

2.8.7 LAND USE CODE - OVERLAY ZONES - HISTORIC PRESERVATION ZONE (HPZ)

REFERENCES in 2.8.7 to other Sections of LUC:

3.7.0 LANDSCAPING AND SCREENING REGULATIONS [**not in this package**]

5.1.10 ADMINISTRATION - POWERS AND DUTIES - HISTORIC DISTRICT ADVISORY BOARDS.

5.4.1 ADMINISTRATION - PROCEDURES - GENERAL LEGISLATIVE PROCEDURES

5.4.3 ADMINISTRATION - PROCEDURES - ZONING EXAMINER LEGISLATIVE PROCEDURE

6.2.8 DEFINITIONS - LISTING OF WORDS AND TERMS - DEFINITIONS - H

REFERENCES in 2.8.7 to Development Compliance Code,

II.1 REVIEW PROCEDURES - GENERAL ZONING REVIEW PROCEDURE

Sec. 23A-32 Administrative Design Review Procedure

II.2 REVIEW PROCEDURES - SPECIAL ZONING REVIEW – LIMITED NOTICE PROCEDURE

Sec. 23A-40. Limited Notice Procedure

II.3 REVIEW PROCEDURES - SPECIAL ZONING REVIEW – FULL NOTICE PROCEDURE

Sec. 23A-50. Application, Notice, Public Comment and Review.

Sec. 23A-51 DSD Full Notice Procedure.

ARTICLE V. ADMINISTRATION

DIVISION 1. POWERS AND DUTIES

SECTIONS:

5.1.1	PURPOSE
5.1.2	MAYOR AND COUNCIL
5.1.3	CITY MANAGER
5.1.4	DEPARTMENT OF URBAN PLANNING AND DESIGN
5.1.5	PLANNING COMMISSION
5.1.6	ZONING EXAMINER
5.1.7	BOARD OF ADJUSTMENT (B/A)
5.1.8	DESIGN REVIEW BOARD (DRB)
5.1.9	TUCSON-PIMA COUNTY HISTORICAL COMMISSION
5.1.10	HISTORIC DISTRICT ADVISORY BOARDS
5.1.11	DEVELOPMENT SERVICES DEPARTMENT (DSD)

- 5.1.1 PURPOSE.** This Division describes the responsibilities, powers, and duties exercised by the legislative and administrative bodies, appointive officers and municipal agencies, and boards and commissions involved in the planning, zoning, and division of land within the city.
- 5.1.2 MAYOR AND COUNCIL.** The Mayor and Council perform the following functions.
- 5.1.2.1 General Plan. The Mayor and Council shall adopt a comprehensive, long-range general plan for the development of the city known as the *General Plan* and any of its elements as provided in Sec. 5.2.2 and elements mandated by the Arizona Revised Statutes (ARS), Sec. 9-461.05 and 9-461.06. Adoption of, and amendment to, the *General Plan* shall be in accordance with procedures set forth in the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). The *General Plan* is equivalent to the state-mandated general plan. (Ord. No. 9374, §1, 4/10/00; Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.2 Specific Plans and Regulations. The Mayor and Council shall adopt specific plans, regulations, programs, and legislation as described in Sec. [5.2.3](#) and as may be needed for the systematic implementation of the *General Plan* and provided for in the Arizona Revised Statutes (ARS), Sec. 9-461.08. Adoption of, and amendment to, specific plans shall be in accordance with procedures set forth in the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). (Ord. No. 9374, §1, 4/10/00; Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.3 Redevelopment Plans. The Mayor and Council shall adopt redevelopment plans which are policy plans addressing slum and blighted areas from the standpoint of providing economic incentives to stimulate development/redevelopment. Consideration of adoption of, or amendment to, a redevelopment plan shall be in accordance with the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.4 Land Use Code (LUC). The Mayor and Council shall adopt and amend the *Land Use Code (LUC)* in accordance with procedures set forth in the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.5 Establishment of Original City Zoning. The Mayor and Council shall establish original city zoning for land annexed in accordance with procedures set forth in the Zoning Examiner Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.3](#). (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)

-
- 5.1.2.6 Changes in Zoning District Boundaries (Rezoning). The Mayor and Council shall consider amendments to zoning district boundaries as provided on the City Zoning Maps in accordance with there Zoning Examiner Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.3](#). (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.7 Repealed. (Ord. No. 8765, §1, 10/14/96; Ord. No. 9517, §4, 2/12/01)
- 5.1.2.8 Appeals of Zoning Examiner (Examiner) Decisions, Special Exception Land Uses. The Mayor and Council shall consider appeals from Zoning Examiner (Examiner) decisions on Special Exception Land Use applications in accordance with procedures set forth in the Mayor and Council Appeal Procedure, Sec. 23A-62. (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.9 Plats. The Mayor and Council shall consider final plats in accordance with procedures set forth in Sec. 4.1.6.2. Authority to approve a tentative plat is delegated to the Development Services Department (DSD) Director. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9517, §4, 2/12/01)
- 5.1.2.10 Special Exception Land Uses. The Mayor and Council shall consider Special Exception Land Use requests requiring legislative consideration in accordance with the Zoning Examiner Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.3](#). (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.11 Enforcement. The Mayor and Council shall adopt policies for establishing rules and procedures deemed necessary for the enforcement of the *Land Use Code (LUC)*. (Ord. No. 9517, §4, 2/12/01)
- 5.1.2.12 Appointments. The Mayor and Council appoint the members of the following boards and commissions.
- A. Planning Commission in accordance with Sec. 5.1.5.
 - B. Board of Adjustment (B/A) in accordance with Sec. 5.1.7.
 - C. Design Review Board (DRB) in accordance with Sec. 5.1.8. (Ord. No. 9967, §5, 7/1/04)
- (Ord. No. 9517, §4, 2/12/01)
- 5.1.2.13 Appeals of DSD Full Notice Procedure Decisions. The Mayor and Council shall consider appeals of Development Services Department (DSD) Director decisions on applications under the DSD Full Notice Procedure in accordance with the Mayor and Council Appeal Procedure, Sec. 23A-62. (Ord. No. 9179, §1, 12/14/98; Ord. No. 9392, §1, 5/22/00; Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- 5.1.2.14 Protected Development Right Plan Approvals. The Mayor and Council shall consider for approval protected development right plans submitted in accordance with Arizona Revised Statutes (ARS), Sec. 9-1201 through 9-1205 inclusive and the procedures set forth in Sec. [5.3.1.0](#). (Ord. No. 9635, §1, 12/10/01; Ord. No. 9750, §1, 8/5/02)
- 5.1.3 CITY MANAGER.** The City Manager provides general supervision of, and direction to, the Department of Urban Planning and Design and the Development Services Department (DSD) in the administration of the *Land Use Code (LUC)*, subject to the control of the Mayor and Council, and is given the authority to perform the following duties. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9967, §5, 7/1/04)
- 5.1.3.1 Enforcement. The City Manager assures that the *Land Use Code (LUC)* is enforced and that City agencies and employees provide assistance to the Department of Urban Planning and Design, the Development Services Department (DSD), and the responsible boards and commissions in the planning, zoning, and division of land. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9967, §5, 7/1/04)
- 5.1.3.2 Capital Improvement Program. The City Manager, with the assistance of the Director of the Department of Urban Planning and Design and other City agencies, prepares a coordinated program of proposed public works for the city on an annual basis.
-

5.1.3.3 Reserved. (Ord. No. 9392, §1, 5/22/00)

5.1.3.4 Reserved. (Ord. No. 9392, §1, 5/22/00)

5.1.3.5 Development Standards. The City Manager establishes, by Administrative Directive, procedures for the preparation and administrative adoption of Development Standards. Upon establishment, the Directive shall also be published as Development Standard No. 1-01.0. The Development Standards are for the purposes of ensuring that land development proposals are reviewed in a timely manner and that property is developed with due consideration to public services and facilities, surroundings, the environment, and the general health, safety, and welfare of the public. The Development Services Department is responsible for maintaining the Development Standards book and coordinating the adoption of, and amendment to, Development Standards. (Ord. No. 9967, §5, 7/1/04)

5.1.3.6 Establishment of Fees. The City Manager recommends fees to be imposed in connection with reviews necessitated through the application of the *LUC*. Such fees are published in Development Standard No. 1-05.0 upon concurrence by the Mayor and Council.

5.1.4 DEPARTMENT OF URBAN PLANNING AND DESIGN. The Department of Urban Planning and Design, as established by the Mayor and Council, shall serve in the capacity of a planning agency as provided in the ARS, Title 9, Article 6. (Ord. No. 9967, §5, 7/1/04)

5.1.4.1 Purpose and Intent. It is the purpose and intent of the planning agency to preserve and protect the public health, safety, convenience, comfort, and general welfare of the citizens of Tucson as follows.

- A. To implement the *General Plan*. (Ord. No. 9517, §4, 2/12/01)
- B. To provide for the efficient and orderly future growth and development of the city which represents the most beneficial and convenient relationships among the residential, nonresidential, and public areas in accordance with the *General Plan* and adopted specific plans. (Ord. No. 9517, §4, 2/12/01)
- C. To provide for efficient and orderly procedures for the adoption of plans, laws, and regulation of land within the city and for the administration and enforcement of those plans, laws, and regulations.
- D. To provide policies for the growth and development of the city in conformance with the *General Plan* and efficient procedures for the implementation of those policies. (Ord. No. 9517, §4, 2/12/01)
- E. To promote citizen participation in the formulation of policies, plans, laws, and land use regulations.
- F. To promote a fair and equitable system of land use regulation.

5.1.4.2 Functions and Duties. The Department of Urban Planning and Design shall be responsible for the preparation, maintenance, and administration of the *General Plan* and specific plans, the preparation and maintenance of land use regulations, redevelopment plans, and other functions as deemed necessary or desirable for the city. (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)

- A. *General Plan.* The Department of Urban Planning and Design prepares the *General Plan*, and amendments thereto, for consideration by the Mayor and Council in accordance with the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). The *General Plan* is a comprehensive, long-range plan declaring purposes, policies, and programs for the growth and development of the city and its environs as provided in Sec. 5.2.2 and is equivalent to the state-mandated general plan. (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)

- B. *Specific Plans.* The Department of Urban Planning and Design prepares specific plans for consideration of adoption or amendment by the Mayor and Council in accordance with the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). The Department of Urban Planning and Design shall provide for the maintenance and administration of specific plans as provided in Sec. [5.2.3](#). Specific plans include such elements as, but are not limited to, neighborhood and area plans, plans for major streets or parks, and land use regulations and policy documents for the implementation of the *General Plan*. (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- C. *Capital Improvement Program.* The Department of Urban Planning and Design assists the City Manager and other City departments in coordinating the major public works of the Capital Improvement Program, monitors its implementation, and advises the Mayor and Council on its conformance with the *General Plan* and specific plans. (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- D. *LUC.* The Department of Urban Planning and Design prepares the *LUC* and any amendments thereto for Mayor and Council consideration of adoption in accordance with the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). (Ord. No. 9967, §5, 7/1/04)
- E. *Planning Commission.* The Department of Urban Planning and Design shall be responsible for scheduling meetings, providing agendas and public notice of meetings, and maintaining public records of meetings, findings, and recommendations of the Planning Commission. (Ord. No. 9967, §5, 7/1/04)
- F. *Other Responsibilities.* The Department of Urban Planning and Design shall perform such other functions as may be required by the Mayor and Council, City Manager, or the *LUC*. (Ord. No. 9967, §5, 7/1/04)

5.1.4.3 Director of the Department of Urban Planning and Design. The Director of the Department of Urban Planning and Design is the chief executive officer of the Department of Urban Planning and Design and shall be responsible for administering the functions and duties of the Department of Urban Planning and Design. The Director, or designee, performs other such functions as may be required for the administration of the Department of Urban Planning and Design or as provided by the City Manager or the *Land Use Code (LUC)*. (Ord. No. 9967, §5, 7/1/04)

5.1.5 **PLANNING COMMISSION.** The Planning Commission is established to advise the Mayor and Council and the Department of Urban Planning and Design on the adoption of long-range plans, policies, specific plans, and regulations that affect land use and development. The Planning Commission serves in the capacity of a planning commission as provided in the ARS. (Ord. No. 9967, §5, 7/1/04)

5.1.5.1 Composition. The Planning Commission consists of thirteen (13) members as provided below.

- A. *Appointment.* Each member of the City Council appoints two (2) members, both of whom must be residents of the city and at least one (1) of whom must be a resident of the Council Member's ward. The Mayor appoints one (1) member who must be a resident of the city. Should an appointment not be made within thirty (30) days of when the position becomes available, the appointment can be made by a majority vote of the Mayor and Council. All members of the Commission serve without compensation.
- B. *Qualifications.* Members of the Planning Commission are appointed on the basis of their interest in the city and its future development, particularly as demonstrated by active participation in community affairs directly related to planning issues. No member shall hold any city, county, or state elective office or be a permanent employee of the City while appointed to the Commission.
- C. *Terms and Removal from Office.* The term of appointment and the removal of a member of the Planning Commission shall be in accordance with Tucson Code, Chapter 10A, Article XIII. (Ord. No. 9374, §1, 4/10/00)

- D. *Vacancies.* All vacant positions on the Planning Commission shall be filled by appointment as described in Sec. 5.1.5.1.A. An appointment to fill an unexpired term shall be for the unexpired portion of the term.

(Ord. No. 9374, §1, 4/10/00)

5.1.5.2 Administrative Functions. The Planning Commission's administrative functions shall be accomplished as follows.

- A. *Election of Officers.* The Planning Commission shall elect a Chair and Vice Chair from among its members. The terms of the Chair and Vice Chair are one (1) year which shall commence in February of each year.
- B. *Meetings.* The Planning Commission shall hold at least one (1) meeting per month but may hold as many meetings as necessary to conduct its business in a timely manner. All meetings shall be open to the public.
- C. *Quorum and Voting.* Seven (7) members of the Planning Commission present at a meeting constitute a quorum. A concurring vote of seven (7) members is necessary to make a recommendation to the Mayor and Council. A simple majority of those members present is required to approve or deny any other matter before the Planning Commission. If a concurring vote cannot be attained within the specified time allotted by the procedure on matters requiring Mayor and Council decision, the matter shall be forwarded to the Mayor and Council without recommendation.
- D. *Records.* The Department of Urban Planning and Design shall keep public records of the Planning Commission's public hearings, findings, and recommendations. (Ord. No. 9967, §5, 7/1/04)
- E. *Rules of Procedure.* The Planning Commission shall adopt rules of procedure necessary to carry out its functions. Copies of such rules shall be available to the public through the Department of Urban Planning and Design. (Ord. No. 9967, §5, 7/1/04)
- F. *Subcommittees.* The Planning Commission may create such special subcommittees as it may deem necessary or desirable as provided under Chapter 10A of the Tucson Code. The members of such subcommittees shall be selected from among the members of the Planning Commission and may include other persons qualified to contribute to the work of the special subcommittee.

