

## Chapter 23A DEVELOPMENT COMPLIANCE CODE

**Editor's note:** Ord. No. 9967, § 7, adopted May 17, 2004, effective July 1, 2004, amended the title of said chapter to read as set out. Formerly said title pertained to Development Compliance Reviews.

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### ARTICLE I. GENERAL PROVISIONS

#### DIVISION 1. INTRODUCTION

##### **Sec. 23A-1. Title.**

This chapter is entitled "Development Compliance Code."  
(Ord. No. 9392, § 2(1.1.1), 5-22-00; Ord. No. 9967, § 7, 5-17-04)

##### **Sec. 23A-2. Purpose.**

Chapter 23A is established to identify the processes for the review and approval of proposed development for compliance with the technical and objective requirements of the Land Use Code (LUC), Chapter 23 of the Tucson Code and to provide for the calculation, assessment and collection of impact fees.

(Ord. No. 9392, § 2(1.1.2), 5-22-00; Ord. No. 10053, § 1, 9-27-04)

##### **Sec. 23A-3. Scope.**

The provisions of Chapter 23A apply to all proposed development within the corporate limits of the city and shall establish the process for certification of zoning compliance.

(Ord. No. 9392, § 2(1.1.3), 5-22-00)

##### **Sec. 23A-4. Certification of zoning compliance.**

The certification of zoning compliance as provided in Chapter 23A shall consist of the certification that proposed development and construction are in conformance with the nondiscretionary, technical, and objective requirements of the Land Use Code (LUC), Chapter 23 of the Tucson Code, prior to final development approval.

(Ord. No. 9392, § 2(1.1.4), 5-22-00)

##### **Sec. 23A-5. Applicability.**

The development services department (DSD) is responsible for assuring that no land is used or occupied; no site improvement, modification, or construction is started; no existing use is implemented, expanded, or changed; no structure is expanded, reconstructed, changed, or otherwise altered; and no land is divided into multiple parcels until the certification of zoning compliance has been provided in accordance with this chapter. No city agency may issue a permit for excavation, grubbing, grading, paving, demolition, or construction of any sort before DSD has certified such compliance with the Land Use Code (LUC).

(Ord. No. 9392, § 2(1.1.5), 5-22-00)

##### **Sec. 23A-6. Interpretation.**

The development services department (DSD) director is responsible for issuing all final decisions in the content and application of this chapter, except as may be expressly provided in this chapter. Any decision or interpretation on the application and content of the Land Use Code (LUC), Chapter 23 of the Tucson Code, shall be by the zoning administrator as provided in section 1.2.1 of the LUC.

(Ord. No. 9392, § 2(1.1.6), 5-22-00)

**Editor's note:** All graphics included in Chapter 23A are for illustrative purposes and do not have legal status.

##### **Sec. 23A-7. Appeals.**

The decision of the development services department (DSD) director on the content and application of this chapter shall be final and nonappealable unless specifically provided herein.

(Ord. No. 9392, § 2(1.1.7), 5-22-00)

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### **Sec. 23A-8. Violation.**

Any improvements that are constructed without zoning compliance or any improvements under construction that are not in compliance with plans approved for zoning compliance shall be considered a violation of this chapter. The development services department (DSD) shall enforce compliance with this chapter by suspending construction or through other available means until compliance is achieved.

(Ord. No. 9392, § 2(1.1.8), 5-22-00)

### **Sec. 23A-9. Enumeration.**

The Tucson Code establishes an outline of organization in descending order of chapter, article, division, section, subsection, paragraph, sentence, clause, and words. Chapter 23A is arranged in the same organizational format with minor modification. Chapter 23A, the assigned chapter within the Tucson Code, is implied but not used when referencing articles, divisions, sections, or subsections within this chapter.

(Ord. No. 9392, § 2(1.1.9), 5-22-00)

### **Sec. 23A-10. Hierarchy.**

The hierarchy used in Chapter 23A is a combination of numerical digits separated by a period to denote the descending order of article, division, section, and so on. For example, Sec. 3.0.0 references Article III; Sec. 3.3.0 references Article III, Division 3; Sec. 3.3.5 references Article III, Division 3, Section 5; and Sec. 3.3.5.5.A. references Article III, Division 3, Section 5, subsection 5, paragraph A.

(Ord. No. 9392, § 2(1.1.9.1), 5-22-00)

**Editor's note:** See the original section numbers retained in the history notes.  
Secs. 23A-11--23A-20. Reserved.

## **DIVISION 2. MAPPING**

### **Sec. 23A-21. Title.**

As provided by Chapter 23 of the Tucson Code, Land Use Code, section 1.3.1, the set of maps depicting land use zoning boundaries within the City of Tucson is entitled "City of Tucson Zoning Maps."

(Ord. No. 9392, § 2(1.2.1), 5-22-00)

### **Sec. 23A-22. Purpose, applicability, and interpretation.**

The purpose, applicability, and interpretation of the City of Tucson Zoning Maps are as provided by Chapter 23 of the Tucson Code, Land Use Code (LUC), Article I, Division 3.

(Ord. No. 9392, § 2(1.2.2), 5-22-00)

Secs. 23A-23--23A-30. Reserved.

## ARTICLE II. REVIEW PROCEDURES\*

**\*Editor's note:** Ord. No. 9967, § 8, adopted May 17, 2004, repealed the former Art. II, §§ 23A-31--23A-33, 23A-41--23A-49, 23A-61, 23A-62. Section 9 of said ordinance enacted a new Art. II, §§ 23A-31--23A-35, 23A-40, 23A-50--23A-54, 23A-60--23A-63, as set out herein. The former Art. II pertained to similar subject matter and derived from Ord. No. 9392, § 2(2.1.1)--(2.1.3), (2.2.1)--(2.2.9), (2.3.1), (2.3.2), adopted May 22, 2000.

### DIVISION 1. GENERAL ZONING REVIEW PROCEDURE

#### **Sec. 23A-31. Zoning compliance review.**

Review to determine whether any application conforms to zoning regulations is conducted in accordance with this section. Interpretations of zoning regulations and certifications of approval of applications in compliance with all zoning regulations may be appealed to the board of adjustment.

For certain applications as specified in the LUC, there are also special zoning review requirements which may involve either a limited notice procedure in accordance with Division 2 of this chapter or a full notice procedure in accordance with Division 3 of this Chapter. Limited notice procedures may be appealed to the board of adjustment. Full notice procedures may be subject to an appeal to either the board of adjustment or the mayor and council in accordance with Division 4 of this chapter.

For proposed development in conformance with the property's existing zoning regulations, whether it is new construction, expansion of existing construction, new use, change in use, or expansion of an existing use, review for conformance with the provisions of the Land Use Code (LUC), Chapter 23 of the Tucson Code, this chapter and applicable development standards will be by development services department (DSD). The applications requiring zoning compliance review include, but are not limited to, temporary uses, business licenses, tenant improvement, home occupations, site plan review, new construction, expansion of existing premises, and certain electrical reconnections.

(1) *Application.* Applications shall conform to the requirements set forth in the LUC, this chapter and appropriate development standards. The director may require additional information and materials following acceptance of an application where it is determined that such information is important to the review of the application. The director may conditionally accept an application subject to obtaining subsequent approvals. The director shall not be required to make a decision on an application until at least five (5) days following the acceptance of the additional submittal information or five (5) days following the time for submission of a recommendation by an advisory body.

(2) *Review process.* Review is conducted by the development services department staff and other agencies, committees or advisory boards as specified in this chapter, the LUC and as may be deemed appropriate by the director. Applications are reviewed for compliance this chapter, the LUC and applicable development standards. Where an application requires review under more than one special zoning review procedure, the development services director shall determine whether reviews shall be conducted sequentially or concurrently based upon the issues raised by each application. Where the director determines that reviews shall be conducted sequentially, the date of acceptance for each procedure shall

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commence upon the date of decision of the prior procedure unless otherwise stated by the director.

(3) *Decision.* Except as otherwise provided, the director determines whether to approve or deny an application. For all general and special zoning review decisions, time periods specified for the director's decision may be extended by the applicant.

(4) *Written statement of reasons for denial.* If an application is not approved due to lack of compliance with zoning regulations, the applicant may request a written statement of the basis for the rejection of the application, which shall then be provided within three (3) days. Projects under this review process may be approved by the DSD director or designee if they are in conformance with the LUC, this chapter and applicable development standards.

(5) *Zoning interpretations and zoning certification.* For any development reviewed in accordance with this Article which involves an interpretation of the substantive provisions of the LUC or the application of substantive zoning provisions in the zoning certification of a development plan, site plan, tentative plat or final plat, a request for a written interpretation or certification may be submitted to the zoning administrator in the following manner:

a. A person affected by the proposed development, as defined in subsection b below, may request in writing that any decision requiring a interpretation of substantive zoning regulations be reviewed and decided by the zoning administrator. The applicant or the zoning administrator may place other parties on notice of the determination by providing a copy of the application to such parties at the time it is submitted to the zoning administrator and listing such persons as a party of record in the application.

b. A person affected by the proposed development shall include the applicant, owners or residents of property within three hundred (300) feet of the site, any neighborhood association within one (1) mile and any person who may be personally affected by the proposed development in a manner that is beyond the impact of the development on the general public.

c. The zoning administrator shall make the final zoning determination within five (5) days of receipt of any such written request. Any party interested in the decision may request a copy of the final zoning determination. The final zoning determination or certification shall be mailed to the applicant and all parties of record within three (3) days of the determination.

d. The zoning administrator may designate certain decisions as precedent for future decisions. Any decision so designated shall be binding upon future cases unless reversed on appeal. One (1) copy of all precedent decisions shall be maintained by the zoning administrator and one (1) copy shall be maintained by the city clerk for public review and inspection.

e. The zoning administrator's determination shall be binding upon the applicant and all parties of record unless appealed.

(6) *Appeal of zoning interpretations.* Within thirty (30) days of a final zoning determination by the zoning administrator that involves the interpretation of the substantive zoning provisions of the Land Use Code, the applicant, and any party of record may appeal that determination to the board of adjustment pursuant to section 23A-61.

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(7) *Stay of the issuance of plan approvals and permits during appeals.* Where an administrative appeal is submitted in a timely manner to a city official or body such as the director, the board of adjustment, the zoning examiner or the mayor and council in accordance with this chapter, no permits shall be issued and no formal plan approvals or inspections shall be made on any portion of an application that is subject to the appeal while that appeal, review period or the time provided for reconsideration is pending. DSD may, in the discretion of the director, continue to process review of applications and may issue permits or plan approvals on applications or portions thereof that are not affected by the appeal. Where a final city decision has been made following city administrative appeals, any further appeal shall be to Superior Court in accordance with applicable law. An appeal to Superior Court shall not stay the issuance of permits or plan approvals unless the Superior Court issues such a stay.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-32. Administrative design review procedure.**

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

(1) *Pre-application conference.* A pre-application conference with the development services department is required to determine whether the application shall be reviewed through the minor, conceptual or full design review procedure. The applicant may request informal review by the DRB as part of the pre-application process.

(2) *Minor design review.* Development subject to the minor design review procedure shall reviewed as follows.

a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall be accepted or rejected within two (2) days.

b. *Staff review.* DSD staff shall review the application to determine compliance with the applicable requirements and shall recommend to the director whether to approve or reject the application.

c. *Advisory board review.* Applications in the RND Zone shall be referred to the design review board (DRB) to be scheduled for consideration at the first available meeting for review in accordance with design criteria of Development Standard 9-05.0. If the proposed development includes exterior changes for buildings on or eligible for inclusion on the National Register of Historic Places, the application and elevation drawings will be forwarded to the Tucson-Pima County Historical Commission Plans Review Subcommittee for review and recommendation to the director. Applications for development in HPZ districts shall be referred to the district advisory board and the plans review subcommittee for review and recommendation.

d. *Decision.* The director shall make a decision on whether to accept or reject the application within seven (7) days of acceptance of the application. The director may, alternatively, determine that the application be subject to the full design review procedure.

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e. *Notice of decision.* Notice of the decision shall be provided to the applicant within three (3) days of the date of the decision and, in the case of a Historic Preservation Zone minor design review, the appropriate advisory board and the plans review subcommittee.

f. *Appeal to the board of adjustment.* If an application is denied, the applicant may appeal the decision to the board of adjustment in accordance with section 23A-61 by filing an appeal within five (5) days of the notice of decision with the zoning administrator.

