

**Second Draft 6-15-19**

## **Article 3 | Applications and Permits**

Sections:

- Sec. 3.1 Interpretation of this Ordinance**
- Sec. 3.2 Common Review Procedures**
- Sec. 3.3 General Plan Adoption/Amendment**
- Sec. 3.4 Ordinance Text Amendment**
- Sec. 3.5 Zoning Map Change**
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### **Sec. 3.1 Interpretation of this Ordinance**

Paragraphs:

- 3.1.1 Interpretation Authority**
- 3.1.2 Application Requirements**
- 3.1.3 Action by Director**
- 3.1.4 Official Record**
- 3.1.5 Appeal**

#### **3.1.1 Interpretation Authority**

The Director, in his/her role as Zoning Administrator, shall make all final interpretations and determinations regarding the substantive provisions of this Ordinance, including those necessary in the zoning certification of a Site Plan, Tentative Plat or Final Plat. The Director may consult other appropriate City officials in providing interpretations and zoning certifications under this Ordinance.

#### **3.1.2 Application Requirements**

A request for interpretation shall be submitted to the Director in writing, as required by the PZD, as follows:

- A. Applications shall provide sufficient information about the request, including the Section of the Ordinance that shall be interpreted and the specific property and relevant facts on which the interpretation and/or zoning certification is being requested.
- B. Applications may request that the Director issue a written determination that an existing use or building was legally established in compliance with zoning regulations at the time the use began, or building was constructed.

**3.1.3 Action by Director**

- A. The Director shall:
  - 1. Review and evaluate the request in light of the text of this Ordinance, the Official Zoning Map, the *General Plan* and any other relevant information;
  - 2. Consult with the City Engineer, Public Works Director, City Attorney, Building Inspector or designees, and coordinate with other City staff, as necessary; and
  - 3. Render an opinion within 60 days of receiving the request.
- B. The interpretation or certification shall be provided to the Applicant in writing.

**3.1.4 Official Record**

The Director or designee shall maintain an official record of all interpretations and certifications. The record of interpretations and certifications shall be made available by PZD for public inspection during normal business hours.

**3.1.5 Appeal**

Final action on an official interpretation of this Ordinance by the Director or designee may be appealed in accordance with Sec. 3.7, Appeal of Administrative Decision.

**Sec. 3.2 Common Review Procedures**

Paragraphs:

- 3.2.1 Applicability**
- 3.2.2 Pre-Application Conference**
- 3.2.3 Application Requirements**
- 3.2.4 Public Hearings and Required Notice**
- 3.2.5 Reconsideration**
- 3.2.6 Notice of Decision**

### 3.2.1 Applicability

The review procedures required for common development approval applications are listed in Table 3.2.1.A below. The specific review process for each development application is described in the corresponding Sections.

**Table 3.2.1.A**

Required Review Procedures				
Process	Pre-App	Application	Public Hearing	Section
General Plan Amendment	✓	✓	✓	3.3
Ordinance Text Amendment		✓	✓	3.4
Zoning Map Change (Rezoning)	✓*	✓	✓	3.5
Variance	✓	✓	✓	3.6
Appeal of Administrative Decision		✓	✓	3.7
Site Plan Review	✓	✓		3.8
Development Standard Modification Option	✓	✓		3.9
Special Use Permit	✓	✓	✓	3.10
Temporary Use Permit		✓		3.11
Home Occupation Permit		✓		3.12
Protected Development Right		✓		3.13
*If City is not the applicant.				

Refer to the sections of this Ordinance referenced in the table below for the applicable requirements and review processes for the following development approvals.

**Table 3.2.1.B**

Other Process Requirements & Procedures	
Process	Section
Sign Permit	11
Subdivision Review	13.3

### 3.2.2 Pre-Application Conference

- A. A mandatory pre-application conference with the Director or designee shall be required for the following development reviews:
1. General Plan amendments not initiated by the City;
  2. Rezoning not initiated by the City;
  3. Variances;
  4. Site Plan Review;

5. Development Standard Modification Options; and
  6. Special Use Permits.
- B. The purpose of the pre-application conference is to provide PZD staff an opportunity to conduct an initial review of the proposed application, to provide the Applicant comments on the application, and to allow staff to discuss the approval process with the Applicant.
- C. The Applicant shall provide any materials necessary for PZD staff to review and comment on the proposed application at least five business days in advance of the pre-application conference date.

### **3.2.3 Application Requirements**

The following requirements shall apply to all applications for development approvals, as identified in Sec. 3.2.1, Applicability.

- A. PZD shall make available an application form(s) for all development approvals required under this Ordinance. Applications shall be submitted to PZD and include any relevant information required by PZD or other City department to process the application. All applications shall include, at a minimum, the following information:
1. Applicant contact information.
  2. Property owner contact information, if different from the Applicant. The Director or designee may require a non-owner Applicant to provide property owner authorization.
  3. Identification of the property affected by the application, such as a legal description, address, or parcel identification number, as may be appropriate.
  4. Any other information required by the Director or designee or the provisions of this Ordinance.
- B. A Diminution in Value and Just Compensation (Proposition 207) Waiver shall be completed, notarized and submitted along with all applications for a Rezoning or Variance. This Waiver shall only be recorded upon the approval of the Rezoning or Variance.
- C. Application filing fees, per the current City fee schedule.
- D. Applications Sufficient for Processing - All applications shall be complete and contain all required information as described on the application forms, unless specifically noted otherwise by PZD, as described below. Incomplete applications shall be returned to the Applicant for completion, unless the Director determines that extraordinary circumstances justify acceptance of an incomplete application.
- E. Application Reviews

1. Administrative Completeness Review - Staff will review the application to make sure all required documents and information have been included.
    - a. If required information is missing, Applicant will be notified that the application has been rejected until all required information is submitted.
    - b. If the application is rejected, upon resubmittal, a new Administrative Completeness Review will be required.
  2. Substantive Review - After an application is deemed complete, it shall be routed to City staff and all other affected City departments for review and comment.
    - a. After completion of the substantive review, PZD will consolidate the comments and return them to the Applicant. The Applicant is responsible for addressing staff comments and revising and amending the application materials for additional review(s), as required.
    - b. If all comments have not been addressed to the satisfaction of City staff, the Applicant may resubmit for comment and review, as required by this Section. This process shall repeat until all comments are addressed.
- F. Review Timeline - PZD shall process all applications in accordance with its established Project Review Timelines.
- G. Related Applications - Multiple related applications for development approvals for a single Site may be filed and reviewed simultaneously, at the discretion of the Director and only as necessary. The Director has discretion to determine the sequence of approvals for multiple applications if one approval is required to satisfy the requirements of a subsequent approval (i.e., Site Plan approval requiring a variance shall not be approved until after the variance approval).

#### **3.2.4 Public Hearings and Required Notice**

- A. Required Hearing - A duly noticed public hearing shall be required for the following development approvals or related process as show in Table 3.2.4.A, below. The specific review process for each are described in the corresponding Sections.

**Table 3.2.4.A**

Public Hearings				
Applications for Approval	Board	Commission	Mayor & Council	Section
General Plan Adoption/Amendment		✓	✓	3.3
Ordinance Text Amendment		✓	✓	3.4
Rezoning		✓	✓	3.5
Variance	✓*			3.6
Appeal of Administrative Decision	✓*			3.7
Special Use Permit	✓			3.10

\*Quasi-judicial hearing.

- B. Summary of Notice Required - Notice shall be required for public hearings as described in Section 3.2.4 and by relevant State law for these processes.

**Table 3.2.4.B**

Public Notice Requirements			
Procedure	Published	Mailed	Posted
General Plan or Ordinance Text Amendment	✓		
Rezoning	✓	✓*	✓
Variance	✓	✓*	✓
Appeal of Administrative Decision	✓	✓*	✓ (site-specific appeal only)
Special Use Permit	✓	✓*	✓
Development Standard Modification Option (“DSMO”)		✓ (50-foot notice area)	

\*300-foot radius notification area, except as noted.