5.1.5.3 Powers and Duties. The Planning Commission performs the following duties.

- A. *General Plan.* The Planning Commission conducts public hearings and makes recommendations to the Mayor and Council on the adoption of, and amendment to, the *General Plan* in accordance with the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- B. *Specific Plans.* The Planning Commission conducts public hearings and makes recommendations to the Mayor and Council on adoption of, and amendment to, specific plans and on regulations for the implementation of the *General Plan* in accordance with the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)
- C. *Land Use Code (LUC).* The Planning Commission conducts public hearings and makes recommendations to the Mayor and Council on adoption of, and amendment to, the text of the *Land Use Code (LUC)* in accordance with the Planning Commission Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.2](#). (Ord. No. 9967, §5, 7/1/04)
- D. *Other Matters.* The Planning Commission shall review such other issues as may be required by the Mayor and Council, and upon agreement by seven (7) of its members, the Planning Commission may consider any other matter that pertains or is reasonably related to its duties as described above.

-
- 5.1.6 ZONING EXAMINER.** The position of the Zoning Examiner is established to conduct public hearings on rezoning requests on behalf of the Mayor and Council and to consider other land use applications as provided in the *Land Use Code (LUC)*.
- 5.1.6.1 Position. The Zoning Examiner serves in accordance with the following provisions.
- A. *Appointment.* The Zoning Examiner is appointed by the City Manager in accordance with Chapter V, Sections 2 and 13, of the *City Charter*.
 - B. *Qualifications.* The Zoning Examiner is appointed on the basis of a demonstrated ability to perform the duties of the office, such as training and experience relevant to the conduct of administrative and adjudicative hearings and knowledge of the principles and practices of land use planning. The Zoning Examiner may not hold a city elective office concurrently with this position.
 - C. *Term.* The Zoning Examiner serves at the pleasure of the City Manager. The City Manager may designate a qualified person as a temporary Zoning Examiner whenever the Zoning Examiner is unable to perform the duties of the office due to illness, potential conflict of interest, or similar reason.
- 5.1.6.2 Administrative Functions. The administrative functions necessary to discharge the duties and responsibilities of the Zoning Examiner are assigned to the Zoning Examiner, the City Clerk, and the Development Services Department as provided in the Zoning Examiner's Rules and Procedures. Copies of such rules and procedures shall be available to the public through the Development Services Department. (Ord. No. 9967, §5, 7/1/04)
- 5.1.6.3 Powers and Duties. The Zoning Examiner performs the following duties.
- A. *Rezoning.* The Zoning Examiner conducts public hearings on applications to rezone property and makes recommendations to the Mayor and Council in accordance with procedures as set forth in Sec. 5.3.2.
 - B. *Special Exception Land Uses.* The Zoning Examiner conducts public hearings on certain Special Exception Land Uses and, depending upon the applicable procedure, makes decisions or provides recommendations to the Mayor and Council in accordance with procedures as set forth in Sec. [5.3.9](#).
 - C. *Expansion of Nonconforming Use.* The Zoning Examiner hears and decides requests to exceed the amount of expansion allowed for structures and land area devoted to a nonconforming use in accordance with procedures as set forth in Sec. [5.3.6](#).
 - D. *Substitution of Nonconforming Uses.* The Zoning Examiner hears and decides requests to substitute a land use for an existing nonconforming use, when the proposed substitution is from a Land Use Class that is different from the one to which the existing nonconforming use belongs. Consideration of the request shall be in accordance with the Zoning Examiner Full Notice Procedure, Sec. 23A-50 and Sec. 23A-53, as provided in Sec. [5.3.6](#).1.D. (Ord. No. 9967, §5, 7/1/04)
 - E. *Other Responsibilities.* The Zoning Examiner shall perform such other functions as may be required by the City Manager or the *Land Use Code (LUC)*. (Ord. No. 9967, §5, 7/1/04)
- (Ord. No. 9392, §1, 5/22/00)

5.1.7 BOARD OF ADJUSTMENT (B/A). The Board of Adjustment (B/A) is established to hear and decide requests for variances from *Land Use Code (LUC)* regulations, appeals of Zoning Administrator's interpretations, appeals by the applicant from Administrative Design Review decisions, appeals from Limited Notice Procedure decisions and other land use issues as provided by the *LUC*. The B/A serves in the capacity of a board of adjustment as provided by the Arizona Revised Statutes (ARS). (Ord. No. 9967, §5, 7/1/04)

5.1.7.1 Composition. The Board of Adjustment (B/A) consists of seven (7) members as provided below.

- A. *Appointment.* Each member of the City Council appoints one (1) Board of Adjustment (B/A) member who must be a resident of the appointing Council Member's ward. The Mayor appoints one (1) B/A member who must be a resident of the city. Should an appointment not be made within thirty (30) days of the date the position becomes vacant, the appointment can be made by a majority vote of the Mayor and Council. All members of the B/A serve without compensation.
- B. *Qualifications.* No member of the Board of Adjustment (B/A) is to hold any city, county, or state elective office or be a permanent employee of the City while a member of the B/A.
- C. *Terms and Removal from Office.* The term of appointment and the removal of a member of the Board of Adjustment (B/A) shall be in accordance with *Tucson Code*, Chapter 10A, Article XIII. (Ord. No. 9374, §1, 4/10/00)
- D. *Vacancies.* Any position on the Board of Adjustment (B/A) that is vacated shall be filled by appointment as described in Sec. 5.1.7.1.A. An appointment to fill an unexpired term shall be for the unexpired portion of the term.

(Ord. No. 9374, §1, 4/10/00)

5.1.7.2 Administrative Functions. The Board of Adjustment's (B/A) administrative functions shall be accomplished as follows.

- A. *Election of Officers.* The Board of Adjustment (B/A) shall elect a Chair and Vice Chair from among its members. The terms of the Chair and Vice Chair are one (1) year which shall commence in February of each year.
- B. *Meetings.* The Board of Adjustment (B/A) shall hold at least one (1) meeting per month but shall hold as many meetings as necessary to conduct its business in a timely manner. All meetings shall be open to the public.
- C. *Quorum and Voting.* Four (4) members of the Board of Adjustment (B/A) present at a meeting constitute a quorum. A concurring vote of four (4) members is necessary to decide any matter within its powers and duties as provided in Sec. 5.1.7.3, except that, on a motion to approve, if four (4) votes cannot be achieved, the item is considered denied. On all other matters before the B/A, a simple majority of those members present is sufficient to approve a motion.
- D. *Records.* The Development Services Department shall keep public records of the Board of Adjustment's (B/A) hearings, findings, and decisions. (Ord. No. 9967, §5, 7/1/04)
- E. *Rules of Procedure.* The Board of Adjustment (B/A) shall adopt rules of procedure necessary to carry out its functions. Copies of such rules shall be available to the public through the Development Services Department. (Ord. No. 9967, §5, 7/1/04)

5.1.7.3 Powers and Duties. The Board of Adjustment (B/A) performs the following duties.

- A. *Appeals of Land Use Code (LUC) Interpretations.* The Board of Adjustment (B/A) hears and decides appeals from interpretations made by the Zoning Administrator in the application or enforcement of the *LUC* as provided in Sec. 1.2.1 or in the determination of a zone boundary location as provided in Sec. 1.3.6 in accordance with the Board of Adjustment Appeal Procedure, Sec. 23A-61. (Ord. No. 9179, §1, 12/14/98; Ord. No. 9967, §5, 7/1/04))
- B. *Variances from Land Use Code (LUC) Provisions.* The Board of Adjustment (B/A) hears and decides requests for variances from the provisions of the *LUC*. Consideration of a variance request shall be in accordance with procedures set forth in Board of Adjustment Full Notice Procedure, Sec. 23A-50 and 23A-52. (Ord. No. 9967, §5, 7/1/04)
 1. The Board of Adjustment (B/A) may grant a variance only if it finds:
 - a. That, because there are special circumstances applicable to the property, strict enforcement of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district; and
 - b. That such special circumstances were not self-imposed or created by the owner or one in possession of the property; and
 - c. That the variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and
 - d. That, because of special circumstances applicable to the property, including its size, shape, topography, location, and surroundings, the property cannot reasonably be developed in conformity with the provisions of this Chapter; and (Ord. No. 9374, §1, 4/10/00)
 - e. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and
 - f. That the proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase congestion, or substantially diminish or impair property values within the neighborhood; and
 - g. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the *Land Use Code (LUC)* provisions which are in question.
 2. Powers not granted the Board of Adjustment (B/A). The B/A may not:
 - a. Delete or vary any performance criteria applicable to a Special Exception Land Use as required by the *Land Use Code (LUC)*, unless specifically allowed by the *LUC*, or as established as a condition by the decision-making body in granting the use.
 - b. Make any changes in the uses permitted in any zoning classification. (Ord. No. 9179, §1, 12/14/98)
 - c. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.
 - d. Grant a variance to any administrative requirement of the *Land Use Code (LUC)* or to any requirement which is not a specific development regulation or performance criteria required of a land use. (Ord. No. 8785, §1, 12/16/96)

- e. Grant a variance to the performance criteria required of Educational Uses as provided in Sec. [3.5.3.7](#). (Ord. No. 9374, §1, 4/10/00)

- C. *Appeals of City Zoning Map Interpretations.* The Board of Adjustment (B/A) hears and decides appeals of Zoning Administrator's interpretations of the official City Zoning Maps in determining exact locations of zone boundary lines as shown on the City Zoning Maps. Consideration shall be in accordance with procedures set forth in the Board of Adjustment Appeal Procedure, Sec. 23A-61. (Ord. No. 9967, §5, 7/1/04)
- D. *Appeals of Design Development Option (DDO) Decisions.* The Board of Adjustment (B/A) hears and decides appeals of Development Services Department Director decisions on Design Development Option (DDO) applications in accordance with the Board of Adjustment Appeal Procedure, Sec. 23A-61. (Ord. No. 9179, §1, 12/14/98; Ord. No. 9967, §5, 7/1/04)
- E. *Appeals of Administrative Design Review Decisions.* The Board of Adjustment (B/A) hears and decides appeals by the applicant of decisions by the Development Services Department Director on Administrative Design Review applications in accordance with the Board of Adjustment Appeal Procedure, Sec. 23A-61. In considering the appeal, the B/A shall apply the same findings required of the Development Services Department Director. (Ord. No. 9179, §1, 12/14/98; Ord. No. 9967, §5, 7/1/04)
- F. *Other Responsibilities.* The Board of Adjustment (B/A) shall perform such other functions as may be required by the *Land Use Code (LUC)*. (Ord. No. 9179, §1, 12/14/98)

5.1.8 DESIGN REVIEW BOARD (DRB). The Design Review Board (DRB) is established to review proposed buildings, structures, landscaping, architectural features, development plans, and site plans as set forth in the *Land Use Code (LUC)*, Sec. 23 of the Tucson Code and in the Development Compliance Code, Sec 23A of the Tucson Code. (Ord. No. 9967, §5, 7/1/04)

5.1.8.1 Composition. The Design Review Board (DRB) consists of seven (7) members, of whom five (5) are regular members and two (2) are alternates, as provided below. (Ord. No. 9967, §5, 7/1/04)

- A. *Appointment.* Any member of the Mayor and Council may make a recommendation for appointment of a Design Review Board (DRB) member. Such appointments are made by a majority vote of the Mayor and Council. The DRB members must be city residents. All members of the DRB serve without compensation. (Ord. No. 8961, §1, 10/6/97; Ord. No. 9967, §5, 7/1/04)
- B. *Qualifications.* Of the seven (7) members, there shall be at least one (1) registered architect, one (1) contractor, and two (2) registered landscape architects. No member of the Design Review Board (DRB) is to hold any city, county, or state elective office or be a permanent employee of the City while a member of the DRB. (Ord. No. 8961, §1, 10/6/97, as amended 11/3/97; Ord. No. 9967, §5, 7/1/04)
- C. *Terms.* The term of each member is four (4) years, beginning with the date of appointment. Members are eligible for reappointment but shall not serve more than eight (8) continuous years. After the eight (8) continuous years of service, a member becomes eligible for reappointment after a break in service of one (1) year. (Ord. No. 8961, §1, 10/6/97)
- D. *Vacancies.* An appointment to fill an unexpired term shall be considered a new appointment in accordance with Sec. 5.1.8.1.C. Any position on the Design Review Board (DRB) that is vacated shall be filled by appointment as described in Sec. 5.1.8.1.A. (Ord. No. 8961, §1, 10/6/97; Ord. No. 9967, §5, 7/1/04)

-
- E. *Removal.* A member of the Design Review Board (DRB) may be removed with or without cause by a majority vote of the Mayor and Council. A member who misses four (4) consecutive meetings for any reason or fails to attend for any reason at least forty (40) percent of the DRB meetings held in one (1) calendar year is automatically and immediately removed as a member of the DRB. (Ord. No. 9967, §5, 7/1/04)

5.1.8.2 Administrative Functions. The Design Review Board's (DRB) administrative functions shall be accomplished as follows. (Ord. No. 9967, §5, 7/1/04)

- A. *Election of Officers.* The Design Review Board (DRB) shall elect a Chair and Vice Chair from among its regular members. The terms of the Chair and Vice Chair are one (1) year which shall commence in February of each year. Should both the Chair and Vice Chair be absent from a meeting, an interim Chair shall be voted upon by those members attending. (Ord. No. 9967, §5, 7/1/04)
- B. *Meetings.* The Design Review Board (DRB) shall hold meetings as necessary to conduct its business in a timely manner. All meetings shall be open to the public. (Ord. No. 9967, §5, 7/1/04)
- C. *Quorum and Voting.* Three (3) regular members or alternates constitute a quorum. A concurring vote of a majority of the members present and voting is necessary to make a decision.
- D. *Records.* The Development Services Department shall maintain public records of the Design Review Board's (DRB) actions, findings, and recommendations. (Ord. No. 9967, §5, 7/1/04)
- E. *Rules of Procedure.* The Design Review Board (DRB) shall adopt rules of procedure necessary to carry out its functions. Copies of such rules shall be available to the public through the Development Services Department. (Ord. No. 9967, §5, 7/1/04)
- F. *Required Action.* Applications reviewed for the purpose of providing a recommendation to another board, committee, official, or the Mayor and Council for a decision shall be forwarded without a recommendation should the Design Review Board (DRB) fail to act within twenty-one (21) days of the date a plan is accepted for review by the DRB. Action by the DRB to continue deliberation to another meeting shall stay the twenty-one (21) day requirement. (Ord. No. 9967, §5, 7/1/04)

5.1.8.3 Powers and Duties. The Design Review Board (DRB) performs the following duties. (Ord. No. 9967, §5, 7/1/04)

- A. *Scenic Corridor Zone (SCZ), Development Review.* The Design Review Board (DRB) reviews development applications for projects located within a Scenic Corridor Zone (SCZ), when requested by the Development Services Department (DSD) Director or applicant, as provided in Sec. 2.8.2.11.A, and in accordance with procedures established in the DSD Full Notice Procedure, Sec. 23A-50 and Sec. 23A-51. In formulating its recommendation, the DRB shall utilize the same criteria, as provided in Sec. 2.8.2.11.B, required of the DSD Director in making the decision. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9967, §5, 7/1/04)
- B. *Scenic Corridor Zone (SCZ), Variances.* The Design Review Board (DRB) reviews, for recommendation, all requests for variances from Scenic Corridor Zone (SCZ) provisions, as provided in Sec. 2.8.2.14. In formulating its recommendation, the DRB shall utilize the same findings required in Sec. [5.3.3](#) for granting a variance. In addition, the DRB may make any recommendation that may assist in mitigating any negative impacts which may occur should the request be granted. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9967, §5, 7/1/04)

-
- C. *Design Development Option (DDO), Appeals.* The Design Review Board (DRB) reviews, for recommendation, appeals of Development Services Department Director decisions on Design Development Option (DDO) applications in accordance the Board of Adjustment Appeal Procedure, Sec. 23A-61. In formulating its recommendation, the DRB shall utilize the same criteria, as provided in Sec. 5.3.4, required of the Development Services Department Director in making the decision. (Ord. No. 9967, §5, 7/1/04)
- D. Reserved. (Ord. No. 9967, §5, 7/1/04)
- E. *Environmental Resource Zone (ERZ) Mitigation Plan, Appeals.* The Design Review Board (DRB) reviews, for recommendation, appeals of Development Services Department (DSD) Director decisions on Environmental Resource Zone (ERZ) mitigation plans, as provided in Sec. 2.8.6.8.B and in accordance with procedures set forth in the Mayor and Council Appeal Procedure, Sec. 23A-62. In formulating its recommendation, the DRB shall utilize the same criteria required of the DSD Director in making the decision. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9967, §5, 7/1/04)
- F. *Environmental Resource Zone (ERZ), Variances.* The Design Review Board (DRB) reviews, for recommendation, all requests for variances from ERZ regulations, as provided in Sec. 2.8.6.8.A and in accordance with the Board of Adjustment Full Notice Procedure, Sec 23A-50 and Sec. 23A-52. In formulating its recommendation, the DRB shall utilize the same findings required in Sec. [5.3.3](#) for granting a variance. In addition, the DRB may make any recommendation that may assist in mitigating any negative impacts which may occur should the request be granted. (Ord. No. 9967, §5, 7/1/04)
- G. *Landscaping and Screening Regulations, Variances.* The Design Review Board (DRB) reviews, for recommendation, all requests for variances from Sec. 3.7.0, Landscaping and Screening Regulations, as provided in Sec. 3.7.7.5 and in accordance with the Board of Adjustment Full Notice Procedure, Sec. 23A-50 and Sec. 23A-52. In formulating its recommendation, the DRB shall utilize the same findings required in Sec. [5.3.3](#) for granting a variance. In addition, the DRB may make any recommendation that may assist in mitigating any negative impacts which may occur should the request be granted. (Ord. No. 9967, §5, 7/1/04)
- H. *Gateway Corridor Zone, Variances.* The Design Review Board (DRB) reviews, for recommendation, all requests for variances from Gateway Corridor Zone regulations, as provided in Sec. 2.8.4.5 and in accordance with the Board of Adjustment Full Notice Procedure, Sec. 23A-50 and Sec. 23A-52. In formulating its recommendation, the DRB shall utilize the same findings required in Sec. [5.3.3](#) for granting a variance. In addition, the DRB may make any recommendation that may assist in mitigating any negative impacts which may occur should the request be granted. (Ord. No. 9967, §5, 7/1/04)
- I. *Native Plant Preservation, Variances.* The Design Review Board (DRB) reviews, for recommendation, all requests for variances from Native Plant Preservation regulations, as provided in Sec. 3.8.8.3 and in accordance with the Board of Adjustment Full Notice Procedure, Sec. 23A-50 and Sec. 23A-52. In formulating its recommendation, the DRB shall utilize the same findings required in Sec. [5.3.3](#) for granting a variance. In addition, the DRB may make any recommendation that may assist in mitigating any negative impacts which may occur should the request be granted. (Ord. No. 9967, §5, 7/1/04)
- J. *Neighborhood Commercial (NC) Zone, Development Review.* The Design Review Board (DRB) reviews all proposed nonresidential development, including exterior remodeling, for approval of architectural and site design compatibility with the surrounding residential area, as provided in Sec. [2.5.2.6.D](#). (Ord. No. 9967, §5, 7/1/04)
- K. *Office (O-1) Zone, Development Review.* The Design Review Board (DRB) reviews all new office development in the O-1 zone, including Medical Service - Outpatient, as provided in Sec. [3.5.4.11.G](#). (Ord. No. 9967, §5, 7/1/04)

-
- L. *Communications Land Use, Development Review.* The Design Review Board (DRB) reviews, for recommendation when requested by the Development Services Department Director, Communications land uses in all zones which require approval as a Special Exception Land Use through a Zoning Compliance Review, Sec. 23A-31, as provided in Sec. 3.5.4.20.D. (Ord. No. 9967, §5, 7/1/04)
 - M. *Communications Land Use, Development Review.* The Design Review Board (DRB) reviews, for recommendation, Communications land uses in all zones which require approval as a Special Exception Land Use through a Limited Notice Procedure, Sec. 23A-40, as provided in Sec. 3.5.4.20.E. (Ord. No. 9967, §5, 7/1/04)
 - N. *Communications Land Use, Development Review.* The Design Review Board (DRB) reviews, for recommendation when requested by the Zoning Examiner, Communications land uses in all zones which require approval as a Special Exception Land Use through a Zoning Examiner Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.3](#), as provided in Sec. 3.5.4.20.F. (Ord. No. 9967, §5, 7/1/04)
 - O. *Communications Land Use, Development Review.* The Design Review Board (DRB) reviews, for recommendation when requested by the Mayor and Council, Communications land uses in all zones which require approval as a Special Exception Land Use through a Zoning Examiner Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.3](#), as provided in Sec. 3.5.4.20.G. (Ord. No. 9967, §5, 7/1/04)
 - P. *Home Occupation: Travelers' Accommodation, Lodging, Development Review.* The Design Review Board (DRB) reviews all Home Occupation: Travelers' Accommodation, Lodging, land uses in the various zones in which the use is permitted, as provided in Sec. 3.5.7.4.F. (Ord. No. 9967, §5, 7/1/04)
 - Q. *Historic Preservation Zone (HPZ), Appeals.* The Design Review Board (DRB) reviews, for recommendation, any appeal of a Development Services Department Director decision which was made in compliance with the procedural requirements of the DSD Full Notice Procedure, Sec. 23A-50 and Sec. 23A-51. The DRB recommendation shall be based on the purpose of the HPZ and the specific criteria for development listed in Sec. 2.8.8.6. (Ord. No. 9967, §5, 7/1/04)
 - R. *Rio Nuevo and Downtown (RND) Zone, Development Review.* The Design Review Board (DRB) reviews, for recommendation, all proposed development in the Rio Nuevo and Downtown (RND) Zone, as provided in Sec. 2.8.10.4 and in accordance with the Administrative Design Review Procedures, Sec. 23A-32. In formulating its recommendation, the DRB shall utilize the design criteria found in Sec. 2.8.10.5 and Development Standard 9-10.0. (Ord. No. 9780, §6, 10/14/02; Ord. No. 9967, §5, 7/1/04)
 - S. *Other Responsibilities.* The Design Review Board (DRB) shall perform such other functions as may be required by the *Land Use Code (LUC)*. (Ord. No. 9967, §5, 7/1/04)

(Ord. No. 9179, §1, 12/14/98; Ord. No. 9780, §6, 10/14/02)

5.1.9 TUCSON-PIMA COUNTY HISTORICAL COMMISSION. The Tucson-Pima County Historical Commission is established to advise the Mayor and Council, the City Development Services Department Director, the Board of Supervisors, and the applicable county officials on issues concerning historic sites, historic structures, and new construction and demolition within historic districts or Historic Landmarks within the community. The functions and duties of the Tucson-Pima County Historical Commission as provided herein shall be performed by the Tucson-Pima County Historical Commission Plans Review Subcommittee. (Ord. No. 9967, §5, 7/1/04)

5.1.9.1 Establishment. The Tucson-Pima County Historical Commission is established and constituted as provided in Chapter 10A, Boards and Commissions, of the *Tucson Code*.

-
- 5.1.9.2 Administrative Functions. The Tucson-Pima County Historical Commission Plans Review Subcommittee's administrative functions are as provided in Chapter 10A, Boards and Commissions, of the *Tucson Code*. (Ord. No. 9967, §5, 7/1/04)
- 5.1.9.3 Powers and Duties within the *Land Use Code (LUC)*. In addition to the powers and duties provided in Chapter 10A, Boards and Commissions, of the *Tucson Code*, the Tucson-Pima County Historical Commission Plans Review Subcommittee shall be responsible for the following. (Ord. No. 9967, §5, 7/1/04)
- A. *Establishment of a Historic District or Historic Landmark.* The Tucson-Pima County Historical Commission Plans Review Subcommittee shall review all requests to establish a historic district or Historic Landmark in accordance with Sec. 2.8.8.3. (Ord. No. 9967, §5, 7/1/04)
 - B. *Amendments to an Existing Historic District or Historic Landmark.* The Tucson-Pima County Historical Commission Plans Review Subcommittee shall review any request to amend an existing historic district or Historic Landmark in accordance with Sec. 2.8.8.3. (Ord. No. 9967, §5, 7/1/04)
 - C. *Development Review.* The Tucson-Pima County Historical Commission Plans Review Subcommittee shall review any development proposal within a historic district for compliance with design and construction requirements and standards in accordance with Sec. 2.8.8.6. (Ord. No. 9967, §5, 7/1/04)
 - D. *Demolition Review.* The Tucson-Pima County Historical Commission Plans Review Subcommittee shall review all proposals to demolish any structure within a historic district or a Historic Landmark. (Ord. No. 9967, §5, 7/1/04)
- 5.1.10 **HISTORIC DISTRICT ADVISORY BOARDS.** For each historic district proposed or established, a historic district advisory board (advisory board) is appointed to assist the Mayor and Council, the Department of Urban Planning and Design and the Development Services Department in evaluating establishment of, or amendment to, a historic district and in evaluating proposed development within an adopted historic district. (Ord. No. 9967, §5, 7/1/04)
- 5.1.10.1 Composition. Each historic district advisory board consists of at least six (6), but not more than fifteen (15), members. Members may be either voting or non-voting advisory members.
- A. *Appointment.* Members of each advisory board are appointed by the Mayor and Council.
 - B. *Qualifications.* For each advisory board, approximately one-third (1/3) of the voting members must be residents within the historic district; approximately one-third (1/3) of the voting members must be property owners within the historic district; and approximately one-third (1/3) of the voting members must have special qualifications in such areas as archaeology, architecture, architectural history, local history, historic preservation law, landscape architecture, planning, construction, or other related field. The application information for all prospective members must be accompanied by a statement of interest, including the category in which they would serve. The information for members having special qualifications shall also reference the individuals' educational and professional experience. The Development Services Department Director, the Historic Program Administrator, and a member of the Tucson-Pima County Historical Commission Plans Review Subcommittee shall review the information for applicants in the special qualifications category and make recommendations prior to the nomination being forwarded to the Mayor and Council for consideration. Members serve without compensation. (Reso. No. 17915, §1, 1/12/98; Ord. No. 9967, §5, 7/1/04)
 - C. *Terms.* The term of each member of an advisory board is for a maximum of four (4) years, expiring on December 31 of the fourth year. Terms may be staggered to assure continuity. Members are eligible for reappointment. (Reso. No. 17915, §1, 1/12/98)

- D. *Removal.* A member of an advisory board may be removed by a two-thirds (2/3) vote of the Mayor and Council.

