of the City’s Bicycle Coordinator to also approve the stated modification and exception. The proposal would allow additional people to assist customers in the event the Bicycle Coordinator is unavailable;
2. *Motor Vehicle and Bicycle Parking: Parking Design Modification Request (PDMR)* – The PDMR is proposed for removal from this section and consolidated into the Design Development Option (DDO – Section 3.11.1);
3. *Landscaping and Screening Standards (Section 7.6)* – The landscaping and screening standards from the current Development Standards have been consolidated into the UDC standards. The Design Development Option (Section 3.11.1) has been revised to maintain the same level of flexibility for those standards from the Development Standards incorporated into the UDC;
4. *Landscaping and Screening, Protected Riparian Areas (UDC Sec. 7.6.4.A.3.c)* – Staff recommends adding this provision;
5. *Landscaping and Screening, Use of Reclaimed Water (UDC Sec. 7.6.6.B)* – The following provision is proposed for deletion because it currently does not occur: “Prior to development plan approval or the issuance of a building permit, the Tucson Water Department shall review the landscape plan for compliance with adopted City water policies;
6. *Section 7.8, Access* – This section has been significantly revised from the April 2012 draft to include the missing provisions from LUC Section 3.2.8. The access requirements provided in this section is an amalgam of LUC Sections 3.2.8 (Access Provisions) and 4.1.8 (Subdivision Design Standards). The requirements have been consolidated and located here in order to clarify that these development standards apply to all application types; and,
7. *Section 7.8.4.C, Width of Access* - The proposed deletion of “two duplexes” is consistent with the City’s policy that 3 or more units require compliance with commercial access standards.

Significant Changes Made to the May 2012 Draft: The Parking Design Modification Request procedure is proposed for removal from this section and consolidated into the Design Development Option (DDO – Section 3.11.1). This proposal is consistent with the Project’s goal of consolidating and simplifying standards and addresses the concern raised below by maintaining the same level of flexibility as currently allowed.

Issues. Chuck Martin, a representative from the Metropolitan Pima Alliance, submitted comments objecting to the consolidation of the landscaping and screening standards from the current Development Standards into the UDC on the grounds that the consolidation would result in a loss of flexibility. Staff believes this issue has been addressed by the proposed revisions to the Design Development Option described above.

Article 8: Land Division and Subdivision Standards (Available Online)

Summary. Article 8 establishes criteria for land division and subdivision standards.

Significant Differences Between the LUC and the Proposed UDC. There are no significant changes to current code being proposed, with the following exceptions:

1. *Various provisions have been revised to be in sync with the Arizona Revised Statutes (ARS)* – For example, the definitions of lot splits and minor subdivisions have been simplified, the minor subdivision criteria have been expanded, and the Record of Survey process has been deleted.
2. *Block Plats (UDC Sec. 8.4.1) and Residential and Non-Residential Condominium and Condominium Conversions (UDC Sec. 8.4.2)* – These are two processes that have been clarified and revised to be consistent with State statutes.
3. *General Requirements for Subdivisions and Minor Subdivisions, Acceptable Forms of Assurances (UDC Sec. 8.6.2.B)* – Assurances (third-party land trusts) will no longer go to the Mayor and Council as long as the applicant uses the forms in the Technical Manual.
4. *Subdivision Design Standards – Streets, Access, Alleys, Easements Required, and Hydrology (UDC Sec. N/A)* – These design standards are being relocated to Article 7 (Development Standards). These standards apply to more types of development applications than just land divisions and subdivisions, and therefore, should be located where they will have more general applicability.
5. *Subdivision Design Standards, Flexible Lot Development – Project Amenities and Site Improvements (UDC Sec. N/A)* – The Project Amenities and Site Improvements section (LUC Section 3.6.1.4.C) is proposed for deletion because the section is redundant, and in some ways, conflicts with the Assurance requirements. Deletion of this section does not reduce or negate a developer’s responsibility to construct or provide a certain amount of a project’s amenities prior to the sale or release of any residences.

6. *Subdivision Design Standards, Flexible Lot Development (FLD) Submittal, Review, and Decision – Tentative Plat (UDC Sec. 8.7.3.P.1)* – Staff is proposing to revise the FLD tentative plat review process to maintain the neighborhood meeting and notice of application, but to no longer require a notice of decision.

Significant Changes Made to the May 2012 Draft:

1. The draft has been revised in various ways in response to feedback from Chuck Martin, a representative of the Metropolitan Pima Alliance; and,
2. In accordance with staff's response to SB 1598, the tentative plat review timeframes have been relocated to the Compliance Review Timeframes Policy in the Administrative Manual.

Issues. To be determined. Staff has revised the draft in response to stakeholder feedback, but does not yet know whether the stakeholders agree with proposed changes.

Article 9: Nonconforming Uses, Buildings, and Structures (Available Online)

Summary. Article 9 establishes requirements for nonconforming uses and structures.

Significant Differences Between the LUC and the Proposed UDC: There are no significant differences being proposed.

Significant Changes Made to the May 2012 Draft: None.

Issues. To the best of staff's knowledge, there are no unresolved issues with Article 9.

Article 10: Enforcement and Penalties (Available Online)

Summary: Article 10 establishes a clear division of authority in the enforcement of the UDC and to establish procedures to enforce compliance with the UDC. Enforcement is the responsibility of the Zoning Administrator with assistance from PDSD, Housing and Community Development Department (HCDD), and other City departments.

Significant Differences Between the LUC and the Proposed UDC: Staff proposes to delete Sec. 10.5 (Conditional Uses, Suspension or Termination) because it is covered in Section 10.3.

Issues. To the best of staff's knowledge, there are no unresolved issues with Article 10.

Article 11: Definitions and Rules of Construction (Attachment J)

Summary: Article 11 establishes the general rules for construction of language and the definitions of land use groups, classes, types and other terms.

Significant Differences Between the LUC and the Proposed UDC:

1. *Proposed new definitions:* adjudicated delinquent, change of use, compatibility, cooking facility, design professional, natural undisturbed open space, site area, yard.
2. *Definitions proposed for deletion:* display lot, enclosed area of a dwelling unit
3. *Civic Use Group, Jail or Prison (Sec. 11.3.3.C.3)* – The following phrase from the end of the definition is proposed for deletion because it not required: “These facilities may employ one or more of the following measures to ensure accountability of offenders: fences, walls, outside patrols and/or towers with armed staff, inside recreation yards, and secure control centers.”
4. *Family Dwelling (Sec. 11.3.7.A)* – The different subtypes of the Family Dwelling use have been consolidated into a single place. The types are: duplex, manufactured housing, multifamily development, single-family attached, and single-family detached,
5. *Shelter Care (Sec. 11.3.7.D.4)* – Phrase limiting care to “typically for less than 30 days” is proposed for deletion.
6. The definitions of Assurable Items and Assurable Infrastructure have been consolidated into one term.
7. The definitions of Assurable Infrastructure and Subdivision Improvements have been revised to ensure they are consistent with Arizona Revised Statutes and Third Party Assurance forms.

Significant Changes Made to the May 2012 Draft: None.

Issues. To the best of staff’s knowledge, staff has addressed all of the outstanding issues.

Administrative Manual (Available Online)

Summary: The Administrative Manual is a companion document to the UDC and Technical Standards Manual, which establishes the application submittal requirements, the City Development Review Committee procedure, the Senate Bill 1598 “Regulatory Bill of Rights” Compliance Review Timeframes Policy, and the development review fees.

Significant Differences Between the Current and Proposed Requirements:

	Current Requirement	Proposed Requirement	Rationale
Procedure to amend the application submittal requirements	Requires City Manager approval	Requires PDSD Director approval	Can be adequately administered by the PDSD Director.
Modifications to application submittal requirements (at the applicants request on a per project basis)	Limited to PAD applications	Expands to allow applicants to request modifications to the application submittal requirements for all application types, except those required of Protected Development Rights applications	Does not modify requirements of the applicable zone, overlay zone, and development standards. There are instances, such as the redevelopment of a midtown site, when certain information is not needed to adequately review a proposal for compliance with applicable requirements. Allowing a certain amount of flexibility can potentially save time and money in the preparation and review of applications.
Rezoning application submittal requirements	Multiple plans required (i.e. Preliminary Development Plan; General Site Inventory; Design Compatibility Report; Environmental Resource Report; Cluster Option Report; and Services Impact Report), redundant information required among the plans	Consolidates the number of plans to the Preliminary Development Plan (includes an introduction and policy, site analysis, and plan proposal) and the Environmental Resource Report	Consistent with the goals of the LUC Project to remove redundancy and simplify the current standards
SB 1598 Compliance Review Policy (see below for more details)	N/A	Consolidate the application completeness and substantive review timeframes for the administrative review procedures into a	Added in response to SB 1598. NOTE: The policy in the Administrative Manual is incorrect. Please refer to Attachment C for the latest version of the proposed policy.

	Current Requirement	Proposed Requirement	Rationale
		single section located in the Administrative Manual.	
Development Fee Schedule – General	N/A	Reorganization and reordering	Fees are grouped more logically and it is easier to locate specific fees.
Technology/Archive Fee	Varies from \$16.50 to \$16.50 or 1% of the total filing fee, whichever is greater.	Several technology/archive fees have been revised to require \$16.50 or 1% of the total filing fee, whichever is greater for consistency purposes. A tech/archive fee is proposed for CDRC Fees.	The technology/ archive fee has been added to the CDRC Fees since these are costs incurred currently by the City that, to date, has not been charged to applicants.
Zoning Determination Fee	\$220	\$300	The proposed fee more closely reflects, on average, the amount of staff time required to research and make a zoning determination.
Design Professional Fee (when review of FLD Privacy Mitigation or Architectural Variation Plan required or other applications as deemed appropriate by the PDSD Director)	Not included in current Development Review Fee Schedule	\$75/hour	Review by the Design Professional is currently required by the LUC of certain FLD applications, but a fee has not yet been approved (note: the Design Professional(s) is a consultant on contract with the City who works on an as needed basis). There are other instances, such as with the review of downtown projects, when review by the Design Professional is beneficial.

Overview of the SB 1598, Staff's Response, and the Changes Required of Article 3 and the Administrative Manual as a Result: 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 PDSD 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.

Significant Changes Made to the May 2012 Draft:

1. The hillside development plan requirements were relocated to the Hillside Development Zone section of the Technical Standards Manual to reduce cross-referencing.
2. The Protected Development Right Plan section has been significantly edited to only include the submittal requirements. Many regulations pertaining to Protected Development Rights currently in the Development Standards have been consolidated into the Section 3.12 of the UDC.

Issue Requiring Further Consideration: To the best of staff's knowledge, the latest draft adequately addresses stakeholder feedback.

Technical Standards Manual (Available Online)

Summary: The Technical Standards Manual is a companion document to the UDC and Administrative Manual, which establishes the Historic Preservation Zone design guidelines and engineering-related site standards, such as solid waste collection, street design, and detention/retention standards. The standards in the Technical Standards Manual are primarily from the City's Development Standards.

Significant Differences Between the Current and Proposed Standards:

	Current Requirement	Proposed Requirement	Rationale
Procedure to Establish or Amend the Technical Standards Manual	Requires minimum 30-day review period	No longer require 30-day review period	The current requirement unnecessarily delays the implementation of non-contentious, minor amendments.
Pedestrian Access	Includes a detailed account of when and how an accessible route must be provided.	Refers applicants to the City adopted Building Code for accessible route requirements.	Consistent with the City's adopted Building Code
Historic Preservation Zone	Improvements must be a "like for like."	Allows green building materials to be used with certain conditions.	Allows for alternative materials to be considered without sacrificing the historic appearance of the structure.
Solid Waste and Recycle Disposal, Collection, and Storage standards	<ol style="list-style-type: none"> 1. In single family development, Automated Plastic Containers (APC, i.e. garbage or recycling container) cannot be located in a driveway on pickup day; 2. There shall be no obstruction within 5 feet of an APC in 	<ol style="list-style-type: none"> 1. Proposed for deletion. As a result, APCs could be located in the driveway on pickup day; 2. Reduced from 5 to 3 feet; 	<ol style="list-style-type: none"> 1. a) in some neighborhoods, the driveway is the only place APCs can be put; b) in these neighborhoods, pickup from the driveway has occurred without it creating any safety or access issues; 2. The revision does not affect the ability to pickup APCs;

	single-family development; 3. Eight bollards required within double container enclosures; and, 4. Six bollards required within double container enclosures.	3. Reduced from the required 8 to 6 bollards; and, 4. Reduced from the required 6 to 4 bollards.	3. & 4. The revision will result in cost savings when constructing the enclosures without compromising safety or protection of the enclosure.
Street Technical Standard		Various	

Significant Changes Made to the May 2012 Draft:

1. The Landscaping and Screening and the Rio Nuevo District standards sections have been consolidated with their respective sections in the UDC and deleted from the Technical Standards Manual. The Design Development Option section of the UDC (Section 3.11.1) has been revised to ensure that no flexibility is lost with this proposed move.

Issue Requiring Further Consideration. To the best of staff's knowledge, the latest draft adequately addresses stakeholder feedback.

Stakeholder Involvement and Feedback

Staff has had multiple meetings since early 2011 on the LUC Simplification Project with the LUC Committee. Additionally, staff has sought input and feedback on this project from the Planning Commission, an ad hoc group of neighborhood representatives, and, most recently, the Metropolitan Pima Alliance.

Attachments:

Attachment A – Request from the MPA, SAHBA, and ABA for additional time to review and comment on the UDC

Attachment B – Article 3: General Procedures

S:/Land Use Code Revision/UDC/Planning Commission

ATTACHMENT A

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

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

Thank you for your consideration.

--

Amber Smith, MPA

Executive Director

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

Amber@mpaaz.org

(c) 520.878.8811

**CITY OF TUCSON
UNIFIED DEVELOPMENT CODE**

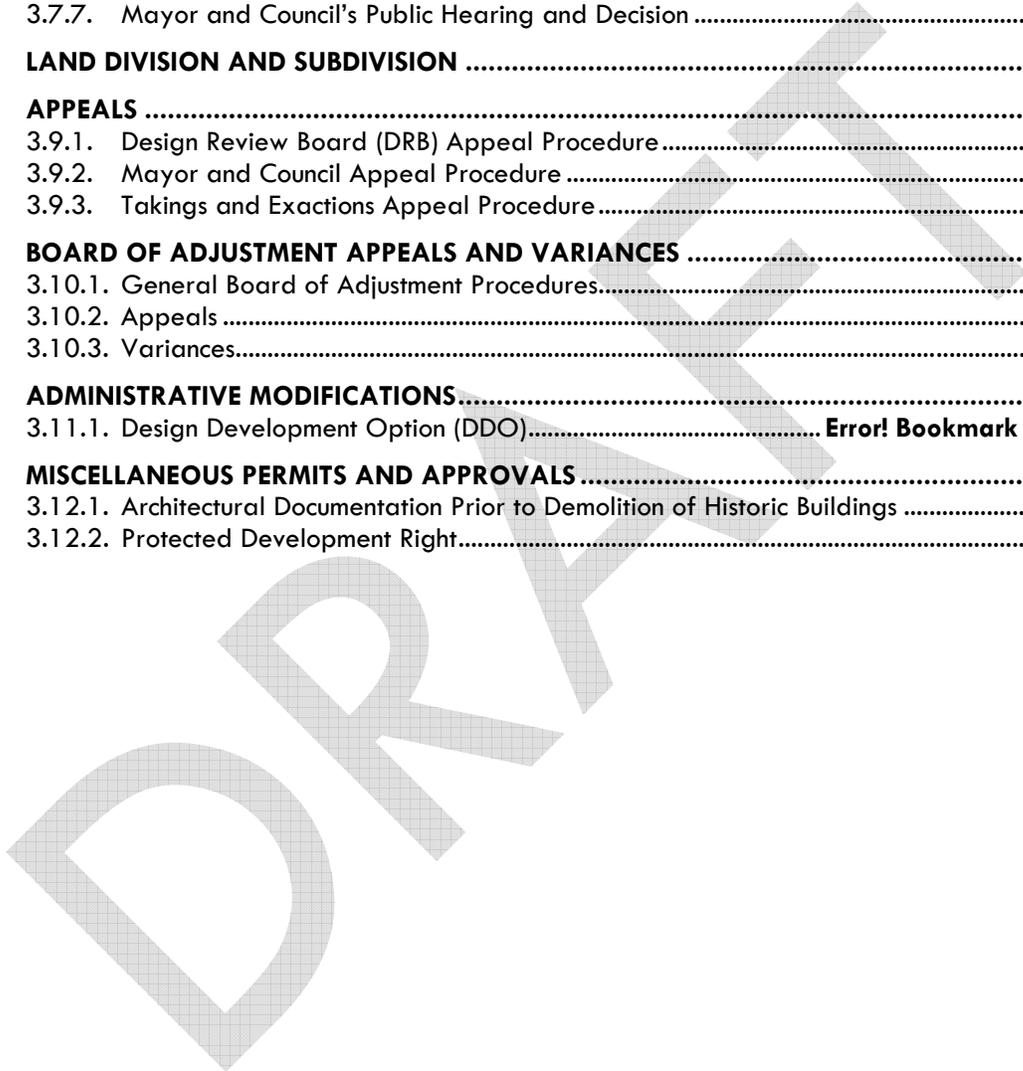
PRELIMINARY FINAL PUBLIC DRAFT – JUNE 2012

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ARTICLE 3: GENERAL PROCEDURES¹

3.1. PURPOSE OF ARTICLE²

This article describes zoning and land use review procedures related to development activity in the City of Tucson.

3.2. GENERAL REQUIREMENTS³

This section establishes general requirements pertaining to pre-application conference, neighborhood meeting, public notice, public comments, application completeness, and other rules for processing applications after they are accepted for review. Individual review procedures and their specific requirements are set forth in this Article.

3.2.1. PRE-APPLICATION CONFERENCE

A. Purpose

The pre-application conference is designed to assist the applicant by providing as much information as possible regarding City regulations and requirements and how they may affect the proposed project's scope and design, prior to submission of a formal application.

B. Applicability

A pre-application conference is required in accordance with the applicable procedure detailed in this Article. Table 3.2-1 sets forth the procedures for which a pre-application conference is required.

C. Requirements⁴

At the pre-application conference, the applicant shall describe to the PDSD the general goals, uses, and development characteristics (e.g., size, location, density, etc.) of the proposed project in sufficient detail to enable the City to identify potential code or plan compliance issues and discuss design issues and options. Depending upon the level of detail of the information provided for the proposed project or the need to include other City departments in the preliminary discussions, the PDSD may request additional pre-application conference(s).

D. Effect

Review is on a conceptual basis, therefore, comments made at this conference are advisory and do not constitute approval or denial of the project.

3.2.2. NEIGHBORHOOD MEETING

A. Purpose

The neighborhood meeting is intended to provide an opportunity to inform potentially affected property owners of the details of a proposed development and application,

¹ In response to SB 1598, the application completeness and review timelines for various procedures as noted in this Article have been relocated to Section 3, PDSD Review Timeline Policy, of the Administrative Manual.

² Proposed new section added to provide introduction to article.

³ The General Requirements section is a consolidation and standardization of the public notice requirements from various procedures.

⁴ The code does not currently describe what a pre-application meeting requires of the applicant, so this provision was added.

how the applicant intends to meet the standards contained in the UDC, and to receive public comment and encourage dialogue at an early time in the review process.

B. Applicability

A neighborhood meeting is required in accordance with the applicable review procedures required in this Article, and Table 3.2-1.

C. Meeting Requirements⁵

1. Standards⁶

The applicant shall mail notices offering to meet at a specified time and place to discuss the proposed project with the persons and entities entitled to notice of the application in accordance with following requirements:

- a. The offer must be made at least ten days prior to the date of the meeting and sent by first class mail to property owners within 300' of the property, registered neighborhood associations with one mile of proposal, and affected Council Ward offices.
- b. The meeting shall occur not more than 60 days prior to the date of the submittal of the application⁷; and
- c. Documentation of the offer to meet and a summary of the meeting must be submitted with the application.
- d. The meeting must be held at or near the subject site.

