

REVISED

ORDINANCE NO. O2014.72

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE, PART 1 – INTRODUCTION, SECTIONS 1-311 AND 1-312; PART 5 – OVERLAY ZONING DISTRICTS, SECTIONS 5-402 AND 5-403; AND PART 6 – APPLICATIONS AND REVIEW PROCEDURES, TABLE 6-101A AND SECTIONS 6-304, 6-305, 6-312, 6-401, 6-402, AND 6-404.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

SECTION 1. That Section 1-311(B) of the Zoning and Development Code, pertaining to City Council duties and powers, is hereby amended to read as follows:

B. City Council - Duties and Powers. For the purpose of this Code, the City Council will have the power to review and approve, continue, deny, or approve with conditions, the following:

1. *Final Subdivision* plats and lot line adjustments pursuant to Section 6-307;
2. General Plan amendments pursuant to Section 6-302;
3. Code text and zoning map amendments (including *overlay districts*) pursuant to Section 6-304;

4. Annexations pursuant to Section 2-106(B), and A.R.S. 9-471;

5. WHEN PART OF A ZONING MAP AMENDMENT OR PLANNED AREA DEVELOPMENT OVERLAY:

A. MAJOR DEVELOPMENT PLAN REVIEW APPLICATIONS;

B. MAJOR MODIFICATION TO A DEVELOPMENT PLAN REVIEW; OR

C. MAJOR MODIFICATION TO CONDITIONS OF APPROVED DEVELOPMENT PLANS PURSUANT TO SECTIONS 6-306 AND 6-312;

- 56. Major modifications to Planned Area Development Overlays or major modifications to conditions of approved Planned Area Development Overlays pursuant to Section 6-312;
- 67. Hear and decide appeals of decisions of the President of ASU, or a designated representative, for projects within the MU-Ed zoning district, and Development Review Commission, regarding *development plan* review, time extensions, preliminary subdivision plats, and use permits, pursuant to Part 6, Chapter 8, Appeals;
- 78. Hear and decide appeals of decisions of the Community Development Director, or designee, regarding lot splits and time extensions, pursuant to Part 6, Chapter 8, Appeals; and
- 89. Council may prescribe in connection with a request ~~noted in subsection 1 and 2 above~~, conditions as the Council deems necessary, in order to fully carry out the provisions and intent of the General Plan and this Code, pursuant to Part 6, Chapter 6, Conditions of Approval. Violations of any City Council condition shall be a violation of this Code.

SECTION 2. That Section 1-312(B) of the Zoning and Development Code, pertaining to Development Review Commission recommendation powers, subsection (2) is hereby amended to read as follows:

- 2. **Recommendation Powers.** The Development Review Commission shall have the power to recommend to the City Council and hold public meetings and hearings to review and approve, continue, deny, or approve with conditions the following requests:
 - a. General plan amendment and major amendment applications pursuant to Section 6-302;
 - b. Zoning map amendment (re-zoning) and overlay district applications pursuant to Sections 6-304 and 6-305;
 - c. Code text amendment applications pursuant to Section 6-304;
 - d. Historic Preservation applications pursuant to §14A-4 of the City Code; and
 - e. Major modifications to approved Planned Area Development Overlays, or major modifications to conditions of approved Planned Area Development Overlays pursuant to Sections 6-312.

F. MAJOR DEVELOPMENT PLAN REVIEW APPLICATIONS PURSUANT TO SECTION 6-306, WHEN PART OF A ZONING MAP AMENDMENT OR PLANNED AREA DEVELOPMENT OVERLAY (PAD);

SECTION 3. That Section 5-402 of the Zoning and Development Code, pertaining to Planned Area Development Overlay District applicability, is hereby amended to read as follows:

Section 5-402 Applicability.

The *Planned Area Development Overlay District* may be applied to any zoning district in the City of Tempe. A PAD Overlay District may not be used for an individual detached single *family dwelling*. A DEVELOPMENT PLAN REVIEW APPLICATION SHALL BE PROCESSED CONCURRENTLY WITH A PAD OVERLAY DISTRICT, PURSUANT TO SECTION 6-306.

SECTION 4. That Section 5-403 of the Zoning and Development Code, pertaining to Planned Area Development Overlay District general regulations, is hereby amended to read as follows:

Section 5-403 General Regulations.