5.1.10.2 Administrative Functions. Each advisory board is responsible for the following administrative functions.

- A. *Election of Officers.* Each advisory board elects a Chair and Vice Chair from among its members. The terms of the Chair and Vice Chair are one (1) year.
- B. *Meetings.* Each advisory board holds as many regular meetings as necessary to conduct its business in a timely manner. All meetings shall be open to the public.
- C. *Quorum and Voting.* A majority of the voting members constitutes a quorum of an advisory board. The concurring vote of the majority of members present and voting is necessary to make any recommendation to the Development Services Department Director or to the Mayor and Council. If a concurring vote cannot be attained within the specified time allotted by the review procedure, the matter will be forwarded without recommendation. (Ord. No. 9967, §5, 7/1/04)
- D. *Records.* Each advisory board will keep a public record of its actions, findings, and recommendations.
- E. *Rules of Procedure.* Each advisory board may adopt rules of procedure necessary to carry out its functions. Copies of such rules will be filed with the City Clerk and made available to the public through the Development Services Department. (Ord. No. 9967, §5, 7/1/04)
- F. *Training.* Advisory Boards shall schedule not less than one (1) meeting per year for the purposes of training related to their design review responsibilities. The training shall be coordinated with the City's Historic Program Administrator. (Reso. No. 17915, §2, 1/12/98)

5.1.10.3 Powers and Duties. Each advisory board performs the following duties.

- A. *Establishment of Historic District.* Upon receipt of a request to establish a historic district, the Mayor and Council establish a historic district advisory board for the proposed historic district to evaluate and make recommendations on the proposed establishment of the historic district in accordance with Sec. 2.8.8.3. As part of the review, the advisory board makes recommendations on the boundaries of the historic district and which sites or structures are to be designated Contributing Properties and Noncontributing Properties. (Ord. No. 9967, §5, 7/1/04)
- B. *Historic District Amendments.* Each advisory board makes written recommendations to the Development Services Department Director and to the Mayor and Council concerning amendments to the boundaries of its historic district and the addition or deletion of designated sites and structures in accordance with Sec. 2.8.8.3. (Ord. No. 9967, §5, 7/1/04)
- C. *Historic Preservation.* Each advisory board reviews and makes written recommendations to the Development Services Department Director on applications involving new construction, additions, alterations, and moving or demolition of existing structures located within its historic district for compliance with the purpose and intent of the historic district and all applicable provisions and criteria. (Ord. No. 9967, §5, 7/1/04)
- D. *Permitted Uses.* The applicable advisory board shall review applications for resident artisan uses and make recommendations to the Development Services Department Director. (Ord. No. 9967, §5, 7/1/04)

5.1.11 DEVELOPMENT SERVICES DEPARTMENT (DSD). The Development Services Department (DSD), as established by the Mayor and Council, shall administer and enforce the *Land Use Code (LUC)*, the Development Compliance Code and Development Standards. The DSD Department is also established as the authority to administer and enforce airport zoning regulations in accordance with ARS, Title 2, Article 2, Airport Zoning and Zoning Regulations. (Ord. No. 9967, §5, 7/1/04)

5.1.11.1 Functions and Duties. The Zoning Administrator is responsible for the enforcement of the *Land Use Code (LUC)* in accordance with Sec. 5.1.4.4.B; however, the Development Services Department (DSD) shall be responsible for the administration of the *LUC* on all new development within the boundaries of the city as follows. (Ord. No. 9967, §5, 7/1/04)

- A. *Implementation of the Land Use Code (LUC).* The Development Services Department (DSD) shall be responsible for the implementation of applicable provisions of the *Land Use Code (LUC)* on all projects being developed under the existing zoning of the property.
- B. *Implementation of the Development Compliance Code.* The Development Services Department (DSD) shall be responsible for the implementation of applicable provisions of the *Land Use Code (LUC)* on all projects being developed under the existing zoning of the property. (Ord. No. 9967, §5, 7/1/04)
- C. *Development Standards.* The Development Services Department (DSD) shall be responsible for the review of all development proposals for compliance with Development Standard requirements.
- D. *City Zoning Maps.* The Development Services Department is responsible for maintaining the official City Zoning Maps and for the coordination and review of any request to amend the zoning boundaries as provided on the maps. Review of requests to amend such boundaries shall be in accordance with procedures set forth in Sec. 5.3.2.G. (Ord. No. 9967, §5, 7/1/04)
- E. *Board of Adjustment (B/A).* The Development Services Department shall be responsible for scheduling meetings, providing agendas and public notice of meetings, and maintaining public records of the B/A's findings and decisions. (Ord. No. 9967, §5, 7/1/04)

-
- F. *Design Review Board (DRB)*. The Development Services Department shall be responsible for scheduling meetings, providing agendas and public notice of meetings, and maintaining public records of the DRB's decisions. (Ord. No. 9967, §5, 7/1/04)
- G. *Historic Preservation Program*. City staff performs the duties and responsibilities of the Historic Preservation Program as described below. The Development Services Department Director may delegate such duties and responsibilities, provided the person to whom they are delegated acts under the general supervision and on behalf of the Development Services Department Director.
1. Performs those administrative functions as required by Sec. 2.8.8, Historic Preservation Zone (HPZ).
 2. Coordinates review of all alterations, new development, and demolitions within the HPZ.
 3. Creates and maintains programs to encourage the recognition, restoration, and maintenance of the historic, archaeological, and cultural resources of the city.
 4. Works with and assists departments of the City and the Tucson-Pima County Historical Commission in matters affecting historic preservation, including enforcement of the HPZ regulations.
 5. Assumes other responsibilities as needed to accomplish the intent of the HPZ.
- (Ord. No. 9967, §5, 7/1/04)
- H. *Subdivisions, Minor Subdivisions, and Land Splits*. The Development Services Department (DSD) shall be responsible for the review of all development proposals for compliance with the subdivision, minor subdivision, and land split regulations in the *Land Use Code (LUC)* and applicable Development Standards. (Ord. No. 9967, §5, 7/1/04)
- I. *Other Responsibilities*. The Development Services Department shall perform such other functions as may be required by the Mayor and Council, City Manager, or the *LUC*. (Ord. No. 9967, §5, 7/1/04)

5.1.11.2 Development Services Department (DSD) Director. The Development Services Department (DSD) Director is the chief executive officer of DSD. The DSD Director, or designee, shall be responsible for administering the functions and duties of DSD regarding the *Land Use Code (LUC)* as follows. (Ord. No. 9967, §5, 7/1/04)

- A. *Plats*. The Development Services Department (DSD) Director is responsible for the coordination of reviews of all plats in accordance with Sec. 23A-33. The DSD Director, on behalf of the Mayor and Council, makes decisions on approving tentative plats, as provided by the *Land Use Code (LUC)*, Sec 4.1.6 and Sec. 5.1.2.9. (Ord. No. 9517, §4, 2/12/01; Ord. No. 9967, §5, 7/1/04)

-
- B. *Implementation of the Land Use Code (LUC).* The Development Services Department (DSD) Director is responsible for the review of all proposed projects that are being developed under the existing zoning of the property for conformance with provisions of the *Land Use Code (LUC)*. As part of this responsibility, the DSD Director shall assure that: (1) no land is used or occupied; (2) no existing use is expanded or changed; (3) no site improvement, modification, or construction is started; (4) no new structures are constructed; (5) no existing structure is reconstructed, changed, or otherwise altered; and (6) no land is divided into multiple parcels until conformance with provisions of the *LUC* has been certified through a zoning review process and shall assure that development occurs as approved prior to final occupancy. The responsibility includes the authority to suspend construction of a project when the project has not been approved for zoning or if it is not in keeping with the plans approved for conformance with zoning regulations.
- C. *Development Standards.* The Development Services Department (DSD) Director is responsible for assuring that no land is used or occupied; no site improvement, modification, or construction is started; no existing use or structure is expanded, reconstructed, changed, or otherwise altered; and no land is divided into multiple parcels until conformance with provisions of the Development Standards has been certified through a zoning review process and for assuring that development occurs as approved prior to final occupancy.
- D. *DSD Full Notice Procedure Decisions.* The Development Services Department (DSD) Director evaluates and makes decisions on applications for development under the DSD Full Notice Procedure within the resource overlay zones including the Hillside Development Zone (HDZ), Scenic Corridor Zone (SCZ), Environmental Resource Zone (ERZ), Historic Preservation Zone (HPZ), applications for development under the Watercourse Amenities, Safety and Habitat (WASH) regulations, and other matters as designated by the Tucson Code in accordance with the DSD Full Notice Procedure, Sec. 23A-50 and 23A-51. (Ord. No. 9967, §5, 7/1/04)
- E. *Limited Notice Procedure Decisions.* The Development Services Department (DSD) Director evaluates and makes decisions on applications for development under the Limited Notice Procedure in accordance with Sec. 23A-40. (Ord. No. 9967, §5, 7/1/04)
- F. *Administrative Design Review.* The Development Services Department (DSD) Director evaluates and makes decisions on applications for development under the Administrative Design Review Procedure in accordance with Sec. 23A-32. (Ord. No. 9967, §5, 7/1/04)
- G. *Land Splits.* The Development Services Department (DSD) Director is responsible for assuring conformance with land split regulations, as provided in Article IV, Division 3, and in Sec. 23A-33.2(2). (Ord. No. 9967, §5, 7/1/04)
- H. *Special Exception Land Uses.* The Development Services Department Director evaluates and makes administrative decisions on certain Special Exception Land Uses as provided in Sec. [5.3.9](#). (Ord. No. 9967, §5, 7/1/04)
- I. *Substitution of Nonconforming Use.* The Development Services Department Director evaluates and makes decisions on requests to substitute new nonconforming uses for existing nonconforming uses as provided in Sec. [5.3.6](#). (Ord. No. 9967, §5, 7/1/04)
- J. *Modification of Land Use Code (LUC) Provisions.* The Development Services Department Director evaluates and makes decisions on requests to modify requirements such as setbacks, height, parking, screening, and landscaping as provided in the Design Development Option (DDO), Sec. [5.3.4](#) and Sec. [5.3.5](#). (Ord. No. 9967, §5, 7/1/04)

- K. *Temporary Use or Structure.* The Development Services Department Director may approve a temporary use or structure as provided in Sec. [5.3.7](#). (Ord. No. 9967, §5, 7/1/04)
- L. *Other Duties.* The Development Services Department (DSD) Director performs such other functions as may be required of DSD in assisting the Zoning Administrator in implementing provisions of the *Land Use Code (LUC)*. (Ord. No. 9967, §5, 7/1/04)

(Ord. No. 9392, §1, 5/22/00)

5.1.11.3 **Zoning Administrator.** The Zoning Administrator, who is appointed by the Development Services Department Director, performs the duties and responsibilities as described below. The Development Services Department Director shall designate a temporary Zoning Administrator whenever the Zoning Administrator is unable to perform the duties of the office due to illness, potential conflict of interest, or similar reason.

- A. *Land Use Code (LUC) Interpretation.* The Zoning Administrator interprets the City Zoning Maps and the provisions of the *Land Use Code (LUC)* in accordance with Sec. 23A-31(5).
- B. *Land Use Code (LUC) Enforcement.* The Zoning Administrator enforces the *Land Use Code (LUC)* with assistance from the Development Services Department (DSD) as provided in Sec. 5.1.11, Sec. 5.5.2, and Sec. 5.5.3 and from other City departments as may be provided by the City Manager and Mayor and Council.
- C. *Other Responsibilities.* The Zoning Administrator shall perform such other functions as may be required by the Development Services Department Director or the *Land Use Code (LUC)*.

(Ord. No. 9967, §5, 7/1/04)

DIVISION 4. PROCEDURES

SECTIONS:

- 5.4.1 GENERAL LEGISLATIVE PROCEDURES**
5.4.2 PLANNING COMMISSION LEGISLATIVE PROCEDURE
5.4.3 ZONING EXAMINER LEGISLATIVE PROCEDURE
-

- 5.4.1 GENERAL LEGISLATIVE PROCEDURES.** Legislative approvals are considered and decided by the Mayor and Council. All applications are subject to the general application procedures in this section. All applications are then subject to citizen review through one of two public comment, public hearing and public review procedures. Plan and text amendments, including amendments to the General Plan, specific plans, redevelopment plans and to the *LUC* are reviewed by the Planning Commission in accordance with Sec. 5.4.3. All applications to designate or change zoning regulations for specific property are reviewed by the Zoning Examiner in accordance with Sec. 5.4.3. These include changes in zoning classifications through rezoning, Planned Area Developments and approval of Mayor and Council Special Exception uses. Designation of property as subject to an overlay zone may occur when the overlay zone is first added as a text amendment in accordance with Sec. 5.4.3 or as a change of zoning in accordance with Sec. 5.4.3.
- 5.4.1.1. Pre-application conference. A pre-application conference is required for all applications by parties other than the City. Depending upon the level of detail of the information provided for the proposed project by the potential applicant or the need to include other City departments in the preliminary discussions, additional pre-submittal conference(s) may be requested by the Development Services Department.
- 5.4.1.2 Neighborhood Meeting. The applicant shall offer to meet at a specified time and place to discuss the proposed project with the persons and entities entitled to notice of the application. The offer shall be made at least ten (10) days prior to the date of the meeting. The meeting shall occur at least fifteen (15) and not more than (60) days prior to the submittal of the application. The offer shall describe the substance of the application and advise the adjacent property owners and neighborhood association(s) that they may submit comment to the Director prior to the public hearing or speak at the public hearing. The applicant shall also provide notice of the meeting to the office of the Council Ward in which the subject site is located. The date for such meeting shall be prior to submittal of the application. Documentation of the offer to meet and a summary of the meeting shall be submitted with the application. A neighborhood meeting shall not be required for amendments to the General Plan or for text amendments to the *Land Use Code*.
- 5.4.1.3 Applications. Applications shall be in conformance with the General Plan, applicable specific plans, the *LUC*, Chapter 23, Development Compliance Code, Chapter 23A, Development Standards, the applicable fees in Development Standards, other pertinent codes and regulations and the following.
- A. Applications for the amendment to an area or neighborhood plan within two (2) years of the date of adoption of the plan shall not be processed unless Mayor and Council consent to the application.
 - B. Applications for designation of protected peaks and ridges shall be accepted only from the City or one or more property owners of the subject property.
 - C. The re-adoption of the General Plan, amendments to the *LUC*, and original city zoning shall only be initiated by the Mayor and Council. Notice of initiation shall be provided in conformance with A.R.S. §9-461.06.
 - D. Redevelopment plans shall be initiated after a resolution by the Mayor and Council declaring that an area is subject to redevelopment in accordance with state law prior to initiating a redevelopment plan.

