

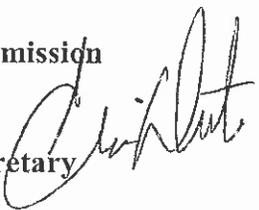


PLANNING COMMISSION

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

DATE: September 21, 2011

TO: Planning Commission

FROM: Ernie Duarte
Executive Secretary 

SUBJECT: Proposed Unified Development Code: Articles 8 (Land Division and Subdivision Standards); 9 (Nonconformities); and, 10 (Enforcement and Penalties)

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

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

The City's consultant, Clarion Associates, has completed preliminary drafts of all eleven articles of the UDC. Staff has completed their initial review of Articles 8, 9, and 10 and revised the articles to address several issues. Preliminary final drafts of each article, as well as a disposition report for Article 8, are attached.

Recommendation – Staff recommends continued review of these and upcoming draft articles for the next several months.

Background

Land Use Code Simplification and Reformat Project (Project). The purpose of the Project is, in general, to simplify and reformat the City's LUC, Development Standards, and Chapter 23A Procedures so that they are more user-friendly. 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.

The Project requires the preparation of three separate, but interrelated documents:

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. Clarion Associates, the consultant contracted by the City to prepare the UDC, has completed a draft UDC (see Attachment A for a summary of the UDC's eleven articles). Staff is reviewing the draft and is in the process of preparing the next draft for review by the Planning Commission and the public.

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. Staff is responsible for preparing the Administrative Manual. The Administrative Manual will be presented to the Planning Commission for their consideration in the fall or winter 2011.

Technical Manual. The Technical Manual includes engineering-related site standards, such as solid waste collection, street design, and detention/retention standards. Staff is responsible for preparing the Technical Manual. The Technical Manual will be presented to the Planning Commission for their consideration in the fall or winter 2011.

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.

Articles 8, 9, & 10

The following is summary of each article, as well as a description of the significant differences between the proposed UDC and LUC, of Articles 8, 9, and 10. For each article, a description of several issues yet-to-be resolved is also provided. Preliminary final drafts of Articles 8 (Attachment C), 9 (Attachment D), and 10 (Attachment E) are attached.

NOTES:

1. A disposition report for Article 8 is attached (Attachment B), which details the significant differences between the proposed UDC and LUC, unresolved issues, and documents proposed amendments outside the scope of the UDC project that will be considered separately from this project. Disposition reports for Articles 9 and 10 have not been provided because the differences between the UDC and LUC are relatively minor.
2. The footnotes within each article describe the proposed significant changes to the LUC and the source material (i.e. LUC, Chapter 23A, and Development Standards) for each proposed section in the UDC. This same information is summarized in the disposition report for A (Attachments C, E, and F).
3. Sections references to Articles 8, 9, and 10 have been updated and are accurate to the best of staff's knowledge. Placeholders for references to articles other than 8, 9, and 10 have been included and will be updated once the other articles are finalized. These section references will be updated by the time this item returns to the Planning Commission for public hearing.

Article 8: Land Division and Subdivision Standards (Attachments B & C)

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 following revisions are being proposed in order to be consistent with ARS: 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 and 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 either Article 7 (Development Standards) or the Technical Manual. 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 no longer require a neighborhood meeting and notice of application for the following reasons: 1) the FLD is much more prescriptive than the previously adopted Residential Cluster Project ordinance, and, therefore, review and consideration for approval of proposed FLD projects is much more objective and much less subject to staff interpretation; 2) the FLD standards provide greater protections to adjacent property owners; and, 3) the additional notice requirements create a mistaken perception among interested parties that they can influence the PDS Director's decision when, in fact, the decision is based on a project's compliance with all applicable criteria.

Issue Requiring Further Consideration.

1. **Subdivision Design Standards, FLD – Regulations for FLD Projects (UDC Sec. 8.7.3.D, Table 8.7.3-I):** The unresolved issues with density currently in the LUC have been carried over into the UDC. Should these issues be resolved now?
2. **Subdivision Design Standards, FLD – Natural Undisturbed Open Space (NUOS) and Detention and Retention Basins (UDC Sec. 8.7.3.F.3 & 8.7.3.G):** These provisions apply to all development that have NUOS and detention/retention basins and can be relocated to Article 7 (Development Standards) or the Technical Manual where it will have more general applicability.

Article 9: Nonconformities (Attachments D & E)

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.

Article 10: Enforcement and Penalties (Attachments F & G)

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 Requiring Further Consideration:

1. Staff is working with HCDD to clarify their role in performing typical enforcement duties.
2. The City Attorney has been asked to verify whether Article 10 adequately authorizes the HCDD to conduct code enforcement
3. Staff is currently identifying frequently cited Zoning Administrator interpretations (e.g. outdoor storage) for possible incorporation into the UDC.
4. PDSD and HCDD staff are developing definitions of terms that would be helpful in enforcing the code (e.g. yard sale, commercial vehicle) and amending definitions when vague.

Attachments:

Attachment A – Summary of the Unified Development Code

Attachment B — Article 8: Land Division and Subdivision Standards – Disposition Report

Attachment C – Article 8: Land Division and Subdivision Standards (September 2011 Draft)

Attachment D — Article 9: Nonconformities (September 2011 Draft)

Attachment E – Article 10: Enforcement and Penalties (September 2011 Draft)

ATTACHMENT A

Summary of the Unified Development Code

Article	Title
1	General Provisions (scope/applicability, severability, relationship to other ordinances, etc.)
2	Review Authorities (who makes decisions, scope of powers of decision-making bodies with summary table)
3	General Procedures (procedures for each review or permit type, e.g., rezonings and variances, with summary tables and flow charts)
4	Zones/Uses (listing of all zoning districts, permitted uses, use specific standards, accessory and temporary uses)
5	Overlay Zones (standards for special overlays)
6	Dimensional Standards and Measurements (height, setback, and similar dimensions; rules for measurements)
7	Development Standards (standards such as parking, loading, landscaping, native plant preservation)
8	Subdivision Standards (standards for subdivisions)
9	Nonconformities (provisions for nonconforming uses, structures, and lots)
10	Enforcement and Penalties (zoning enforcement standards and procedures)
11	Definitions and Rules of Construction (comprehensive set of definitions for use classes and other items)

ATTACHMENT B

ARTICLE 8: LAND DIVISION AND SUBDIVISION STANDARDS – DISPOSITION REPORT			
Title	UDC Sec #	LUC Sec #	Significant Revisions/Comments
Purpose	8.1	4.1.1	
Definitions	Article 11	4.1.2	
Applicability	8.2	4.1.3	
Land Division	8.3	4.3	
Subdivisions	8.4	4.1	
Block Plats	8.4.1		Staff proposes clarifying the Block Plat procedure and to be consistent with Arizona Revised Statutes..
Residential and Non-Residential Condominium and Condominium Conversion Plat	8.4.2	4.1.9	Staff proposes clarifying the Block Plat procedure and to be consistent with Arizona Revised Statutes.
Minor Subdivision	8.4.3	4.2	
Tentative Plat	8.4.4	4.1.6.1, 23A-33	
Final Plat	8.4.5	4.1.6.1, 23A-33	
Review Periods and Expiration Dates	8.5	4.1.7, 4.2.5	
General Requirements for Subdivisions and Minor Subdivisions	8.6	4.1.4	
Acceptable Forms of Assurances	8.6.2.B	4.1.4.1	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.
Subdivision Design Standards	8.7	4.1.8	
Streets, Access, Alleys, Easements Required, and Hydrology	N/A	4.1.8.1, 2, 3, 4 and 7	These design standards are being relocated to either Article 7 (Development Standards) or the Technical Manual. 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.
Flexible Lot Developments	8.7.3	3.6.1	
Regulations for FLD Projects	8.7.3.D, 8.7.3-I		The unresolved issues with density currently in the LUC have been carried over into the UDC. Should these issues

ARTICLE 8: LAND DIVISION AND SUBDIVISION STANDARDS – DISPOSITION REPORT			
Title	UDC Sec #	LUC Sec #	Significant Revisions/Comments
			be resolved now?
Natural Undisturbed Open Space and Detention and Retention Basins	8.7.3.F.3 & 8.7.3.G	3.6.1.4.D.3.a & b	These provisions apply to all development that have NUOS and detention/retention basins and can be relocated to Article 7 (Development Standards) or the Technical Manual where it will have more general applicability.
Project Amenities and Site Improvements	N/A	3.6.1.4.C.1	The Project Amenities and Site Improvements section (LUC Section 3.6.X) 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.
FLD Submittal, Review, and Decision – Tentative Plat	8.7.3.P.1	3.6.1.3.B	Staff is proposing to revise the FLD tentative plat review process to no longer require a neighborhood meeting and notice of application for the following reasons: 1) the FLD is much more prescriptive than the RCP, and, therefore, review and consideration for approval of proposed FLD projects is much more objective and much less subject to staff interpretation; 2) the FLD standards provide greater protections to adjacent property owners; and, 3) the additional notice requirements create a mistaken perception among interested parties that they can influence the PDSD Director's decision when, in fact, the decision is based on a project's compliance with all applicable criteria.

ATTACHMENT C

CITY OF TUCSON
UNIFIED DEVELOPMENT CODE

PRELIMINARY FINAL PUBLIC DRAFT – SEPTEMBER 2011

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ARTICLE 8: LAND DIVISION AND SUBDIVISION STANDARDS¹

8.1. PURPOSE

The purpose of this Article is to:

- 8.1.1. Assure that all land divisions and subdivisions are in conformance with the City's regulations regarding land development;
- 8.1.2. Assure a coordinated vehicular and pedestrian circulation system;
- 8.1.3. Establish minimum design standards for land divisions and subdivisions;
- 8.1.4. Assure that all lots are provided with infrastructure improvements;
- 8.1.5. Provide an expedient and consistent review process;
- 8.1.6. Obtain accurate survey and permanent public record of the boundaries of lots created by the division of lands and subdivision plats;
- 8.1.7. Facilitate the conveyance of land by reference to an accurate legal description by means of a recorded plat; and
- 8.1.8. Provide a convenient method of describing property being conveyed.

