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CHAPTER 1 – APPROVAL AND APPEAL AUTHORITIES

Section 6-101 Summary Decision Matrix.

The following table describes the decision-making authority and the appeal authority for the approvals that may be granted under this Code. Where more than one body may be the decision or appeal body for a specific type of approval, the Community Development Director, or designee, is responsible for determining the applicable decision or appeal body.

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							Rev /D	D	D/A	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

- Where this Code identifies more than one possible decision or appeal body, the Community Development Director shall determine which body is applicable to a particular project.
- The JRC jurisdiction and process only applies to the MU-Ed zoning district. Appeals of a JRC decision shall first be heard by the President or designee of Arizona State University. That decision can be appealed to the City Council.

KEY:

CD DIR. = Community Development Director or designee
ZA = Zoning Administrator
ORIGINAL = Decision body that made the original decision (modifications)
HO = Hearing Officer
BA = Board of Adjustment
DRC = Development Review Commission

JRC = Joint Review Committee
CC = City Council
Rev = Reviews and recommends action to decision-making body
D = Decision-making authority
A = Appeal authority
Nghd. Meeting = Neighborhood Meeting requirement

CHAPTER 2 – APPLICATION SUBMITTAL AND REVIEW

Section 6-201 Initiation and Withdrawal of Application.

- A. **Initiation of Application.** An application may be initiated under this Code by the City Council or by the owner of the subject parcel. The property owner's written authorization shall be required for all applications. The City Council may initiate an application without the owner's authorization for a zoning map (re-zoning) amendment.
- B. **Withdrawal.** An applicant may withdraw an application at any time or the Community Development Director, or designee, may withdraw an application at the written request of the applicant.

Section 6-202 Application Submittal.

A. Preliminary Review Process.

1. **Purpose.** The purpose of the preliminary review is intended to acquaint the prospective applicant or applicant's representative(s) with the requirements of this Code, the General Plan and other relevant city policies and regulations. Preliminary review is intended to be informative and identify potential issues.
2. **Applicability.** The preliminary review is required for annexations, General Plan amendments, major *development plans*, PAD overlays, zoning map amendments and *subdivisions*, but is not required for individual *single-family dwelling* applications or applications regarding individual *structures* that are accessory to a *single-family dwelling*. Minor *development plans* and exterior modifications to existing *development* may require preliminary review upon determination of the Community Development Director, or designee. A preliminary review may also be held as requested by the prospective applicant or applicant's representative for any proposal.
3. **Requirements.** Applications for preliminary review under this Code shall be submitted to the Community Development Department, in accordance with the format and upon such forms as established by the Community Development Director, or designee.

- 4. Preliminary Review Conference.** Upon a preliminary review request being filed, staff will notify the applicant or applicant's representative of a preliminary review conference which shall take place within twenty (20) business days of the preliminary review application being filed and be held at the Community Development Department by appointment. After reviewing the information provided from the applicant, staff from the reviewing city departments and divisions will prepare comments. Staff will review the comments with the applicant or applicant's representative at the preliminary review conference and provide information on city code requirements, procedures, and other relevant city policies and regulations. If the city is unable to comply with these time frames, notification will be made to the applicant and proceed as soon as practicable.
- B. Application Forms and Submittal Requirements.** Applications under this Code shall be submitted to the Community Development Department, in accordance with the format and upon such forms as established by the Community Development Director, or designee. Applications must be signed by the property owner or the property owner's authorized representative, except that applications initiated by the City Council must be signed by the Community Development Director, or designee.
- C. Concurrent Review of Applications for Same Project.** The applicant or Community Development Director, or designee, may elect to combine multiple applications for concurrent review when the applications are for the same project and the same decision-making body is responsible for reviewing all of the applications related to the project. For example, the Zoning Administrator may review an application for a code interpretation concurrently with an application for a *non-conforming use* determination; and a decision-making body may review an application for Planned Area Development Overlay and a *subdivision* plat concurrently.

Section 6-203 Application Acceptance.

- A. Review for Completeness.** The Community Development Director, or designee, shall review the application for completeness, in conformance with this section. The city will not schedule a meeting or hearing date or begin administrative review until the application is complete. If the applicant fails to submit the missing information within sixty (60) calendar days of the first submittal, the Community Development Director, or designee, may notify the applicant that the application cannot be accepted and a new application will be required for the proposed project. Such a decision by the Community Development Director, or designee, requiring a re-application shall be subject to administrative appeal and shall not be construed as denial of the application.
- B. Complete Application.** A complete application is one which fulfills the following general requirements, more specifically described on official application forms available from the Community Development Department:
1. A completed original application form that is signed by the property owner or authorized representative agent, or the Community Development Director, or designee, for applications initiated by the City Council. In lieu of signature by property owner, a letter of authorization shall substitute;

2. Application fee, payable to the City of Tempe in accordance with the fee schedule in effect at the time of application pursuant to Appendix H;
3. An application requiring a public hearing pursuant to Section 6-206 shall provide the current Maricopa County tax map(s) showing the subject property(ies) and all properties within three hundred (300) feet of the subject property(ies), and a list of the names and addresses of the owners of record within that three hundred (300) foot area, in the form and manner as required by the Community Development Director, or designee. For applications regarding existing *developments* with commercial, industrial or *mixed-use* zoning, the names and mailing addresses of all tenants within the subject property(ies) shall also be included. For projects containing more than one (1) parcel, or phases of a larger project, the three hundred (300) foot measurement shall be taken from the perimeter of the entire project including all future phases of that project. The Community Development Department will provide the applicant with a list of recognized neighborhood and homeowner associations within the vicinity of the project for notification pursuant to Part 6, Chapter 4;
4. A letter explaining the nature and intent of the proposed *development* and reasons justifying the request. References to the effects produced by the request upon surrounding neighborhoods, and the city at large, should be included;
5. Schematic level construction documentation pursuant to the application form, i.e. site plan, elevations, landscape plan, and preliminary grading and drainage plans. In addition, the applicant may submit additional information not specifically requested by the application form but which will aid in the understanding and review of the application; and
6. The Community Development Director, or designee, may require any other supportive information to aid in clarifying an application.

B. Processing Application. Processing of an application indicates only that the application is ready for review. The Community Development Director, or designee, may accept additional information from the applicant at the discretion of the Director during the review process.

Section 6-204 Administrative Application Review Procedures.

An Administrative application review includes the staff interpretation of the administration related to this Code without public meeting or public hearing. The steps in reviewing administrative applications include the following:

A. Preliminary Review Process. No preliminary review process is required for administrative review applications; however, an applicant may request such preliminary review pursuant to Section 6-202(A).

- B. Application Submittal and Review for Completeness.** The applicant shall submit an application to the Community Development Department, in accordance with the format and upon such forms as established by the Community Development Director, or designee. The application shall be reviewed for completeness pursuant to Sections 6-202 and 6-203.
- C. Review.** The Community Development Director, or designee, shall review the application pursuant to Part 6, Chapters 1 and 2 and may act upon the application to approve, approve with conditions, or deny the request.
- D. Notice of Decision.** The Community Development Director, or designee, shall provide notice of the administrative decision in writing to the applicant or the applicant's representative and owner(s) of the subject property within fourteen (14) calendar days after the date of filing the administrative application.
- E. Appeal.** Any appeals of an administrative decision shall be filed in accordance with Part 6, Chapter 8, Appeals. Such appeal shall be forwarded to the appropriate decision-making body pursuant to Part 6 Chapter 8 and placed on the next regularly scheduled hearing or meeting agenda or heard administratively within fourteen (14) calendar days from the date of filing the appeal.

Section 6-205 Public Meeting Application Review Procedures.

A Public Meeting is held to gather input from the community but does not require advertising or posting of the specific property. The steps in reviewing public meeting applications include the following:

- A. Preliminary Review Process.** Pursuant to Section 6-202 regarding the preliminary review process, preliminary review may be requested by the applicant for any matter. See Section 6-202 for further requirements.
- B. Application Submittal and Review for Completeness.** The applicant shall submit an application to the Community Development Department, in accordance with the format and upon such forms as established by the Community Development Director, or designee. The application shall be reviewed for completeness pursuant to Sections 6-202 and 6-203.
- C. Schedule Public Meeting.** The Community Development Director, or designee, shall schedule the public meeting with the appropriate decision-making body according to the publicly available public meeting schedules. (See Section 6-101, Summary Decision Matrix and Section 6-403, Notice for Public Meetings.) The Community Development Director, or designee, shall also notify the applicant in writing of the public meeting date(s) within five (5) calendar days of the scheduling of such public meeting.
- D. Review.** Planning Staff shall review the application and provide comments to the Community Development Director or designee, who will then prepare a staff report in accordance with Section 6-406. Planning Staff shall provide the staff report to the applicant and to the decision-making body prior to the public meeting.

- E. **Public Meeting.** A public meeting(s) shall be held before the appropriate decision-making body pursuant to Table 6-101A. The decision-making body shall render a decision on the application pursuant to Part 1, Chapter 3, Applications, following a public meeting.
- F. **Notice of Decision.** The Community Development Director, or designee, shall provide notice of the decision in writing to the applicant or the applicant's representative and owner(s) of the subject property within five (5) calendar days after the decision is rendered.
- G. **Appeal.** Any appeal of a public meeting decision shall be filed pursuant to Part 6, Chapter 8, Appeals, no later than fourteen (14) calendar days after the date on which the decision was rendered.

Section 6-206 Public Hearing Application Review Procedures.

A Public Hearing shall be preceded by public notice and is held to gather input from the community. The steps in reviewing public hearing applications include the following:

- A. **Preliminary Review Process.** Pursuant to Section 6-202 regarding the preliminary review process, preliminary review may be requested by the applicant for any matter, but is required for annexations, General Plan Amendments, major *development plans*, PAD overlays, zoning map changes and *subdivisions*. See Section 6-202 for further requirements.
- B. **Application Submittal and Review for Completeness.** The applicant shall submit an application to the Community Development Department, in accordance with the format and upon such forms as established by the Community Development Director, or designee. The application shall be reviewed for completeness pursuant to Sections 6-202 and 6-203.
- C. **Neighborhood Meeting.** The applicant shall comply with Section 6-402 regarding conducting an informational neighborhood meeting.
- D. **Schedule Public Hearing.** The Community Development Director, or designee, shall schedule a public hearing with the appropriate decision-making body according to the publicly available public hearing schedules. (See Section 6-101, Summary Decision Matrix and Section 6-404, Notice for Public Hearings.) The Community Development Director, or designee, shall also notify the applicant in writing of the public hearing date(s) within five (5) calendar days of the scheduling of such public hearing.
- E. **Public Notification.** Staff shall issue public notice pursuant to Section 6-404. Such public notification shall include, but not be limited to, posting a *sign(s)* on the property and sending notices by mail to property owners within three hundred (300) feet of the property at least fifteen (15) calendar days prior to the public hearing date.
- F. **Review.** Staff shall review the application and provide comments to the Community Development Director, or designee, who will then prepare a staff report in accordance with Section 6-406. Staff shall provide the staff report to the applicant and to the decision-making body prior to the public hearing.

- G. Public Hearing.** A public hearing(s) shall be held before the appropriate decision-making body pursuant to Table 6-101A. The decision-making body shall render a decision on the application pursuant to Part 1, Chapter 3, Applications, following a public hearing.
- H. Notice of Decision.** The Community Development Director, or designee, shall provide notice of the decision in writing to the applicant or the applicant's representative and owner(s) of the subject property within ten (10) calendar days after the decision is rendered.
- I. Appeal.** Any appeal of a public hearing decision shall be filed pursuant to Part 6, Chapter 8, Appeals. When the City of Tempe is the appellate body, appeals shall be filed within fourteen (14) calendar days from the date of the decision which is being appealed. When the Superior Court is the appellate body, appeals shall be filed within thirty (30) calendar days from the date of the decision which is being appealed.

Section 6-207 Legislative Review.

For requirements related to City Council review, please refer to City Charter, Section 2.11, Action Requiring Ordinances in General, and Arizona Revised Statute 9-461.06.

CHAPTER 3 – APPLICATIONS

Section 6-301 Code Interpretations and Similar Use Rulings.

- A. **Purpose.** Any use not appearing in this code which is similar to, and not more detrimental than the uses permitted herein, as determined by the Zoning Administrator, may be permitted based on a code interpretation and similar use ruling.
- B. **Procedure.** Code interpretations and similar use rulings are processed as administrative review decisions by the Zoning Administrator pursuant to Part 6, Chapter 1 and 2. Decisions by the Zoning Administrator may be appealed to the Board of Adjustment pursuant to Part 6, Chapter 8. (Please refer to the Community Development Department for application requirements.)
- C. **Approval Criteria.** The decision-making body shall base its decision regarding a code interpretation and similar use ruling on the definitions and other provisions contained in this Code, relevant city policy, and/or any applicable State or Federal law or case law.
- D. **Record.** Code interpretations and similar use rulings shall be catalogued and kept in the Zoning and Development Code Appendix.

Section 6-302 General Plan Amendment.

- A. **Purpose.** The General Plan is an evolving document that is designed to change based on community needs. The purpose of a General Plan amendment is to facilitate reasonable changes in effort to maintain a livable and sustainable urban environment that is sensitive to issues that impact where people live, learn, work and play.
- B. **Applicability.** There are two (2) types of amendments to the General Plan, amendments and major amendments. Any change to the maps or text of the General Plan, is an amendment to the General Plan. Community Plans and Specific Plans are amendments to the General Plan. Any change determined by the Community Development Director, or designee, to be a major amendment pursuant to the criteria below has additional processing requirements. A proposed plan or project is a major amendment to the General Plan if any one (1) of the following apply:
 1. A Specific Plan which decreases any land use category within the specified area by one percent (1%);
 2. The plan or project results in significant *alteration* to or deviation from the Water Master Plan;
 3. The plan or project results in significant *alteration* to or deviation from the Comprehensive Transportation Plan; and

4. The plan or project decreases the acreage of any projected land use ratios city-wide at the time of application by the following criteria:
 - a. Residential land use by one percent (1%);
 - b. Open space land use by one percent (1%); or
 - c. Any other land use category by two percent (2%).

(For the acreage resulting in a major amendment, see the land use element chart of projected land uses within the city's adopted general plan. The projected land uses are subject to update by amendment to the general plan. Calculation will be made with the most updated data at the time of application.)

C. Procedure.

1. Commission Action:
 - a. Amendments. The applicable recommending body shall hear and forward its recommendation to the City Council after at least one (1) public hearing in accordance with the public hearing procedures in Part 6, Chapter 5, Public Meetings and Public Hearings; and
 - b. Major amendments. The applicable recommending body shall hold at least two (2) public hearings, in accordance with the public hearing procedure. Hearings shall be in different locations to encourage community participation. The first hearing shall be held for the purpose of gathering public information only. A recommendation shall be forwarded to the City Council only at the second public hearing.
2. City Council Action:
 - a. Amendments. Applications for a general plan amendment shall be heard by the City Council during at least one (1) public hearing;
 - b. Major Amendments. Applications for a general plan major amendment shall be heard by the City Council during at least (2) public hearings;
 - c. The initial public hearing(s) shall be held for the purpose of gathering public information only. The final hearing on an application for a major amendment must be held at one (1) annual public hearing in the calendar year that the proposed major amendment was filed. This annual hearing shall be held in October, at a date to be determined by the City Council; and
 - d. All general plan amendments, including map amendments, shall be approved by an affirmative vote of two-thirds (2/3) of all members of the City Council. If any members of the City Council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be two-thirds (2/3) of the remaining City Council members, provided that such required number of votes shall in no event be less than a majority of the full membership of the Tempe City Council.

3. Final Hearing Notification Requirements. At least sixty (60) days before either an amendment or major amendment, staff shall transmit the proposal to the applicable decision-making body and submit a copy for review and comment to:
 - a. The planning agency of Maricopa County;
 - b. Each municipality that is *contiguous* to the corporate limits of the city;
 - c. The regional planning agency within which the city is located;
 - d. The Department of Commerce or any other state agency that is subsequently designated as the general planning agency for the state; and
 - e. Any person or entity that requests in writing to receive a review copy of the proposal.
4. Notice of time and place of hearings and availability of relevant materials shall be:
 - a. Advertised by publication at least once, in a newspaper of general circulation in the city, at least fifteen (15) and not more than thirty (30) calendar days before the first hearing;
 - b. Posted on the website at least fifteen (15) and not more than thirty (30) calendar days before the first hearing;
 - c. Posted at the City Council Chambers and Clerks Office at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law;
 - d. If modifying a map, then post property with dates, times and locations of the public hearings, and a summary of the amendment. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way or a *public street* or road for maximum visibility. Posting shall be done not less than fifteen (15) calendar days before the first hearing. It shall be the responsibility of the applicant to maintain the notice once it has been placed on the subject property; and
 - e. If modifying a map, then mailed notification of public hearings shall be sent not less than fifteen (15) and not more than thirty (30) calendar days before the first hearing to:
 1. The applicant or representative and the owners of the subject property;
 2. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant; and
 3. The chairperson of the registered neighborhood association(s) and home owners association(s) in which subject property is located.

D. Approval Criteria. No General Plan amendment shall be approved unless it has substantial conformance with the criteria below, and any other criteria determined by the City Council.

1. Appropriate short and long-term public benefits;
2. Mitigate impacts on land use, water infrastructure or transportation;
3. Helps the city attain applicable objectives of the General Plan;
4. Provides rights-of-way, transit facilities, open space, recreational amenities or *public art*;
5. Potentially negative influences are mitigated and deemed acceptable by the City Council; and
6. Judgment of the appropriateness of the amendment with regard to market demands, and impacts on surrounding area, service, fiscal, traffic, historic properties, utilities and public facilities.

State law reference – ARS 9-461.06 Adoption and amendment of General Plan

Section 6-303 Specific Plan *[reserved]*

Section 6-304 Zoning Map Amendments (including Overlay Districts) and Code Text Amendments.

