

RESOLUTION 2021-014

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; DECLARING A 30-DAY PUBLIC RECORD PERIOD FOR AMENDMENTS TO CHAPTER 151 OF THE CITY CODE OF ORDINANCES, THE DEVELOPMENT CODE, AS SHOWN IN EXHIBIT A, ATTACHED HERETO; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICES AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

WHEREAS, in accordance with established policy and development code procedures, the City of Sierra Vista has proposed text amendments to the following Development Code Sections: Article 151.26-Conditional Use Permits Article 151.31-Amendments; and

WHEREAS, Article 151.31 of the Development Code requires that the City Council review and decide on all applications for text amendments; and

WHEREAS, per Article 151.31, the Planning & Zoning Commission recommended approval of the amendments to City Council; and

WHEREAS, under the provisions of Section 9-802 of the Arizona Revised Statutes, the proposed amendments to the City's Development Code shall be declared a matter of public record for a period of 30 days prior to being passed and adopted by ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista declaring proposed text amendments to the Development Code as a public record be, and hereby is, reaffirmed.

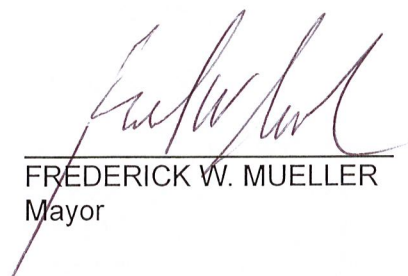
SECTION 2

That the certain document entitled Exhibit A, proposed amendments to Development Code attached hereto, copies of which are on file in the office of the City Clerk, is hereby declared a 30-day public record.

SECTION 3

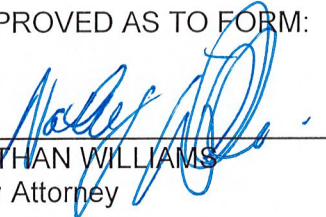
That the City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 25TH DAY OF FEBRUARY 2021.



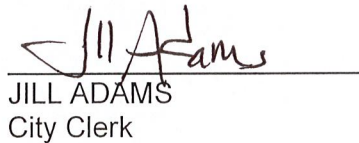
FREDERICK W. MUELLER  
Mayor

APPROVED AS TO FORM:



NATHAN WILLIAMS  
City Attorney

ATTEST:



JILL ADAMS  
City Clerk

PREPARED BY:

Jeff Pregler, AICP  
Senior Planner

EXHIBIT A

**ARTICLE 151.26  
CONDITIONAL USES**

Sections:

- 151.26.001 Purpose
- 151.26.002 Conditional Uses
- 151.26.003 [Review Considerations](#)~~Authority and Council Action~~
- ~~151.26.004 Locational Criteria~~
- 151.26.004<sup>5</sup> Application for Conditional Use
- 151.26.005<sup>6</sup> Notice of Public Hearing
- 151.26.006<sup>7</sup> Consideration by the Commission
- 151.26.007<sup>8</sup> Council Action
- 151.26.008<sup>9</sup> Revocation of Conditional Use Permit
- 151.26.009<sup>10</sup> Automatic Termination of Conditional Use
- 151.26.010<sup>11</sup> Fees

**Section 151.26.001**

**Purpose**

Each district in the City contains designated permitted uses as a matter of right. In addition to the designated uses in each district, there are conditional uses, neither absolutely permitted as a right nor prohibited by law, which may be compatible within the district. These are privileges, in a sense, and must be applied for and approved by the City. It is the intent of this Article to provide a set of procedures and standards for conditional uses of land or structures which, because of their unique characteristics relative to locational features, design, size, operation, circulation, and public interest or service require special consideration in relation to the welfare of adjacent properties and the community as a whole. It is the purpose of the regulations and standards set forth below to:

- A. Allow, on one hand, practical latitude for use of land and structures, but at the same time maintain adequate provision for the protection of the health, safety, convenience, and general welfare of the community and adjacent properties; and
- B. Provide for periodic review of Conditional Use Permits to provide for further conditions to more adequately assure conformity of such uses to the public welfare.  
(Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02)

**Section 151.26.002**  
**Conditional Uses**

Conditional uses shall be those established by the Matrix of Use Permissions by Zoning District under Section 151.22.006 of this Code and shall be subject to the approval procedures of this Article.