(3) *Major project design review.* Development subject to major project design review shall be reviewed as follows:

a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall be accepted or rejected within four (4) days. If the application is accepted, it is forwarded to the design review board (DRB) to be scheduled for consideration at the next available DRB meeting.

b. *Review.* DSD staff shall review the application to determine conceptual compliance with the applicable RND requirements and with other code requirements including those in the LUC, building codes and this chapter. These reviews shall be preliminary and shall not establish any right on the part of the applicant. DSD staff shall report preliminary findings and recommendations to the director. The application may be referred to the DRB or appropriate historic advisory boards for preliminary review during this time period.

c. *Request for advisory board action.* At any time during this review, the applicant may request final conceptual review by the DRB and any appropriate historic board. When such a request is made, the application shall be scheduled before the appropriate advisory board for final action on the conceptual plan within thirty (30) days.

d. *Advisory board review.* Applications in the RND Zone shall be referred to the design review board (DRB) to be scheduled for consideration at the first available meeting for determination of preliminary findings and recommendations within thirty (30) days of acceptance of the application. The DRB, in formulating its preliminary findings and recommendations, shall evaluate the application based on the design criteria in Development Standard 9-05.0. If the proposed development includes exterior changes for buildings on or eligible for inclusion on the National Register of Historic Places, the application and elevation drawings will be forwarded to the Tucson-Pima County Historical Commission Plans Review Subcommittee for review and recommendation to the director within thirty (30) days of acceptance of the application.

e. *Recommendation for final approval.* Where the project is sufficiently detailed and complete, the advisory boards may recommend to the DSD director that the application is ready for final approval without being referred to the full review process.

f. *Summary of preliminary findings and recommendations.* The director shall make a summary of the preliminary findings and recommendations by the staff, DRB and TPHC plans review subcommittee. The summary shall be provided to the applicant within three (3) days of receipt of the last recommendations.

g. *Action by applicant.* Upon receipt of the preliminary findings and recommendations, the applicant incorporates the findings and recommendations into the final drawings and plans and submits these final documents for full design review in accordance with section 23A-32(4).

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h. *Final approval.* Where there is a recommendation from the advisory bodies for final approval, and where the DSD director determines that the application is sufficiently detailed and complete to establish full compliance with the RND regulations, the application may be approved without being referred for further review through the full design review procedure in accordance with section 23A-32(4).

(4) *Full design review.* Development subject to the full design review procedure shall reviewed as follows.

a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall be accepted or rejected within four (4) days. If the application is accepted, it is forwarded to the design review board (DRB) to be scheduled for consideration at the next available DRB meeting.

b. *Review.* DSD staff shall review the application to determine compliance with the applicable requirements and shall recommend to the director whether to approve or reject the application.

c. *Advisory board review.* Applications in the RND Zone shall be referred to the design review board (DRB) to be scheduled for consideration at the first available meeting for review and recommendation. The DRB, in formulating its recommendation, shall evaluate the application based on the design criteria in Development Standard 9-05.0. If the proposed development includes exterior changes for buildings on or eligible for inclusion on the National Register of Historic Places, the application and elevation drawings will be forwarded to the Tucson-Pima County Historical Commission Plans Review Subcommittee for review and recommendation to the director.

d. *Decision.* The director shall make a decision on whether to accept or reject the application based upon required design criteria and the recommendations of the DRB and the TPHC plans review subcommittee. The decision shall not earlier than fourteen (14) days and shall not be later than thirty (30) days of acceptance of the application.

e. *Notice of decision.* Notice of the decision shall be provided to the applicant within three (3) days of the date of the decision.

f. *Appeal of the director's decision.* The applicant, or in cases involving historic properties the advisory board or the plans review subcommittee, may appeal the director's decision to the board of adjustment in accordance with section 23A-61 by submitting an appeal to the director within fourteen (14) days of the date of decision. The appeal shall address and be determined upon the purpose, intent, specific regulations, specific goals and the objectives of the RND zone.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-33. Subdivision of land.**

The following procedure is for review of applications for the subdivision of land by subdivision, minor subdivision or lot split for approval in compliance with the requirements of the Tucson Code, Chapter 23, Land Use Code (LUC), Article IV.

(Ord. No. 9967, § 9, 5-17-04)

#### **Sec. 23A-33.1. Subdivision plat process.**

The subdivision of land through the platting process as provided in LUC [section] 4.1.6 shall be reviewed and approved as follows.

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(1) *Tentative plat review.* All subdivision applications, except as provided for minor subdivisions (see section 23A-33.2), require the review and approval of a tentative plat. The tentative plat shall be prepared in accordance with requirements set forth in Development Standard No. 2-03.0.

a. *Pre-application conference.* A pre-application conference with development services department (DSD) staff is encouraged.

b. *Application.* Applications for tentative plats shall be in accordance with Development Standard No. 2-03.0. Only complete applications will be accepted for processing.

c. *Review.* Tentative plats are reviewed by the community design review committee (CDRC) for compliance with city regulations in accordance with Development Standards No. 1-03.0 and 2-03.0.

1. As provided by the Land Use Code (LUC), section 4.1.7, one (1) year from the date the application was accepted for review is provided for the applicant to secure approval based on regulations in place at the time the application was accepted. Should the approval not be secured within the required timetable, the tentative plat shall be revised to comply with regulations at the time of re-submittal. The re-submittal initiates a new one (1) year time period.

2. Extensions to the time period may be granted in accordance with section 4.1.7.4 of the Land Use Code (LUC).

d. *Approval.* As provided in the Land Use Code (LUC), section 4.1.6.1, the development services department (DSD) director shall approve the tentative plat within five (5) days of receiving notification of approval from all community design review committee (CDRC) members, provided the zoning of the property permits the proposed use of the property. If the use of the property as proposed on the plat is subject to the adoption of a rezoning ordinance or includes property in a resource overlay zone that is subject to the DSD full review procedure in section 23A-51, the tentative plat cannot be approved until the effective date of the rezoning ordinance as provided in the LUC, section 4.1.6.1 or approval pursuant to 23A-51 or appeal thereof.

Upon notice that the tentative plat is approved, the applicant shall submit the number of copies of the tentative plat required by the development services department (DSD) for placement of the approval signature. A copy of the signed version will be sent to the applicant for submittal with grading plans and other development applications for this development site. The final plat, the grading plan, and other building permit applications will be reviewed by staff for conformance with the signed version of the tentative plat.

e. *Notice of decision.* Written notice of the decision shall be issued to the applicant. The notice shall include the date of approval and the expiration date of the tentative plat approval period as provided in the Land Use Code (LUC), section 4.1.7.

f. *Review after expiration of approval.* Review of plats with expired approval dates shall be in accordance with section 4.1.7.5 of the Land Use Code (LUC).

(2) *Final plat review.* All proposed subdivisions, including minor subdivisions, require the review and approval of a final plat. The final plat shall substantially conform to the approved tentative plat and be prepared in accordance with final plat requirements set forth in Development Standard No. 2-03.0.

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a. *Pre-application conference.* A pre-application conference with development services department (DSD) staff is encouraged but is not required, unless the application is for a minor subdivision plat.

b. *Application.* Submittal of an application shall be in accordance with Development Standard No. 2-03.0. The final plat may be submitted prior to, or concurrent with, the tentative plat in accordance with criteria set forth in the development standard.

c. *Review.* Final plats are reviewed by the community design review committee (CDRC) in conformance with Development Standards 1-03.0 and 2-03.0.

1. As provided by the Land Use Code (LUC), section 4.1.7, the applicant has one (1) year from the date of tentative plat approval to secure approval and have the final plat recorded. This time period provides the applicant one (1) year within which to complete the platting process under the regulations in place at the time of tentative plat approval. Should the approval not be secured within the required timetable, the tentative plat and final plat shall be revised to comply with regulations at the time of re-submittal. The re-submittal initiates a new one (1) year time period. Refer to the LUC, section 4.2.5, for expiration dates on minor subdivisions.

2. Extensions to the time period may be granted in accordance with section 4.1.7.4 of the Land Use Code (LUC).

d. *Director's recommendation.* Upon recommendation of approval from all the community design review committee (CDRC) members, the DSD director shall forward the final plat to mayor and council for consideration. If the plat is dependent on the adoption of a rezoning ordinance, mayor and council consideration of the plat shall be scheduled for the same agenda as, or on an agenda following, the mayor and council consideration of the rezoning ordinance.

e. *Mayor and council consideration.* The mayor and council consider the application for final approval in a public meeting. Mailed notice of the meeting is provided to the applicant and to all parties who have requested notice.

f. *Notice of decision.* A notice of the mayor and council's decision shall be provided by the city clerk to the applicant and any party requesting such notice.

g. *Recordation of plat.* The city clerk shall forward the final plat documents to the Office of the Pima County Recorder for recordation within five (5) days after approval of a final plat by mayor and council. If the use of the property proposed through the plat is dependent on the adoption of a rezoning ordinance, the recordation shall occur within five (5) days after the effective date of any change in zoning.

The subdivider shall pay the recording fees as specified by the Office of the Pima County Recorder. In addition to the recording fees, the subdivider shall pay the cost of providing reproducible copies of the recorded final plat to the city engineer, Tucson Water, county recorder, county assessor, and county addressing coordinator.

(Ord. No. 9967, § 9, 5-17-04)

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### **Sec. 23A-33.2. Minor subdivision platting process.**

Minor subdivision platting requirements are established by the Tucson Code, Chapter 23, Land Use Code (LUC), Article IV, Division 2.

(1) *Application and review.* The application and review procedures for minor subdivision applications shall be the same as for final plats, as provided in section 23A-45(2) of this division.

(2) *Land survey exception.* A minor subdivision may be recorded as a land survey instead of a tentative or final plat provided assurances acceptable to the director are provided for any required infrastructure. A subdivider shall have one (1) year to obtain approval and record the survey under the regulations in place at the time of application. Should the one (1) year review period expire prior to the plat being recorded, the review of the project shall be as provided in Article IV of the LUC.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-33.3. Land splits.**

The procedure for review of land splits for compliance with the requirements of the Tucson Code, Chapter 23, Land Use Code (LUC), Article IV, Division 3, shall be as provided below. Applications filed under this procedure require review and decision by the development services department (DSD) director or designee for conformance with LUC requirements.

(1) *Application.* Applications are submitted to the development services department (DSD) and shall be accepted as complete or rejected as incomplete within two (2) days. Application requirements shall be established by the DSD director and shall include the information required under the Land Use Code (LUC), section 4.3.3.1, and as listed below.

a. A completed application form.

b. A drawing or sketch showing the proposed land split. The drawing or sketch should be fully dimensioned and prepared at a scale that maintains legibility. The drawing or sketch shall show the following information:

1. The boundaries of the original parcel or lot prior to the land split.
2. The proposed lots.
3. The rights-of-way adjacent to or within the property, including streets and easements.
4. The locations and dimensions of any existing structures.
5. The setbacks of existing buildings from existing and proposed property lines.
6. The land area of each proposed lot in square feet or acreage.
7. Access to all proposed lots in compliance with section 3.2.14.5 of the Land Use Code (LUC).
8. Whether there is any shared use of facilities between properties.

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c. Documentation of the land division history of the parcel. Documentation may consist of assessor's maps and records, deeds, title history search, or any other information that would credibly show the number of land divisions that have occurred from the original parcel over the last twenty (20) years or from the date of annexation if the annexation occurred within the last twenty (20) years.

d. If applicable, a copy of any easement agreement or other legal document that permits shared facilities. For specific information on the preparation of the drawing or sketch and other submittal requirements, refer to Development Standard 2-03.0 for land splits.

(2) *Review.* Review is conducted by development services department (DSD) staff for implementation of provisions of the Land Use Code (LUC) on land splits, including the determinations provided in section 4.3.3.2 of the LUC and applicable requirements from state law.

(3) *Development services department (DSD) director's decision.* The development services department (DSD) director shall base the approval or denial of an application on the findings listed in the Land Use Code (LUC), section 4.3.3.3. Such decision shall be issued within ten (10) days of acceptance. As provided in the LUC, section 4.3.3.3.D, if a decision is not issued within the ten (10) day period, the land split shall be deemed not to constitute a subdivision.

(4) *Appeal.* The applicant may appeal the development services department (DSD) director's decision within fourteen (14) days of the date of decision. The appeal shall be considered in accordance with the board of adjustment appeal procedure, section 23A-61.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-34 Development plan review.**

A development plan is a drawing of a project site that provides detailed information as to how a proposed project will be constructed in conformance with city ordinances and regulations. When a development plan is required to be processed in accordance with the Land Use Code (LUC), Chapter 23, Tucson Code, section 5.3.8, preparation, application, review, and approval shall be as follows.