- A. Purpose.** The regulations and boundaries of zoning districts set forth in this Code may be amended whenever deemed necessary to best serve the public interest, and the health, comfort, convenience, safety, and general welfare of the city.
- B. Applicability.** Amendments to the text or zoning map of this Code shall not be made except through the adoption of an amending ordinance by the City Council and following the procedure prescribed in this Code.
- C. 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.
 2. 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.
 3. 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 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* application shall be processed concurrently with a PAD Overlay District, pursuant to Section 6-306.

D. Approval Criteria. PAD Overlay District approval shall be based on consideration of the following criteria:

1. 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. 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. The development appropriately mitigates transitional impacts on the immediate surroundings.

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.

Section 6-306 Development Plan Review.

- A. Purpose.** The purpose of a Development Plan Review is to provide review of architectural drawings, including but not limited to a *site plan*, *building elevations*, *landscape plan*, preliminary grading and drainage plan, materials and color samples, *structures*, and *signs*. A development plan provides a plan of development supported by technical construction documents as necessary to encourage, protect, and enhance the functional and attractive appearance of the City of Tempe.
- B. Applicability.** Development plan review shall include the following, except individual single-family dwellings:
1. Major Development Plan Review. Applies to all *new development*, expansions over five thousand (5,000) square feet *net floor area*; major changes in elevations or new major *sign package criteria*; and residential *development* consisting of four (4) or more *dwelling* units.
 2. Minor Development Plan Review. Applies to any modifications or expansions up to five thousand (5,000) square feet of *net floor area* or twenty percent (20%) of the existing *building area*, whichever is less; and residential *development* consisting of two (2) and three (3) *dwelling* units.
- C. Procedure.** Major *development plan* reviews are processed as public meetings through the appropriate decision-making body, pursuant to Section 6-101. Minor *development plan* reviews are processed as administrative review decisions through the Community Development Director, or designee.
- D. Approval Criteria.** *Development plan* approval shall be based on consideration of the following criteria:
1. Placement, form, and articulation of buildings and structures provide variety in the streetscape;
 2. Building design and orientation, together with landscape, combine to mitigate heat gain/retention while providing shade for energy conservation and human comfort;
 3. Materials are of a superior quality, providing detail appropriate with their location and function while complementing the surroundings;
 4. Buildings, structures, and landscape elements are appropriately scaled, relative to the site and surroundings;

5. Large building masses are sufficiently articulated so as to relieve monotony and create a sense of movement, resulting in a well-defined base and top, featuring an enhanced pedestrian experience at and near street level;
6. Building facades provide architectural detail and interest overall with visibility at street level (in particular, special treatment of windows, entries and walkways with particular attention to proportionality, scale, materials, rhythm, etc.) while responding to varying climatic and contextual conditions;
7. Plans take into account pleasant and convenient access to multi-modal transportation options and support the potential for transit patronage;
8. Vehicular circulation is designed to minimize conflicts with pedestrian access and circulation, and with surrounding residential uses;
9. Plans appropriately integrate *Crime Prevention Through Environmental Design* principles such as territoriality, natural surveillance, access control, activity support, and *maintenance*;
10. *Landscape* accents and provides delineation from *parking, buildings, driveways and pathways*;
11. *Signs* have design, scale, proportion, location and color compatible with the design, colors, orientation and materials of the *building* or site on which they are located; and
12. Lighting is compatible with the proposed *building(s)* and adjoining *buildings* and uses, and does not create negative effects.

E. Time Limitations. *Development plan* approval shall be void if the *development* is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the approval is granted or within the time stipulated by the decision-making body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the *development plan*.

Section 6-307 Subdivisions, Lot Splits and Adjustments.

A. Purpose. The purpose of this section is to provide for the orderly growth and harmonious *development* of the city; to insure adequate traffic circulation through coordinated *street*, transit, bicycle and pedestrian systems with relation to major thoroughfares, adjoining *subdivisions*, and public facilities; to achieve individual property *lots* of reasonable utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to insure consideration for adequate sites for *schools*, recreation areas, and other public facilities; and to promote the conveyance of land by accurate legal description and plat.

B. Applicability.

1. *Subdivision.* *Subdivision* applies to improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four (4) or more *lots*, tracts or parcels of land. Also, if a new *street* is involved, any such property which is divided into two (2) or more *lots*, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. *Subdivision* also includes any *condominium*, cooperative, community apartment, *townhouse* or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the *buildings* or the manner in which the *buildings* or airspace above the property shown on the plat are to be divided or as defined in A.R.S. § 9-463.02, as it may be amended.
2. *Lot Split.* *Lot* splits apply to the division of improved or unimproved land whose area is two and one-half (2 1/2) acres or less, into two (2) or three (3) tracts or parcels of land for the purpose of sale or lease or as defined in A.R.S. § 9-463.
3. *Lot Line Adjustment.* *Lot line* adjustments apply to *property line* modifications within a recorded *subdivision* plat.

C. Procedure.

1. *Subdivision.*
 - a. Preliminary Subdivision Plat. Shall be processed to the Development Review Commission for approval at a public meeting.
 - b. Final Subdivision Plat. Shall be processed to the City Council for approval at a public meeting.
 - c. Amended Final Subdivision Plat. Shall be processed to the City Council for approval at a public meeting.

2. Lot Split. Requires an administrative approval by the Community Development Director, or designee. Appeals of the Community Development Director, or designee, decision shall be appealed to the City Council within fourteen (14) calendar days of action.
3. Lot Line Adjustment. Requires approval by the City Council at a public meeting.

Reference — Subdivisions, City Code, Chapter 30.

D. Approval Criteria. See City Code Chapter 30, Subdivisions.

Section 6-308 Use Permit.