- C. Published Notice Requirements - Published Notice - At least one advertisement shall be placed by the PZD in a local newspaper of general circulation not less than ten days nor more than 25 days before the date fixed for the public hearing.
- D. Mailed Notice Requirements
  - 1. All property owner notifications shall be performed through first class mail utilizing the County property tax listings for property ownership.
  - 2. The notice shall be mailed at least 15 but not more than 25 days prior the date of the public hearing.
- E. Posted Notice (Sign) Requirements - A sign noticing the public hearing shall be prominently posted by the Director or designee not less than 15 days prior to the public hearing at which the application shall be reviewed. The sign shall be posted on the property or at a point visible from the nearest public street. In the case of multiple parcels, sufficient signs shall be posted to provide reasonable notice to interested persons, as determined by the Director or designee.
- F. Content of Notice - The notices listed above shall contain the following specific information.
  - 1. Published or Mailed Notice - A published or mailed notice shall provide at least the following:
    - a. A general description or address of the location of the land that is the subject of the application, and for mailed notice, a location map;
    - b. A description of the action requested;
    - c. Where a Rezoning or a *General Plan* Amendment is proposed, the current and proposed designations;
    - d. The time, date and location of the public hearing;
    - e. A phone number to contact the Director or designee; and
    - f. A statement that interested parties may appear at the public hearing or submit comments directly to the PZD.
  - 2. Posted Notice - Required posted notices shall indicate the following:
    - a. A case number;
    - b. Summary description of the action; and
    - c. A phone number to contact the Director or designee.
- G. Minor Defects in Notice - Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a *bona fide* attempt has been made to comply with applicable notice requirements.

### **3.2.5 Reconsideration**

- A. A member of the Mayor and Council, Commission, or Board may request the reconsideration of an authorization decision, or a decision on a proposed ordinance or resolution, recommendation, variance, or appeal provided, subject to the following:
  - 1. The motion to reconsider shall be made by an individual on the prevailing side of the initial decision. For a Board decision only, an Applicant may petition the Board to reconsider a decision, pursuant to the requirements of this Section.
  - 2. The vote to reconsider is made within 30 calendar days of the decision date or at the next regularly scheduled meeting if more than 30 calendar days of the decision date.
- B. A request for reconsideration may be made only where there is an error in fact or law in the decision or where a party has new evidence or material that was not available at the time of the public hearing.
- C. A hearing for reconsideration will be scheduled upon a majority vote in favor of the reconsideration, and the hearing shall occur at the current meeting or next regularly scheduled meeting of the Mayor and Council, Commission, or Board.
- D. If the reconsideration occurs after the meeting when the decision is initially made, then public notice of the reconsideration must be given in the same manner as for the initial decision.

### **3.2.6 Notice of Decision**

Within five business days after a decision is made, or as otherwise required in this Ordinance or State law, a copy of the decision shall be provided to the Applicant via electronic mail and/or First-Class mail and be made available by PZD for public inspection during regular office hours.



### **Sec. 3.3 General Plan Adoption/Amendment**

Paragraphs:

- 3.3.1 Applicability and Initiation**
- 3.3.2 Coordination with Applications for Rezoning**
- 3.3.3 Pre-Application Conference**
- 3.3.4 Application Requirements**
- 3.3.5 Action by the Commission**
- 3.3.6 Criteria for Plan Amendments**
- 3.3.7 Action by the Mayor and Council**
- 3.3.8 Annual Report**

#### **3.3.1 Applicability and Initiation**

- A. This Section applies to all modifications of the *General Plan*, including the statutorily mandated *General Plan* re-adoption or other amendments to the *General Plan* that periodically may be required.
- B. Only the Mayor and Council may initiate the re-adoption of the *General Plan*. Re-adoption of the *General Plan* shall occur as required by ARS § 9-461.06.
- C. Other *General Plan* amendments may be initiated either by Mayor and Council or a private property owner (“Plan Amendment”).
- D. Major Amendments to the *General Plan* have additional processes described herein. The definition of a Major Amendment is found in the Administration/Implementation Element of the *General Plan*.
- E. The Mayor and Council may also consider Plan Amendments when Rezoning proposals conflict with the Plan, as determined by the Director or designee.

#### **3.3.2 Coordination with Applications for Rezoning**

- A. When required to ensure consistency between the *General Plan* and proposed Rezoning, an application for a Plan Amendment may be submitted concurrently with a Rezoning application. The public hearings on both the Plan Amendment and Rezoning may be heard at the same meeting; however, decisions shall be rendered with separate motions.
- B. A Plan Amendment shall not be required to establish Original Zoning for annexations of land into the City’s administrative boundaries pursuant to ARS § 9-471.

#### **3.3.3 Pre-Application Conference**

- A. Plan Amendment Applicants shall schedule a pre-application conference with the Director or designee in accordance with Sec. 3.2.2, Pre-Application Conference.

- B. If a Plan Amendment application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.

### **3.3.4 Application Requirements**

- A. An application for a Plan Amendment shall be submitted in accordance with Sec. 3.2.3, Application Requirements.
- B. At least 60 days prior to providing notice of a Commission public hearing as required by Sec. 3.3.5.B, the Director shall distribute the Plan Amendment to the Commission and other public entities as required by ARS § 9-461.06(D), or as amended.
- C. All major amendments to the *General Plan* proposed for adoption shall be presented at a single public hearing during the calendar year the proposal is made.
- D. Administrative Withdrawal - The Director or designee may withdraw applications for a Plan Amendment under the following circumstances:
  - 1. The Applicant has failed to submit required information within 90 days of a request for such information; or
  - 2. The associated Rezoning is administratively withdrawn pursuant to Sec. 3.5.6, Administrative Withdrawal.

### **3.3.5 Action by the Commission**

- A. Before making any recommendation on a Plan Amendment, the Commission shall consider all recommendations from the Director or designee and shall conduct a public hearing. If the Commission is considering the re-adoption or major amendment to the *General Plan*, it shall hold at least two or more public hearings at different locations within the municipality where interested parties may be heard.
- B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.4, Notice and Public Hearings.
- C. It is expected that the Applicant or a representative of the Applicant will appear at the meetings to explain why the *General Plan* should be changed.
- D. At the conclusion of the public hearing, the Commission shall consider and make a recommendation on the Plan Amendment application to the Mayor and Council based on criteria in Section 3.3.6 below.

### **3.3.6 Criteria for Plan Amendments**

The recommendations of the Director and the Commission to the Mayor and Council shall show that the following criteria were considered regarding a proposed change to the *General Plan*:

- A. Whether the proposed change would be consistent with the intent, goals,

objectives, policies, guiding principles and programs of the adopted plans;

- B. Whether the proposed change would be compatible with the existing land use pattern and/or designated future land uses;
- C. Whether the proposed change would create substantial adverse impacts in the adjacent area or the City in general; and
- D. Whether the subject site is of adequate shape and size to accommodate the proposed change.

### **3.3.7 Action by the Mayor and Council**

- A. Before acting on a Plan Amendment, the Mayor and Council shall consider the recommendations of the Director and the Commission and shall conduct a public hearing.
- B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.4, Notice and Public Hearings.
- C. It is expected that the Applicant or a representative of the Applicant will appear at the meetings to explain why the plan should be changed.
- D. Following the public hearing, the Mayor and Council may approve, deny, continue to the next meeting, or send the Plan Amendment back to the Commission for additional consideration. The approval may be contingent upon conditions specified by the Mayor and Council.
- E. The Mayor and Council shall re-adopt the *General Plan* or adopt a Plan Amendment by resolution. Re-adoption or adoption of a major amendment shall occur by a two-thirds affirmative vote of Mayor and Council; otherwise all other adoptions shall occur by simple majority. The *General Plan* cannot be re-adopted or modified by an emergency measure.

### **3.3.8 Annual Report**

PZD staff will prepare an Annual Report for review and approval by the Mayor and Council. This report will include, at a minimum, the following:

- A. A report on the progress of policies within the *General Plan*;
- B. Proposed changes to the policies of the *General Plan*, if any;
- C. A summary of land use trends and issues that developed over the previous year; and
- D. Within two years of requirement to re-adopt *General Plan*, provide a workplan for meeting the ten-year requirement.