(Ord. 743, passed 4-10-86; Am. Ord. 752, passed 8-14-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 834, passed 3-9-89; Am. Ord. 854, passed 1-25-90; Am. Ord. 877, passed 2-28-91; Am. Ord. 882, passed 4-25-91; Am. Ord. 888, passed 10-10-91; Am. Ord. 896, passed 1-23-92; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2004-002, passed 2-26-04; Am. Ord. 2011-012, passed 9-22-11; Am. Ord. 2016-002, passed 2-25-16)

**Section 151.26.003**

**Review Considerations Authority and Council Action**

A. ~~The Council may approve, approve with conditions, or deny the application for a Conditional Use Permit.~~ In permitting a new conditional use or the alteration of an existing conditional use, the Council can impose, in addition to those standards and requirements expressly specified by this Code, additional conditions which it finds necessary to avoid a detrimental environmental impact and to otherwise protect the best interest of the surrounding area or the community as a whole. These conditions can include, but are not limited to, the following:

1. Limiting the manner in which the use is conducted, including restricting the time a certain activity can take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare, and odor.
2. Establishing special yard, open space, lot area, or dimensional requirements.
3. Limiting the height, size, or location of a building or other structure or use.
4. Designating the size, number, location, and nature of vehicle access points.
5. Designating the size, location, screening, drainage, surfacing, or other improvements of a parking area or loading area.
6. Limiting or otherwise designating the number, size, location, height, and lighting of signs.
7. Limiting the intensity of outdoor lighting and requiring light shielding.

8. Requiring diking, screening, landscaping, or another facility to protect adjacent or nearby property and designate standards for its installation and maintenance.

9. Designating the size, height, location of screening, and materials of fencing.

10. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or another significant natural resource.

(Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02)

### **~~Section 151.26.004-~~**

#### **~~Locational Criteria~~**

~~A. The provisions of this Section are designed to provide siting criteria for the conditional uses specified herein and guidelines for the imposition of additional conditions not specifically provided for herein, to the end that such uses will:~~

~~—1. Be consistent with the intent and purpose of the district in which the use is proposed to locate such use, meet the requirements of the General Plan with regard to providing benefit to the general welfare of the public, and fill a probable need of the public which can best be met by a conditional use at this time and in this place.~~

~~—2. Comply with the requirements of the district within which the conditional use is proposed and in accordance with conditions attached to such use under the authority of this Article.~~

~~B. Conditional uses shall be located subject to the following specific standards:~~

~~—1. Buffering, screening or other means shall be used where necessary to protect the privacy and safety of neighboring properties.~~

~~—2. Solid waste landfills and transfer stations, natural gas storage, sewage treatment plants, and electrical generating facilities shall not be in or adjacent to established residential areas.~~

~~—3. Solid waste landfills and transfer stations, natural gas storage, sewage treatment plants and electrical generating facilities will not provide access from local residential or collector streets. Recycling centers, water reservoirs, telephone communication and switching facilities, runoff detention facilities and City or County maintenance facilities shall not be provided access from local residential streets.~~

~~—4. The site layout promotes energy conservation and user convenience, as well as operational efficiency.~~

~~—5. The site layout conforms to the established street and circulation pattern.~~

~~—6. Noise levels and lights from the facility will not interfere with adjacent land uses. (Ord. 743, passed 4-10-86; Am. Ord. 854, passed 1-25-90; Am. Ord. 1151, passed 11-14-02)~~

## **Section 151.26.004~~5~~**

### **Application for Conditional Use**

A. A request for a conditional use, modification of an existing conditional use permit, or a review of an existing Conditional Use Permit shall be initiated by a property owner or the authorized agent by filing an application with the City. Such application shall include:

1. Complete information regarding the proposed location, area, height, bulk, and placement of such use and shall be accompanied by a plot plan prepared in accordance with the provisions of Article 151.18, Site Plan.

~~2. A vicinity ownership map, drawn to scale, showing all parcels in the vicinity adjacent to and surrounding the property proposed for conditional use within a radius of 500 feet of the exterior boundaries of the property.~~

~~3. Two sets of a typed, printed, or electronic list containing the names and mailing addresses of the owners of parcels within a radius of 500 feet of the exterior boundaries, and identified by the same number as on the vicinity ownership map. One set shall be printed on mailing labels. Correct zip codes must be shown for each address.~~

24. A neighborhood meeting shall be required for all conditional uses that are in, abut, or are separated by a street or alley from any residential zoning district. Neighborhood meetings are to be held ~~subsequent to the submittal of the application, but~~ no later than seven7 days prior to the Commission public hearing. The applicant is responsible for organizing, scheduling, and supplying all materials for the neighborhood meeting. All property owners within 500 feet of the exterior boundaries of the property shall be notified. The applicant will provide the City with information on the meeting date, time, location, and purpose of the meeting. The applicant shall also provide a copy of the letter sent to the adjacent property owners notifying them of the meeting, and a written summary of the meeting to the City.

