



PLANNING COMMISSION

Planning & Development Services Department • 201 N. Stone Ave. • Tucson, AZ 85701

DATE: November 4, 2009

TO: Planning Commission

FROM: Ernie Duarte
Executive Secretary

SUBJECT: *Land Use Code (LUC) Amendment – Architectural Documentation*

Issue – This item is for discussion by the Planning Commission in a Study Session. On January 13, 2009, Mayor and Council directed staff to prepare a *Land Use Code* Amendment that would provide for architectural documentation of historic structures prior to demolition. The amendment would add a new section (5.3.11) to Article V Administration, Division 3. Special Development Applications of the *Land Use Code* entitled Architectural Documentation Prior to Demolition of Historic Buildings.

Recommendation – Staff recommends that the Planning Commission set this amendment for public hearing on December 2, 2009.

Background – On June 12, 2007 the Mayor and Council adopted the 2006 International Building Code (IBC) and associated local amendments. One of the local amendments added Section 3303.7 entitled Demolition in the Historic Central Core relating to demolition permits. Section 3303.7 stated that, prior to demolition of a structure that is 45 or more years old and located within the Historic Central Core (defined as the City limits as of October 6, 1953), certain documentation must be provided to determine if the structure represents a historic, cultural or architectural resource. A survey was required to determine historic, cultural and architectural significance of any structures on the property and within a 300 ft radius. These surveys were to be reviewed by the Tucson-Pima County Historical Commission Plans Review Subcommittee for a recommendation to the Building Official. The Building Official would then determine if the demolition of that structure would affect the historic and architectural integrity of the Central Core. The Building Official could delay the demolition for 90 to 180 days to allow preservation of the structure through a negotiated purchase, however the regulation did not provide a means to prohibit the demolition. In addition, the new regulation did not change the allowed permitted uses of the property. The only new element included in the ordinance required historical documentation to be completed prior to demolition.

In 2008, an owner of property in the previously defined Historic Central Core filed a lawsuit challenging the Ordinance on the grounds that this regulation is a Zoning Ordinance and therefore must follow the notification and procedures established for Zoning Code amendments. The City Attorney argued that, because the regulation did not change or does not regulate the permitted uses of the property, and did not mandate preservation or prevent demolition, but instead only provided for important documentation, it was appropriate to be included as part of the Building Code.

The Honorable Judge John Kelly of Pima County Superior Court agreed with the plaintiff's position and held that Section 3303.7 of the IBC is a Zoning regulation and was subject to the procedural requirements of a Zoning Code amendment. Judge Kelly ruled that the new section of the Building Code was void and unenforceable. The City Attorney advised the Mayor and Council that if they desire to have this procedure in the LUC that they direct staff to prepare a new ordinance according to the LUC amendment procedures, and that it be added to the Special Development Applications section of the *LUC*.

Other Cities – After reviewing documentation regulations applied to demolitions of historic buildings in other US cities, staff has concluded that the architectural documentation requirements proposed in the draft amendment are comparable to other jurisdictions. The amount and type of information required are based on the same national standards used by other jurisdictions, and such documentation is a community benefit because it ensures there are records of historically significant architectural resources lost to demolitions. A partial list of jurisdictions that have requirements for architectural documentation of historic buildings prior to demolition include Santa Barbara, CA; Wilmington, DE; Charlottesville, VA; Canton, MA; St. Augustine, FLA; Lincoln MA; and the state of Texas. Wilmington, DE requires a great deal of documentation and analysis, however several cities require the same type and level of documentation as proposed the draft amendment to the City of Tucson *LUC*. Like the staffs of other cities, staff believes that the documentation requested from property owners proposing to demolish historic buildings is reasonable, and it is important to keep a record of our City's past.

Architectural Documentation – The attached draft amendment will require property owners intending to demolish a structure or portion of a structure that is fifty or more years old to provide architectural documentation prior to demolition. Like the previous Building Code regulation, this *LUC* draft amendment does not regulate permitted uses, prevent a demolition, or mandate preservation of the structure.

The following is a summary of the key provisions of the amendment:

- Two types of documentation procedures are available depending on the type of demolition proposed.
 - 1) Minor documentation applies to a building that is not a historic structure in a National Register Historic District, a City of Tucson Historic Preservation Zone, or the Rio Nuevo and Downtown Zone.
 - 2) Full Documentation applies to historic buildings located in a National Register Historic District, a City of Tucson Historic Preservation Zone, or the Rio Nuevo and Downtown Zone, and buildings anywhere else in the City that meet the eligibility criteria for the National Register of Historic Places.
- The City of Tucson Historic Preservation Officer is the administrator of the application review procedure in conjunction with the Planning and Development Services Department.

- Minor documentation requires current photos of the facades of the structure and documentation that establishes the date of construction.
- Full documentation requires a measured site plan, current photos of the facades of the structure, documentation that establishes the date of construction, more detailed information about architectural features, and any supplemental information about people or historic events that occurred in the building, if known. The guidelines for full documentation are based on the Secretary of the Interior's standards for documentation of buildings listed on, or meeting the eligibility criteria for, the National Register of Historic Places.
- The acceptance of a demolition application does not authorize a demolition permit. The property owner must demonstrate that all City codes that apply to the property are complied with. When review staff at Planning and Development Services has verified that all criteria are met, a demolition permit may be issued.

Attachments: A - Draft Amendment

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ARTICLE V. ADMINISTRATION DIVISION 3. SPECIAL DEVELOPMENT APPLICATIONS

5.3.11 ARCHITECTURAL DOCUMENTATION PRIOR TO DEMOLITION OF HISTORIC BUILDINGS. Applications for permits that involve the demolition of buildings that are partially or in their entirety fifty (50) or more years old shall supply architectural documentation to provide a record of those buildings of historical significance. Demolition applications are available from the City of Tucson Planning and Development Services Department.

5.3.11.1 Applicability. These regulations apply when an application for a demolition permit involves the demolition of a building that is partially or in its entirety fifty (50) or more years old.

If the building to be demolished is located in an Historic Preservation Zone (HPZ) or the Rio Nuevo and Downtown Zone (RND) overlay zone, compliance with the applicable demolition review and approval requirements contained in Section 2.8.8.7. through Section 2.8.8.9. is required in addition to the provisions required for architectural documentation of historic buildings.

5.3.11.2 Review Required. A Planning and Development Services staff member designated by the Historic Preservation Officer (HPO) shall review all demolition applications. The HPO Designee shall determine if the application will require Minor or Full Documentation prior to the issuance of a demolition permit.

5.3.11.3 Application Procedures. The applicant shall submit two (2) copies of the demolition permit application and the applicable architectural documentation to the City of Tucson Planning and Development Services Department.

A. The HPO Designee must accept or reject the application within five (5) working days of submittal and advise the applicant of the level of documentation required. The HPO Designee shall forward demolition requests requiring Full Documentation to the HPO for **determination of** completeness, review, and decision.

Comment [AU2]: Added two words...

B. If the architectural documentation provided is sufficient, the HPO Designee shall forward the application to the appropriate review staff. If the architectural documentation is insufficient, the HPO designee shall return the application.

C. Acceptance of the application and architectural documentation does not grant a demolition permit. The applicant must demonstrate compliance with all provisions of the Tucson Code.

5.3.11.4 Minor Documentation. The HPO Designee shall review architectural documentation for demolition permit requests for buildings that are fifty (50) or

more years old and are not contributing properties within a designated or pending National Register Historic District and do not meet the eligibility criteria for the National Register of Historic Places.

A. *Architectural Documentation Required.*

1. A site plan depicting existing conditions;
2. Current photographs of the building to be demolished (printed on photographic paper), including each façade of the building; and
3. Documentation confirming the year of construction and dates of additions to the building to be demolished.

5.3.11.5 Full Documentation. Demolition permit requests for buildings that are fifty (50) or more years old, are contributing properties within a designated or pending National Register Historic District and/or meet the criteria for eligibility for the National Register of Historic Places shall be reviewed by the HPO.

A. *Architectural Documentation Required.*

1. A site plan and dimensioned floor plans depicting existing conditions;
2. Photographs of the building to be demolished (printed on photographic paper), including each façade, interior rooms, and architectural features;
3. Documentation confirming the year of construction and dates of additions to the building to be demolished;
4. A general description of architectural features (exterior wall materials, roof shapes and materials, window types, porches, carports, etc.) of the building to be demolished; and
5. A list of any important historical events or historically significant persons related to the building to be demolished, as and if known to the applicant.

5.3.11.6 Documentation Retention. Upon approval of the demolition permit, the HPO shall retain one (1) copy as a record of a lost historic resource and forward one (1) copy to the Tucson-Pima County Historical Commission for their records.

@ Draft 9/30/09