- A. Land Use.** All uses shall comply with underlying zoning district.
- B. Density.** The PAD Overlay District shall not modify densities allowed by the underlying zoning district.
- C. Development Standards.** The PAD Overlay District may establish alternate *development* standards (except *density*) for those standards found in Tables 4-202A, 4-202B, 4-202C, 4-203A, 4-203B, 4-204, Section 4-205, and parking standards found in Table 4-603E. PAD OVERLAYS IN THE MIXED-USE ZONING DISTRICTS THAT IDENTIFY A DEVELOPMENT STANDARD AS “NS” (NO STANDARD) FOUND IN TABLE 4-203B, SHALL ESTABLISH SUCH STANDARD. Standards developed through the PAD Overlay District process shall be appropriate to the location and context for the site for which the project is proposed. Standards created through the PAD Overlay should also assist in the fulfillment of the goals, objectives and policies in the General Plan. APPROVAL OF THE STANDARDS IS BASED ON THE SITE PLAN PROVIDED AS PART OF THE PAD.
- D. Modifications to PAD Overlay Standards.** Once development standards are established through the PAD Overlay they may be amended only through the PAD Overlay modification process set forth in Section 6-312.

SECTION 5. That Table 6-101A of the Zoning and Development Code, pertaining to applications by decision body and type of procedures, is hereby amended to read as follows:

Table 6-101A – Applications by Decision Body and Type of Procedure¹

Type of Procedure:	Decision Body:	CD DIR.	ZA	ORIGINAL	HO	BA	DRC	JRC ²	CC	Superior Court	Nghd. Meeting	Code Reference
Abatements					D	A				A		Sec. 6-310
Annexation									D	A		Sec. 2-106
Code Interpretation/ Similar use Rulings			D			A		A		A		Sec. 6-301
Code Text Amendment							Rev	Rev	D	A		Sec. 6-304
Development Plan Review												
Major							<u>REV</u> /D	D	<u>D/A</u>	A		Sec. 6-306
Minor		D					A	A	A	A		Sec. 6-306
General Plan Amendment							Rev	Rev	D	A	Yes	Sec. 6-302
Major Amendment							Rev	Rev	D	A	Yes	Sec. 6-302
Lot Line Adjustment									D	A		Sec. 6-307
Lot Split		D							A	A		Sec. 6-307
Modify Approved Development Plan, PAD Overlay or Condition of Approval:												
Major Modification				D						A	Yes	Sec. 6-312
Minor Modification		D		A						A		Sec. 6-312
Planned Area Development Overlay (PAD Overlay), and PAD Overlay Amendments							Rev		D	A	Yes	Sec. 6-305
Preliminary Review Process		Rev										Sec. 6-202
Shared Parking Applications		D					A	A	A	A		Sec. 6-311
Sign Permit		D					A	A	A	A		Sec. 4-904
Subdivision, Preliminary							D	D	A	A		Sec. 6-307
Final or Amended								Rev	D	A		Sec. 6-307
Time Extension		D		D						A		Sec. 6-901
Use Permit					D		D/A	D/A	A	A		Sec. 6-308
Variance					D	D/A		D/A		A	Yes	Sec. 6-309
Zoning Map Amendment							Rev	Rev	D	A	Yes	Sec. 6-304

SECTION 6. That Section 6-304(C) of the Zoning and Development Code, pertaining to zoning map amendment procedure, is hereby amended to read as follows:

Procedure. An application for zoning map or code text amendment shall be made as a written request submitted to the Community Development Director, or designee. The written request shall specify the nature of the amendment with pertinent details to explain or support the

request. Requests for zoning map or code text amendments shall be taken to the applicable decision-making body, by the owner or owners of real property situated in the city or by any officer, department, board or commission of the city, or by the City Council, under its own motion. In addition the following are required:

1. A DEVELOPMENT PLAN REVIEW APPLICATION SHALL BE PROCESSED CONCURRENTLY WITH A ZONING MAP AMENDMENT, PURSUANT TO SECTION 6-306.

42. The applicable recommending body shall review the request and make a recommendation to City Council in a public hearing. The recommendation of approval of any amendment by the recommending body shall be based on a finding of consistency and conformance with the General Plan and may include conditions of approval.

23. City Council Review and Approval Criteria. The City Council shall conduct at least one public hearing for zoning map and code text amendments. Approval by the City Council of an amendment shall be based on a finding that the zoning amendment is in the public interest and is consistent and conforms with the General Plan. Any approval may be subject to such conditions as the council deems applicable in order to fully carry out the provisions and intent of this Code. Zoning map amendments are subject to legal protest, pursuant to procedures in Section 6-502.

State law reference—Zoning amendments, procedures, A.R.S. §9-462.01, §9-462.03, §9-462.04.