8.2. APPLICABILITY

This Article applies to all proposed land divisions and subdivisions of land as defined in this Code, with the following exceptions:

- 8.2.1. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots;
- 8.2.2. The partitioning of land in accordance with other statutes regulating the partitioning of land held in common ownership;
- 8.2.3. The leasing of apartments, offices, stores, or similar space within a building or mobile home/RV park, or mineral, oil, or gas leases;
- 8.2.4. Land divisions for defining cemetery plots or columbarium units; and,
- 8.2.5. These types of land divisions still require review and approval by the PDSD staff and outside review agencies.

8.3. LAND DIVISION

8.3.1. LAND SPLIT²

A. Purpose

According to A.R.S. §9-463.01(T) the City may regulate a land split within its jurisdictional limits. The state law gives the City authority to determine the division lines, area, and shapes of the parcels. A land split involves the division of land whose area is 2 ½ acres or less into 2 or 3 lots. Neither a tentative plat nor a final plat are

¹ The entire text for this article was taken from staff's most recent redraft of the article. The 20-year history is being removed from the code because it is not supported by State statute.

² Land split appeal process has been eliminated because it is a review process. Once the review is complete, the applicant may appeal the decision in accordance with the same process as any review process.

required but the resulting lots shall conform to applicable zoning requirements and other government codes and ordinances. The purpose of this Section is to establish a review process for land splits. This review:

1. Assures that newly created lots are of sufficient size to be developed and meet the requirements of applicable zoning classification;
2. Assures that the newly created lots have locations for building pads that are protected from flood and erosion hazards as defined in the Floodplain Ordinance (Tucson Code Chapter 26) and Standards Manual for Drainage Design and Floodplain Management in Tucson, Arizona;
3. Assures that all lots resulting from a land split shall have adequate access as specified by Section X of the Technical Manual.

B. Applicability

Any proposed land split, as defined by this Article, shall be submitted to PDSO for review and approval as provided in Section 8.3.1.C.

C. Review Procedures

1. Pre-application Conference

A pre-application conference is encouraged but not required.

2. Submittal

Submittal of an application to PDSO for review and approval.

3. Complete Application

The application shall conform to the requirements in Section X of the Administrative Manual. Only complete applications will be accepted for processing.

4. Review

Review shall be conducted by PDSO staff for compliance with the UDC requirements on land splits. The land split shall:

- a. Not constitute a subdivision as defined in Section 8.3.11 which would require compliance with platting requirements of Section 8.5 of this Article;
- b. Result in lots which conform to the minimum lot size requirements of the zoning applicable to the property;
- c. Provide access to the proposed lots in compliance with Section X of the Technical Manual.
- d. Result in all existing buildings complying with building setbacks of the zoning applicable to the property;
- e. Result in lots of at least the minimum size required to build in conformance with the applicable zoning including any natural, environmental and floodplain requirements.

D. Approval and Recordation

PDSO will notify the applicant if the land split has been approved. After approval, the deeds for the land split shall be recorded at the Pima County Recorder's Office by the applicant/owner.

8.4. SUBDIVISIONS

8.4.1. BLOCK PLAT

A. Purpose

The block plat process allows a subdivider to divide a parcel of land into ten or fewer lots without the necessity of a tentative plat, subject to the requirements of this section.

B. Applicability

Any proposed block plat, as defined by this Article, shall be submitted to PDSO for review and decision as provided in 8.4.1.C.

C. Review Procedures

1. Pre-application Conference

A pre-application conference, per Section 3.3.1.A is required.

2. Submittal

Applications are submitted to PDSO for review and approval.

3. Complete Application

The application shall conform to the requirements in the Administrative Manual. Only complete applications will be accepted for processing.

4. Review

PDSO shall coordinate the formal technical review of all block plats to ensure the plats are prepared in accordance with the applicable codes, ordinances and standards. The block plat shall:

- a. Result in lots/blocks which conform to the minimum lot size requirements of the zoning applicable to the property;
- b. Provide access to the proposed lots in compliance with Section X of the Technical Manual;
- c. Result in all existing buildings complying with building setbacks of the zoning applicable to the property;
- d. Conform to all City, State, and Federal drainage requirements;
- e. Result in lots of at least the minimum size required to build in conformance with the applicable zoning including any natural, environmental and floodplain requirements; and,
- f. Not be for a Flexible Lot Development.

D. Approval and Recordation

A block plat shall be prepared, processed, and approved in compliance with Section 8.4.5 (Final Plat) and Section X of the Administrative Manual.

8.4.2. RESIDENTIAL AND NON-RESIDENTIAL CONDOMINIUM AND CONDOMINIUM CONVERSION PLAT³**A. Purpose**

The purpose of this section is to establish procedures and requirements for proposed condominium projects and the conversion of existing structure(s) into condominiums.

B. Applicability

Any proposed condominium projects or condominium conversion, as defined by this Article, shall be submitted to PDSO for review and decision as provided in 8.4.2.C.

C. Review Procedures

Under the Arizona Condominium Act, A.R.S. § 33-1201 et. seq., a subdivision plat is a required part of the condominium declaration. In conjunction with the creation of a condominium, a subdivision plat shall be prepared in accordance with this Article and processed according to these regulations, prior to the recordation of a condominium declaration as specified in A.R.S. § 33-1211.

1. Pre-application Conference

A pre-application conference, per section 3.3.1.A is encouraged but not required.

2. Submittal

Applications are submitted to PDSO for review and approval.

3. Complete Application

The Application shall conform to the requirements in Section X of the Administrative Manual. Only complete applications will be accepted for processing.

4. Tentative and Final Plat

A tentative and final plat is required; however, the approved site plan for the existing structure/development may serve as the tentative plat if approved by the Director. A final plat may be submitted concurrently with the tentative plat in accordance with the criteria set forth in Section 3.3.4 (verify reference).

D. Approval and Recordation

A Condominium Plat shall be prepared, processed, and approved in compliance with Section 8.4.5 (Final Plat) and Section X of the Administrative Manual.

8.4.3. MINOR SUBDIVISION**A. Purpose**

A minor subdivision may be accomplished with less documentation and it provides a more streamlined process than required for subdivisions. Although a tentative plat is not required, additional information shall be submitted, as needed, to review the project for compliance with all governmental regulations and good engineering

³ The Residential and Non-Residential Condominium provisions have been clarified and revised to be consistent with State statutes.

practices. The purpose of this section is to establish procedures and requirements for minor subdivision plats.

B. Applicability

Any proposed minor subdivision, as defined by this Article, shall be submitted to PSDS for review and decision as provided in this Section and Section X of the Administrative Manual.

C. Criteria

1. The number of proposed lots is ten or less;
2. All utility services are available at the subdivision site boundary;
3. All proposed lots have street frontage or perpetual access easements of a minimum width and maximum length complying with requirements established by Section 7.8 and Section X of the Technical Manual;
4. All streets forming the boundary of the subdivision are fully improved, except for sidewalks that may be improved as part of the project;
5. The subdivision has no special topographic conditions, such as slopes greater than ten percent;
6. The property is not within a 100-year floodplain area or 100-year erosion hazard setback;
7. The property has at least one all weather access;
8. The proposed subdivision site does not have special development requirements, or special requirements have been reviewed and special development requirements have been determined. These special development requirements may include, but are not limited to, the Hillside Development Zone (HDZ); the Environmental Resource Zone (ERZ); the Scenic Corridor Zone (SCZ); and the Watercourse Amenities, Safety, and Habitat (WASH) ordinance; and
9. The minor subdivision cannot be used for for the creation of Flexible Lot Development (FLD).

D. General Provisions

1. Minor subdivisions shall conform to the design standards provided in Section 8.7 and 8.8 (General Requirements for Subdivisions and Minor Subdivisions and Subdivision Design Regulations and).
2. Up to two single-family model homes may be authorized for construction prior to recordation of the final plat, provided:
 - a. Sale or occupancy of an individual unit as a residence does not occur until after recordation of the final plat and the City's release of assurances for improvements, and
 - b. The location of each unit is based on the lot configuration approved for the tentative plat at one unit per proposed lot.

E. Review Procedures

1. A pre-application conference, per Section 3.3.1.A, is required.

2. Applications are submitted to PDSD for review and approval. Only complete applications will be accepted for processing.

F. Review

1. A minor subdivision application shall be reviewed in conformance with the review, approval, and recordation procedures for final plats as provided in Section 8.4.5 and Section X the Administrative Manual except as provided by this section.
2. Any reviews that are normally conducted during the tentative plat process, such as those involving drainage statements or reports, shall instead be conducted as part of the final plat process

G. Approval and Recordation

A final subdivision plat for a minor subdivision shall be prepared, processed, and approved in compliance with Section 8.5.5 (Final Plat) and Section X of the Administrative Manual.

8.4.4. TENTATIVE PLAT

A. Purpose

The tentative plat sets forth the technical mapping of the project including its density, intensity, land uses, pedestrian and bicycle ways, trails, parks, open space, and future lots, streets, and drainage patterns established for the site. The purpose of this section is to establish procedures and requirements for tentative plats. If the subdivision proposed is a Flexible Lot Development alternative, the subdivision shall additionally comply with Section 8.8.9.

B. Applicability

Any proposed subdivision, as defined by this Article, shall be submitted to PDSD for review and decision as provided in this Section.

C. Procedure

The tentative plat shall be prepared as follows:

1. **Pre-application Conference**

A pre-application conference, per Section 3.3.1A, is encouraged but not required

2. **Submittal**

Applications are submitted to PDSD for review and approval.

3. **Complete Application**

The application shall conform to the requirements in Section X of the Administrative Manual. Only complete applications will be accepted for processing.

4. Concurrent Review

The final plat may be submitted concurrent with the tentative plat in accordance with the criteria set forth in Section 3.3.4 (verify reference).

D. Review

1. PDSO shall coordinate the formal technical review of all tentative plats to ensure the plats are prepared in accordance with the applicable codes, ordinances, and standards.
2. On receipt of the application, PDSO shall distribute copies of the tentative plat to CDRC members for review and comment.
3. CDRC shall review the tentative plat for compliance with all pertinent codes and legal requirements, including, but not limited to, codes regulating streets, sidewalks and public transportation access, zoning, floodplain and drainage, fire, water, environmental services, Pima County wastewater, and utility company regulations.
4. If CDRC finds that the tentative plat requires revisions then:
 - a. The plat will be returned to the subdivider with a letter listing specific deficiencies and required revisions;
 - b. The subdivider shall resubmit a revised tentative plat and a letter which responds to each deficiency in detail and explains any revisions made by the subdivider to the plat;
 - c. The subdivider continues to resubmit the tentative plat until such time as the CDRC recommends approval of the tentative plat and it is forwarded to the PDSO Director; and,
 - d. Any necessary resubmittals will not change or extend the expiration times commencing at acceptance of a tentative plat, as provided in this article.
5. The zoning of the property shall permit the proposed use, and any changes to zoning shall have been adopted prior to the approval of the tentative plat.

E. Approval

1. Notice of Decision

- a. If the requirements for tentative plats have been met, then the CDRC, by its designated representative, shall send a letter to the applicant notifying the applicant that the plat has been forwarded to the PDSO Director with a recommendation for approval.
- b. The PDSO Director, or designee, shall approve the tentative plat once all the final documents, as detailed in the CDRC decision letter, are submitted for his or her signature. See Section X of the Administrative Manual for more details.

2. Significance of Tentative Plat Approval

Approval of the tentative plat shall constitute authorization for the subdivider to proceed with the preparation of the final plat.

- a. Once a tentative plat is approved, the layout and design under which approval of the tentative plat is granted shall not be changed without

concurrence of both the reviewing departments and agencies and subdivider prior to the expiration date of the tentative plat.

- b. Approval of a tentative plat does not guarantee final acceptance of streets for dedication.
3. An application for which a tentative plat was approved prior to the effective date of this UDC may be processed in accordance with the tentative plat approval and applicable terms of the ordinance in place at the time of tentative plat approval, even if the application does not comply with one or more standards set forth in this UDC. Tentative plat approvals granted prior to the effective date of this UDC may be extended no more than once, and for no longer than six months.

8.4.5. FINAL PLAT

A. Applicability

1. All proposed subdivisions, including minor subdivisions, block plats, and condominium plats, require the review and approval of a final plat except as provided in Section 8.2.
2. The final plat shall substantially conform to the approved tentative plat and be prepared in accordance with final plat requirements set forth in the Administrative Manual Section XXX
3. The subdivider shall construct all required subdivision improvements, at no expense to the City, prior to recordation of the final plat, or the subdivider may post financial assurances as detailed in Section 8.7.2.

B. Procedure

The final plat shall be prepared as follows:

1. Submittal

Applications are submitted to the PDSD for review and approval.

2. Complete Application

The Application shall conform to the requirements in Section X of the Administrative Manual. Only complete applications will be accepted for processing.

3. Concurrent Review

The final plat may be submitted concurrently with the tentative plat in accordance with the criteria set forth in Section 3.3.4 (verify reference).

C. Review

1. PDSD shall coordinate the formal technical review of all final plats to ensure the plats are prepared in accordance with the applicable codes, ordinances, and standards.
2. On receipt of the application, PDSD shall distribute copies of the final plat to CDRC members for review and comment.
3. CDRC shall review the final plat for compliance with all pertinent codes and legal requirements, including, but not limited to, codes regulating streets,

sidewalks and public transportation access, zoning, floodplain and drainage, fire, water, environmental services, Pima County wastewater, and utility company regulations.

4. If CDRC finds that the final plat requires revisions then:
 - a. The plat will be returned to the subdivider with a letter listing specific deficiencies and required revisions.
 - b. The subdivider shall resubmit a revised final plat and a letter which responds to each deficiency in detail and explains any revisions made by the subdivider to the plat.
 - c. The subdivider continues to resubmit the final plat until such time as the CDRC recommends approval of the final plat and it is forwarded to the PDSO Director.
 - d. Any necessary resubmittals will not change or extend the expiration times commencing at acceptance of a final plat, as provided in this article.

D. PDSO Engineering Administrator and PDSO Final Plat Approval

1. Director's Recommendation

Upon recommendation of approval by the CDRC and submission of all required items as detailed in the CDRC approval letter, the PDSO Director shall forward the final plat to Mayor and Council for consideration. If the plat is dependent on the adoption of a rezoning ordinance, Mayor and Council consideration of the plat shall be scheduled for the same agenda as, or on an agenda following, the Mayor and Council consideration of the rezoning ordinance.

2. Mayor and Council Consideration

The Mayor and Council shall consider the application for final approval in a public meeting.

3. Notice of Decision

The City Clerk shall provide a notice of the Mayor and Council's decision to the applicant and any party requesting such notice.

4. Final Plat Recordation

The City Clerk's Office shall forward the final plat documents to the Office of the Pima County Recorder for recordation after approval of the final plat by Mayor and Council. If the use of the property proposed through the plat is dependent on the adoption of a rezoning ordinance, the recordation shall occur after the effective date of any change in zoning.

8.5. REVIEW PERIODS AND EXPIRATION DATES

8.5.1. TENTATIVE PLAT

A. Tentative Plat Maximum Review Period

1. The subdivider has one year from the date PDSO accepts the tentative plat application to obtain approval of a tentative plat that complies with

requirements in effect at the time of application, except where an ordinance specifically states that the regulation applies to pending applications.

2. If the tentative plat has not been approved within one year of the date of acceptance of the application, the review period expires. A one year extension to the review period is possible as long as the plat is revised to meet all codes and regulations in effect at the time of resubmittal and appropriate fees are paid.
3. The maximum review period is two years from the date of application submittal.

B. Tentative Plat Expiration

1. The tentative plat approval expires three years from the date of approval.
2. When a tentative plat that is platted and recorded in phases all phases except phase I expire four years from the date of approval.
3. For subdivision processes that do not require a tentative plat, these review period apply to the final plat review.

8.5.2. FINAL PLAT

A. Final Plat Approval Period

A final plat shall be approved and recorded within three years of the tentative plat approval date. A final plat is subject only to the ordinances in effect at the time of the tentative plat application except where an ordinance specifically states that it applies to pending applications.

B. Tentative Plat Approval Extension

A subdivider may request an extension of the tentative plat approval period. The extension may be granted based on the following:

1. Up to a one (1) year time extension to the three (3) year tentative plat approval period, provided there have been no changes in City regulations applicable to the proposed subdivision since the approval of the tentative plat; or
2. Up to one (1) year periods of extension for each phase of a tentative plat being platted and recorded in phases, provided there have been no changes in City regulations applicable to the proposed subdivision since the approval of the tentative plat phase under consideration.

8.6. GENERAL REQUIREMENTS FOR SUBDIVISIONS AND MINOR SUBDIVISIONS

8.6.1. GENERAL PROVISIONS

The following requirements apply to all subdivisions.

8.6.2. SUBDIVISION IMPROVEMENTS AND FINANCIAL ASSURANCES

Assurances are required where necessary improvements are not completed at the time a final plat is recorded. The assurances provide security that the subdivider will complete necessary improvements.

A. Requirement

1. A subdivider shall construct all required subdivision improvements at no expense to the City prior to the recordation of the final plat; or
2. A subdivider shall post financial assurances to guarantee the completion of the required subdivision improvements provided that the form and the amount of the financial assurance conforms to the requirements of this section and Section X of the Administrative Manual and is satisfactory to the City Attorney's Office as to form, sufficiency, and manner of execution.
3. Assurances that all required improvements will be completed and approved by the City shall be provided by the subdivider in conformance with Section X of the Technical Manual before a final plat may be forwarded to the Mayor and Council for approval. The City Manager is authorized to execute on behalf of the Mayor and Council agreements to provide subdivision assurances as provided in Section X of the Technical Manual. The PDSO Director is authorized to release assurances when appropriate.

B. Acceptable Form of Assurances⁵

The following are acceptable forms of assurances.

1. Performance Bond

A subdivider may post a performance bond executed by a surety company licensed to do business in the State of Arizona in an amount approved by the PDSO City Engineer. The PDSO City Engineer may sign the bond instrument on behalf of the City, and the City Attorney shall approve same as to form.

2. Cash Escrow Account

A subdivider may establish a cash escrow account with the City or a bank or similar financial institution acceptable to the City.

3. Letter of Credit

A subdivider may provide an irrevocable letter of credit in a sum approved by the PDSO City Engineer from a bank or other financial institution or person acceptable to the City. The PDSO City Engineer is authorized to sign the agreement on behalf of the City, and the City Attorney's Office shall approve same as to form.

4. Third Party Land Trust

A subdivider may vest ownership of the subdivision developments in a Third Party Trustee, with direction that the property in trust will not be released for sale by the Trustee unless and until the City agrees to the release. The City will thereafter agree to a full or partial release of trust property as provided in this section. The PDSO City Engineer is authorized to sign the agreement on behalf of the City and the City Attorney shall approve same as to form. The Mayor and Council approval of the third party land trust is required if the subdivider deviates from the City-approved third party land trust documents.

⁵ 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.

5. Alternative Forms of Assurances

The PDSD Director or designee may accept alternate methods to assure the completion of subdivision improvements where acceptable to the PDSD Director and the City Attorney's Office in form and substance. Mayor and Council approval of the alternate assurance method, agreement, or form(s) is required prior to the approval of the final plat.

C. Amount of Assurances

Except for third party land trust agreements, the PDSD Director or designee may require a monetary amount for assurance of subdivision improvements not to exceed one and one half (1.5) times the estimated cost of construction of the required improvements. For phased subdivisions, assurances may be provided separately for the improvements necessary for each phase.

D. Inspection and Acceptance of Improvements for Partial and Final Releases

1. The PDSD Director, or designee, shall provide for inspection of required improvements.
2. If the PDSD Director or designee finds upon inspection that any of the required improvements have not been constructed per City approved documents, or have not been constructed in accordance with the City's construction standards and specifications, the subdivider shall be responsible for completing or replacing such improvements in accordance with the list of deficiencies, the City accepted specifications, and approved plans, as outlined in this article and the Administrative Manual.
3. Project completion documentation is required to be submitted for final release as outlined in the PDSD Engineering established procedures in Section X of the Technical Manual.
4. The City will not accept dedication of the required improvements or release or reduce any assurance for a subdivided project requiring sewer or water improvements, until the PDSD Director or designee has received statements from the Director of Tucson Water and the Director of the Pima County Wastewater Management Department that such improvements have been satisfactorily completed. Upon such approval and recommendation by the City Manager, the Mayor and Council shall accept the improvements for dedication in accordance with established procedure.