B. An application filed pursuant to this section shall be accompanied by the required fee. Such fee shall be determined according to a schedule established by resolution of the Council and posted in the office of the City Clerk.

C. The Department of Community Development shall review each application for technical compliance with established application requirements and shall formally accept or reject the application within three working days.

(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2004-014, passed 12-9-04)

## **Section 151.26.0056**

### **Notice of Public Hearing**

All applications for Conditional Use Permits shall be considered by the Commission and Council ~~at a public hearing, advertised~~ in accordance with ~~Section 151.26.006~~ [this Article](#).

#### A. Public Notice Requirements

Notice of the time, date, and place of the public hearing, including a general explanation of the Conditional Use Permit will be given at least 15 days before the hearing in the following manner:

1. Newspaper. Each notice of public hearing will be published at least once in a newspaper of general circulation published or circulated in the City.
2. Posting at Public Locations. Each notice of public hearing will be posted at locations identified as posting areas by the City Clerk.
3. Posting on Property. A notice will be posted on the site and shall be printed so that the words, "Conditional Use Permit" and the date and time of the public hearing are visible from a distance of 100 feet.
4. Certified Mailing. A notice will be mailed by certified mail to the owner and applicant or the designated agent.
5. Property Owner Mailing. All property owners within 500 feet of the exterior boundaries of the land subject to the application.

~~Unless otherwise provided, addresses for the required mail public hearing notice will be obtained by the property owner and applicant or his agent, from the County's real property tax records.~~ The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with this requirement. In addition, the City may provide notice to others if it has reason to believe that they are affected or otherwise represent an interest that may be affected by the proposed development.

6. Interested Parties. A notice shall be sent to any persons who register their names and addresses with the City as being interested in receiving such notices, for a reasonable fee.

7. Adjoining Political Jurisdictions. Notice shall be sent to municipalities or political jurisdictions that abut the property subject to the application.  
(Ord. 2003-021, passed 11-25-03; Am. Ord. 2004-014, passed 12-9-04)

### **Section 151.26.006~~7~~**

#### **Consideration by the Commission**

A. All applications for Conditional Use Permits shall be ~~first~~ considered by the Commission at a public hearing, advertised, and conducted in accordance with the provisions of Section 151.26.006.

B. The Commission shall recommend approval, approval with conditions, or denial of the request based on compliance with the following findings: ~~review each application for compliance with the criteria and requirements set forth in Article 151.26 and forward a recommendation of approval, approval with conditions, or denial by resolution to the Council.~~

1. The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements, and natural features.

2. Noise levels and lights from the facility do not interfere with adjacent land uses.

2. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.

3. The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the district.

4. The proposed use satisfies those goals, objectives, and policies of the General Plan that are applicable to the proposed use specifically with regard to providing benefit to the general welfare of the public, and filling a probable need of the public which can best be met by a conditional use.

5. Be consistent with the intent and purpose of the district in which the use is proposed to locate such use.

C. After the hearing, the Commission shall render a decision in the form of a written recommendation to the Council and to the applicant.



The recommendation shall include the reasons for the recommendation and be transmitted to the Council and the applicant by the Director of Community Development.

(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

## **Section 151.26.007~~8~~**

### **Council Action**

~~A. If the Commission has held a public hearing, T~~he Council may adopt the recommendations of the Commission without holding a second public hearing if there is no objection, request for public hearing, or other protest.

B. If an objection, request for public hearing, or other protest is formally submitted, a public hearing shall be required before the Council. The public hearing shall be advertised and meet the public notice requirements as stated 151. 26.006. Requests for public hearing, objections, or protests, shall be submitted no more than seven days after the Commission has rendered their decision.

a. The Council shall act to approve, approve with conditions, or deny the request. Any decision must include a determination on whether the request is compliant with findings as stated in 151.26.007.(B). The Director of Community Development shall notify the applicant of the action.

