

(1/28/2020) DRAFT

**ZONING AND DEVELOPMENT CODE
CITY OF TEMPE**

DENSITY BONUS PROGRAM

ORDINANCE NO. O2020.xx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE BY ADDING A NEW SECTION 5A-107 – DEVELOPMENT BONUS PROGRAM, AND A NEW PART 5A, CHAPTER 2, TRANSFER OF DEVELOPMENT RIGHTS, PURSUANT TO THE PROVISIONS OF ZONING AND DEVELOPMENT CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

SECTION 1. That Section 5A-107, of the Zoning and Development Code, pertaining to a new Development Bonus Program, is hereby amended to read as follows:

Section 5A-107 – Development Bonus Program. [RESERVED]

~~A development bonus program will be available for the UCD. The bonus will be available for achieving additional building heights and densities for developments that provide public benefits that include affordable housing, sustainability elements, historic preservation (when applicable) assurance, or public amenities. The amount of bonus height and density available for providing these public benefits will be in accordance with the Code (note: this code is under development).~~

The Development Bonus Program is available within the Urban Code District (UCD) to allow additional building heights and densities for developments that provide public benefits that include either affordable housing, sustainability elements, public gathering spaces, or historic preservation assurance (when applicable). The amount of bonus height and density available for providing these public benefits will be in accordance with the provisions in this Section.

A. Applicability.

1. Properties that opt-in to the UCD, pursuant to Section 5A-102(A)(1), and are eligible to for the Development Bonus Program.
2. The Development Bonus Program does not apply to properties in the UC-7 (Urban Code-7) Zone. However, eligible Historic Properties in UC-7 can be Sending Properties towards the Transfer of Development Rights (TDR) program pursuant to Part A, Chapter 2.
3. Property owners of sites which have structures that are listed on the National Register of Historic Places (NR), Tempe Historic Property Register (THPR), and Tempe Historic Eligible (HE), can participate in the Development Bonus Program by assuring the preservation of historic structures as by providing conservation easement to the City as approved by the Historic Preservation Commission (HPC), and opting-into the UCD. The bonus will be in the form of

Transfer of Development Rights pursuant to Part 5A, Chapter 2.

4. Alternative Compliance Method. A development may also meet the requirements of this Section by showing how the public benefits provided by the developer meet the intent of this Section. Applicant shall provide a written explanation to the Community Development Director or designee describing how the intent of the bonus elements are being met by the proposed development, including cost estimates for each public benefit elements provided, and how the sum total of the public benefits equals to the number of points required to achieve the bonus sought. The Community Development Director or designee will make a determination if the proposal meets the intent of this section to achieve bonus points.

- a. This approach requires developer to show how the proposed public benefit elements meet the value sharing intent of the Development Bonus Program by providing the City with the financial pro formas for the proposed development.
- b. Value sharing intent: Value of contribution to bonus elements (public benefits) equals half of the incremental profit (developer profits):

$$\begin{aligned} \text{Approximate value of developer contribution} &= 0.5 \times (\text{Bonus Project Profit} \\ &\quad \text{minus Base Project Profit}), \text{ or} \\ &= 0.5 \times (\text{Incremental Profit}) \end{aligned}$$

5. All projects shall include the public benefits on *site*. However, in case of affordable housing, an in-lieu fee can also be used to achieve partial points necessary to meet the minimum requirements for compliance under the Development Bonus Program. The In-lieu fee payment can only supplement the bonus points achieved through the provisions of on-site elements to earn adequate points to achieve bonus height and density.

B. Public Benefit Elements.

The amount of public benefit elements provided, and associated bonus points are based on the developer recouping approximately half of the additional project value resulting from UCD bonus development.

Table 5A-107A –Bonus Elements and Points (UCD Zones) shows the amount of bonus points achievable by the development in accordance with public benefits provided in the project.