E. Partial Release of Assurance

1. Partial Release of Subdivision Improvements for Third Party Land Trust

Where a Third Party Land Trust is provided as assurance for completion of improvements, a partial release of a portion of the subdivision may occur, prior to the completion of all improvements, provided the partial release is proportional to the level of completion of improvements. Requests for release, inspections, and approvals shall be in conformance with PDSD Engineering procedures in Section X of the Technical Manual.

a. Partial Release of Residential Subdivision Assurances for Third Party Land Trust

Up to 75 percent of the lots held in a third party trust in any particular phase may be released prior to completion and acceptance of the

common-element improvements (e.g., basins, sewer lines, water lines, street improvements, etc.). Any lot(s) released shall be served by the completed common-element improvements that serve the subject lot(s). Once the common-element improvements have been accepted, partial releases greater than 75 percent or a final release may be granted only when all the subdivision improvements have been completed, inspected, accepted by the appropriate agency, and the project closure documents have been submitted and accepted by PDS Engineering.

b. Commercial Subdivisions for Third Party Land Trust Release

Up to 60 percent of the lots in any particular phase may be released prior to the completion and acceptance of the common-element improvements (e.g., sewer lines, water lines, street improvements, etc.). Any lot(s) released shall be served by the common-element improvements. Once the common-element improvements have been accepted, partial releases greater than 60 percent or a final release may be granted only when all the subdivision improvements have been completed, inspected, accepted by the appropriate agency, and the project closure documents have been submitted and accepted by PDS Engineering.

2. Reduction or Partial Release of Monetary Assurances

Where a bond, letter of credit, or other monetary assurance is provided the amount of an assurance may be reduced upon partial completion of construction or actual dedication of one or more improvements, but, only in a ratio that the dedicated improvement(s) bears to the total improvements indicated on the plat. Where a subdivider completes and offers to dedicate the required improvements for a portion of the final plat, monetary assurances for such improvements may be reduced only where the improvements can be used and maintained independently of remaining improvements required for the entire plat. For example, temporary cul-de-sacs should be provided for incomplete streets; water, sewer, and electric facilities should be capable of independent operation; and adequate access for public safety vehicles shall be provided. In no case may more than 75 percent of the total monetary value of assurances be released prior to completion of all improvements.

F. Substitution of Third Party Trust Assurances

Where a Third Party Land Trust is provided as assurance for completion of improvements, a substitute assurance may be submitted for review. The substitute trust shall include those portions of the subdivision to be covered. Additional substitute assurances may be needed to be in place so that all the assurable items that need completion are covered. The Third Party Trust may be entirely substituted by another form of assurance using cost estimate procedures based on the remaining improvements with contingency and mobility costs. Acceptance of substitute assurances is solely at the discretion of the PDS Director. The number of substitutes for any given subdivision may be limited as determined by the PDS Director.

G. Full Release of Assurables Items

A final release may be granted only when all the subdivision improvements have been completed, inspected, accepted by the appropriate agency, and the project closure documents have been submitted and accepted by PDS Engineering.

H. Expiration or Lapse of Assurances

1. Additional Assurances

Notwithstanding assurances provided, if the PDS Director, in his sole discretion reasonably determines that grounds exists resulting in commercial insecurity that the required improvements will be completed he may demand additional assurances. The neglect or refusal of the Subdivider to provide such additional assurances within 30 days shall result in the immediate suspension of the issuance of any permits or further permits unless and until further assurance is provided.

2. Expiration or Lapse

If the PDS Director determines that any applicable assurances expire, lapse, become subject to a bankruptcy or otherwise become ineffective, the PDS Director shall suspend the issuance of any permit(s) until such time as appropriate current assurances have been provided.

8.6.3. SURVEY MONUMENTS REQUIRED

The subdivider shall place survey monuments of appropriate type and design delineating the external boundary of the parcel being subdivided, public streets, and all public street intersections within or adjacent to the subdivision, installed in accordance with established practices of the City.

- A. External boundary survey monuments for the parcel being subdivided shall be installed prior to recordation of the final plat.
- B. All other monuments are to be installed prior to the recordation of the final plat, unless the subdivider has posted financial assurances with the City to assure the installation of the monuments after recordation.

8.6.4. PERMITS FOR MODEL HOMES

Upon approval of the tentative plat, up to five single-family model homes may be authorized for construction prior to recordation of the final plat, provided:

- A. Sale or occupancy of an individual unit as a residence does not occur until after recordation of the final plat and the City's release of assurances for improvements, and
- B. The location of each unit is based on the lot configuration approved for the tentative plat at one unit per proposed lot.

8.6.5. LAND CLEARING AND GRADING

- A. Land clearing or grading may begin after grading plans are approved, provided the plans are prepared in compliance with an approved tentative plat and such tentative plat is in conformance with the underlying zoning. Mass graded subdivisions include grading of all the platted lots and other subdivision improvements by the developer. Custom graded lot subdivisions include the road improvements that guaranty access to

each lot, and other subdivision improvements where access to a future building pad is feasible for each lot. (mass grading and custom grading definitions may need to be moved to revised development standards? To be discussed)

- B. Grading plans may be submitted for review prior to approval of the tentative plat in accordance with criteria listed in Section X of the Administrative Manual, but cannot be approved until after the tentative plat has been approved.

8.6.6. PLAT ABANDONMENT

A recorded plat that is filed for the purpose of abandoning the plat, meaning reverting to the configuration of land previously subdivided, or vacating streets or easements previously dedicated to the public; or vacating or redescribing lot or parcel boundaries previously recorded shall be replatted following the procedures set forth in this Article.

8.7. SUBDIVISION DESIGN STANDARDS⁶

8.7.1. PARKS, RECREATIONAL FACILITIES, FIRE STATIONS, AND SCHOOL SITES

Where, in accordance with an adopted plan, it is determined that there are inadequate parks and recreational facilities, fire stations, or school sites, the Mayor and Council may require that land area within the subdivision be reserved for one or more of those uses. Such requirement shall be in accordance with state subdivision statutes regulating reservation of parks, recreational facilities, fire stations, and school sites.

8.7.2. PHASED SUBDIVISIONS

All plats for subdivisions platted in phases shall comply with this Article and all other relevant City regulations and standards.

8.7.3. FLEXIBLE LOT DEVELOPMENT (FLD)

A. Purpose

The purpose of the Flexible Lot Development (FLD) is to provide greater flexibility and creativity in the design of residential development by:

1. Providing incentives to achieve community goals, such as historic and archaeological preservation, preservation of native vegetation, development within low-income areas, and in-fill housing projects;
2. Implementing the goals and objectives of the General Plan, Area Plans, and Neighborhood Plans;
3. Providing open space that is usable and includes suitably located active and passive recreational amenities, such as trails, walking paths, picnic areas, and playgrounds;

⁶ The Street, Access, Alley, Easements Required, and Hydrology design standards are being relocated to either Article 7 (Development Standards) or the Technical Manual. 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.

⁸ 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.

4. Providing for visual, and where achievable, physical connections to open space areas on adjacent properties;
5. Efficiently using land and public facilities by means of a more economical arrangement of buildings, circulation systems, land uses, and utilities;
6. Preserving to the greatest extent possible existing Natural Undisturbed Open Space, environmentally sensitive areas, and landscape features and amenities, such as significant topography, protected peaks and ridges, natural vegetation, washes, riparian areas, and floodplains, and integrating such features with structures and other improvements;
7. Coordinating architectural styles, building forms, and building relationships within the development and with surrounding land development;
8. Providing high-quality sustainable development within the city that incorporates "green building" techniques such as water harvesting, solar access, and passive solar orientation;
9. Mitigating the urban heat island effect by requiring such measures as canopy trees throughout the FLD project and other acceptable mitigation efforts; and,
10. Creating incentives for appropriate urban infill development on lots with site constraints.

B. Applicability

FLDs may be developed in the following zones:

1. Single-family detached residential development in the SR, SH, RX-1, and RX-2 zones;
2. Single-family residential development, attached or detached, in the R-1, MH-1, and MH-2 zones; and
3. Single-family attached or detached, and multifamily residential development in the R-2, R-3, O-1, O-2, O-3, C-1, C-2, and C-3 zones.

C. General Development Criteria^a

1. **Conformance with the General Plan and other Applicable Plans**
An FLD shall be in conformance with the General Plan and any of its components, including any applicable adopted area and neighborhood plans.
2. **Applicability of General UDC and Technical Manual Requirements**
Except as provided in this section, all applicable standards of the UDC and the Technical Manual apply to FLDs.
3. **Development Alternatives**
FLDs shall be developed using one of the following alternatives:
 - a. **Standard FLD**
Standard FLD projects shall not exceed the dimensional standards for Development Alternative A in Section 8.7.8.D.
 - b. **Maximum Density Option**

FLD projects that meet at least one of the following development options may develop to the dimensional standards for the Development Alternative B in Section 8.7.8.D.

(1) Low Income Housing

A minimum of ten percent of the project's total number of units or minimum of two units, whichever is greater, are constructed and used for low-income housing.

(2) Housing for the Elderly

The entire project is designed and constructed only for the elderly. A covenant shall be recorded for the project site stating that the housing is restricted for use by the elderly. Residents of an FLD for elderly shall be at minimum 62 years old.

(3) Historic Preservation

The project includes preservation of a historic site, structure, or landmark or leads to the preservation or scientific study and archaeological documentation of prehistoric or historic buildings or sites, in accordance with the criteria listed in Section X of Technical Manual. Features eligible for use of this option are those identified in the required archaeological study as meeting the criteria in Section X of the Technical Manual. A recorded covenant preserving the historical site is required.

