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CHAPTER 1 – ORGANIZATION

Section 1-101 Title.

This Code shall be known and may be cited as the “Zoning and Development Code of the City of Tempe, Arizona” (this “Code”).

Section 1-102 Authority, Purpose and Scope.

- A. Authority.** The authority for this Code is Arizona Revised Statutes (ARS) Section 9-462 et seq, which provides for the regulation of land and land use by municipalities in Arizona.
- B. Purpose and Intent.** This Code is adopted to implement Tempe’s General Plan and to promote: public health, safety, convenience, aesthetics and welfare; efficient use of land; sustainable land use and *building* practices; transportation options and *accessibility*; crime prevention; timely citizen involvement in land use decision-making; and effective and efficient development review and land use administration.
- C. Scope.** Consistent with the above purpose and intent, this Code: establishes land use classifications; creates zoning districts; establishes regulations, prohibitions and restrictions on land use and *development*; governs the use of land for residential and non-residential purposes; regulates the height and bulk of *buildings* and other *structures*; regulates *lot* occupancy and the size of *yards* and other open spaces; establishes standards of performance and design; adopts a map of the zoning districts; creates boards and commissions for land use and *development* decisions and defines the powers and duties of the boards and commissions; prescribes procedures for amendments to the General Plan, this Code, zoning map, *use permits*, *development plan* and land division approvals, *variances* and other permits; prescribes penalties for violations of the Code;

State law reference – A.R.S. 9-462.01, Zoning regulations; public hearing; definitions.

Section 1-103 How to Use the Zoning and Development Code.

This Code governs land use and *development* within the incorporated limits of the City of Tempe. This Code, the Zoning Map and Appendix are used together in the review of land use and *development* applications, enforcement of zoning and land use regulations, and implementation of the Tempe General Plan. They are organized as follows:

- A. **Part 1 – Introduction and General Provisions.** In addition to this chapter (Chapter 1 – Organization), Part 1 provides information on the legal construction of the Code, enforcement, general provisions (Chapter 2), and information on city officers, boards and commissions (Chapter 3).
- B. **Part 2 – Establish Zoning Districts.** Part 2 identifies the city’s zoning (land use) districts. Every parcel, *lot*, and tract of land within the city’s incorporated boundaries is located within a zoning district, as depicted on the City of Tempe Zoning Map. Four general types of districts are provided: Residential, Commercial, Mixed-Use, and Office/Industrial. Further divisions within each category provide a range of low to high-*density development*. *Overlay districts* are provided for special situations and/or distinct geographic areas.
- C. **Part 3 – Land Use.** Part 3 indicates the land uses that are permitted within each zoning district and provides standards for specific types of land uses. The Code is intended to implement the vision and policies of Tempe’s General Plan by reserving land for planned land uses, providing compatibility between different types of uses, and integrating land use and transportation planning.
- D. **Part 4 – Development Standards.** Part 4 provides standards for housing *density*; *building height*, bulk and *setbacks*; public infrastructure; building design; vehicle and bicycle *parking*; *landscapes*; access and circulation for pedestrians and vehicles; *signs*; and lighting.
- E. **Part 5 – Overlay Districts.** Part 5 contains the city’s overlay zoning districts. *Overlay districts* in Tempe include the following: Rio Salado Overlay District, Southwest Tempe Overlay District, General Industrial Overlay District and *Planned Area Development Overlay Districts*. The geographic boundaries of these areas are shown on the zoning map.
- F. **Part 6 – Administration and Process.** Part 6 provides all of the application requirements and procedures for obtaining approvals required by this Code.
- G. **Part 7 – Definitions.** Part 7 provides definitions for certain terms and words used in this Code. Wherever italicized words or terms appear, it shall indicate these terms are defined in Part 7, Definitions.
- H. **Appendix.** The Appendix contains a fee schedule, and various administrative rules and guidelines, as may be adopted and updated from time to time by the city departments and divisions, including an index. The administrative rules and guidelines provide guidance and direction to applicants, property owners, and city staff and are not Code standards. Code standards and approval criteria may refer to these rules and guidelines.

CHAPTER 2 – GENERAL PROVISIONS

Section 1-201 Violations and Penalties.

