



# PLANNING COMMISSION

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

**DATE:** November 2, 2011

**TO:** Planning Commission

**FROM:** Ernie Duarte  
Executive Secretary

**SUBJECT:** Public Hearing - Land Use Code (LUC) Amendment – Group Dwellings

**Issue** – This item is scheduled for Study Session and Public Hearing before the Planning Commission. On October 12, 2011, the Mayor and Council directed staff to proceed with a code amendment to address Group Dwellings in the R-1 and R-2 residential zones by codifying two elements of the Zoning Administrator’s recent ruling regarding the clarification of the definition of Group Dwelling – a use which is already prohibited in R1 and R2 zones, and the parameters for the allowance of conditional use of existing structures as Group Dwellings, so long as such conditional uses remain compatible with the underlying zone. As part of the process the Mayor and Council directed staff to include specific language addressing the explicit inclusion of domestic partnerships and dependency relationships so that Tucson’s legacy of protecting members of the GLBT community from housing discrimination is preserved.

The draft language proposes an amendment to the Tucson Code, Chapter 23, Land Use Code, Article II, *Zones*, Division 3, *Urban Residential Zone*; to Article III *Development Regulations*, Division 5, *Performance Criteria*; and to Article VI, *Definitions*, Division 3, *Land Use Groups*, and incorporates the direction of the Mayor and Council.

**Background** – On January 18, 2011, the Zoning Administrator was requested by Joan Hall and Jefferson Park Neighborhood Association (“Hall/JPNA”) to make a determination as to whether the use of certain buildings in the Jefferson Park area constituted group dwelling uses that are not permitted in the R-1 zone. The original determination, issued by the Zoning Administrator on March 14, 2011, found that the use of those buildings was that of a group dwelling and was not permitted in the R-1 zone.

The determination was appealed to the Board of Adjustment by both the owner of property and Hall/JPNA and a hearing was scheduled for July 27, 2011. At the time set for the hearing of the appeal, both appellants and the City requested a continuance so that all parties could engage in mediation of their differences regarding the use and development of these structures. As a result of this mediation both parties agreed that the Zoning Administrator would vacate the March 14<sup>th</sup> determination and the pending appeals. The determination and subsequent appeals would be replaced with a new, revised determination. That revised determination was issued by the Zoning Administrator on September 28, 2011 (see attached). This determination is to be used as the basis of the proposed Land Use Code amendment.

**SUBJECT: Public Hearing - Land Use Code (LUC)  
Amendment – Group Dwellings**

**Page 2 of 2**

Staff presented this issue as an informational item only to the Planning Commission on October 5, 2011.

**Recommendation** – Staff recommends that the Planning Commission forward this text amendment to the Mayor and Council for final review and approval.

Attachments: Revised Determination dated September 28, 2011  
Group Housing Amendment (strike-out version)  
Group Housing Amendment (final version)



CITY OF  
TUCSON

PLANNING AND  
DEVELOPMENT  
SERVICES  
DEPARTMENT

ZONING  
ADMINISTRATION  
DIVISION

September 28, 2011

Minnette Burges  
Law Offices of Minnette Burges  
177 N. Church Avenue, Suite 808  
Tucson, AZ 85701

Russell E. Krone  
Thompson-Krone, P.L.C.  
6303 E. Tanque Verde Road, Suite 210  
Tucson, AZ 85715

Subject: Zoning Administrator Determination on Group Dwellings.

Dear Ms. Burges and Mr. Krone,

I was previously asked by Joan Hall and Jefferson Park Neighborhood Association ("Hall/JPNA") to make a determination as to whether the use of certain buildings owned by Michael Goodman ("Goodman") known as Goodman developments constituted a group dwelling use that was not permitted in the R-1 zone. My determination issued on March 14, 2011, found that the use of those buildings was that of a group dwelling and was not permitted in the R-1 zone. My determination further stated that it applied only to the use of the structures and not to the approval of building plans for the structures or future structures.