(4) Additional Functional Open Space

The project preserves at least 20 percent more Functional Open Space than is required by Section 8.7.8.F.1 (Functional Open Space Requirements). The additional open space shall be usable for passive or active recreational uses, such as trails, walking paths, picnic areas, and playgrounds.

(5) Additional Open Space within an FLD Greater than 5 Acres

The project preserves in a natural state at least 15 percent more area than is required by other sections of the Tucson Code. These natural features include, but are not limited to, vegetation, washes, and hillsides.

(6) Proximity to an Arterial Street

The project is located in the City's Central Core (as defined in the City of Tucson's General Plan) and is on a designated arterial street near transit facilities to promote the use of transit and reduce vehicle trips. The project density does not conflict with any applicable area or neighborhood plan.

(7) Trail or Wildlife Corridor Dedication

The FLD provides for dedication of trails or wildlife corridors, or both, that connect to offsite trails and wildlife corridors as approved by the Parks and Recreation Department.

(8) Green Building

The project is designed and located to comply with the energy efficiency requirements listed in the Technical Manual Sec. XXX.

D. Regulations for FLD Projects⁹

The following regulations are required of all FLD projects:

1. Development Alternative A is for standard FLDs.
2. Development Alternative B is for Maximum Development Option FLDs per Section 8.7.8.C.3.b.

TABLE 8.7.3-1: Dimensional Standards for FLDs				
Zone	Development Alternative	Site Coverage (max. %)	Allowable Density (max.)	Building Height (ft)
SR	A	8	0.25	30
RX-1	A	33	1.00	30
RX-2 & SH	A	33	2.25	25
R-1 & MH-1	A	50	5.14	25
	B	70	6.25	25
MH-2	A	62	8.00	25
	B	75	15.00	25
R-2	A	62	8.71	25
	B	75	22.00	25
R-3	A	70	36.00	40
	B	75	44.00	40
O-1, O-2 & O-3	A	75	22.00	25
C-1	A	75	36.00	25
C-2 & C-3	A	75	44.00	40

E. Minimum Lot Size

There is no minimum lot size within an FLD, except as follows:

1. Lots in the SR and RX-1 zones shall be at least 18,000 square feet.
2. Lots in the RX-2 zone shall be at least 12,000 square feet.
3. All lots developed with a septic system shall be at least one acre.

F. Open Space Requirements

1. Functional Open Space Area Requirements

a. Functional Open Space shall be provided as shown in the following Table:

TABLE 8.8.9-2: Functional Open Space Standards	
Project Size	Functional Open Space Requirement
5 acres or less	Less than 13 DU/AC* = 109 SF**/unit 13 DU/AC or more = 161 SF/unit
More than 5 acres	269 SF/unit
*DU/AC = Dwelling units per acre	

⁹ The unresolved issues with density currently in the LUC have been carried over into the UDC. Should these issues be resolved now?

**SF = square feet

- b. Functional Open Space shall be for an active recreational, passive recreational or scenic purpose.
- c. An FLD shall provide Functional Open Space amenities appropriate for the mix of residents for which the FLD project is designed.
- d. A homeowners' association or management organization shall be established by the developer to be responsible for the ownership, permanent care, and maintenance of Functional Open Space areas.
- e. Any portion of the FLD project site that has been dedicated to and accepted by a public entity for public use as a Functional Open Space amenity may be included in meeting the Functional Open Space area requirements. Dedications that meet this requirement include, but are not limited to, parks, trail, and detention and retention basins that incorporate Multiple-Use Concepts and Aesthetic Design Guidelines described in Chapter IV of the Stormwater Detention/Retention Manual.

f. Exemptions

The following FLD projects are exempt from functional open space requirements:

- (1) An FLD project with 60 lots or fewer located within one-quarter (1/4) of a mile of a City community park of at least 15 acres which does not require crossing an arterial roadway to reach the park; or
- (2) An FLD project zoned SR, SH, RX-1 or RX-2.

2. Configuration and Location of Functional Open Space within an FLD Project

- a. FLD projects 5 acres and less. Functional Open Space amenities should be configured as contiguous areas, but may also be incorporated into the design of other elements on the site, such as detention/retention basins and buffers, in order to make those areas functional.
- b. FLD projects more than 5 acres. Functional Open Space may be divided into smaller areas if they are distributed throughout the project site and conveniently located for residents of the FLD project.
- c. Functional Open Space shall be conveniently located to and usable by the maximum number of the residential units on the site.
- d. To the greatest extent possible, Functional Open Space should not be comprised of remnant areas that are not usable by residents of the FLD project.
- e. Where the project is located near a public preserve, or can provide connections to open space areas or areas of environmentally or culturally significant features, the open space shall be configured in a manner to preserve this connectivity.

3. **Natural Undisturbed Open Space (NUOS)¹⁰**
 - a. NUOS areas include environmentally significant features (as identified in the Environmental Resource Zone; Hillside Development Zone; and, Watercourse Amenities, Safety and Habitat zone); culturally significant features (features eligible for National Register status as identified during the cultural resource assessment process); designated floodplains (except where channelized); and, other features identified during the FLD site design plan process.
 - b. NUOS areas shall remain unimproved and permanently conserved with the following exceptions:
 - (1) Trails are permitted in NUOS areas and may count toward meeting Functional Open Space requirements.
 - (2) Infrastructure is permitted in NUOS areas when connectivity of services is required or cannot be achieved elsewhere on the site outside the NUOS area using design techniques that minimize the impact on the NUOS, such as limiting crossings and borings.
- G. **Detention and Retention Basins¹¹**
 1. To the greatest degree practicable, detention and retention basins within an FLD shall be designed as Functional Open Space by incorporating the Multiple-Use Concepts and Aesthetic Design Guidelines described in Chapter IV of the Stormwater Detention/Retention Manual, and in accordance with Section 7.6.6.C. Functional Open Space amenities within detention and retention basins may count toward meeting Functional Open Space requirements.
 2. Detention and retention basins shall be:
 - a. Located in a common area, outside the boundaries of a residential lot;
 - b. Owned and maintained by the homeowners organization or management organization established by the developer;
 - c. Located within the perimeter wall, fence, or screening surrounding the FLD project site boundaries, if provided; and,
 - d. Designed and constructed in compliance with the Stormwater Detention/Retention Manual.
 3. Slopes should be no steeper than 4:1 where water depths exceed two feet within a detention or retention basin so that a safety barrier is not required.
- H. **Landscaping, Screening and Wall Requirements**
 1. FLD projects shall comply with Landscaping and Screening Standards, Section 7.6, except as otherwise provided by this section.

¹⁰ The NUOS and Detention/Retention Basin provisions apply to all development that have NUOS and detention/retention basins and can be relocated to Article 7 (Development Standards) or the Technical Manual where it will have more general applicability.

¹¹ The NUOS and Detention/Retention Basin provisions apply to all development that have NUOS and detention/retention basins and can be relocated to Article 7 (Development Standards) or the Technical Manual where it will have more general applicability.

2. One canopy tree shall be provided every 40 feet of pedestrian circulation systems, excluding crossings with streets, alleys, and driveways. If providing canopy trees every 40 feet is not achievable, the applicant shall:
 - a. Provide the equivalent number of trees that would be obtained using the 40-foot increment measure; and,
 - b. Distribute the trees within the FLD project site along pedestrian circulation systems and within Functional Open Space areas.
 3. Landscape plans shall incorporate water-conserving design as defined in Section 7.6.6 and as described in the Technical Manual Sec. XXX.
 4. Water harvesting techniques shall be incorporated as part of the landscape design based on the Water Harvesting Guidance Manual prepared for the City of Tucson Transportation Department Stormwater Section.
 5. Mechanical equipment, utility boxes, irrigation equipment and similar elements shall be screened from adjacent streets exterior to the project and from adjacent existing residential development. Screening shall be architecturally integrated with the overall design of the FLD.
 6. If a perimeter wall is proposed along an existing public right-of-way, it shall be constructed of, or painted with, graffiti-resistant materials. The wall shall incorporate one or more of the following decorative materials:
 - a. Tile;
 - b. Stone;
 - c. Brick;
 - d. Adobe;
 - e. A textured material such as stucco or plaster; or
 - f. Metal
- I. Parking**
- Parking shall comply with Section 7.4 (Motor Vehicle and Bicycle Parking), applicable sections of Section 7.6 (Landscaping), and Section X of the Technical Manual, applicable regulations related to accessibility, and the following criteria:
1. Streets within the FLD site for which on-street parking is proposed shall be designed with parking lanes that comply with Section X of the Technical Manual.
 2. An alley abutting an existing development shall not be used for parking access.
 3. Common parking areas shall meet the following requirements:
 - a. No more than 60 parking spaces may be located in any single outdoor parking area;
 - b. There shall be a minimum of 30 ft. separation between common parking areas. Common parking areas shall be separated by a building or landscaping;

- c. The same parking area access lane (PAAL) may provide access to two or more parking areas; and,
- d. Curbed areas shall provide openings to allow water to flow into landscaped areas and water harvesting basins.

J. Circulation and Connectivity

- 1. The right-of-way and pavement widths for internal ways, common parking areas, streets, roads, or other means of vehicular circulation and for surface drainage serving the FLD shall be in conformance with Section 7.4.6, and Section XXX in the Technical Manual.
- 2. All elements of an FLD, including residential units and recreational amenities, shall be connected by a pedestrian circulation system.
- 3. Interior pedestrian sidewalks shall connect to sidewalks on abutting streets and to abutting commercial and recreational facilities with adjacent property owner's consent.
- 4. Bus turn-out lanes and bus waiting shelters shall be provided if requested by the City.
- 5. **Barrier Free Access to Functional Open Space Amenities**
 - a. For purposes of this section, barrier free access is defined as functional access for semiambulatory and nonambulatory persons.
 - b. Barrier free access to Functional Open Space amenities shall be provided pursuant to the City's adopted Building Code Section 1109.14 (Recreational and sports facilities). Exception: FLDs using the Housing for the Elderly maximum development option (Section 8.7.8.C.3.b) shall provide barrier free access pursuant to the City's adopted Building Code Section 1109.14 (Recreational and sports facilities) or 50 percent, but not less than one, of each type of Functional Open Space amenity, whichever is greater.
- 6. Trails that have current or future linkages to other trails, open space areas or recreation areas shall be provided as determined by the City Parks and Recreation Department.
 - a. Trails shall be constructed in compliance with the design criteria established for trails by the City of Tucson Parks Department and Pima County Parks Department.
 - b. Hard and soft surface paths, when required, shall have an average separation of at least five feet to allow for landscaping that does not interfere with the paths, except where a reduced width is allowed by the City's Parks and Recreation Department.