~~A. After a public hearing advertised and conducted in accordance with the provisions of Section 151.26.006, the Council can approve, approve with conditions, or deny the application for a conditional use, provided the applicant submits evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and further that the applicant demonstrates the proposed use also satisfies the following criteria:~~

- ~~—1. The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements, and natural features.~~
- ~~—2. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.~~
- ~~—3. The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the district.~~
- ~~—4. The proposed use satisfies those goals, objectives, and policies of the General Plan that are applicable to the proposed use.~~

B. Written notice of the Council's decision shall be provided by the City to:

1. The applicant; and
2. Any person notified of the application for a conditional use pursuant to Section 151.26.006.  
(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

**Section 151.26.008~~9~~**  
**Revocation of Conditional Use Permit**

A. Any previously granted Conditional Use Permit may be revoked by the Council, after a hearing conducted in the manner required for approval of a Conditional Use Permit initially, upon any one of the following grounds:

1. Failure to comply with the conditions of approval.
2. Discontinuance of the use for a period in excess of one year.
3. Failure to comply with other applicable provisions of the General Plan regarding design, dimensional, or use requirements.
4. A change in the General Plan or standards of the district within which the use is located that have the effect of no longer allowing a new Conditional Use Permit application to be considered in such district.

B. Revocations initiated under Section 151.26.009.A.1 or 2 above can take place immediately after approval of the conditional use permit. Revocations initiated under Section 151.26.009.A.1, 2, and 3 above shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under Section 151.26.009.A.4 above shall have the effect of making the previously granted conditional use a non-conforming use.  
(Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

**Section 151.26.009~~10~~** **Automatic Termination of Conditional Use**

A. Unless otherwise provided by the Council in the resolution granting approval of the Conditional Use Permit, a Conditional Use Permit shall automatically become null and void

one year after the effective date upon which it was granted unless one of the following events occurs:

1. The applicant or his successor in interest has secured a building permit within said one-year period, if a building permit is required, and has actually commenced construction of the building or structure authorized by the permit within said one- year period.

2. The applicant or his successor in interest has commenced the activity or installation of the facility or structure authorized by the Conditional Use Permit within the one- year period.

B. The applicant may submit a request to the Council for an extension of time on the conditional use permit to avoid the permit becoming null and void. The request for extension must be filed with the City prior to the expiration of the times established by Section A above. The Council can, in the resolution granting such Conditional Use Permit, provide for an extension of time beyond one year.

(Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

#### **Section 151.26.010~~1~~**

##### **Fees**

Conditional Use Permit fees shall be determined according to a schedule establish by resolution of the Council and posted in the Office of City Clerk.

(Ord. 2003-021, passed 11-25-03)

**ARTICLE 151.31**  
**AMENDMENTS**

Sections:

- 151.31.001 Amendments
- 151.31.002 Types of Amendments; Initiation of Same
- 151.31.003 Application for Amendment
- 151.31.004 Notice of Public Hearing
- 151.31.005 [Commission Hearings and Recommendation](#)~~Public Hearing of Applications~~
- 151.31.006 [Council Hearings and Decision](#)~~Appeal from Denial of Amendment~~
- 151.31.007 Protest Against Amendments
- 151.31.008 Reconsideration of Denied Zoning District Map Amendments
- 151.31.009 Fees
- ~~151.31.010 Zoning District Map Amendments Conditioned Upon Site Plan Approval~~

**Section 151.31.001**  
**Amendments**

The Council may from time to time, upon recommendation of the Commission, amend, supplement, change or repeal the regulations, restrictions and district boundaries herein established. All amendments to this Code and the Zoning District Map shall be consistent with the adopted General Plan, as amended, and shall be a reflection of the City's land use planning goals. Requests to amend this Code may be initiated by the Council or the Commission on their own motions, or by petition from property owners as hereinafter set forth.

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

**Section 151.31.002**  
**Type of Amendments; Initiation of Same**

A. Text Amendment. The application for an amendment to the text of this Code shall state in particular the article, section, subsection, and paragraph sought to be amended. The application for amendment shall contain the language of the proposed amendment and shall recite the reasons for the proposed change in the text.

B. Map Amendment. An application which seeks to change or modify the zoning classification imposed upon a particular piece of property by the district map.