## **Sec. 3.4 Ordinance Text Amendment**

Paragraphs:

- 3.4.1 Applicability and Initiation**
- 3.4.2 Action by the Director**
- 3.4.3 Action by the Commission**
- 3.4.4 Action by Mayor and Council**

### **3.4.1 Applicability and Initiation**

- A. The text and requirements of the Ordinance may be amended as necessary (“Text Amendments”) and may only be initiated by the Mayor and Council.
- B. The Mayor and Council may initiate a Text Amendment on their own initiative or at the request of the Commission, the Director, or a private individual who has submitted a written request with evidence that a public benefit would result from such an amendment.
- C. Upon Mayor and Council authorization, the PZD is responsible for the development and coordination of a Text Amendment pursuant to this Section.

### **3.4.2 Action by the Director**

- A. Upon Mayor and Council authorization, the Director or designee shall be responsible for reviewing the Text Amendment request, drafting the amendment language, and preparing a report and recommendation for the Commission regarding the Text Amendment.
- B. The Director or designee shall draft an appropriate ordinance and present its report, recommendation and ordinance to the Commission for review at a public hearing.

### **3.4.3 Action by the Commission**

- A. Before making any recommendation on a Text Amendment, the Commission shall consider any recommendations from the Director or designee and shall conduct a public hearing where interested parties may be heard.
- B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.4, Notice and Public Hearings.
- C. The Commission shall make a recommendation to the Mayor and Council within 90 days of its initial public hearing.
- D. When a recommendation is not made within the time periods established in this Section, the Text Amendment request is deemed a recommendation to deny and forwarded to the Mayor and Council for consideration at a public hearing.

**3.4.4 Action by Mayor and Council**

- A. Before taking action on a Text Amendment, the Mayor and Council shall consider the recommendations of the Commission and Director or designee and shall conduct a public hearing.
- B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.4, Notice and Public Hearings.
- C. Following the public hearing, the Mayor and Council may approve the amendment, deny the amendment, continue to the next meeting, or send the amendment back to the Commission for additional consideration.

## **Sec. 3.5 Zoning Map Change (Rezoning)**

Paragraphs:

- 3.5.1 Applicability and Initiation**
- 3.5.2 Pre-Application Conference**
- 3.5.3 Coordination with the General Plan**
- 3.5.4 Application Requirements**
- 3.5.5 Preliminary Development Plan**
- 3.5.6 Withdrawal/Resubmittal of a Rezoning Application**
- 3.5.7 Action by the Director**
- 3.5.8 Action by the Commission**
- 3.5.9 Action by the Mayor and Council**
- 3.5.10 Written Protest by Property Owners**
- 3.5.11 Ordinance Effective Date and Conditional Zoning**
- 3.5.12 Changes to Rezoning Conditions or Approved Preliminary Development Plans**
- 3.5.13 Coordination with Development Packages**
- 3.5.14 Subsequent Applications**

### **3.5.1 Applicability and Initiation**

A Zoning Map Change, or “Rezoning”, allows a property owner or the City to amend the Zoning District boundaries of the Official Zoning Map, including a Rezoning to the PAD Zoning District. Rezonings to PAD Zoning District shall follow the requirements in this Section and any additional requirements in Section 4.4 (Planned Area Development Districts) or as requested by PZD. A Rezoning may be initiated by the Mayor and Council, or any property owner or their agent of the proposed rezoning Site.

### **3.5.2 Pre-Application Conference**

- A. Pursuant to Sec. 3.2.2, Pre-Application Conference, a pre-application conference is required prior to the submittal of a Rezoning application.
- B. If a Rezoning application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.

### **3.5.3 Coordination with the General Plan**

- A. All petitions for Rezoning shall conform and be consistent with the General Plan. An application for Rezoning shall only be approved by the Mayor and Council when it conforms with the General Plan, as determined by the Director or designee (see Sec. 3.3, General Plan Adoption/Amendment).
- B. Plan Determination – In order to ensure a Rezoning application conforms with the *General Plan*, the following shall occur:

1. Prior to submittal of a rezoning application, the Director will provide the applicant with a preliminary determination of General Plan compliance at the pre-application conference. The Applicant may request a written determination of this conformance; and
  2. Upon submittal of a Rezoning application pursuant to Sec. 3.5.4 below, the Director shall provide to the applicant a written determination of General Plan conformance. If the Director finds conformance, the Rezoning application may be accepted. If the Director determines a Plan Amendment is necessary, no further formal Rezoning processing may occur until the Applicant files an application for a Plan Amendment pursuant to Section 3.3, General Plan Adoption/Amendment.
- C. When required, an application for a Plan Amendment may be submitted and reviewed concurrently with an application for Rezoning. The public hearings on both the Plan Amendment and Rezoning may be heard at the same meeting. The decisions shall be rendered with separate motions, with a Plan Amendment being considered first.

#### **3.5.4 Application Requirements**

- A. An application for Rezoning shall be submitted in accordance with Sec. 3.2.3, Application Requirements.
- B. Rezonings should correspond with the boundary lines of existing platted lots or tracts. If the boundaries of a Rezoning request stop short of an exterior property line, that portion of the property outside the proposed Rezoning boundary shall otherwise comply with the minimum lot size, subdivision, and other existing zoning and other requirements of this Ordinance.
- C. All zoning requirements shall be met within the boundaries of the area being proposed for change. If all the requirements cannot be met on the site being changed, the Rezoning shall be expanded to include property necessary to meet zoning requirements.
- D. If the boundaries of a Rezoning request in process are modified to 1) remove property from the request, and 2) have the effect of separating other adjoining properties from the boundaries of the modified request, that change shall be considered a substantial change from the original request and shall be considered a new Rezoning request.
- E. Application Requirements – A Rezoning application shall require the following:
  1. Existing Site Condition Summary, as required by PZD;
  2. Proposed Rezoning Narrative, to include:

- a. Description of proposed zoning districts and uses;
  - b. Information on how the project complies with the *General Plan* and any other adopted plans or zoning requirements; and
  - c. Any other information required by PZD.
3. Preliminary Development Plan (“PDP”) is required as described in Sec. 3.5.5 with each Rezoning application to illustrate the Rezoning application’s details and commitments that satisfy the Ordinance requirements, including but not limited to:
- a. Intensity/density of the proposed development;
  - b. Sensitive areas and related protection;
  - c. Any limitations on number, type, or range of uses;
  - d. Dedications;
  - e. Design elements if required or otherwise provided; and
  - f. Development phasing if required or otherwise provided.
- F. Uses and Special Use Permits – As part of a Rezoning, a separate Special Use Permit is not required for uses that otherwise need such a permit pursuant to Sec. 5.1.2, Use Table; Sec 5.3, Use-Specific Standards; or for standards specified elsewhere within the Ordinance, if:
1. The use or standard is specified on the approved PDP; and
  2. The location, access, building height, and size, as applicable, for the proposed use or standard is specified on the PDP.

### **3.5.5 Preliminary Development Plan**

- A. A PDP shall comply with all applicable laws and guidelines, including those within this Section. PZD may supplement the PDP requirements stated herein.
- B. The PDP shall contain the following:
  1. Legal Description;
  2. Vicinity Map;
  3. Scale, north arrow, and dimensions;
  4. Proposed zoning district boundaries;
  5. Building layout
    - a. Location of proposed building with square footage and height of each building;



- b. Applicant may submit alternative layouts if the exact location of development is yet to be determined.
  6. Adjacent rights-of-way and easements showing existing and future improvements;
  7. Location of public utilities;
  8. Adjacent zoning districts and adjoining lot lines within 300 feet;
  9. Uses and structures on adjacent parcels within 300 feet;
  10. Project Data Table:
    - a. Gross and net acres;
    - b. Current and proposed Zoning District(s) and *General Plan* classification(s);
    - c. Percent of total acreage in each Zoning District (gross and net); and
    - d. Any other information required by PZD.
  11. Development Phasing Plan (if applicable)
    - a. Parcels designated with each phase;
    - b. Off-site and on-site improvements with each phase; and
    - c. Open space areas in each phase.
- C. Modifications before Approval
1. Modifications to a PDP that are proffered at a hearing before the Commission or Mayor and Council shall become additional conditions and shall supersede existing conditions, if conflicts exist.
  2. Minor modifications may be made to a PDP after the Commission recommendation and before the Mayor and Council hearing. If Mayor and Council approves, such modifications become additional conditions and shall supersede existing conditions, if conflicts exist.
- D. Significant Modifications, as described in Sec. 3.5.12.B, that are made to a PDP after the Commission recommendation and before the Mayor and Council hearing shall be referred back to the Commission for an additional hearing as required under Sec. 3.5.8.B, Changed Application.