2. Exceptions⁸

- a. For designation or amendment to a Historic Preservation Zone, the offer to meet shall be made no more than one year before the Zoning Examiner public hearing.
- b. A neighborhood meeting is not required for amendments to the General Plan or for any amendment to the UDC.

3. Content of Neighborhood Meeting Notices

A neighborhood meeting notice shall contain the following:

⁵ From LUC 5.4.1.2, a section was added for "exceptions" to account for any special requirements for certain procedures.

⁶ Based on language from staff comments.

⁷ PDSD currently does not accept applications until at least 15 days after the neighborhood meeting. The proposed deletion would allow applications to be submitted anytime up to 60 days after the neighborhood meeting. In staff's opinion, this would be a process improvement because it removes an unnecessary time impediment while taking no opportunities away for public review and input.

⁸ Added in response to staff comment.

- a. The notice shall describe the substance of the application, include the date, time, and location of the meeting, and specify the contact person, company, or official applicant's name and phone number;
- b. For Board of Adjustment variance applications, the notice shall contain property ownership information, a site plan, elevations, and other information necessary to fully describe the proposed project; and,
- c. The notice shall advise the recipients of the notice that they may submit comments to the PDSD Director or, when applicable, speak at the public hearing.

4. Preparation of Notice

For neighborhood meeting notices, the applicant is responsible for mailing the notices. Applicants must obtain mailing labels from the PDSD and mail the notices to the persons and entities entitled to receive mailed notice in Table 3.2-1 in compliance with the mailing procedures in Section 3.2.4.B.5.

3.2.3. APPLICATION REQUIREMENTS⁹

A. Application Required

1. The Director of the Planning and Development (PDSD) only initiates the review and processing of a complete application, except as provided below. The PDSD Director shall make a determination of application completeness.¹⁰ An application is considered complete if it is submitted in the required form, includes all mandatory information, including all supporting materials specified in the Administrative Manual, and is accompanied by the applicable fee. Rezoning Applications shall also submit evidence of plan compliance to be considered complete. If the application is determined to be complete, the application shall then be processed according to this Article;
2. If an application is determined to be incomplete, the PDSD Director shall provide notice to the applicant with an explanation of the application's deficiencies. Incomplete submittals are generally not accepted for review. However, if an incomplete submittal be accepted for review, the applicant should be aware that, because of a lack of information, the review will take longer since comments cannot be finalized until after the re-submittal when the required information is provided.
3. Applications submitted with false or misleading information shall be deemed incomplete.

⁹ This is proposed new text and intended to strengthen and clarify the City's existing language about accepting complete applications. The proposed language clarifies the obligations of both the applicant and staff and makes a more efficient use of staff time and resources. It replaces the text from DS 2-05.4.0. In addition, all references in the current code to completeness provisions that may differ from these more uniform requirements will be deleted or changed to refer to this section.

¹⁰ In response to SB 1598, this timeline has been relocated to Section 3, PDSD Review Timeline Policy, of the Administrative Manual.

B. Sequential or Concurrent Review Process

1. Where an application under this Section requires review under more than one review procedure, the PDSO Director shall determine whether reviews will be conducted sequentially or concurrently, based upon the issues raised by each application.
2. Where the Director determines that reviews will be conducted sequentially, the date of acceptance for each procedure shall commence upon the date of decision of the prior procedure unless otherwise stated by the PDSO Director.

C. Appeal Procedure for Denial of Plan Compliance

If an application is rejected because it is not consistent with the General Plan or any applicable specific plan, the rejection of the application may be appealed by the applicant to the Mayor and Council in accordance with Section 3.9.2.

D. Suspension and Withdrawal of a Rezoning or Plan Amendment Application

1. For rezoning and plan amendments only, an applicant may suspend an application at any time prior to the date published notice is given for the public hearing before the Planning Commission or the Zoning Examiner. When requested in writing by the applicant, the PDSO Director may authorize a delay of the plan amendment process for a maximum of 90 days. The applicant may request in writing an additional delay(s). The PDSO Director may delay the amendment process to permit a number of related plan amendment applications to be considered at the same time.¹¹ An application shall not be suspended for more than one year from the date of acceptance of the application.
2. The PDSO Director may withdraw a plan amendment application at any time and at the request of the applicant and/or the party who paid the filing fee. PDSO shall determine if the applicant is eligible for a refund, and if so, the amount of fees to be refunded.

3.2.4. PUBLIC NOTICE

A. Purpose¹²

The purpose of public notice is to inform interested members of the public and those who may be affected by a proposed development, or text or plan amendment, of the proposed action to allow and encourage timely public comment to the decision-making body.

¹¹ Three previous sentences of this subsection are adapted from DS 1-08.6.3.

¹² This is new text. We thought a purpose statement would be helpful to provide context for the reader.

TABLE 3.2-1 PUBLIC NOTICE AND PROCEDURAL REQUIREMENTS¹³

				NOTICE**							
Procedure	Section	Pre-Application Conference	Neighborhood Meeting	Mailing/Distance	Posted	Published	Neighborhood Association/Distance	Application Acceptance	Notice of Decision	Decision Maker	Appeal
ZONING ADMINISTRATOR INTERPRETATION											
ZA Interpretation of UDC	1.5.1.B		R/300'					R	R	ZA	B/A
ZONING COMPLIANCE REVIEW											
50' Notice	3.3.4.E			R/50'			R/Assoc. of the site	R		PDSD Director	B/A
300' Notice	3.3.5	R	R	R/300'			R/1 mile	R	R	PDSD Director	M/C
NPZ Design Review	5.10.3	R		R/50'			Assoc. of the site		R	PDSD Director	DRB
PDSD ADMINISTRATIVE APPROVAL											
Minor Subdivision Review	8.4.3.E	R								PDSD Director	
FLD Subdivision Plat or Site Plan	8.7.3.P		R	R/300'			R/1 mile	R		PDSD Director	
SPECIAL EXCEPTION LAND USES											
PDSD Director SE	3.4.2			R/50'			Assoc. of site	R		PDSD Director	B/A
ZE SE	3.4.3	R	R	R/300'	R	R	R/1 mile	R		ZE	M/C
M/C SE	3.4.4	R	R	R/300'	R	R	R/1 mile	R		M/C	
REZONING / ZONING EXAMINER LEGISLATIVE PROCEDURE											
Rezoning	3.5	R	R	R/300'	R	R	R/1 mile		R	M/C	
Rezoning to Establish a PAD or PCD	3.5.7.E	R	R	R/½ mile	R	R	R/1 mile		R	M/C	
Major Change to RZ condition; Site Specific Establishment	3.5	R	R	R/300'	R	R	R/1 mile		R	M/C	

¹³ This proposed new reference table consolidates the notice and procedural requirements into a user-friendly format.

TABLE 3.2-1 PUBLIC NOTICE AND PRODEDURAL REQUIREMENTS¹³

				NOTICE**								
Procedure	Section	Pre-Application Conference	Neighborhood Meeting	Mailing/Distance	Posted	Published	Neighborhood Association/Distance	Application Acceptance	Notice of Decision	Decision Maker	Appeal	
of an Overlay Zone; Major amendments to PAD, PCD												
LAND USE PLAN ADOPTION AND AMENDMENT												
Redoption of General Plan	3.6	Notice is in conformance with the requirements of A.R.S § 9-461.06								M/C		
Adoption of MS&R, Redev. or Specific Plan	3.6	Notice is in conformance with the requirements of A.R.S. § 9-461.06 For Redevelopment Plans, notice must be published for 2 consecutive weeks in compliance with A.R.S. § 36-1479								M/C		
Site-Specific Amendment to Gen. Plan, MS&R, Redevelopment or Specific Plan.	3.6	R	R	R/ 300'			R/ 1 mile			M/C		
UNIFIED DEVELOPMENT CODE TEXT AMENDMENT												
Text Amendment, General	3.7					R/ 1/8 th page display ad	R/ All n'hood assoc. registered with the City			M/C		
Text Amend. Creating or Amending an Overlay zone	3.7		R	R/ 300" & all owners within Overlay Zone		R/ 1/8 th page display ad	R/ All n'Hood assoc. in the City			M/C		
APPEALS PROCEDURES												
DRB Appeal	3.9.1			R/50'			R/Assoc of site		R	M/C		
M/C Appeal	3.9.2			R/300'	R	R	R/1 mile		R	M/C		
Takings Appeal	3.9.3. C								R/Ap plicant only	ZA		

TABLE 3.2-1 PUBLIC NOTICE AND PRODEDURAL REQUIREMENTS¹³

				NOTICE**								
Procedure	Section	Pre-Application Conference	Neighborhood Meeting	Mailing/Distance	Posted	Published	Neighborhood Association/Distance	Application Acceptance	Notice of Decision	Decision Maker	Appeal	
BOARD OF ADJUSTMENT APPEAL AND VARIANCE												
B/A Appeal	3.10.2			R/300'		R	R/1 mile		R	B/A		
B/A Var.	3.10.3		R	R/300'		R	R/1 mile		R	B/A		
ADMINISTRATIVE MODIFICATIONS												
DDO	3.11.1			R/50'			Assoc. of the site			PDS Director	B/A	
RND: Minor MDR	5.11.9			R/50'			Assoc. of site			PDS Director	B/A	
MISCELLANEOUS APPROVALS												
Protected Development Right	3.12.2								R to applicant only	M/C		
B/A=Board of Adjustment DDO=Development Design Option DRB=Design Review Board M/C=Mayor and Council MDR= Modification of Development Regulations				MS&R=Major Streets and Routes Plan PDS=Planning & Development Services Department PH=Public Hearing				RND=Rio Nuevo District RZ=Rezoning ZA=Zoning Administrator ZE=Zoning Examiner **See also Special Notice Requirements in Section 3.2.4.B.7				

B. Mailed Notice

Mailed notices shall comply with the requirements of Table 3.2-1 and Section 3.2.4.

1. Applicability

Mailed notice is required in accordance with the applicable review procedure detailed in this Article.

2. Notices of Acceptance of Application

The PDS is responsible for sending a notice of acceptance of application for the application review procedures identified in Table 3.2-1.

3. Content of Notices of Application Acceptance and Public Hearing

Notices of acceptance of application and public hearing notices shall contain the following:

- a. A general description of the type, size, and location, as applicable, of the matter to be considered;
- b. A general description of the area affected;
- c. An advisory that public comments regarding the matter may be submitted prior to the public hearing, or if no public hearing is required, that public comments may be submitted within the comment period for notice procedures as set forth in Section 3.2.4.H;
- d. Whether a proposed rezoning is within the high noise or accident potential zone of the Airport Environs Zone¹⁴(See Section 5.6); and,
- e. If the notice is for a public hearing, the time, date, and location of the hearing.

4. Content of Notice of Decision

Notices of Decision are required for the application review procedures identified in Table 3.2-1. Notices of decision shall contain the following:

- a. The decision rendered; and
- b. When applicable, information pertaining to appeals of the decision, such as when the intent to appeal is due and to whom it is submitted.

5. Preparation of Notice

- a. The PDSD will use the latest Pima County Assessor records to determine the property owners to be notified;
- b. Mailed notices must use mailing labels generated within 60 days of mailing; and,
- c. Mailed notices for rezonings must be sent as first class mail. Other mailings shall be per PDSD policy.

¹⁴ Staff's suggested language regarding notice to DMAFB was moved to the airport overlay section because it is a specific notice requirement and does not involve the general content of the notice.

6. Recipients of Notice

Mailed notice must be sent to:

- a. The applicant and all property owners within the distance specified in Table 3.2-1, whether or not the properties are within the corporate limits of the City;
- b. Any other persons the Director determines are affected by the application or has an interest in the matter;
- c. Pima County and other municipalities where the subject property being reviewed adjoins their boundaries;
- d. All persons who have registered their names and addresses with the municipality as being interested in receiving notice of UDC text amendments;
- e. Ward offices pursuant the PDSD policy; and,
- f. Neighborhood Associations as provided for in Table 3.2-1.

7. Special Notice Requirements

In addition to the persons and entities entitled to receive notice listed in Table 3.2-1, notice also must be sent to the following, as applicable:

- a. Tucson International Airport or the Davis Monthan Air Force Base, as applicable for sites within the Airport Environs Zone and for all procedures using the Zoning Examiner Legislative or Special Exception Procedures;
- b. Public service agencies affected by the application as determined by the PDSD Director;
- c. Council Ward office for General Plan amendments, UDC text amendments, text amendments creating an overlay zone; and the creation and/or amendment to specific plans such as area, sub-area, neighborhood, Major Streets and Routes and, redevelopment plans;
- d. For appeals, except Takings Appeals pursuant to Section 3.9.3.C, notice to the applicant, the same parties notified to the original application, and those who provided oral or written comments on the application;
- e. For Takings Appeals pursuant to Section 3.9.3, notice to applicant and to the person or body which made the administrative decision that is being appealed; and,
- f. For UDC text amendments creating or enabling an overlay zones, to all property owners within the overlay zone and within 300' of the overlay zone.

C. Timing of Notice

1. General

Published notice, posted notice, and mailed notice shall be provided at least 15 days prior to the public hearing¹⁵. Specific requirements for published and posted notice are set forth in Sections 3.2.4.E and .F. For procedures which do not require a public hearing, notices shall be sent or posted in accordance with PDSD policy.

2. Exception

For Takings Appeal Procedure applications, required public notice is mailed only to the appellant and to the parties entitled to notice of the administrative decision.

D. Calculation of Notice Area

1. General

The required distance for notification is in accordance with the requirements of Table 3.2-1 for the applicable procedure.

2. Measurement

- a. The distance of the required notice area is measured from the property lines of the applicant's property, except where a public right of way adjoins the property, the distance is measured from the right of way boundary line opposite the property line.
- b. Adjoining property under the same ownership as the subject site and adjoining public right of way must be combined with in the property in determining the boundaries from which the notice is measured.

E. Published Notice

When required by the applicable procedure, published notice must be provided at least once in a newspaper with general circulation in the City. Notice shall contain the following: time, date and location of the hearing, general explanation of the matter to be considered, and if applicable, general description of the affected area. For UDC text amendments notice must be published in a one-eighth (1/8th) page display advertisement.

F. Posted Notice

1. Applicability

When required by the applicable procedure in Table 3.2-1, posted notice must be in accordance with this section.

2. Location

Notice shall be posted on the affected property. At least one notice shall be posted for each street the property adjoins. For the 300' Notice Procedure, notice must be posted in accordance with PDSD policy.

¹⁵ Section revised to remove the provision requiring notices to be sent not more than 30 days prior to the public hearing to allow for those instances when dual notice of ZE or Planning Commission and Council public hearings is required.

3. Content

At a minimum, the notice shall include the following:

- a. The type of action (e.g., rezoning, special exception, text amendment/overlay zone, or variance, 300' Notice, etc.);
- b. The case name;
- c. For a rezoning, the word "Zoning" visible from a distance of 100 feet and the existing and proposed zoning districts;
- d. For B/A, description of the request;
- e. The date, time, and location of the public hearing, if applicable;
- f. Beginning and end of public comment period; and,
- g. The telephone number for the PDSO or other applicable City department.

G. Failure of Notice to Adequately Describe the Project

If, upon receiving a complaint, the responsible City agency determines that the notice required by this section failed to accurately or adequately describe the proposed development in a manner that substantially informs how the project will affect other property owners, PDSO may determine that the approval is invalid and that the application must obtain a new approval through the same process as required originally. The City's decision to invalidate an approval may be appealed by the applicant to the B/A in accordance with Sections 3.10.1 and 3.10.2.¹⁶

H. Public Comments to Public Notice

Public comments shall be submitted to the PDSO Director. Comments involving a public hearing shall be forwarded to the appropriate officials conducting the public hearing (e.g. the Mayor and Council, Planning Commission, Zoning Examiner, and the Board of Adjustment).

1. All procedures requiring public comment

For all review procedures that require a public comment period, comment period is 20 days following the date that notice is mailed, except as provided below.

2. Exception

For Zoning Compliance 50' Notice Procedure and Neighborhood Preservation Zone Design Review, the comment period is ten days.

3.3. ZONING COMPLIANCE REVIEW PROCEDURES¹⁷

3.3.1. PURPOSE

The purpose of the Zoning Compliance Review is to determine whether an application conforms to applicable zoning regulations.

¹⁶ Text relocated from other sections of the LUC but made more generally applicable.

¹⁷ Text from Section 23A-31.

3.3.2. REVIEW PROCEDURES

Compliance with all applicable zoning regulations is verified in accordance with one of the following review procedures:

- A. PDSD Director Approval Procedure;
- B. 50' Notice Procedure;
- C. 300' Notice Procedure;
- D. Zoning Administrator Approval Procedure in accordance with Section 1.5.1;
- E. Historic Preservation Zone Design Review Procedure in accordance with Section 5.8.5;
- F. Neighborhood Preservation Zone Design Review Procedure in accordance with Section 5.10.3; or,
- G. Rio Nuevo District Design Review and Minor Modification of Development Regulations Procedures in accordance with Sections 5.11.8 and 5.11.9, respectively.

3.3.3. PDSD DIRECTOR APPROVAL PROCEDURE

A. Applicability¹⁸

Applications that are processed in accordance with the Planning and Development Services (PDSD) Director Approval Procedure include, but are not limited to:

- 1. Business licenses;
- 2. Changes of use;
- 3. Downtown Area Infill Incentive District – projects within the Downtown Core Sub-district requesting a modification of development regulations (Note: projects within the Greater Infill Incentive Subdistrict are processed in accordance with the 300' Notice Procedure, Section 3.3.5);
- 4. Electrical connections (certain types);
- 5. Expansion of existing premises;
- 6. Home occupations;
- 7. Individual Parking Plans for projects greater than 300' from R-3 or more restrictive zoning districts;
- 8. New construction;
- 9. Nonconforming same Land Use Class substitution;
- 10. Nonconforming parking areas;
- 11. Parking Design Modification Requests (except requests to modify the number of bicycle or motor vehicle parking spaces);
- 12. Projects within certain overlay zones;
- 13. Restricted adult activities;
- 14. Site plans (except for projects within overlay zones that require a different procedure);

¹⁸ Section 23A-31 mentions only a few application types as examples of the application types that are processed in accordance with the Zoning Compliance Review. The proposed revision more greatly details the applicable application types.

15. Land division and subdivision (See Article 8 for detailed procedures);
16. Temporary uses or structures;
17. Tenant improvements;
18. Wireless Communication uses (certain types);
19. Zoning Compliance for Site Improvements in Existence on May 1, 2005 (See Section 3.3.3.H below); and,
20. Other applications, such as blood donor centers and circus, carnival and tent shows.

B. Site Plans

Some of the above listed application types may also require submission of a site plan with the application. (See section 3.3.3.G for the requirements for site plans.

C. Pre-Application Conference

A pre-application conference is recommended, but not required, except as provided below. (See Section 3.2.1 for details on pre-application conferences.)

D. Application

Submittal of an application to the PDSB is required in order to process the request. (See the Administrative Manual for application submittal requirements.) Applications are reviewed for completeness in compliance with Section 3.2.3 and compliance with the neighborhood meeting requirements of Section 3.2.2.

E. Review of Accepted Applications

Applications are reviewed for compliance with applicable zoning regulations by the PDSB staff and other agencies, committees or advisory boards as required by the UDC and as deemed necessary or appropriate by the PDSB Director.

F. Decision

1. The PDSB Director decides whether to approve or deny an application;
2. The Director is not required to make a decision on an amended application until after the required recommendation on the amended application by an applicable advisory body is received by the PDSB. .¹⁹

G. Site Plans²⁰

1. Purpose²¹

Certain types of applications listed in Section 3.3.3.A may require the submission of a site plan. This section sets forth the requirements of the PDSB Director Approval Procedure as they pertain to the processing of site plans. These procedural requirements ensure that an applicant provides sufficient

¹⁹ In response to SB 1598, the timeline previously included in this section has been relocated to Section 3, PDSB Review Timeline Policy, of the Administrative Manual.