- A. Purpose.** The purpose of Section 6-308 is to ensure the orderly use of land in conformance with the General Plan and applicable city standards where uses are proposed that may require special limitations or conditions to provide compatibility with other uses.
- B. Applicability Based on Square Feet of Use.** For *use permits* that are based on the square footage devoted to a particular use, the square footage will be taken as the *net floor area* for the use requiring the *use permit*.
- C. Procedure.** All requests for *use permits* shall be taken to the Hearing Officer for a public hearing, to review and approve, continue, deny, or approve with conditions. Appeals of decisions made by the Hearing Officer shall be processed through the appropriate decision-making body, pursuant to Part 6, Chapter 8, Appeals.
 1. The Zoning Administrator may direct that a request be heard instead by the Development Review Commission, based on a review which includes but is not limited to the following factors:
 - a. Previous decisions by the city regarding the site on which the proposed use is located;
 - b. The probable impact of the requested use on its immediate surroundings; or
 - c. The consistency of the requested use with the projected land uses, policies and principles of the General Plan.
- D. First Amendment.** A *use permit* request for any activity that is protected by the First Amendment shall be heard by the decision-making body at the next regularly-scheduled public hearing complying with legal notice requirements following submittal of a complete application for such a permit. No continuances or other delays in such processing may occur without the concurrence of the applicant for such permit, provided that there is sufficient time to complete any public notification requirement. If approved, the use shall be commenced within one (1) year after the approval is granted.

E. Approval Criteria.

1. A *use permit* shall be granted only upon a finding by the decision-making body, that the use covered by the permit, the manner of its conduct, and any *building* which is involved, will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirements, or standards prescribed therefore by this Code.
2. In arriving at the above determination, the following factors shall be considered, but not be limited to:
 - a. Any significant increase in vehicular or pedestrian traffic;
 - b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which, is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;
 - d. Compatibility with existing surrounding *structures* and uses; and
 - e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public.

F. Burden of Proof. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant. A refusal of a *use permit* shall not be interpreted as the denial of a right, conditional or otherwise.

G. Conditions. Any *use permit* granted may be subject to conditions the decision-making body deems applicable in order to fully carry out the provisions and intent of the Code, including, but not limited to:

1. Limit the hours, days, place and/or manner of operation;
2. Require site or architectural design features that minimize impacts due to removal of vegetation, noise, vibration, exhaust/emissions, light, glare, erosion, water quality impacts, odor and/or dust;
3. Require landscaping, screening, drainage, water quality facilities, and/or improvement of *parking* and loading areas;
4. Designate the size, number, location and/or design of vehicle access points or *parking areas*;
5. Require additional *setbacks* and planting if deemed necessary; and
6. Limit the *building height*, size or *lot coverage*, and/or location on the site.

I. Effect of Use Permit.

1. The *use permit* is valid and operable only for the specific use as granted and subject to any specified time limit. No use may be modified, changed, altered or increased in *intensity*, in a manner that conflicts with the *use permit* and/or required conditions of approval, without approval of a new *use permit*.

J. Use Modifications. See Section 6-312.**K. Use Permit Time Limitation.** *Use permit* approvals shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the *use permit*.

Section 6-309 Variances.

- A. Purpose.** This section provides for relief from the standards of this Code.
- B. Applicability.** *Variances* are applicable to quantified standards (e.g., *setbacks*, height, *lot* areas, dimensions, etc.) and non-quantified standards. *Variances* are not applicable to guidelines as specifically identified in this Code. A *variance* shall not:
1. Make any changes in the uses and densities permitted in any zoning classification or zoning district; or
 2. Allow relief from any item expressly prohibited by this Code.
- C. Procedure.** Requests for *variances* from the terms of this Code shall be processed as a public hearing procedure to the decision-making body as provided in Section 6-101.
- State law reference** — *Variances*, power to grant, A.R.S. §9-462.06.
- D. Approval Criteria.** A *variance* from the terms of the Zoning and Development Code shall not be authorized unless the decision-making body finds upon sufficient evidence of the following:
1. That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings; and
 2. The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district; and
 3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and
 4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
- E. Conditions of Approval.** Any *variance* granted may be subject to such conditions deemed applicable by the decision-making body. *Variances* shall become void if the subject property does not conform to all conditions, requirements, and standards prescribed by the decision-making body as a condition for approval of the *variance*. See also, Section 6-902, Revocation of a Permit/Approval.
- F. Variance Time Limitations.** *Variance* approvals shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months of such granting or within the time stipulated by the decision-making body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the *variance*.

Section 6-310 Abatement.

- A. **Purpose.** Abatements shall remove code violations from property.
- B. **Applicability.** Refer to Tempe City Code, Chapter 21, Article III.
- C. **Procedure.** Abatements are processed through the Hearing Officer during a public meeting. Appeals from the Hearing Officer shall be heard by the Board of Adjustment, and then appealed to the Superior Court.

Section 6-311 Shared Parking.

- A. **Purpose.** *Shared parking* allows for different uses on one site to share *parking*, there by increasing flexibility, use, *building* design and other *development plan* criteria.
- B. **Applicability.** Any commercial, industrial, civic, or *mixed-use* project may request approval of alternative *parking* space requirements using a *parking* demand study. The application procedures, methodology, specifications, and approval criteria for *parking* demand studies are provided in the Appendix F. See also, Section 4-604.
- C. **Procedure.** *Shared parking* applications shall be processed using the administrative review procedure through the Community Development Director, or designee.
- D. **Approval Criteria.** A *shared parking* model shall be reviewed for compliance with the standards of Section 4-604 (See Appendix F, Shared Parking Model).

Section 6-312 Modify Approved Development Plan, Use Permit, or Condition of Approval.

- A. **Purpose.** This section allows an applicant to modify an approved plan or condition of approval when a project needs change.
- B. **Applicability.** This section applies to all types of applications approved under this Code.
- 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.

D. Approval Criteria.

1. Minor Modifications. Minor modifications are administrative decisions and may be approved by staff when they meet the basic thresholds defined in this section, and when approval does not cause a violation of any provision of this Code.

2. Major Modifications. The approval criteria for major modifications are the same as for the original decision.
3. Elimination of Conditions of Approval. A request to remove condition(s) of approval shall only be granted if the decision-making body determines that:
 - a. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of conditions; or
 - b. The condition could not be implemented because it is beyond the reasonable control of the applicant and the modification will not require a significant modification of the original decision; or
 - c. The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or
 - d. A different condition(s) would better accomplish the purpose of the original condition.

Section 6-313 Security Plan.