K. Setback Along FLD Project Site Boundaries¹²

- 1. Setbacks along FLD project site boundaries are required in accordance with Section 6.X and are based on the site's underlying zoning.

¹² The development designator system is being replaced with a development standards based on zone.

2. Street setbacks along FLD project site boundaries are required in accordance with Section 6.X, unless special zoning requirements dictate a greater distance or different point of measurement.
- L. **Setbacks on Interior Lots**
1. The setback requirements of Section 6.X may be reduced for setbacks along interior lot lines to the extent permitted by the City's adopted Building Codes.
 2. Along interior street lot lines, street setbacks are required, in accordance with Section 3.2.6.5. The street setback may be administratively reduced by the PDS Director based on a finding that the reduced setback enhances the architectural design or the vehicular circulation in the FLD and a transportation statement is approved by the City's Traffic Engineering division.
 3. Along parking area access lanes (PAALs), setbacks are required in accordance with Section X of the Technical Manual.
- M. **Design Criteria**
1. **Architectural Variation**
 - a. **Purpose**

To provide architectural diversity, visual interest, and to avoid monotony in architectural design by requiring variations in such architectural treatments as color, finished materials, massing and rooflines, orientation of units, garages and porches.
 - b. **Applicability**

The requirements of this section apply to projects meeting the following criteria:

 - (1) Projects with 20 or more single-family detached residential units except when residential units are on lots larger than 10,000 square feet or, where dwelling units are separated by 30 feet or more; or
 - (2) Elevations of single family detached units abutting a public street designated as a collector or arterial street in the Major Streets and Routes Plan; or, a private or public street designed and/or designated as a residential collector street.
 - c. **Requirements**
 - (1) The same architectural elevation shall not be repeated more often than every fourth lot.
 - (2) Architectural variation may be accomplished by incorporating a minimum of two of the following design features into the affected elevations: different building footprint orientation, building elevation, garage placement, roof type, ornamentation, or architectural style. The applicant shall work with the City's Design Professional to ensure that adequate variation is achieved.
 - (3) **Garage Placement.** For FLD projects with over 20 or more single-family detached residential units, no more than 50 percent of detached residential units throughout the FLD shall be designed with garages that protrude from or are flush with the front wall of the living area or front porch of the house.

d. Architectural Variation Plan Required

- (1) An Architectural Variation Plan (AVP) demonstrating compliance with the requirements of this section shall be prepared in accordance with the Section of the Administrative Manual.
- (2) The AVP shall be included with the subdivision plat, site plan, or building permit submittal.
- (3) The Design Professional will review AVPs for compliance with this Section and forward his or her findings and recommendation in writing to the PDS Director for consideration of approval.
- (4) The PDS Director's decision may be appealed to the Design Review Board in accordance with Section 3.X.
- (5) Conditions of the approved AVP shall be included as notes on the approved plat or site plan, whichever applies, and the building plan.
- (6) An AVP shall be approved prior to issuance of a building permit.

2. Transition Edge Treatment and Mitigation for Adjacent Properties

a. Transition Edge Treatment

Where a single-family attached or multi-family FLD project is adjacent to existing single-family residential development, the FLD shall provide buffering in order to preserve the privacy of the existing residential development. Examples of buffering include, but are not limited to, landscaping, a fence, or a wall. The proposed buffering shall be included as conditions on the approved subdivision plat or site plan.

b. Privacy Mitigation

(1) Applicability

Privacy mitigation as required by this section is required when multistory residences are proposed adjacent to existing single story residences and the existing residences are zoned R-2 or more restrictive.

(2) Prohibited

Balconies, windows (except for clerestory and translucent windows), or any other feature on an upper floor that overlook the rear and side yards of an adjacent residence are prohibited.

(3) Privacy Mitigation Plan

A Privacy Mitigation Plan (PMP) is required demonstrating compliance with this section.

(a) PMPs shall be prepared in accordance with Section X of the Administrative Manual.

(b) PMPs shall demonstrate that adequate measures, such as screening, setbacks, building mass, solar access, air circulation, and light access are incorporated into the design of the project to preserve the existing residents' privacy.

- (c) PMPs shall be included with submittal of the tentative plat or site plan, whichever is applicable.
- (d) The Design Professional will review the PMP for compliance with Sec. 8.8.9M.2.b and forward his or her findings and recommendation in writing to the PDSO Director for consideration of approval.
- (e) The PDSO Director's decision may be appealed to the Design Review Board in accordance with Section 3.X.
- (f) Conditions of the approved PMP, including a description of the required mitigation and for which units the mitigation applies, shall be included as notes on the plat or site plan, whichever applies, and the building plan.
- (g) A PMP shall be approved prior to issuance of a building permit.

3. Solar Access and Passive Solar

a. Solar Access

Dwelling units should be configured to allow solar access to adjacent structures in accordance with Section 7.3.

b. Passive Solar

FLD projects should incorporate passive solar design when practicable.

N. Management of Common Properties

The subdivision plat will provide for the ownership, control, maintenance, and liability of all common areas through the homeowner's association or joint and several liability of all property owners in accordance with Section X of the Technical Manual.

O. FLD Phasing Requirements¹³

An FLD may be phased for construction and development; however, the FLD shall be considered a single project for purposes of allowable densities, open space, common areas, hydrology, and grading, provided that all of the following conditions are met.

- 1. The entire FLD shall be platted as one project, as setbacks and other FLD requirements are based on the entire FLD site. If the FLD is platted by phase, then each phase shall comply with requirements as a separate project, including the following:
 - a. Homeowners' association documentation shall allow for the annexation of future phases if designed to work as one project; and,
 - b. If access to future phases is designed to be through the phase being platted, right-of-way easements or other acceptable legal instruments shall be provided on/with the plats and homeowners' association documents.

¹³ The Project Amenities and Site Improvements section (LUC Section 3.6.X) 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.

2. If the FLD contains common areas, the entire FLD shall be subject to an overall set of comprehensive conditions, covenants, and restrictions which establish the character of the development and create an overall homeowners' association. If the documentation for the overall homeowners' association does not indicate responsibility for each phase within the FLD, then the excluded phase shall have its own homeowners' association which will be responsible for owning and maintaining any common area, open space, natural area, or recreation area within the phase.
3. The developer shall submit a document to show how the project amenities and site improvements will be developed in proportion to the number of residential units developed. The site improvements shall be designed to function independently for each phase and as each new phase is added. Such project amenities and site improvements shall be located adjacent to or within developed or developing phases and on property that is abutting or physically connected to the residential development in order to provide access between the amenity and the development it serves.
4. At no time during the construction of the FLD shall the number of constructed residential units per acre of developed land exceed the overall density for the land area in each phase and as approved by the recorded plat

P. FLD Submittal, Review, and Decision

An FLD shall be prepared, processed, and have a tentative and final plat or site plan, whichever is applicable, approved prior to issuance of a building permit.

1. Tentative Plat¹⁴

A tentative plat for an FLD shall be prepared, processed, and considered for approval in compliance with Section 8.4.4, with the following exception.

- a. Notice of the PDSO Director's decision shall be sent to the applicant, property owners within 300 feet of the project site, and neighborhood associations within one mile of the project site.
- b. Appeals to the PDSO Director's decision of the PDSO Director are considered by the Mayor and Council in accordance with Section 3.X. Appeals must be based on the grounds that the PDSO Director's decision is not in conformance with the criteria established by this section. The notice of intent shall be filed with the City Clerk's Office no later than 14 days after the date of the decision. The complete appeal materials shall be filed within 30 days of the decision.

2. Final Plat

A final subdivision plat for an FLD shall be prepared, processed, and approved in compliance with Sec. 8.5.5 (Final Plat).

¹⁴ Staff is proposing to revise the FLD tentative plat review process to no longer require a neighborhood meeting and notice of application for the following reasons: 1) the FLD is much more prescriptive than the RCP, and, therefore, review and consideration for of proposed FLDs is much more objective and much less subject to staff interpretation; 2) the FLD standards provide greater protections to adjacent property owners; and, 3) the additional notice requirements create a mistaken perception among interested parties that they can influence the PDSO Director's decision when, in fact, the decision is based on a project's compliance with all applicable criteria.

3. Site Plan

A site plan is required only if a subdivision plat is not required. The submittal, review and approval of a site plan shall comply with Sec. 3.3.2.

ATTACHMENT D

CITY OF TUCSON
UNIFIED DEVELOPMENT CODE

PRELIMINARY FINAL PUBLIC DRAFT – AUGUST 2011

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ARTICLE 9: NONCONFORMITIES

9.1. GENERAL¹

9.1.1. INTRODUCTION

Structures that came into existence legally but that do not comply with one or more requirements of the Unified Development Code (UDC) may continue to operate or be used as provided below. A nonconforming use may be discontinued, resumed, expanded, or substituted with another nonconforming use, and nonconforming structures can be reconstructed or expanded as provided below, except for advertising and outdoor signs, which are regulated by the Sign Code, Chapter 3 of the Tucson Code.

9.1.2. APPLICABILITY

This Article applies to nonconformities created by initial adoption of or amendments to the UDC. It also applies to nonconformities that were legal nonconformities under previously applicable ordinances, even if the type or extent of nonconformity is different.²

9.1.3. CONTINUATION PERMITTED

Any nonconformity that legally existed on _____ (insert effective date of the UDC), or that becomes nonconforming upon the adoption of any amendment to the UDC may be continued in accordance with the provisions of this Article.

9.1.4. DETERMINATION OF NONCONFORMITY STATUS

The burden of establishing that any nonconformity is a legal nonconformity shall, in all cases, be solely upon the owner of such nonconformity. Application requirements shall be established by the Planning and Development Services Department (PDSD) Director. See the Administrative Manual for the application requirements.