²⁰ This text from LUC Sec. 3.3.2.A to F has been rewritten according to language provided by staff. In general, the development plan sections in the current code are located in Sec. 23A-34, DS 2-05.4.0., and LUC Sec. 5.3.8. In addition, in response to staff comment, the entire current section on "site plans" has been deleted from the UDC because staff deemed the site plan procedures to be essentially redundant in purpose with the "development plan" procedure.

²¹ Revised language provided by staff.

information to enable the City to determine compliance with all applicable UDC requirements and other applicable City ordinances, standards, policies, and special conditions.

2. Applicability

A site plan is required for the following types of development:

- a. All new non-residential development;
- b. All residential development with three or more dwelling units on one lot;
- c. Existing development undergoing a change of use, building or structure additions, and/or a reconfiguration of an area outside a building;
- d. Flexible Lot Developments not required to be processed in accordance with the subdivision requirements of Article 8; and
- e. A residential, commercial, or industrial use reviewed as a subdivision plat, but no building permits may be issued until a site plan is approved for all or a portion of the subject subdivision plat. Any other application type listed in Section 3.3.3.A where a site plan submittal is determined by the PDSB Director to be necessary for adequate review of the application.

3. Application Processing

Site plans are processed in accordance with the applicable requirements of the PDSB Director Approval Procedure, Sections 3.3.3.B through F.

4. Review

City departments and applicable outside public agencies shall review an application and return comments on the application.²²

5. Approval

- a. When a determination has been made that an application complies with all applicable regulations, the PDSB Director shall send a written approval confirmation to the applicant and sign the site plan. An approved site plan indicates that all reviews have occurred and all conditions have been met.
- b. In the case of a rezoning, a written confirmation is used to initiate the preparation of the rezoning ordinance for Mayor and Council consideration. The PDSB Director shall sign the site plan once the rezoning ordinance is adopted and becomes effective.
- c. An applicant has one year from the date of application to obtain approval of a site 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 site plan application that has been in review for a period of one year and has not yet been approved is considered denied. To continue the review of a site plan for the property, a new site plan must be submitted that complies with regulations in effect at the time of re-

²²In response to SB 1598, the timeline previously included in this section has been relocated to Section 3, PDSB Review Timeline Policy, of the Administrative Manual.

submittal. The new submittal initiates a new one-year review period.

- d. Approved site plans shall be filed with the official building records for the site and shall be the basis for the issuance of building permits.

6. Expiration of Approval²³

Expiration dates for site plans are listed below. For the purposes of this Section, "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 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. Site Plan Approval Period and Expiration²⁴

Except in the case of a Protected Development Right Plan, Section 3.12.2, an approved site plan remains valid for a period of three years from the date of approval, subject to the following:

- (1) If, at the end of three years, a building permit has not been obtained, a new site plan application must be submitted that complies with the regulations in effect at the time of the re-submittal.
- (2) If the project is being developed in phases and permits have not been issued for all phases within the three year period, developers of subsequent phases have one additional year to obtain permits. If, at the end of the four year period, permits have not been issued, review and approval of a revised site plan for the undeveloped portion(s), in compliance with all applicable requirements in effect at the time of re-submittal, 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 site plan approval periods expire, the approval of the site plan is considered expired. Review and approval of a revised site plan, in compliance with all applicable requirements in effect at the time of re-submittal, 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 months to allow for completion of the review and for the issuance of permits.
- (5) If the approval period has expired, the re-submittal to obtain approval of a new site plan initiates a new review period in accordance with Section 3.3.3.B through .F.

²³ Text from LUC Sec. 5.3.8.2, with minor clarifications.

²⁴ This section is an attempt to to simplify the current code language.

7. Issuance of Permits

The following provisions apply to review and approval for the issuance of permits for site plans:

a. Approved Site Plan

The approved site plan on file with the PDSB is the basis for issuance of building permits. If the building plans differ from the approved site plan on file with the PDSB, a revised site plan will be required prior to issuance of the building permits.

b. Minor Changes

The PDSB Director may approve minor changes from the approved building or site plan without processing the plan through the entire review process. Determination as to whether the change is minor or major is made by the PDSB Director on a case-by-case basis. Changes in site design include, but are not limited to, minor changes to building height, density, land use, parking, and traffic circulation.

c. Major Changes

Major changes from the approved building or site plan require review and approval by the PDSB Director and affected review agencies. If the building or site plan is required as a special requirement imposed by the Mayor and Council as a condition of rezoning or special exception approval, a major change requires approval by the Mayor and Council prior to review of the revised plan.²⁵

d. Change From, or Expiration of, an Approved Site Plan

Building permit applications must be accompanied by a copy of an amended site plan bearing the approval of the PDSB Director for construction that is not consistent with the approved site plan or for which the initial approval has expired.

H. Zoning Compliance for Site Improvements in Existence on May 1, 2005²⁶

This Section encourages the re-use of and re-investment in older, nonconforming uses and buildings, and facilitates the issuance of a Certificate of Occupancy (C of O) or a Certificate of Zoning Compliance for a non-legally permitted use or building. The owner of property, at the time of a request for a Certificate of Occupancy or Certificate of Zoning Compliance may concurrently 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:

- 1.** This section only applies to developed property with nonresidential zoning that is not subject to any of the Overlay Zones in Sections 5.2 (Hillside Development Zone), 5.3 (Scenic Corridor Zone), 5.6 (Airport Environs Zone), 5.7 (Environmental Resource Zone), 5.8 (Historic Preservation Zone), 5.9 (Drachman School Overlay), 5.10 (Neighborhood Preservation Zone), 5.11 (Rio Nuevo District), or any change of zoning (rezoning), variance, or special exception approved subject to conditions, or the subject of an unabated

²⁵ The Minor and Major Changes sections are proposed additions to the UDC to clarify the difference between the two types of changes. These provisions are consistent with the minor and major change provisions used elsewhere in the UDC.

²⁶ Text from LUC Section 5.3.12.

zoning violation.

2. Existing site improvements are determined by referring to May 2005 aerial photography administered by the Pima Association of Governments (PAG) and available on the PAG and PDS websites.
3. Existing site improvements are not subject to compliance with the following:
 - a. Access, Section 7.8;
 - b. Accessory Uses and Structures, Section 6.6;
 - c. Dimensional standards as provided in Tables 6.3-1 through 7 in Article 6;
 - d. Height, Section 6.4.4;
 - e. Landscaping and Screening, Section 7.6;
 - f. Lot Coverage, Section 6.4.3;
 - g. Motor Vehicle and Bicycle Parking, Section 7.4;
 - h. Native Plant Preservation, Section 7.7;
 - i. Off-Street Loading, Section 7.5; and,
 - j. Perimeter Yards, Section 6.4.5.
4. Properties granted zoning compliance under the provisions of this Section 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. Alcoholic Beverage Service uses unless continuously licensed through the Arizona Department of Liquor Licenses and Control from May 1, 2005, to the present, Section 11.3.4.B;
 - b. Billboard, Section 11.3.4.F;
 - c. Correctional Use, Section 11.3.3.C;
 - d. Family Dwelling, Section 11.3.7.A;
 - e. Food Service uses unless continuously licensed through the Pima County Health Department from May 1, 2005, to the present, Section 11.3.4.N;
 - f. Group Dwelling, Section 11.3.7.B;
 - g. Mobile Home Dwelling, Section 11.3.7.C;
 - h. Residential Care Services, Section 11.3.7.D;
 - i. Restricted Adult Activities Use Group, Section 11.3.8
 - j. In the C-2 and C-3 Districts Medical Marijuana Designated Caregiver Cultivation Location, Medical Marijuana Dispensary, Medical Marijuana Dispensary Off-site Cultivation Location
 - k. In the I-1 and I-2 Districts Medical Marijuana Designated Caregiver Cultivation Location, Medical Marijuana Dispensary Off-site Cultivation Location
5. Required drop-off areas must be provided.
6. Use of the property must be in compliance with all applicable use-specific standards in Section 4.9.

7. This Section is applied to single or multiple parcels of land but may not be applied to partial parcels.
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 7.4.6 (Motor Vehicle Use Area Design Criteria) so long as no existing elements such as loading zones or dumpsters are deleted except as permitted under current standards.
9. The owner of the property shall:
 - a. Submit a sworn affidavit that the use of the property will be in compliance with the Section, 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 constitutes a material breach of this lease agreement entitling Lessor to invoke all remedies provided hereunder including termination."
10. A site inspection to verify that the use of the property is in compliance with this Section may be conducted at the discretion of the PDSD Director.
11. Applications are reviewed in accordance with the PDSD Director Approval Procedure, Section 3.3.3.
12. Zoning compliance granted pursuant to this section shall be valid only so long as the property and site improvements thereon remain in the same condition as on the date the zoning compliance is granted. Any subsequent development or modification to the property or site improvements will render zoning compliance under this section void and of no effect. Any modification or improvement not shown on May 2005 aerial photography administered by the Pima Association of Governments (PAG) will be considered a subsequent development of the property.
13. Requests for zoning compliance pursuant to this Section must be submitted to the PDSD, and all applicable fees must be paid, prior to the expiration date of the ordinance adopting this Section 3.3.4.G, as provided herein.

3.3.4. 50' NOTICE PROCEDURE FOR ZONING COMPLIANCE REVIEW²⁷

A. Purpose

Proposed development that involves minor modifications, small deviations to design criteria, or minor construction subject to design review shall comply with the following general procedures. This procedure is intended to provide notice to parties who may be affected by the development.

²⁷ Text regarding procedural requirements is from 23A-40.

B. Applicability

The 50' Notice Procedure applies to the following applications:

1. Approval of resident artisan uses in the Historic Preservation Zone;
2. Certain wireless facilities;
3. Design Development Options (DDO) in accordance with Section 3.11.1;
4. Parking Design Modification Requests to the required number of bicycle and motor vehicle parking spaces;
5. PDSD Director Special Exception applications;
6. Requests for demolition of contributing, nonhistoric structures in Historic Preservation Zones; and,²⁸
7. Other types of applications if the PDSD Director makes one of the following findings:
 - a. There is a minor change in the development criteria that is requested;
 - b. There are few, if any, changes in the physical attributes of the property;
 - c. There is a potential for impact upon the neighborhood or the adjacent properties;
 - d. Where there are commercial and office developments, (1) through (3) above apply and there is a benefit to area properties from the proposed redevelopment of the property; or,
 - e. There is an administrative special exception land use designated in the UDC related to the proposed development.

C. Pre-Application Conference Recommended

A pre-application conference with City staff is recommended, but not required. See Section 3.2.1 for details on the pre-application conference.

D. Neighborhood Meeting Recommended

The applicant is recommended, but not required, to conduct a neighborhood meeting with surrounding property owners and neighborhood association representatives.

E. Application and Notice of Application Required

Submittal of an application to the PDSD is required in order to process the request. See the Administrative Manual for application submittal requirements. Applications shall be reviewed for completeness in compliance with Section 3.2.3.A. Following acceptance by the PDSD, notice of the application is required in accordance with Section 3.2.4.B.

F. Public Comment Period

For ten (10) days following the date on which notice is provided, the public may submit comments on the proposal to the PDSD.

²⁸ Staff proposes no longer requiring RND MDR – Minor applications to be processed in accordance with the PDSD Director Approval Procedure and not the 50' Notice Procedure. This change would make processing of MDR's consistent with how IID MDRs are processed in the Downtown Core Subdistrict.

G. Review

Review is conducted by the PDSO staff and other agencies, committees or advisory boards as required by the UDC, and others as may be deemed appropriate by the PDSO Director.

H. Decision²⁹ and Notice of Decision

The PDSO Director shall approve or deny an application and send written notice of the decision in accordance with Table 3.2-1. The PDSO Director may impose conditions for approval of the application or may require further processing of the application in accordance with the 300' Notice Procedure, Section 3.3.5. The PDSO Director shall provide written notice in accordance with Section 3.2.4.

I. Appeals

A party of record may appeal the PDSO Director's decision to the Board of Adjustment (B/A). Appeals must be filed in accordance with Section 3.10.1 and .2. A notice of intent to appeal must be received by the PDSO within five days after the notice of decision. The complete appeal materials must be filed within 30 days of the decision.

J. Waiver of Comment, Notice of the Decision and Right to Appeal

The required time period for public comment, for notice of the decision, and for the filing of an appeal may be waived, if the applicant provides written documentation that all parties of record have waived one or more of these provisions.

3.3.5. 300' NOTICE PROCEDURE FOR ZONING COMPLIANCE REVIEW³⁰**A. Purpose**

The purpose of this procedure is to require notice to parties who may be affected by the development.

B. Applicability³¹

The 300' Notice Procedure applies to the following applications:

1. Mitigation plans for restaurants that are located within 300' of R-3 or more restrictive zoning district and that serve alcohol;
2. Projects within the Greater Infill Incentive Subdistrict of the Downtown Area Infill Incentive District requesting a Modification of Development Regulations; and,
3. Individual Parking Plans for projects within 300' of R-3 or more restrictive zoning districts.

C. Pre-Application Conference Required

A pre-application conference with City staff is required in accordance with Section 3.2.1.

²⁹ In response to SB 1598, the timeline previously included in this section has been relocated to Section 3, PDSO Review Timeline Policy, of the Administrative Manual.

³⁰ Now that the B/A and ZE Full Notice Procedures have been relocated to their respective sections, the Zoning Compliance 300' Notice (PDSO FNP) is the only remaining procedures in this section. Thus, we have relocated or deleted some of the introductory provisions that applied to all three procedures in order to streamline this section. Text from Sec. 23A-51 DSD Full Notice Procedure, with minor reorganization and clarifications.

³¹ This provision no longer requires projects within the HDZ, SCZ, ERZ, HPZ, and WASH overlay zones listed to be processed using the 300' Notice Procedure.

- D. Neighborhood Meeting Required**
The applicant is required to conduct a neighborhood meeting and shall provide notice of the neighborhood meeting in accordance with Section 3.2.2.C.
- E. Application and Notice of Application Required**
Submittal of an application to the PDSB is required in order to process the request. See the Administrative Manual for application submittal requirements. Applications are reviewed for completeness in compliance with Section 3.2.3.A. Following acceptance by the PDSB, notice of the application is required in accordance with Section 3.2.4.B.
- F. Public Comment Period**
For twenty (20) days following the date on which notice is mailed, the public may submit comments on the proposal to the PDSB.
- G. Review**
Review is conducted by the PDSB staff and other agencies, committees or advisory boards as required by the UDC, and others as may be deemed appropriate by the PDSB Director.
- H. Decision and Notice of Decision³²**
The PDSB Director shall approve or deny an application and send written notice of the decision in accordance with Table 3.2-1.
- I. Appeals**
1. The PDSB Director's decision may be appealed to the Mayor and Council on the grounds that the decision is not in conformance with the criteria established by the UDC;
 2. Appeals are processed in accordance with Section 3.9.2;
 3. The notice of intent to appeal must be filed with the City clerk no later than 14 days after the date of the decision;
 4. The complete appeal materials must be filed with the City Clerk within 30 days of the decision; and,
 5. A copy of the appeal is provided to the PDSB Director at the time it is filed.
- J. Site Inspection**
Prior to the issuance of an occupancy permit, the site shall be inspected by the PDSB for compliance with the plans approved for the issuance of building permits and any changes authorized by the PDSB Director to those approved plans during construction.

3.3.6. ZONING ADMINISTRATOR APPROVAL PROCEDURE

The following applications shall be processed in accordance with the Zoning Administrator Approval Procedure provided in Section 1.5.1 (Zoning Interpretations and Zoning Certifications):

³² In response to SB 1598, the timeline previously included in this section has been relocated to Section 3, PDSB Review Timeline Policy, of the Administrative Manual.

3.3.7 Historic Preservation Zone (HPZ) Design Review Procedure

- A. Compliance with certification of existing premises;
- B. Interpretations of the Unified Development Code;
- C. Planned Area Development Interpretation; and
- D. Zone boundary conflicts.

3.3.7. HISTORIC PRESERVATION ZONE (HPZ) DESIGN REVIEW PROCEDURE

Applications for projects within an HPZ are processed in accordance with the HPZ Design Review Procedure provided in Section 5.8.5.

3.3.8. NEIGHBORHOOD PRESERVATION ZONE (NPZ) DESIGN REVIEW PROCEDURE

Applications for applicable projects within an NPZ are processed in accordance with the NPZ Design Review Procedure provided in Section 5.10.3

3.3.9. RIO NUEVO DISTRICT (RND) DESIGN REVIEW AND MODIFICATION OF DEVELOPMENT REGULATIONS PROCEDURES

- A. **Major and Minor Project Design Review**
Major and minor project design review of projects within the RND are processed in accordance with the procedure provided in Section 5.11.8.
- B. **Major and Minor Modification of Development Regulations (MDR) Requests**
Major and Minor MDR requests are processed in accordance with the procedure provided Section 5.11.9.

3.4. SPECIAL EXCEPTION LAND USES³³

3.4.1. GENERAL

Special Exception Land Uses are often desirable but may have detrimental effects on adjacent properties or neighborhoods or on the surrounding community if not properly designed and controlled. Special Exception Land Uses are uses that are not allowed by right within a zone but are permitted if approved through a particular review process. A special review of these land uses is necessary to ensure that avoidable problems or hazards are not created and that such uses are consistent with the intent of this Section and the zones under which they are permitted.

Depending on the proposed use, a Special Exception Land Use application is processed in accordance with the PDSD Director, Zoning Examiner, or the Mayor and Council Special Exception Procedure.

3.4.2. PDSD DIRECTOR SPECIAL EXCEPTION PROCEDURE

- A. **Applicability**
Those uses identified in Section 4.8 (Use Table) as requiring processing in accordance with the PDSD Director Special Exception Procedure.

³³ Text from LUC Sec. 5.3.9.

B. Application

An application must be submitted to the PDSO to process the request. See the Administrative Manual for application submittal requirements. Applications shall be reviewed for completeness in compliance with Section 3.2.3.A.

C. Review and Decision

PDSO Director Special Exceptions are processed in accordance with the 50' Notice Procedure, Section 3.3.4. Approval shall be granted if the PDSO Director finds the proposal is in compliance with the findings provided in Section 3.4.5. The approval may be subject to conditions as provided in Section 3.4.6.

D. Appeals

A party of record may appeal the PDSO Director's decision to the Board of Adjustment (B/A). Appeals must be filed in accordance with Sections 3.10.1 and 3.10.2. A notice of intent to appeal must be received by the PDSO within five days after the date of the notice of decision. The complete appeal materials must be filed within 30 days of the date of the decision.

E. Projects Within the Airport Environs Zone (AEZ)³⁴

1. Special exception uses within the AEZ and projects within the AEZ requesting to exceed the limits of the Performance Standards as set forth in Section 5.6.8.A, B, and C are processed in accordance with the PDSO Director Special Exception Procedure; and,
2. These Special Exception applications shall be analyzed for:
 - a. Land use compatibility with Tucson airport or DM base operations;
 - b. Proximity to the end of the runway;
 - c. Location in relationship to major flight tracks; and,
 - d. Compliance with the intent of the DM Joint Land Use Study.

3.4.3. ZONING EXAMINER SPECIAL EXCEPTION PROCEDURE³⁵

A. Applicability³⁶

The following uses are processed in accordance with the Zoning Examiner Special Exception Procedure:

1. Those uses identified in Section 4.8 (Use Table) as requiring processing in accordance with the Zoning Examiner Special Exception Procedure;
2. Expansions of nonconforming uses; and
3. Substitutions of nonconforming uses if the proposed use is not within the same land use class as the existing use.

B. Pre-Application Conference Required

A pre-application conference with City staff is required in accordance with Section 3.2.1.

³⁴ Text from LUC Sec. 2.8.5.10. Text moved to this section for better organization and per staff comment.

³⁵ The introduction to this section is deleted because it is redundant with the provisions already provided in the section.

³⁶ In response to staff comment, this text (Zoning Examiner Special Exception Full Notice Procedure) was relocated, and modified as necessary, from previous Sec. 3.3.4.F. Text originally from Sec. 23A-53 Zoning Examiner Special Exception Full Notice Procedure, with minor reorganization and clarifications.

- C. Neighborhood Meeting Required**
The applicant is required to conduct a neighborhood meeting and provide notice of the meeting in accordance with Section 3.2.2.
- D. Application and Notice (Mailed and Posted) Required**
Submittal of an application to the PDSO is required in order to process the request. See the Administrative Manual for application submittal requirements. Applications shall be reviewed for completeness in compliance with Section 3.2.3.A and for compliance with the neighborhood meeting requirements of Section 3.2.2. Following acceptance by the PDSO, mailed and posted notice of the application is required in accordance with Section 3.2.4.
- E. Public Comment Period**
For a period of 20 days following the date on which notice is mailed, the public may submit comments on the proposal to the PDSO.
- F. Review**
Review is conducted by the PDSO staff and other agencies, committees or advisory boards as required by the UDC, and others as may be deemed appropriate by the PDSO Director.
- G. PDSO Director Recommendation**
The PDSO Director shall prepare a recommendation and forward it to the applicant and the Zoning Examiner.
- H. Zoning Examiner's Public Hearing**
A public hearing must be held before the Zoning Examiner within 70 days of acceptance of the application. Public hearings are held in accordance with the following and the Zoning Examiner's rules and procedures.
1. The Zoning Examiner shall administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party.
 2. The Zoning Examiner may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.
 3. Comments may be given by any person, either verbally or in writing.
 4. A record of the hearing must be made and retained as a public record.
 5. The Zoning Examiner may close the public hearing, or continue the public hearing to a specified time, date and place. A continuance may not be for more than 30 days.
- I. Zoning Examiner's Decision**
Within five days after the close of a hearing, the Zoning Examiner shall make a decision to approve, approve with conditions as provided in Section 3.4.6, or deny the application. Approval shall be based on the findings as provided in Section 3.4.5.

3.4.4 Mayor and Council Special Exception Procedure

J. Appeal

The Zoning Examiner's decision may be appealed to the Mayor and Council by any party of record in accordance with Section 3.9.2 by submitting a notice of intent to appeal to the City Clerk within 14 days from the date of the decision with a copy delivered to the PSDS. The complete appeal materials must be filed with the City Clerk within 30 days of the decision.

K. Change in Condition of Approval

An applicant may request a change in a condition of approval of a Zoning Examiner Special Exception land use. The request must be submitted to the PSDS and reviewed by the PSDS staff for recommendation to the Zoning Examiner. The request is then considered at a public hearing in accordance with procedures in this Section 3.4.4.I.

3.4.4. MAYOR AND COUNCIL SPECIAL EXCEPTION PROCEDURE

A. Applicability

Those uses identified in Section 4.8 (Use Table) as requiring processing in accordance with the Mayor and Council Special Exception Procedure.

B. Application Processing

1. Mayor and Council Special Exceptions applications are processed in accordance with the Zoning Examiner Special Exception Procedure, Sections 3.4.3.B – I, and the following:
2. The Zoning Examiner shall forward a recommendation with findings, and when applicable, conditions on the proposed use to the Mayor and Council for decision.
3. Any person may request that the application be heard at a public hearing before the Mayor and Council if the request is filed with the City Clerk within 14 days after the date of the Zoning Examiner's public hearing or reconsideration public hearing. Notice of the public hearing must be provided in the same manner as the notice provided for the Zoning Examiner's public hearing.
4. The Mayor and Council shall make a decision to approve, approve with conditions as provided in Section 3.4.6 below, or deny the application.

3.4.5. FINDINGS

A. Findings for all PSDS Director and Zoning Examiner Special Exceptions

To grant a Special Exception the PSDS Director and the Zoning Examiner must find that the requested Special Exception:

1. Meets the standard expressly applied by all adopted by all codes and regulations for that type of land use or for the Land Use Class applicable to the proposed use.
2. Does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions as provided in Section 3.4.6;
3. Provides for adequate and efficient vehicular and pedestrian access and circulation and vehicular parking;

4. Can be adequately and efficiently served by public facilities and services, such as water, stormwater drainage, fire and police protection, and solid and liquid waste disposal and/or collection as may be required by the various public and private agencies; and
5. Complies with the General Plan and any applicable sub-regional, area, or neighborhood plan.

3.4.6. CONDITIONS OF APPROVAL

A. Authority to Apply Conditions.

In approving an application, the PDSO Director, the Zoning Examiner, or the Mayor and Council may impose such reasonable and appropriate conditions and safeguards as are necessary to ensure compliance with the criteria for approval. Conditions and safeguards may also be imposed to reduce or minimize any potentially injurious effects on adjacent properties; the character of the neighborhood; or the health, safety, or general welfare of the community. Such conditions may include, but are not limited to:

1. Structural or vegetative screening greater than that required by the landscaping and screening standards of the UDC to buffer the surrounding land uses from the proposed use.
2. Limitations on the height, size, or illumination of signs more restrictive than the applicable requirements of the Tucson Sign Code;
3. Limitations on the conduct of the proposed use, such as, but not limited to, hours of operation, or use of loudspeakers or external lighting, as necessary to protect adjacent land uses.
4. Dedication of necessary right-of-way for streets, alleys, drainageways, and utilities.

3.5. REZONING (CHANGE OF ZONING)³⁷

3.5.1. GENERAL

Changes to zoning boundaries are considered in accordance with the Zoning Examiner Legislative Procedure as provided in the section. The procedure requires a public hearing conducted by the Zoning Examiner (ZE) and a final decision by the Mayor and Council.

3.5.2. TYPES OF REZONING ORDINANCES³⁸

All rezoning ordinances require compliance with one or more conditions of rezoning including substantial compliance with the preliminary site plan submitted in support of the rezoning application. The three types of rezoning ordinances, all considered final actions, are as follows.

³⁷ In response to staff comment, this rezoning section has been revised to include the Zoning Examiner Legislative Process from previous Sec. 3.3.5 so that all the major rezoning procedures, except uniform procedures, are in one place. Other procedures, such as the PAD or PCD, that use the ZELP have been revised to refer to the ZELP in this rezoning section. Most of this section is taken from DS 1-07.0 Rezoning Procedures, with significant deletions (for obsolete code references) and clarifications.

³⁸ This section was moved from the bottom of this section to the beginning because it is essentially introductory information.

A. Building Permit

This is the standard type of rezoning ordinance. In addition to other conditions of rezoning, a building permit rezoning ordinance requires issuance of a building permit for construction of the principal structure(s) on the rezoning site to effectuate the rezoning. Permits issued for grading, electrical, sidewalks, patio walls, fences, storage buildings, and other similar types of improvements will not effectuate the rezoning. The building permit must be secured within the time period allowed for the rezoning case. If all conditions of rezoning are met prior to expiration of the rezoning approval, the new zoning becomes effective, and the zoning map is changed to reflect the new zoning.

B. Subdivision Plat

1. This type of rezoning ordinance requires compliance with the conditions of rezoning, including the completion of the rezoning process through the recordation of a subdivision plat. Where the plat demonstrates compliance with the conditions³⁹ and the subdivision plat is approved and recorded within the time period allowed, the new zoning becomes effective, and the zoning base maps are changed to reflect the new zoning.
2. The use of this type of ordinance is generally limited to single-family residential projects, where division of lots is such that the property cannot be used for other purposes without replatting. Staff may recommend the use of this type of ordinance for other forms of development where, in staff's opinion, the same intent can be accomplished. In such instances where there is a site plan approved for the project, and the project is a large multi-use development with phased construction, the subdivision plat can be a block (or master) subdivision plat, with each block encompassing each land use area.
3. Under this option, a rezoning ordinance may be forwarded to the Mayor and Council based on an approved tentative plat, provided it can be shown that all conditions of rezoning have been met, with the exception of the recordation of the plat. The effectuation of the rezoning is subject to the recordation of the final plat prior to the expiration of the time period applicable to the rezoning. Although an ordinance may be adopted based on the approved tentative plat, no permits may be issued on the project until the plat has been recorded and the new zoning has become effective.

C. Site Inspection

This type of rezoning ordinance applies to those rezoning applications where the eventual improvements to the property do not require the issuance of a building permit or the recordation of a subdivision plat. The rezoning ordinance requires conditions of rezoning, including the requirement that a site inspection be conducted to verify that the Mayor and Council conditions of rezoning have been met. The purpose of the site inspection is to verify that site improvements have been installed on the rezoning site within the time period allowed, in accordance with an approved site

³⁹ Changes made per staff comments.

plan. Once the site is inspected and compliance is confirmed, the new zoning becomes effective, and the zoning base maps are changed to reflect the new zoning.⁴⁰

3.5.3. ZONING EXAMINER LEGISLATIVE PROCEDURE

A. Applicability

The Zoning Examiner Legislative Process includes both Zoning Examiner review and Mayor and Council actions. The following applications are processed in accordance with the Zoning Examiner Legislative Procedure:

1. Original City zoning for newly annexed areas;
2. Amendments to the zoning of specific properties including changes in the zoning classifications (rezoning)⁴¹;
3. Rezoning to the Planned Area Development (PAD) zone (see Section 3.5.6 for additional requirements);
4. Rezoning to the Planned Community District (PCD) (see Sec. 3.5.7 for additional requirements);
5. Rezoning of properties to establish an overlay zone (e.g. Neighborhood Preservation Zone and Urban Overlay District); and,
6. Certain Special Exceptions.

B. Pre-Application Conference Required

1. A pre-application conference with City staff is required in accordance with Section 3.2.1.
2. City staff will also make a preliminary determination of whether the proposal complies with the goals and policies of the General Plan and any applicable Specific Plan, including Area and Neighborhood Plans. The applicant may request that the PDS Director provide the determination of plan compliance in writing prior to submittal of an application.
3. Review is on a conceptual basis, therefore, comments made at a pre-application conference are advisory and do not constitute approval or denial of the project.

C. Neighborhood Meeting Required

1. The applicant shall offer to meet at a specified time and place to discuss the proposed project in compliance with Section 3.2.2. For rezonings initiated by the Mayor and Council, a neighborhood meeting may be conducted as part of a

⁴⁰ The following language regarding “future development” has been moved to the enforcement section of a later draft of the UDC: “Once a rezoning case is completed and the zoning changed, the approved development plan and rezoning conditions remain as part of the public record and run continuously with the land, regardless of ownership. Change of use, removal or modification of improvements (including landscaping, screening, and parking) shown on the plan, or additions made without going through the development plan process for approval for a change in the approved development plan constitute a zoning violation.”

⁴¹ Deleted two sentences are no longer necessary because the relevant provisions of Sec. 3.3.5 have been relocated to this section.

broader public outreach process facilitated by the PDSO and other departments as needed.⁴²

2. Exception. For the designation or amendment to a Historic Preservation Zone, the offer to meet shall be made no more than one year before the Zoning Examiner Public hearing;

D. Application Requirements

1. General

See the Administrative Manual for application submittal requirements. Applications are reviewed for completeness in compliance with Section 3.2.3.A.

2. Initiation

A rezoning may be initiated by the property owner or the owner's agent upon submittal of a written application to amend the zoning on the property. A rezoning may also be initiated by a majority vote of the Mayor and Council.

3. Plan Amendment Determination⁴³

Rezoning applications must be in conformance with adopted plan policies before a rezoning application may be accepted for processing. A determination of plan compliance shall be made in one of the following three ways:

a. Plan Compliance Determination

- (1) Prior to submittal of a rezoning application, the PDSO Director will provide the applicant with a preliminary determination of plan compliance at the pre-application conference.
- (2) Prior to submittal of a rezoning application, the applicant may request in writing that the PDSO Director provide a written determination of plan compliance.

b. Determination by the PDSO after Application for Rezoning

Upon submittal of an application for rezoning, the PDSO Director shall provide a written determination of land use plan compliance to the applicant.⁴⁴ If the proposal is found to comply with the applicable plans, the rezoning application is formally accepted. If the Director determines a plan amendment is necessary, no further formal processing of the application may occur until the applicant requests a plan amendment in accordance with Section 3.6. A written notice of decision shall be provided if it is determined that a plan amendment is required.

c. Appeal of Plan Amendment Determination

The PDSO Director's decision that a plan amendment is required may be appealed to the Mayor and Council. The appeal must be submitted in writing to the PDSO within ten days of the date of PDSO Director's written notice of decision. Appeals shall be processed in accordance with

⁴² This provision was added to clarify that for city-initiated rezonings a neighborhood meeting is typically only one part of a larger public outreach process.

⁴³ Text from DS 1-08.5.0 Plan Amendment Determination.

⁴⁴ In response to SB 1598, the timeline previously included in this section has been relocated to Section 3, PDSO Review Timeline Policy, of the Administrative Manual.

procedures set forth in Mayor and Council Appeal Procedure, Section 3.9.2. An appeal stays all processing until the appeal is heard and decided.

E. Notice of Application

Notice is required as follows:

1. Mailed Notice

- a. Notice must be sent to those individuals and neighborhood associations in accordance with Section 3.2.4.B.6 and Table 3.2-1. Notice shall also be sent to all parties of record on a previous hearing on the same application.⁴⁵
- b. See Section 3.2.4.B.3 for the mailed notice's content requirements.

2. Posted Notice

Notice shall be posted on the subject site in accordance with Section 3.2.4.F, Posted Notice.

F. Public Comment Period

There is a period of twenty (20) days following the date on which notice is mailed for submission of comments on the proposal to the PDSD.

G. Review

Review is conducted by the PDSD staff and other agencies, committees or advisory boards as required by the UDC and as may be deemed appropriate by the PDSD Director.

H. Changes to the Rezoning Application

If the applicant proposes changes to the rezoning application, including any supporting materials, after the application has been accepted for processing, the PDSD Director shall determine whether or not the proposed changes are significant enough to require additional staff or agency review.

1. If the changes require additional review, the changes may be accepted only if the revised application is submitted prior to the legal advertisement and public notification of the public hearing and the changes are accompanied by the applicant's written consent to begin anew the process from the date of submittal of the revised application.
2. Upon submitting a significant change to the rezoning application, the applicant shall also submit a signed letter waiving the 70-day public hearing requirement to allow for proper staff evaluation of the new information.
3. Once the public hearing has been advertised, any request to delay the public hearing or to change the application must be submitted to the Zoning Examiner for determination. If the public hearing is delayed, the applicant shall remit to the City an additional rezoning public notice label fee to provide mailed notice to neighbors of canceled public hearing and the rescheduled public hearing date), and an additional public hearing legal advertisement fee. If the rescheduled

⁴⁵ Proposed for deletion because "affected property owners" are assumed in the term "parties of record."

public hearing date cannot be determined when the notice of cancellation is mailed to neighbors, a second public hearing notice label fee must be paid by the applicant to provide the required notice to the neighboring property owners.

I. Planning and Development Services Department (PDS) Recommendation

After City departments and public service agencies have reviewed and provided comment on the application, a staff report is prepared by the PDS. The report is distributed to the Zoning Examiner, the applicant, and the owners of property located within 300 feet of the rezoning site and made available to the public at least 15 days prior to the public hearing.

J. Public Hearing

1. Applications reviewed under this procedure are considered by the Zoning Examiner at a public hearing(s) for recommendation to the Mayor and Council.

2. Original City Zoning⁴⁶

Upon the effective date of annexation of property into the City, the City may adopt original City zoning or may continue the existing county zoning for a period not to exceed six months. The original City zoning shall only be initiated by the Mayor and Council. Notice of initiation must be provided in conformance with A.R.S. §9-461.06.A and the notice requirements of Section 3.2.4. A case that establishes original City zoning may be initiated any time after the filing of a blank petition for annexation of the subject property with the office of the Pima County Recorder in accordance with state law.

3. Zoning Examiner Public Hearing

The Zoning Examiner shall hold a public hearing on behalf of the Mayor and Council on applications for a change of zoning and on applications for Mayor and Council Special Exception Land Uses. The public hearing procedures set forth in this Section is used for both types of applications. The public hearing must be held within 70 days of acceptance of the application, except for applications for original City zoning.

a. Conduct of the Public Hearing

(1) The Zoning Examiner is empowered to obtain information from all parties and interested persons, including public agencies, prior to the public hearing, provided all requests for information are in writing and the request and information are included as part of the public record. The Zoning Examiner also has the authority, after the close of the public hearing, to obtain additional information or clarification of information that has been presented. Any such request shall be in writing and the request and response shall be included as part of the record or report to the Mayor and Council. The Zoning Examiner may close the public hearing, or may continue the hearing to a specified date, time and place. However, a continuance may not be for more than 30 days.

⁴⁶ This section was reorganized consistent with staff direction. The material is relocated text from the ZELP section.

(2) Except a permitted in subsection (1) above, the Zoning Examiner shall not communicate, directly or indirectly, with any party, any party's representative or any interested person in connection with any issue involved with a particular request, except upon notice and opportunity for all parties to participate; use, or rely upon any communication, report, staff memorandum, or other material prepared in connection with the particular case. Any and all written information received by the Zoning Administer in the case must be made a part of the record. The Zoning Examiner may inspect the site provided all parties are given an opportunity to be present.

b. Zoning Examiner's Preliminary Recommendation

The Zoning Examiner shall issue a report with preliminary findings and a preliminary recommendation within five days after the close of a hearing. The preliminary recommendation is provided to the applicant, the PDSO Director and to any person who has requested a copy of the preliminary recommendation.

c. Reconsideration

Any party of record may request that the preliminary recommendation be reconsidered or that the public hearing be reopened if there are errors of fact or procedure. The request shall state the alleged errors of fact or procedure and must be submitted to the Zoning Examiner within five days after the date of the preliminary recommendation. The Zoning Examiner must take action on the request within five days following the receipt of a request for reconsideration. Action on the request includes revising the preliminary recommendation, reopening the public hearing, or denying the request.

d. Final Recommendation

Within 14 days following the close of the public hearing or the re-opened public hearing, the Zoning Examiner shall issue and transmit a final recommendation to the Mayor and Council for final action. If the Zoning Examiner determines that minor corrections to the preliminary recommendation are appropriate in response to a request for reconsideration, such corrections may be incorporated into the final recommendation without further proceedings. No further requests for reconsideration are permitted. If the Zoning Examiner determines that a significant change to the preliminary recommendation is appropriate, the public hearing must be reopened with notice provided to all persons who received the previous preliminary recommendation.

e. Reopening of the Public Hearing

If the public hearing is reopened, the new hearing must be held within 40 days of the close of the last public hearing. Notice of the reopened hearing is the same as the notice for the original public hearing. If the public hearing is reopened at the request of a party, or to consider new information from a party, the Zoning Examiner may require that the party pay the costs for the re-opened public hearing. At the conclusion of the reopened hearing, the issuance of a preliminary recommendation, the time period for reconsideration, the issuance of a final recommendation

and the time periods for each shall be the same as for the original hearing.

f. Mayor and Council Public Hearing Request

Any person may request that the application be heard at a public hearing before the Mayor and Council if the request is filed with the City Clerk within 14 days after the date of the Zoning Examiner's public hearing or reconsideration public hearing. The Mayor and Council may also decide to conduct a public hearing without a specific request. If a public hearing is requested, notice must be provided in the same manner as the notice provided for the Zoning Examiner's public hearing.

K. Mayor and Council Action

1. Mayor and Council Public Hearing Request

Any person may request that the application be heard at a public hearing before the Mayor and Council if the request is filed with the City Clerk within 14 days after the date of the Zoning Examiner's public hearing or reconsideration public hearing. The Mayor and Council may also decide to conduct a public hearing. If a public hearing is requested, notice must be provided in the same manner as the notice provided for the Zoning Examiner's public hearing.