SECTION 7. That Section 6-305 of the Zoning and Development Code, pertaining to planned area development overlay districts, is hereby amended to read as follows:

Section 6-305 Planned Area Development Overlay Districts.

A. Purpose. The purpose of *Planned Area Development Overlay Districts* is to accommodate, encourage and promote innovatively designed *developments* involving residential and/or non-residential land uses, which form an attractive and harmonious unit of the community. Such a planned *development* may be designed as a large-scale separate entity, able to function as an individual community, neighborhood, or *mixed-use development*; as a small-scale project which requires flexibility because of unique circumstances or design characteristics; or as a transitional area between dissimilar land uses.

This zoning designation recognizes that adherence to a traditional pattern of *development* standards, (i.e. height, *setback*, *lot coverage*) space, bulk and use specifications contained elsewhere in this Code would preclude the application of the PAD concept. Therefore, where PAD zoning is deemed appropriate or necessary, traditional zoning regulations are replaced by performance considerations to fulfill the objectives of the General Plan. The PAD *overlay district* may be tailored to meet the specific *development* representations of an application. Hence one PAD overlay may vary considerably from another overlay.

B. Applicability. PAD Overlays may be applied to any zoning district in the City of Tempe and shall be processed as a zoning map amendment. A PAD Overlay District may not be used for an individual detached single *family dwelling*.

C. Procedure.

1. PAD Overlay Districts shall be processed to the Development Review Commission or Joint Review Committee, as applicable, using the public hearing procedure. PAD Overlay Districts shall also be processed to the City Council, using the public hearing procedure, after review and recommendation by the recommending body;
2. Modifications. Once a PAD Overlay District request has been approved, it can be modified or amended per Section 6-312. Questions as to procedure for modifications to existing PADs shall be determined by the Zoning Administrator; and
3. Development Plan Review. ~~A Development Plan Review approval is required~~ APPLICATION SHALL BE PROCESSED CONCURRENTLY WITH A PAD OVERLAY DISTRICT, PURSUANT TO SECTION 6-306~~prior to issuance of building permits.~~

D. Approval Criteria. ~~PAD OVERLAY DISTRICT approval of a PAD Overlay District requires conformance with the standards with~~ SHALL BE BASED ON CONSIDERATION OF the following criteria:

1. ~~The allowable land uses in Part 3;~~ THE DEVELOPMENT FULFILLS CERTAIN GOALS AND OBJECTIVES IN THE GENERAL PLAN, AND THE PRINCIPLES AND GUIDELINES OF OTHER AREA POLICY PLANS. PERFORMANCE CONSIDERATIONS ARE ESTABLISHED TO FULFILL THOSE OBJECTIVES;
2. ~~The development standards as established as part of the PAD Overlay District process, as well as, the standards allowed by use permit in Part 4;~~ STANDARDS REQUESTED THROUGH THE PAD OVERLAY DISTRICT SHALL TAKE INTO CONSIDERATION THE LOCATION AND CONTEXT FOR THE SITE FOR WHICH THE PROJECT IS PROPOSED;
3. ~~Any applicable overlay district provisions in Part 5; and~~ THE DEVELOPMENT APPROPRIATELY MITIGATES TRANSITIONAL IMPACTS ON THE IMMEDIATE SURROUNDINGS.

~~4. The decision-making body may impose reasonable conditions to ensure conformance with these provisions.~~

E. Property Owners Associations. If a property owners association(s) is required, the covenants, conditions and restrictions shall include all applicable requirements under the Tempe City Code, and shall be reviewed by the City Attorney and Community Development Director, or designee, to determine if the association will remain responsible for maintaining common areas within the *development*. Such covenants, conditions and restrictions shall be recorded with the Maricopa County Recorder.

F. REVERSION. A COMPLETE BUILDING PERMIT APPLICATION SHALL BE MADE ON OR BEFORE TWO (2) YEARS FROM THE DATE OF CITY COUNCIL APPROVAL, OR WITHIN A TIME STIPULATED AS A CONDITION OF APPROVAL. IF THIS CONDITION IS NOT MET, THE APPLICANT SHALL BE REQUIRED TO APPEAR AT A HEARING BEFORE THE CITY COUNCIL TO DETERMINE BY COUNCIL VOTE WHETHER THE ZONING SHOULD REVERT TO THAT IN PLACE AT THE TIME OF APPLICATION, OR WHETHER TO EXTEND, REMOVE OR DETERMINE COMPLIANCE WITH THE SCHEDULE. A HEARING PURSUANT TO THIS SECTION IS SUBJECT TO THE SAME PUBLIC HEARING PROCESS AS A ZONING MAP AMENDMENT.