- A. Violations.** It is a violation to construct, erect, install, alter, change, maintain, use or to permit the construction, erection, installation, *alteration*, change, *maintenance* or use of any house, *building*, *structure*, *sign*, *landscape area*, *parking lot*, or fence, or to use or permit the use of any *lot* or other land contrary to, or in violation of any of the provisions of this Code. Any land use that is specifically prohibited by this Code, or is unspecified and not classified by the Zoning Administrator, is prohibited in any district.
- B. Number of Offenses.** Every such *person* shall be deemed responsible or guilty of a separate offense for each and every day during which any violation is committed or continued.
- C. Responsible Party.** The responsible party is any owner or *person* in possession of any property. The responsible party shall be responsible for any violation thereof, whether or not the designated agent has committed the prohibited act or acts or has neglected to prevent the performance of the prohibited act or acts by another *person*.
- D. Penalty.** Any *person* violating any of the provisions of this Code and any amendments thereto shall be:
1. Subject to a civil sanction of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000); or
 2. Guilty of a class 1 misdemeanor, punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by a term of probation not exceeding three (3) years or imprisonment for a term not exceeding six (6) months, or punishable by a combination of fine, probation or imprisonment. The City Prosecutor is authorized to file a criminal misdemeanor complaint in the Tempe Municipal Court for violation of this Code.
- E. Commencement of Civil Action, Citation, Contents.**
1. Unless otherwise specified, all civil actions for violations of this Code, which are designated as subject to civil sanction or penalty, shall be commenced by delivering a citation to the person responsible for the violation. The citation shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed within fourteen (14) days after issuance of the citation. The form shall contain a schedule of fines and penalties. The citation shall be served by delivering a copy to the defendant by any of the following means:
 - a. By service upon the defendant;
 - b. By first class mail, postage prepaid, addressed to the defendant at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail;

- c. By posting the citation on the property where the violation has occurred; or
 - d. By any of the methods described in rules 4, 4.1 or 4.2, Arizona Rules of Civil Procedure.
2. The citation shall contain the date and location of the violation, reference to the Code section or provision violated, and notice that within fourteen (14) days from the date on which the citation was issued the fine for the violation must be paid to and received by the Tempe Municipal Court or a request for a hearing be made to and received by the Tempe Municipal Court; and
 3. The citation shall state that if the defendant fails to appear within the time specified, and either pay the fine for the violation or request a hearing, judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as may be established by this Code for the defendant's failure to appear.

F. Appearance; Payment by Mail.

1. The defendant shall, within fourteen (14) days of the issuance of the citation, appear in person or through his attorney in the Tempe Municipal Court, and shall either admit or deny the allegations contained in the citation, or defendant may proceed as provided in paragraph F. 2. below. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a date for a hearing of the matter;
2. The defendant may admit the allegation in the citation and pay the fine indicated by mailing the citation together with a check or money order made payable to the Tempe Municipal Court. If admitting the allegation, the defendant may also pay the fine by credit card as prescribed by the court. If payment is not received by the court date provided on the citation, a default judgment will be entered; or
3. Any defendant who appears in the Tempe Municipal Court and denies the allegations as provided in paragraph F. 1. above shall be deemed to have waived any objection to service of the citation, unless such objection is affirmatively raised by the defendant at the time of the first appearance in relation to the citation.

G. Default Judgment; Collection of Judgments.

1. In addition to any civil sanction imposed, the city court shall assess a default fee of not less than fifty dollars (\$50), unless another amount is specified in the Tempe City Code, for:
 - a. Each default judgment entered upon a failure of the defendant to appear for any civil violation, unless such default judgment is set aside under Rule 28 of the Rules of Procedure in Civil Traffic Violation Cases; or

- b. A failure to pay any civil sanction imposed by the court.
- 2. A judge or hearing officer may waive all or part of the default fee if the payment of the fee would cause a financial hardship to the defendant;
- 3. No judgment may be entered against a fictitiously identified defendant, unless the citation is amended to reflect the true identity of the defendant who received the citation; and
- 4. The court may enforce collection of delinquent fines, fees, reinspection fees and penalties as may be provided by law. Any judgment for civil sanction pursuant to this article may be collected as any other civil judgment.

H. Rules of Procedure and Appeal. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Tempe Municipal Court for civil citations issued pursuant to this Code, except as modified or where inconsistent with the provisions of the Zoning and Development Code or as modified or established for use by the Tempe Municipal Court or the Arizona Supreme Court.

Section 1-202 Repeal, Saving Clause and Application.

- A. Repeal.** All Codes or parts of Codes in conflict herewith are hereby repealed, including but not limited to, Ordinance No. 808, the “Zoning Ordinance of the City of Tempe, Arizona,” and all amendments thereto. All rights or remedies of the City of Tempe are expressly saved as to any and all violations of such repealed ordinance, and all amendments thereto. Courts of competent jurisdiction shall have all the powers that existed prior to the effective date of this Code as to all violations that have accrued at the time of the effective date of this Code. All existing violations of Ordinance No. 808, “Zoning Ordinance of the City of Tempe, Arizona,” and all amendments thereto, which may otherwise become nonconforming uses under this ordinance, shall not become legal nonconforming uses, but shall be considered as violations of this Code in the same manner that they were violations of Ordinance No. 808, “Zoning Ordinance of the City of Tempe, Arizona,” and all amendments thereto.
- B. Saving Clause.** Should any section or provision of this Code be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Code as a whole, or any part thereof other than the part so decided to be unconstitutional or invalid.
- C. Application.** The repeal of the Codes or parts thereof by this Code shall not:
- 1. Affect suits pending or rights existing immediately prior to the effective date of this Code;
 - 2. Impair, avoid, or affect any grant or conveyance made or right acquired or cause of action now existing under any such repealed Code or amendment thereto; or
 - 3. Affect or impair the validity of any bond or other obligation issued or sold and constituting a valid obligation of the issuing authority immediately prior to the effective date of this Code.