- A. **Purpose.** The purpose of approving a security plan is to protect the public health, safety, and welfare through crime prevention measures that are tailored to proposed land uses.
- B. **Applicability and Procedure.** Security plans are required for the following uses subject to the standards contained in Chapter 26, Article V, Security Plans, of the Tempe City Code:
 1. *Bars, cocktail lounges, taverns, discotheques, nightclubs and similar businesses;*
 2. *Adult-oriented businesses;*
 3. Recreational or amusement businesses, including both indoor and outdoor activities, including pool halls and *video arcades;*
 4. *Entertainment as accessory to restaurant facilities, bars or similar establishments;*
 5. Hotels and motels;
 6. Convenience stores;
 7. *Medical marijuana dispensary or cultivation facility, and*
 8. Any other use determined by the Community Development Director or the Chief of Police, or their designees, to be similar to a use listed immediately above.

Security plans for uses within the MU-Ed District shall be formulated in coordination with the *Public University*.

Section 6-314 Adaptive Reuse Program.

- A. Purpose.** The purpose of the *adaptive reuse* program is to facilitate the reuse of underutilized buildings while providing needed services and amenities to the community. These projects often incur increased costs related to use of new innovations and technologies. Many sites are constrained by the existing size and layout, making code improvements more difficult.
- B. Applicability.** Projects eligible for the *adaptive reuse* program include the following:
1. The project involves a building constructed at least twenty (20) years from the current date;
 2. The subject lot is located within 100 feet of the right-of-way of an arterial street;
 3. The new use results in a change of occupancy classification for the existing building; and
 4. The building, including any proposed additions, shall not exceed 5,000 square feet.
 5. The Community Development Director has the ability to authorize projects that comply with two of the four above criteria and that otherwise meet the intent of the *adaptive reuse* program.

CHAPTER 4 – PUBLIC NOTICE AND STAFF REPORTS

Section 6-401 General Provisions.

- A. Mailed Notices.** Notices mailed under provisions of this Code shall be mailed to property owners and neighborhood/homeowner associations, and tenants (if required) within the notification area as defined in Section 6-401(B). The applicant is responsible for mailing neighborhood meeting notices in accordance with Section 6-402, and the city is responsible for mailing all other public notices under this Code in accordance with Section 6-404 and 6-405. The city is not responsible for receipt of mailed notices.
- 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, phases of a larger project, or when part of a larger commercial center with shared access, the 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.
- C. Computation of Time.** All time required actions shall be consistent with “computation of time” as defined in the Tempe City Code, Sec. 1-2, Definitions and rules of construction.

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 six hundred (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 thirty (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 six hundred (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 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 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 6-403 Notice for Public Meetings.

- A. **Purpose and Applicability.** The purpose of a public meeting is to provide a means for the decision-making body to receive input from the public.
- B. **Agenda as Notice of Meeting.** Agendas for all public meetings shall be posted at City Hall at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law.
- C. **Notice of Decision.** Written notice of the decision made by the decision-making body in a public meeting shall be provided to the applicant and property owner (if different) and made available for public inspection at the Community Development Department.

Section 6-404 Notice for Public Hearings.

- A. **Public Notice.** Public hearings shall be preceded by public notice in accordance with this section and Arizona open meeting law. Public hearings for General Plan amendments have additional notification requirements; see Section 6-302. When multiple applications are under review for the same project, the city may simultaneously issue notice for multiple applications. Such notice may be given in the initial posting and of the initial hearing and any subsequent hearing.
- B. **Agenda.** Upon receiving a complete application for action requiring a public hearing under this Code, the Community Development Director, or designee, shall place the request upon the next available agenda for a regular meeting of the decision-making body.
- 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 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 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.
- D. Content of Public Hearing Notice.** Public hearing notices pursuant to Section 6-404(C) shall contain:
- 1. The name of the applicant or owner;
 - 2. A description of the subject property reasonably sufficient to inform the public of its location;
 - 3. A concise description of the proposed *development* or use;
 - 4. The designation of the hearing body; and
 - 5. The time, date and place of the hearing.
- E. Decision Notice.** Written notice of the decision of the hearing body shall be provided to the applicant and property owner (if different). The notice of decision shall contain a brief summary of the decision and conditions of approval, if any.

Section 6-405 Notice of Appeals.

Notice of an appeal of a decision made at the public meeting or public hearing shall be provided in the same manner as the original meeting or hearing.

Section 6-406 Staff Reports.

- A. Staff Reports for Boards and Commissions.** After any application has been submitted for a public hearing/meeting as provided for in this Code and has been placed on an agenda, the Community Development Department shall prepare a written report for the decision-making body that includes the following information:

1. The name of the applicant or initiating party;
2. A description of the subject property or amendment, including any maps, drawings etc.;
3. A statement of the proposed request and any history pertinent to such request or property; A statement of the observations of the personal inspection of the subject property and surrounding area; and
4. A recommendation for disposition of the request.

B. Staff Reports for City Council. Any request forwarded to the City Council shall be transmitted to the City Clerk for inclusion on the agenda of a regular meeting of the City Council. A report shall accompany the request and include items in Section 6-406(A)(1-5) and the following information:

1. A concise statement of history and facts on the processing of the request by the Community Development Department and the public meeting(s)/hearing(s) held by the relevant decision-making body(s), found in Part 1, Chapter 3, Officers, Boards, Committees and Commissions;
2. The findings made by the decision-making body(s) and the action taken; and
3. Any other pertinent documents and maps, as well as other information deemed necessary by the City Clerk or Community Development Director, or designee.

CHAPTER 5 – PUBLIC MEETINGS AND PUBLIC HEARINGS

Section 6-501 Purpose.

This chapter provides procedures for public meetings and public hearings. It is intended to provide an efficient and effective means of public review on land use and *development* decisions made by the city. The provisions set forth in this chapter also are intended to encourage public dialogue and comment that is relevant to the applicable approval. All public meetings and hearings shall be open to the public and held in an *accessible* location and shall provide special accommodation when requested.

Section 6-502 Rules of Procedure.

Public meetings and hearings shall be conducted in accordance with this Section and any rules of procedure adopted by the decision-making body, so long as these procedures do not conflict.