Goodman appealed in case C10-11-06 the portion of the determination that found his buildings were used as a group dwelling and Hall/JPNA appealed in Case C10-11-07 the portion of the decision that found that the building plans were not plans for group dwellings. At the time set for the hearing of the appeal, both appellants and the City requested a continuance so that all parties could engage in mediation of their differences regarding the use and development of these structures.

As a result of that mediation process, the parties have agreed to a framework for continuing to pursue resolution of their differences. That framework calls for the vacation of the prior determination and the issuance of this new determination.

I therefore vacate the determination dated March 14, 2011 and issue this determination to replace it, both effective Sept. 28, 2011.

A group dwelling in the R-1 zone consists of the following:

1. The occupancy on an R-1 lot by 5 or more persons who are unrelated is a group dwelling. Related persons are those who are related by blood or by law or legal custody.

Planning and Development Services Department (DSD) - 201 North Stone Avenue  
P.O. Box 27210 - Tucson, AZ 85726-7210  
Telephone: (520) 791-5550 - Fax: (520) 791-5852

Minnette Burges  
Russell E. Krone  
September 28, 2011  
Page 2

2. This determination shall be applicable to all new construction and any change of the use of existing R-1 dwellings having less than 5 unrelated persons after September 28, 2011.
3. Existing structures in the R-1 zone for which there is documented use for occupancy by 5 or more unrelated persons prior to Sept. 28, 2011, shall be allowed to remain as a matter of equity subject to the Zoning Administrator determining upon the filing of any complaint if it is necessary to condition the continued use in order to preserve compatibility of behavior associated with the dwelling with the purpose and intent of the R-1 zone. This paragraph shall apply to properties where building plans have been submitted to the City prior to the date of this determination.
4. A copy of this determination shall be provided to persons applying for a single family residential permit in the R-1 zone.
5. Based upon the agreement of the parties to this determination, the time period for the filing of any appeal shall be tolled until either party or the Zoning Administrator provides written notice to all other parties that the period for tolling has ceased. Any appeal shall be filed no later than 30 days after the receipt of the written notice ending the tolling period.

This zoning determination constitutes precedent pursuant to Tucson Code §23A-31 and a copy of this determination shall be maintained in the City Clerk's office and available to the public.

I may be contacted at 837-4902 or at [craig.gross@tucsonaz.gov](mailto:craig.gross@tucsonaz.gov) for further information or assistance.

Sincerely,



Craig L. Gross  
Deputy Director/Zoning Administrator  
Planning and Development Services Department

- C: Mike Rankin, City Attorney's Office  
Mike McCrory, City Attorney's Office  
Paul Loucks, Mesch, Clark and Rothschild, P.C.

**ARTICLE II, ZONES**  
**DIVISION 3, URBAN RESIDENTIAL ZONES**

**2.3.4 "R-1" RESIDENCE ZONE.**

\* \* \*

2.3.4.2 Permitted Land Uses. The following Land Use Classes are principal Permitted Land Uses within this zone, subject to compliance with the development and compatibility criteria listed for the Development Designator indicated and to any additional conditions listed after each use. The number or letter in quotation marks following the Land Use Class refers to the Development Designator provisions of Sec. 3.2.3.

A. Residential Use Group, Sec. 6.3.8

1. Family Dwelling "G", subject to: Sec. 3.5.7.1.E, .F, .G, ~~and .H~~, and .I
2. Family Dwelling "H", subject to: Sec. 3.5.7.1
3. Family Dwelling "FLD-4", subject to: the development regulations in Sec. 3.6.1 and Sec. 3.5.7.1.E, ~~and .F~~, .H, and .I

\* \* \*

**2.3.5 "R-2" RESIDENCE ZONE.**

\* \* \*

2.3.5.2 Permitted Land Uses. The following Land Use Classes are principal Permitted Land Uses within this zone, subject to compliance with the development and compatibility criteria listed for the Development Designator indicated and to any additional conditions listed for each use. The number or letter in quotation marks following the Land Use Class refers to the Development Designator provisions of Sec. 3.2.3.