2. Authorization for Change of Zoning (Rezoning)

Where a change in zoning is requested based upon a preliminary site plan, the Mayor and Council may make a preliminary determination to authorize the applicant to proceed with the case.

a. Authorization for the Application to Proceed

A vote by the Mayor and Council to authorize a change of zoning case constitutes authorization for the applicant to proceed, subject to the applicant's subsequent demonstration of compliance with any special conditions that may have been established by the Mayor and Council. Unless the Mayor and Council state a shorter time period, the applicant must complete all conditions of approval within five years from the date the request is authorized.

b. Discretion of the Mayor and Council

An authorization for a change of zoning is preliminary and does not in any way limit the legislative discretion of the Mayor and Council to determine whether or not to adopt a change of zoning ordinance or to add conditions thereto at the time an ordinance is presented for adoption. Authorization does not establish any vested right to the authorized zoning prior to ordinance adoption.

3. Direct Ordinance Adoption

Where a change of zoning application includes a site plan or a proposed plat that provides sufficient specific details to demonstrate compliance with all conditions that may be required by the Mayor and Council and is in compliance with this Section, the application may proceed from staff review to Mayor and Council ordinance adoption without a separate Mayor and Council authorization to proceed with the application.

a. Mayor and Council Actions

The Mayor and Council shall consider the change of zoning application, the Zoning Examiner's recommendation, and the City Manager's recommendation in a public meeting or a public hearing. The Mayor and Council may authorize the case to proceed; may modify, delete or add to the proposed conditions for approval; may remand the case to the Zoning Examiner for further proceedings; may adopt an ordinance changing the zoning, deny the application; or may take other appropriate action.

b. Davis Monthan AEZ Comments

If Davis Monthan Air Force Base submits comments to the City on any application concerning the compatibility of the proposed rezoning with the high noise, accident potential zone, or approach-departure corridor that may have an adverse impact on the operation of the base or upon public health and safety, a public hearing shall be held to consider these and other comments per requirements of the A.R.S.

4. Mayor and Council Adoption of the Change of Zoning

- a.** If an application substantially demonstrates compliance with the conditions for a change of zoning, staff shall prepare an ordinance to be submitted to the Mayor and Council for adoption enacting the change in zoning.
- b.** For a project that is to be completed in phases, the Mayor and Council may adopt a separate ordinance for each phase of the project, but only if each phase submitted for approval can meet all required conditions and codes without reliance on future phases.

5. Voting Requirements

Adoption of a change of zoning must be by a vote of three-fourths of all members of the governing body if written protests are filed by property owners who own twenty percent or more of the area within one of the following areas.

- a.** The entire area of the lot or lots within the subject site.
- b.** Property in any one of the following quadrants: north, south, east, west, that is located within 150 feet of the rezoning site, excluding public right of way abutting the subject site.

6. Ordinance Effective Date

Ordinances granting changes in zoning are, by state statute, subject to referendum and shall not become effective until 30 days after the date of adoption or the date the final ordinance is available from the City Clerk, whichever is later. The effective date of the ordinance is not necessarily the effective date of the change of the zoning (rezoning). The effective date of the change of zoning is when compliance with conditions of approval is completed and certified by the PDS Director. No permits or development approvals may be granted that are in furtherance of the rezoning request until the 30 days have lapsed and the conditions of rezoning have been met.⁴⁷

⁴⁷ This last sentence was relocated from Sec. 3.4.1.L.3 of this draft, which was deleted from that section for redundancy reasons with the ZE legislative procedure in this section.

3.5.4 Change in Conditions of Approval and Completion of Conditions

7. Reconsideration

A member of the Mayor and Council may request the reconsideration of an authorization decision or decision on a proposed ordinance provided the vote to reconsider is made within 30 days of the date of decision. A hearing for reconsideration will be scheduled upon a majority vote in favor of the reconsideration. If the reconsideration occurs after the meeting when the decision is initially made, then public notice of the reconsideration must be given in the same manner as for the initial decision.

3.5.4. CHANGE IN CONDITIONS OF APPROVAL AND COMPLETION OF CONDITIONS

An applicant may request a change to conditions of approval. The PDSO Director shall make a determination as to whether a proposed change to the conditions of rezoning, to the preliminary site plan, or to the approved site plan is major, minor, or administrative. A request to change conditions of approval is considered as follows.

A. Types of Changes⁴⁸

The three types of changes are as follows:

1. Major Change

(a) Density or increase in non-residential floor area condition. This change involves, 1) if the number of residences increases by ten percent or greater; or in any case increases by fifty or more units; or 2) if the non-residential floor area increases by ten percent or greater;

(b) Design condition. This change involves a quantified physical dimension established in a condition to adapt to specific site characteristics or mitigate development impacts on the site and surrounding land uses. Examples of such dimensions include setbacks, heights, landscape buffers, natural areas, or areas to be disturbed, when these are illustrated on the preliminary site plan or stated in a condition;

(c) Use condition. This change involves an illustration on the preliminary site plan or a change stated in a condition that only a specific set of uses are permitted on the site; or

(d) A change in a preliminary site plan when the building area is substantially reconfigured such that traffic generated by the new layout will increase 10% or greater over the previous layout's proposed traffic generation.

2. Minor Change

A change in the rezoning conditions or preliminary site plan that is not a major change or an administrative change.

3. Administrative Change

A change in a feature of a preliminary site plan for an approved rezoning when the result is still in substantive compliance with the approved rezoning. Administrative changes are approved by the PDSO Director. The Director shall make a finding that the change will not create a nuisance on adjoining land uses or cause a safety hazard.

⁴⁸ This is a new section recommended by staff to clarify the different types of changes.

3.5.4 Change in Conditions of Approval and Completion of Conditions

B. Procedures for Changes

1. Minor Amendment to a Preliminary Site Plan

A request for a minor amendment to a preliminary site plan that was approved by the Mayor and Council is considered a change to conditions of approval that may be granted by the PDSO Director.

2. Major Amendment to Conditions or the Preliminary Site Plan

A request for a major amendment to the conditions of approval or the approved preliminary site plan requires Mayor and Council approval after a public hearing. Notice of such hearing must be given in the same manner as for the procedure adopting the conditions. The same voting requirements as for the original adoption shall apply to the request for a substantial change of conditions.

3. Minor Changes to conditions

Minor amendments to conditions of approval must be considered by the Mayor and Council in a public meeting.

C. Time Period for Completion of Conditions

1. The Mayor and Council, when authorizing a rezoning request, shall establish a time period to meet all conditions of rezoning. The time period shall begin the day after the date of authorization.

2. The required length of the time period to complete conditions of rezoning may range from one day to five years. By Mayor and Council policy, the staff recommendation for rezoning requests that involve a zoning violation is a one-year period. For rezoning requests that do not involve a zoning violation, a five year period is recommended.

D. Extension of Time

1. When a rezoning request has been authorized or an ordinance adopted and the specified time period within which to complete all conditions of rezoning has lapsed, the case file shall be closed. A closed case may be reactivated only by the Mayor and Council after a public hearing on the reactivation of the case.

2. A time extension may be requested before the time period for completion of the ordinance conditions expires. The request must be filed prior to the expiration date so Mayor and Council can take action on the request prior to the expiration of rezoning.

3. The filing of a time extension request initiates a staff review to determine whether the request should be approved or denied, and whether conditions should be revised to reflect new conditions, or practice. New conditions may be added as part of the staff review. At the end of the staff review period, a communication to Mayor and Council is drafted and forwarded to the City Clerk for City Manager review and Mayor and Council consideration.

4. The Mayor and Council shall consider the time extension request after a public hearing, in the circumstance where the time extension request does not extend the expiration period beyond five years from the most recent public hearing on the

3.5.5 Planned Area Development (PAD) ZONE

case. However, no time extension may be granted beyond ten years from the original date of approval.

5. Where an ordinance has been adopted, the last public hearing before the ten year limitation shall provide for the repeal of the adopted ordinance if the conditions are not completed prior to the expiration of the ten year period.

E. Completion and Certification

A case is deemed complete and final when the conditions of approval are verified as complete by the PDS Director. The conditions may include, but are not limited to the issuance of a building permit, the recording of legal documents, such as a subdivision plat, or issuance of a zoning compliance certificate upon a site inspection. When completion of the conditions has been verified the PDS Director shall certify completion of the conditions and the zoning on the property shall be changed in accordance with the adopted ordinance.

F. Time Limitations on Re-filing

1. Mayor and Council policy and the Rules and Procedures of the Zoning Examiner require that a new request for rezoning on property previously denied rezoning by the Mayor and Council may not be accepted for a period of one year from the date of denial, except:
 - a. When the new case does not involve a request for a zone that was denied or recommended as a substitute zone and rejected by the original applicant; or
 - b. When a substantial change in the use of adjacent property has occurred since the previous case was heard that could not have been anticipated; or
 - c. When there has been a change in ownership and a substantially modified site plan is presented.
2. Mayor and Council policy recognizes the Pima County Board of Supervisors' one-year policy with respect to rezoning applications that have been denied, where these properties are later annexed into the City. The one-year waiting period begins on the day after the date the Board of Supervisors denied the application.

3.5.5. PLANNED AREA DEVELOPMENT (PAD) ZONE⁴⁹

A. General

1. The purpose of the Planned Area Development (PAD) zone is to enable and encourage comprehensively planned development in accordance with adopted plans and policies.
2. The PAD is a zoning classification which provides for the establishment of zoning districts with distinct standards.

⁴⁹ Most of this section is taken from the recent 2009 amendments and DS 1-06-0, starting at 1-06.3.3, except where noted otherwise, with minor clarifications. The plan compliance provisions are deleted because they are already covered in the Zoning Examiner Legislative Procedure. The Initiation provision is deleted because it is generally understood that a rezoning or any other procedure is initiated by the submittal of an application.

B. Distinct Dimensional Standards Permitted

1. A PAD may have dimensional standards different from those of other zoning districts.
2. When a provision in a PAD varies from the UDC, the provisions in the PAD shall govern.

C. Application Processing and PAD Establishment

1. Each PAD must be in compliance with the General Plan and applicable sub-regional and neighborhood plans.
2. A PAD is processed and established in accordance with Section 3.5.3, *Zoning Examiner Legislative Procedure*, and the following additional requirement.
3. Within 30 days after the PDSB Department recommends approval, the PAD rezoning request is scheduled for a public hearing before the Zoning Examiner.

D. Established Districts

1. PADs are identified on the City Zoning Maps by the letters "PAD" followed by a number, such as "PAD-1," signifying the set of standards adopted and applicable to that Planned Area Development.
2. The PDSB is responsible for maintaining the list of established PADs.

E. PAD Implementation⁵⁰

PADs are implemented in accordance with the procedures in this Section 3.5.6. PADs may establish additional implementation procedures, provided such methods are not in conflict with required procedures and are fully described by the PAD document.

F. Site Plan Review

No development may occur within a PAD until a site plan for the development is approved by the City in accordance with Section 3.3.3, *PDSB Director Approval Procedure*.

G. Enforcement

Standards adopted for each PAD are enforced in the same manner as the enforcement of any zoning violation as provided in Section 10.2.

H. Interpretation

The Zoning Administrator shall interpret a PAD in accordance with Section 1.5.1, *Interpretation by the Zoning Administrator*. Interpretations of UDC zoning provisions may be applied to similar PAD provisions.

⁵⁰ Txt from LUC Sec. 2.6.3.7.

I. Amendment to an Adopted PAD⁵¹

1. PAD amendments must be in substantial conformance with the objectives of the PAD. Changes to conditions and terms of a PAD that affect the overall density, intensity, and classifications of land uses must be processed as a new change of zoning. Changes to other conditions of a PAD must comply with the procedures for changes of conditions in this section.
2. Amendment Application
 - a. An amendment to a PAD may be initiated by the property owner, the owner's agent, or the Mayor and Council upon submittal of a written application to amend one or more of the PAD standards.
 - b. The application must be accompanied by a statement documenting the need for the amendment.
 - c. The PDSO Director shall determine if the amendment would result in a major change in the PAD. A major change is one which:
 - (1) Allows uses not otherwise permitted in the PAD or a section of the PAD;
 - (2) Varies or changes a PAD policy;
 - (3) Increases the number of proposed residences per acre by more than ten percent or exceeds the maximum number of dwelling units permitted within the adopted PAD;
 - (4) Changes designated buffers or perimeter landscaping, as delineated in the PAD, which was established to adapt the PAD to specific site characteristics or mitigate development impacts on the site and surrounding area;
 - (5) Varies the building height, lot coverage, or building setbacks by more than ten percent of that delineated in the adopted PAD;
 - (6) As a consequence of more than one non-substantial change submitted concurrently, cumulatively results in a significant change in the objectives or goals of the PAD; or
 - (7) Results in a significant change in pedestrian or traffic circulation within the PAD or in the surrounding area.
 - d. Major changes to a PAD are processed in accordance with Sections 3.5.3, Zoning Examiner Legislative Procedure. A major change may require, as determined by the PDSO Director, submittal of amended items, such as a site analysis.
 - e. The PDSO Director may approve changes determined to be minor or administrative.
 - f. When requested in writing by the applicant, the PDSO Director may authorize a delay in the PAD amendment process.

⁵¹ Text from LUC Sec. 2.6.3.11.

3.5.6. PLANNED COMMUNITY DEVELOPMENT (PCD) ZONE⁵²

A. Purpose⁵³

1. Accommodate large-scaled, unified planned developments that conform to the best practices, policies and programs within the City's General Plan, applicable specific plans, and other sustainability and conservation programs.
2. Provide an alternative zoning district and development process to accommodate large master-planned developments that allow development flexibility not otherwise attainable under conventional zoning districts and allow for adjustments to changing community and market conditions.
3. Provide a framework to promote sustainable land use patterns and mobility options while being responsive and sensitive to the natural features and topography of the desert environment.
4. Provide within such developments a variety of housing, including affordable housing, and combination of land uses with sound site planning principles and development techniques.
5. Promote the timely planning, funding and development of public facilities designed to serve the projected population.

B. General Provisions⁵⁴

1. Conformance with the General Plan

- a. Each PCD must be in compliance with the General Plan and applicable specific plans.

b. Specific Plans

A PCD is permitted only in areas where there is an existing specific plan. In areas where there is no existing specific plan, an applicant may submit an application for a PCD so long as an application for a Specific Plan, consistent with the application for the PCD, has already been submitted pursuant to Sec. 3.6. The application for the PCD will be processed concurrently with the application for the specific plan, but the PCD may not be adopted until after the adoption of a Specific Plan.

2. Ownership of the PCD

Upon application for and approval of the PCD, the site of the PCD, with the exception of public rights-of-way, must be under single ownership or control of a single entity with legal authority to conduct the application process on behalf of all the landowners.

3. Minimum PCD Area

- a. A PCD must be the minimum size as required in the applicable General Plan, specific plan, or a minimum of 500 contiguous acres, whichever is greater.
- b. Public rights-of-way located within the interior of a PCD may be included in calculating the minimum 500 acres.

⁵² Text from LUC Sec. 2.6.5.3.

⁵³ Text from LUC Section 2.6.5.1.

⁵⁴ Text from LUC Section 2.6.5.2.

E. Review and Establishment Procedure

A PCD shall be established in accordance with Section 3.5.3, *Zoning Examiner Legislative Procedure*. Notice must be sent in accordance with the requirements of Table 3.2-1, except that notice must be sent to all property owners within 2,640' (one-half mile) from the boundaries of the proposed PCD and to all neighborhood associations within 2 miles of the boundary.

F. Amendment Procedures⁵⁶

The Director of Planning and Development Services Department (PDSD) shall determine if the proposed amendment constitutes an administrative, minor, or major amendment according to the criteria set forth in this Section. The Director shall evaluate a proposed change for its compliance with the intent of the approved PCD and any impact that may cause a public health or safety risk. These amendment procedures do not preempt an applicant's ability to apply for other modification procedures available within the UDC. The following procedures shall be followed for an amendment to the PCD.

1. Administrative Amendment

An administrative amendment is one that does not create a substantial change to the Master Site Plan (MSP), an overall District Area (DA), or the overall PCD. The PDSD Director shall determine if the potential impacts to the PCD are a substantial or insubstantial change after review of the requested changes. Insubstantial changes are administratively decided by the PDSD Director.

a. Process

An administrative amendment requires no public hearing unless one is required as part of the PCD adoption. Administrative amendments include the following:

- (1) the categories of changes listed in Subsection b;
- (2) other changes specifically identified as administrative amendments in the PCD approved by the Mayor and Council; and
- (3) categories of changes deemed by the PDSD Director to be comparable to those identified in (1) or (2) or otherwise to have no negative potential impacts on the PCD.

b. Administrative Amendment Categories

The following changes and comparable changes are presumed to be administrative unless they significantly affect the PCD or property owners other than the master developer.

- (1) Changes that enhance or refine the original vision and/or purpose and intent statements expressed in the original PCD application. The applicant shall present information regarding the size and extent of the development activity that supports the change.
- (2) Changes that continue to support specific plans or applicable City policies affecting the diversity of housing type and mixed use. The applicant shall present information showing how the proposal

⁵⁶ In response to staff comment, this text from LUC Sec. 2.6.5.6 has been added to the PCD procedures section, with modifications for clarity and consistency.

3.5.6 Planned Community Development (PCD) Zone

strengthens the creation of a sense of place in the neighborhoods and communities. Administrative amendments may be based upon new market design requirements or technological advances in architecture and infrastructure engineering design and construction.

- (3) A transfer of commercial square footage or number of dwellings from one mixed use parcel to another that stays within the maximum and minimum ranges established by the PCD or the DA.
- (4) A transfer involving a change in total number of dwellings or gross leasable floor area among DAs or zoning districts where the transfer amount stays within the minimum and maximum ranges established by the PCD.
- (5) Changes in configurations of individual DA boundaries to include modifications of boundaries, division of larger parcels, or combinations of parcels, that do not result in any loss in open space or change the overall permitted land uses and density and intensity of land uses of DAs within the PCD.
- (6) Changes in parcels, preservation of environmentally sensitive lands, or open space that are necessitated by the need to accommodate final engineered infrastructure as approved by the City, within the minimum and maximum range of density and intensity of development and there is no reduction in open space areas as established in the MDP.
- (7) Adjustments or modifications to the number and order of phasing as long as the related infrastructure development is precedent to or concurrent with the development the infrastructure is to serve.
- (8) Change of number, location or sites designated for schools, parks, or other public, government, or quasi-governmental facilities which either enhance the opportunity to create a sense of neighborhood and community, to better centralize such sites based on actual development densities and with the approval of the governmental unit that owns or will own the facility.
- (9) Modifications in the design and construction of proposed infrastructure based upon technological advances when such modifications are accepted by the controlling City and/or Pima County agencies (including but not limited to transportation, water and wastewater, and flood control). Infrastructure capacity shall be adequate to provide service for the planned densities and intensities of use and phasing.
- (10) Minor modifications or adjustments to intrusions, encroachments, proposed easements, proposed right-of-ways or open spaces, so long as the modifications fall within the general overall range and target densities and intensities for the PCD or DA.
- (11) Changes in infrastructure that do not increase the cost or reduce the benefit to the public.
- (12) Interpretation by the PDSD Director of terms and provisions of the PCD and MSP that may result in insubstantial changes to the PCD.

3.5.6 Planned Community Development (PCD) Zone

- (13) Placement and/or construction of identity or character features such as community art, entry monuments, mailboxes and neighborhood signage in compliance with the PCD standards unless there is a safety concern.
- (14) Other insubstantial changes deemed to be administrative amendments by the PDSO Director, as long as the amendments do not negatively impact the general health, safety, and welfare of the residents of the City and do not modify the overall intent of the approved PCD, including the compliance with the General Plan and specific plan policies for this area.

2. Minor Amendment

A minor amendment is one that does not substantially change the MSP, DAs, or the overall PCD. A minor amendment includes changes that have greater potential impacts on the intensity of land use mix of the PCD than the categories of changes that qualify as administrative changes for the adopted PCD.

a. Procedure

A minor amendment requires a public hearing review and decided in accordance with Section 3.5.3, Zoning Examiner Special Exception Procedure. Minor amendments include (i) the categories of changes listed in Subsection b, (ii) changes specifically identified as minor amendments in the PCD approved by the Mayor and Council, and (iii) categories of changes deemed by the PDSO Director not to change substantially the overall PCD but that have potential impacts on the intensity of land use mix of the PCD than the categories of changes that qualify as administrative changes.

b. Minor Amendment Categories

The following changes and comparable changes are presumed to be minor unless they significantly affect the PCD or property owners other than the master developer.