- A. Procedure.** The following procedures apply to all public meetings and public hearings, except as provided for zoning map amendment protests under Section 6-502(C):
1. Call for the request as stated on the agenda and announce that any person believed to be affected by the request may appear and will be heard, in person or by their representative;
 2. Hear the report and recommendation submitted by the Community Development Department;
 3. Time Limits. The decision-making body may set reasonable time limits for oral presentations. The decision-making body may also determine not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the decision-making body determines that a reasonable opportunity for oral presentations has been provided;
 4. Hear a presentation by the applicant(s) describing the manner in which the proposal is consistent with city plans, policies, and codes;
 5. Hear the relevant comments from the public regarding the application;
 6. Hear the response to the public comments and a summary statement by the applicant;
 7. The presiding officer may allow further comment, exhibits, and other evidence to be filed as part of the record of the meeting/hearing; and
 8. Hold any pertinent discussion necessary for clarification or additional information.

- B. Decision.** Following discussion related to the application or comments received during the public meeting/hearing, the decision-making body may approve, approve with conditions, continue, or deny the application. In making the decision, consideration shall be given to the facts presented. The findings of fact justifying the decision shall be noted for the record. Decisions made under the provisions of this Code are effective on the date of approval (unless conditioned otherwise), except for those decisions subject to referendum.
- C. Zoning Map Amendment (rezoning) Protest.** The following procedure shall apply when a zoning map amendment is protested:
1. In the event that the owners of at least twenty percent (20%) of the following properties file a protest in writing against a proposed amendment with the City Clerk prior to the time of or at the public hearing of the City Council, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council:
 - a. The area of the *lots* included in a proposed change; or
 - b. The area of adjacent properties extending one hundred and fifty (150) feet from any side or rear *property line* of the subject property.
 2. The area of properties directly opposite thereto extending one hundred fifty (150) feet from the *street* frontage of the opposite *lots*. Proposed amendments shall require a favorable vote of three-fourths (3/4) of all members of the City Council to become effective if a valid protest is filed in writing against the proposed amendment.
 3. If any members of the council are unable to vote on such a question because of a 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 council, provided that such required number of votes shall in no event be less than a majority of the full membership of the council.

State law reference — A.R.S. §9-462.04(H).

Section 6-503 Record.

- A. Summary Minutes.** Summary minutes giving a reflection of the matters discussed and decisions made during a public hearing or meeting shall be written and shall be retained as part of the public record.
- B. Additional Information.** Other materials and correspondence submitted prior to or at the public hearing or meeting shall be retained as part of the record.

Chapter 6 – CONDITIONS OF APPROVAL

Section 6-601 Conditions of Approval.

The decision-making body may impose conditions on any approval. Such conditions shall be designed to implement the requirements of this Code, protect the public from potential adverse impacts from the proposed use or *development*, or to fulfill an identified need for public services. In addition to those conditions imposed by the decision-making body, the city may consider as a requirement or condition any plan, exhibit, statement, or other material provided by the applicant and on record with the decision.

Section 6-602 Contract for Conditions.

When the approval requires a contract, conditions shall be set forth in a contract executed by the city and the applicant and approved as to form by legal counsel for the city. If a contract is required, no approval shall be effective until the conditions are recorded. As a condition of approval, the city may require that the contract or a memorandum thereof be filed in the County Deed Records and shall appear in the chain of the title of the subject property, if recording is required. In addition to any personal remedy, the condition shall constitute a burden running with the land in favor of the City of Tempe and, unless otherwise provided, shall be removed only with the written authorization of the Tempe City Council. The contract shall be enforceable by and against the parties, their heirs, successors and assigns. The contract, however, shall not restrict the authority of the City of Tempe from taking actions affecting the property.

Section 6-603 Time Limits on Conditions.

Conditions shall be fulfilled within the time limitations set forth or a reasonable time if no time limitations are specified. Failure to fulfill a condition within said time may result in initiation of revocation of the approval, citation or such other enforcement action as the city deems appropriate.

Section 6-604 Failure to Fulfill Previous Conditions.

The decision-making body may withhold a requested approval if it determines that the current applicant has not fulfilled a previous condition or requirement from a previous approval, granted to the applicant, on the subject property, and withholding the permit would encourage compliance or is necessary to protect the public from future noncompliance.

Section 6-605 Modification or Removal of Conditions.

Modification or removal of conditions of approval may be sought on appeal or as a new application, in accordance with Section 6-312. Such proposals shall be processed through the same procedure that was used to impose the conditions.

CHAPTER 7 – RE-APPLICATION AND RECONSIDERATION OF DECISIONS

Section 6-701 Re-Application.

In the event that an application is denied, an application that is substantially the same project or request will not be considered for a period of one (1) year from the date the initial application was denied, except as follows;

Section 6-702 Reconsideration as Extraordinary Remedy.

Reconsideration of a decision is available only as an extraordinary remedy upon a determination by the decision-making body that the criteria in subsections A and B are met:

- A. Mistake.** The party requesting reconsideration has sufficiently alleged in writing that a mistake of law or fact occurred; and the alleged mistake, if found to have occurred, was a substantial factor in the decision; and
- B. Hardship or Delay.** Reconsideration is appropriate to avoid delay or hardship that may be caused by an appeal.

Section 6-703 Motion for Reconsideration.

A motion for reconsideration must be filed with the Community Development Director, or designee, within fourteen (14) calendar days of the original decision. The motion shall address the factors set forth in Section 6-702 above. The applicable fee shall be submitted with the request. A motion for reconsideration may be filed by the applicant, the Community Development Director, or designee, or a party of record.

Section 6-704 Motion for Reconsideration and Appeal Period.

Filing a motion for reconsideration is not a precondition to appealing the decision and does not stay the deadline for filing an appeal. To preserve the right to appeal, a party must file a petition for review as provided in Part 6, Chapter 8, Appeals. If the decision-making body grants reconsideration, and ultimately rules in favor of the party filing for reconsideration, the party may terminate its appeal.

Section 6-705 Process for Reconsideration.

The decision-making body shall schedule and notify the parties of a new public hearing or meeting on the merits of the issues raised. Such hearing or meeting shall be held at the next reasonably available opportunity. The decision-making body shall limit their discussion to the issues raised in the motion for reconsideration and the merits of those issues. New evidence or testimony provided by the applicant or staff, shall be limited to grounds upon which the motion or petition for reconsideration was granted.