-
- 5.4.1.4 Notice. Notice as required by this section shall state the substance of the proposed specific plan amendment, amendment to the *LUC* or change of zoning, including a general description of the matter to be considered and a general description of the area affected. The notice shall advise adjacent property owners and other affected or interested persons that comments and expressions of issues and concerns regarding the application may be submitted prior to the public hearing on the application. Comments on plan amendments and amendments to the *LUC* shall be submitted to the Planning Director who shall forward the comments to the Planning Commission. Comments on change of zoning cases shall be submitted to the DSD Director, who shall forward them to the Zoning Examiner. Notice shall also be given by first class mail to all persons who have registered their names and addresses with the City for the purpose of receiving such notice and any other persons the Planning Director or DSD Director determines are affected by the application.
- 5.4.1.5 Military Airport Notice. Any change of zoning involving land that is located within the vicinity of a military airport as defined by state law shall include provision of notice by first class mail to the Davis Monthan Air Force Base. If the application involves property within the high noise or accident potential zone as defined in A.R.S. §28-8461, that fact shall be stated in the notice.
- 5.4.1.6. Suspension or Withdrawal of an Application. An applicant may suspend an application at any time prior to the date published notice is given for the public hearing before the Planning Commission or the Zoning Examiner. An application shall not be suspended for more than one (1) year after the date of acceptance of the application. An application may be withdrawn at any time.
- 5.4.1.7 Staff review and recommendation. City staff shall review each application to determine, to the extent applicable, compliance with the General Plan, specific plans, the *LUC*, Chapter 23, the Development Compliance Code, Chapter 23A, the Development Standards and any other code or regulation that may pertain to the application. Where it is determined that the application does not comply with applicable plans, codes, regulations and standards, the application may be denied by staff. If an application for a change of zoning is denied by staff for noncompliance with the General Plan or specific plans, that decision may be appealed to the Mayor and Council in conformance with Development Compliance Review, Sec. 23A-62. Where appropriate, City staff may request comments from other public and private agencies during the review process. Staff shall prepare and submit a report and recommendation to the Planning Commission or Zoning Examiner and shall make copies available to the public prior to the public hearing. The staff report in a change of zoning case shall be available to the public not less than fifteen (15) days before the public hearing.
- 5.4.2 PLANNING COMMISSION LEGISLATIVE PROCEDURE.** Applications reviewed under this procedure require consideration by the Planning Commission at a public hearing(s) for recommendation to the Mayor and Council. This procedure is used for adoption of, re-adoption of, or amendment to, the General Plan and the specific plans, such as, but not limited to, subregional, area, neighborhood plans, the Major Streets and Routes (MS&R) Plan and redevelopment plans and amendments to the *LUC*, including amendments for the creation of overlay zones.
- 5.4.2.1 Planning Commission's Public Hearing. The Planning Commission shall hold at least one (1) public hearing. For the re-adoption of or a major amendment to the General Plan, the Planning Commission shall hold at least two (2) public hearings, each in a different location within the city and shall provide additional consultation and public notice in conformance with A.R.S. §9-461.06.
- A. *Notice of Public Hearings.* Notice of public hearings shall be given at least fifteen (15) days and not more than thirty (30) days before the public hearing. Notice of the time and date of the hearing and the general subject matter shall be published at least once in a newspaper with general circulation in the City. A display ad shall be provided for amendments to the *LUC*.
- B. *Notice for Specific Plan Amendments.* Notice for proposed amendments to specific plans, including neighborhood plans, area plans and subregional plans, where the amendment changes the plan application to a limited, specific site within the plan area, shall be mailed to property owners within three hundred (300) feet of the amendment site and to neighborhood associations within one mile of the site.

-
- C. *Notice for Applications of Overlay Zones to Specific Property.* Where an application provides for a text amendment to create a new overlay zone and also provides for specific application of that overlay zone to specific properties, mailed notice shall be given in accordance with Sec. 5.4.3.B.1 for the area to be designated subject to the new overlay zone.
- D. *Public Comment.* Property owners and other interested persons may submit their comments and expressions of any issues or concerns regarding an application prior to a public hearing by submitting them to the Planning Commission in care of the Planning Director. The Planning Director shall forward the comments to the Planning Commission, or submit them to the Planning Commission at the public hearing.
- E. *Planning Commission's Recommendation.* Except for redevelopment plans, the Planning Commission may close a public hearing or may decide to continue a public hearing to a future time and place provided it is closed within ninety (90) days of the date of the initial hearing. The Planning Commission shall issue a recommendation, including a statement of the reasons for the recommendation, within forty-five (45) days of the close of the hearing(s). The application, together with the Planning Commission Recommendation and the City Manager's Recommendation, is forwarded to the Mayor and Council for decision.

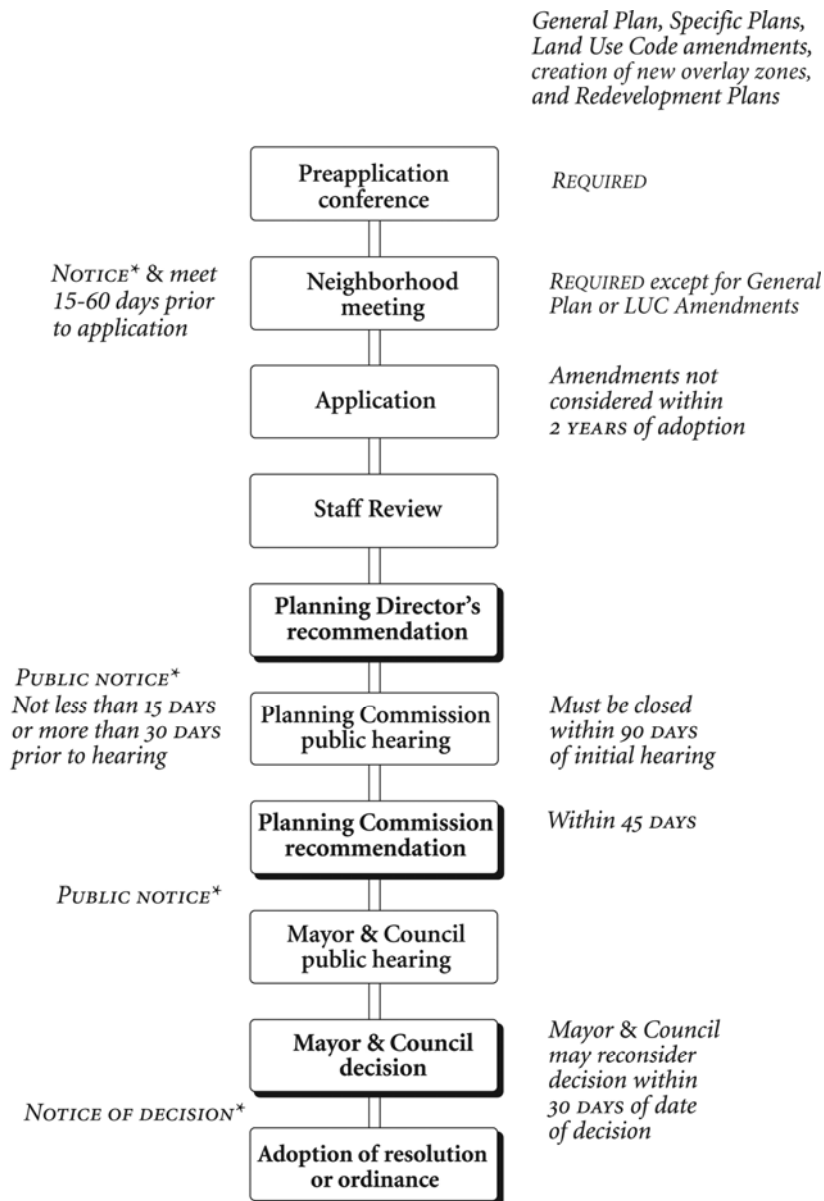
If the Planning Commission fails to issue a recommendation within the prescribed time, the application will be forwarded as a recommendation to the Mayor and Council for a decision and shall state the reasons for the positions taken by members of the Planning Commission.

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

5.4.2.2 Mayor and Council Decision. The Mayor and Council shall hold a public hearing on legislative applications prior to decision. The decision on legislative applications shall consider the application, the Planning Commission's recommendation and the City Manager's recommendation and public comments. The notice for the public hearing before the Mayor and Council shall be the same as the notice before the Planning Commission except for redevelopment plans. Adoption and re-adoption of or amendment to the General Plan shall be in conformance with A.R.S. §9-461.06 (G) and (K) and other applicable provisions. For redevelopment plans, notice shall be published once each week for two consecutive weeks, the last publication to be at least ten (10) days before the date set for the hearing.

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

CITY OF TUCSON LAND USE CODE
ARTICLE V. ADMINISTRATION
DIVISION 4. PROCEDURES



SEC 5.4.2 PLANNING COMMISSION PROCEDURE

5.4.3 ZONING EXAMINER LEGISLATIVE PROCEDURE. Applications reviewed under this procedure require consideration by the Zoning Examiner at a public hearing(s) for recommendation to the Mayor and Council. This procedure is used for establishment of original city zoning for newly annexed areas and for amendments to the zoning of specific properties including changes in the zoning classifications (rezonings), Planned Area Developments, designation of properties subject to established overlay zones and Mayor and Council Special Exception land uses.

5.4.3.1 Original City Zoning. Upon the effective date of annexation of property into the City the City may adopt original City zoning or may continue the existing county zoning for a period not to exceed six (6) months. A case which establishes original City zoning may be initiated anytime after the filing, in the office of the Pima County Recorder, the blank petition for annexation of the subject property in accordance with state law.

5.4.3.2 Zoning Examiner Public Hearing. The Zoning Examiner shall hold a public hearing on applications for a change of zoning and on applications for Mayor and Council Special Exception uses on behalf of the Mayor and Council. The public hearing shall be opened within seventy (70) days of acceptance of the application, except for applications for original city zoning.

A. *Notice of the Public Hearing.*

1. Notice of public hearings shall be given at least fifteen (15) days and not more than thirty (30) days before the public hearing.
2. Mailed public notice shall be provided by first class mail to each property owner within the area of the application and within three hundred (300) feet of any lot line of the area of the application, neighborhood associations within one mile of the site and any other persons the DSD Director determines are affected by the application. The property owner shall be determined from the last assessment of the property. For a change of zoning to property that abuts other municipalities or unincorporated areas of Pima County, notice shall also be given to the planning agency of the abutting jurisdiction. Mailed notice shall also be provided to the public service agencies effected by the application.
3. Adjoining property under the same ownership as the property within the subject site and adjoining public right of way shall be included in the site in determining the boundaries from which the notice area is measured.
4. Posted Notice. No later than fifteen days prior to the public hearing, notice shall be posted that is of such size that the following are visible one hundred (100) feet from the site boundary: the word "zoning," the existing and proposed zoning, and the date and time of the hearing. At least one (1) notice shall be posted for each street the property adjoins.
5. Published Notice. Notice of the time and date of the hearing with a general explanation of the matter to be considered and a general description of the area affected shall be published at least once in a newspaper with general circulation in the City.
6. Military Airport Notice. Any change of zoning involving land that is located near a military airport shall include provision of notice by first class mail to the Davis Monthan Air Force Base as required by state law.

B. *Public Comment.* Comments and expressions of any issues or concerns regarding the application from area property owners and other interested persons may be submitted prior to the public hearing to the DSD Director, who shall forward the comments to the Zoning Examiner, or may be submitted to the Zoning Examiner at the public hearing.

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

Beyond these limitations, the Zoning Examiner shall not communicate, directly or indirectly, with any party, any party's representative or any interested person in connection with any issue involved with a particular request, except upon notice and opportunity for all parties to participate; use or rely upon any communication, report, staff memorandum, or other material prepared in connection with the particular case, unless it is made a part of the record. The Zoning Examiner may inspect the site provided all parties are given an opportunity to be present.

- D. *Zoning Examiner's Preliminary Recommendation.* The Zoning Examiner shall issue a report with preliminary findings and a preliminary recommendation within five (5) days of the close of a hearing. The preliminary recommendation shall be provided to the applicant, the DSD Director and to any person who has requested a copy of the preliminary recommendation.
- E. *Reconsideration.* Any party of record may request that the preliminary recommendation be reconsidered or that the public hearing be reopened if there are errors of fact or procedure. The request shall state the alleged errors of fact or procedure and shall be submitted to the Zoning Examiner within five (5) days of the date of the preliminary recommendation. The Zoning Examiner has five (5) days following the receipt of a request for reconsideration to take action on the request which may include revising the preliminary recommendation, reopening the public hearing or denial of the request.
- F. *Final Recommendation.* Within fourteen (14) days following the close of the public hearing or the reopened public hearing, the Zoning Examiner shall issue and transmit a final recommendation to the Mayor and Council for final action. If the Zoning Examiner determines that minor corrections to the preliminary recommendation are appropriate in response to a request for reconsideration, such corrections may be incorporated into the final recommendation without further proceedings. The final recommendation shall not be subject to further requests for reconsideration. If the Zoning Examiner determines that a significant change to the preliminary recommendation is appropriate, the public hearing shall be reopened with notice provided to all persons who received the previous preliminary recommendation.
- G. *Reopening of the public hearing.* If the public hearing is reopened, the new hearing shall be held within forty (40) days of the close of the last public hearing. Notice of the reopened hearing shall be the same as the notice for the original public hearing. If the public hearing is reopened at the request of a party or to consider new information from a party, the Zoning Examiner may require that the party pay the costs for the re-opened public hearing. At the conclusion of the reopened hearing, the issuance of a preliminary recommendation, the time period for reconsideration, the issuance of a final recommendation and the time periods for each shall be the same as for the original hearing.
- H. *Mayor and Council Public Hearing Request.* Any person may request that the application be heard at a public hearing before the Mayor and Council if the request is filed with the City Clerk within fourteen (14) days after the date of the Zoning Examiner's public hearing or re-opened public hearing. The time for this request shall not be extended by the filing of a request for reconsideration. If a public hearing is requested, notice shall be provided in the same manner as the notice provided for the Zoning Examiner's public hearing.

5.4.3.3 Authorization for Change of Zoning. Where a change in zoning is requested based upon conceptual plans, the Mayor and Council make a preliminary determination to authorize the applicant to proceed with the case.

- A. *Authorization for the application to Proceed.* A vote by the Mayor and Council to authorize a change of zoning case constitutes authorization for the applicant to proceed, subject to the applicant's subsequent demonstration of compliance with any special conditions that may be established by the Mayor and Council. Unless the Mayor and Council states a shorter time period, the applicant has five (5) years from the date the request is authorized to complete all conditions of approval.