Table 5A-107A Bonus Elements and Points (UCD Zones)										
Bonus Elements and Points	Public Benefit Elements and Bonus Points by UC Zone									
	UC-1		UC-2		UC-3		UC-4		UC-5 and UC-6	
	Public Benefit ¹	Pts	Public Benefit ¹	Pts	Public Benefit ¹	Pts	Public Benefit ¹	Pts	Public Benefit ¹	Pts
Affordable Housing, On-Site										
Up to 50% AMI	3%	100	3%	100	3%	100	3%	100	n/a	
51% to 80% AMI	5%	100	5%	100	5%	100	5%	100	n/a	
81% to 100% AMI	10%	100	10%	100	10%	100	10%	100	n/a	
101% to 120% AMI	n/a		n/a		n/a		n/a		n/a	
Housing In-Lieu Fee Fee per Point (b)	\$6,500	1	\$6,500	1	\$15,000	1	15,000	1	\$15,000	1
Minimum Multiple		1		1		1		1		1
Maximum Multiple		70		70		70		70		10
Public Outdoor Gathering Space										
Minimum Multiple based on percentage of site set-aside	5%	15	5%	15	5%	10	5%	10	5%	5
	10%	30	10%	30	10%	20	10%	20	10%	10
	15%	45	15%	45	15%	30	15%	30	15%	10
Maximum Multiple	20%	60	20%	60	20%	40	20%	40	20%	10
Sustainability Elements										
Points per \$250,000 in Qualified Expenditures										
Minimum Multiple		30		30		15		15		10
Maximum Multiple		90		90		75		75		10

¹ The percentage shown for on-site affordable housing are the number of affordable housing provided in a project as the percentage of the total number of housing units in the project. Providing affordable housing to any one of the AMI levels as shown bestows to the developer full 100 bonus points. The percentage shown for Outdoor Gathering Space are the percentage of the net site area to be provided as outdoor gathering space.

The categories of on-site bonus elements include the following:

1. **Affordable Housing.** Provide on-site units equal to up to fifty percent (50%) of the additional project value in accordance with the percentages provided in Table 5A-107A. Projects need only provide the percentage of units required for the bonus program at any of the affordability levels based on the Area Median Income (AMI) for Maricopa County as published by the US Housing and Urban Development Department. Projects participating in this option would choose one of the percentages of housing units provided and corresponding affordability levels shown on Table 5A-107A and provide those units on-site. The average number of bedrooms per unit in the affordable units will be similar to the average number of bedrooms per unit in the market rate housing component as approved by the Community Development Director or designee.

The affordable housing units on the development must be covenanted and deed restricted in perpetuity to remain as affordable units for the owners or tenants with income in the specified AMI level and shall survive any change in ownership of the property.

The City can provide ongoing monitoring as required for a cost of \$175 per unit per year, increasing annually with the City's personnel cost increases.

2. **Public Outdoor Gathering Space.** To receive bonus, provide an on-site public outdoor gathering space as defined in Section 5A-105-I in amounts as shown in Table 5A-107A. An applicant with that dedicates a minimum of five (5) percent of its net site area to public outdoor gathering space shall earn bonus points for public gathering space. Each additional increment of the net site coverage is eligible to earn additional points. Points can be earned in multiples of the base rate. The points may be proportionally scaled gradually for different size of the public gathering spaces if necessary, for the design of the project as approved by the Community Development Director or designee.

A maximum of ten (10) percent of net lot coverage dedicated to Public Outdoor Gathering space can result in Bonus Points in UC 1 and UC 2. A maximum of twenty (20) percent lot coverage can earn bonus points in UC 3 and UC 4. Minimum lot coverage requirements to opt in to the UCD are treated separately, and count towards Bonus Point accumulation only in cases where the project development footprint meets or exceeds 90 percent of net lot coverage.

The bonus points for Public Outdoor Gathering Space is based on a site of up to one 0.7 acre in UC 1 and UC 2, and three (3) acres in UC 3 and UC 4. For any development site greater than the sizes above, the bonus points can be decreased based on the relative acreage of the property as approved by the Community Development Director or designee.

The property owner must provide a perpetual public access and use easement for the Public Outdoor Gathering Space, and record it with the City. The easement shall survive any change in the ownership of the property.

3. **Sustainability.** Provide qualified on-site sustainability elements in dollar amounts specified in Table 5A-107A, and provide the cost estimates of providing the sustainability elements to the Community Development Director or designee. Up to ninety (90) points can be achieved for qualified sustainability expenditures.

The value of the sustainability elements is based on a site of up to one 0.7 acre in UC 1 and UC 2, and three (3) acres in UC 3 and UC 4. For any development site greater or less than the sizes above, the dollar amount assessment of \$250,000 can be increased based on the relative acreage of the property as approved by the Community Development Director or designee.