9.1.5. REPAIRS AND MAINTENANCE

Incidental repairs and normal maintenance of nonconformities shall be permitted unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by the UDC. Nothing in this Article shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

9.1.6. TENANCY AND OWNERSHIP

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

¹ This is suggested new language to replace the broad opening paragraph in the current LUC Sec. 5.3.6. Does this suggested text accurately reflect current city policy? In addition, the text in LUC Sec. 1.2.7 Continuing Existing Uses, has not been carried forward in the UDC because it is redundant with the text of this article.

² Does this section apply to annexations also?

9.2. NONCONFORMING USE³

A nonconforming use may be discontinued, resumed, expanded, or substituted with another nonconforming use as provided below.

9.2.1. DISCONTINUANCE OF NONCONFORMING USE

A nonconforming use may be resumed if the nonconforming use activity has been discontinued for less than six months.

- A. A discontinued nonconforming use may be substituted with another nonconforming use, as provided by Section 9.2.3 and Section 9.2.4, provided such nonconforming use is substituted within the six month period.
- B. The right to resume a nonconforming use is lost if the discontinuance is for six months or more or if a change to a conforming use occurs. Determination of discontinuance shall be based upon a consideration of relevant activities and records, including, but not limited to, business license records and/or utility records and the continued maintenance of the property which indicates the intent to continue or discontinue such use. Property left in disrepair or in an unkempt condition shall be considered in the discontinuance of the use.

9.2.2. EXPANSION OF A NONCONFORMING USE

A nonconforming use may be expanded within an existing or new structure or in land area subject to approval by the Zoning Examiner through a Zoning Examiner Special Exception Procedure, Section 3.5.1.B.2, and provided such expansion complies with the following standards.

- A. The expansion is being undertaken within five years of the time the use became nonconforming.
- B. The expansion complies with the UDC standards. These standards include, but are not limited to, setbacks applicable to the use itself or for new construction, bicycle and motor vehicle parking standards, and landscaping and screening standards.
- C. The expansion is for the principal use or for a use that is accessory and incidental to the operation of the existing nonconforming use.
- D. The amount of expansion does not exceed 50 percent of the floor area of the existing building or land area devoted to the existing nonconforming use. Incremental expansions, cumulatively, shall not exceed the 50 percent provision.
- E. The expansion area adjoins the land area, within the same lot, which houses the nonconforming use.
- F. The expansion must comply with the development standards listed for the Land Use Class of the nonconforming use in the most restrictive zone in which the nonconforming use is permitted as of right.

9.2.3. SUBSTITUTION WITH A USE WITHIN THE SAME LAND USE CLASS

An existing nonconforming use may be substituted with the same use or another use from the same Land Use Class without affecting the nonconforming status of the use or

³ Text from LUC Sec. 5.3.6.1, with minor nonsubstantive clarifications only.

9.2.4 Substitution With a Use From a Different Land Use Class

structures on the property. The substitution may be approved by the PDSO Director through a Zoning Compliance Review, Section 3.2.1, if the substitute use complies with standards B, C, and D as listed in Section 9.2.4.

9.2.4. SUBSTITUTION WITH A USE FROM A DIFFERENT LAND USE CLASS

A nonconforming use may be substituted with a use from a Land Use Class that is different from the one to which the existing nonconforming use belongs, provided it is approved through a Zoning Examiner Special Exception Procedure Section 3.5.1.B.2, and provided the use complies with the following standards before and after the substitute use is in operation.

- A. The substitute use is a use permitted in the most restrictive zoning classification in which the existing nonconforming use is permitted as of right.
- B. The substitute use does not generate additional traffic or noise, have longer hours of operation, have additional outside lighting, or cause other negative impacts on adjoining properties greater than those associated with the existing nonconforming use.
- C. The substitute use provides parking as required by the UDC. A modification to the parking standards may be requested in accordance with Section 7.4.10 (Parking Design Modification Request) or Section 3.3.4.E.3 (Variance).
- D. The substitute use does not propose an extension or enlargement of the structure or of the areas occupied by the nonconforming use, except as provided for expansion in Section 9.2.2.

9.2.5. CHANGE IN NONCONFORMING STATUS

When a substitute use is allowed in a zoning district which is a more restrictive zone than the zoning district in which the existing nonconforming use is first allowed, the nonconforming status for that parcel changes to the more restrictive zoning district.

9.3. NONCONFORMING STRUCTURE⁴

A nonconforming structure may be reconstructed or expanded as provided below.

9.3.1. RECONSTRUCTION

- A. Any nonconforming structure or groups of nonconforming structures damaged by natural causes, such as, but not limited to, fire, flood, and lightning, may be reconstructed and used as before with the following limitations.
 - 1. Permits to reconstruct the structure must be issued within 12 months of the occurrence.
 - 2. The reconstruction of the structure may not exceed the original footprint or square footage as it existed at the time of the occurrence.
- B. Except as set forth in Section 9.2.1, a nonconforming structure that is demolished loses its nonconforming status.

⁴ Text from LUC Sec. 5.3.6.2, with minor nonsubstantive clarifications only.

9.3.2. EXPANSION

Nonconforming structures may continue to be utilized as they existed at the time such structures became nonconforming; however, any expansions made to nonconforming structures from that date shall be in compliance with current standards. The proposed expansion of a nonconforming building or structure to rebuild any part of a building damaged or demolished due to a government act, such as right-of-way condemnation, shall not count toward the 50 percent expansion standards of Section 9.2.2; however, such new construction shall comply with the UDC.

9.3.3. LOSS OF NONCONFORMING STATUS

When a building or structure is altered to comply with applicable development standards of the underlying zoning, the nonconforming status of that building or structure is terminated.

9.3.4. NONCONFORMING PARKING AREAS⁵

Nonconforming parking areas may be reconstructed, repaved, restriped, or improved with landscaping, additional buffers, lighting, or similar modifications, including the redesign of the parking area layout. The proposed modifications may be approved by the PDS Director through Section 3.2.1 (Zoning Compliance Review) if the modifications meet the following standards:

- A. The modifications are in the interest of public health and safety;
- B. The modifications do not increase the intensity of the nonconforming use of the parking lot; and,
- C. There is a reduction, or no change, in the adverse impact of the nonconforming parking lot on adjacent residentially zoned properties.

⁵ Per staff comment, we relocated the text in proposed UDC Sec. 9.2.6 to this section, deleted the current language in UDC Sec. 9.3.4, and deleted Sec. 9.2.6 because it is no longer necessary.

ATTACHMENT E
CITY OF TUCSON
UNIFIED DEVELOPMENT CODE

PRELIMINARY FINAL PUBLIC DRAFT – AUGUST 2011

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ARTICLE 10: ENFORCEMENT AND PENALTIES¹

10.1. PURPOSE²

This Article is established to provide a clear division of authority in the enforcement of the Unified Development Code (UDC) and to establish procedures to enforce compliance with the UDC.

10.2. ENFORCEMENT AUTHORITY³

Enforcement of UDC provisions is the responsibility of the Zoning Administrator as provided by state law. The Zoning Administrator is assisted by the Planning and Development Services Department (PDSD), the Housing and Community Development Department (HCDD), and other City departments in enforcement as provided by this Article. Enforcement is ensured as follows.

10.2.1. COMPLIANCE REVIEW, PROPOSED DEVELOPMENT

No land may be used or occupied; no site improvement, modification, or construction started; no existing use or structure expanded, reconstructed, changed, or otherwise altered; and no land may be divided into multiple parcels until compliance with the provisions of the UDC has been certified through a zoning review process by PDSD. No City agency may issue a permit for excavation, grubbing, grading, paving, demolition, or construction of any sort before certification of compliance with provisions of the UDC has been determined by PDSD. In the event a zoning regulation requires interpretation, such interpretation shall be issued by the Zoning Administrator in accordance with Sections 1.5 (Interpretations of the Unified Development Code) and Section 3.2.1 (Zoning Compliance Review).

10.2.2. COMPLIANCE REVIEW, DURING CONSTRUCTION

Monitoring of construction for compliance with plans approved through the zoning review process as required in Section 10.2.1 shall be the responsibility of PDSD. The PDSD shall monitor the implementation of the proposed development to ensure compliance with the plans approved for zoning compliance. PDSD has the authority to suspend construction when construction does not conform with the plans approved for zoning compliance.

10.2.3. COMPLIANCE REVIEW, EXISTING DEVELOPMENT

Any land used or occupied; any site improvement, modification, or construction started; any existing use or structure expanded, reconstructed, changed, or otherwise altered; and any land divided into multiple parcels without certification of compliance with the provisions of the UDC through a zoning review process shall be considered a violation of the UDC. Enforcement of violations shall be in accordance with Section 10.4.

10.2.4. COMPLIANCE CERTIFICATION, EXISTING PREMISES

The Zoning Administrator, upon written request, shall issue a written determination on whether an existing use or building was legally established in compliance with zoning regulations at the

¹ Text primarily from LUC Sec. 5.5 Compliance and Enforcement. We have made some suggested reorganizations (e.g., separating out the "remedies" provisions into their own section). In addition, we have deleted the current Sec. 23A-8 Violation because it is redundant with the requirements of the LUC.

² Text from LUC Sec. 5.5.1.

³ Text from LUC Sec. 5.5.2.

time the use was established or the structure was constructed, in accordance with Section 3.3.1.1.8.

10.2.5. CONTINUED COMPLIANCE FOR APPROVED SITE PLANS⁴

Once a site plan is completed, the approved site plan remains 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 site plan process for approval for a change in the approved site plan constitute a zoning violation.

10.2.6. REVOCATION OF ZONING COMPLIANCE APPROVAL

Continued operation of a land use activity for which a zoning compliance certificate or approval has been revoked constitutes a violation of the UDC and shall be pursued in accordance with Section 104.

10.3. VIOLATIONS⁵

The Zoning Administrator shall be responsible for assuring that violations of the provisions of the UDC are mitigated with assistance from the PDSO, the City Attorney's Office, the HCDD, and other City departments as provided by the City Manager and the Mayor and Council.