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

5.4.3.4 Direct Ordinance Adoption. Where a change of zoning application includes development plan or proposed plat that provides sufficient specific details to demonstrate compliance with all conditions that may be required by the Mayor and Council and is in compliance with Development Standard 1-07, the application may proceed from staff review to Mayor and Council ordinance adoption without a separate Mayor and Council authorization to proceed with the application.

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

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

5.4.3.6 Mayor and Council Adoption of the Change of Zoning. Where an application substantially demonstrates compliance with the conditions for a change of zoning in accordance with paragraph C or D above and paragraph E above, staff shall prepare an ordinance to be submitted to the Mayor and Council for adoption enacting the change in zoning.

5.4.3.7 Voting Requirements. Adoption of a change of zoning shall be by a vote of three-fourths (3/4) of all members of the governing body if there are written protests filed by property owners who own twenty percent (20%) or more of the area within one of the following areas.

A. The entire area of the lot or lots within the subject site.

B. Property in any one (1) of the following quadrants: north, south, east, west, that is located within one hundred fifty (150) feet of the rezoning site, excluding public right of way abutting the subject site.

5.4.3.8 Ordinance Effective Date. Ordinances granting changes in zoning are subject to referendum and shall not become effective until thirty (30) days after the date of adoption or the date the final ordinance is available from the City Clerk, whichever is later. The effective date of the ordinance is not necessarily the effective date of the change of the zoning (rezoning). The effective date of the change of zoning is when compliance with conditions of approval is completed and certified by the DSD Director.

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

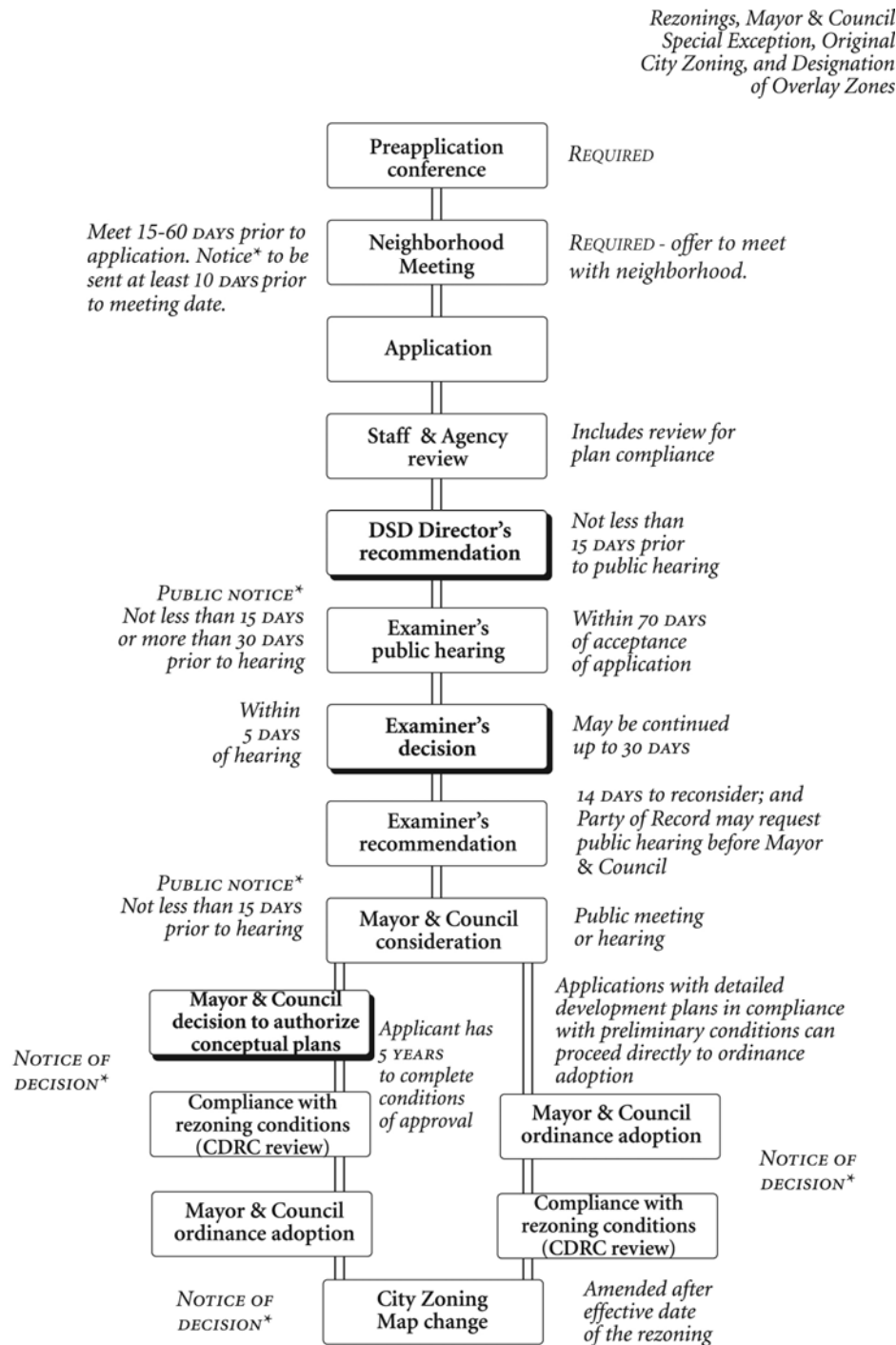
5.4.3.10 Change in Conditions of Approval. An applicant may request a change to conditions of approval which shall be considered as follows.

-
- A. *Substantial Change to Conditions or the Preliminary Development Plan.* A request to substantially amend the conditions of approval or the approved preliminary development plan requires Mayor and Council approval after a public hearing. Notice of such hearing shall be given in the same manner as for the procedure adopting the conditions. The same voting requirements as for the original adoption shall apply to the request for a substantial change of conditions.
 - B. *Minor Change to Conditions.* Minor amendments to conditions of approval may be considered by the Mayor and Council in a public meeting.
 - C. *Minor Change to a Preliminary Development Plan.* Minor amendments to a preliminary development plan approved by the Mayor and Council are considered changes to conditions of approval that may be granted by the DSD Director.
 - D. *Change of Conditions of a Planned Area Development.* Changes to conditions and terms of a Planned area development which affect the overall density, intensity and classifications of land uses shall be processed as a new change of zoning. Changes to other conditions of a Planned Area Development shall be in accordance with Sec. 5.4.3.J.1, 2 and 3 above. *LUC* requirements which apply to a PAD may be modified in accordance with the administrative procedures in Development Compliance Code, Chapter 23A .

5.4.3.11 Extension of Time. On applications where there is a specified period of time within which to complete all conditions of approval, a time extension may be requested. If the time period lapses, the case is closed. A closed case may be reactivated only by the Mayor and Council after a public hearing on the reactivation of the case. A new public hearing is required on any request that would extend the time more than five (5) years from the date of the last public hearing. New notice for this public hearing shall be provided in the same manner as the Zoning Examiner hearing and there shall be a new calculation of the protests/approvals. No extension beyond ten (10) years from the original date of approval shall be allowed. Where an ordinance has been adopted, the last public hearing before the ten (10) year limitation shall provide for the repeal of the adopted ordinance if the conditions are not completed prior to the expiration of the ten (10) year period.

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

(Ord. No. 9967, §5, 7/1/04)



* All notices are to be sent to property owners within 300 feet of site and neighborhood associations within 1 mile.

SEC 5.4.3 ZONING EXAMINER PROCEDURE

[The next page is 422.]

Gross Floor Area. The sum of the horizontal areas of all floors of all buildings, including accessory buildings on a lot, measured from the exterior faces of the exterior walls or from the centerline of walls separating two (2) buildings and includes elevator shafts and the stairwells at each story; floor space with structural headroom of six (6) feet and six (6) inches or more used for mechanical equipment; penthouses; attic space; interior balconies; mezzanines; and service bays but does not include any interior space used for parking, loading, or loading space that is incidental to the principal use.

6.2.8 DEFINITIONS - H.

H. The eighth letter of the alphabet. When used in perimeter yard application, it is the abbreviation for the height of the exterior wall of the proposed building.

HDZ. Same as Hillside Development Zone. See Sec. 2.8.1.

Height, Patio Wall or Fence. Same as Structure Height.

Height, Structure. Same as Structure Height.

Historic Landmark. A historic site or structure of the highest historic, cultural, architectural, or archaeological importance to Tucson which if demolished or significantly altered would constitute an irreplaceable loss to the quality and character of Tucson. A Historic Landmark is an outstanding or unique example of architectural style; is associated with a major historic event, activity, or person; or has unique visual quality and identification. A Historic Landmark may be located within the boundaries of or outside a historic district.

Historic Site or Historic Structure. As used in Sec. 2.8.8, Historic Preservation Zone (HPZ), a building, structure, object, or site, including vegetation or signs located on the premises, which:

- A. Dates from a particular significant period in Tucson's history, i.e., prehistoric, native indigenous, Pre-Colonial (before 1775), Spanish Frontier (Colonial) (1775-1821), Mexican Frontier (1821-1853), Territorial (1854-1912), Post-Territorial (1912-1920), or Post-World War I Development (1920-1945), or relates to events, personages, or architectural styles which are at least fifty (50) years old; however, outstanding examples less than fifty (50) years old should be evaluated on their own merits; and
- B. Is associated with the lives of outstanding historic personages; or
- C. Is associated with significant historic events or occurrences; or
- D. Exemplifies the architectural period in which it was built and has distinguishing characteristics of an architectural style or method of construction or is the notable work of a master builder, designer, or architect whose individual genius influenced his/her age; or
- E. Contributes information of archaeological, historic, cultural, or social importance relating to the heritage of the community; or
- F. Relates positively to buildings in its immediate vicinity in terms of scale, size, massing, etc., such that its removal would be an irreparable loss to the setting.

Home Occupation. A land use activity carried out for financial gain by a resident, on the resident's property, conducted as a secondary use to the Family Dwelling or Mobile Home Dwelling use on the property.

House Trailer. Same as Mobile Home.

the final zoning determination. The final zoning determination or certification shall be mailed to the applicant and all parties of record within three (3) days of the determination.

- d. The Zoning Administrator may designate certain decisions as precedent for future decisions. Any decision so designated shall be binding upon future cases unless reversed on appeal. One copy of all precedent decisions shall be maintained by the Zoning Administrator and one copy shall be maintained by the City Clerk for public review and inspection.
 - e. The Zoning Administrator's determination shall be binding upon the applicant and all parties of record unless appealed.
6. *Appeal of Zoning Interpretations.* Within thirty (30) days of a final zoning determination by the Zoning Administrator that involves the interpretation of the substantive zoning provisions of the Land Use Code, the applicant, and any party of record may appeal that determination to the Board of Adjustment pursuant to Sec. 23A-61.
7. *Stay of the Issuance of Plan Approvals and Permits During Appeals.* Where an administrative appeal is submitted in a timely manner to a City official or body such as the Director, the Board of Adjustment, the Zoning Examiner or the Mayor and Council in accordance with this Chapter, no permits shall be issued and no formal plan approvals or inspections shall be made on any portion of an application that is subject to the appeal while that appeal, review period or the time provided for reconsideration is pending. DSD may, in the discretion of the Director, continue to process review of applications and may issue permits or plan approvals on applications or portions thereof that are not affected by the appeal. Where a final City decision has been made following City administrative appeals, any further appeal shall be to Superior Court in accordance with applicable law. An appeal to Superior Court shall not stay the issuance of permits or plan approvals unless the Superior Court issues such a stay.

Sec. 23A-32 Administrative Design Review Procedure

The following procedure is for administrative design review where such review is required by the LUC. This procedure applies to review of minor development applications in Historic Preservation Zone (HPZ) districts in accordance with LUC Sec. 2.8.8.5.c and design review in the Rio Nuevo and Downtown (RND) Zone. The criteria for determining whether development in the RND Zone is subject to minor, full or conceptual review are stated in LUC Sec. 2.8.10.4.

- 1. *Preapplication Conference.* A preapplication conference with the Development Services Department is required to determine whether the application shall be reviewed through the minor, conceptual or full design review procedure. The

applicant may request informal review by the DRB as part of the preapplication process.

2. *Minor Design Review.* Development subject to the Minor Design Review procedure shall reviewed as follows.
 - a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall be accepted or rejected within two (2) days.
 - b. *Staff Review.* DSD staff shall review the application to determine compliance with the applicable requirements and shall recommend to the Director whether to approve or reject the application.
 - c. *Advisory Board Review.* Applications in the RND Zone shall be referred to the Design Review Board (DRB) to be scheduled for consideration at the first available meeting for review in accordance with design criteria of Development Standard 9-05.0. If the proposed development includes exterior changes for buildings on or eligible for inclusion on the National Register of Historic Places, the application and elevation drawings will be forwarded to the Tucson-Pima County Historical Commission Plans Review Subcommittee for review and recommendation to the Director. Applications for development in HPZ districts shall be referred to the district advisory board and the Plans Review Subcommittee for review and recommendation.
 - d. *Decision.* The Director shall make a decision on whether to accept or reject the application within seven (7) days of acceptance of the application. The Director may, alternatively, determine that the application be subject to the Full Design Review procedure.
 - e. *Notice of Decision.* Notice of the decision shall be provided to the applicant within three (3) days of the date of the decision and, in the case of a Historic Preservation Zone Minor Design Review, the appropriate advisory board and the Plans Review Subcommittee.
 - f. *Appeal to the Board of Adjustment.* If an application is denied, the applicant may appeal the decision to the Board of Adjustment in accordance with Sec. 23A-61 by filing an appeal within five (5) days of the notice of decision with the Zoning Administrator.
3. *Major Project Design Review.* Development subject to Major Project Design Review shall be reviewed as follows.
 - a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall

DIVISION 2. SPECIAL ZONING REVIEW – LIMITED NOTICE PROCEDURE

Sec. 23A-40. Limited Notice Procedure

Special zoning reviews which involve minor modifications to design criteria or minor construction subject to design review shall be conducted in accordance with the following general procedures. These procedures provide limited notice to parties who may be affected by the development. It is the responsibility of the applicant to provide full and complete information on the project in a timely manner and the responsibility of the affected parties to provide comments to the applicant and/or the City in a timely manner. Limited Notice Procedures apply to certain Design Development Options (DDO), approval of resident artisan uses and requests for demolition of contributing, nonhistoric structures in historic districts and special exception uses approved by the DSD Director, “DSD Special Exceptions”.