C. The initiation of a change to the text and/or Zoning District Map may be accomplished by one of the following methods:

1. A majority of the property owners in the area of proposed change or their authorized agents; or

2. A majority vote of the Council; or

3. A majority vote of the Commission.

(Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

### **Section 151.31.003**

#### **Application for Amendment**

A. **Application Form for Text Amendment.** Application for a text amendment ~~of the text of this Code~~ shall be made to the City ~~on a standard form provided for this purpose and include the required information and documentation as specified on the form.~~ The Department of Community Development shall review each application for technical compliance with established application requirements and shall formally accept or reject the application within three working days. The application submittal, at a minimum shall include:

1. The applicant's name, address, and interest in the amendment; and

2. The language of the proposed amendment to the Code; and

3. Statements in support of the application, including a list of the present conditions justifying the proposed amendment.

B. **Application for Zoning District Map Amendment.** An application for an amendment to the Zoning District Map shall be made to the City and include the required documentation as specified on the form. The application submittal, at a minimum, shall include the following:

1. Name and address of the applicant. If the applicant is not the owner of the property, the name and address of the owner shall be supplied along with the authorization that the applicant is the agent of the owner and may apply for the permit. Proof of ownership must be submitted with the application. The ownership information shall be as documented in the Cochise County Recorder's Office records. ~~The name and address of all owners of the property for which a change is sought, together with proof of ownership. Proof of ownership shall consist of a copy of a title report issued not more than 30 days prior to the date of the application by a title company authorized to conduct business in the State of Arizona.~~

~~In the event that the application includes other property in addition to that owned by the applicant, there shall be filed by the applicant, a petition in favor of the request signed by~~

~~the real property owners representing at least 75 percent of the land area to be included in the application. Such petition shall be filed and checked for authenticity of ownership before the application is accepted by the City. Proof of ownership shall consist of a copy of a title report as required above.~~

~~In the event that the application includes properties owned by more than one owner, the City shall notify, by certified mail, all property owners as listed on the County Assessor's records included in the area proposed to be changed by the application. Such notice shall be postmarked not later than 15 days prior to any Commission public hearing on the application.~~

~~—2. Where the applicant represents another person, firm, partnership or corporation, the proof of agency, including a list of every real party in interest, whether a beneficiary of a trust or otherwise, shall be provided to the City.~~

~~—a. If the land is owned by a corporation, proof of agency shall consist of a corporate resolution designating the individual to act as an agent. The corporate resolution must be certified by the secretary of the corporation and authenticated by the corporate seal, or acknowledged in the form prescribed by A.R.S. § 33-506.~~

~~—b. If the land is owned by a partnership, proof of agency shall consist of a written document of the partner(s) designating an individual to act as agent. The document must be certified and acknowledged in the form prescribed by A.R.S. § 33-506. If the land is owned by an individual, proof of agency shall consist of a written document designating an individual to act as agent. The document must be certified and acknowledged in the form prescribed by A.R.S. § 33-506.~~

~~23. A preliminary site plan of the property showing the use(s) proposed for the site, showing setbacks, heights, parking areas, landscaping, and other information to assist in the evaluation of the request. The proposed amendment to the district classification or boundary.~~

~~34. A map drawn to scale showing the existing and proposed district boundaries and an accurate legal description of the area being proposed for the amendment. If the legal description of the property is less than the entirety of the lot, block or parcel described in a recorded subdivision, a legal description and map shall be prepared and certified by a registered surveyor licensed by the State of Arizona.~~

~~4. Appropriate public service and utility information, including how the project will be served by water, sewer, gas, electricity, telephone, and other utilities.~~

~~—5. A vicinity ownership map drawn to scale showing all parcels in the vicinity adjacent to and surrounding the property proposed to be changed within a radius of 500 feet of the exterior boundaries of the property.~~

~~—6. Two sets of a typed, printed, or electronic list containing the names and mailing addresses of the owners of parcels within a radius of 500 feet of the exterior boundaries and identified by the same number as on the vicinity ownership map obtained from the County's real property tax records. One set shall be printed on mailing labels. Correct zip codes must be shown for each address.~~

5.7. Statements reflecting the present conditions justifying the proposed amendment; statements showing that the parcel fulfills the criteria for establishment of the proposed zoning district or, in the absence of the ability to comply, statements as to why the presumption against the rezoning should be overcome; and any other factors or reasons in support of the proposed amendments.

6 Public service information, including how the project will impact local services such as schools, police, parks, fire service, sanitary pick-up, and other similar services. Included shall be how the developer will provide public paved roads, provisions of parks and playgrounds for residential development, and other services required by the project as applicable.