A. Residential Use Group, Sec. 6.3.8

1. Family Dwelling "I", subject to: Sec. 3.5.7.1.F, .I, and .J
2. Family Dwelling "K", subject to: Sec. 3.5.7.1.F, .I, and .J
3. Family Dwelling "FLD-6", subject to: the development regulations in Sec. 3.6.1 and Sec. 3.5.7.1.F, .I, and .J

\* \* \*

ARTICLE III, DEVELOPMENT REGULATIONS  
DIVISION 5, PERFORMANCE CRITERIA

3.5.7 RESIDENTIAL USE GROUP.

3.5.7.1 Family Dwelling.

\* \* \*

- H. If there is one or more structure(s) on a lot, all structures on a lot are considered to be one dwelling for the purpose of determining whether there is a group dwelling. If there are five (5) or more unrelated persons residing on the lot, it is a group dwelling that is not permitted. ~~For all single family dwellings in the R-1 zone with five (5) or more bedrooms, and for all lots containing two (2) or more single family dwellings, with the second dwelling having more than one bedroom, all parking and maneuvering must be located on-site, either in a side or rear perimeter yard. The vehicular use area must be improved, which includes surfacing, striping, and provision of barriers, in conformance with Sec. 3.3.6 (Motor Vehicle Use Area Design Criteria). Parking spaces may not be located in a vehicular use area in any front-street perimeter yard.~~
- I. For any structure or lot existing prior to Sept. 28, 2011, where there is documentation that a structure was used or intended to be used for the occupancy by 5 or more unrelated persons, the use by 5 or more unrelated persons, that use may continue after Sept. 28, 2011, conditioned on compatibility with the purpose and intent of the underlying zone. If there is a complaint the property is not compatible, the use may be subject to further conditions specific to a property, suspended or revoked pursuant to Tucson Code Sec. 23A -54. In making a determination pursuant to 23A-54, the Zoning Administrator shall determine whether there is conduct or activity associated with the use of a structure that has an impact on the neighbors, a neighborhood or the community that is incompatible with the purpose and intent of the underlying zone. The Zoning Administrator may consider factors including, but not limited to, repeated unlawful acts as defined by T.C. §16-32 or any court determination that a nuisance exists in connection with the use of the property as grounds for suspension or revocation of the conditional use. Any suspension or revocation of the conditional use shall not affect the continued use of the property as a single family residence with less than five (5) unrelated persons.
- J. Occupancy of a dwelling by five (5) or more unrelated persons is a group dwelling and is not permitted.

\* \* \*

**ARTICLE VI, DEFINITIONS**  
**DIVISION 3, LAND USE GROUPS**

**6.3.8 RESIDENTIAL USE GROUP.**

6.3.8.1 Purpose. The Residential Use Group includes Land Use Classes which are residential on a nontransient basis. The following Land Use Classes comprise the Residential Use Group.

6.3.8.2 Family Dwelling. Family Dwelling is the occupancy (habitation) of a permanent structure or structures on a lot or parcel by one (1) or more individuals holding the dwelling unit under common property rights, living together as a single household, and using common cooking facilities. Typical uses include attached or detached dwellings and single-family or multiple-family dwellings.

6.3.8.3 Group Dwelling. Group Dwelling is the residential occupancy of a permanent structure by five (5) or more unrelated persons or ~~structures~~ by one (1) or more individuals where the individual or group of individuals has the exclusive right of occupancy of a bedroom. Typical uses include fraternities; sororities; convents; dormitories; college student rentals; rooming and boarding; boardinghouses, not primarily for travelers; and apartments where individual bedrooms are separately leased. Related persons include persons related by blood, marriage, domestic partnership as defined in Tucson City Code Chapter 17, Article IX or a legal custodial relationship.

\* \* \*

**ARTICLE II, ZONES  
DIVISION 3, URBAN RESIDENTIAL ZONES**

**2.3.4 "R-1" RESIDENCE ZONE.**

\* \* \*

2.3.4.2 Permitted Land Uses. The following Land Use Classes are principal Permitted Land Uses within this zone, subject to compliance with the development and compatibility criteria listed for the Development Designator indicated and to any additional conditions listed after each use. The number or letter in quotation marks following the Land Use Class refers to the Development Designator provisions of Sec. 3.2.3.