- (1) A change of up to ten percent in the number of units or gross leasable floor area in the DA or zoning district that is an increase or decrease in the overall PCD's minimum or maximum ranges.
- (2) Multiple proposed administrative amendments or any single proposed administrative amendment that is viewed by the PDSO Director in relation to a series of past administrative amendments may be determined by the PDSO Director to be a minor amendment pursuant to this Section if they have the cumulative effect of contradicting the policies, spirit, and intent of the underlying General Plan documents.
- (3) Other changes deemed to be minor amendments by the PDSO Director that do not qualify as administrative or major amendments within this section or within the subject PCD.

3. Major Amendment

A major amendment is one that substantially changes the MSP, a DA, or the overall PCD or substantially changes the application of the PCD to a limited area.

3.5.6 Planned Community Development (PCD) Zone

a. Process

A major amendment is processed pursuant to the Zoning Examiner Legislative Procedure, Section 3.5.3. Major amendments include (i) those categories of changes listed in Subsection b, (ii) other changes specifically identified as major amendments in the PCD approved by the Mayor and Council, and (iii) those categories of changes that do not qualify as administrative or minor amendments for the adopted PCD and that are deemed by the PDSD Director to change substantially the overall PCD or the application of the PCD to a limited area.

b. Major Amendment Categories

The following changes and relative changes are major amendments:

- (1) A reduction in open space other than as defined as an administrative amendment in Section 3.5.7.F.
- (2) Changes in configurations of individual DA boundaries to include modifications of boundaries, division of larger parcels, or combinations of parcels that result in a net loss in open space or a change to the minimum and maximum number of DAs proposed within the PCD.
- (3) Change that would allow uses not otherwise permitted in the PCD, zoning district, or DA.
- (4) A change of greater than ten percent in the number of dwellings or gross leasable floor area in a DA or zoning district that is an increase or decrease in the overall PCD's minimum or maximum ranges.
- (5) A change that alters a design element and substantially reduces the mitigation of the intensity of development adjacent to an existing residential development outside of the PCD.
- (6) A change that locates a more intense land use or increases the residential density adjacent to an existing residential development outside of the PCD or a change adjacent to existing residential development in the PCD where the intensity of development exceeds ten percent in the number of units or gross leasable floor area in the DA or zoning district.

G. Annual Report⁵⁷

At the request of the PDSD Director the PCD property owner shall submit an annual progress report. The report shall begin to be submitted to PDSD once the issuance of building permits within the subject PCD commences. The report may include the following elements as requested by PDSD: phasing and completion update report on horizontal infrastructure, public facilities, open space dedication, number of housing units and nonresidential square footage, installation of trails, parks, and any other development activity requested by the department. The report shall be submitted by February 15 of the following year.

⁵⁷ Text from LUC Section 2.6.5.7.

3.6. LAND USE PLAN ADOPTION AND AMENDMENT PROCEDURES⁵⁸

3.6.1. PURPOSE

This section establishes a public process Land Use Plan adoption and amendment.

3.6.2. APPLICABILITY

The following applications are processed in accordance with the requirements of this Section:

- A.** Re-adoption of or amendment to the General Plan;
- B.** Adoption of or amendment to specific plans, such as, but not limited to sub-regional, area, and neighborhood plans;
- C.** Adoption of or amendment to the Major Streets and Routes (MS&R) Plan; and
- D.** Adoption of or amendment to redevelopment plans.

3.6.3. INITIATION

A. General Plan

The re-adoption of the General Plan may only be initiated by the Mayor and Council. Amendments to the adopted General Plan may be initiated by the Mayor and Council or privately initiated by the owner of the property for which the amendment is sought.⁵⁹ Notice of initiation must be provided in conformance with A.R.S. §9-461.06.

B. Redevelopment Plans

Prior to initiating the creation of a redevelopment plan, the Mayor and Council must approve a resolution declaring that the subject area is subject to redevelopment in accordance with A.R.S. § 36-1479. Amendments to an adopted redevelopment plan may be initiated by the Mayor and Council or privately initiated by the owner of the property for which a plan amendment is sought.

C. Specific and MS&R Plans

The creation of a specific plan shall only be initiated by the Mayor and Council. Amendments to a specific plan or the MS&R Plan may be initiated by the Mayor and Council or privately initiated by the owner of property for which an amendment is sought.

3.6.4. PRE-APPLICATION CONFERENCE REQUIRED

For site specific, privately initiated plan amendments, a pre-application conference with City staff is required to review requirements for the proposal in accordance with Section 3.2.1 and other applicable policies and regulations.

⁵⁸ The Planning Commission Legislative Procedure has been relocated to this section and the three plan-related procedures (general plan amendments, specific plan adoptions, and redevelopment plan adoptions) that use this PC procedure have been consolidated into this single renamed section. This will result in less page flipping.

⁵⁹ “[O]r privately initiated by the owner of the property for which the amendment is sought” is proposed new text.

3.6.5. PUBLIC OUTREACH AND NEIGHBORHOOD MEETINGS

A. Re-Adoption of the General Plan

Public outreach for the re-adoption of the General Plan shall be conducted in accordance with state statute and adopted City policies.

B. Plan Amendments

A neighborhood meeting in accordance with Section 3.2.2 is required for privately initiated, site specific plan amendments. Mailed notice of the neighborhood meeting in accordance with Section 3.2.2 and 3.2.4 is required. Exception: A neighborhood meeting is not required for City-initiated amendments to the General Plan.

3.6.6. APPLICATION

A. Applicants of privately-initiated plan amendments requests are required to submit an application to the PDSD. See the Administrative Manual for the plan amendment application submittal requirements. Applications are reviewed for completeness in accordance with Section 3.2.3.A.

B. Applications must be in conformance with the General Plan, applicable specific plans, the UDC, other pertinent codes and regulations.

C. Applications for an amendment to a specific plan within two years of the date of adoption of the specific plan may not be processed unless the Mayor and Council consent to the application

3.6.7. STAFF REVIEW AND RECOMMENDATION

City staff shall review each application to determine, to the extent applicable, compliance with the General Plan, specific plans, the UDC, and any other code or regulation that may pertain to the application. When appropriate, City staff may request comments from other agencies, committees or advisory boards. Staff shall prepare and submit a report and recommendation to the Planning Commission and shall make copies available to the public prior to the public hearing.

3.6.8. PLANNING COMMISSION PUBLIC HEARING REQUIRED

A. Study Session

The Planning Commission may conduct a study session to determine the merits of a proposed amendment. The Planning Commission may remand an amendment to the PDSD for further development or set it for public hearing.

B. Public Hearing⁶⁰

At least one public hearing before the Planning Commission on the request is required. Exception: For the re-adoption of or a major amendment to the General Plan, at least two Planning Commission public hearings, each at a different location in the City are required. Additional consultation and public notice in accordance with A.R.S. §9-461.06 are required.

⁶⁰ Text from LUC Sec. 5.4.2.1.

C. Mailed and Published Notice

For site-site specific plan amendments, mailed notice must be mailed to all property owners within 300' feet of the subject property. Mailed and published notice of the public hearing(s) is required in accordance with Sections 3.2.4.B and E, respectively.

3.6.9. PLANNING COMMISSION RECOMMENDATION AND RECONSIDERATION**A. General**

1. Except for redevelopment plans, the Planning Commission may close a public hearing or may decide to continue a public hearing to a future time and place provided the hearing is closed and a recommendation, including a statement of the reasons for the recommendation, is issued within 180 days of the date of the initial hearing.⁶¹ The PDSO shall transmit to the Mayor and Council the application, Planning Commission's recommendation and findings or other action of the Planning Commission, and the City Manager's recommendation.
2. If the Planning Commission fails to issue a recommendation within the prescribed time, the application will be forwarded to the Mayor and Council for a decision together with a statement of the reasons for the positions taken by members of the Planning Commission.

B. Redevelopment Plans

For redevelopment plans, the Planning Commission reviews the plan for compliance with the General Plan and any applicable specific plan at a public meeting or a public hearing. The Planning Commission shall forward a recommendation to Mayor and Council within 30 days from the date of its receipt of the plans for review. If no recommendation is forwarded within 30 days, the Mayor and Council may proceed with the public hearing on the redevelopment plan.

C. Reconsideration⁶²

The Planning Commission may, by majority vote of all members, choose to reconsider a decision made on a plan amendment, provided the vote to reconsider is made within 30 days of the date of the original decision. Reconsideration may not take place earlier than 14 days from the date of the original decision, unless reconsideration occurs at the same meeting as the original decision. If the reconsideration occurs at a different meeting, all persons noticed for the public hearing before the Planning Commission must be notified prior to the reconsideration. This notification shall include the time, date, and location of the reconsideration. If the Planning Commission's decision is not reconsidered within the specified time period and the decision was to deny, the case shall be closed administratively. If, after reconsideration, the decision is to reaffirm a denial, the case shall be closed administratively immediately after the reconsideration.

⁶¹ Staff recommends changing the public hearing and recommendation timeframe from 90 + 45 days to 180 days to allow additional time and provide greater flexibility to open and close public hearings.

⁶² Text for this provision from DS 1-08.6.6.C.

3.6.10. MAYOR AND COUNCIL'S PUBLIC HEARING AND DECISION⁶³

A. Public Hearing

1. The Mayor and Council shall hold a public hearing prior to making a decision. The notice for the public hearing before the Mayor and Council shall be the same as the notice before the Planning Commission except for redevelopment plans.
2. For redevelopment plans, notice must be published once each week for two consecutive weeks, the last publication to be at least ten days before the date set for the hearing.

B. Decision

1. The Mayor and Council may adopt, deny, continue the item, or remand the item to the Planning Commission. The Mayor and Council shall consider the application, the Planning Commission's recommendation and the City Manager's recommendation, and public comments when making their decision.
2. Adoption and re-adoption of an amendment to the General Plan shall be in conformance with A.R.S. §9-461.06 (G) and (K) and other applicable provisions.

C. Reconsideration by Mayor and Council⁶⁴

The Mayor or a member of the Council may request the reconsideration of an authorization decision or a decision on a proposed ordinance provided the vote to reconsider is made at the original hearing or within 30 days of the date of the decision. A reconsideration shall be scheduled upon a majority vote in favor of the reconsideration. If the reconsideration occurs after the time when the decision is initially made, then public notice of the reconsideration must be given in the same manner as for the initial decision.

3.6.11. RE-APPLICATION⁶⁵

New plan amendment applications may not be accepted for any property that had a previous application acted upon by the Mayor and Council within one year of the date of that action, except as follows:

- A.** The application does not involve a request for a plan designation that was denied;
- B.** There has been substantial change in the use of the property adjacent to the plan amendment site since the previous case was heard; or
- C.** There has been an ownership change on the plan amendment site and a substantially modified development concept is presented.

⁶³ Text from LUC Sec. 5.4.2.2.

⁶⁴ Text from LUC Sec. 5.4.2.3.

⁶⁵ Text from DS 1-08.6.8.

3.7. UDC TEXT AMENDMENT PROCEDURE

3.7.1. PURPOSE

This section establishes a public process for amending the Unified Development Code (UDC).

3.7.2. APPLICABILITY

The procedure provided in this Section 3.7 applies to text amendments to the UDC, including text amendments to create or amend the regulations of an overlay zone affecting a specific area, but whose provisions are located within the UDC.

The establishment, amendment, or dissolution of overlay zones involving a rezoning of specific properties, as is the case with the Neighborhood Preservation Zone and the Historic Preservation Zone, is processed in accordance with Section 3.5.3, Zoning Examiner Legislative Procedure. (Refer to Article 5 (Overlay Zones) to determine which overlay zones must be established, amended and dissolved in accordance with the Zoning Examiner Legislative Process.)

3.7.3. INITIATION

Text amendments may only be initiated by the Mayor and Council. The Mayor and Council may initiate a text amendment on their own initiative or at the request of the Planning Commission, City staff, or a private individual who has submitted evidence that a public benefit would result from such an amendment. The PDSD is responsible for the development and coordination of a text amendment.

3.7.4. DEVELOPMENT OF A TEXT AMENDMENT

A. Department Responsible

The PDSD is responsible for the development and coordination of a text amendment. Staff shall submit a report and recommendation to the Planning Commission and make copies available to the public prior to the public hearing.

B. Public Outreach and Neighborhood Meeting Required

1. Text Amendments Creating or Enabling an Overlay Zone

A neighborhood meeting in accordance with Section 3.2.2 is required for text amendments to the UDC that propose creating or enabling an overlay zone to apply to specific properties.⁶⁶

2. Text Amendments with Citywide Application

The PDSD staff shall seek input on a proposed text amendment to the UDC from the public. The manner and extent to which public input is conducted shall be determined by the PDSD Director on a per text amendment basis.

C. Application

UDC Text amendments do not require submittal of an application.

D. Staff Review and Recommendation

City staff shall review each proposed amendment to determine, to the extent applicable, compliance with the General Plan, specific plans, the UDC, and any other

⁶⁶ Proposed new text recommended by staff.

3.7.5 Planning Commission Public Hearing Required

code or regulation that may pertain to the application. When appropriate, City staff may request comments from other agencies, committees or advisory boards. Staff shall prepare and submit a report and recommendation to the Planning Commission and shall make copies available to the public prior to the public hearing. UDC Text amendments are not required to submit an application.

3.7.5. PLANNING COMMISSION PUBLIC HEARING REQUIRED⁶⁷

A. Study Session

The Planning Commission may conduct a study session to determine the merits of a proposed amendment. The Planning Commission may remand an amendment to the PDSO for further development or set it for public hearing.

B. Public Hearing⁶⁸ and Public Notice (Mailed and Published) Required

At least one public hearing with the Planning Commission on the request is required. Mailed and published notice of the public hearing(s) is required in accordance with Sections 3.2.4.B and E, respectively.

3.7.6. PLANNING COMMISSION RECOMMENDATION AND RECONSIDERATION

A. General

1. The Planning Commission may close a public hearing or may decide to continue a public hearing to a future time and place provided the hearing is closed and a recommendation, including a statement of the reasons for the recommendation, is issued within 180 days of the date of the initial hearing.⁶⁹ The PDSO shall transmit to the Mayor and Council the application, Planning Commission's recommendation and findings or other action of the Planning Commission, and the City Manager's recommendation.
2. If the Planning Commission fails to issue a recommendation within the prescribed time, the application, will be forwarded to the Mayor and Council for a decision, together with a statement of the reasons for the positions taken by members of the Planning Commission.

B. Reconsideration⁷⁰

By majority vote of all the members, the Planning Commission may choose to reconsider a decision made on a UDC text amendment application, provided the vote to reconsider is made within 30 days of the date of the original decision. Reconsideration may not take place earlier than 14 days from the date of the original decision, unless reconsideration occurs at the same meeting as the original decision. If the reconsideration occurs at a different meeting, all persons notified for the public hearing before the Planning Commission must be notified prior to the reconsideration. This notification shall include the time, date, and location of the reconsideration. If the Planning Commission's decision is not reconsidered within the specified time period and the decision was to deny, the case shall be closed

⁶⁷ Text of this subsection (with renamed heading) was moved from the general legislative procedures to here because most (if not all) of the general procedures can be deleted or moved to this consolidated and modified legislative procedure section.

⁶⁸ Text from LUC Sec. 5.4.2.1.

⁶⁹ Staff recommends changing the public hearing and recommendation timeframe from 90 + 45 days to 180 days to allow additional time and provide greater flexibility to open and close public hearings.

⁷⁰ Text for this provision from DS 1-08.6.6.C.

3.7.7 Mayor and Council's Public Hearing and Decision

administratively. If, after reconsideration, the decision is to reaffirm a denial, the case shall be closed administratively immediately after the reconsideration.

3.7.7. MAYOR AND COUNCIL'S PUBLIC HEARING AND DECISION⁷¹

A. Public Hearing

The Mayor and Council shall hold a public hearing prior to making a decision. The notice for the public hearing before the Mayor and Council shall be the same as the notice before the Planning Commission.

B. Decision

The Mayor and Council may adopt, deny, continue the item, or remand the item to the Planning Commission. The Mayor and Council shall consider the application, the Planning Commission's recommendation and the City Manager's recommendation, and public comments when making their decision.

C. Reconsideration by Mayor and Council⁷²

The Mayor or a member of the Council may request the reconsideration of an authorization decision or decision on a proposed ordinance provided the vote to reconsider is made at the original hearing or within 30 days of the date of the decision. A consideration shall be scheduled upon a majority vote in favor of the reconsideration. If the reconsideration occurs after the time when the decision is initially made, then public notice of the reconsideration shall be given in the same manner as for the initial decision.

3.8. LAND DIVISION AND SUBDIVISION

See Article 8: Land Division and Subdivision Standards.

3.9. APPEALS

The Board of Adjustment, Design Review Board (DRB), the Mayor and Council, and the Zoning Examiner, as applicable, hear and decide on appeals in which it is alleged there is an error or abuse of discretion in any order, requirement, decision, interpretation, or other determination made by a City official in the enforcement of the UDC. Appeals are limited to review of substantive zoning regulations, such as development standards and use specific standards and required findings for approval.⁷³ This Section provides the appeals to the DRB, the Mayor and Council and the Zoning Examiner. For Board of Adjustment Appeals, see Section 3.10

3.9.1. DESIGN REVIEW BOARD (DRB) APPEAL PROCEDURE⁷⁴

A. Applicability

Appeals to the DRB may be made by and party of record from the following decisions by the PDSO Director:

1. Neighborhood Preservation Zone (NPZ) Design Review applications. An appeal under this section must be based upon an error in the Director's decision finding

⁷¹ Text from LUC Sec. 5.4.2.2.

⁷² Text from LUC Sec. 5.4.2.3.

⁷³ The same applicability language from the general appeals section was carried over for clarity.

⁷⁴ This section was reorganized for clarity to combine the recent amendments to LUC Sec. 23A-32.1.F and the new 23A-64. There was significant redundancy in the current text.

3.9.1 Design Review Board (DRB) Appeal Procedure

compliance or noncompliance with the neighborhood specific design manual and compatibility review standards; and,

2. Architectural Variation and Privacy Mitigation Plans associated with a Flexible Lot Development.

B. Appeal to the Design Review Board (DRB)

1. Filing an Appeal

Appeals must be filed with PDSO within 14 days of the PDSO Director's decision.⁷⁵ An appeal will be scheduled for consideration by the DRB at the next regular meeting that is at least 30 days following the filing of the appeal. PDSO may, for good cause, grant one extension to the second regular meeting after the filing of the appeal. The filing of an appeal stays the issuance of permits and approvals and all formal land use action on the development proposal subject to the appeal.

2. Limitation on Contact With The Design Review Board

Except for duly noticed site inspection, study and public hearing, no person shall contact or discuss the merits of any appeal with any members of the DRB between the filing of the appeal and the final determination by the DRB.

3. PDSO Director's Report

The PDSO Director shall forward the appeal to the DRB any additional materials provided by the appellant, any materials provided by any other party, and the Director's report and recommendation.⁷⁶

⁷⁵ The 14 day timeline is currently not specified in the LUC. This timeline is consistent with the time period required of other appeal and variance procedures.

⁷⁶ In response to SB 1598, the timeline previously included in this section has been relocated to Section 3, PDSO Review Timeline Policy, of the Administrative Manual.

4. Public Hearing and Public Notice Required

- a. The DRB shall conduct a public hearing on the appeal. The DRB may hold a prior study session but the application for appeal must be scheduled for public hearing within 30 days of acceptance. Mailed notice of the appeal is required in accordance with Section 3.2.4.B, and must be sent not less than 15 days and not more than 30 days prior to the hearing. The public hearing on the appeal is conducted in accordance with the rules and regulations of the DRB.
- b. The DRB may continue the public hearing for up to 45 days. The public hearing shall not be continued for more than 45 days without the consent of the applicant, regardless of who is the appellant.