1. *Eligibility for Limited Notice Procedure.* The Director shall determine whether a proposed development qualifies for the Limited Notice Procedure based upon the following.
 - a. There is a minor change in the development criteria that is requested.
 - b. There are few, if any, changes in the physical attributes of the property.
 - c. There is a potential for impact upon the neighborhood or the adjacent properties.
 - d. For commercial and office developments, a-c above shall apply and there is a benefit to area properties from the proposed redevelopment of the property.
 - e. DSD Special Exception land uses as designated in the LUC.
2. *Pre-application conference.* A pre-application conference with city staff to review requirements for the proposal under this Chapter, the LUC, Development Standards and other applicable policies and regulations is encouraged on all Limited Notice Procedure applications.
3. *Pre-application Neighborhood contact.* The applicant is encouraged to meet with the property owners who are entitled to notice of the application, the neighborhood association that includes the site and other interested parties prior to submittal of the application to explain the proposed development and potential impacts.
4. *Application.* Applications shall conform to the requirements set forth in the LUC, this Chapter and appropriate Development Standards and shall show the impact upon adjacent properties. Upon submittal of the application for minor HPZ review, a copy shall be provided to the designated member of the historic district

advisory board and the designated member of the TPHC Plans Review Subcommittee for review and comment.

5. *Notice of Submittal of the Application.* Notice of the application shall be provided to property owners within fifty (50) feet of the subject site and to the neighborhood association that includes the subject site.
6. *Public Comment Period.* There shall be a period of ten (10) days following the date on which notice is provided for submission of comments on the proposal to the Development Services Department.
7. *Review Process.* Review is conducted by the Development Services Department staff and other agencies, committees or advisory boards as specified in this Chapter, the LUC and as may be deemed appropriate by the Director.
8. *Decision by the Director.* The Director shall decide whether to approve or deny an application no earlier than one (1) day after the expiration of the public comment period and no later than ten (10) days after the expiration of the public comment period. The Director may impose conditions for approval of the application or may decide to require that the application proceed through the Procedure in accordance with Division 3 of this Chapter.
9. *Notice of the Decision.* The Director shall notify the applicant and parties of record in writing of the decision within three (3) days of the decision.
10. *Appeal to the Board of Adjustment.* A party of record may submit an appeal of the decision to the Board of Adjustment in accordance with Sec. 23A-61. A notice of intent to appeal must be received by the Development Services Department within five (5) days after the notice of decision. The complete appeal materials must be filed within thirty (30) days of the decision.
11. *Waiver of Comment, Notice of the Decision and Right to Appeal.* The time period for public comment, for notice of the decision and for the filing an appeal may be waived if the applicant provides written documentation that all parties of record have waived one or more of these provisions.
12. *Failure to Adequately Describe the Project.* If, upon receiving a complaint, the Zoning Administrator determines that the notice required by this section, failed to accurately or adequately describe the proposed development in a manner that substantially affects other property owners, the Zoning Administrator may determine that the approval is invalid and that the application must obtain a new approval through the Limited Notice Procedure in accordance with Division 3 of this Chapter. The Zoning Administrator's decision to invalidate an approval may be appealed by the applicant to the Board of Adjustment in accordance with 23A-61.

DIVISION 3. SPECIAL ZONING REVIEW – FULL NOTICE PROCEDURE

Special zoning reviews which require the Full Notice Procedure involve DSD Director decisions on development applications in resource overlay zones, applications for variances before the Board of Adjustment and certain special exception uses that are decided by the Zoning Examiner, the “Zoning Examiner Special Exceptions”. This procedure provides broad notice to parties who may be affected by the development. It is the responsibility of the applicant to provide full and complete information on the project in a timely manner and the responsibility of the affected parties to provide comments to the applicant and/or the City in a timely manner. This procedure applies to applications as specified in the LUC and include the following.

Sec. 23A-50. Application, Notice, Public Comment and Review.

An application for and review of a special zoning request that requires Full Notice Procedure shall comply with the following.

1. *Preapplication conference.* A preapplication conference with city staff to review requirements for the proposal under this Chapter, the LUC, Development Standards and other applicable policies and regulations is required on all Full Notice Procedure applications.
2. *Neighborhood Meeting.* The applicant shall offer to meet at a specified time and place to discuss the proposed project with the persons and entities entitled to notice of the application. The offer shall be made at least ten (10) days prior to the date of the meeting. The meeting shall occur at least fifteen (15) and not more than (60) days prior to the submittal of the application. The neighborhood meeting shall be held at a location near the property that is the subject of the application. Notice of the meeting shall also be provided by the applicant to the office of the Council Ward in which the subject site is located. Documentation of the offer to meet and a summary of the meeting shall be submitted with the application.
3. *Application.* Applications shall conform to the requirements set forth in the LUC, this Chapter and appropriate Development Standards. An application is accepted or rejected within seven (7) days of the date of receipt unless the applicant consents to additional time. An application may, in the discretion of the Director, be conditionally accepted.
4. *Public Notice of the Application.* Applications for Full Notice Procedure shall be provide public notice as follows.
 - a. *Mailed Notice.*
 1. Shall be sent to the applicant, public service agencies affected by the application, all property owners within the subject site and within three

hundred (300) feet of the subject site, the neighborhood association(s) which includes or are within one (1) mile of the subject site, any person or organization that has filed a request and paid a fee to receive notification of public meetings and hearings on a particular process and any other person the Director determines has an interest in the matter.

2. Property owners shall be determined from the records of the Pima County Assessor that are available to the public no more than forty-five (45) days prior to the application or public hearing.
 3. Shall be provided to all parties of record on a previous hearing on the same application and to other affected property owners as required by each process.
 4. Shall be sent whether or not the properties are within the corporate limits of the city.
 5. Adjoining land under the same ownership as the subject site and public right of way abutting the site shall be included as part of the subject site in determining the boundaries from which the notice area is measured.
 6. For sites within the Airport Environs Zone (AEZ), notice shall be provided to the Tucson International Airport or to the Davis Monthan Airforce Base, whichever is applicable.
- b. *Posted Notice.* Notice shall be posted in such locations on the subject property as to be visible to the public. The posted notice shall identify the request, the date, time and location of any public comment period or public hearings and a telephone number for the City and the applicant where further information may be obtained.
5. *Public Comment Period.* There shall be a period of twenty (20) days following the date on which notice is mailed for submission of comments on the proposal to the Development Services Department.
 6. *Review Process.* Review is conducted by the Development Services Department staff and other agencies, committees or advisory boards as specified in this Chapter, the LUC and as may be deemed appropriate by the Director.
 7. *Denial of Plan Compliance Appeal.* If an application is rejected because it is not consistent with the General Plan or any applicable specific plan, the rejection of the application may be appealed by the applicant to the Mayor and Council in accordance with 23A-62.

Sec. 23A-51**DSD Full Notice Procedure.**

This procedure applies to approvals within overlay zones, such as, but not limited to, the Hillside Development Zone (HDZ), Scenic Corridor Zone (SCZ), Environment Resource Zone (ERZ) and Historic Preservation Zone (HPZ). This section does not apply to applications for development subject to the Major Streets and Routes Setback Zone or the Gateway Corridor Zone, to the Rio Nuevo and Downtown Development (RND) Zone or the Drachman School Overlay (DSO) Zone. This procedure also applies to development applications subject to the Watercourse, Amenities, Safety and Habitat (WASH) regulations in Sec. 29-12 et. seq.

1. *Application, Notice, Public Comment and Review.* The preapplication conference, neighborhood meeting, application, notice, public comment, review and denial of plan appeal shall be in conformance with Sec. 23A-50.
2. *Maintenance and protection.* Prior to approval of a subdivision plat or issuance of building permits, such measures as covenants, assurances, or homeowners' associations, as may be necessary to ensure the long-term maintenance and control measures, may be required.
3. *Alteration of the property prohibited.* No grubbing, grading, excavation or construction shall occur nor shall the city issue any approval or permit for grubbing, grading, excavation or construction on any lot or parcel subject to the overlay zone unless and until the city approves a plat or plan in conformance with this Chapter, the LUC and the Development Standards.
4. *WASH Development.* Development subject to the Watercourse, Amenities, Safety and Habitat (WASH) regulations in Sec. 29-12 et. seq. shall be subject to review and approval in accordance with the DSD Full Notice Procedure, Sec. 23A-51, and to the standards for review set forth in Sec. 29-17.
5. *Time for issuance of decision.* The Director shall not make any decision prior to the expiration of the twenty (20) day period for public comment. The Director shall make a decision on applications no later than twenty (20) days after the expiration of the comment period or five (5) days after the latest recommendation from a city advisory board, whichever is later.
6. *Notice of Decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to all persons entitled to notice of the application.
7. *Appeal.* The decision of the Director may be appealed to the Mayor and Council on the grounds that the decision is not in conformance with the

criteria established by the LUC. The notice of intent to appeal shall be in accordance with Sec. 23A-62 and shall be filed with the City Clerk no later than fourteen (14) days after the date of the decision. The complete appeal materials must be filed within thirty (30) days of the decision. A copy of the appeal shall be provided to the Director at the time it is filed.

8. *Site inspection.* Prior to the issuance of an occupancy permit, the site will be inspected by the development services department (DSD) for compliance with the plans approved for the issuance of building permits and any changes authorized by the DSD director to those approved plans during construction.

Sec. 23A-52 Board of Adjustment Full Notice Procedure.

Applications for certain design development options and for variances before the Board of Adjustment shall be in conformance with Sec. 23A-50 and the following.

1. *Director's Recommendation.* The Director shall prepare a Recommendation in accordance and forward it, together with the DRB and STAC recommendations when required, to the applicant and the Board of Adjustment not less than five (5) days prior to the scheduled public hearing. The recommendation shall be a written report that includes the request and present plans, policies, regulations, and other information relating to the request. The recommendation shall include a recommended action by the Board of Adjustment or a statement that the Development Services Department has no objection to the request.
2. *Advisory Board Review.* Variance requests from the Environmental Resource Zone regulations require review by the Design Review Board (DRB) and the Stormwater Technical Advisory Committee (STAC) as provided in LUC Sec. 2.8.8.6. Variance requests from Scenic Corridor Zone (SCZ), the Gateway Corridor Zone, the Landscaping and Screening regulations, and the Native Plant Protection regulations require DRB review as provided in LUC Sec. 2.8.2.14, LUC Sec. 2.8.4.5, LUC Sec. 3.7.7.5, and LUC Sec. 3.8.8.3, respectively.
3. *Board of Adjustment Public Hearing.* The Board of Adjustment shall hold a public hearing in accordance with the following and the Board of Adjustment's Rules and Regulations.
 - a. Notice of the public hearing shall be provided at least fifteen (15) and no more than thirty (30) days before the date of the public hearing to all parties who received notice of the application. Notice shall be provided in the same manner as the application. The Notice of the public hearing may be consolidated with the notice of the application.
 - b. Except as permitted in the public hearing and the procedures for submission of written materials, no person shall communicate with a

member of the Board of Adjustment regarding a matter to be decided by the Board any time prior to the expiration of the time for reconsideration of a decision.

- c. The chair of the hearing body or person presiding may administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party.
 - d. The chair or person presiding may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.
 - e. Comments may be given by any person, either verbally or in writing.
 - f. Following the close of the hearing and prior to making a decision or recommendation, the hearing body may discuss the matter and further question staff or any party submitting comment.
 - g. A record of the hearing is made and retained as a public record.
4. *Board of Adjustment Decision.* The Board of Adjustment may close the public hearing or continue it to a specific date, time, and place provided the continuance is not for more than one hundred twenty (120) days. The Board of Adjustment shall issue a decision in accordance with the required findings set forth in LUC Sec. 5.1.7.3.B and in accordance with state law at the conclusion of the public hearing.
5. *Notice of Decision.* Notice of the decision shall be mailed within three (3) days of the decision to the applicant and any persons requesting the notice.
6. *Reconsideration.* The Board of Adjustment may consider one request for reconsideration by the applicant or a party of record, provided:
- a. A written request is filed with the Zoning Administrator within fourteen (14) calendar days after the Board has rendered its decision, and
 - b. The request is based upon new evidence or materials which were not presented and could not reasonably have been presented at the public hearing on the case.
7. *Change of Condition.* After a DDO or a variance has been granted by the Board, the property owner/applicant may request a change to a condition for approval as imposed by the Board based upon changed circumstances which affect the condition. The request shall be heard by the Board and the Board shall initially

determine whether the request is for a minor change of condition that does not materially alter the variance and does not materially affect any other properties. If the Board determines that the request is for a minor change of condition, it may decide whether to approve or deny the change. If the Board determines that the request is not a minor change of condition and there are reasonable grounds for the request, the case shall be scheduled for a public hearing and notice provided in conformance with this section.

Sec. 23A-53 Zoning Examiner Special Exception Full Notice Procedure

Applications for special exception land uses that are decided by the Zoning Examiner, “Zoning Examiner Special Exceptions”, and for expansions of nonconforming uses and substitutions of nonconforming uses (uses not within the same land use class) shall be decided by the Zoning Examiner in accordance with the preapplication conference, neighborhood meeting, application, notice, public comment, review and denial of plan appeal shall be in conformance with Sec. 23A-50 and the following.

1. *Director's Recommendation.* The Director shall prepare a Recommendation and forward it to the applicant and the Zoning Examiner not less than fifteen (15) days prior to the scheduled public hearing.
2. *Zoning Examiner's Public Hearing.* The public hearing shall be held before the Zoning Examiner within seventy (70) days of acceptance of the application. Public hearings are held in accordance with the following and the Zoning Examiner's Rules and Procedures.
 - a. Notice of the public hearing shall be provided at least fifteen (15) and no more than thirty (30) days before the date of the public hearing to all parties who received notice of the application. The notice of the public hearing may be consolidated with the notice of the application.
 - b. The Zoning Examiner may administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party.
 - c. The Zoning Examiner may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.
 - d. Comments may be given by any person, either verbally or in writing.
 - e. A record of the hearing is made and retained as a public record.
3. *Conduct of the Zoning Examiner.* The Zoning Examiner shall have the ability to obtain information from all parties, including public agencies, prior to the public hearing, provided all requests for information are in writing and the request and

information are included as part of the public record. The Zoning Examiner shall also have the ability, after the close of the public hearing, to obtain additional information or clarify information presented and of record at the hearing provided the request for additional information or clarification is requested in writing and such request and information are included as part of the record or in the report to the Mayor and Council.