The maximum allowed points in this category shall be eighty (90) points of the one hundred (100) total points required for bonus.

The sustainability elements provided shall be maintained on the site by the property owner, and are subject to regular monitoring by the City. The sustainability elements shall remain in the development permanently, and shall survive any change in the ownership of the property. Any future changes as required by the change in technology and other reasons shall be reviewed and approved by the Community Development Director or designee.

The following provisions qualify for inclusion in the sustainability elements:

- a. Resilience to Extreme Heat
 - i. Provide shade coverage on at least thirty percent (30%) of the east and west above-grade building walls and retaining walls from grade level to a height of 20 feet or the whole wall height. Shade coverage shall be calculated at 10 am for the east walls, and 3 pm for the west walls on the date of summer solstice. Any vegetation providing shading shall consist of biodiverse plantings of low water use plants as identified by the ADWR (Arizona Department of Water Resources) and this Code.
 - ii. At least fifty percent (50%) of the site hardscape that is not covered by solar energy systems shall be shaded by biodiverse planting of low water use plants as identified by the ADWR (Arizona Department of Water Resources) and this Code. The shade coverage on hardscape shall be the arithmetic mean of the shade coverage at 10 am, noon, and 3 pm measured on the date of summer solstice.
 - iii. A minimum of seventy-five percent (75%) of the roof area shall be covered with any of the following products. Portion of the roof already covered by photovoltaic panels shall be excluded from these calculations and requirements.
 - a) Roof coverage materials with a three-year aged minimum SRI (Solar Reflectance Index) value of thirty-five (35).
 - b) Vegetative terrace or roofing system that consist of plants that are suitable for the site microclimate, and which provide foliage to at least fifty percent (50%) of the designated area for vegetation.
 - iv. Site development incorporates a minimum three (3) feet deep window overhang(s) or similar architectural features to shade seventy-five percent (75%) of all west facing windows and fifty percent (50%) of all glazed windows. The shade coverage shall be the arithmetic mean of

the shade coverage at 10 am, noon, and 3 pm measured on the date of summer solstice.

- v. Provide on at least fifty percent (50%) of the site hardscaped area, permeable paving, structured soil/grass, open grid paving or similar material which allows for water to permeate the surface to promote natural drainage and filtration.
- vi. Site development incorporates functional rainwater harvesting that irrigates at least 75 percent (75%) of the total landscape area.

b. Greenhouse Gas Emissions Reduction

- i. Ensure that at least eighty percent (80%) of all parking spaces are Electric Vehicle (EV) charger ready (wiring conduit provided) and with ten percent (10%) of spaces with EV chargers installed.
- ii. Site development at grade and roof incorporates solar panels which cover twenty percent (20%) of the net site area, with a minimum size of 250 watts for each panel.
- iii. Allocate physical space and pathways for future installation of on-site renewable energy systems including solar and battery, which provide the annual energy annual production equivalent of not less than 10 kBtu/ft² (21 kWh/m²)¹ multiplied by the gross roof area in square feet or square meter as applicable.
- iv. Any other sustainability features from the International Green Construction Code (IgCC) 2018 or amended IgCC codes adopted by the City of Tempe to enhance sustainability in the development, to be reviewed and accepted by the Community Development Director or designee.
- v. Achieve energy conservation levels that are at least fifty percent (50%) of the calculated baseline energy consumption for the project, certified by a third party.
- vi. Provide for on-site microgrid (local energy grid with control capability powered by distributed generators, batteries or renewable resources) investment for critical energy requirement, which should be at least thirty percent (30%) of expected summer electrical uses.

4. **Affordable Housing In-Lieu Fee.** After providing one or more bonus elements on-site, project applicants may obtain additional points necessary to achieve one hundred (100) minimum points through the payment of an affordable housing in-lieu fee. In-lieu fee amounts are shown in Table 5A-107A. Through in-lieu fee payment, a project can only earn a maximum of seventy (70) points towards achieving the bonus. In-lieu fee amounts per point vary by UC zone. The fees are paid on a per bonus point basis, and are deposited to the City's Affordable

Housing Trust Fund. Projects cannot participate in the Development Bonus Program through in-lieu fee payments alone.

The value of the in-lieu fee is based on a site of up to one 0.7 acre in UC 1 and UC 2, and three (3) acres in UC 3 and UC 4. For any development site greater than the sizes above, the fees can be increased based on the relative acreage of the property as approved by the Community Development Director or designee.