### **3.5.6 Withdrawal/Resubmittal of a Rezoning Application**

- A. Administrative Withdrawal - The Director or designee may withdraw applications due to the failure of the Applicant to submit required information within 90 days of a request for such information.

- B. Resubmittal of Withdrawn Applications - Withdrawn applications may be resubmitted at any time.
- C. Resubmittal of Denied Applications - No Rezoning application that was previously denied may be resubmitted until at least six months have elapsed since the date of denial. The Director or designee may waive this waiting period if the application has been substantially modified or if there has been a significant change in facts or circumstances since the application was denied.

### **3.5.7 Action by the Director**

- A. The Director or designee shall prepare a staff report that reviews the Rezoning request in light of any applicable plans and the general requirements of this Ordinance. The staff report shall include an evaluation of the consistency of the requested Zoning District with adopted plans and the impact of the requested Zoning District on public infrastructure, as well as any specific requirements of the requested Zoning District.
- B. The Director or designee shall forward completed Rezoning requests and any related materials to the Commission for a public hearing and recommendation at the first regularly scheduled meeting following completion of the technical reviews by staff, including by the Internal Review Panel pursuant to Sec. 2.8.
- C. The Director or designee shall forward completed Rezoning requests and any related materials, including the Commission recommendation, to the Mayor and Council for a public hearing as soon as practicably possible after the Commission's recommendation.

### **3.5.8 Action by the Commission**

- A. General Procedures
  - 1. Before making any recommendation on a Rezoning application, the Commission shall consider any recommendations from the Director and shall conduct a public hearing where interested parties may be heard.
  - 2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.4, Notice and Public Hearings and ARS § 9-462.04.
  - 3. The Commission may continue a public hearing for a Rezoning one time.
  - 4. The Commission shall make its recommendation within 90 days of its initial public hearing. The time period for a recommendation may be altered, as in the case of Significant Modifications, as described in Sec. 3.5.12.B, in which case, an additional 60 days shall be granted before the case shall go to the Mayor and Council.

5. When a recommendation is not made within the time periods established in this Section, the Rezoning application is deemed a recommendation to deny and forwarded to the Mayor and Council for consideration at a public hearing.
- B. Changed Application - If the Applicant makes a Significant Modification, as described in Sec. 3.5.12.B, to an application for a Rezoning after the Commission has made its recommendation, the Director shall refer the modified request back to the Commission for an additional public hearing. In such case, the Commission shall make a recommendation to the Mayor and Council within 60 days of the public hearing on the modified application.

### **3.5.9 Action by the Mayor and Council**

- A. Before taking action on a Rezoning application, the Mayor and Council shall consider any recommendations of the Commission, Director or designee, and of staff agencies, and shall conduct a public hearing where interested parties may be heard.
- B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.4, Notice and Public Hearings.
- C. Continuances may be granted before action upon Applicant or Mayor and Council request.
- D. Following the public hearing, the Mayor and Council may approve the request, approve with conditions, deny the request, continue until the next meeting, or send the request back to the Commission for additional consideration.
- E. The Mayor and Council may approve a Rezoning subject to specific development requirements and conditions ("Rezoning Conditions"). The Rezoning request approved by the Mayor and Council may include changes from the request presented.
- F. Approval of an application gives the Applicant the ability to proceed with any additional required approvals, subject to Sec. 3.5.11.

### **3.5.10 Written Protest by Property Owners**

- A. If the owners of twenty percent (20%) or more of the property by area and number of lots, tracts and condominium units within the Zoning Area of the affected property file a protest in writing against a proposed Rezoning, the change shall not become effective except by a favorable vote of three-fourths (3/4) of all members of the Mayor and Council. For the purpose of this section, the vote shall be rounded to the nearest whole number.
- B. If any members of the Mayor and Council are unable to vote on such question because of conflict of interest, then the required number of votes for passage of the

question shall be three-fourths (3/4) of the remaining membership of the City Council; provided, that such required number of votes shall in no event be less than a majority of the full membership of the City Council.

- C. Zoning Area shall have the same meaning as defined in A.R.S. § 9-462.04.
- D. A protest filed pursuant to this subsection shall be signed by the property owners opposing the proposed Rezoning and filed in the office of the City Clerk no later than 12:00 noon, five (5) business days before the date on which the Mayor and Council will vote on the proposed amendment or on an earlier time and date established by the Mayor and Council.

### **3.5.11 Ordinance Effective Date and Conditional Zoning**

- A. Ordinances granting Rezonings are, by Arizona statute, subject to referendum and shall not become effective until 30 days after the date of adoption or the date the final ordinance is available from the City Clerk, whichever is later. The effective date of the Rezoning is the day after the expiration of the referendum period.
- B. No permits or development approvals may be granted that are in furtherance of the Rezoning request until the 30 days have lapsed and the Rezoning is effective.
- C. If, after five (5) years from the Rezoning effective date, the property has not been developed according to the required Rezoning Conditions, the Mayor and Council shall hold a public meeting to revert the Site to its former Zoning District. The Director may grant a single five (5) year extension of the Rezoning upon written request from the property owner.

### **3.5.12 Changes to Rezoning Conditions or Approved Preliminary Development Plans**

- A. A request for a Significant Modification to Rezoning Conditions or the approved PDP requires Mayor and Council approval after a public hearing. Notice of such hearing must be given in the same manner as for the procedure adopting the conditions. The same voting requirements as for the original adoption shall apply to the request for a Change of Rezoning Condition.
- B. Significant Modifications - The following deviations from Rezoning Conditions or an approved PDP are deemed significant and shall require the new submittal of a Zoning Map Change application pursuant to this Section:
  - 1. Increase in the approved residential density in the overall project by more than 10 percent, except through use of the density bonus pursuant to Sec. 6.6, Affordable Housing Bonus;
  - 2. Decrease by more than 20% in total density in residential projects;
  - 3. In a nonresidential or mixed-use development, a cumulative expansion

- adjacent to a residential district or use that exceeds five percent of total building floor area or 4,000 square feet, whichever is greater;
4. Any change to a PDP that exceeds current Rezoning requirements/conditions for setbacks, open space, buffer width or planting, recreation areas, landscaped areas, or limitations on height;
  5. Elimination or reduction of a dedication of public right-of-way;
  6. A change in the proposed phasing of the project where phasing plans are required or are conditions of Rezoning;
  7. A change in use category (for example, residential to office, office to commercial, commercial to industrial, as described in Article 5, Use Regulations), if limitations on the number, range, or types of uses were proposed on the PDP, and the Mayor and Council limited its consideration of uses to those uses;
  8. A change in the number, location, or configuration of access points to the development; or a change to previously shown public road improvements;
  9. A change in the location, square footage, or size of a building adjacent to a residential district or use;
  10. If a Traffic Impact Analysis was originally submitted, a change that would increase the total vehicle peak hour trips by three percent or greater. If a Traffic Impact Analysis was not originally submitted, a change that would require a Traffic Impact Analysis;
  11. An increase of more than three percent in impervious surface area; or
  12. Any change that is otherwise prohibited under this Rezoning, its conditions, or the Ordinance.
- C. Changes to Portions of Preliminary Development Plans - Where a deviation is proposed from a portion of a PDP, for example from one phase or Zoning District, the Director may consider cumulative deviations and the impact of such portion on the overall development in a significance assessment. If the deviation is deemed significant, the Director shall determine whether it requires a revision to all or only a portion of the PDP.
- D. Changes Required by Ordinance or Other Law - Notwithstanding the other requirements of this Section, a Development Package or Preliminary Plat may deviate from an approved PDP to conform to the requirements of a new ordinance or other law adopted after Rezoning approval, and a new Rezoning shall not be required.

- E. Minor Modifications – A modification to the PDP or Rezoning Condition that is not found to be significant pursuant to this Section is deemed minor and may be administratively approved by the Director.

### **3.5.13 Coordination with Development Packages**

Approval of a Rezoning and PDP shall enable the owner or an authorized agent of the owner to prepare a Development Package in conformance with the Rezoning and PDP for the property. The Development Package may be prepared for the entire property or phases of the development project and shall demonstrate compliance with all Rezoning Conditions and the PDP.