(1) *Applicability.* As provided by the Land Use Code (LUC), section 5.3.8, the development plan process is applied only on those projects whose approval is subject to the process in section 5.3.8. Typically, rezoning cases and special exception land use applications are approved subject to approval of a development plan in accordance with the procedures established in section 5.3.8 of the LUC. The purpose of the review is twofold:

a. The review provides the mayor and council with information on whether public infrastructure is currently available to the project or if public improvements have to be provided; and

b. The review assures the mayor and council that the completed project will conform with all conditions of approval applied by the mayor and council and is in substantial conformance with the concept plan presented during the public process, in addition to all city regulations applicable to the project. The plan is also reviewed to ensure the implementation of any additional requirements to which the applicant agreed at the time of approval of the rezoning or special exception land use request. Many of these requirements will be over and above the adopted regulations that are applied to projects with existing zoning.

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### (2) *Pre-application*

a. *Pre-application conference.* A pre-application conference with development services department (DSD) staff is encouraged.

b. *Preparation of drawings.* Development plans shall be prepared in accordance with Development Standard 2-05.0.

### (3) *Review procedure.* Review of development plans shall be as follows.

a. *Application.* Applications shall be in accordance with submittal requirements as provided in Development Standard 2-05.0. Development plans, which are submitted as the result of a rezoning, a special exception land use, or another similar public process application, generally require the plan to be in substantial conformance with the concept plan submitted during the public portion of those processes. Any deviation from the concept plan requires review and approval in accordance with the Land Use Code (LUC), section 5.3.8.3.B, prior to review by the community design review committee (CDRC).

b. *Review.* Development plans are reviewed by the community design review committee (CDRC) in accordance with procedures established in Development Standards 1-03.0 and 2-05.0. If notification as to the status of the review is not provided to the applicant within sixty (60) days of acceptance of the application, the development plan shall be deemed approved.

In accordance with section 5.3.8.2.A of the Land Use Code (LUC), the applicant has one (1) year from the date the application was accepted for review to obtain approval under the zoning and development requirements in effect at the time of application. Should the approval not be obtained within the allotted time period, a revised development plan, which complies with regulations in effect at that time, is to be provided if the project is to continue.

c. *Approval.* The development services department (DSD) director shall approve the development plan within five (5) days of receiving notification that all community design review committee (CDRC) members recommend approval, and it is confirmed that all conditions of approval as authorized by a rezoning, special exception land use, or other similar application have been met. This includes architectural review, dedication of right-of-way, building height, land use, or any other requirement pertinent to the individual case.

As provided by the Land Use Code (LUC), section 5.3.8.2.B, the approval is valid for one (1) year. The one (1) year time period provides the applicant the opportunity to secure permits and commence construction based on the regulations in effect during the review of the development plan. Expiration of the one (1) year time period prior to obtaining permits or commencing construction requires re-approval of the development plan based on regulations in effect at the time the development plan is resubmitted for review.

d. *Notice of decision.* A notice of decision shall be issued to the applicant. The notice shall provide the case number and title, the decision, the date of the decision, the expiration date for that approval, and the address and telephone number of the development services department (DSD).

A written notice of approval is also provided to the planning department on development plans associated with rezoning or special exception land use applications. The notice

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shall provide information on how the conditions of approval on those applications were met.

(4) *Issuance of permits.* As provided by the Land Use Code (LUC), section 5.3.8.3, any property which is subject to development in accordance with an approved development plan shall include, with the building permit documents, a copy of the approved plan bearing the appropriate approval signature. Any change to an approved development plan requires approval in accordance with the LUC, section 5.3.8.3.B.

Permits for the implementation of any development plan approved through this process and which is subject to the adoption of a rezoning ordinance cannot be issued until the rezoning ordinance is in effect. By state law, the effective date of the rezoning is thirty (30) days after the adoption of the rezoning ordinance.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-35. Residential cluster project (RCP).**

The residential cluster project (RCP) is a development alternative permitted by the Land Use Code (LUC), Chapter 23 of the Tucson Code, in various zoning districts. While the development designator requirements, such as density, building height, setbacks, and lot coverage, are provided in each zone, specific provisions for the design and development of an RCP are found in the LUC, section 3.6.1, and in Development Standard 2-10.0.

(1) *Plat required.* Section 3.6.1.7 of the Land Use Code (LUC) requires all residential cluster projects (RCPs) to be platted. Platting, submittal, and review requirements shall be the same as provided in section 23A-45, subdivision platting procedures, of this chapter and those listed in Development Standard 2-10.0.

(2) *Public notice.* Public notice that a residential cluster project (RCP) application has been filed and accepted for review shall be sent within five (5) days after acceptance of the application. The notice shall include information on the plat, such as name; case number; type of development; site size; residential density, if applicable; where the plat can be viewed by the public; and the address and telephone number of the development services department (DSD). Such notice shall contain a sentence indicating that any person may request further notification of actions concerning the RCP. A minimum period of ten (10) working days from the date the notice is sent will be provided for response. The notice shall be sent to the following.

a. All owners of property located within one hundred fifty (150) feet of the residential cluster project (RCP) site (any public rights-of-way abutting the RCP site are excluded from the measurement).

b. At least two (2) designated representatives of any neighborhood association registered with the city and located within one (1) mile of the residential cluster project (RCP) site.

c. Any other person determined by the development services department (DSD) director to be affected by the proposed residential cluster project (RCP).

(Ord. No. 9967, § 9, 5-17-04)

Secs. 23A-36--23A-39. Reserved.

## **DIVISION 2. SPECIAL ZONING REVIEW--LIMITED NOTICE PROCEDURE**

### **Sec. 23A-40. Limited notice procedure.**

Special zoning reviews which involve minor modifications to design criteria or minor construction subject to design review shall be conducted in accordance with the following general procedures. These procedures provide limited notice to parties who may be affected by the development. It is the responsibility of the applicant to provide full and complete information on the project in a timely manner and the responsibility of the affected parties to provide comments to the applicant and/or the city in a timely manner. Limited notice procedures apply to certain design development options (DDO), approval of resident artisan uses and requests for demolition of contributing, nonhistoric structures in historic districts, special exception uses approved by the DSD director, "DSD special exceptions," and modification to certain development regulations in the RND Zone.

(1) *Eligibility for limited notice procedure.* The director shall determine whether a proposed development qualifies for the limited notice procedure based upon the following.

- a. There is a minor change in the development criteria that is requested.
- b. There are few, if any, changes in the physical attributes of the property.
- c. There is a potential for impact upon the neighborhood or the adjacent properties.
- d. Where there are commercial and office developments, a--c above shall apply and there is a benefit to area properties from the proposed redevelopment of the property.
- e. There is a DSD special exception land uses designated in the LUC.
- f. There is a request for a modification of development requirements (MDR) in the RND overlay zone in accordance with LUC section 2.8.10.8.

(2) *Pre-application conference.* A pre-application conference with city staff to review requirements for the proposal under this chapter, the LUC, development standards and other applicable policies and regulations is encouraged on all limited notice procedure applications.

(3) *Pre-application neighborhood contact.* The applicant is encouraged to meet with the property owners who are entitled to notice of the application, the neighborhood association that includes the site and other interested parties prior to submittal of the application to explain the proposed development and potential impacts.

(4) *Application.* Applications shall conform to the requirements set forth in the LUC, this chapter and appropriate development standards and shall show the impact upon adjacent properties. Upon submittal of the application for minor HPZ review, a copy shall be provided to the designated member of the historic district advisory board and the designated member of the TPHC plans review subcommittee for review and comment.

(5) *Notice of submittal of the application.* Notice of the application shall be provided to property owners within fifty (50) feet of the subject site and to the neighborhood association that includes the subject site.

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(6) *Public comment period.* There shall be a period of ten (10) days following the date on which notice is provided for submission of comments on the proposal to the development services department.

(7) *Review process.* Review is conducted by the development services department staff and other agencies, committees or advisory boards as specified in this chapter, the LUC and as may be deemed appropriate by the director.

(8) *Decision by the director.* The director shall decide whether to approve or deny an application no earlier than one (1) day after the expiration of the public comment period and no later than ten (10) days after the expiration of the public comment period. The director may impose conditions for approval of the application or may decide to require that the application proceed through the procedure in accordance with Division 3 of this chapter.

(9) *Notice of the decision.* The director shall notify the applicant and parties of record in writing of the decision within three (3) days of the decision.

(10) *Appeal to the board of adjustment.* A party of record may submit an appeal of the decision to the board of adjustment in accordance with section 23A-61. A notice of intent to appeal must be received by the development services department within five (5) days after the notice of decision. The complete appeal materials must be filed within thirty (30) days of the decision.

(11) *Waiver of comment, notice of the decision and right to appeal.* The time period for public comment, for notice of the decision and for the filing an appeal may be waived if the applicant provides written documentation that all parties of record have waived one or more of these provisions.

(12) *Failure to adequately describe the project.* If, upon receiving a complaint, the zoning administrator determines that the notice required by this section, failed to accurately or adequately describe the proposed development in a manner that substantially affects other property owners, the zoning administrator may determine that the approval is invalid and that the application must obtain a new approval through the limited notice procedure in accordance with Division 3 of this chapter. The zoning administrator's decision to invalidate an approval maybe appealed by the applicant to the board of adjustment in accordance with [section] 23A-61.

(Ord. No. 9967, § 9, 5-17-04; Ord. No. 10295, § 2, 6-27-06)

Secs. 23A-41--23A-49. Reserved.

### **DIVISION 3. SPECIAL ZONING REVIEW--FULL NOTICE PROCEDURE**

Special zoning reviews which require the full notice procedure involve DSD director decisions on development applications in resource overlay zones, applications for variances before the board of adjustment and certain special exception uses that are decided by the zoning examiner, the "zoning examiner special exceptions", and mitigation plans for certain restaurants serving alcohol. This procedure provides broad notice to parties who may be affected by the development. It is the responsibility of the applicant to provide full and complete information on the project in a timely manner and the responsibility of the affected parties to provide comments to the applicant and/or the city in a timely manner. This procedure applies to applications as specified in the LUC and include the following.

(Ord. No. 10387, § 4, 4-10-07)

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### **Sec. 23A-50. Application, notice, public comment and review.**

An application for and review of a special zoning request that requires full notice procedure shall comply with the following.

(1) *Pre-application conference.* A pre-application conference with city staff to review requirements for the proposal under this chapter, the LUC, development standards and other applicable policies and regulations is required on all full notice procedure applications.

(2) *Neighborhood meeting.* The applicant shall offer to meet at a specified time and place to discuss the proposed project with the persons and entities entitled to notice of the application. The offer shall be made at least ten (10) days prior to the date of the meeting. The meeting shall occur at least fifteen (15) and not more than (60) days prior to the submittal of the application. The neighborhood meeting shall be held at a location near the property that is the subject of the application. Notice of the meeting shall also be provided by the applicant to the office of the council ward in which the subject site is located. Documentation of the offer to meet and a summary of the meeting shall be submitted with the application.

(3) *Application.* Applications shall conform to the requirements set forth in the LUC, this chapter and appropriate development standards. An application is accepted or rejected within seven (7) days of the date of receipt unless the applicant consents to additional time. An application may, in the discretion of the director, be conditionally accepted.

(4) *Public notice of the application.* Applications for full notice procedure shall be provide public notice as follows.

a. *Mailed notice.*

1. Shall be sent to the applicant, public service agencies affected by the application, all property owners within the subject site and within three hundred (300) feet of the subject site, the neighborhood association(s) which includes or are within one (1) mile of the subject site, any person or organization that has filed a request and paid a fee to receive notification of public meetings and hearings on a particular process and any other person the director determines has an interest in the matter.

2. Property owners shall be determined from the records of the Pima County Assessor that are available to the public no more than forty-five (45) days prior to the application or public hearing.

3. Shall be provided to all parties of record on a previous hearing on the same application and to other affected property owners as required by each process.

4. Shall be sent whether or not the properties are within the corporate limits of the city.

5. Adjoining land under the same ownership as the subject site and public right-of-way abutting the site shall be included as part of the subject site in determining the boundaries from which the notice area is measured.

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6. For sites within the Airport Environs Zone (AEZ), notice shall be provided to the Tucson International Airport or to the Davis Monthan Airforce Base, whichever is applicable.

b. *Posted notice.* Notice shall be posted in such locations on the subject property as to be visible to the public. The posted notice shall identify the request, the date, time and location of any public comment period or public hearings and a telephone number for the city and the applicant where further information may be obtained.

(5) *Public comment period.* There shall be a period of twenty (20) days following the date on which notice is mailed for submission of comments on the proposal to the development services department.

(6) *Review process.* Review is conducted by the development services department staff and other agencies, committees or advisory boards as specified in this chapter, the LUC and as may be deemed appropriate by the director.