Section 1-203 Compliance and Scope.

- A. **Compliance.** Land and *structures* may be used or developed by construction, reconstruction, *alteration*, occupancy, use or otherwise, only as allowed in this Code. No *subdivision* plat shall be recorded or no building permit shall be issued without compliance with the provisions of this Code.
- B. **Obligation by Successor.** The requirements of this Code apply to the owner(s) of record, *persons* undertaking the *development* or use of land, and to those *persons'* successors in interest.
- C. **Most Restrictive Regulations Apply.** Where this Code imposes greater restrictions than those imposed or required by other rules or regulations, the most restrictive or that imposing the higher standard shall govern.
- D. **Variances.** *Variances* shall be governed by the provisions of Section 6-309.
- E. **Transfer of Development Standards Prohibited.** No *lot* area, *yard*, *landscape*, open space, off-street *parking* or loading area, or other feature which is required by this Code for one use shall be a required *lot* area, *yard*, *landscape*, open space, or off-street *parking* or loading area for another use, except as otherwise specifically allowed by this Code.

Section 1-204 Conformance with General Plan.

All *development*, uses, and district changes in the City of Tempe shall be in conformance with the Tempe General Plan as implemented by this Code. All provisions of this Code shall be construed in conformity with the adopted General Plan, and any amendments which may be approved by the city from time to time.

State law reference – A.R.S. 9-462.01(F), Zoning regulations; public hearing; definitions.

Section 1-205 Use of Real Property.

Land shall be used only for lawful uses. A lawful use is one that is permitted by this Code and is not prohibited by law. Part 3, Land Use, sets forth the uses permitted by this Code.

Section 1-206 Pre-Existing Approvals (Grandfathered Approval).

- A. **Legality of Pre-Existing Approvals.** *Developments* and uses for which approvals were lawfully granted prior to the effective date of this Code, may occur pursuant to such approvals.

- B. Subsequent Applications.** All applications for uses, *development*, and permits received by the city after February 19, 2005, including modifications processed under Section 6-312, shall conform to the provisions of this Code.

Section 1-207 Building Permit and Certificate of Occupancy.

- A. Building Permit.** A building permit shall not be issued until the Development Services Department has determined that the proposal complies with all of the applicable land use and *development* standards contained in this Code, with the exception of pre-existing approvals pursuant to Section 1-206(A). Refer to Section 4-102(C), Conformance to Approved Plans Required.

For *mixed use* development in the MU-Ed zoning district, the *Public University* shall review plans for shell buildings and tenant improvements (for *Public University* and *Public University* related uses) and shall not issue a building permit until the *Public University* has determined that the proposal complies with all of the applicable land use and development standards. For tenant improvements for commercial or residential Uses in the MU-Ed zoning district, a building permit shall not be issued until the Development Services Department has determined that the proposal complies with all of the applicable land use and development standards contained in this Code.

- B. Certificate of Occupancy.** To ensure completion of a *building* in the manner approved by the city, the *building* shall not be occupied and a use shall not begin until the Development Services Department/Building Safety has issued a final inspection or certificate of occupancy. In the case of *mixed use* development in the MU-Ed zoning district, the *Public University* shall inspect shell buildings and tenant improvements (for *Public University* and *Public University* related uses) for conformance to all of the applicable land use and development standards and shall certify that all construction has been built in accordance with the City Building Codes.
- C. Prior to Final Completion.** Prior to the final completion of all work, a temporary certificate of occupancy may be issued for the *structure* or a portion thereof, conditioned upon further work being completed by a date certain and guaranteed, as applicable.

Section 1-208 Official Action.

- A. Official Action.** All officials, departments, divisions, and employees of the city vested with authority to issue permits or grant approvals shall adhere to and require conformance with this Code.
- B. Notice.** The failure of any *person* to receive mailed notice or failure to post a notice shall not invalidate any actions pursuant to this Code, except as otherwise determined by the City Attorney.

Section 1-209 Fractions Measurement.

Fractions or decimals equal to or greater than one-half (1/2 or 0.5) of a whole number shall be rounded up to the next whole number.

Section 1-210 Interpretation.