### **3.5.14 Subsequent Applications**

When the Mayor and Council have denied a Rezoning, no new application may be filed for a similar Rezoning until at least twelve (12) months have elapsed since the Application acceptance date of the previous action. The Director or designee may waive this requirement if the application has been significantly modified or there has been a significant change in the facts or circumstances since the previous request.

## **Sec. 3.6 Variance**

Paragraphs:

- 3.6.1 Applicability**
- 3.6.2 Pre-Application Conference**
- 3.6.3 Application Requirements**
- 3.6.4 Notice and Public Hearings**
- 3.6.5 Action by the Director**
- 3.6.6 Burden of Proof**
- 3.6.7 Action by the Board**
- 3.6.8 Findings**
- 3.6.9 Expiration**
- 3.6.10 Appeal**

### **3.6.1 Applicability**

- A. The Board may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where an Applicant's request meets the findings and requirements stated herein.
- B. No variance shall be granted that would make any changes in the uses permitted pursuant to Sec. 5.1, Use Table.

### **3.6.2 Pre-Application Conference**

Pursuant to Sec. 3.2.2, all Applicants seeking a variance shall schedule a pre-application conference with the Director or designee to discuss the procedures, findings, and regulations required for variance approval in accordance with the provisions of this Ordinance.

### **3.6.3 Application Requirements**

- A. An application for a variance shall be submitted in accordance with Sec. 3.2.3, Application Requirements.
- B. Variance applications shall include the specific Ordinance section from which the Applicant is requesting the variance, a description of how the Site shall vary from the Ordinance requirements, and a written explanation as to how the request meets the findings in Sec. 3.6.8. Failure to provide this information will cause the Application to be incomplete.

### **3.6.4 Notice and Public Hearings**

Once PZD deems the application complete, the Director or designee shall schedule a public hearing and give public notice as forth in Sec. 3.2.4, Notice and Public Hearings.

### **3.6.5 Action by the Director**

The Director or designee shall provide the Board with a copy of the application and all relevant materials pertaining to the request prior to the public hearing.

### **3.6.6 Burden of Proof**

The Applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board to determine the request meets the findings in Sec. 3.6.8, as well as the burden of persuasion on those issues.

### **3.6.7 Action by the Board**

The Board shall make a decision on each variance request as follows:

- A. The Board may approve the request, approve with conditions, deny the request, or continue the request. In approving the variance, the Board may prescribe reasonable and appropriate conditions provided that the conditions are reasonably related to the variance.
- B. The Board shall issue a written decision on a variance request within five business days of the public hearing at which the Board made its decision. The written decision shall consider all of the findings in Sec. 3.6.8 and be accompanied by a finding of fact by the Board which specifies the reasons for the decision.
- C. The issuance of the written decision shall be the variance effective date.

### **3.6.8 Findings**

In granting any variance, the Board shall make the following findings:

- A. That there are special circumstances or conditions applying to the property referred to in the application, including but not limited to its size, shape, topography, location or surroundings, which do not apply to other properties in the district;
- B. That these special circumstances deprive the property of privileges enjoyed by other property of the same classification in the same zoning district;
- C. That special circumstances were not created by the owner or applicant;
- D. That the authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights;
- E. That any variance granted imposes such conditions as will assure that the authorizing of the variance 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
- F. That the authorizing of the variance will not be materially detrimental to persons residing in the vicinity, to adjacent property, to the neighborhood or the public welfare in general.



### **3.6.9 Expiration**

A variance shall become null and void in any of the following cases:

- A. If a Site Plan, Preliminary Plat, or architectural review subject to the variance is not approved within 12 months of the date of approval of the variance.
- B. If an approved Site Plan, Preliminary Plat, architectural review, or building permit subject to the variance expires.
- C. In cases where a Site Plan, Preliminary Plat, or architectural review is not required:
  - 1. If a building permit subject to the variance is not issued within one year of the date of approval.
  - 2. If a substantial violation of the conditions of the variance approval is determined by the Director or designee.

### **3.6.10 Appeal**

A person aggrieved by a variance decision may appeal the final action by the Board by filing a complaint for special action with the Santa Cruz County Superior Court, pursuant to ARS § 9-462.06.

## **Sec. 3.7 Appeal of Administrative Decision**

Paragraphs:

- 3.7.1 Applicability and Initiation**
- 3.7.2 Notice of Appeal Requirements**
- 3.7.3 Issuance of Permits and Approvals**
- 3.7.4 Notice of Public Hearings**
- 3.7.5 Action by the Director**
- 3.7.6 Action by Board**
- 3.7.7 Appeal**

### **3.7.1 Applicability and Initiation**

- A. The Board shall hear appeals of interpretations of the Director in his/her capacity as Zoning Administrator, or any other administrative interpretation or decision related to the provisions of this Ordinance, except as otherwise provided in this Ordinance.
- B. Appeals may be made to the Board by a person aggrieved by an administrative decision, pursuant to ARS § 9-462.06.
- C. A person with standing to make an appeal shall file a notice of appeal with the Director within 14 days of the effective date of the written decision. All appeal materials shall be submitted within 30 days of the effective date of the written decision. Failure to submit the notice or appeal materials will deem the appeal rejected as untimely.

### **3.7.2 Notice of Appeal Requirements**

- A. An appeal of an administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the Director and Board.
- B. The Director shall, upon receipt, transmit to the Board all records pertaining to the action appealed.
- C. A notice of appeal of an administrative decision shall be considered filed upon receipt of a written notice that identifies the decision being appealed, the grounds on which that decision was in error, and the relief being sought. The date and time of filing shall be entered on the notice.

### **3.7.3 Issuance of Permits and Approvals**

An appeal to the Board stays all proceedings in the matter appealed from, unless the Director certifies to the Board that, in the Director's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. On the certification proceedings shall not be stayed, except by restraining order granted by the Board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests

relief that has previously been denied by the Board except pursuant to a special action in superior court.

#### **3.7.4 Notice of Public Hearing**

Once the application has been submitted, the Director or designee shall schedule a public hearing at the first available Board meeting and give public notice pursuant to Sec. 3.2.4, Notice and Public Hearings and ARS § 9-462.06.

#### **3.7.5 Action by the Director**

- A. The Director or designee shall transmit to the Board all documents and exhibits constituting the record upon which the action is appealed.
- B. The Director or designee shall provide a copy of the record to the appellant and to the owner of the property that is subject to the appeal, if the owners is different than the appellant.

#### **3.7.6 Action by Board**

The Board may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made in the case before it. To this end, the Board shall have all the powers of the official from whom the appeal is taken. The Board shall issue a written decision of appeal within five (5) business days of the hearing, at which time the Board's decision will become effective.

#### **3.7.7 Appeal**

- A. The Board's appeal decision may be challenged by filing a complaint for special action with the Santa Cruz County Superior Court, pursuant to ARS § 9-462.06.

## **Sec. 3.8 Site Plan Review**

Paragraphs:

- 3.8.1 General**
- 3.8.2 Applicability**
- 3.8.3 Site Plan Amendments**
- 3.8.4 Conformance to an Approved Preliminary Development Plan**
- 3.8.5 Site Plan Requirements**
- 3.8.6 Submittal of Corrections**
- 3.8.7 Final Approval**
- 3.8.8 Issuance of Building Permits**
- 3.8.9 Inspections of Required Improvements**
- 3.8.10 Coordination with Special Use Permits**
- 3.8.11 Coordination with Construction Drawings**
- 3.8.12 Continuing Validity of Site Plans**

### **3.8.1 General**

The Director and PZD staff review all Site Plan applications, and the Director or designee approves all Site Plans. Site Plan review, when applicable, shall verify that proposed development:

- A. Complies with all applicable Ordinance requirements, including any applicable PDP or other condition of Rezoning;
- B. Complies with all previously approved applicable plans, including open space and trails plans, and bicycle and pedestrian plans;
- C. Provides for trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use;
- D. Provides adequate locations of parking areas, and pedestrian and vehicular access points and circulation;
- E. Provides adequate design of traffic patterns, traffic control measures, and street pavement areas, with provisions for maintaining traffic flows and reducing unfavorable effects of traffic on nearby properties;
- F. Provides adequate stormwater facilities, water supply, sanitary sewer service, and fire protection, as evidenced by conformance with department standards, specifications, and guidelines;
- G. Complies with requirements for easements and dedications;
- H. Where a TIA has been submitted, accommodation for the traffic generated by the development with the existing or funded transportation system, or adequate traffic

mitigation measures, are provided.