(7) *Denial of plan compliance appeal.* if an application is rejected because it is not consistent with the general plan or any applicable specific plan, the rejection of the application may be appealed by the applicant to the mayor and council in accordance with [section] 23A-62.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-51. DSD full notice procedure.**

This procedure applies to approvals within overlay zones, such as, but not limited to, the Hillside Development Zone (HDZ), Scenic Corridor Zone (SCZ), Environment Resource Zone (ERZ) and Historic Preservation Zone (HPZ). This section does not apply to applications for development subject to the Major Streets and Routes Setback Zone or the Gateway Corridor Zone, to the Rio Nuevo and Downtown Development (RND) Zone or the Drachman School Overlay (DSO) Zone. This procedure also applies to development applications subject to the watercourse, amenities, safety and habitat (WASH) regulations in section 29-12 et seq. and approvals of mitigation plans for certain restaurants serving alcohol.

(1) *Application, notice, public comment and review.* The pre-application conference, neighborhood meeting, application, notice, public comment, review and denial of plan appeal shall be in conformance with section 23A-50.

(2) *Maintenance and protection.* Prior to approval of a subdivision plat or issuance of building permits, such measures as covenants, assurances, or homeowners' associations, as may be necessary to ensure the long-term maintenance and control measures, may be required.

(3) *Alteration of the property prohibited.* No grubbing, grading, excavation or construction shall occur nor shall the city issue any approval or permit for grubbing, grading, excavation or construction on any lot or parcel subject to the overlay zone unless and until the city approves a plat or plan in conformance with this chapter, the LUC and the development standards.

(4) *WASH development.* Development subject to the watercourse, amenities, safety and habitat (WASH) regulations in section 29-12 et seq. shall be subject to review and approval in accordance with the DSD full notice procedure, section 23A-51, and to the standards for review set forth in section 29-17.

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(5) *Time for issuance of decision.* The director shall not make any decision prior to the expiration of the twenty (20) day period for public comment. The director shall make a decision on applications no later than twenty (20) days after the expiration of the comment period or five (5) days after the latest recommendation from a city advisory board, whichever is later.

(6) *Notice of decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to all persons entitled to notice of the application.

(7) *Appeal.* The decision of the director may be appealed to the mayor and council on the grounds that the decision is not in conformance with the criteria established by the LUC. The notice of intent to appeal shall be in accordance with section 23A-62 and shall be filed with the city clerk no later than fourteen (14) days after the date of the decision. The complete appeal materials must be filed within thirty (30) days of the decision. A copy of the appeal shall be provided to the director at the time it is filed.

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

(Ord. No. 9967, § 9, 5-17-04; Ord. No. 10387, § 4, 4-10-07)

### **Sec. 23A-52. Board of adjustment full notice procedure.**

Applications for certain design development options, modifications of development regulations in the RND and for variances before the board of adjustment shall be in conformance with section 23A-50 and the following.

(1) *Director's recommendation.* The director shall prepare a recommendation in accordance and forward it, together with the DRB and STAC recommendations when required, to the applicant and the board of adjustment not less than five (5) days prior to the scheduled public hearing. The recommendation shall be a written report that includes the request and present plans, policies, regulations, and other information relating to the request. The recommendation shall include a recommended action by the board of adjustment or a statement that the development services department has no objection to the request.

(2) *Advisory board review.* Variance requests from the Environmental Resource Zone regulations require review by the design review board (DRB) and the stormwater technical advisory committee (STAC) as provided in LUC section 2.8.8.6. Variance requests from Scenic Corridor Zone (SCZ), the Gateway Corridor Zone, the landscaping and screening regulations, and the native plant protection regulations require DRB review as provided in LUC sections 2.8.2.14, 2.8.4.5, 3.7.7.5, and 3.8.8.3, respectively.

(3) *Board of adjustment public hearing.* The board of adjustment shall hold a public hearing in accordance with the following and the board of adjustment's rules and regulations.

a. Notice of the public hearing shall be provided at least fifteen (15) and no more than thirty (30) days before the date of the public hearing to all parties who received notice of the application. Notice shall be provided in the same manner as the application. The notice of the public hearing may be consolidated with the notice of the application.

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b. Except as permitted in the public hearing and the procedures for submission of written materials, no person shall communicate with a member of the board of adjustment regarding a matter to be decided by the board any time prior to the expiration of the time for reconsideration of a decision.

c. The chair of the hearing body or person presiding may administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party.

d. The chair or person presiding may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.

e. Comments may be given by any person, either verbally or in writing.

f. Following the close of the hearing and prior to making a decision or recommendation, the hearing body may discuss the matter and further question staff or any party submitting comment.

g. A record of the hearing is made and retained as a public record.

(4) *Board of adjustment decision.* The board of adjustment may close the public hearing or continue it to a specific date, time, and place provided the continuance is not for more than one hundred twenty (120) days. The board of adjustment shall issue a decision in accordance with the findings required for approval of the application at the conclusion of the public hearing.

(5) *Notice of decision.* Notice of the decision shall be mailed within three (3) days of the decision to the applicant and any persons requesting the notice.

(6) *Reconsideration.* The board of adjustment may consider one request for reconsideration by the applicant or a party of record, provided:

a. A written request is filed with the zoning administrator within fourteen (14) calendar days after the board has rendered its decision, and

b. The request is based upon new evidence or materials which were not presented and could not reasonably have been presented at the public hearing on the case.

(7) *Change of condition.* After a DDO or a variance has been granted by the board, the property owner/applicant may request a change to a condition for approval as imposed by the board based upon changed circumstances which affect the condition. The request shall be heard by the board and the board shall initially determine whether the request is for a minor change of condition that does not materially alter the variance and does not materially affect any other properties. If the board determines that the request is for a minor change of condition, it may decide whether to approve or deny the change. If the board determines that the request is not a minor change of condition and there are reasonable grounds for the request, the case shall be scheduled for a public hearing and notice provided in conformance with this section.

(Ord. No. 9967, § 9, 5-17-04; Ord. No. 10295, § 3, 6-27-06)

**Sec. 23A-53. Zoning examiner special exception full notice procedure.**

Applications for special exception land uses that are decided by the zoning examiner, "zoning examiner special exceptions", and for expansions of nonconforming uses and substitutions of nonconforming uses (uses not within the same land use class) shall be decided by the zoning examiner in accordance with the pre-application conference, neighborhood meeting, application, notice, public comment, review and denial of plan appeal shall be in conformance with section 23A-50 and the following.

(1) *Director's recommendation.* The director shall prepare a recommendation and forward it to the applicant and the zoning examiner not less than fifteen (15) days prior to the scheduled public hearing.

(2) *Zoning examiner's public hearing.* The public hearing shall be held before the zoning examiner within seventy (70) days of acceptance of the application. Public hearings are held in accordance with the following and the zoning examiner's rules and procedures.

a. Notice of the public hearing shall be provided at least fifteen (15) and no more than thirty (30) days before the date of the public hearing to all parties who received notice of the application. The notice of the public hearing may be consolidated with the notice of the application.

b. The zoning examiner may administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party.

c. The zoning examiner may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.

d. Comments may be given by any person, either verbally or in writing.

e. A record of the hearing is made and retained as a public record.

(3) *Conduct of the zoning examiner.* The zoning examiner shall have the ability to obtain information from all parties, including public agencies, prior to the public hearing, provided all requests for information are in writing and the request and information are included as part of the public record. The zoning examiner shall also have the ability, after the close of the public hearing, to obtain additional information or clarify information presented and of record at the hearing provided the request for additional information or clarification is requested in writing and such request and information are included as part of the record or in the report to the mayor and council.

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

(4) *Zoning examiner's decision.* The zoning examiner may close the public hearing or continue the public hearing to a specified time, date and place provided the continuance is not for more than thirty (30) days. Within five (5) days of the close of a hearing, the zoning examiner shall make a decision to approve, approve with conditions, or deny the application.

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(5) *Notice of decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to the applicant and all persons who request the notice.

(6) *Appeal.* The zoning examiner's decision may be appealed by a party of record to the mayor and council in accordance with section 23A-62 by submitting a notice of intent to appeal to the city clerk within fourteen (14) days from the date of the decision with a copy delivered to DSD. The complete appeal materials must be filed within thirty (30) days of the decision.

(7) *Change of condition.* An applicant may request a change in a condition of approval of a zoning examiner special exception land use. The request shall be reviewed by staff for recommendation to the zoning examiner. The request shall then be considered at a public hearing in accordance with subsections 3, 4, 5, 6, 7 and 8 above.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-54. Conditional use: Suspension or termination of designated permitted, secondary and special exception uses.**

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

(1) *Determination by the zoning administrator.* Upon receipt of information establishing a reasonable grounds for determining that a conditional use is operating in violation of established conditions, the zoning administrator shall initiate such further investigation as may be necessary and, based upon that investigation, shall determine if a violation of the conditions exists.

(2) *Notice of violation.* Upon determination that a violation of conditions exists, the zoning administrator shall notify the property owner and all other parties who may be identified with the operation of the use of the determination that a violation exists. The notice shall state the facts that support the determination. The notice shall further state that the use may be suspended, subject to additional conditions or revoked if the property is not brought into compliance with all use conditions. The determination shall not be final until a period of fourteen (14) days from the date it is issued or until an appeal to the board of adjustment has been completed.

(3) *Appeal to the board of adjustment.* A party who has received a determination that a conditional use will be suspended, subject to additional conditions or revoked, may appeal that decision by filing a notice of appeal with the zoning administrator within fourteen (14) days of the date of the decision. The appeal shall state the reasons for the appeal. Upon receipt of such a notice, the zoning administrator shall schedule a public hearing before the board of adjustment to consider the appeal.

(4) *Public notice.* Public notice shall be provided in accordance with section 23A-50.

(5) *Public hearing.* The board of adjustment shall conduct a public hearing to determine whether the use has complied with required conditions. The board of adjustment shall determine whether the zoning administrator's decision is supported by evidence in the record at the hearing. The board of adjustment may affirm, reverse or modify the decision of the zoning administrator and may place additional or different conditions upon the use.

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(6) *Final decision.* Where no appeal is filed or the board of adjustment affirms or modifies the decision of the zoning administrator, a determination shall become final. Failure to comply with a final order shall be a continuing violation of the Land Use Code for each day of operation that is not in full compliance.

(7) *Notice of decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to the applicant and all persons who request the notice.  
(Ord. No. 9967, § 9, 5-17-04; Ord. No. 10387, § 4, 4-10-07)

Secs. 23A-55--23A-59. Reserved.

### **DIVISION 4. APPEAL PROCEDURES**

#### **Sec. 23A-60. Appeal procedures.**

(1) *Administrative appeals.* Appeals from zoning and development decisions shall be to the board of adjustment or to the mayor and council as specified in each procedure. Appeals are limited to review of substantive zoning regulations such as design and performance criteria and required findings for approval. Where there is no further appeal to a city body is specified, the decision is the final city decision and any further appeal or special action may be filed with the Superior Court as provided by law.

(2) *Takings appeals for individual dedications and exactions or excessive reduction of property values.* Appeals to final discretionary decisions that require a dedication or an exaction as a condition for granting a development approval and appeals to the adoption or amendment of a zoning regulation on the grounds that the regulation creates an unconstitutional taking of private property shall be processed in accordance with section 23A-63.

(Ord. No. 9967, § 9, 5-17-04)

#### **Sec. 23A-61. Board of adjustment appeal procedure.**

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

(1) *Filing of an appeal.* Appeals shall be filed with the zoning administrator within the time provided by the procedure from which the decision is appealed. An appeal shall be scheduled for consideration by the board of adjustment at the next regular meeting which is at least thirty-five (35) days following the filing of the appeal. The zoning administrator may, for good cause, grant one extension to the second regular meeting after the filing of the appeal. The filing of an appeal stays the issuance of permits and approvals and all formal land use action on the development proposal subject to the appeal.

(2) *Limitation on contact with the board of adjustment.* Except for duly noticed site inspection, study and public hearing, no person shall contact or discuss the merits of any

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appeal with the members of the board of adjustment between the filing of the appeal and the final determination by the board of adjustment.

(3) *DSD director's report.* The DSD director shall forward the appeal, any additional materials provided by the appellant, the recommendations of the DRB or other applicable advisory body, any materials provided by any other party and the director's report and recommendation to the board of adjustment no later than five (5) days prior to the scheduled meeting.

(4) *Public notice.* Public notice of the board of adjustment public hearing shall be provided not less than fifteen (15) days and not more than thirty (30) days prior to the hearing. Public notice shall be to the applicant, the same parties notified of the initial application and those who provided oral or written comments in the course of the prior procedure. Notice shall be provided in the same manner as for the procedure from which the appeal is filed.