SECTION 8. That Section 6-312(C) of the Zoning and Development Code, pertaining to modifications to an approved plan, is hereby amended to read as follows:

C. Procedure. There are four (4) types of modification procedures as follows:

1. Minor Modifications to Approved Plans. Minor modifications are processed through an administrative review by the Community Development Director, or designee. Minor modifications include:
 - a. An increase in the *floor area* proposed for RESIDENTIAL OR non-residential use by less than ten percent (10%) where previously specified, unless such increase fails to meet the development standards OR THE PLANNED AREA DEVELOPMENT OVERLAY;
 - b. A reduction of less than 10 percent (10%) of the area reserved for *landscape, open space*, or outdoor living area, unless such reduction fails to meet the development standards OR THE PLANNED AREA DEVELOPMENT OVERLAY; or
 - c. Changes similar to those listed in subsection (a) and (b) that are not likely to have an adverse impact on adjoining properties, as determined by the Community Development Director, or designee.

2. Major Modifications to Approved Plans. A major modification is a significant change that exceeds the threshold(s) provided for a minor modification under 6-312(C)(1) or changes the basic intent of the original plans, as determined by the Community Development Director, or designee. Major modifications shall be processed through the original or appropriate decision-making body. MAJOR MODIFICATIONS INCLUDE:
 - a. AN INCREASE IN THE AMOUNT OF APPROVED RESIDENTIAL UNITS OR A 10 PERCENT (10%) OR MORE INCREASE IN BEDROOMS WHERE PREVIOUSLY SPECIFIED ON THE APPROVED PLANS;
 - b. THE SITE PLAN IS NOT IN SUBSTANTIAL CONFORMANCE WITH THE ORIGINAL PLANS;
 - c. FOR A PLANNED AREA DEVELOPMENT OVERLAY, ANY MODIFICATION TO THE ESTABLISHED MAXIMUM OR MINIMUM DEVELOPMENT STANDARDS FOR THAT OVERLAY; OR
 - d. FOR A PLANNED AREA DEVELOPMENT OVERLAY, ANY INCREASE OR DECREASE IN THE APPROVED PLANS FOR HEIGHT BY 10 PERCENT (10%) OR MORE, WHETHER SUCH CHANGE MODIFIES THE STANDARDS.
3. Minor Modifications to Conditions of Approval. A minor modification, processed through an administrative review, is one that does not change the basic intent of the condition as determined by the Community Development Director, or designee.
4. Major Modifications or Elimination of Conditions of Approval. A major modification changes the basic intent of the original condition as determined by the Community Development Director, or designee, or eliminates the condition. Major modifications shall be processed through the original or appropriate decision-making body.

SECTION 9. That Section 6-401(B) of the Zoning and Development Code, pertaining to general provision notices, is hereby amended to read as follows:

- B. Notification Area.** The boundary of the subject property shall be used in determining the geographic area to be notified. For projects containing more than one parcel, or phases of a larger project, OR WHEN PART OF A LARGER COMMERCIAL CENTER WITH SHARED ACCESS, the ~~three hundred (300) foot~~ measurement shall be taken from the perimeter of the entire project (all phases). The Community Development Department will provide a list of recognized neighborhood and homeowner associations, within the vicinity of the project, for notification.

SECTION 10. That Section 6-402 of the Zoning and Development Code, pertaining to neighborhood meetings, is hereby amended to read as follows:

Section 6-402 Neighborhood Meetings.

- A. Purpose.** The purpose of the neighborhood meeting is to provide a means for the applicant, surrounding residential neighbors, and ALL AFFECTED registered neighborhood and homeowner's association representatives to review a preliminary *development* proposal and solicit input and exchange information about the proposed *development*. This preliminary meeting is intended to result in an application that is responsive to neighborhood concerns and to expedite and lessen the expense of the review process by avoiding needless delays, appeals, remands or denials. The applicant is responsible for all costs associated with the neighborhood meeting.
- B. Applicability.** NEIGHBORHOOD MEETING STEPS AND PROCEDURES SHALL BE CONDUCTED IN A MANNER THAT IS CONSISTENT WITH THE CREATION OF A PUBLIC INVOLVEMENT PLAN. A neighborhood meeting is required for ALL ZONING MAP AMENDMENTS AND PLANNED AREA DEVELOPMENT OVERLAYS, AND the following types of applications when located within ~~three~~ SIX hundred ~~(300)~~ (600) feet from the lot line of a residential use:
1. Variances;
 2. Planned Area Development Overlay Districts (ALL LOCATIONS);
 3. Major modification to an approved plan or condition of approval (when original approval requires neighborhood meeting);
 4. Zoning map amendments (ALL LOCATIONS); and
 5. General Plan map amendments.
- C. Meeting Schedule.** The applicant is required to hold one (1) meeting, prior to the first public hearing on an application for a specific site, but may hold more if desired. The required meeting shall be held at least ~~fifteen~~ THIRTY (15) (30) calendar days and not more than one (1) year (365 days) before the first public hearing on the application. Meetings held more than one (1) year (365 days) before the first public hearing shall be required to hold an additional neighborhood meeting.
- D. Meeting Location.** Neighborhood meetings shall be held at a location near the proposed *development* site. The meeting shall be held on a weekday evening, or weekends at any reasonable time and in a publicly *accessible* location.
- E. Notification Requirements.** Notice of the meeting shall be provided by the applicant as follows:

1. The development site shall be posted with public notice about the meeting not less than fifteen (15) calendar days prior to the date of neighborhood meeting, a notice of the date, time and place and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a *public street* or road. It shall be the responsibility of the applicant to use reasonable efforts to maintain the notice once it has been placed on the subject property. It is the responsibility of the applicant to post the notice affiliated with items identified in Section 6-402(B)(2-5), with a *sign* having a minimum *sign* area of sixteen (16) square feet, which shall include information on future public hearings, pursuant to Section 6-404(C)(2). For variance applications the neighborhood meeting *sign(s)* shall be no smaller than six (6) square feet in area.

2. Mailing a notice not less than fifteen (15) calendar days prior to the date of the neighborhood meeting to:
 - a. All property owners of record within ~~three~~ SIX hundred ~~(300)~~ (600) feet of the subject property which are included on the mailing list submitted by the applicant;

 - b. PROVIDE NOTICE BY ELECTRONIC COMMUNICATION OR OTHER STANDARD MEANS OF NOTICING TO the chairperson of the registered neighborhood association(s) and home owners association(s) within ~~six hundred (600)~~ ONE THOUSAND THREE HUNDRED TWENTY (1,320) feet (1/4 mile) of the subject property; and

 - c. All tenants, within the boundary of the subject property(ies).

F. Meeting Summary. The applicant shall submit to the Community Development Department ~~seven (7)~~ NOT LESS THAN FIFTEEN (15) calendar days before the first public hearing on the matter a written summary of the issues and discussions from the meeting and the meeting notes.

SECTION 11. That Section 6-404(C) of the Zoning and Development Code, pertaining to notices for public hearings, is hereby amended to read as follows:

C. Notification Requirements. The Community Development Department or the City Clerk shall issue public notices for all types of hearings under this Code as follows:

1. Posting the agenda at City Hall at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law;

2. The development site shall be posted with public notice about the hearing not less than fifteen (15) calendar days prior to the dates of public hearings, a notice of the date, time and place of each public hearing and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a *public street* or road. It shall be the responsibility of the

applicant to use reasonable efforts to maintain the notice once it has been placed on the subject property. Signs shall be no smaller than sixteen (16) square feet, except applications for *single-family dwellings* and inline commercial sites without *landscape* frontage, when not part of a zoning map amendment or PAD overlay. Such sign shall be no smaller than six (6) square feet. Hearing signs are not required for Zoning and Development Code text amendments;

3. Submitting for publication in the official newspaper the hearing notice, at least once, fifteen (15) days prior to the public hearing; and
4. Mailing a hearing notice not less than fifteen (15) calendar days prior to the date of the initial hearing to:
 - a. The applicant or representative and owners of the subject property;
 - b. All property owners of record within ~~three hundred (300)~~ SIX HUNDRED (600) FEET of the subject property which are included on the mailing list submitted by the applicant;
 - c. PROVIDE NOTICE BY ELECTRONIC COMMUNICATION, OR IF NOT APPLICABLE, BY OTHER STANDARD MEANS OF NOTICING TO the chairperson of the registered neighborhood association(s) and home owners association(s) within the vicinity of the project ONE THOUSAND THREE HUNDRED TWENTY (1,320) FEET (1/4 MILE) OF THE SUBJECT PROPERTY(IES).
 - d. All tenants, within the boundary of the subject property(ies); and
 - e. Mailing of hearing notices does not apply to Zoning and Development Code text amendments.
5. If notification is required for a public hearing with City Council, the City Clerk shall submit for publication in the official newspaper the request, at least once, fifteen (15) days prior to the action hearing. If a Tempe City Code amendment is involved, the City Clerk shall comply with the requirements of the City Charter.

SECTION 12. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA, this ____ day of _____, 2014.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney