

**CITY OF TUCSON
DEVELOPMENT STANDARD NO. 2-17.0
PROTECTED DEVELOPMENT RIGHT PLAN STANDARD**

PROTECTED DEVELOPMENT RIGHT PLAN STANDARD

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PROTECTED DEVELOPMENT RIGHT PLAN STANDARD

- 1.1 Purpose. This Standard provides the procedures consistent with applicable State law and the LUC for securing a protected development right for a development plan or plat. A protected development right plan can be for a nonphased or phased development.
- 1.2 Explanation. A protected development right gives the landowner the right to undertake and complete the development and use of the property under the terms and conditions of a protected development right plan without compliance with changes in zoning regulations and development standards adopted during the period of the protected development right.

Upon Mayor and Council approval, the landowner has the right to undertake and complete the development only to the extent of the specific elements and details shown on the plan.

The protected development right also precludes the enforcement against the development of any city land use regulation that would change, alter, impair, prevent, diminish, delay, or otherwise impact the development or use of the property as set forth in the approved plan except as provided herein.

2-17.2.0 **DEFINITIONS.** Definitions for words used in this Standard are found in A.R.S. § 9-1201, the Development Standards Glossary, or in Sec. 6.2.0 of the *LUC*.

2-17.3.0 **GENERAL PROVISIONS**

- 3.1. Submittal. A plan or plat submitted to the City and identified at the time of submittal as a protected development right plan, shall be processed as a protected development right plan. However, the protected development right does not vest until the Mayor and Council approve the plan or plat as a protected development right plan at public hearing.
- 3.2 Subsequent Designation. The Mayor and Council may designate by resolution a development plan or plat, that is not identified as a protected development right plan at the time it is submitted, as a protected development right plan upon a finding that granting a protected development right to undertake and complete the development shown on the plan will promote reasonable certainty, stability and fairness in the land use planning and regulatory process and secure the reasonable investment-backed expectations of the owner.

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- 3.3 Nonphased Developments. Nonphased developments are developments constructed in one phase.
- 3.4 Phased Development. For consideration and approval as a protected development right plan, a phased development shall be a master planned development which:
- A. Consists of at least forty (40) acres depicted on a single master subdivision plat for a residential development; or
 - B. Consists of at least twenty (20) acres depicted on a single master subdivision plat or development plan for a nonresidential development; or
 - C. Is a Planned Area Development (PAD) zone; or
 - D. The Mayor and Council have identified as a phased development for the purposes of protected development rights.
- 3.5 Variiances. A protected development right plan approved with a condition that a variance be obtained does not confer a protected development right until the variance is granted. Approval of a protected development right plan does not guarantee approval of a variance.
- 3.6 Successors. After approval of the protected development right plan, all successors to the original landowner are entitled to exercise the protected development rights.

2-17.4.0 STANDARD

- 4.1 Application. Applications shall be filed in accordance with application procedures set forth in the LUC and the Development Compliance Code and additional application requirements set forth in this standard. Applications may be filed for nonphased or phased protected development right plans.
- A. *Nonphased Development.* An application for a protected development right for a nonphased development, must comply with the requirements set forth in:
 - 1. LUC Article IV, Subdivisions T.C. § 23A-33, and applicable Development Standards, for a subdivision plat; or
 - 2. LUC § 5.3.8, Development Plan, T.C. § 23A -34, and applicable Development Standards, for a development plan.
 - B. *Phased Developments.* An application for a protected development right for a phased development, must comply with the requirements set forth in:
 - 1. LUC Article IV , Subdivisions, T.C. § 23A-33, and applicable Development Standards, if the master planned development consists of at least forty (40) acres depicted on a single master subdivision plat for a residential development; or
 - 2. LUC Article IV , Subdivisions, T.C. § 23A-33, and applicable Development Standards, if the master planned development consists of at least twenty (20)

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acres depicted on a single master subdivision plat for a nonresidential development; or

3. LUC § 5.3.8, Development Plan, T.C. § 23A -34, and applicable Development Standards, if the master planned development consists of at least twenty (20) acres depicted on a single master development plan for a nonresidential development; or
4. LUC § 2.6.3 for a master planned development which is a Planned Area Development (PAD) Zone.

4.2 Application Content.

- A. *All Applications.* All applications for a protected development right plan must describe with a reasonable degree of certainty:
 1. The proposed uses of the site;
 2. The boundaries of the site;
 3. Significant topographical and other natural features affecting development of the site;
 4. The number of dwelling units;
 5. The location of all existing and proposed utilities and a provision for other infrastructure on the property, including water, sewers, road, and pedestrian walkways; and
 6. All other studies and reports required by the *LUC* Subdivision Regulations and other City codes, including traffic reports, drainage reports, and master street plans.
 7. All necessary easements and dedications.
- B. *Nonphased Developments.* In addition to the requirements of DS 2-17.4.1.A and DS 2-17.4.2.A., a plan or subdivision plat, for a nonphased development, may be considered protected development right plan only if the plan:
 1. Is designated as a nonphased protected development right plan at the time of submittal (except for plans subsequently designated per DS 2-17.3.2);
 2. Describes with a reasonable degree of certainty the square footage, height, and general location of the proposed buildings, structures, and other improvements; and
 3. Is an approved development plan or plat.