(5) *Board of adjustment public hearing.* The board of adjustment may hold a study session and shall hold a public hearing on the appeal in accordance with section 23A-52(2) and the rules and regulations of the board of adjustment. The board of adjustment shall reach a decision following the close of the public hearing. The board of adjustment may continue the public hearing for up to forty-five (45) days. The public hearing shall not be continued for more than forty-five (45) days without the consent of the applicant, regardless of who is the appellant.

(6) *Notice of the decision.* The decision by the board of adjustment shall be announced and shall be final at the time the decision is made following the public hearing. Written confirmation of the decision shall be provided within three (3) days of the date of decision to all parties of record.

(7) *Reconsideration.* The appellant, the applicant or the zoning administrator may request reconsideration of a decision on an appeal provided the request is filed with the zoning administrator within fourteen (14) days of the date the decision is announced. A request for reconsideration may be made only where there is an error in fact or law in the decision or where a party has new evidence that was not available at the time of the public hearing. The request shall be scheduled for the next regular meeting of the board of adjustment.

(8) *Issuance of permits and approvals.* No permits or development approvals based on the decision shall be issued, no inspections performed or other formal action taken, while the appeal is pending before the board of adjustment or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the board of adjustment.

(Ord. No. 9967, § 9, 5-17-04)

### **Sec. 23A-62. Mayor and council appeal procedure.**

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

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(1) *Filing of an appeal.* Appeals shall be filed with the city clerk with a copy to DSD within the time provided by the procedure from which the decision is appealed. The filing of an appeal stays the issuance of any permits or development approvals based on the decision and all formal land use action on the development proposal subject to the appeal.

(2) *Limitation on contact with the mayor and council.* No person shall contact or discuss the merits of any appeal with the members of the mayor and council between the filing of the appeal and the final determination by the mayor and council.

(3) *DRB Review.* Appeals from decisions on SCZ, ERZ and HPZ applications shall be forwarded to the DRB for review and recommendation if such review and recommendation has not occurred.

(4) *STAC Review.* Appeals from decisions on ERZ and WASH applications shall be forwarded to the stormwater technical advisory committee (STAC) for review and recommendation if such review and recommendation has not occurred.

(5) *City manager's communication.* The DSD director shall forward the appeal, any additional materials provided by the appellant, the recommendations of the applicable advisory body(ies), any materials provided by any other party and the city manager's report and recommendation to the mayor and council no later than five (5) days prior to the scheduled meeting.

(6) *Public notice.* Public notice of the mayor and council public hearing shall be provided not less than fifteen (15) days and not more than thirty (30) days prior to the hearing. Public notice shall be in accordance with section 23A-50.

(7) *Mayor and council public hearing.* The mayor and council may hold a study session and shall hold a public hearing on the appeal in accordance with the rules and regulations of the mayor and council. The mayor and council shall reach a decision following the close of the public hearing. The mayor and council may continue the public hearing for up to forty-five (45) days. The public hearing shall not be continued for more than forty-five (45) days without the consent of the property owner of the subject site.

(8) *Mayor and council decision.* Mayor and council shall decide the appeal based upon the application, testimony, evidence and other materials considered in the prior proceeding, the city managers communication and the testimony and evidence presented in the public hearing. Mayor and council shall consider the provisions, purpose and intent of the plans and regulations that apply to the appeal.

(9) *Notice of the decision.* The decision by the mayor and council shall be announced and shall be final at the time the decision is made following the public hearing. Written notice of the decision shall be provided within three (3) days of the date of decision to all parties of record.

(10) *Issuance of permits and approvals.* No permits or development approvals based on the decision shall be issued, or other formal action taken, while the appeal is pending before the mayor and council or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the mayor and council.

(Ord. No. 9967, § 9, 5-17-04)

**Sec. 23A-63. Takings appeal procedure, individual dedications and exactions and excessive reduction of property value.**

Appeals asserting that a final discretionary decision or a zoning regulation constitute a "taking" of property in violation of the Fifth Amendment to the United States Constitution (a "takings appeal") shall be processed in accordance with this section.

(1) *Decisions subject to appeal.*

a. A takings appeal may be filed by a property owner are as follows.

1. Where the property owner has a legally recognized property interest in the property that is subject to the city decision; and

2. Where a final discretionary administrative decision has been made by the development services director, zoning examiner or the mayor and council to require the dedication of property or the payment of a monetary exaction as a condition for the approval of the development application in a manner that is alleged to constitute a taking of property; or

3. A zoning regulation has been adopted or amended and is alleged to constitute a taking of property.

b. A takings appeal may not be filed by a property owner regarding the application of fees, assessments, taxes or any other dedication or exaction required by a legislative act that does not give discretion to the administrative agency or official to determine the nature or extent of the requirement.

(2) *Filing of appeal.* An appeal shall be in writing and filed with or mailed to the zoning examiner within thirty (30) days after the final action is taken. Final action on a zoning regulation shall be the effective date of the regulation. No fee shall be charged for an appeal under this section 23A-63.

(3) *Public hearing and notice of public hearing.* The zoning examiner shall schedule a public hearing on the appeal to be held no later than thirty (30) days after receipt of the appeal. Notice of the public hearing shall be mailed to the appellant and to all parties entitled to notice of the administrative decision at least ten (10) days before the appeal is heard.

(4) *Statement of city authority.* In all proceedings under this section 23A-63, the city shall provide the zoning examiner with a statement of the city's authority to require the dedication or exaction or to adopt or amend the zoning regulation. The city has the burden to establish in its statement of authority the nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development or, in the case of a zoning regulation, that the zoning regulation does not create a taking of property in violation of the Fifth Amendment to the United States Constitution.

(5) *Zoning examiner's decision.* The zoning examiner shall decide the appeal within five (5) days after the appeal is heard. If the city has met it's burden set forth in subsection (4)

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above, the appeal shall be denied. If the city has failed to meet its burden as set forth in subsection (4) above, the zoning examiner shall:

a. In the case of a dedication or exaction, modify or delete the requirement appealed under this section.

b. In the case of a zoning regulation, transmit a recommendation for further action to the mayor and council.

(Ord. No. 9967, § 9, 5-17-04)

Secs. 23A-64--23A-70. Reserved.

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### ARTICLE III. IMPACT FEES\*

**\*Editor's note:** Ord. No. 10053, § 5, added a new Art. III to read as herein set out. Section 2 of said ordinance renumbered the existing Art. III (definitions) as Art. IV. See the Code Comparative Table for a detailed analysis of inclusion. The users attention is also directed to sections 7--11 of Ord. No. 10053, which sections are not set out herein, but available for inspection in the offices of the city.

#### DIVISION 1. APPLICABILITY AND INTENT

##### Sec. 23A-71. Short title and applicability.

(1) *Short title.* This article may be known and cited as Tucson's "Impact Fee Regulations," and is referred to herein as "this article."

(2) *Applicability.* The provisions of this article shall apply to all of the territory within the corporate limits of the city.

(Ord. No. 10053, § 5, 9-27-04)

##### Sec. 23A-72. Intent.

(1) The intent of this article is to ensure that impact-generating development bears a reasonable proportionate share of the cost of improvements to the city's arterial road, regional park, police, fire and public facilities infrastructure system; to ensure that the proportionate share does not exceed the cost of providing this infrastructure; to ensure that the expenditure of impact fees results in beneficial use to the fee-generating development; to ensure that funds collected from impact-generating development are actually used to construct the infrastructure improvements within each fee category and within the benefit district that serves new development; to ensure that funds collected from impact-generating development within a specific benefit district are spent only within that benefit district; and to provide for appropriate credits to the established fees. It is further the intent of this article to use impact fees to implement the city's general plan and major streets and routes plan.

(2) It is not the intent of this article to collect any money from any impact-generating development in excess of the actual amount necessary to offset demands generated by that development for infrastructure system improvements for which the fee was paid.

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 1, 2-6-07; Ord. No. 10442, § 1, 8-6-07)  
Secs. 23A-73--23A-80. Reserved.

#### DIVISION 2. FEE CALCULATION

##### Sec. 23A-81. Fee determination.

(1) *Fee schedule.* Any person who applies for a building permit for an impact-generating development, except as otherwise provided in this article, shall pay impact fees in accordance with the following fee schedule. The impact fees have been calculated based upon the data provided by the respective impact fee studies.

(a) *Arterial road impact fee schedule.* The arterial road impact fee for residential structures, not including mobile homes and motel/hotel structures, as shown on the fee

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schedule below, represents a rate of ninety-three (93) percent of the full cost as determined by the impact fee study. If any credit is due pursuant to section 23A-82(2) and (3), the amount of such credit shall be deducted from the amount of the fee to be paid at the time the fee is paid.

(b) *Regional park impact fee schedule.* The regional park impact fee is eighty cents (\$0.80) per square foot of new residential development. This fee is based on the impact fee study and the data regarding the median household size provided in the public hearing. The regional park fee is not subject to the reduction of the fee provided in section 23A-81(8).

(c) *Police, fire and public facilities impact fee schedule.* Impact fees, shall be assessed for the impact of new development on police, fire and public facilities infrastructure needs. The police, fire and public facilities impact fees shall be assessed in accordance with the schedule below.

TABLE INSET:

Impact Fee Schedule				
		Unit	Fee/Unit	Central District Fee/Unit
Roads	Residential			
	Single-Family/Multi-Family	Sq. Ft.	\$ 2.00	\$ 1.54
	Mobile Home	Dwelling Unit	2,553.00	1,965.00
	Non-Residential			
	General Retail/Commercial	1,000 Sq. Ft.	3,976.00	3,061.00
	Hotel/Motel	Room	1,203.00	926.00
	Office/Institutional	1,000 Sq. Ft.	4,724.00	3,637.00
	Industrial/Warehousing	1,000 Sq. Ft.	2,039.00	1,570.00
Parks	Residential	Sq. Ft.	0.80	
Police	Residential			
	Single-Family	Dwelling Unit	643.00	
	Multi-Family	Dwelling Unit	476.00	
	Mobile Home	Dwelling Unit	552.00	
	Non-Residential	1,000 Sq. Ft.	699.00	
Fire	Residential			
	Single-Family	Dwelling Unit	469.00	
	Multi-Family	Dwelling Unit	346.00	

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	Mobile Home	Dwelling Unit	402.00	
	Non-Residential	1,000 Sq. Ft.	269.00	
Public Facilities	Residential			
	Single-Family	Dwelling Unit	477.00	
	Multi-Family	Dwelling Unit	353.00	
	Mobile Home	Dwelling Unit	410.00	
	Non-Residential	1,000 Sq. Ft.	259.00	

(2) *Annual fee adjustment.* Impact fees shall be annually adjusted for inflation and cost increases based upon the most recent data available as of December 31st of each year. The annual adjustment shall then become effective on March 1st of each succeeding year. Annual adjustments for road and park fees shall be first assessed in March, 2008. Annual adjustments for police, fire and public facilities fees shall first be assessed in March, 2009, for residential uses and in March, 2010, for nonresidential uses. The impact fee adjustment pursuant to this section 23A-81(2) shall not exceed five (5) percent for the initial adjustment and each annual adjustment thereafter.

(a) The cost adjustment for arterial road and park impact fees shall be based on the Engineering News Report, Construction Cost Index or comparable successor index if that index is discontinued. The adjustment shall be computed by:

1. Calculating the percent increase in the Engineering News Report, Construction Cost Index between the most recently published Engineering News Report, Construction Cost Index at the time of the adjustment and the Engineering News Report, Construction Cost Index used for the previous calculation; and
2. Multiplying the percentage derived from section 23A-81(2)(a)(1) above times the impact fee; and
3. Adding the amount derived in section 23A-81(2)(a)(2) above to the impact fee.

(b) The cost adjustment for police, fire and public facilities fees shall be as follows:

1. Eighty-five (85) percent of the adjustment of police impact fees shall be determined based upon the increase in the Construction Cost Index and fifteen (15) percent shall be determined based upon the increase in the Consumer Price Index since the last adjustment.
2. Seventy (70) percent of the adjustment of the fire impact fees shall be determined based upon the increase in the Construction Cost Index and thirty (30) percent shall be determined based upon the increase in the Consumer Price Index since the last adjustment.

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3. Ninety-six (96) percent of the adjustment of the public facility impact fees shall be determined based upon the increase in the Construction Cost Index and four (4) percent shall be determined based upon increase in the Consumer Price Index since the last adjustment.

(c) Any adjustment for revenue credits shall take into account any additional revenue sources for the projects for which impact fees are to be used and deduct any increased revenue credit in accordance with the formula used to establish the fee set forth in section 23A-81(1) above.