7.8. A neighborhood meeting shall be required for all Zoning District Map amendments. Neighborhood meetings shall be held ~~are to be held subsequent to the submission of the application form, but~~ no later than seven days prior to the Commission public hearing. The applicant is responsible for organizing, scheduling, and supplying all materials for the neighborhood meeting. All property owners within 500 feet of the exterior boundaries of the property shall be notified. The applicant will provide the City with information on the meeting date, time, location, and purpose of the meeting. The applicant shall also provide a copy of the letter sent to the adjacent property owners notifying them of the meeting, and a written summary of the meeting to the City.

~~—9. A completed Development Impact Questionnaire stating the impacts that the map amendment will have on the community.~~

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 875, passed 1-10-91; Am. Ord. 2004-014, passed 12-9-04)

## **Section 151.31.004**

### **Notice of Public Hearing**

~~All applications for text and map amendments shall be considered by the Commission and the Council at public hearings advertised in accordance this Section.~~

A. Public Notice Requirements. Notice of the time, date, and place of the public hearing, including a general explanation of the text or map amendment will be given at least 15 days before the hearing in the following manner:

1. Each notice of public hearing for text or map amendments shall be published at least once in a newspaper of general circulation published and posted at locations identified as posting areas by the City Clerk.

2. Notice of the time, date and place of the hearing on Zoning District Map amendments shall be posted on the affected property. A posted notice shall be printed so that the following are visible from a distance of 100 feet: the word "zoning," the present district classification, the proposed zoning district classification and the date and time of the hearing.

3. Notice of the time, date and place of the hearing for a text or map amendment shall be mailed by certified mail to the owner and applicant or [their](#) ~~his~~ agent.

4. Notice of the time, date and place of hearings on Zoning District Map Amendments shall be sent to all owners of property within 500 feet of the exterior boundaries of the property. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice. In addition to persons whom receive notice as required by the matter under the consideration, the City may provide notice to others if it has reason to believe that they are affected or otherwise represent an interest that may be affected by the proposed development.

5. In proceedings involving Zoning District Map Amendments for land that abuts other municipalities or un-incorporated areas of the County or a combination thereof, copies of the notice of public hearing shall be sent to the planning agency of such governmental unit controlling such abutting land.

[6. In proceedings involving Zoning District Map Amendments that has land located within the territory in the vicinity of a military airport or ancillary military facility as defined in section A.R.S. 28-8461, a copy of the notice of public hearing shall be sent by first class mail to the Fort Huachuca Encroachment Board.](#)

[7](#)6. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed in paragraph [8](#)~~7~~ of this Section:

a. A 10 percent or more increase or decrease in the number of square feet or units that may be developed.

b. A 10 percent or more increase or reduction in the allowable height of buildings.

c. An increase or reduction in the allowable number of stories of buildings.



- d. A 10 percent or more increase or decrease in setback or open space requirements.
- e. An increase or reduction in permitted uses.

87. In proceedings governed by this Section, the City shall provide notice to real property owners pursuant to at least one of the following notification procedures 15 days before the hearing in the following manner:

- a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment from the County Assessor's records, whose real property is directly governed by the changes.
- b. The City shall include notice of such changes with utility bills or other mailings.
- c. The City shall publish such changes prior to the first hearing on such changes in a newspaper or general circulation in the City. The changes shall be published in a display ad covering not less than 1/8 of full page.

98. If notice is provided pursuant to Subsections b or c of Paragraph 7, the City shall also send notice by first-class mail to persons who register their names and addresses with the City as being interested in receiving such notice.

10 If the matter to be considered applies to territory in a high noise or accident potential zone as defined in A.R.S 28-8461, the notice pursuant to Paragraph 7 on this Section, shall include a general statement that the matter applies to property located in the high noise or accident potential zone.

119. Notwithstanding the notice requirements set forth in Subsection A of this Section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.  
(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 834, passed 3-9-89; Am. Ord. 2003-008, passed 4-24-03; Am. Ord. 2004-014, passed 12-9-04)

#### **Section 151.31.005**

#### **Commission Hearings and recommendation ~~Public Hearing of Applications~~**

Every application for amendment of this Code shall be considered by the Commission ~~and Council~~ at a public hearing.

A. Burden of Proof. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable elements of the General Plan and to applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.