Section 6-706 Reconsideration and Appeals.

If the motion for reconsideration is denied or the decision is not altered upon reconsideration, any appeal of the original decision, timely filed, shall be processed in accordance with Part 6, Chapter 8, Appeals. If the motion is granted and the decision-making body modifies the previous decision, the parties to the initial decision shall be notified within ten (10) calendar days of the decision and may appeal the decision as modified pursuant to Part 6, Chapter 8, Appeals.

Section 6-707 Reconsideration Limit.

No decision shall be reconsidered more than once.

CHAPTER 8 – APPEALS

Section 6-801 Purpose.

This chapter provides criteria and procedures to be used whenever an applicant or person is aggrieved by a decision by a decision-making body.

Section 6-802 Parties to an Appeal.

Any person, entity, or group aggrieved by a decision under this Code may be a party to an appeal hearing as provided in this Section.

- A. **Public Notice/Hearing.** Such appeals shall be noticed and heard using the same procedures as the original public meeting/hearing, pursuant to Part 6, Chapter 4, Public Notice and Staff Reports and Part 6, Chapter 5, Public Meetings and Public Hearings.
- B. **Appeal Stays Proceedings.** An appeal shall stay all proceedings in the matter appealed from, unless the Zoning Administrator certifies in writing to the decision-making body that, by reason of the fact stated in the certificate, the stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted by a court of record on application and notice to the Zoning Administrator.
- C. In the event that a decision made under this Code is appealed, the appeal does not invalidate the approval. The holder of the approval may proceed with a use or *development* at their own risk.
- D. **Conditions When Granting Appeal.** Any appeal granted may be subject to such conditions as the decision-making body deems applicable.

Section 6-803 Appeal Criteria.

- A. **Appeal Criteria.** To effect an appeal, the petitioner must file an appeal petition with the Community Development Department, City Clerk or Superior Court not later than 5:00 p.m. on the appeal due date, as provided on the notice of decision.
 - 1. The petition for appeals to the City of Tempe shall contain:
 - a. The name of the applicant and the city case file number;
 - b. The name, address and signature of each petitioner; and
 - c. The specific grounds for appeal. The appeal shall be limited to the issue(s) raised in the petition.
 - 2. Appeals to Superior Court shall be filed per the standards of Superior Court.

- B. Time Limitations.** Appeals may be processed in accordance with the time limitations established, after the decision has been rendered.

Decision Making Body	Appeal Submittal Deadline	Appeal Body
Community Development Director	14 Calendar Days	Applicable decision-making body
Zoning Administrator	14 Calendar Days	Board of Adjustment
Hearing Officer	14 Calendar Days	Board of Adjustment
(Use Permits)	14 Calendar Days	Development Review Commission
Board of Adjustment	30 Calendar Days	Maricopa County Superior Court
Development Review Commission	14 Calendar Days	City Council
Joint Review Committee	14 Calendar Days	President of ASU
President of ASU	14 Calendar Days	City Council
City Council	30 Calendar Days	Maricopa County Superior Court

- C. Failure to File an Appeal.** Failure to file an appeal with the Community Development Department or City Clerk as applicable, by 5:00 p.m. on the due date, shall render such appeal invalid.

CHAPTER 9 – TIME EXTENSION, REVOCATION, AND TRANSFER OF PERMITS/APPROVALS

Section 6-901 Time Extension.

- A. Request for Extension.** If an extension is desired, the holder of the approval or permit must file an application for an extension prior to expiration of the approval or permit.
- B. Procedure and Approval Criteria.** Extension requests shall be processed by the Community Development Director, or designee, as an administrative review decision. The Community Development Director, or designee, may refer the request to the original decision-making body that issued the original approval if different than the Community Development Director, or designee. An extension may be granted for a maximum of one (1) year from the original date of expiration, and may be less than one (1) year if the Community Development Director, or designee, or the original decision-making body deems that a shorter timeframe is warranted. Extensions shall be granted only upon findings that:
1. The use or *development* could not reasonably commence for reasons beyond the control of the permit holder;
 2. The request for extension is not sought for purposes of avoiding the requirements or standards of this Code or the permit;
 3. There has been no change in city standards or other circumstances likely to necessitate significant modification of the *development* approval or conditions of approval; and
 4. The use of property, if any, conforms to applicable city codes. The city may deny an extension request if there is an existing Code violation, or impose conditions to facilitate compliance.

Section 6-902 Revocation of a Permit/Approval.

The city may revoke an approval or permit granted under this Code. In revoking an approval or permit, the following procedures apply:

- A. Procedure and Criteria.** Following reasonable notice to the permit/approval holder an administrative hearing shall be held to consider all relevant information, conditions, and concerns related to the permit. The permit/approval holder will be given a reasonable opportunity to resolve all related issues. If the permit/approval holder cannot comply with conditions of the permit/approval or otherwise remains in violation of this Code after thirty (30) days, or sooner when the violations constitute an immediate public health, safety and general welfare concern, the Zoning Administrator shall schedule the item on the next regularly scheduled agenda of the original decision-making body, as may be appropriate, at which time revocation of the permit/approval may be considered. Notice of a revocation shall be provided in the same manner as the original meeting or hearing, as amended within Sections 6-403 and 6-404, Notices for Public Meetings and Hearings. A permit/approval may be revoked if it is determined that:
1. Development which has occurred does not comply with the standards set forth in this Code or any special conditions imposed upon the permit/approval;
 2. The permit/approval was approved based on materially incorrect or incomplete information; or
 3. A change has occurred to city regulations, the General Plan or applicable law, prior to the *development* obtaining a vested right or status as a legal nonconforming use that makes the approved *development* unlawful or not permitted.
- B. Revoke Permit/Approval.** The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- C. Option to Reapply for Permit/Approval.** The holder of the revoked permit/approval may reapply for a new permit/approval at any time as an entirely new application.

Section 6-903 Transfer of Permits/Approvals.

- A.** *Use permits* and approvals are transferable to successors in interest. Transfer of a *use permit* is reviewed as an administrative application, pursuant to Section 6-204.