### (3) *Determination of applicable category.*

(a) In determining the applicable road impact fee category for a specific use, the impact fee administrator shall determine the most appropriate category based upon (1) the impact generated by the development, (2) comparable land use classifications under the Land Use Code and (3) the comparable trip generation rates contained in the most current edition of the report titled Trip Generation, prepared by the Institute of Transportation Engineers (ITE), or articles or reports appearing in the ITE Journal. If the impact fee administrator determines that the proposed use is not within any category listed on the fee schedule, the administrator may calculate the road impact fee administratively based on the formula in section 23A-85 and available data, or require that the applicant prepare an independent fee calculation study pursuant to section 23A-85. If the impact fee administrator determines the road impact fee administratively and the applicant does not agree with the determination, the applicant may prepare an independent fee calculation study. An applicant may also appeal a determination of a road impact fee pursuant to section 23A-92(2).

(b) In determining the applicable regional park, police, fire and public facilities impact fees category for a specific use, the impact fee administrator shall determine the most appropriate category based upon (1) the impact generated by the development and (2) the comparable land use classifications. If an applicant disagrees with the calculation of the applicable regional park, police, fire or public facilities fees, that decision may be appealed pursuant to section 23A-92(1). If an applicant disagrees with the determination of the applicable category for the assessment of regional park, police, fire or public facilities fees, that decision may be appealed pursuant to section 23A-92(2). An independent fee calculation may not be made for regional park, police, fire and public facilities impact fees.

(4) *Fee assessed on primary use.* If there is more than one (1) primary use within a building, the impact fees shall be calculated separately for the two (2) primary uses and the results summed. In many instances, a particular structure may include auxiliary uses associated with the primary land use. For example, in addition to the actual production of goods, manufacturing facilities usually also have office, warehouse, research, and other associated functions. Impact fees generally are assessed based on the primary land use. If the applicant can document that a secondary land use accounts for over twenty-five (25) percent of the gross floor area of the structure, and that the secondary use is not included in the data used for the calculation of the primary use, then the impact fees may be assessed based on the aggregated square footage of the primary and secondary land use.

(5) *Net impact of redevelopment.* If a new impact-generating development is an expansion, redevelopment or modification of an existing development or a development that had been in existence within the prior ten (10) years, impact fees shall be assessed for the amount of square footage that exceeds the prior square footage of the structure. Increases in square

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footage of residential structures that do not create new dwelling units shall not be assessed an impact fee.

(6) *No refund for redevelopment.* If an expansion, redevelopment or modification results in a net decrease in the impact fee for the new development as compared to the existing or prior development, there shall be no refund of impact fees previously paid.

(7) *Administrative charges.* The city shall initially assess a surcharge of fifty dollars (\$50.00) to cover administrative expenses. The administrative charge may not be paid with impact fee credits. The administrative charge shall be in addition to the amount of the fee that is due and shall be paid at the same time as the fee. The administrative fee may be amended to reflect the actual administrative costs by the development services department. Any amendment shall be adopted as a development standard with the approval of the mayor and council.

(8) *Fee assessed in central benefit district.* The arterial road impact fee assessed in the central district in accordance with section 23A-81(1) is seventy-seven (77) percent of the fee assessed in the other districts based upon the reduced traffic impact of development within central benefit district documented in the impact fee study. Credits, pursuant to section 23A-82(2) and (3), shall be determined based upon the full value of each credit. This reduction does not apply to impact fees other than the impact fee for arterial roadways.

(9) *Cap on residential fees.* The impact fees for residential uses that are calculated based upon square footage shall be capped at three thousand (3,000) square feet for each dwelling unit.

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 2, 2-6-07; Ord. No. 10442, § 2, 8-6-07)

### **Sec. 23A-82. Credits.**

(1) *Public revenue credits.* Public revenue credits have been deducted in the calculation of the impact fee amount stated in section 23A-81(1) as set forth in the respective impact fee studies.

(2) *Public funding credits.*

(a) Where all or a portion of the construction of a development is directly funded with appropriated public funds duly authorized by a local, state or federal government, a public funding credit shall be deducted from the impact fee calculated in section 23A-81, or in the calculation of the fee pursuant to section 23A-85, prior to the assessment and payment of the fee. The public funding credit shall be a percentage of the impact fee and shall apply equally to all impact fees. The percentage shall be determined based upon the amount of public monies as a percentage of the total cost of the construction of the development project utilizing public funding. The public funding credit shall not apply to guaranteed loans, tax credits or other indirect government financing.

(b) Where construction of infrastructure which is an eligible expenditure of impact fees in accordance with section 23A-84 is financed by a municipal improvement district or community facilities district, or other similar special taxing district with governmental authority, a public funding credit shall be deducted from the impact fee as calculated in section 23A-81 or as calculated in section 23A-85 after the fee calculation and prior to the assessment and payment of the fee. The public funding credit shall be a percentage of the impact fee. The percentage shall be determined based upon the amount of public

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monies that are to be used as a percentage of the construction cost of the eligible infrastructure utilizing public funding.

(3) *Site-specific credits.* Credits against the impact fees shall be provided for contributions towards the infrastructure capacity improvements as defined herein regardless of whether the infrastructure is listed in the city's capital improvement plan and the impact fee projects plan. Both the improvements and the use of the credit must be within the same benefit district as the development for which the credits are claimed. Credits shall be submitted and approved in accordance with the applicable development standard.

(a) *Credit eligibility.* For roads, credit will be given for capacity improvements to the arterial road system that are required and approved by the city. Capacity improvements are defined as the construction of additional through vehicular travel lanes, and the construction of new traffic signals, left turn lanes, bus pull-outs, and drainage structures that add capacity to the arterial roadway system. Said arterial roadway capacity improvements shall not include site-specific and site-fronting safety and access improvements required by existing codes, standards, ordinances or guidelines. Providing required paved, all-weather access to the developing property shall not be considered a capacity improvement. For parks, credit will be given for dedication of land for regional park facilities or capacity improvements to regional park facilities provided by the developer of the type for which the impact fee is assessed. For police, fire and public facilities, credit will be given for dedication of land and other infrastructure capacity improvements for the respective facilities that are comparable to those upon which the fee is calculated. Capacity improvements are defined as improvements that result in a net expansion of the type of infrastructure that was used in the respective impact fee studies to calculate each impact fee. A proposal for dedication of land or construction of infrastructure improvements must be approved by the city before it is eligible for credit.

(b) *Claims for credit and credit calculation.* The city requests that the developer submit a preliminary claim for credit during the development review process, prior to the approval of a development plan or final plat. Any credit for improvements in conjunction with a rezoning shall be agreed to in the rezoning conditions and approved by the impact fee administrator. All associated costs of eligible capacity improvements will be considered for credit. Associated costs include the design, contract administration, and construction costs for improvements and include all elements of the roadway that are approved by the city such as medians, curbs, sidewalks, turn lanes, landscaping and public art. The value of road credits shall be calculated using a table of fixed roadway improvement costs provided by the city to the developer. The value of credits shall be calculated at the same time that the impact fee is calculated and shall be deducted from the assessed fee to determine the amount due. The developer shall submit a request for credit in such form as maybe prescribed by the impact fee administrator, which shall include completed engineering drawings and specifications, and shall provide such other information as is necessary for the impact fee administrator to clearly identify what portion of the assumed cost of eligible infrastructure improvements will be constructed, and the amount of the credit to which the developer is entitled.

(c) *Effective upon city acceptance.* Approved credits shall generally become effective when the improvements have been completed and have been accepted by the city. Credits may be applied in advance against impact fees for the same development prior to the acceptance of the improvements by the city provided that no more than seventy-five (75) percent of the total credits are used prior to acceptance and that the developer is liable for any difference between the credits that are advanced and the final amount of credits approved after acceptance of improvements.

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(d) *Limitation on credits.* No credit will be given for improvements which are not included in the calculation of the impact fee.

(e) *Land valuation.* Credit for dedication of land for regional parks, police, fire or public facilities shall be based on the value of the land to be dedicated. The value of any such land required to be dedicated during the subdivision process shall be based upon the "fair market value" of the land at the time of approval of the final plat. The value of any land required to be dedicated as part of a rezoning or other approval shall be based on the value of the land at the time of the ordinance adoption. The value shall be determined by a certified appraiser in accordance with standard city real estate appraisal procedures.

(f) *Allocation of credits within a development.* Unless otherwise specified in accordance with the applicable development standard or a development agreement, in the event that the impact-generating development for which credits have been issued is sold to different owners, the credits usable by each new owner shall be calculated in terms of a percentage of the impact fees that would otherwise be due from the entire development. If the total amount of development is not known, the maximum potential development under existing development regulations shall be assumed. This percentage reduction will be applied to all impact fees assessed within the development until the total amount of the credits is exhausted or the development is completed, whichever occurs first.

(g) *Allocation of credits outside a development.* In accordance with a credit agreement between the city and the developer of a property, all or part of the credits generated by a specific development may be allocated to other developments within the benefit district in which improvement occurs. In evaluating requests to allocate credit outside a development, the city will determine whether the capacity improvements are necessary and appropriate in the context of the overall impact fee program and assess the need for and timing of the proposed facility in light of development taking place in the area. Credit agreements under this subsection shall be approved by the city manager who may refer them to the mayor and council.

(h) *Credits prior to full fee assessment.* Applicants may also obtain credits for eligible infrastructure system improvements completed prior to the effective date of this article. Applicants may use such credits to reduce the impact fees due after the effective date of this article for improvements generated by the same impact-generating development for which the credits were issued. In the event that the impact-generating development for which the credits are claimed is partially completed, the amount of the credits shall be reduced by the amount of the impact fees that would have been charged for the completed portion of the development had this article been in effect. In the event that the impact-generating development project has been fully completed, no credits shall be issued.

(i) *Credits for expenditures prior to annexation.* Credits may be claimed for eligible expenditures made prior to annexation into the city provided that the improvements are within the applicable benefit district at the time the credit is claimed. Credits under this subsection shall be a percentage of the full credit that is equal to the percentage of the development that will be subject to the fees. Thus if sixty (60) percent of the development is subject to the fees under this article, the project is eligible for sixty (60) percent of the credits attributed to the development.

(j) *Claims filed before building permits.* Credits must be approved prior to the application for the initial building permit. Credits may be approved by development

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agreement prior to the initial building permit. Any right to credit not claimed prior to the issuance of a building permit shall be deemed to be waived. Credits may be amended after assessment of the impact fee in accordance with section 23A-91(3).

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 2, 2-6-07; Ord. No. 10442, § 2, 8-6-07)

### **Sec. 23A-83. Exemptions and waivers.**

(1) *Exemptions.* The following shall be exempt from the terms of this article. An exemption must be claimed at the time of application for a building permit.

(a) *Residential alterations.* Alterations of an existing dwelling unit where no additional dwelling units are created.

(b) *Residential replacement.* Replacement of a destroyed, partially-destroyed or moved residential building or structure with a new building or structure that does not create additional dwelling units.

(c) *Nonresidential replacement.* Replacement of destroyed, partially-destroyed or moved nonresidential building or structure with a new building or structure and same gross floor area.

(d) *Nonresidential change of use.* A change of use for a nonresidential structure that does not result in any increase in gross floor area of the structure.

(e) *Government projects.* Development by a governmental entity for a governmental purpose on property owned by a governmental entity.

(2) *Waivers.* Impact fees shall not be waived except in accordance with the provisions set forth in this subsection. When impact fees are waived, the city shall transmit non-impact fee funds to cover the waivers into the appropriate impact fee account within the fiscal year in which the waiver is granted.

(a) *Affordable housing.* Impact fees will be waived for non-profit affordable housing providers whose residential development is certified by the City of Tucson Community Services Department to be affordable to households that earn under one hundred (100) percent of the area median income and that further the goals of the city's Affordable Housing Strategies.

(b) *Development incentives.* Through a development agreement between the city and the developer of a property, partial or full impact fee waivers may be granted for projects that provide a public benefit to the City of Tucson and result in a net financial benefit to the city.

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 2, 2-6-07; Ord. No. 10442, § 2, 8-6-07)

### **Sec. 23A-84. Expenditure of funds.**

Impact fees collected by the city shall be spent as follows.

(1) *Segregation of funds.* Separate interest-bearing accounts for each category of impact fee funds that are distinct from the general fund of the city are hereby created for each benefit district, and the impact fees collected from each benefit district will be deposited in the separate fund for the benefit district from which the impact fees are collected. Separate funds

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shall be established for each benefit district for arterial road impact fees and for regional park impact fees. Separate funds shall be established for a single city-wide benefit district for police, fire and public facilities impact fee funds.

(2) *FIFO accounting.* Monies in each impact fee account shall be considered to be spent in the order collected, on a first in/first out basis.

(3) *Benefit districts.* Impact fees shall be spent only within the benefit district in which the development that generates the impact fee occurs. For the purposes of administering this article, all territory within the incorporated boundaries of the city shall be included in a benefit district. Expenditure of funds within a benefit district, and within the city limits for city-wide benefit districts, shall only be for the infrastructure to support new development.