Unless the context clearly indicates the contrary, the following shall be interpreted as follows:

- A. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular;
- B. The word “shall” is mandatory and not permissive;
- C. The word “*person*” includes any owner of personal property improvements or real property or person in possession or control of any personal property improvements or real property and includes any individual, firm, association, organization, partnership, business trust, corporation or company;
- D. “And” indicates that all connected words or provisions shall apply;
- E. “Or” indicates that the connected words or provisions may apply singly or in any combination;
- F. “Either . . . or” indicates that the connected words or provisions shall apply singly but not in combination; and
- G. Part, chapter and section references refer to parts, chapters and sections of this Code, unless otherwise specifically stated to the contrary.

CHAPTER 3 – OFFICERS, BOARDS, COMMITTEES AND COMMISSIONS

Section 1-301 Purpose.

This chapter sets forth the purpose, duties, organization, and powers of the city boards, commissions, and other bodies charged in making decisions under this Code created for the purpose of conserving and promoting the public health, safety and general welfare, and aiding in the harmonious, orderly, and progressive development of the city. For a complete description of the decision-making procedures, refer to Part 6, Chapter 1, Approval and Appeal Authorities.

Section 1-302 Development Services Manager.

- A. Development Services Manager – Creation and Purpose.** The Development Services Manager is the manager of the Development Services Department. The Development Services Manager, or designee, directs the work of the department and leads the department in fulfilling its mission and goals.
- B. Development Services Manager – Duties and Powers.** The Development Services Manager, or designee, shall have the duty to carry out the provisions and intent of the General Plan and this Code. The Development Services Manager, or designee, shall have the power to administratively review and approve, continue, deny, or approve with conditions the following:
1. Minor Development Plan Review applications;
 2. Minor modification to approved Development Plans or Minor modification to conditions of approval to Development Plans pursuant to Sections 6-306 and 6-312;
 3. Minor modification to approved Planned Area Development Overlay or Minor modification to conditions of approval to Planned Area Development Overlay pursuant to Section 6-312;
 4. Lot Split Applications pursuant to Chapter 30 of the City Code;
 5. Sign permit applications pursuant to Section 4-904;
 6. Shared Parking applications pursuant to Section 6-311;
 7. Time extension applications pursuant to Section 6-901; and
 8. Other administrative requests in accordance with Part 6, Application and Review Procedures.

- C. Development Services Manager – Appeals.** Any person aggrieved by a decision of the Development Services Manager, or designee, under this Code may file an appeal within fourteen (14) calendar days after the Development Services Manager, or designee, has provided a written notice with their decision, in accordance with Part 6, Chapter 8, Appeals.
- D. Development Services Manager – Reconsideration.** Reconsideration of the Development Services Manager, or designee, decisions shall comply with Part 6, Chapter 7, Re-Application and Reconsideration of Decisions.

Section 1-303 Zoning Administrator.

- A. Zoning Administrator – Creation and Purpose.** The Zoning Administrator is the Development Services Manager or designee. The Zoning Administrator is created to interpret the meaning and intent of the General Plan and this Code.

State law reference – A.R.S. 9-462.05 Enforcement. (Zoning Administrator creation)

- B. Zoning Administrator – Duties and Powers.** The Zoning Administrator shall have the duty to carry out the provisions and intent of the General Plan and this Code. The Zoning Administrator shall have the power to interpret and enforce this Code.
1. Interpretation of this Code includes, but is not limited to, clarification of intention, determination of zoning classifications of land uses not specified in this Code, the delegation of processing procedures and requirements, and enforcement of Code provisions. The Zoning Administrator shall keep a record of interpretations made pursuant to this section. The record of interpretations shall be available to the public;
 2. The Zoning Administrator may appoint representatives of the Development Services Department to enforce provisions of this Code; and
 3. Any land use that is unspecified in this Code and not classified by the Zoning Administrator is prohibited in any district.
- C. Zoning Administrator – Appeals.** Any person aggrieved by a decision of the Zoning Administrator under this Code may file an appeal to the Board of Adjustment, or the Joint Review Committee, as applicable, within fourteen (14) calendar days after the Zoning Administrator has rendered its decision, in accordance with Part 6, Chapter 8, Appeals.
- D. Zoning Administrator - Reconsideration.** Reconsideration of Zoning Administrator decisions shall comply with Part 6, Chapter 7, Re-Application and Reconsideration of Decisions.

Section 1-304 Special Review Commissions/Committees.

A. Historic Preservation Commission.

1. **Creation and Purpose.** The Tempe Historic Preservation Commission is created by Tempe City Code to act in an advisory capacity to the City Council in all matters concerning historic preservation. The mission of the Tempe Historic Preservation Commission is to provide protection for significant properties and archeological sites which represent important aspects of Tempe's heritage; to enhance the character of the community by taking such properties and sites into account during development, and to assist owners in the preservation and restoration of their properties.
2. **Duties and Powers.** For the purpose of this Code, the Historic Preservation Commission shall have the powers to:
 - a. Review applications for the designation of landmarks, historic properties and historic districts and make recommendations to the Development Review Commission and City Council. Such review shall be based on the criteria as specified in § 14A-4 of the City Code; and
 - b. Review and make decisions on applications for proposed alterations, new construction, demolition or removal affecting landmarks, historic properties or properties located within an historic district. Such review shall be based on the criteria as specified in § 14A-6 of the City Code.
 - c. Any recommendation by the Historic Preservation Commission relative to such application will be forwarded to the appropriate decision-making body as a part of the staff report regarding the request.
3. **Organization.** For Commission organization refer to City Code Chapter 14A. The Historic Preservation Commission shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.