B. Order of Proceedings

1. The presiding officer will state the case and call the public hearing to order. The presiding officer may establish the time allowed for the presentation of information.
2. Any objections or jurisdictional grounds shall be noted in the record.
3. Any abstentions or disqualification shall be determined. Members shall announce all conflicts of interest.
4. Presentation of staff report. City staff may also present additional information, whenever allowed by the presiding officer, during the proceedings.
5. The Commission and Council may view the area in dispute for purposes of evaluating the proposal, but shall state the place, time, manner, and circumstances of such viewing in the record.
6. Presentation of information by the applicant or those representing the applicant.
7. Presentation of evidence or inquiries by those persons who support the proposal.
8. Presentation of evidence or inquiries by those persons who oppose the proposal.
9. Presentation of evidence or inquiries by those persons who do not necessarily support or oppose the proposal.
10. Rebuttal testimony may be presented by persons who have testified supporting or opposing the proposed change. The scope of material presented during rebuttal shall be limited to matters that were brought up during the course of the hearing. Rebuttal shall be first presented by the applicant or his representative and then by those opposed to the proposed change. The presiding officer shall limit rebuttal to avoid repetition and redundancy.
11. At the close of presentation of information, rebuttal, and written argument, the presiding officer shall declare that the hearing is closed unless there is a motion to continue

the public hearing. Additional written argument may be permitted at the discretion of the Commission and Council.

12. Once a hearing has been closed, it shall be reopened only upon a majority vote of the Commission and Council and only after a reasonable showing that:

- a. There is evidence which was not reasonably available at the time of the hearing; and
- b. The evidence is now available to the person seeking to reopen the hearing; and
- c. The evidence is factual, substantial, and material. If the hearing is closed, no further evidence shall be received except in response to specific questions directed to staff or one of the parties to clarify earlier evidence. The opportunity for brief rebuttal shall also be afforded to adverse parties.

### C. Rules of Procedure

1. Formal rules of evidence shall not apply.
2. Written exhibits, visual aids, affidavits, maps, and the like may be submitted as part of the evidence. Any correspondence presented to or received by any member of the Commission and/or Council, or by any other City agency or official outside the public hearing, may be received as argument and placed in the record, but will not be considered as part of the information, except that correspondence received prior to the closing of the public hearing shall be included as part of the information in that hearing. Unless the Commission or Council specifically allows later filing of argument, no correspondence received after the close of the hearing will be considered as argument.
3. All information received by the Commission and Council shall be retained and preserved and shall be sent to an appellate body in the event an appeal is filed in accordance with Section 151.31.006. True, certified, or recorded copies of original information may be substituted for original documents.
4. All evidence and argument shall be as brief as possible, consistent with full presentation.
5. Redundancy shall be avoided.
6. Each person presenting information or argument shall be permitted to complete his presentation without interruption, except by the presiding officer, to enforce this Code.

7. Discussion of personalities shall be avoided to the extent possible in making a complete presentation.

8. No person present shall engage in applause, cheers, or other vocal or outward expressions of approval or disapproval, agreement or disagreement. If any person persists in such conduct after warning by the presiding officer, such person may be expelled from the hearing.

9. The presiding officer has complete authority to enforce these provisions to assure that a fair hearing is held, including the authority to expel from the public hearing and to bar from further appearance at the public hearing any person who willfully violates any one or more of these provisions.

~~BD. Findings~~ Considerations. The Commission shall recommend approval, approval with conditions, or denial of the request based on compliance with the following findings. Following the hearing, the Commission and Council shall consider and make a recommendation, taking into account:

1. Findings for Map Amendments:

a. The change is consistent with the General Plan goals and policies;

b. The change is consistent with the purpose of the Development Code to promote the growth of the City in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare;

c. The change is necessary to achieve the balance of land uses desired by the City and to provide sites for needed housing or employment-generating uses; and to increase the inventory of land within a given zoning district to meet market demand.

~~1. The testimony at the hearing;~~

~~2. A site inspection of the property in question;~~

~~3. The recommendations from interested official bodies;~~

~~4. That a map amendment request has addressed:~~

~~a. The need and justification for the change; and,~~

~~b. The consistency of the amendment with the goals and objectives of the General Plan; and~~

~~c. Whether the proposed amendment benefits the general public welfare and does not constitute a granting of special privileges to an individual.~~

~~5. That a text amendment:~~

2. Findings for Text Amendments:

- a. Demonstrates the need and justification for the change; and,
- b. Demonstrates the relationship of the proposed amendment to the City's General Plan with appropriate consideration as to whether the proposed change will further the purposes of this Code and other City ordinances and regulations; and
- c. Consistent with the purposes of the Development Code to promote the growth of the City in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and~~Benefits the~~ general public welfare\_ and does not constitute a granting of special privileges to an individual owner.