- I. Any other requirements of the Ordinance and other regulations administered by PZD, as may be amended.

### **3.8.2 Applicability**

A Site Plan submittal and review shall be required for all proposed Development or changes of use, except as otherwise noted in this Section. The following are exempt from Site Plan review:

- A. Single-family and two-family development on existing single lots of record.
- B. Development that does not require review by any City department for conformance with the standards of this Ordinance; or does not require a building permit.
- C. Change of use or improvements to existing buildings that do not require additions, expansions, or exterior reconfigurations of buildings or structures, or exterior land improvements are proposed and the change of use:
  1. Does not require additional parking or stacking.
  2. Does not require additional landscaping.
  3. Does not require a Traffic Impact Analysis (TIA), or no improvements are required as a result of a TIA analysis.
- D. Public Right-of-Way Improvements - Development projects consisting only of public utility improvements (water, sewer, gas, electric) within the public right-of-way or improvements to the public right-of-way (repairing, surfacing, striping, widening, stabilizing, landscaping).

### **3.8.3 Site Plan Amendments**

- A. The Director or designee is authorized to approve changes to the approved Site Plan resulting from field conditions.
- B. Significant changes to the approved Site Plan, such as but not limited to a change in access points, relocation of or addition to buildings or parking areas, relocation or modification of stormwater facilities, and changes of use that require different development standards, shall be resubmitted for Site Plan approval as a new Site Plan application.
- C. A Site Plan amendment request that is not a significant change shall clearly identify in both text and graphic form the elements for which approval is sought, and reviewed by PZD as follows:
  1. Only the modified elements on the Site Plan shall be reviewed and considered for approval.
  2. If any element of an approved Site Plan is modified but not identified, the

amendment request shall be denied in its entirety or, if the amendment is already approved, the amendment shall be deemed null and void in its entirety.

### **3.8.4 Conformance to an Approved Preliminary Development Plan**

A Site Plan shall conform to an approved Preliminary Development Plan except as required under Sec. 3.5.12, Changes to Rezoning Conditions or Approved Preliminary Development Plans.

### **3.8.5 Site Plan Requirements**

- A. A pre-application conference shall be required pursuant to Sec. 3.2.2, Pre-Application Conference.
- B. An application for Site Plan review shall be submitted in accordance with Sec. 3.2.3, Application Requirements.
- C. Site Plans shall demonstrate compliance with all applicable Ordinance requirements, including any variance obtained pursuant to Sec. 3.6, Variance, and Rezonings approved pursuant to Sec. 3.5, and any other applicable development requirements. Site Plan documents shall contain the information required within the Site Plan checklists maintained by the PZD unless expressly exempted by another provision of this Ordinance, or unless the Director or designee makes the determination that less detailed information is adequate for review.
- D. No processing or review of a Site Plan will proceed without the required information.
- E. Site Plan applications shall utilize applicable forms maintained by the PZD.
- F. A Site Plan shall conform to an approved PDP except as required under Sec. 3.5.12, Changes to Rezoning Conditions or Approved Preliminary Development Plans.
- G. All requirements imposed through a Site Plan shall run with the land and shall apply against any owner, subsequent owner, or occupant.

### **3.8.6 Submittal of Corrections**

- A. Corrections or modifications for Site Plans shall be returned to the Director or designee within 90 days from the date comments are officially issued by PZD or the Site Plan application shall be considered withdrawn.
- B. Corrections or modifications for Site Plans submitted to address a Notice of Violation shall be returned to the Director or designee within 30 days from the date comments are officially issued by PZD or the Site Plan application shall be considered withdrawn.
- C. The Director or designee may grant an extension period, at his/her sole discretion.

### **3.8.7 Final Approval**

- A. Site Plans can be considered for final approval only after all PZD comments have been satisfied, as determined by the applicable reviewing department or agency.
- B. The Director or designee approves all Site Plans, and approved plans shall be stamped, signed, and dated by the Director or designee, along with any other approving authority.

### **3.8.8 Issuance of Building Permits**

After an approved copy of the Site Plan is received by the Building Inspector or designee, building permits may be issued for the project. No building permit may be issued until the required Site Plan is approved.

### **3.8.9 Inspections of Required Improvements**

Inspections of site improvements shall be made by PZD or any other entity responsible for such improvements as required to certify compliance with approved Site Plans. No improvements shall be accepted for maintenance by the governing jurisdiction unless and until the requirements regarding public improvements have been met.

### **3.8.10 Coordination with Special Use Permits**

If a Special Use Permit application requires a Site Plan, the Special Use Permit application may be submitted concurrently with the Site Plan. The Special Use Permit decision shall be made prior to the approval of the Site Plan.

### **3.8.11 Coordination with Construction Drawings**

Building permits shall be approved in accordance with the approved Site Plan.

### **3.8.12 Continuing Validity of Site Plans**

- A. An approved Site Plan shall retain its validity for four years, and shall remain valid if:
  - 1. A permit to begin development pursuant to the Site Plan, such as a grading permit, a building permit, or an improvement permit, has been issued within the four years and has remained continuously valid thereafter; and
  - 2. Building or land disturbing activity has begun on the property.
- B. Upon written request from the Applicant or property owner, the Director may at his sole discretion extend the validity of a Site Plan for another four years.
- C. The issuance of a building permit or a Certificate of Compliance within a phase of a project shall not extend the validity of the Site Plan for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.
- D. Continued Compliance for Approved Site Plans - Once a Site Plan is deemed valid,

the approved Site Plan remains as part of the public record and runs continuously with the land, regardless of ownership.



## **Sec. 3.9 Development Standard Modification Option**

Paragraphs:

- 3.9.1 Applicability**
- 3.9.2 Pre-Application Conference**
- 3.9.3 Application Requirements**
- 3.9.4 Public Notice Requirements**
- 3.9.5 Approval and Findings**
- 3.9.6 Expiration of Approval**
- 3.9.7 Appeal**

### **3.9.1 Applicability**

Certain dimensional, landscaping and parking standards, as listed in Sec. 6.4.8, may be considered for modification under this Section.

### **3.9.2 Pre-Application Conference**

- A. Pursuant to Sec. 3.2.2, Pre-Application Conference, a pre-application conference is required prior to the submittal of a DSMO application.
- B. If a DSMO application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.

### **3.9.3 Application Requirements**

- A. An application for a DSMO shall be submitted in accordance with Sec. 3.2.3, Application Requirements.
- B. Only one application is required when more than one modification is being requested, and all modification requests may be processed concurrently.
- C. Parking modification requests shall also include the following information, if applicable:
  - 1. Number of required and proposed on-site parking spaces;
  - 2. Location of parking spaces including accessible parking spaces;
  - 3. Existing and proposed Site conditions and uses including on-street parking;
  - 4. Site access and traffic circulation patterns;
  - 5. Distance to the nearest residential neighborhoods;
  - 6. Distance to nearest public parking, together with number of spaces available to the public;
  - 7. On-Site hours of operation and peak use times for uses;

8. Existing and proposed shared parking agreements;
9. Any other information deemed appropriate by the Director, including a traffic study.

#### **3.9.4 Public Notice Requirements**

- A. The DSMO request, including a descriptive diagram, shall be mailed by Planning staff to the owners of all parcels located within 50 feet, excluding rights-of-way, of the subject property.
- B. The notice shall inform the owners any objections shall be in writing and received by PZD within 30 days of the date on the notice.
- C. If more than one objection is received, then the Director shall review the matter with the Internal Review Panel for recommendation. The Internal Review Panel shall review the proposal and make a recommendation to approval, approve with conditions or deny the request.
- D. The Internal Review Panel's recommendation shall be delivered in writing to the Director. The Director shall forward a copy of Internal Review Panel's recommendation to the Applicant and objector.
- E. The Director will make the final decision, which may or may not reflect the Internal Review Panel's recommendation.
- F. The Director's written decision shall be mailed to any person filing an objection to the request and the applicant, together with the right to appeal the decision pursuant to Sec. 3.9.7, below.