City Code reference – See TCC §14A, Historic Preservation Commission

B. Rio Salado Citizen Advisory Commission.

1. **Creation and Purpose.** The Rio Salado Citizen Advisory Commission is created to guide the development of the Rio Salado for the betterment of current and future citizens of Tempe. The purpose of the Rio Salado Overlay District is to accomplish the objectives of the specific plan referred to as the “Tempe Rio Salado Plan”, for opportunities of increased development requirements such as landscaping and citizen review.
2. **Duties and Powers.** For the purpose of this Code, the Rio Salado Citizen Advisory Commission shall have the powers to:
 - a. Review development proposals within the Rio Salado Overlay District;
 - b. Review *use permits* and *variances* within the Rio Salado Overlay District;

- c. Solicit public input, which may include holding public hearings;
 - d. The Commission will review applications prior to a public meeting or public hearing of the Hearing Officer, Board of Adjustment, Development Review Commission, or City Council meeting; and
 - e. Any recommendation by the Rio Salado Citizen Advisory Commission relative to such application will be forwarded to the appropriate decision-making body as a part of the staff report regarding the request.
3. **Organization.** For Commission organization, refer to City Code Chapter 2, Article V, Div. 11. The Rio Salado Citizen Advisory Commission shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.

City Code reference – See TCC § 2-275—2-284, Rio Salado Citizen Advisory Commission

C. Apache Boulevard Project Area Committee.

- 1. **Creation and Purpose.** The Apache Boulevard Project Area Committee is created to guide the development within the Apache Boulevard Redevelopment Area, which encourages reinvestment in the Apache Boulevard area in order to build a more desirable neighborhood in which people will enjoy living and working, enhance the positive aspects of this area and promote desirable reuse of the land.
- 2. **Duties and Powers.** For the purpose of this Code, the Apache Boulevard Project Area Committee shall have the powers to:
 - a. Review development proposals within the Apache Boulevard Redevelopment Area;
 - b. Review *use permits* and *variances* within the Apache Boulevard Redevelopment Area;
 - c. The Committee will review applications prior to a public meeting of the Design Review Board and a public hearing of the Hearing Officer, Board of Adjustment, and Planning and Zoning Commission or City Council meeting; and
 - d. Any recommendation by the Apache Boulevard Project Area Committee relative to such application will be forwarded to the appropriate decision-making body as a part of the staff report regarding the request.
- 3. **Organization.** The Apache Boulevard Project Area Committee shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.

Reference – See Resolution No. 97.75, Apache Boulevard Redevelopment Plan

Section 1-305 Hearing Officer.

- A. Hearing Officer – Creation and Purpose.** The Hearing Officer shall be appointed by the Development Services Manager or designee. The Hearing Officer is created to conduct public hearings on specific applications as noted in Section 1-305(B).
- B. Hearing Officer – Duties and Powers.** The Hearing Officer shall have the duty to carry out the provisions and intent of the General Plan and this Code. The Hearing Officer shall have the power to hold a public hearing to review and approve, continue, deny, or approve with conditions, the following:
1. Use permit applications pursuant to Section 6-308;
 2. Variance applications pursuant to Section 6-309;
 3. Rental housing code appeals pursuant to Chapter 21 of the Tempe City Code; and
 4. Abatements pursuant to Chapter 21 of the Tempe City Code and Section 6-310.

The Hearing Officer may in connection with any application, impose conditions deemed necessary in order to fully carry out the provisions and intent of this Code, pursuant to Part 6, Chapter 6, Conditions of Approval. Violation of any Hearing Officer condition shall be a violation of this Code.

- C. Hearing Officer – Procedure.** Public hearings conducted by the Hearing Officer shall be open to the public and conducted in accordance with Part 6, Chapter 5, Public Meetings and Public Hearings. The public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings in accordance with Section 6-503, shall be kept by the City Clerk as a public record.
- D. Hearing Officer – Appeals.** Any person aggrieved by a decision of the Hearing Officer under this Code may file an appeal to the Board of Adjustment, Joint Review Committee, or the Development Review Commission as applicable, within fourteen (14) calendar days after the Hearing Officer has rendered its decision, in accordance with Part 6, Chapter 8, Appeals. Appeals of the decisions of the Hearing Officer shall be heard de novo by the Board of Adjustment, Development Review Commission, Joint Review Committee, or the City Council, as applicable.

State law reference — A.R.S. §9-462.08 Hearing officer

Section 1-306 Board of Adjustment.