- A. Residential Use Group, Sec. 6.3.8
  - 1. Family Dwelling "G", subject to: Sec. 3.5.7.1.E, .F, .G, .H, and .I
  - 2. Family Dwelling "H", subject to: Sec. 3.5.7.1
  - 3. Family Dwelling "FLD-4", subject to: the development regulations in Sec. 3.6.1 and Sec. 3.5.7.1.E, .F, .H, and .I

\* \* \*

**2.3.5 "R-2" RESIDENCE ZONE.**

\* \* \*

2.3.5.2 Permitted Land Uses. The following Land Use Classes are principal Permitted Land Uses within this zone, subject to compliance with the development and compatibility criteria listed for the Development Designator indicated and to any additional conditions listed for each use. The number or letter in quotation marks following the Land Use Class refers to the Development Designator provisions of Sec. 3.2.3.

- A. Residential Use Group, Sec. 6.3.8
  - 1. Family Dwelling "I", subject to: Sec. 3.5.7.1.F, .I, and .J
  - 2. Family Dwelling "K", subject to: Sec. 3.5.7.1.F, .I, and .J
  - 3. Family Dwelling "FLD-6", subject to: the development regulations in Sec. 3.6.1 and Sec. 3.5.7.1.F, .I, and .J

\* \* \*

**ARTICLE III, DEVELOPMENT REGULATIONS  
DIVISION 5, PERFORMANCE CRITERIA**

**3.5.7 RESIDENTIAL USE GROUP.**

**3.5.7.1 Family Dwelling.**

\* \* \*

- H. If there is one or more structure(s) on a lot, all structures on a lot are considered to be one dwelling for the purpose of determining whether there is a group dwelling. If there are five (5) or more unrelated persons residing on the lot, it is a group dwelling that is not permitted.
  
- I. For any structure or lot existing prior to Sept. 28, 2011, where there is documentation that a structure was used or intended to be used for the occupancy by 5 or more unrelated persons, the use by 5 or more unrelated persons, that use may continue after Sept. 28, 2011, conditioned on compatibility with the purpose and intent of the underlying zone. If there is a complaint the property is not compatible, the use may be subject to further conditions specific to a property, suspended or revoked pursuant to Tucson Code Sec. 23A -54. In making a determination pursuant to 23A-54, the Zoning Administrator shall determine whether there is conduct or activity associated with the use of a structure that has an impact on the neighbors, a neighborhood or the community that is incompatible with the purpose and intent of the underlying zone. The Zoning Administrator may consider factors including, but not limited to, repeated unlawful acts as defined by T.C. §16-32 or any court determination that a nuisance exists in connection with the use of the property as grounds for suspension or revocation of the conditional use. Any suspension or revocation of the conditional use shall not affect the continued use of the property as a single family residence with less than five (5) unrelated persons.
  
- J. Occupancy of a dwelling by five (5) or more unrelated persons is a group dwelling and is not permitted.

\* \* \*

**ARTICLE VI, DEFINITIONS  
DIVISION 3, LAND USE GROUPS**

**6.3.8 RESIDENTIAL USE GROUP.**

6.3.8.1 Purpose. The Residential Use Group includes Land Use Classes which are residential on a nontransient basis. The following Land Use Classes comprise the Residential Use Group.

6.3.8.2 Family Dwelling. Family Dwelling is the occupancy (habitation) of a permanent structure or structures on a lot or parcel by one (1) or more individuals holding the dwelling unit under common property rights, living together as a single household, and using common cooking facilities. Typical uses include attached or detached dwellings and single-family or multiple-family dwellings.

6.3.8.3 Group Dwelling. Group Dwelling is the residential occupancy of a permanent structure by five (5) or more unrelated persons or by one (1) or more individuals where the individual or group of individuals has the exclusive right of occupancy of a bedroom. Typical uses include fraternities; sororities; convents; dormitories; college student rentals; rooming and boarding; boardinghouses, not primarily for travelers; and apartments where individual bedrooms are separately leased. Related persons include persons related by blood, marriage, domestic partnership as defined in Tucson City Code Chapter 17, Article IX or a legal custodial relationship.

\* \* \*