5. Decision

- a. The DRB shall reach a decision following the close of the public hearing.
- b. The DRB may affirm, reverse or modify the decision subject to appeal and may impose conditions necessary and appropriate to implement the UDC and other pertinent regulations. The decision by the DRB shall be announced and is final at the time the decision is made following the public hearing.
- c. The DRB in formulating its preliminary findings and recommendations shall apply the same standards applied by the Design Professional.
- d. Written confirmation of the decision shall be provided within three days of the date of decision to all parties of record.

6. Reconsideration

The appellant, the applicant, or the PSD Director may request reconsideration of a decision on an appeal provided the request is filed with the PSD Director within 14 days of the date the decision is announced. A request for reconsideration may be made only where there is an error in fact or law in the decision, or where a party has new evidence that was not available at the time of the public hearing. The request shall be scheduled for the next regular meeting of the DRB.

7. Issuance of Permits and Approvals

No permits or development approvals based on the decision shall be issued, no inspections performed or other formal action taken, while the appeal is pending before the DRB or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the DRB.

3.9.2. MAYOR AND COUNCIL APPEAL PROCEDURE⁷⁷**A. Applicability⁷⁸**

Appeals to the following decisions are processed in accordance with the Mayor and Council Appeal Procedure:

⁷⁷ Text from Sec. 23A-62, with minor clarifications.

⁷⁸ The HDZ, SCZ, ERZ, HPZ, and WASH have been removed from this section as part of the overall procedural change within these overlays to no longer require the 300' Notice Procedure, and instead, require the PSD Director Approval Procedure.

1. Decision by the Zoning Examiner on a Special Exception Land Uses;
2. Decisions on the 300' Notice Procedures; and,
3. Other matters as designated in the UDC.

B. Filing of an Appeal

Appeals must be filed with the City Clerk's Office with a copy to the PDSD within the time provided by the procedure from which the decision is appealed. The filing of an appeal stays the issuance of any permits or development approvals based on the decision and all formal land use action on the development proposal subject to the appeal.

C. Limitation on Contact with the Mayor and Council

No person shall contact or discuss the merits of any appeal with the members of the Mayor and Council between the filing of the appeal and the final determination by the Mayor and Council.

D. City Manager's Communication

The PDSD Director shall forward to the Mayor and Council the appeal, any additional materials provided by the appellant, the recommendations of the applicable advisory body(ies), any materials provided by any other party and the City Manager's report and recommendation.

E. Public Hearing and Public Notice Required

1. The Mayor and Council may hold a study session and shall hold a public hearing on the appeal in accordance with the rules and standards of the Mayor and Council. The Mayor and Council shall reach a decision following the close of the public hearing. The Mayor and Council may continue the public hearing for up to 45 days. The public hearing shall not be continued for more than 45 days without the consent of the property owner of the subject site.
2. Public notice of the public hearing shall be provided not less than 15 days and not more than 30 days prior to the hearing. Public notice shall be to the applicant, the same parties notified of the initial application and those who provided oral or written comments in the course of the prior procedure. Notice shall be provided in the same manner as for the procedure from which the appeal is filed.

3.9.3 Takings and Exactions Appeal Procedure

F. Mayor and Council Decision

1. The Mayor and Council shall decide the appeal based upon the application, testimony, evidence and other materials considered in the prior proceeding, the City Manager's communication and the testimony and evidence presented in the public hearing. Mayor and Council shall consider the provisions, purpose and intent of the plans and standards that apply to the appeal.
2. The Mayor and Council may affirm, reverse or modify the decision that is appealed and may establish such conditions as are appropriate to implement the UDC and other pertinent standards.
3. The decision by the Mayor and Council shall be announced and is considered a final action for the purposes of the UDC.⁷⁹

G. Issuance of Permits and Approvals

No permits or development approvals based on the decision shall be issued or other formal action taken, while the appeal is pending before the Mayor and Council or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the Mayor and Council.

3.9.3. TAKINGS AND EXACTIONS APPEAL PROCEDURE⁸⁰

Appeals to final discretionary decisions that require a dedication or an exaction as a condition for granting a development approval and appeals to the adoption or amendment of a zoning regulation on the grounds that the regulation creates an unconstitutional "taking" of private property in violation of the Fifth Amendment to the United States Constitution (a "takings appeal") shall be processed in accordance with this section.

A. Decisions Subject to Appeal

1. A takings appeal may be filed by a property owner as follows:
 - a. Where the property owner has a legally recognized property interest in the property that is subject to the City decision; and
 - b. Where a final discretionary administrative decision has been made by the PDS Director, Zoning Examiner, or the Mayor and Council to require the dedication of property or the payment of a monetary exaction as a condition for the approval of the development application in a manner that is alleged to constitute a taking of property; or
 - c. A zoning regulation has been adopted or amended and is alleged to constitute a taking of property.
2. A takings appeal may not be filed by a property owner regarding the application of fees, assessments, taxes, or any other dedication or exaction required by a legislative act that does not give discretion to the administrative agency or official to determine the nature or extent of the requirement.

⁷⁹ Proposed new text.

⁸⁰ Text taken from Sec. 23A-63.

B. Filing of Appeal

An appeal must be in writing and filed with or mailed to the Zoning Examiner within 30 days after the final action is taken. Final action on a zoning regulation is the effective date of the regulation. No fee is charged for an appeal under this Section.

C. Public Hearing

1. Public notice shall be mailed to the appellant and to the parties entitled to notice of the administrative decision at least ten days before the appeal is heard.
2. The Zoning Examiner shall schedule a public hearing on the appeal to be held no later than 30 days after receipt of the appeal.

D. Statement of City Authority

In all proceedings under this Section, the City shall provide the Zoning Examiner with a statement of the City's authority to require the dedication or exaction or to adopt or amend the zoning regulation. The City has the burden to establish in its statement of authority the nexus between the dedication or exaction and a legitimate governmental interest, and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development or, in the case of a zoning regulation, that the zoning regulation does not create a taking of property in violation of the Fifth Amendment to the United States Constitution.

E. Zoning Examiner's Decision

The Zoning Examiner shall decide the appeal within five days after the appeal is heard. If the City has met its burden set forth in subsection D above, the appeal shall be denied. If the City has failed to meet its burden as set forth in subsection D above, the Zoning Examiner shall:

1. In the case of a dedication or exaction, modify or delete the requirement appealed under this section.
2. In the case of a zoning regulation, transmit a recommendation for further action to the Mayor and Council.

F. Appeal of Zoning Examiner's Decision⁸¹

At anytime within 30 days after the Zoning Examiner renders a decision an individual may file a complaint for trial de novo in the superior court, pursuant to ARS 9-500.12.G.

⁸¹ Proposed new text.

3.10. BOARD OF ADJUSTMENT APPEALS AND VARIANCES

3.10.1. GENERAL BOARD OF ADJUSTMENT PROCEDURES

A. Applicability

The procedures in this Section 3.10.1, apply to both Board of Adjustment hearing on appeals and requests for variances. Appeals and applications for variances are filed with the PDSD.

B. Director of Planning and Development Services Department (PDSD) Recommendation

The PDSD Director prepares a recommendation and forwards it, together with any additional materials provided by the applicant or any other party to the applicant and the B/A not less than five days prior to the scheduled public hearing. The recommendation shall be in the form of a written report that includes the request and present plans, policies, standards, and other information relating to the request. The recommendation shall include a recommended action by the B/A or a statement that the PDSD has no objection to the request. The PDSD Director shall also solicit a recommendation from the Design Review Board or the Stormwater Technical Advisory Committee (STAC) if a recommendation from either of these bodies is required by Section 3.10.2.A or Section 3.10.3.G.2.

C. Notice

Notice of public hearings is required in accordance with Section 3.2.4.

D. Limitation on Contact with the Board of Adjustment

Except for a duly noticed site inspection, study, and public hearing, no person shall contact or discuss the merits of any case with the members of the B/A between the filing of the appeal or variance and the final determination by the B/A.

E. Board of Adjustment Public Hearing

The B/A may hold a study session and shall hold a public hearing on an application in accordance with the rules and standards of the Board of Adjustment and the requirements listed below.

1. Except as permitted in the public hearing and the procedures for submission of written materials, no person shall communicate with a member of the B/A regarding a matter to be decided by the board any time prior to the expiration of the time for reconsideration of a decision;
2. The chair of the B/A or person presiding may administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party;
3. The chair or person presiding may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers;
4. Comments may be given by any person, either verbally or in writing;

5. Following the close of the hearing and prior to making a decision or recommendation, the B/A may discuss the matter and further question staff or any party submitting comment; and,
6. A record of the hearing must be made and retained as a public record.

F. Decision

Following the public hearing the decision by the B/A is announced and is final at the time the decision is made.

G. Reconsideration

The B/A may consider one request for reconsideration by the applicant or a party of record, if:

1. A written request is filed with the Zoning Administrator within 14 calendar days after the board has rendered its decision, and
2. A request for reconsideration may be made only where there is an error in fact or law in the decision or where a party has new evidence or material that was not available at the time of the public hearing. The request shall be scheduled for the next regular meeting of the Board of Adjustment.

H. Issuance of Permits and Approvals

No permits or development approvals based on the decision shall be issued, no inspections shall be performed, nor other formal action shall be taken while the case is pending before the B/A or before the expiration of the period for reconsideration if no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the Board of Adjustment.

3.10.2. APPEALS

A. Decisions Subject to B/A Appeal

Appeals to the following decisions are processed in accordance with the B/A appeal procedure:

1. Decisions by the Zoning Administrator, including interpretations of the UDC, notices of violations of the UDC, and determinations of violations of conditional uses consistent with Section 10.3.3;
2. Decisions by the PDSO Director on applications processed in accordance with the 50' Notice Procedure, Section 3.3.4.
3. Decisions by the PDSO Director on a Special Exception Land Use;
4. Review decisions where the PDSO Director has challenged the historic designation of a structure proposed for demolition;
5. Decisions of the Design Review Board (DRB) pertaining to applications in Neighborhood Preservation Zones as permitted in Section 5.10.3.1;⁸²
6. Decisions by the PDSO Director on Design Development Option applications⁸³; and,
7. Other determinations in accordance with the UDC.

B. Filing of an Appeal

Appeals must be filed with the Zoning Administrator 14 days after the decision,⁸⁴ or within the time provided by the individual procedure from which the decision is appealed. An appeal shall be scheduled for consideration by the B/A at the next regular meeting that is at least 35 days following the filing of the appeal. The Zoning Administrator may, for good cause, grant one extension to the second regular meeting after the filing of the appeal. The filing of an appeal stays the issuance of permits and approvals and all formal land use action on the development proposal subject to the appeal.

C. Public Hearing and Public Notice Required

A public hearing with the B/A is required. The B/A may continue the public hearing for up to 45 days. The public hearing shall not be continued for more than 45 days without the consent of the applicant, regardless of who is the appellant. Public notice of the public hearing is required in the same manner as for the procedure from which the appeal is filed.

⁸² This provision added (language modified for clarity) from new NPZ appeals amendment.

⁸³ Appeals to the PDSO Director's decision on DDO applications are currently processed per the B/A Variance Procedure. Staff recommends allowing these type of appeals to be considered through the B/A Appeal Procedure because the notification requirements are similar to those of the original DDO application.

⁸⁴ A timeline is currently not specified in the LUC. The 14-day time period is consistent with the time period for other appeal and variance procedures.

D. Decision

The B/A may affirm, reverse, or modify the decision being appealed, and may impose conditions necessary and appropriate to implement the UDC and other pertinent standards.

E. Reconsideration

The appellant, the applicant, the Zoning Administrator, or in the case of a decision relating to NPZ design review, the PDSD Director, may request reconsideration of a decision on an appeal as provided in Section 3.10.1.G.

3.10.3. VARIANCES

A. Applicability

The following applications are processed in accordance with the B/A Variance procedure:

1. Variances from the requirements of the UDC; and
2. Requests for Major Modifications of Development Regulations (MDR) in the Rio Nuevo District (see Section 5.11.9 for the minor and major MDR criteria).

B. Pre-Application Conference Required

A pre-application conference with City staff is required in accordance with Section 3.2.1.

C. Application

Submittal of an application to the PDSD is required in order to process the request. See the Administrative Manual for the application submittal requirements. Applications shall be reviewed for completeness in compliance with Section 3.2.3.A.

D. Notice of Application

The PDSD Director shall mail and post notice of the application in accordance with Section 3.2.4.B & .F.

E. Neighborhood Meeting Required

The applicant is required to conduct a neighborhood meeting and provide notice of the meeting in accordance with Section 3.2.2.

F. Public Comment Period

For twenty (20) days following the date on which notice is mailed, the public may submit comments on the proposal to the PDSD.

G. Review

1. Review is conducted by the PDSD staff and other agencies, committees or advisory boards as required by the UDC, and others as may be deemed appropriate by the PDSD Director.
2. Variance requests from the Environmental Resource Zone standards require review by the Design Review Board and the Stormwater Technical Advisory Committee as provided in Section 5.7.7. Variance requests from Scenic Corridor Zone, the Gateway Corridor Zone, the landscaping and screening regulations, and the

native plant protection standards require DRB review as provided in Sections 5.3.14, 5.5.6, 7.6.9.D, and 7.7.6.B respectively.

H. Public Hearing and Public Notice Required

A public hearing with the B/A on the request is required. Mailed notice of the public hearing is required in accordance with Section 3.2.4.B. The notice of the public hearing may be consolidated with the notice of the application submittal.

I. Advisory Board Review

Variance requests from the Environmental Resource Zone standards require review by the Design Review Board and the Stormwater Technical Advisory Committee as provided in Section 5.7.7. Variance requests from the Scenic Corridor Zone, the Gateway Corridor Zone, the landscaping and screening regulations, and the native plant preservation standards require DRB review as provided in Sections 5.3.14, 5.5.5, 7.6.9.D, and 7.7.6.B, respectively.

J. Board of Adjustment Decision

The B/A may close the public hearing or continue it to a specific date, time, and place provided the continuance is not for more than 120 days. The B/A shall issue a decision in accordance with the findings required for approval of the application at the conclusion of the public hearing.

K. Findings for Approval⁸⁵

The B/A may approve a variance only if it finds:

1. That, because there are special circumstances applicable to the property, strict enforcement of the UDC will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;
2. That such special circumstances were not self-imposed or created by the owner or one in possession of the property;
3. That the variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;
4. That, because of special circumstances applicable to the property, including its size, shape, topography, location, and surroundings, the property cannot reasonably be developed in conformity with the provisions of the UDC;
5. That the granting of the variance shall not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance shall not impair an adequate supply of light and air to adjacent property, substantially increase congestion, or substantially diminish or impair property values within the neighborhood; and,

⁸⁵ Text from LUC Sec. 5. 1.7.3.B.1.

7. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the UDC provisions that are in question.

L. Variance Powers Not Granted to Board of Adjustment

The B/A may not:

1. Make any changes in the uses permitted in any zoning classification.
2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.
3. Grant a variance to any administrative requirement of the UDC or to any requirement which is not a specific development regulation or use-specific standards required of a land use.
4. Grant a variance to the use-specific standards required of Educational Uses as provided in Section 4.9.3.E.
5. Delete or vary any use-specific standards applicable to a Special Exception Land Use as required by the UDC or as established as a condition by the decision-making body in granting the use, unless specifically allowed by the UDC.

M. Notice of Decision Required

Notice of the decision shall be mailed within three (3) days of the decision to the applicant and persons who received notice of acceptance of application. See Table 3.2-1 and Section 3.2.4.

N. Reconsideration

The B/A may consider one request for reconsideration by the applicant or a party of record, in accordance with Section 3.10.1.G.

O. Change of Condition

After a variance has been granted by the B/A, the property owner/applicant may request a change to a condition for approval imposed by the B/A based upon changed circumstances that affect the condition. The request shall be heard by the B/A. The B/A shall initially determine whether the request is for a minor change of condition that does not materially alter the variance and does not materially affect any other properties. If the B/A determines that the request is for a minor change of condition, it may decide whether to approve or deny the change. If the B/A determines that the request is not a minor change of condition and there are reasonable grounds for the request, the case shall be scheduled for a public hearing and notice provided in accordance with Section 3.2.4.

P. Expiration of Approval

Any variance granted through this process or on appeal is null and void if building permits are not issued or compliance with conditions of approval does not occur within 180 days from the date of approval. A shorter time period for compliance may be required as a condition of approval. Two extensions of up to 180 days each may be granted by the PDSD Director for good cause. A plat that has been recorded in compliance with the variance is exempt from the expiration period in this section. .

3.11. ADMINISTRATIVE MODIFICATIONS

3.11.1. DESIGN DEVELOPMENT OPTION (DDO)⁸⁶

A. Purpose

This section is established to provide an administrative process by which specific development and dimensional standards of the UDC may be modified under certain criteria applicable to a land use within a zone. A Design Development Option (DDO) is intended to encourage the following:

1. Flexible design solutions that are within the intent of the regulation, encourage efficient use of land, do not create a nuisance on adjacent property, and address situations where strict application of a requirement may not be practical;
2. Energy conservation through site and building design;
3. Innovation in site planning and architectural design; and
4. Enhancement of community aesthetics.

B. Applicability

A DDO is classified as either minor or major as follows:

1. Minor DDO

Modifications to the following standards are a Minor DDO:

- a. Structural setback and parking space length requirements for carports only in single-family and duplex development;⁸⁷
- b. Height of accessory walls and fences when the wall and fence heights do not exceed two feet above the maximum height permitted;⁸⁸
- c. Dimensional and location requirements of Section 7.4.6, *Motor Vehicle Use Area Design Criteria*, including, but not limited to off-site parking location, parking space width, access lane and PAAL width, and back-up spur depth;⁸⁹
- d. Number of bicycle parking spaces; or,⁹⁰
- e. Landscaping and screening standards.⁹¹

⁸⁶ The two DDO procedures (LUC Sections 5.3.4 and 5.3.5) and the Parking Design Modification Request procedure (PDMR - LUC Section 3.3.10) are proposed for consolidation as provided in the section. This proposal is consistent with the Project's goals of consolidating procedures and simplifying the standards. This proposal also addresses the development community's concerns that the ability to request modifications to those standards currently in the Development Standards that are proposed for integration into the UDC will be lost, whereby the proposed revisions to the DDO process will result in a process very similar to the DSMR process. To maintain the same procedural requirements as they are currently, two subtypes of DDOs are proposed: a Minor and Major DDO. Similar to the current PDMR and DSMR procedures, Minor DDOs will be processed and considered for approval administratively. Like the current DDO procedure, Major DDOs will require property owners within 50' and neighborhood associations to be notified.

⁸⁷ This proposal is recommended by staff and the Board of Adjustment. These types of modifications for carports can reasonably be processed as a DDO, rather than variances as they currently are.

⁸⁸ Currently requires a 50' notice via the DDO procedure. Staff proposes allowing these types of requests to be processed and considered for approval administratively without notice on the grounds that these types of requests have historically not been opposed by adjacent property owners.

⁸⁹ Text from LUC Section 3.3.10.2.B – PDMR, Applicability

⁹⁰ Text from LUC Section 3.3.10.2.B – PDMR, Applicability

2. Major DDO⁹²

Modifications to the following standards are a Major DDO:

- a. Perimeter yards; or,
- b. Required number of motor vehicle parking spaces.

C. Application Processing

Only one application is required when more than one DDO is being requested and may be processed concurrently in accordance with the most restrictive applicable procedure. For example, applications requesting a modification to the setback and landscaping standards shall go to the Design Review Board for a recommendation prior to a decision by the PDSO Director.⁹³

D. Review and Approval Procedures

1. Minor DDO

Minor DDO applications are reviewed and considered for approval in accordance with Section 3.3.3, *PDSO Director Approval Procedure*. The Design Review Board shall review landscaping and screening modification requests and make a recommendation to the PDSO Director. The PDSO Director may approve a Minor DDO request only when a finding in accordance with Section 3.11.1.E, *Findings for Approval*, is determined.