#### **3.9.5 Approval and Findings**

The Director may approve a DSMO request upon a determination that the request meets all the findings listed in Sec. 6.4.8.A, and/or in Sec. 7.5.1 for requests to modify the Parking Area requirements of Article 7.

#### **3.9.6 Expiration of Approval**

Any DSMO approval granted by the Director shall be null and void if building permits are not issued implementing the DSMO or compliance with conditions of approval does not occur within 180 days from the date of approval. One extension of up to 180 days may be granted by the Director for good cause.

#### **3.9.7 Appeal**

A Party of Record may appeal the Director's decision on DSMO applications to the Board. The Board considers appeals in accordance with Sec. 3.7, Appeal of Administrative Decision. Appeals must be filed within five days of the effective date of the decision. The complete

appeals material must be filed within 30 days of the effective date of the decision. An appeal under this section shall be based upon an error in the Director's decision finding compliance or noncompliance with the applicable findings. The Board shall apply the applicable findings as provided in Sec. 6.4.8.A, Findings Necessary for Approval, when rendering its decision.

## **Sec. 3.10 Special Use Permit**

Paragraphs:

- 3.10.1 Applicability**
- 3.10.2 Pre-Application Conference**
- 3.10.3 Application Requirements**
- 3.10.4 Notice and Public Hearings**
- 3.10.5 Action by the Director**
- 3.10.6 Approval of a Special Use Permit**
- 3.10.7 Criteria for Approval**
- 3.10.8 Coordination with Variances**
- 3.10.9 Coordination with Rezoning Applications**
- 3.10.10 Resubmittals**
- 3.10.11 Amendments**
- 3.10.12 Expiration**
- 3.10.13 Appeal**

### **3.10.1 Applicability**

- A. Special Uses within the Zoning Districts are uses that are appropriate in a particular Zoning District but because of their potential for incompatibility with surrounding uses require individual review.
- B. A Special Use Permit shall be required for all special uses as set forth in the use table in Sec. 5.1, Use Table. Special Use Permits require approval by the Board.

### **3.10.2 Pre-Application Conference**

All Applicants applying for a Special Use Permit shall schedule a pre-application conference in accordance with Sec. 3.2.2, Pre-Application Conference.

### **3.10.3 Application Requirements**

All applications for Special Use Permits shall be submitted in accordance with Sec. 3.2.3, Application Requirements.

### **3.10.4 Notice and Public Hearings**

Once the application has been determined complete, the Director or designee shall schedule a public hearing and give public notice as set forth in Sec. 3.2.4, Notice and Public Hearings.

### **3.10.5 Action by the Director**

The Director or designee shall prepare a report that reviews the Special Use Permit as required in Sec. 3.10.7, Criteria for Approval. A copy shall be provided to the Board and the Applicant.

### **3.10.6 Approval of a Special Use Permit**

- A. Prior to scheduling the public hearing with the Board, the corresponding Site Plan shall be ready for approval by the Director or designee.
- B. After reviewing the recommendations of the Director or designee and conducting the public hearing, the Board shall approve the request, approve the request with conditions, deny the request, or continue the hearing.
- C. If an application is denied, the Board's written decision shall specify which of the review factors or findings in Sec. 3.10.7, were not adequately addressed.
- D. The Board may place conditions on the use as part of the approval to ensure that adequate mitigation measures are associated with the use. The conditions shall become a part of the Special Use Permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

### **3.10.7 Criteria for Approval**

- A. General Findings - Unless otherwise specified in this Ordinance, applications for Special Use Permits shall be approved only if the Board finds that the use as proposed, or the use as proposed with conditions, are:

- 1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
- 2. In conformance with all special requirements applicable to the use;
- 3. Will not adversely affect the health or safety of the public; and
- 4. Will adequately address the review factors identified below.

All of these findings shall be analyzed for each of the review factors listed below.

- B. Review Factors - The Applicant shall demonstrate that each of the review factors listed below have adequately addressed and meet the Special Use Permit findings in Sec. 3.10.7.A.

- 1. Circulation - Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- 2. Parking and Loading - Location of off-street parking and loading areas.
- 3. Service Entrances and Areas - Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.
- 4. Lighting - Locations of exterior lighting with reference to glare, traffic safety, economic effect and compatibility with other property in the area.

5. Signs - Appropriateness of signs considering location, color, height, size, and design within the context of other property in the area.
6. Utilities - Location and availability of utilities.
7. Open Spaces - Location of required yards and other open spaces and preservation of existing trees and other natural features.
8. Environmental Protection - Preservation of native plants, floodplain, riparian area, steep slopes, open space and other natural features, and protection of water quality.
9. Screening, Buffering and Landscaping - Installation of screening, buffering, fencing and landscaping where necessary to protect adjacent property.
10. Effect on Nearby Properties - Effects of the proposed use on nearby properties, including, but not limited to, the effects of noise, odor, lighting, and traffic.
11. Compatibility - The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to the appropriateness of the scale, design, and use in relationship to other properties.
12. Consistency with Policy - Consistency with the *General Plan*, any applicable area plans and Zoning District intent statements in Article 4, Zoning Districts.
13. Other Factors - Any other review factors which the approving authority considers to be appropriate to the property in question.

### **3.10.8 Coordination with Variances**

Applications for variances may be submitted concurrently with requests for Special Use Permits.

### **3.10.9 Coordination with Rezoning Applications**

An application for a Special Use Permit may be submitted concurrently with a Rezoning application.

### **3.10.10 Resubmittals**

An application for a Special Use Permit that has been denied may not be resubmitted within six (6) months of the application date unless there has been a change in circumstances, as determined by the Director or designee.

### **3.10.11 Amendments**

Once a Special Use Permit has been granted, any alterations or revisions to approved special uses may be approved by the Director or designee if the special use still meets the intent of the standards established with the original approval. Significant modifications to approved

Special Use Permits, as determined by the Director or designee, shall require submittal of a new application.

**3.10.12 Expiration**

A Special Use Permit shall become null and void in any of the following cases:

- A. If a Site Plan is not approved within 12 months of the date of permit approval, unless the Special Use Permit does not require a Site Plan.
- B. If an approved Site Plan or building permit expires.
- C. If a building permit is not issued within two years of the date of approval, in cases where a corresponding Site Plan is not required.
- D. If a substantial violation of the conditions of the permit, as determined by the Director or designee occurs.

**3.10.13 Effective Date**

Approval of Special Use Permits shall become effective immediately upon the Board's decision. No permits or development approvals may be granted that are in furtherance of the Special Use Permit until the effective date.

## **Sec. 3.11 Temporary Use Permit**

Paragraphs:

- 3.11.1 Applicability**
- 3.11.2 Application Requirements**
- 3.11.3 Action by the Director**
- 3.11.4 Revocation of a Temporary Use Permit**
- 3.11.5 Appeal**

### **3.11.1 Applicability**

- A. Temporary uses occurring on property outside of the public right-of-way shall be allowed upon the issuance of a Temporary Use Permit, except as set forth in, Sec. 5.5, Temporary Uses.
- B. The provisions of this Section shall not apply to temporary uses occurring within the public right-of-way.

### **3.11.2 Application Requirements**

A Temporary Use Permit application shall be submitted in accordance with Sec. 3.2.3, Application Requirements.

### **3.11.3 Action by the Director**

- A. After receiving the application, the Director or designee shall have up to 45 days to review the application. The Director shall consult all appropriate City departments regarding approval of the Temporary Use Permit.
- B. Upon receiving comments from all appropriate departments, the Director or designee shall approve or deny the issuance of a Temporary Use Permit subject to the following:
  - 1. No lighting or electrical service shall be provided without an electrical permit;
  - 2. No temporary use structure shall be erected without a building permit, unless otherwise not required by this Ordinance or the Building Code;
  - 3. No temporary use structure shall block fire lanes or pedestrian or vehicular access;
  - 4. The site of the temporary use shall be cleared of all debris at the end of the temporary use. All temporary structures shall be cleared from the site within five days after the use is terminated;
  - 5. Written permission of the property owner for the temporary use shall be provided;



6. Adequate parking shall be provided, considering both the required parking for other uses and the parking for the proposed temporary use;
  7. Adequate traffic control measures shall be provided;
  8. Required landscaped and vegetated areas remain undisturbed;
  9. Adequate provisions for trash disposal and sanitary facilities shall be provided; and
  10. When appropriate, adequate provisions for crowd control shall be provided
- C. Temporary use permits may be renewed one time by the Director or designee, unless other renewal standards are specified in Sec. 5.5, Temporary Uses, or in other provisions of this Section.