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- C. *Phased Developments.* In addition to the requirements of DS 2-17.4.1.B and DS 2-17.4.2.A, an application for a protected development right plan for a phased development shall:
1. Designate the plan as a phased protected development right plan at the time of submittal (except for plans subsequently designated per DS 2-17.3.2);
 2. Include the proposed phasing plan, the boundaries of each phase, and the schedule of development of each phase;
 3. Include the general location on the property of the proposed buildings, structures and other improvements for the first phase;
 4. Include the number of dwelling units proposed for all phases of the development;
 5. Include the square footage and height of the proposed buildings and other structures for the first phase;
 6. Identify all improvements required to be constructed for each phase; and
 7. Include a phased public infrastructure schedules.
 8. Demonstrate that each phase will be fully functional and independent at the time of completion of that phase.

4.3 Approval.

- A. *Mayor and Council approval.* The Mayor and Council shall consider approval of protected development right plans.
- B. *Approval of protected development right plan.* The Mayor and Council may consider approval of the plat or development plan without a protected development right, approval of the plat or development plan with a protected development right, or approval of the plat or development plan with a protected development right and subject to specific conditions.
- C. *Approval of a phased development is limited.* Approval of a protected development right plan for one phase of a phased development is not approval of a protected development right plan for any other phase.
- D. *Conditions.* The Mayor and Council may impose and subject a protected development right plan to terms and conditions of approval

4.4 Effective Date. The date Mayor and Council approves the protected development right plan by resolution is the effective date of the protected development right.

2-17.5.0 ENFORCEMENT

5.1 Subsequent Land Use Regulations. A protected development precludes the enforcement of legislative or administrative land use regulations that would change, alter, impair,

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prevent, diminish, delay, or impact the development or use of the property as approved in the protected development right plan, except under any one of the following circumstances.

- A. *Landowner consent.* The affected landowner consents in writing.
- B. *Natural or man-made hazard.* The Mayor and Council declare by resolution, after notice and a public hearing, that natural or man-made hazard on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as approved in the protected development right plan.
- C. *Inaccurate information.* Declaration by the Mayor and Council by resolution after notice and a public hearing that the owner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval of the protected development right plan by the City.
- D. *Enactment of state or federal law.* The enactment of a state or federal law or regulation that precludes development as approved in the protected development right plan, in which case the Mayor and Council, after notice and a public hearing, may modify the affected provisions, on a finding that the change in state or federal law has a fundamental effect on the Protected Development Right Plan.

5.2 Subsequent Overlay Zoning, Development Fees, and Other Codes. A protected development right does not preclude the enforcement of the following.

- A. *Overlay Zone.* A subsequently adopted overlay zoning classification that imposes additional requirements and that does not affect the allowable type or density of use.
- B. *Development Fee.* A subsequently adopted development fee applicable to similar properties in the City adopted pursuant to ARS § 9-463.05.
- C. *Other Codes.* A subsequently adopted building, fire, plumbing, electrical, or mechanical code or other ordinance or regulation general in nature and applicable to all property subject to land use regulation by the City.

5.3 Nonconforming Uses and Structures. A protected development right does not preclude, change, or impair the authority of the City to adopt and enforce zoning ordinance provisions governing nonconforming uses or structures on the property.

5.4 Suspension and Revocation Procedures. The City is permitted by state law to subject a protected development right plan to subsequent reviews and approvals consistent with the original approval. The City may revoke its approval of a protected development right plan for failure to comply with the applicable terms and conditions of approval. The procedure for compliance review suspension and revocation is described as follows.

- A. *Compliance.* Review of a development for compliance with the terms and conditions of approval shall be as follows:

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1. *DSD Director monitors compliance.* After the approval of a protected development right plan, the DSD Director or designee shall monitor the progress of the development to ensure compliance with the terms and conditions of the original approval or any development agreement applicable to the property.
2. *Suspension or Revocation.* The DSD Director or designee may suspend or revoke a protected development right after notice to the applicant. The notice shall contain the protected development right plan to be revoked, the property to which it applies, and the reason(s) for the proposed suspension or revocation.
3. *Appeal to Mayor and Council.* The DSD Director's decision to revoke a protected development right may be appealed to Mayor and Council in accordance with the procedures set forth in Tucson Code 23A-62 by filing a notice of intent to appeal with the City Clerk no later than fourteen (14) days after the date of the decision.

2-17.6.0 EXPIRATION DATE AND EXTENSIONS

6.1 Expiration.

- A. *Nonphased.* A protected development right plan for a nonphased development is valid for three (3) years.
 1. In its sole discretion, the Mayor and Council may extend this time for a maximum of two (2) additional years if it determines such extension is warranted by all relevant circumstances, including the size and type of the development, the level of investment of the landowner, economic cycles, and market conditions.
 2. If no building permit has been issued prior to expiration, no construction shall commence under the plan.
- B. *Phased.* A protected development right plan for a phased development is valid for five (5) years.
 1. In its sole discretion, the Mayor and Council may extend this time for a maximum of two (2) additional years if it determines such extension is warranted by all relevant circumstances, including the size, type and phasing of the development, the level of investment of the landowner, economic cycles, and market conditions.
 2. No construction shall take place on the property for any phase for which a building permit has not been issued.

2-17.7.0 FEES. The fees for processing a protected development right plan are located in DS 1-05.7.0.

2-17.8.0 NO MODIFICATIONS. The provisions of DS 2-17 cannot be modified because they are required by state law and the *LUC*.