(a) *Road and park benefit districts.* The benefit districts for road and park impact fees are set forth on the impact fee benefit district map on file with the development services department. The area of each benefit district shall extend to the center line of the street which forms the boundary of the district. Impact fees shall be used only for improvements that are located within the same benefit district in which the development occurs which is the subject of the impact fee and from which the impact fees have been collected.

(b) *Police, fire and public facilities benefit districts.* The benefit district for the police, fire and public facilities impact fees shall be all property within the city limits.

(4) *New territory.* Upon annexation of new territory into the city, newly annexed territory shall be included in existing road and park benefit districts in the following manner based on the alignments as shown on the major streets and routes map. Newly annexed territory shall be included in the single city-wide benefit district for police, fire and public facilities.

(a) Property east of Shannon Road and Interstate 10, north of Fort Lowell Road and west of Alvernon Way shall be in the central benefit district.

(b) Property west of Shannon Road and north of Wetmore, west of Interstate 10 between Wetmore and Alvernon Way, west of Alvernon Way and north of Hughes Access Road to western city limit shall be in the west benefit district.

(c) Property east of Alvernon Way, north of Los Reales Road between Alvernon Way and Wilmot Road and north and east of Golf Links Road to the city limit shall be in the east benefit district.

(d) Property east of Wilmot Road, south of Golf Links Road and northeast of Interstate 10 from Wilmot Road to the southeast city limit shall be in the southeast benefit district.

(e) Property south of Hughes Access Road and west of Alvernon Way, and property south of Los Reales Road and west of Interstate 10 shall be in the southlands benefit district.

(5) *Identification of eligible projects.* Impact fees shall be spent only upon eligible projects that provide the same type of capacity infrastructure improvements within each impact fee category as those used to calculate the fee in the respective impact fee studies and that are within the benefit district in which the fee is collected. The city's capital improvement plan shall include an impact fee projects plan that lists the projects within each benefit district which are eligible for use of impact fees. The impact fee projects plan shall be reviewed on

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an annual basis as part of the capital improvement plan. The impact fee projects plan may be modified following a public hearing by the mayor and council.

(6) *Public hearing.* The impact fee projects plan shall be established following a public hearing on proposed projects prior to or concurrent with the annual approval of the capital improvement plan.

(7) *Eligible expenditures.* The monies used in each impact fee account shall be used only for the following purposes.

(a) To pay for the cost of capital improvements of the type reflected in the title of the account which increase service capacity (including without limitation costs for design, engineering, construction and administration); and

(b) To pay for the acquisition of real property for regional parks, police, fire or public facilities; and

(c) To pay debt service on any portion of any current or future general obligation bond or revenue bond issued after the effective date of this article and used to finance improvements of the type reflected in the title of the account.

(8) *Ineligible expenditures.* The monies in each impact fee account shall not be used for the following.

(a) Rehabilitation, reconstruction, replacement or maintenance of existing facilities except to the extent that the projects increase the capacity to serve new development;

(b) Ongoing operational costs; or

(c) Except as provided in section 23A-84(9) below, debt service for any past, current or future general obligation bond or revenue bond used to pay for any improvements commenced prior to the effective date of this article.

(9) *Joint governmental financing.* Where there is an intergovernmental agreement approved by the mayor and council that provides for the use of non-city public funds for capacity improvements on city arterial roads, regional parks, police, fire or public facilities within the city, impact fees may be used to contribute to the overall cost for such improvements, including reimbursement to another governmental entity, provided that the improvements, except for the funding from another jurisdiction, satisfy all criteria for expenditure of impact fees and provided the total amount does not exceed the amount of fees that could have been applied to the improvements in the absence of the funding by the other governmental entity.

(10) *Special development agreement provisions.* Where a development agreement approved by the mayor and council provides for reimbursement to a developer for eligible infrastructure improvements, the reimbursement may be paid from impact fees for the same benefit district in which the improvements are located as fees are collected. Any such reimbursement shall be deducted from the amount of available credits.

(11) *Master planned developments.* Development of tracts of land as master planned developments in conformance with the general plan may provide through a development agreement approved by the mayor and council for alternative calculation and assessment of impact fees, credits and designation of projects to be funded provided the alternative fees are not less than the fees that would be charged under section 23A-81 and the funding of eligible

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infrastructure is not less, respectively, than the funding that would be provided under section 23A-81.

(12) *Time for expenditure.* Impact fees collected by the city shall be spent upon eligible improvements within a reasonable period from the date of collection. Impact fees which are not spent within the same year that they are collected may be spent in subsequent years as provided above. The city shall annually report on the amount of impact fee within each benefit district which are carried over from previous years.

(13) *Advance expenditure of fees.* Where the city or another governmental entity expends funds on capacity improvements which are eligible for use of impact fees, impact fees collected within the same benefit district may be used after collection to reimburse the governmental fund which advanced the money for the cost of the capacity improvements.

(14) *Designation of arterial roads.* Arterial roads shall be designated in the city's major streets and routes plan which shall be updated annually at least thirty (30) days prior to the public hearing on the eligible projects provided for in section 23A-84(6). During the time period between the adoption of each annual update to the major streets and routes plan, the director of the department of urban planning and design may designate any road that meets the criteria for an arterial road as an arterial road for the purposes of this article. Such designation shall be proposed for incorporation into the next updated major streets and routes plan. In the event that a designation by the director is not incorporated into the next adopted major streets and routes plan, any impact fees or credits that were assessed or credited during the time of the designation shall not be effected by the change in designation.

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 2, 2-6-07; Ord. No. 10442, § 2, 8-6-07)

### **Sec. 23A-85. Independent fee calculation.**

The impact fee may be computed by the use of an independent fee calculation study for arterial road impact fees at the election of the applicant, or upon the request of the impact fee administrator, for any proposed development that is not within a standard category in the most current edition of the report titled Trip Generation, prepared by the Institute of Transportation Engineers (ITE), or articles or reports appearing in the ITE Journal, that were used to obtain the average fee for the categories listed on the fee schedule. This section does not apply to fee calculation in accordance with section 23A-84(10) and (11).

(1) *Cost of study; fee.* The preparation of the independent fee calculation study shall be the sole responsibility and cost of the applicant. Any person who requests to perform an independent fee calculation study shall pay an application fee for administrative costs associated with the review and decision on such study.

(2) *Content of study.* The independent fee calculation study shall be based on the same service units, formulas, level of service standards and unit costs for facilities used in the impact fee study, and shall document the methodologies and assumptions used. The scope of the study shall be approved in advance by the impact fee administrator and shall be prepared by professionals with appropriate credentials who shall use commonly accepted methodologies and assumptions that comply with the requirements of applicable law and which document the conclusions of the study. For the road impact fee, the fee calculation shall use trip generation rates contained in the most current edition of the report titled Trip Generation, prepared by the Institute of Transportation Engineers (ITE), or articles or reports appearing in the ITE Journal. The "cost" for improvements and the public revenue credits to

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be calculated in the formula shall be based upon the most current data available from the city.

(3) *Road impact fee formula.* The road impact fees shall be calculated according to the following formula:

TABLE INSET:

FEE	=	$VMT \times NET\ COST/VMT$
Where:		
VMT	=	$TRIPS \times \% \text{ NEW} \times LENGTH \div 2$
TRIPS	=	Trip ends generated by the development during the PM peak hour
% NEW	=	Percent of trips that are primary trips, as opposed to pass-by or diverted-link trips
LENGTH	=	Average length of a trip on arterial road system
$\div 2$	=	Avoids double-counting trips for origin and destination
NET COST/VMT	=	$COST/VMT - REVENUE\ CREDIT/VMT$
COST/VMT	=	$COST/VMC \times VMC/VMT$
COST/VMC	=	Average cost to create a new VMC based on historical or planned improvements
VMC/VMT	=	The system-wide ratio of capacity to demand in the major road system
REVENUE/CREDIT/VMT	=	Revenue credit per VMT, based on revenues to be generated by new development

(4) *Independent fee approval.* The impact fee administrator determines whether the independent fee study and calculation are in conformance with this article and assesses impact fees accordingly.

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 2, 2-6-07)

### **Sec. 23A-86. Assessment and payment of fees.**

Impact fees shall be assessed and paid as follows.

(1) *Residential development.* Commencing July 15, 2005, residential road and park impact fees shall be assessed and paid prior to, and as a condition of, the issuance of a building permit for construction of a structure. For the period from July 15, 2005, through and including January 15, 2006, impact fees on residential development shall be initially assessed at a rate of fifty (50) percent of the fee listed in section 23A-81(1). The fee shall be fully assessed and paid thereafter. Residential police, fire and public facilities impact fees shall be assessed commencing January 16, 2008.

(2) *Nonresidential development.* Nonresidential impact fees shall be assessed on the basis of square footage in the following manner:

a. Commencing July 15, 2006, and prior to January 16, 2008, road impact fees on new nonresidential development shall be assessed at fifty (50) percent of the fee established

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in section 23A-81(1) and shall be paid prior to, and as a condition of, the issuance of a building permit for a project.

b. Commencing January 16, 2008, road impact fees on all new nonresidential development shall be assessed at one hundred (100) percent of the fee established in section 23A-81 and shall be paid prior to, and as a condition of, the issuance of a building permit for a project.

c. Commencing January 16, 2009, police, fire and public facilities fees shall be assessed on all nonresidential development in accordance with section 23A-81 and shall be paid prior to, and as a condition of, the issuance of a building permit for a project.

d. For the purposes of this section, nonresidential impact fees will be due and payable on new nonresidential development when a building permit is issued unless the permit is for a shell building where occupancy has not yet been defined. For shell buildings where occupancy has not yet been defined, the impact fees will be due and payable when a Tenant Improvement permit is obtained on all or a portion of the space within the shell building.

e. Assessment of fees for a building permit for redevelopment of existing structures shall be assessed in accordance with section 23A-81(5).

f. Exemptions:

1. Subsection 23A-86(2)a. shall not apply to a building permit where the square footage to be constructed is based upon a new or amended development plan that was accepted for submittal by DSD prior to April 1, 2006, approved by October 1, 2006, and which is not expired as provided in LUC section 5.3.8.2.

2. Subsection 23A-86(2)(b) shall not apply to a tenant improvement permit where the square footage to be constructed is based upon a new or amended development plan that was accepted for submittal by DSD prior to April 1, 2006, approved by October 1, 2006, and which is not expired as provided in LUC section 5.3.8.2; and where the permit for the shell building is obtained before January 16, 2008 and the tenant improvement permit is obtained within twelve (12) months of the permit for the shell building.

3. Subsection 23A-86(2)(c) shall not apply to a building permit issued prior to January 16, 2010, where the square footage to be constructed is based upon a new or amended development plan or plat that was accepted for submittal by DSD prior to July 10, 2007, approved by January 10, 2008, and which is not expired as provided in LUC section 5.3.8.2.

g. Prior to and as a condition of the issuance of every certificate of occupancy after July 16, 2006, the applicant shall demonstrate that the structure to be occupied has conformed to this article. Where the original assessment of impact fees was less than the impact fees that would be assessed based upon the use specified in the certificate of occupancy, the difference between the two shall be paid by the applicant prior to the issuance of the certificate. No refunded fees shall be provided where the original use was assessed higher fees. A certificate of occupancy shall include both temporary and permanent certificates of occupancy and certificates for all or a portion of a structure.

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(3) This article shall not be altered or extended by or subject to a Protected Development Rights Plan under section 5.3.10.

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10095, § 1, 12-6-04; Ord. No. 10256, §§ 2, 3, 2-28-06; Ord. No. 10442, § 2, 8-6-07)

**Editor's note:** It should be noted that § 5 of Ord. No. 10256 provides for an effective date of May 30, 2006, for section 23A-86(2), (3).

### **Sec. 23A-87. Reserved.**

**Editor's note:** Ord. No. 10372, § 2, adopted Feb. 6, 2007, repealed § 23A-87, which pertained to offsets and derived from Ord. No. 10053, § 5, adopted Sept. 27, 2004. The user's attention is directed to § 23A-82(3), site-specific credits.  
Secs. 23A-88--23A-90. Reserved.

## **DIVISION 3. GENERAL PROVISIONS**

### **Sec. 23A-91. Miscellaneous provisions.**

(1) *Other development requirements.* Nothing in this article shall restrict the city from requiring the construction of reasonable project improvements required to serve the development project, whether or not such improvement are of a type for which credits are available under 23A-82(3).