Beyond these limitations, the Zoning Examiner shall not communicate, directly or indirectly, with any party or party's representative in connection with any issue involved with a particular request, except upon notice and opportunity for all parties to participate; use or rely upon any communication, report, staff memorandum, or other material prepared in connection with the particular case, unless it is made a part of the record; or inspect the site with any party or party's representative, unless all parties are given an opportunity to be present.

4. *Zoning Examiner's Decision.* The Zoning Examiner may close the public hearing or continue the public hearing to a specified time, date and place provided the continuance is not for more than thirty (30) days. Within five (5) days of the close of a hearing, the Zoning Examiner shall make a decision to approve, approve with conditions, or deny the application.
5. *Notice of Decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to the applicant and all persons who request the notice.
6. *Appeal.* The Zoning Examiner's decision may be appealed by a party of record to the Mayor and Council in accordance with Sec. 23A-62 by submitting a notice of intent to appeal to the City Clerk within fourteen (14) days from the date of the decision with a copy delivered to DSD. The complete appeal materials must be filed within thirty (30) days of the decision.
7. *Change of Condition.* An applicant may request a change in a condition of approval of a Zoning Examiner Special Exception land use. The request shall be reviewed by staff for recommendation to the Zoning Examiner. The request shall then be considered at a public hearing in accordance with subsections 3, 4, 5, 6, 7 and 8 above.

Sec. 23A-54 Suspension or Termination of Special Exception Uses.

Where a special exception land use is designated in the LUC as subject to suspension or revocation for failure to conform to adopted conditions and there is reason to believe that it is being operated in a manner that violates the conditions imposed for the use, the use may be suspended or revoked as follows.

1. *Determination by the Zoning Administrator.* Upon receipt of information establishing a reasonable grounds for determining that a conditional use is

operating in violation of established conditions, the Zoning Administrator shall initiate such further investigation as may be necessary and, based upon that investigation, shall determine if a violation of the conditions exists.

2. *Notice of violation.* Upon determination that a violation of conditions exists, the Zoning Administrator shall notify the property owner and all other parties who may be identified with the operation of the use of the determination that a violation exists. The notice shall state the facts that support the determination. The notice shall further state that the use may be suspended, subject to additional conditions or revoked if the property is not brought into compliance with all use conditions. The determination shall not be final until a period of fourteen (14) days from the date it is issued or until an appeal to the Board of Adjustment has been completed.
3. *Appeal to the Board of Adjustment.* A party who has received a determination that a conditional use will be suspended, subject to additional conditions or revoked, may appeal that decision by filing a notice of appeal with the Zoning Administrator within fourteen (14) days of the date of the decision. The appeal shall state the reasons for the appeal. Upon receipt of such a notice, the Zoning Administrator shall schedule a public hearing before the Board of Adjustment to consider the appeal.
4. *Public Notice.* Public notice shall be provided in accordance with Sec. 23A-50.
5. *Public Hearing.* The Board of Adjustment shall conduct a public hearing to determine whether the use has complied with required conditions. The Board of Adjustment shall determine whether the Zoning Administrator's decision is supported by evidence in the record at the hearing. The Board of Adjustment may affirm, reverse or modify the decision of the Zoning Administrator and may place additional or different conditions upon the use.
6. *Final Decision.* Where no appeal is filed or the Board of Adjustment affirms or modifies the decision of the Zoning Administrator, a determination shall become final. Failure to comply with a final order shall be a continuing violation of the Land Use Code for each day of operation that is not in full compliance.
7. *Notice of Decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to the applicant and all persons who request the notice.

Division 4. APPEAL PROCEDURES

Sec. 23A-60. Appeal Procedures.

1. *Administrative Appeals.* Appeals from zoning and development decisions shall be to the Board of Adjustment or to the Mayor and Council as specified in each procedure. Appeals are limited to review of substantive zoning regulations such as design and performance criteria and required findings for approval. Where there is no further appeal to a City body is specified, the decision is the final City decision and any further appeal or special action may be filed with the Superior Court as provided by law.
2. *Takings Appeals for individual dedications and exactions or excessive reduction of property values.* Appeals to final discretionary decisions that require a dedication or an exaction as a condition for granting a development approval and appeals to the adoption or amendment of a zoning regulation on the grounds that the regulation creates an unconstitutional taking of private property shall be processed in accordance with section 23A-63.

Sec. 23A-61. Board of Adjustment Appeal Procedure.

Appeals to the Board of Adjustment may be made from decisions by the Zoning Administrator, including interpretations of the Land Use Code, notices of violations of the Land Use Code, determinations of violations of conditional uses, and review decisions where the DSD Director has challenged the historic designation of a structure proposed for demolition and other determinations in accordance with the LUC. Appeals shall be reviewed and decided by the Board of Adjustment following a public hearing. The Board of Adjustment may affirm, reverse or modify the decision subject to appeal and may impose conditions necessary and appropriate to implement the LUC and other pertinent regulations.

1. *Filing of an Appeal.* Appeals shall be filed with the Zoning Administrator within the time provided by the procedure from which the decision is appealed. An appeal shall be scheduled for consideration by the Board of Adjustment at the next regular meeting which is at least thirty-five (35) days following the filing of the appeal. The Zoning Administrator may, for good cause, grant one extension to the second regular meeting after the filing of the appeal. The filing of an appeal stays the issuance of permits and approvals and all formal land use action on the development proposal subject to the appeal.
2. *Limitation on Contact with the Board of Adjustment.* Except for duly noticed site inspection, study and public hearing, no person shall contact or discuss the merits of any appeal with the members of the Board of Adjustment between the filing of the appeal and the final determination by the Board of Adjustment.

3. *DSD Director's Report.* The DSD Director shall forward the appeal, any additional materials provided by the appellant, the recommendations of the DRB or other applicable advisory body, any materials provided by any other party and the Director's report and recommendation to the Board of Adjustment no later than five (5) days prior to the scheduled meeting.
4. *Public Notice.* Public notice of the Board of Adjustment public hearing shall be provided not less than fifteen (15) days and not more than thirty (30) days prior to the hearing. Public notice shall be to the applicant, the same parties notified of the initial application and those who provided oral or written comments in the course of the prior procedure. Notice shall be provided in the same manner as for the procedure from which the appeal is filed.
5. *Board of Adjustment Public Hearing.* The Board of Adjustment may hold a study session and shall hold a public hearing on the appeal in accordance with Sec. 23A-52 (2) and the Rules and Regulations of the Board of Adjustment. The Board of Adjustment shall reach a decision following the close of the public hearing. The Board of Adjustment may continue the public hearing for up to forty-five (45) days. The public hearing shall not be continued for more than forty-five (45) days without the consent of the applicant, regardless of who is the appellant.
6. *Notice of the Decision.* The decision by the Board of Adjustment shall be announced and shall be final at the time the decision is made following the public hearing. Written confirmation of the decision shall be provided within three (3) days of the date of decision to all parties of record.
7. *Reconsideration.* The appellant, the applicant or the Zoning Administrator may request reconsideration of a decision on an appeal provided the request is filed with the Zoning Administrator within fourteen (14) days of the date the decision is announced. A request for reconsideration may be made only where there is an error in fact or law in the decision or where a party has new evidence that was not available at the time of the public hearing. The request shall be scheduled for the next regular meeting of the Board of Adjustment.
8. *Issuance of Permits and Approvals.* No permits or development approvals based on the decision shall be issued, no inspections performed or other formal action taken, while the appeal is pending before the Board of Adjustment or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the Board of Adjustment.

Sec. 23A-62. Mayor and Council Appeal Procedure.

Appeals to the Mayor and Council may be made from decisions by the Development Services Director on Hillside Development Zone, Scenic Corridor Zone, Environmental Resource Zone and Historic Preservation Zone applications, on certain special exception land uses and such other matters as are designated in this chapter and in the LUC. The Mayor and Council shall consider the appeal following a public hearing in accordance with this section. The Mayor and Council may affirm, reverse or modify the decision that is appealed and may establish such conditions as are appropriate to implement the LUC and other pertinent regulations.

1. *Filing of an Appeal.* Appeals shall be filed with the City Clerk with a copy to DSD within the time provided by the procedure from which the decision is appealed. The filing of an appeal stays the issuance of any permits or development approvals based on the decision and all formal land use action on the development proposal subject to the appeal.
2. *Limitation on Contact with the Mayor and Council.* No person shall contact or discuss the merits of any appeal with the members of the Mayor and Council between the filing of the appeal and the final determination by the Mayor and Council.
3. *DRB Review.* Appeals from decisions on SCZ, ERZ and HPZ applications shall be forwarded to the DRB for review and recommendation if such review and recommendation has not occurred.
4. *STAC Review.* Appeals from decisions on ERZ and WASH applications shall be forwarded to the Stormwater Technical Advisory Subcommittee (STAC) for review and recommendation if such review and recommendation has not occurred.
5. *City Manager's Communication.* The DSD Director shall forward the appeal, any additional materials provided by the appellant, the recommendations of the applicable advisory body(ies), any materials provided by any other party and the City Manager's report and recommendation to the Mayor and Council no later than five (5) days prior to the scheduled meeting.
6. *Public Notice.* Public notice of the Mayor and Council public hearing shall be provided not less than fifteen (15) days and not more than thirty (30) days prior to the hearing. Public notice shall be in accordance with Sec. 23A-50.
7. *Mayor and Council Public Hearing.* The Mayor and Council may hold a study session and shall hold a public hearing on the appeal in accordance with the Rules and Regulations of the Mayor and Council. The Mayor and Council shall reach a decision following the close of the public hearing. The Mayor and Council may continue the public hearing for up to forty-five (45) days. The public hearing shall not be continued for more than forty-five (45) days without the consent of the property owner of the subject site.

8. *Mayor and Council Decision.* Mayor and Council shall decide the appeal based upon the application, testimony, evidence and other materials considered in the prior proceeding, the City Managers Communication and the testimony and evidence presented in the public hearing. Mayor and Council shall consider the provisions, purpose and intent of the plans and regulations that apply to the appeal.
9. *Notice of the Decision.* The decision by the Mayor and Council shall be announced and shall be final at the time the decision is made following the public hearing. Written notice of the decision shall be provided within three (3) days of the date of decision to all parties of record.
10. *Issuance of Permits and Approvals.* No permits or development approvals based on the decision shall be issued, or other formal action taken, while the appeal is pending before the Mayor and Council or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the Mayor and Council.

Sec. 23A-63. Takings Appeal Procedure, individual dedications and exactions and excessive reduction of property value.

Appeals asserting that a final discretionary decision or a zoning regulation constitute a “Taking” of property in violation of the Fifth Amendment to the United States Constitution (a “Takings Appeal”) shall be processed in accordance with this section.

1. *Decisions subject to appeal.*
 - a. A Takings Appeal may be filed by a property owner are as follows.
 1. Where the property owner has a legally recognized property interest in the property that is subject to the City decision; and
 2. Where a final discretionary administrative decision has been made by the Development Services Director, Zoning Examiner or the Mayor and Council to require the dedication of property or the payment of a monetary exaction as a condition for the approval of the development application in a manner that is alleged to constitute a taking of property; or
 3. A zoning regulation has been adopted or amended and is alleged to constitute a taking of property.

- b. A Takings Appeal may not be filed by a property owner regarding the application of fees, assessments, taxes or any other dedication or exaction required by a legislative act that does not give discretion to the administrative agency or official to determine the nature or extent of the requirement.
- 2. *Filing of Appeal.* An appeal shall be in writing and filed with or mailed to the Zoning Examiner within thirty (30) days after the final action is taken. Final action on a zoning regulation shall be the effective date of the regulation. No fee shall be charged for an appeal under this section 23A-63.
- 3. *Public Hearing and Notice of Public Hearing.* The Zoning Examiner shall schedule a public hearing on the appeal to be held no later than thirty (30) days after receipt of the appeal. Notice of the public hearing shall be mailed to the appellant and to all parties entitled to notice of the administrative decision at least ten (10) days before the appeal is heard.
- 4. *Statement of City Authority.* In all proceedings under this Section 23A-63, the City shall provide the Zoning Examiner with a statement of the City's Authority to require the dedication or exaction or to adopt or amend the zoning regulation. The City has the burden to establish in its statement of authority the nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development or, in the case of a zoning regulation, that the zoning regulation does not create a taking of property in violation of the Fifth Amendment to the United States Constitution.
- 5. *Zoning Examiner's Decision.* The Zoning Examiner shall decide the appeal within five (5) days after the appeal is heard. If the City has met its burden set forth in paragraph 4 above, the appeal shall be denied. If the City has failed to meet its burden as set forth in paragraph 4 above, the Zoning Examiner shall:
 - a. In the case of a dedication or exaction, modify or delete the requirement appealed under this section.
 - b. In the case of a zoning regulation, transmit a recommendation for further action to the Mayor and Council.

* * *

SECTION 10. Tucson Code Chapter 23A, Article III, Division 2 is amended to read as follows:

Article III. Definitions.

* * *

Division 2. Listing of Words and Terms

23A-81. Definitions – A

Advisory Board. The Historic District Advisory Board established pursuant to LUC Sec. 5.1.10.

* * *

Sec. 23A – 84. Definitions – D

Director. The Director of the Development Services Department.

DSD. The Development Services Department

* * *

Sec. 23A – 94. Definitions – N

Neighborhood Association. A neighborhood association registered with the City's Department of Neighborhood Resources.

* * *

Sec. 23A – 96. Definitions – P

Party of record. Party of record includes the applicant, all persons who received notice of the application during the review process, all persons who provided a written statement of an interest in the project prior to the issuance of a decision, and all persons who gave testimony at a public hearing.

Plans Review Subcommittee. The same as the Tucson – Pima County Historical Commission Plans Review Subcommittee.