- A. Board of Adjustment – Creation and Purpose.** The Board of Adjustment is created to hold public hearings, as noted in Section 1-306(B), to provide relief from the terms of this Code, to hear applications and to hear and decide appeals from decisions of the Hearing Officer or Zoning Administrator.

State law reference — A.R.S. 9-462.06(A) Board of adjustment (creation)

- B. Board of Adjustment – Duties and Powers.** The Board of Adjustment shall have the duty to carry out the provisions and intent of this Code.

1. The Board of Adjustment shall hold a public hearing to review and approve, continue, deny or approve with conditions the following:
 - a. Variance applications pursuant to Section 6-309;
 - b. Appeals from decisions made by the Hearing Officer, pertaining to variances; and
 - c. Appeals from any decision made by the Zoning Administrator.
2. The Board of Adjustment shall not:
 - a. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this Code; or
 - b. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.
3. The Board of Adjustment may, in connection with any application, impose conditions as the Board deems necessary in order to fully carry out the provisions and intent of this Code, pursuant to Part 6, Chapter 6, Conditions of Approval. Violation of any Board of Adjustment condition shall be a violation of this Code.

State law reference — A.R.S. 9-462.06(H). Board of adjustment.

C. Board of Adjustment – Organization.

1. The Board of Adjustment shall consist of seven (7) regular members and two (2) alternate members. Whenever regular members are unable to attend or must decline due to conflict of interest, the alternate members shall serve at the board hearings. All members shall be a resident of the city, and shall be appointed by the Mayor with approval of the City Council. Each Board of Adjustment member shall serve a term of three (3) years, unless they submit written resignation to the Mayor and City Council, or unless sooner removed by the Council, and their term shall be staggered so that the terms of at least two (2), but not more than three (3) members conclude in any given year. No member shall serve more than two (2) complete consecutive terms. Nothing herein shall affect the expiration of the current terms of the Board of Adjustment. Vacancies for the unexpired term of a member shall be filled by the Mayor with approval of the City Council. The members of the Board of Adjustment shall serve without compensation;
2. The Board of Adjustment shall elect a chairperson and vice-chairperson from among its own regular members who shall have power to administer oaths, take evidence, and set consent agendas;
3. Hearings of the Board of Adjustment shall be open to the public in accordance with Part 6 Chapter 5, Public Meetings and Public Hearings. The public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings in accordance with Section 6-503, showing the vote of each member, records of the boards' examinations and other official actions, shall be kept by the City Clerk as a public record;
4. The Board of Adjustment shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure;
5. A quorum consists of four (4) members of the Board of Adjustment. The concurring vote of four (4) members of the Board of Adjustment shall be necessary to act on any matter on its agenda, except that consent agenda items may be approved or continuances administratively granted as provided for in this section. In the event that Board members are not sufficiently available to make a quorum, one staff member is authorized to act as an alternate member on consent agenda items only and only to the extent that their presence makes a quorum. Robert's Rules of Order shall govern any other motion; and
6. The Development Services Manager, or a designated representative, shall serve ex officio as the secretary of the Board of Adjustment.

D. Board of Adjustment – Appeals. Any person aggrieved by a decision of the Board of Adjustment under this Code may file an appeal to the Maricopa County Superior Court within thirty (30) calendar days after the Board has rendered its decision, in accordance with Part 6, Chapter 8, Appeals.

State law reference — See A.R.S 9-462.06 (K) Board of adjustment (appeal of decisions)

- E. Board of Adjustment – Reconsideration.** Reconsideration of Board of Adjustment decisions shall comply with Part 6, Chapter 7, Re-Application and Reconsideration of Decisions.

Section 1-307 Planning and Zoning Commission. (Repealed)

Section 1-308 Redevelopment Review Commission. (Repealed)

Section 1-309 Design Review Board. (Repealed)

Section 1-310 Joint Review Committee.

- A. Joint Review Committee – Creation and Purpose.** The Joint Review Committee is created for the purpose of reviewing and making decisions and recommendations on development actions in lieu of the Board of Adjustment and Development Review Commission for projects within the MU-Ed zoning district.

B. Joint Review Committee – Duties and Powers.

1. The Joint Review Committee shall exercise the powers granted to the Board of Adjustment, and the Development Review Commission, consistent with applicable law for those boards and commissions for any development action in the MU-Ed zoning district;
2. The Joint Review Committee may, in connection with any development action in the MU-ED zoning district, impose conditions, as it deems necessary to fully carry out the provisions and intent of this Code. Violation of any approved condition shall be a violation of this Code pursuant to Section 1-201. The City of Tempe has zoning enforcement authority within the MU-Ed zoning district; and
3. Any Decision of the Development Services Manager, or designee, may be appealed to the Joint Review Committee for projects within the MU-Ed zoning district.