#### **3.11.4 Revocation of a Temporary Use Permit**

A Temporary Use Permit shall be revoked if the Director or designee finds that the terms of the Temporary Permit have been violated or that there is a hazard to the public health, safety and welfare.

#### **3.11.5 Appeal**

Final action on a Temporary Use Permit can be appealed in accordance with Sec. 3.7, Appeal of Administrative Decision.

## **Sec. 3.12 Home Occupation Permit**

Paragraphs:

- 3.12.1 Applicability**
- 3.12.2 Application Requirements**
- 3.12.3 Action by the Director**
- 3.12.4 Revocation**
- 3.12.5 Appeal**

### **3.12.1 Applicability**

Home Occupations Permits are intended to permit home occupations that do not alter the residential character of the neighborhood nor infringe upon the right of neighboring residents to the peaceful enjoyment of their neighborhood and homes. A Home Occupation (see Sec. 5.4.3) shall require a permit, as set forth below.

### **3.12.2 Application Requirements**

A Home Occupation application shall be submitted in accordance with Sec. 3.2.3, Application Requirements.

### **3.12.3 Action by the Director**

After receiving the application, the Director or designee shall have up to forty-five (45) days to review the application. The Director shall consult all appropriate City departments regarding approval of the Temporary Use Permit.

- A. Upon receiving comments from all appropriate departments, the Director or designee shall approve or deny the issuance of a Home Occupation Permit subject to the Home Occupation requirements found at Sec. 5.4.3.A.
- B. A Home Occupation Permit shall be valid for a period of two (2) years. Renewal of the permit shall be accomplished in the same manner as an application for a new permit under this section.

### **3.12.4 Revocation**

The Home Occupation Permit shall be revoked if the Home Occupation is found to be in violation of the requirements of this Ordinance, pursuant to Art. 15, Enforcement.

### **3.12.5 Appeal**

Final action on a Home Occupation Permit can be appealed in accordance with Sec. 3.7, Appeal of Administrative Decision.

## **Sec. 3.13 Protected Development Rights**

Paragraphs:

- 3.13.1 Applicability**
- 3.13.2 Application Requirements**
- 3.13.3 Action by Mayor and Council**
- 3.13.4 Effective Date**
- 3.13.5 Expiration Date and Extension**
- 3.13.6 Enforcement**

### **3.13.1 Applicability**

During or subsequent to a Site Plan, Tentative or Final Plat approval, an Applicant may apply for a Protected Development Right (“PDR”). A PDR is a right granted to undertake and complete the development and use of property as shown on the PDR Plan without needing to comply with subsequent changes in zoning standards and technical standards adopted during the period of the PDR, except as provided by A.R.S. §9-1204.

The PDR precludes the enforcement against the development of any City land use regulation that would change, alter, impair, prevent, diminish, delay, or otherwise impact the development or use of the property as set forth in the approved plan except as provided herein. The Mayor and Council may consider granting a PDR to the following:

- A. An approved Final Plat or Site Plan provided the PDR is granted prior to the Final Plat or Site Plan expiring; or,
- B. Concurrent with the initial approval of a Final Plat or Site Plan and upon a finding that granting a PDR to undertake and complete the development shown on the Final Plat or Site Plan will promote reasonable certainty, stability and fairness in the land use planning and regulatory process and secure the reasonable investment-backed expectations of the owner.
- C. A PDR may be approved by Mayor and Council as part of the Final Plat approval. A PDR for a Site Plan only shall be scheduled as a separate item before Mayor and Council at a public meeting.

### **3.13.2 Application Requirements**

- A. An application for a PDR shall be submitted in accordance with Sec. 3.2.3, Application Requirements, either concurrent with a Final Plat or Site Plan, or during the effective period of the Final Plat or Site Plan.
- B. An application for a PDR shall comply with the requirements in accordance with Sec. 3.8, Site Plan Review, and Art. 13, Subdivision and Land Split Regulations. The

Director or his/her designee shall review submittals for completeness in accordance with 3.2.3.D, Applications Sufficient for Processing.

- C. Following acceptance of the application, a PDR application will be scheduled for consideration by the Mayor and Council.

**3.13.3 Action by Mayor and Council**

- A. A PDR shall be granted upon approval by the Mayor and Council.
- B. The Mayor and Council may impose terms and conditions of approval.
- C. Upon Mayor and Council approval, the landowner has the right to undertake and complete the development only to the extent of the specific elements and details shown on the plan.

**3.13.4 Effective Date**

- A. The PDR does not vest until the Mayor and Council approve the PDR application for the Site Plan or Final Plat at a public meeting.
- B. A PDR shall be deemed established with respect to a property on the effective date of Mayor and Council approval of the PDR Plan, except if a PDR Plan is approved with a condition that a variance be obtained. Approval of a PDR Plan does not guarantee approval of a variance.
- C. After approval of the PDR Plan, all successors to the original landowner are entitled to exercise the PDRs.

**3.13.5 Expiration Date and Extension**

- A. A PDR Plan is valid for three years beyond the expiration date of the Site Plan or Final Plat.
- B. In its sole discretion, the Mayor and Council may extend this time for a maximum of two additional years if it determines such extension is warranted by all relevant circumstances, including the size and type of the development, the level of investment of the landowner, economic cycles, and market conditions.
- C. If no building permit has been issued prior to expiration, no construction shall commence under the PDR plan.

**3.13.6 Enforcement**

- A. Subsequent Land Use Standards - A protected development precludes the enforcement of legislative or administrative land use regulations that would change, alter, impair, prevent, diminish, delay, or impact the development or use of the property as approved in the PDR Plan, except under any one of the following circumstances:

1. Landowner Consent - The affected landowner consents in writing.
  2. Natural or Man-Made Hazard - The Mayor and Council declare by resolution, after notice and a public hearing, that natural or man-made hazard on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as approved in the PDR Plan.
  3. Inaccurate Information - Declaration by the Mayor and Council by resolution after notice and a public hearing that the owner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval of the PDR Plan by the City.
  4. Enactment of State or Federal Law - The enactment of a state or federal law or regulation that precludes development as approved in the PDR Plan, in which case the Mayor and Council, after notice and a public hearing, may modify the affected provisions, on a finding that the change in state or federal law has a fundamental effect on the PDR Plan.
- B. Subsequent Overlay Zoning, Development Fees, and Other Codes
- A PDR does not preclude the enforcement of the following:
1. Overlay Zone - A subsequently adopted overlay zoning classification that imposes additional requirements and that does not affect the allowable type or density of use.
  2. Other Codes - A subsequently adopted building, fire, plumbing, electrical, or mechanical code or other ordinance or regulation general in nature and applicable to all property subject to land use regulation by the City.
  3. Nonconforming Uses and Structures - A PDR does not preclude, change, or impair the authority of the City to adopt and enforce zoning ordinance provisions governing nonconforming uses or structures on the property.
- C. Suspension and Revocation Procedures - The City is permitted by state law to subject a PDR Plan to subsequent reviews and approvals consistent with the original approval. The City may revoke its approval of a PDR Plan for failure to comply with the applicable terms and conditions of approval. The procedure for compliance review suspension and revocation is described as follows:
1. Director Monitors Compliance - After the approval of a PDR Plan, the Director or designee shall monitor the progress of the development to ensure compliance with the terms and conditions of the original approval or any development agreement applicable to the property.

2. Suspension or Revocation - The Director or designee may suspend or revoke a PDR after notice to the applicant. The notice shall contain the PDR Plan to be revoked, the property to which it applies, and the reason(s) for the proposed suspension or revocation.
3. Appeal to Board - The Director's decision to revoke a PDR may be appealed to the Board in accordance with Sec. 3.7, Appeal of Administrative Decision, by filing a written notice of intent to appeal with the Director no later than 14 days after the effective date of the decision. The complete appeal materials must be filed with the Director within 30 days of the effective date of the decision.