C. After the hearing, the Commission shall render a decision in the form of a written recommendation to the Council and to the applicant. The recommendation shall include the reasons for the recommendation and be transmitted to the Council and the applicant by the Director of Community Development.

**Section 151.31.006**

**Council Hearings and Decision**

A. If the Commission has held a public hearing, the Council may adopt the recommendations of the Commission without holding a second public hearing if there is no objection, request for public hearing, or other protest.

B. If an objection, request for public hearing, or other protest is formally submitted, a public hearing shall be required before the Council. The public hearing shall be advertised and meet the public notice requirements as stated 151. 31.004. Requests for public hearing, objections, or protests, shall be submitted no more than seven days after the Commission has rendered their decision.

a. The Council shall act to approve, approve with conditions, or deny the request. Any decision must include a determination on whether the request is compliant with findings as stated in 151.31.005.(B) The Director of Community Development shall notify the applicant of the action.

C. The Council shall hold a public hearing should the Fort Huachuca Encroachment Board provide comments or analysis concerning the compatibility of the proposed Zoning District Map Amendment within the high noise or accident potential generated by the military airport or ancillary military facility operations, that may have an adverse impact on public health and safety. The Council shall consider and analyze the comments or analysis before making a final determination.

~~(’76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 834, passed 3-9-89; Am. Ord. 2004-014, passed 12-9-04)~~

### ~~Section 151.31.006-~~

#### ~~Appeal from Denial of Amendment~~

~~In the event that the request for amendment is denied by the Commission, the applicant may, within seven days from the date of the Commission hearing, file an appeal to the Council. Upon receipt of such an appeal, the Council shall arrange to hold a public hearing upon due notice and posting as heretofore specified.~~

~~(’76 Code, Art. 12-1) (Ord. 743, passed 4-10-86)~~

### Section 151.31.007

#### Protests Against Amendments

If the owners of 20 percent or more, (1) either of the area of lots included in a proposed change or (2) of those immediately adjacent in the rear or any side extending 150 feet, or (3) of those directly opposite extending 150 feet from the street frontage of the opposite lots, file a written protest against a proposed amendment, it shall not become effective except by the favorable vote of 3/4 of all members of the Council. If any members of the Council are unable to vote on such a question because of a conflict of interest, then, the required number of votes for passage of the question shall be 3/4 of the remaining membership of the Council, provided that such required number of votes for passage shall, in no event, be less than a majority (4) of the full membership of the Council.

(’76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

### Section 151.31.008

#### Reconsideration of Denied Zoning District Map Amendments

In the event that an application for a Zoning District Map Amendment is denied by the Council or is withdrawn after the Commission hearing, the Commission shall not reconsider the application nor consider another application for the same map amendment of this Code as it applies to the same property described in the original application, or any part thereof, for a period of not less than one year from the date of such denial action.

(’76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

## **Section 151.31.009**

### **Fees**

A filing fee shall accompany each application for amendment to the map or text of this Code, and no part of such fee shall be refundable. Such fees shall be determined according to a schedule established by resolution of the Council and posted in the office of the City Clerk. In addition, the applicant must pay all required publishing costs associated with the appeal.

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86)

## **~~Section 151.31.010~~**

### **~~Zoning District Map Amendment Conditioned Upon Site Plan Approval~~**

~~The City Council may approve a Zoning District Map Amendment conditional upon a schedule for development of the specific use or uses for which the change is requested. Applicants requesting change under this Section shall submit, for consideration by the Commission and Council, a statement of the use or uses for which the change is requested, a specific schedule for development detailing the commencement and completion dates of the development of the proposed use and a site plan, prepared in accordance with the provisions of this Code, detailing the development plan for the proposed use. The submitted items will be considered by the Commission and Council at public hearings in accordance with the provisions of this Article. Approval of the site plan by the Commission shall be conditional upon approval of the amendment by the Council. The Council may approve the amendment. If the Council chooses to approve the amendment, approval shall be conditional upon development of the use or uses shown on the approved site plan within the period of time stated in the schedule of development. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, it shall revert to its former classification without additional Council action.~~

~~('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 834, passed 3-9-89; Am. Ord. 2004-014, passed 12-9-04)~~