10.3.1. VIOLATION DECLARED CIVIL INFRACTION

It shall be a civil infraction for any person, firm, or corporation to violate, disobey, omit, neglect, refuse to comply with, or to resist the enforcement of any of the provisions of the UDC. Each day that such violation continues constitutes a separate infraction.⁶

10.3.2. VIOLATION OF A BOARD OF ADJUSTMENT (B/A) DECISION

Failure to comply with the requirements or conditions of approval from the B/A shall constitute a violation of the UDC.

10.3.3. VIOLATION OF REZONING CONDITION

Failure to comply with the requirements or conditions of approval on a rezoning ordinance adopted by the Mayor and Council shall constitute a violation of the UDC.

10.3.4. VIOLATION OF CONDITIONS OF APPROVAL

Failure to comply with the requirements or conditions of approval on any of the various zoning compliance procedures as provided by the UDC, such as, but not limited to, Special Exception, Design Development Option, Temporary Use, or Home Occupation procedures, shall constitute a violation of the UDC.

⁴ This is a new heading with text from the note in DS 1-07.4.13.C.

⁵ Text from LUC Sec. 5.5.3, reorganized for clarity.

⁶ Text from LUC Sec. 1.1.4.

10.3.5. VIOLATION OF A SITE PLAN

Failure to comply with conditions placed on an approved site plan shall constitute a violation of the UDC.

10.3.6. VIOLATION OF PLAT CONDITION

Failure to comply with the UDC conditions and requirements of a tentative or final plat, as approved, shall constitute a violation of the UDC.

10.4. PENALTIES AND REMEDIES⁷

10.4.1. ACTIONS BY THE ZONING ADMINISTRATOR

The Zoning Administrator may take any of the following actions to ensure enforcement of the UDC.

- A. Conduct an investigation of any site with the express permission of the owner or tenant. If the owner or tenant refuses permission to conduct the investigation, the Zoning Administrator shall issue a citation pursuant to Chapter 8 of the Tucson Code, based on the testimony of the complainant.
- B. Serve written notice upon the owner, agent, or tenant of the property, who is the subject of the violation, requiring cessation or correction of the violation.
- C. Issue a citation pursuant to Chapter 8 of the Tucson Code.
- D. Report violations to the City Attorney as appropriate.
- E. Report violations to the Planning and Development Services Department (PDSD) Director as appropriate.
- F. Take such further action as deemed appropriate to assure compliance.

10.4.2. ACTION BY THE CITY ATTORNEY

If any property or improvement thereon is used in violation of the provisions of the UDC, the City Attorney, in addition to other remedies, may institute any appropriate action or proceeding to:

- A. Restrain, correct, or abate such violation.
- B. Prevent the occupancy of such building, structure, or land.
- C. Prevent any additional violation arising from further conduct, business, or use, in or about such premises.

10.4.3. ACTION BY THE PSDS⁸ DIRECTOR

The PSDS Director has the authority to disconnect or order utility companies to disconnect utility services to the premises involved in a violation until compliance is met, subject to the following.

⁷ Text from LUC Sec. 5.5.3, reorganized for clarity.

⁸ This change to PSDS Director should be verified by the city.

10.4.4 Additional Penalties for Unauthorized Demolition of Historic Structures

- A. No such action by the PDSD Director shall be taken until ten days after receipt by the tenant or by the owner of the premises of written notice of intent to take action.
- B. If a written request for review of the matter is received within ten days of receipt of the notice of intent, the action by the PDSD Director shall be stayed until a hearing thereon by the Board of Adjustment (B/A) or hearing as required by Chapter 8 of the Tucson Code.
- C. This provision does not preclude the use of any other enforcement method provided in the Tucson Code.

10.4.4. ADDITIONAL PENALTIES FOR UNAUTHORIZED DEMOLITION OF HISTORIC STRUCTURES⁹

In addition to the general remedies authorized by Sections 10.4.1 through 10.4.3, any property owner, individual, company, or person, as defined in Tucson Code Section 1-2(16), who causes a structure, site, or Historic Landmark located within a Historic Preservation Zone (HPZ) to be demolished without following the procedures as established in Section 10.4.4 will be subject to the following:

- A. A mandatory fine of:
 - 1. Not less than \$250.00 nor more than \$1,000.00 per violation for demolition of an accessory structure that is a Noncontributing Property, or Not less than \$1,500.00 nor more than \$2,500.00 per violation for demolition of a principal structure or site that is a Noncontributing Property; or
 - 2. Not less than \$2,000.00 nor more than \$2,500.00 per violation for demolition of a Historic Landmark or Contributing Property.
- B. In addition to any fine imposed pursuant to Section 10.4.4.A, the PDSD Director will, upon finalization of judgment:
 - 1. Issue a formal complaint with the Arizona State Registrar of Contractors against any contractor or company involved with an unauthorized demolition; and
 - 2. Issue a formal notification of the violation to the State Historic Preservation Office regarding the unauthorized demolition of any structure, site, or Historic Landmark.
- C. In addition to any fine imposed pursuant to Section 10.4.4.A, one of the following will be imposed as a penalty or remedy.
 - 1. Reconstruction or restoration of a Contributing Property or a Historic Landmark to its appearance prior to the violation.
 - 2. Prohibition or restriction of building permits for new construction on the site for not more than seven years, but not less than 30 days, for a Noncontributing Property or two years for a Contributing Property or Historic Landmark and prohibition or restriction of permits involving work in the public right-of-way for not more than seven years, but not less than 30 days, for a Noncontributing Property or two years for a Contributing Property or Historic Landmark.

⁹ Text is from LUC Sec. 2.8.8.9.1 Penalties for Unauthorized Demolition, with minor clarifications.

10.4.5 Penalties for Violation of Native Plant Preservation Standards

- D. Upon finalization of judgment setting forth a remedy as provided in Sec. 10.4.4.C.1 or Sec. 10.4.4.C.2, the PDSO Director or designate will file the judgment in the office of the Pima County Recorder.
- E. The following factors will be considered in imposing any penalty or remedy pursuant to Section 10.4.4.A
1. Whether the structure, site, or Historic Landmark is one of the last remaining examples of its kind in the neighborhood, city, or region.
 2. Whether there exists sufficient documentation, plans, or other data so as to make reconstruction feasible.
 3. The age of the original structure, site, or Historic Landmark and all subsequent additions and modifications.
 4. The physical condition of the structure, site, or Historic Landmark immediately prior to its total or partial demolition.
 5. The amount of demolition sustained by the structure, site, or Historic Landmark.
 6. Whether or not, had total or partial demolition occurred, the structure, site, or Historic Landmark could have been put into a reasonable economic use either prior to or after rehabilitation.
 7. Whether the structure, site, or Historic Landmark was eligible for inclusion on the National Register of Historic Places immediately prior to its total or partial demolition.
 8. Whether the structure, site, or Historic Landmark is included on the National Register of Historic Places.
 9. Whether the responsible party has a legal or equitable interest in the structure, site, or Historic Landmark.

10.4.5. PENALTIES FOR VIOLATION OF NATIVE PLANT PRESERVATION STANDARDS¹⁰

In addition to the general remedies authorized by Sections 10.4.1 through 10.4.3, any violation of Section 7.7 (Native Plant Preservation) shall be subject to the following enforcement, penalties, fines, and other remedies.

A. Fines

Any person who, individually or through the acts of another person, intentionally or negligently damages, destroys, or removes from the site any Protected Native Plant, except as authorized by an approved Native Plant Preservation Plan, shall be subject to the following.

1. A fine as determined for the damage, destruction, or removal from the site of each Protected Native Plant based upon the following schedule:
 - a. For each Viable Saguaro: a minimum of \$200 per foot of main trunk and \$200 per foot of each arm with a maximum not to exceed \$2,500 per Saguaro.

¹⁰ Text from LUC Sec. 3.8.7 Enforcement, Penalties, Fines and other Remedies [Native Plant Preservation], with minor clarifications.

10.4.5 Penalties for Violation of Native Plant Preservation Standards

- b. For each Viable Protected Native Tree or Shrub: a minimum of \$300 per caliper inch measured at six inches for single-trunked specimens and 12 inches for multi-trunked specimens above grade level at the base of the tree with a maximum not to exceed \$2,500 per tree or shrub.
 - c. For all other Viable Protected Native Cacti or Succulents: a minimum of \$300 per specimen with a maximum not to exceed \$2,500 per cactus.
2. A fine of not less than \$500 nor more than \$2,500 if plant materials are damaged, destroyed, or removed from the site prior to approval of a Native Plant Preservation Plan.

B. Additional Penalties

Any person who, individually or through the acts of another person, intentionally or negligently damages, destroys, or removes from the site any Protected Native Plant, except as authorized by an approved Native Plant Preservation Plan, may be subject to one or more of the following, in addition to any fines imposed per Section 10.4.5.A.

- 1. Mitigation in accordance with Section 7.7.5.A.3 and any supplemental mitigation determined to be appropriate to restore the natural habitat and plant communities which have been damaged, destroyed, or removed from the site.
- 2. Supplemental maintenance and monitoring requirements for Protected Native Plants following the final inspection performed on the site for a period not to exceed eight years.
- 3. Revocation of zoning compliance for any building permits which have been issued for the development.
- 4. Immediate suspension by the PDSD Director of any permits issued by the City for development of the property. Any such suspension shall remain in effect until permits expire unless the violation in a manner which is satisfactory to the PDSD Director. The decision by the PDSD Director to suspend any permit, or to reject a proposal to provide the mitigation necessary for the reinstatement of the permits, shall be appealable pursuant to PDSD's established procedures.

C. Recording of Permit Suspension or Revocation

Where any permit issued by the City is suspended until its expiration pursuant to Section 10.4.5.B.4, no new permit shall be issued for the property until any fines issued pursuant to Section 10.4.5.A have been fully paid and/or all mitigation required by Section 10.4.5.B.1 has been fully performed. A notice of this requirement for the issuance of any future development permit on the property shall be recorded on the property by the PDSD Director with the Pima County Recorder.

¹¹ This section is proposed for deletion because it is already covered in Section 10.3. The proposed deleted text is from LUC Sec. 23A-54 Conditional Use: Suspension or Termination, with minor clarifications.