C. Joint Review Committee – Organization.

1. The Joint Review Committee shall consist of seven (7) regular members and five (5) alternates. The alternate members shall serve at the committee hearings whenever a regular committee member is unable to attend or must decline due to conflict of interest. Three (3) regular members and two (2) alternate members of the committee shall be appointed by the President of Arizona State University (ASU), three (3) regular members and two (2) alternate members shall be appointed by the Mayor of Tempe with the approval of the City Council. One (1) regular member and one (1) alternate member of the committee shall be jointly appointed by the Mayor of Tempe with City Council approval, and the President of ASU;
2. The term of office for all Joint Review Committee members shall be three (3) years beginning on the date of appointment except terms for the initial members shall be staggered. Members may serve consecutive terms with concurrence of the Mayor and/or President for their respective appointees. No committee member shall serve more than two (2) complete consecutive three (3) year terms. Vacancies shall be filled for the unexpired term of a member whose office is vacant in the same manner as such member received original appointment;
3. The regular members and alternate members of the Joint Review Committee shall serve without compensation;
4. The Joint Review Committee shall elect a chairperson and vice-chairperson from among its own regular members who shall have power to administer oaths, take evidence, and set consent agendas;
5. Meetings and hearings of the Joint Review Committee shall be open to the public. The public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings, showing the vote of each member, records of the committees' examinations and other official actions, shall be kept by the City Clerk as a public record;
6. The Joint Review Committee shall adopt rules of procedure consistent with the provisions of this ordinance for the conduct of its business and procedure;
7. A quorum consists of four (4) members of the Joint Review Committee. The concurring vote of four (4) members of the Joint Review Committee shall be necessary to approve, deny, approve with conditions, or make a recommendation on any application, or to affect any variation from the terms and conditions of this ordinance. Robert's Rules of Order shall govern any other motion;
8. The Development Services Manager, or designated representative, shall serve ex officio as secretary of the Joint Review Committee;

9. Whenever a regular member is either unable to attend or must decline due to conflict of interest, that member shall give timely notice to the appropriate staff person of the Development Services Department or ASU. The staff shall then notify the alternate Joint Review Committee member(s) to fill the vacancy represented by the respective appointee(s) (i.e., Tempe appointed alternate fills a Tempe appointed vacancy, ASU appointed alternate fills an ASU appointed vacancy, and a jointly appointed alternate fills a jointly appointed vacancy). In the event that such members are not sufficiently available to make a quorum, one staff member is authorized to act as an alternate member on consent agenda items only, and only to the extent that their presence makes a quorum; and
10. The rules and procedures for advertising, notification and scheduling of hearings before the Joint Review Committee shall be consistent with the legal standards required for action before other decision-making bodies, depending upon the subject of the individual application. If any conflict exists between the provisions of this chapter regarding advertising, notification or scheduling and any other applicable law then the stricter standard applies.

- D. Joint Review Committee – Appeals.** On matters other than recommendations, a person aggrieved, or the Development Services Manager, or designee, with the consent of the City Manager, or any member of the City Council, or a designated representative of ASU, may file an appeal with the city clerk within fourteen (14) calendar days after a decision by the Joint Review Committee or President of ASU or designated representative. An appeal will first be heard by the President of ASU or a designated representative. The President of ASU, or a designated representative, may affirm or reverse, in whole or in part, or modify the decision of the Joint Review Committee and shall render a written decision within twenty (20) working days of receipt of request for review. The decision by the President of ASU, or a designated representative, may be appealed to the Tempe City Council. The appeal shall be in accordance with Part 6, Chapter 8, Appeals and procedures adopted by the Council and may affirm or reverse, in whole or in part, or modify the President of ASU's or designated representative's decision. Compliance with applicable open meeting laws is required for all actions in this district by the Joint Review Committee, President of ASU or designated representative and the Tempe City Council.
- A. Joint Review Committee – Reconsideration.** Reconsideration of Joint Review Committee decisions shall comply with Part 6, Chapter 7, Re-Application and Reconsideration of Decisions.

Section 1-311 City Council.

- A. City Council - Creation and Purpose.** The City Council is created in accordance with the City Charter and Arizona Revised Statutes.
- 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. Major modifications to Planned Area Development Overlays or major modifications to conditions of approved Planned Area Development Overlays pursuant to Section 6-312;
6. 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;
7. Hear and decide appeals of decisions of the Development Services Manager, or designee, regarding lot splits and time extensions, pursuant to Part 6, Chapter 8, Appeals; and
8. 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.

C. City Council - Organization. Refer to City Charter and City Code.

D. City Council - Appeals. Any person aggrieved by a decision of the City Council under this Code may file an appeal to the Maricopa County Superior Court within thirty (30) calendar days after the City Council has rendered its final decision, in accordance with Part 6, Chapter 8, Appeals.

E. City Council – Reconsideration. Reconsideration of City Council decisions shall comply with Part 6, Chapter 7, Re-Application and Reconsideration of Decisions.