2. Major DDO

Major DDO applications are reviewed and considered for approval in accordance with Section 3.3.4, *50' Notice Procedure*. The PDSO Director may approve a Major DDO request only when a finding in accordance with Section 3.11.1.E, *Findings for Approval*, is determined.

E. Findings for Approval

1. General Findings for All Modifications

For all modification requests, the PDSO Director may approve a DDO request only if the request meets the following findings:

- a. Is not a request previously denied as a variance;
- b. Does not modify a conditional requirement or finding to determine whether the use should be allowed in the zone;
- c. Is not to a condition of approval for a rezoning or Special Exception Land Use application;
- d. Does not modify a requirement of an overlay zone, such as, but not limited to, Scenic Corridor, Environmental Resource, Major Streets and Routes Setback, or Airport Environs;

⁹¹ Currently requires a 50' notice via the DDO procedure. Staff proposes allowing these types of requests to be processed and considered for approval administratively without notice on the grounds that these types of requests have historically not been opposed by adjacent property owners.

⁹² No change is proposed to the current 50' Notice procedure requirement for modification requests to perimeter yards and the number of required motor vehicle parking spaces.

⁹³ The provision allowing submittal of a single application and concurrent processing when multiple DDOs are being requested was added at the request of Planning Commission.

- e. Does not result in deletion or waiver of a UDC requirement;
- f. Does not create a situation where proposed development substantially reduces the amount of privacy that would be enjoyed by nearby residents any more than would be available if the development was built without the modification;
- g. Does not create a situation where proposed development will block visibility within the required visibility triangle on adjoining streets for either vehicular or pedestrian traffic;
- h. Does not create a situation where the proposed development will cause objectionable noise, odors, trespass lighting, or similar adverse impacts adjacent properties or development; and
- i. Does not create a situation where the development will result in an increase in the number of residential dwelling units or the square footage of nonresidential buildings greater than would occur if the development was built without the modification.

2. Specific Findings for Perimeter Yard and Wall Height Modifications^{94 95}

In the case of perimeter yard and wall height modification requests, the PDS Director may approve the request only if the request complies with the findings as provided in Section 3.11.1.E.1, *General Findings for All Modifications*, and that the modification:

- a. Does not create a situation where proposed development will obstruct significant views of dramatic land forms, unusual stands of vegetation, or parks from nearby properties substantially more than would occur if the development were built without the modification;
- b. Provides design alternatives to better integrate the development into the design character of the immediate neighborhood;
- c. Does not apply to a setback requirement of a Flexible Lot Development (FLD);
- d. Does not create a situation where the proposed development will interfere with the optimum air temperature or solar radiation orientation of buildings on adjoining properties substantially more than would occur if the building or structures were built without the modification; and
- e. Does not create a situation where the proposed use of the property will impose objectionable noise levels on adjoining properties greater than would occur if the buildings or structures were built without the modifications.

⁹⁴ The term “dimensional standards” was removed from this section. Thus, this section now applies only to setbacks and wall heights.

⁹⁵ The following finding is proposed for deletion on the grounds that this is a variance finding and is overly restrictive when considering minor administrative modifications: “[a]pplies to property that cannot be developed in conformity with the standards of the UDC due to physical circumstances or conditions of the property, such as irregular shape, narrowness of lot, or exceptional topographic conditions;

3. Specific Findings for Motor Vehicle and Bicycle Parking Modifications

In the case of motor vehicle and bicycle parking modification requests, the PDSD Director may approve the request only if the request complies with the findings as provided in Section 3.11.1.E.1, *General Findings for All Modifications*, and all of the following applicable findings:

- a. The modification does not impede sight visibility at points of ingress into, egress from, or within the vehicular use area for either vehicular or pedestrian traffic or otherwise create or increase a safety hazard;
- b. The modification provides design alternatives to better integrate the development into the design character of the immediate neighborhood;
- c. Except as provided below, a DDO may modify a dimensional requirement by no more than ten percent;
- d. A modification may be granted for decreasing the required motor vehicle parking by ten percent or less, but in no case more than five spaces. The modification in off-street motor vehicle parking spaces is for the purpose of improving the site design in a manner which will further the intent of the DDO. This includes improvements such as, but not limited to, enhancement of landscaping, pedestrian facilities, or bicycle provisions beyond the requirements of the UDC;
- e. The modification does not decrease the minimum parking space dimension to less than eight feet in width. The number of parking spaces with decreased dimensions may not exceed ten percent of the total number of parking spaces provided. The parking spaces with decreased dimensions must be marked as 'compact';
- f. The modification does not decrease the parking area access lane or driveway dimension by more than five percent of the minimum width required, with the following exception. Exception: The width of a parking area access lane or driveway may not be reduced when it is a fire lane;
- g. The back-up spur dimensional requirements may be modified when the last space in a bay of parking is wider than eight and one-half feet or when the PDSD Director determines that the proposed modification will not create a safety hazard; and,
- h. A modification may be granted for decreasing the required bicycle parking by ten percent or less, but in no case shall the modification result in there being less than two bicycle parking spaces. The modification in the number of bicycle parking spaces is for the purpose of improving the site design in a manner which will further the intent of the DDO. This includes improvements such as, but not limited to, enhancement of landscaping or pedestrian facilities beyond the requirements of the UDC.

4. Specific Findings for Landscaping and Screening Modifications

In the case of landscaping and screening modification requests, the PDSD Director may approve the request only if the request complies with the findings as provided in Section 3.11.1.E.1, *General Findings for All Modifications*, and all of the following applicable findings:

3.12.1 Architectural Documentation Prior to Demolition of Historic Buildings

- a. The modification does not decrease the required area in square footage of landscaping or height of a screening feature;⁹⁶
- b. The modification request does not reduce the required number of canopy trees or distance requirement of a parking space from a canopy tree as provided in Section 7.6.4.B.1, *Canopy Trees in Vehicular Use Areas*⁹⁷;
- c. The modification does not adversely affect the viability of the landscaping⁹⁸
- d. For screening modifications, the PDS Director may approve the request based upon a finding that the modification⁹⁹ does not lower the height of a required screening device to a point where it does not accomplish its purpose.

3.12. MISCELLANEOUS PERMITS AND APPROVALS**3.12.1. ARCHITECTURAL DOCUMENTATION PRIOR TO DEMOLITION OF HISTORIC BUILDINGS¹⁰⁰****A. Applicability**

These regulations apply when an application for a demolition permit involves the complete or partial demolition of a building that is partially or in its entirety 50 or more years old.

B. Required Documentation

Applications for permits for the demolition of buildings that are partially or in their entirety 50 or more years old must include architectural documentation to provide a permanent record of buildings of historical significance before their loss. Demolition applications are available from PDS.

1. Minor Documentation

Minor Documentation is required for demolition permit requests for all buildings that are partially or in their entirety 50 or more years old, but are not contributing properties within designated or pending National Register Historic Districts; are not individually listed on the National Register of Historic Places; and do not meet the eligibility criteria for the National Register of Historic Places. For buildings that otherwise meet the criteria for Full Documentation, only Minor Documentation is required if the demolition will be limited to an addition that is less than 50 years old.

2. Full Documentation

Full Documentation is required for demolition permit requests for all buildings that are partially or in their entirety 50 or more years old and are

- a. Contributing properties within designated or pending National Register Historic Districts;

⁹⁶ Text from LUC Section 5.3.5.3.J and K.

⁹⁷ This is a proposed new finding to ensure the DDO cannot be used to modify the canopy trees in parking lot requirements.

⁹⁸ This is a proposed new finding to allow flexibility, such as with minimum planting area requirements, without affecting the viability of the landscaping.

⁹⁹ This section has been modified to clarify the original text which is awkwardly organized, as only some of the findings might apply to certain modifications. We noted that the findings are "as applicable" and placed an "and/or" to cover all permutations of findings.

¹⁰⁰ Text from LUC Sec. 5.3.1.

3.12.1 Architectural Documentation Prior to Demolition of Historic Buildings

- b. Individually listed on the National Register of Historic Places; or
- c. Meet the criteria for eligibility for the National Register of Historic Places.

3. Additional Documentation

If the building to be completely or partially demolished is located in a Historic Preservation Zone (HPZ) or the Rio Nuevo District (RND) overlay zone, compliance with the applicable demolition review and approval requirements contained in Section 5.8.7 through Section 5.8.9 and Section 5.11.7 is required in addition to the provisions contained in this section.

C. Review Required

The applicant shall submit Minor or Full Architectural Documentation to PDSO for review before issuance of a demolition permit.

D. Application and Review Process¹⁰¹

1. Prior to the submittal of a demolition permit application, the applicant may meet with the PDSO. At that time, the PDSO shall determine whether the application requires Minor or Full Documentation.
2. At the time of submittal, the applicant shall submit two copies of the demolition permit application and all required architectural documentation to the PDSO. All new photos must be printed on photographic paper.
3. If Minor Documentation is required, the PDSO reviews and approves the applications for completeness in accordance with Section 3.2.3.A. The PDSO determines and informs the applicant that the Minor Documentation is complete, or of any additional documentation which is required.
4. If Full Documentation is required, the Historic Preservation Officer (HPO) reviews and approves the applications for completeness, and informs the applicant that Full Documentation is complete or informs the applicant of any additional documentation which is required.
5. If the PDSO or the HPO determine that the required architectural documentation is complete, then a demolition permit application may be processed. The applicant must demonstrate compliance with all provisions of the Tucson Code before a demolition permit will be issued.

E. Minor Documentation Required

Minor Documentation shall include:

1. Current photographs of the front, rear and sides of the building to be completely or partially demolished (printed on photographic paper); and
2. Documentation from the County Assessor's records, the State Historic Preservation Office, or other official government records confirming the year of construction and dates of additions to the building to be demolished. Some of this documentation of construction dates may be available at the PDSO.

¹⁰¹ In response to SB 1598, the timelines previously included in this section has been relocated to Section 3, PDSO Review Timeline Policy, of the Administrative Manual.

F. Full Documentation Required

Full Documentation shall include:

1. Floor plans with measured dimensions;
2. Photographs of the front, rear and sides of the building to be completely or partially demolished, and all interior rooms;
3. A 'context photograph' illustrating the relationship between the building to be completely or partially demolished and the nearest adjacent buildings in the Development Zone. The Development Zone is defined in Section 11.4.5;
4. Copies of old photographs of the building to be completely or partially demolished (taken at least 20 years prior to the demolition application), if in the possession of the applicant;
5. Documentation from the County Assessor's records, the State Historic Preservation Office, or other official government records confirming the year of construction and dates of additions to the building to be demolished. Some of this documentation of construction dates may be available at PDSD;
6. A general description of construction materials, such as exterior walls, roofing, windows, porches, and carports of the building to be demolished; and
7. A list of any important historical events or historically significant persons related to the building to be demolished, if known to the applicant.

G. Documentation Retention

Upon approval of the demolition permit, the HPO shall retain one copy as a record of a lost historic resource and forward one copy to the Tucson-Pima County Historical Commission for their records.

3.12.2. PROTECTED DEVELOPMENT RIGHT¹⁰²

A. General

1. After a site plan or tentative or final plat has been approved, an applicant may apply for a protected development right (PDR). A PDR is a right granted to undertake and complete the development and use of property as shown on the PDR Plan without needing to comply with subsequent changes in zoning standards and technical standards adopted during the period of the PDR, except as provided by A.R.S., Sec. 9-1204. In the event of a conflict between the provisions of the UDC and A.R.S., Sec. 9-1201 through 9-1205 inclusive, as they may be amended, the statutory provisions shall govern.
2. The protected development right also precludes the enforcement against the development of any city land use regulation that would change, alter, impair, prevent, diminish, delay, or otherwise impact the development or use of the property as set forth in the approved plan except as provided herein.¹⁰³
3. The protected development right does not vest until the Mayor and Council approve the plan or plat as a protected development right plan at public hearing.¹⁰⁴

¹⁰² Text from LUC Sec. 5.3.10.

¹⁰³ Text from DS 2-17.1.2

¹⁰⁴ Text from DS 2-17.3.1

B. Applicability

The Mayor and Council may consider granting a PDR to the following:

1. An approved plat or site plan provided the PDR is granted prior to the plat or site plan expiring; or,
2. Concurrent with the initial approval of a plat or site plan upon a finding that granting a protected development right to undertake and complete the development shown on the plan will promote reasonable certainty, stability and fairness in the land use planning and regulatory process and secure the reasonable investment-backed expectations of the owner.¹⁰⁵

C. Application

Submittal of an application to the PDS is required in order to process the request. The PDR application requirements are provided in Section 2-12.0.0 of the Administrative Manual. Applications are reviewed for completeness in compliance with Section 3.2.3.A, *Application Required*. Following acceptance of the application, it will be scheduled for consideration by the Mayor and Council.¹⁰⁶

D. Nonphased and Phased Development Standards

Applications may be filed for nonphased or phased protected development right plans as follows:

1. Nonphased Development¹⁰⁷

Nonphased developments are developments constructed in one phase. An application for a protected development right for a nonphased development, must comply with the requirements in accordance with:

- a. Article 8, Land Divisions and Subdivisions, and applicable standards of the Administrative and Technical Standards Manuals for a subdivision plat; or
- b. Section 3.3.3.G, *Site Plans*, and applicable standards of the Administrative and Technical Standards Manuals for a site plan.

2. Phased Development¹⁰⁸

a. For consideration and approval as a protected development right plan, a phased development shall be a master planned development which:

- (1) Consists of at least forty (40) acres depicted on a single master subdivision plat for a residential development; or
- (2) Consists of at least twenty (20) acres depicted on a single master subdivision plat or site plan for a nonresidential development; or
- (3) Is a Planned Area Development (PAD) zone; or
- (4) The Mayor and Council have identified as a phased development for the purposes of protected development rights.

b. An application for a protected development right for a phased development, must comply with the requirements set forth in:

¹⁰⁵ Text from DS 2-17.3.2 with revisions

¹⁰⁶

¹⁰⁷ Text is a consolidation of DS 2-17.3.3 and 2-17.4.1.A

¹⁰⁸ Text is a consolidation of DS 2-17.3.4 and 2-17.4.1.B

- (1) Article 8, Land Divisions and Subdivisions, and applicable standards of the Administrative and Technical Standards Manuals, if the master planned development consists of at least forty (40) acres depicted on a single master subdivision plat for a residential development; or
- (2) Article 8, Land Divisions and Subdivisions, and applicable standards of the Administrative and Technical Standards Manuals, if the master planned development consists of at least twenty (20) acres depicted on a single master subdivision plat for a nonresidential development; or
- (3) Section 3.3.3.G, *Site Plans*, and applicable standards of the Administrative and Technical Standards Manuals, if the master planned development consists of at least twenty (20) acres depicted on a single master site plan for a nonresidential development; or
- (4) Section 3.5.6, Planned Area Development (PAD) Zone, and applicable standards of the Administrative and Technical Standards Manuals for a master planned development which is a Planned Area Development (PAD) Zone.

E. Granting of a PDR

1. A PDR shall be granted upon approval by the Mayor and Council.
2. The Mayor and Council may impose terms and conditions of approval.¹⁰⁹
3. Upon Mayor and Council approval, the landowner has the right to undertake and complete the development only to the extent of the specific elements and details shown on the plan.¹¹⁰
4. Approval of a protected development right plan for one phase of a phased development is not approval of a protected development right plan for any other phase.¹¹¹

F. Effective Date

1. A PDR shall be deemed established with respect to a property on the effective date of Mayor and Council approval of the PDR Plan, except as follows.
2. Exception. A protected development right plan approved with a condition that a variance be obtained does not confer a protected development right until the variance is granted. Approval of a protected development right plan does not guarantee approval of a variance.

G. Expiration Date and Extension¹¹²

1. **Nonphased**
A protected development right plan for a nonphased development is valid for three (3) years.
 - a. In its sole discretion, the Mayor and Council may extend this time for a maximum of two (2) additional years if it determines such extension is warranted by all relevant circumstances, including the size and type of the development, the level of investment of the landowner, economic cycles, and market conditions.

¹⁰⁹ Text from DS 2-17.4.3.D

¹¹⁰ Text from DS 2-17.1.2

¹¹¹ Text from DS 2-17.4.3.C

¹¹² Text from DS 2-17.6.0

- b. If no building permit has been issued prior to expiration, no construction shall commence under the plan.

2. Phased

A protected development right plan for a phased development is valid for five (5) years.

- a. In its sole discretion, the Mayor and Council may extend this time for a maximum of two (2) additional years if it determines such extension is warranted by all relevant circumstances, including the size, type and phasing of the development, the level of investment of the landowner, economic cycles, and market conditions.
- b. No construction shall take place on the property for any phase for which a building permit has not been issued.

H. Modification of Site Plan Expiration Dates

Notwithstanding Section 3.3.3.G.6.a, a site plan that has been designated a PDR Plan shall expire upon termination of the PDR.

I. Enforcement¹¹³

1. Subsequent Land Use Standards

A protected development precludes the enforcement of legislative or administrative land use regulations that would change, alter, impair, prevent, diminish, delay, or impact the development or use of the property as approved in the Protected Development Right Plan, except under any one of the following circumstances:

a. Landowner Consent

The affected landowner consents in writing.

b. Natural or Man-Made Hazard

The Mayor and Council declare by resolution, after notice and a public hearing, that natural or man-made hazard on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as approved in the Protected Development Right Plan.

c. Inaccurate Information

Declaration by the Mayor and Council by resolution after notice and a public hearing that the owner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval of the Protected Development Right Plan by the City.

d. Enactment of State or Federal Law

The enactment of a state or federal law or regulation that precludes development as approved in the Protected Development Right Plan, in which case the Mayor and Council, after notice and a public hearing, may modify the affected provisions, on a finding that the change in state or federal law has a fundamental effect on the Protected Development Right Plan.

¹¹³ Text from DS 2-17.5.0

2. Subsequent Overlay Zoning, Development Fees, and Other Codes

A protected development right does not preclude the enforcement of the following:

a. Overlay Zone

A subsequently adopted overlay zoning classification that imposes additional requirements and that does not affect the allowable type or density of use.

b. Development Fee

A subsequently adopted development fee applicable to similar properties in the City adopted pursuant to ARS § 9-463.05.

c. Other Codes

A subsequently adopted building, fire, plumbing, electrical, or mechanical code or other ordinance or regulation general in nature and applicable to all property subject to land use regulation by the City.

3. Nonconforming Uses and Structures

A protected development right does not preclude, change, or impair the authority of the City to adopt and enforce zoning ordinance provisions governing nonconforming uses or structures on the property.

4. Suspension and Revocation Procedures

The City is permitted by State law to subject a Protected Development Right Plan to subsequent reviews and approvals consistent with the original approval. The City may revoke its approval of a Protected Development Right Plan for failure to comply with the applicable terms and conditions of approval. The procedure for compliance review suspension and revocation is described as follows:

a. PDSD Director monitors compliance

After the approval of a Protected Development Right Plan, the PDSD Director or designee shall monitor the progress of the development to ensure compliance with the terms and conditions of the original approval or any development agreement applicable to the property.

b. Suspension or Revocation

The PDSD Director or designee may suspend or revoke a protected development right after notice to the applicant. The notice shall contain the Protected Development Right Plan to be revoked, the property to which it applies, and the reason(s) for the proposed suspension or revocation.

c. Appeal to Mayor and Council

The PDSD Director's decision to revoke a protected development right may be appealed to Mayor and Council in accordance with Section 3.9.2, *Mayor and Council Appeal Procedure*, by filing a notice of intent to appeal with the City Clerk no later than fourteen (14) days after the date of the decision.

J. Successors¹¹⁴

After approval of the protected development right plan, all successors to the original landowner are entitled to exercise the protected development rights.

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¹¹⁴ Text from DS 2-17.3.6