(2) *Record-keeping.* The impact fee administrator shall maintain accurate records of the impact fees paid and any other matters that the city deems appropriate or necessary to the accurate accounting of such fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice. Records pertaining to individual developments may be destroyed three (3) years after the completion of the development or the expenditure of all credits, whichever is later.

(3) *Amendment of impact fee assessments.* An impact fee may be amended after it has been assessed and paid where there is an error or mistake in the calculation of the fee or applicable credits, or where the actual cost of credits changes after the calculation of the credits. Any amounts overpaid by an applicant shall be refunded by the impact fee administrator to the applicant within thirty (30) days after the acceptance of the recalculated amount. Any amounts underpaid by the applicant shall be paid to the impact fee administrator within thirty(30) days after the acceptance of the recalculated amount. In the case of an underpayment to the impact fee administrator, the city may not issue any additional permits or approvals for the project for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the city are not paid within such thirty (30) day period, the city may also rescind any permits issued in reliance on the previous payment of such impact fee.

(Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 3, 2-6-07)

### **Sec. 23A-92. Appeals and interpretations.**

(1) *Appeals.* Any individual calculation of an impact fee or credit made by the impact fee administrator charged with the administration of any part of this article may be appealed in accordance with the mayor and council appeal procedure, section 23A-62. Appeals shall be

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limited to disputes regarding the calculation of the fee due or the amount of a credit due. Appeals shall be submitted in writing to the development services department director within fourteen (14) days of a decision and no later than fourteen (14) days after the determination of the final fee to be charged for a project.

(2) *Interpretations.* Any dispute or challenge to the interpretation of this article shall be determined by the zoning administrator. The zoning administrator's decision may be appealed within thirty (30) days in accordance with the board of adjustment appeal procedure, section 23A-61.

(3) *Takings appeal.* Any assertion that the assessment of the impact fee on an individual development constitutes an unconstitutional taking may be appealed in accordance with the takings appeal procedure, section 23A-63.

(4) *Building permits.* Building permits may be issued during the pendency of an appeal if the applicant pays the fee at the time the appeal is filed. Upon final disposition of an appeal, the fee shall be adjusted in accordance with the decision rendered and a refund if applicable. (Ord. No. 10053, § 5, 9-27-04; Ord. No. 10372, § 3, 2-6-07)

### **Sec. 23A-93. Violation.**

Furnishing false information on any matter relating to the administration of this article, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this article. (Ord. No. 10053, § 5, 9-27-04)

### **Sec. 23A-94. Severability.**

If a provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. (Ord. No. 10053, § 5, 9-27-04)

Secs. 23A-95--23A-100. Reserved.

## **ARTICLE IV. DEFINITIONS\***

\***Editor's note:** Formerly Art. III. See editor's note at Art. III.

## **DIVISION 1. GENERAL PROVISIONS\***

\***Editor's note:** Section 3 of Ord. No. 10053 renumbered Art. IV, Div. 1, §§ 23A-71--23A-73 as Art. IV, Div. 1, §§ 23A-101--23A-103, respectively.

### **Sec. 23A-101. Purpose.**

The purpose of this article is to promote consistency and precision in the interpretation of this chapter. (Ord. No. 9392, § 2(3.1.1), 5-22-00; Ord. No. 10053, § 3, 9-27-04)

### **Sec. 23A-102. General rules of application.**

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(a) *Meaning and construction.* The meaning and construction of words and phrases as set forth apply throughout the chapter, except where the context of such words or phrases clearly indicates a different meaning or construction.

(b) *Land Use Code (LUC).* Where the word or term is applicable to the Land Use Code (LUC), the definition in the LUC applies.

(Ord. No. 9392, § 2(3.1.2), 5-22-00; Ord. No. 10053, § 3, 9-27-04)

### **Sec. 23A-103. General rules for construction of language.**

The following general rules of construction apply to the textual provisions of the chapter.

(1) *Headings.* Section and subsection headings do not govern, limit, modify, or in any manner affect the scope, meaning, or intent of any provision of the chapter.

(2) *Illustration.* In case of any difference of meaning or implication between the text of any provision and any illustration, the text prevails.

(3) *Tenses and numbers.* Words used in the present tense include the future, and words used in the singular include the plural and the plural the singular, unless the context clearly indicates contrary.

(4) *Conjunctions.* Unless the context clearly indicates contrary, the following conjunctions will be interpreted as follows:

a. "And" indicates that all connected items or provisions apply.

b. "Or" indicates that the connected items or provisions may apply individually or in any combination.

c. "Either . . . or" indicates that the connected items or provisions apply individually but not in combination.

(Ord. No. 9392, § 2(3.1.3), 5-22-00; Ord. No. 10053, § 3, 9-27-04)

Secs. 23A-104--23A-110. Reserved.

## **DIVISION 2. LISTING OF WORDS AND TERMS\***

**\*Editor's note:** Section 4 of Ord. No. 10053, renumbered Art. IV, Div. 2, §§ 23A-81--23A-106 as Art. IV, Div. 2, §§ 23A-111--23A-136.

### **Sec. 23A-111. Definitions--A.**

*Advisory board* . The historic district advisory board established pursuant to section 5.1.10 of the LUC.

*Applicant.* The applicant for a building permit for which an impact fee is due pursuant to the provisions of this article.

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*Arterial road system* . Arterial roads identified on the city's major street and routes plan that are the responsibility of the City of Tucson or which are designated in accordance with section 23A-84(14).

*Arterial road (system) improvements*. Improvements that expand the capacity of the arterial road system, including but not limited to construction of new roads or the widening of existing roads, roadway pavement, curbs and curb cuts, bridges, sidewalks, pedestrian facilities, trails, drainage structures, medians, street lighting, landscaping and irrigation, one (1) percent public art, intersection improvements, acceleration and deceleration lanes, turn lanes, parking lanes, traffic signals and other similar improvements constructed in conjunction with an arterial road capacity improvement. Ancillary components of a capacity-expanding road improvement shall not be considered system improvements when not an integral part of a capacity-expanding improvement.

(Ord. No. 9392, § 2(3.2.1), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 9967, § 10, 5-17-04)

### **Sec. 23A-112. Definitions--B (Reserved).**

(Ord. No. 9392, § 2(3.2.2), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-113. Definitions--C.**

*CDRC*. Acronym for community design review committee.

*Community design review committee*. The community design review committee (CDRC) is established as an advisory body for the review of land development proposals within the city. Establishment, composition, and function of the CDRC are provided in Development Standard 1-03.0.

*Conformance*. To be in agreement with; to comply with.

*Credit*. There are three (3) types of credits: public revenue credits, public funding credits, and site-specific credits as defined in section 23A-82.

(Ord. No. 9392, § 2(3.2.3), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10372, § 4, 2-6-07)

### **Sec. 23A-114. Definitions--D.**

*Director*. The director of the development services department.

*DSD*. The development services department.

(Ord. No. 9392, § 2(3.2.4), 5-22-00; Ord. No. 10053, § 4, 9-27-04; Ord. No. 9967, § 10, 5-17-04)

### **Sec. 23A-115. Definitions--E (Reserved).**

(Ord. No. 9392, § 2(3.2.5), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-116. Definitions--F (Reserved).**

(Ord. No. 9392, § 2(3.2.6), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-117. Definitions--G (Reserved).**

(Ord. No. 9392, § 2(3.2.7), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-118. Definitions--H (Reserved).**

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(Ord. No. 9392, § 2(3.2.8), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-119. Definitions--I.**

*Impact fee administrator.* The development services department director or designee.

*Impact fee or fees.* The road, park, police, fire and public facilities impact fees collectively unless a specific impact fee is described.

*Impact fee study.* The Road and Park Impact Fee Study prepared for the City of Tucson by Duncan Associates in June 2004, the City of Tucson Impact Fee Study: Police, Fire, Public Facilities prepared by the department of urban planning and design dated February, 2007, or a subsequent similar report.

*Impact-generating development:* Any land development designed or intended to permit a use of the land that will increase the number of service units.

(Ord. No. 9392, § 2(3.2.9), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10442, § 3, 8-6-07)

### **Sec. 23A-120. Definitions--J (Reserved).**

(Ord. No. 9392, § 2(3.2.10), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-121. Definitions--K (Reserved).**

(Ord. No. 9392, § 2(3.2.11), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-122. Definitions--L.**

*Land Use Code.* It is Chapter 23 of the Tucson Code and contains the zoning regulations for the City of Tucson.

*LUC.* Same as the Land Use Code.

(Ord. No. 9392, § 2(3.2.12), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-123. Definitions--M (Reserved).**

(Ord. No. 9392, § 2(3.2.13), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-124. Definitions--N.**

*Neighborhood association.* A neighborhood association registered with the city's department of neighborhood resources.

(Ord. No. 9392, § 2(3.2.14), 5-22-00; Ord. No. 10053, § 4, 9-27-04; Ord. No. 9967, § 10, 5-17-04)

### **Sec. 23A-125. Definitions--O (Reserved).**

(Ord. No. 9392, § 2(3.2.15), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10372, § 4, 2-6-07)

### **Sec. 23A-126. Definitions--P.**

*Party of record.* Party of record includes the applicant, all persons who received notice of the application during the review process, all persons who provided a written statement of an interest

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in the project prior to the issuance of a decision, and all persons who gave testimony at a public hearing.

*Plans review subcommittee.* The same as the Tucson-Pima County Historical Commission Plans Review Subcommittee.

*Public funding credit.* Public funding credits are credits for funds directly appropriated by local, state and federal governments to pay for all or a portion of a development in order to satisfy a public purpose or the funding of construction of eligible improvements with money from municipal improvement districts, community facilities districts or similar special taxing district with governmental authority. Public funding credits do not include indirect public funding through loans, loan guarantees, tax credits or similar indirect financing. Public funding credits are determined by multiplying the percentage of public money provided for the construction of the project by the amount of the impact fee in accordance with section 23A-82.

*Public revenue credits.* Public revenue credits are credits for funds from local, state and federal taxes and other public revenues which are used in the construction of the public improvements that are the subject of the impact fee. Public revenue credits are subtracted before the impact fee is determined in accordance with section 23A-82.

(Ord. No. 9392, § 2(3.2.16), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 9967, § 10, 5-17-04)

### **Sec. 23A-127. Definitions--Q (Reserved).**

(Ord. No. 9392, § 2(3.2.17), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

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### **Sec. 23A-128. Definitions--R.**

*Regional park.* A park that has at least fifteen (15) acres and provides facilities such a pool, soccer fields, baseball fields, basketball court, recreation center, concert stage or other such facilities for regional recreational uses.

*Regional park system.* Park land, facilities and improvements to city-owned land used for active and passive recreational purposes and associated recreational facilities, and recreational facilities and improvements made or installed by the city in regional parks and available for public use.

*Regional park (system) improvements.* Capital improvements that result in a net expansion of the park land or recreational facilities in regional parks that are available to the public. Remodeling, replacement or maintenance of existing equipment or facilities does not constitute a regional park system improvement.

(Ord. No. 9392, § 2(3.2.18), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04)

### **Sec. 23A-129. Definitions--S.**

*Service units.* Vehicle-miles of travel and equivalent dwelling units.

*Site-specific credits.* Credits are given to developers for construction of capacity improvements that are included in the calculation of the impact fees.

*Sq. ft.* Same as Square Foot.

*Square foot.* As used for the calculation of impact fees is the same as the square footage used for determination of the issuance of building permits.

(Ord. No. 9392, § 2(3.2.19), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10256, § 4, 2-28-06; Ord. No. 10372, § 4, 2-6-07)

**Editor's note:** The definition of square foot shall become effective May 30, 2006.

### **Sec. 23A-130. Definitions--T (Reserved).**

(Ord. No. 9392, § 2(3.2.20), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-131. Definitions--U (Reserved).**

(Ord. No. 9392, § 2(3.2.21), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-132. Definitions--V.**

*Vehicle-miles of capacity (VMC).* The product of the maximum number of vehicles that can be accommodated on a roadway during an hour and the length of the roadway in miles.

*Vehicle-miles of travel (VMT).* The product of the number of vehicles traveling during the afternoon peak hour of a week day and the distance in miles that those vehicles travel.

(Ord. No. 9392, § 2(3.2.22), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04)

### **Sec. 23A-133. Definitions--W (Reserved).**

(Ord. No. 9392, § 2(3.2.23), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

## Chapter 23A DEVELOPMENT COMPLIANCE CODE

### **Sec. 23A-134. Definitions--X (Reserved).**

(Ord. No. 9392, § 2(3.2.24), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-135. Definitions--Y (Reserved).**

(Ord. No. 9392, § 2(3.2.25), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

### **Sec. 23A-136. Definitions--Z (Reserved).**

(Ord. No. 9392, § 2(3.2.26), 5-22-00; Ord. No. 10053, § 4, 9-27-04)