Section 1-312 Development Review Commission.

- A. Development Review Commission – Creation and Purpose.** The Development Review Commission is created to hold public meetings and hearings, to provide analysis and recommendations to the City Council regarding general land use policies and applications where the Commission has recommendatory power, and to render final decisions on specified applications where the Commission has final decision-making power, including, but not limited to, all aspects of a proposed and future development. The Development Review Commission recognizes that the creation of a desirable environment throughout the city for residents, business, and industry is a prime requisite for the interdependence of land values, aesthetics, and good site planning, by promoting harmonious, safe, attractive and compatible development that is therefore considered to be in the best interest of public health, safety, and general welfare.
- B. Development Review Commission – Duties and Powers.** The Development Review Commission shall have the duty to carry out the provisions and intent of the General Plan and this Code.
1. **Final Decision-making Powers.** The Development Review Commission shall have the power to make final decisions and hold public meetings and public hearings to review and approve, continue, deny, or approve with conditions the following requests:
 - a. Preliminary Subdivision Plats pursuant to Section 6-307;
 - b. Major Development Plan Review applications pursuant to Section 6-306;
 - c. Major modification to a *development plan* review or major modification to conditions of approved *development plans* pursuant to Sections 6-306 and 6-312;
 - d. Appeals from the Hearing Officer, regarding use permits pursuant to Part 6, Chapter 8, Appeals;
 - e. Appeals from the Development Services Manager, or designee, pursuant to Part 6, Chapter 8, Appeals, regarding the following:
 1. Minor modifications to approved Planned Area Development Overlays, or minor modifications to conditions of approved Planned Area Development Overlays;
 2. Shared parking applications;
 3. Minor *development plan* review applications pursuant to Part 6, Chapter 8, Appeals; and
 4. Minor modifications to approved *development plan* review, or minor modifications to conditions of approved *development plans*.

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.
3. The Development Review Commission may prescribe in connection with any application such conditions as the Commission deems necessary in order to fully carry out the provisions and intent of this Code, pursuant to Part 6, Chapter 6, Conditions of Approval. Violation of any Development Review Commission condition shall be a violation of this Code.

C. Development Review Commission – Organization.

1. The Development Review Commission shall consist of seven (7) regular members and three (3) alternate members. Whenever a regular member is unable to attend or must decline due to conflict of interest, an alternate member shall serve at the Commission hearing. All members shall be a resident of the city, and shall be appointed by the Mayor with approval of the City Council. Each Development Review Commission member shall serve a term of three (3) years, unless they submit written resignation to the Mayor and City Council, or unless sooner removed by the Council, and their term shall be staggered so that the terms of at least two (2), but not more than three (3) members conclude in any given year. No member shall serve more than two (2) complete consecutive terms. Nothing herein shall affect the expiration of the current terms of the Development Review Commission. Vacancies for the unexpired term of a member shall be filled by the Mayor with approval of the City Council. The members of the Development Review Commission shall serve without compensation;
2. At least three (3) regular members of the Commission and one (1) alternate member shall be currently practicing in the field of architecture, landscape architecture, urban planning, land use law, real estate, engineering, or otherwise qualified by a design background, training, experience, or similar related field;
3. The Development Review Commission shall elect a chairperson and vice-chairperson from among its own regular members who shall have power to administer oaths, take evidence, and set consent agendas;

4. Hearings of the Development Review Commission shall be open to the public in accordance with Part 6 Chapter 5, Public Meetings and Public Hearings. The public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings in accordance with Section 6-503, showing the vote of each member, records of the Commissions' examinations, and other official actions, shall be kept by the City Clerk as a public record;
 5. The Development Review Commission shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure;
 6. A quorum consists of four (4) members of the Development Review Commission. The concurring vote of four (4) members of the Development Review Commission shall be necessary to act on any matter on its agenda except that consent agenda items may be approved and continuances administratively granted as provided for in this section. In the event that Development Review Commission members are not sufficiently available to make a quorum, one staff member is authorized to act as an alternate member on consent agenda items only, and only to the extent that their presence makes a quorum. Robert's Rules of Order shall govern any other motion; and
 7. The Development Services Manager, or a designated representative, shall serve ex officio as secretary of the Development Review Commission.
- D. Development Review Commission – Appeals.** Development Review Commission recommendations to the City Council pursuant to Section 1-312(B)(2), are not final decisions. Any person aggrieved by a final decision of the Development Review Commission pursuant to Section 1-307(B)(1), may file an appeal to the City Council within fourteen (14) calendar days after the Development Review Commission has rendered its decision, in accordance with Part 6, Chapter 8, Appeals.
- E. Development Review Commission – Reconsideration.** Reconsideration of Development Review Commission decisions shall comply with Part 6, Chapter 7, Re-Application and Reconsideration of Decisions.