5. **Historic Preservation.** Eligible sites with historic structures can participate in the Development Bonus Program to obtain Transfer of Development Rights (TDR) pursuant to Part 5A, Chapter 2, by opting into the UCD, providing an historic conservation easement on the property to the City, preserving the historic structure/property as approved by the Historic Preservation Commission. Historic Preservation bonus is available in the form of a Transfer of Development Right once the public hearing process is approved, and a conservation easement for the property is recorded with the City:

C. Development Bonuses

1. Table 5A-107B shows the development bonuses available by UCD Zone. Projects that achieve a total of hundred (100) or more points are eligible to achieve the full bonus. Projects seeking to achieve Urban Core Master Plan (UCMP) heights must meet all applicable UCD requirements, consistent with Urban Core Master Plan guidelines, and provide public benefits commensurate with the amount of building heights being requested. The proportionality of public benefits provided and building heights and density achieved through the Development Bonus Program should be the reference for achieving the Urban Core Master Plan heights, with a decision made by the City Council. The Urban Core Master Plan heights map can be found as APPENDIX O of the Code.
2. Projects that achieve Development Bonus Program requirements through the inclusion of a combination of on-site affordable housing, public gathering space, or sustainability elements along with any affordable housing in-lieu fees will achieve bonuses in accordance with Table 5A-107B. Applicants need to earn a total of one hundred (100) points to earn the UCD bonus in all zones except that in UC-5 and UC-6, applicants need to earn a total of ten (10) points to earn the UCD bonus.
3. Historic Preservation bonus is available through the Transfer of Development Rights (TDR) program in accordance with Part 5A Chapter 2.

Table 5A-107B –Base and Bonus Development (UCD Zones)		
Zone/ Max Height Max Density	Base Standards	UCD Bonus
UC-1 Height Density	90-125 ft NS	160 ft 65+ du/acre
UC-2 Height Density	90 ft NS	130 ft 65+ du/acre
UC-3 Height Density	90 ft Up to 65 du/acre	130 ft 65+ du/acre
UC-4 Height Density	70 ft Up to 45 du/acre	90 ft Up to 65 du/acre
UC-5 Height Density	55 ft Up to 25 du/acre	60 ft 25 to 45 du/acre
UC-6 Height Density	40 ft Up to 20 du/acre	45 ft Up to 20 du/acre

Notes

NS = No Standard.

For building heights step-back requirements as per Table 5A- 105A – UCD Building Form and Placement Standards shall apply.

D. Development Bonus Program Entitlement Process

1. UCD Zone Base Development is subject to the processes specified in Section 5A-102.
2. UCD Bonus Development Program requires compliance with UCD base development, per Section 5A-102, site eligibility, and accumulation of one hundred (100) bonus points through *an* administrative review decision. Sites or projects may opt into the corresponding UCD Zone and Development Bonus prior to filing a development application, or upon completion of a development plan review decision, pursuant to Section 6-306.
3. For development projects seeking heights/density beyond the UCD Development Bonus Program with the intent to meet additional goals and objectives within the Urban Core Master Plan, the following process shall be considered:
 - a. The development shall meet one or more of the public benefit elements as defined within the Section 5A-107 and by opting into the UCD.
 - b. The development provides additional public benefits either within the site or off-site, as determined through a development agreement, subject to

an ordinance adoption through a public hearing process with the City Council in compliance with Section 6-404.

- c. If approved by the City Council, the development agreement shall define the acceptable development bonus elements for the project, including but not limited to, maximum building height and density, and compliance with the agreed upon public benefits.
- d. Simultaneous processing of the development plan review is not required for the development agreement, although illustrative elevations and programming uses may be presented to justify acceptance of the additional height or density.
- e. The development shall then proceed with a development plan review, through the process procedures identified in Part 5A, Chapter 1, Urban Code District, and compliant with timelines that may be stipulated in the development agreement.

SECTION 2. That a new Part 5A, Chapter 2, of the Zoning and Development Code, pertaining to a Transfer of Development Rights Program, is hereby added to read as follows:

Chapter 2 – Transfer of Development Rights Program

Section 5A-201 – Purpose

Tempe enjoys a rich multi-cultural heritage evident through its historic buildings, neighborhoods and structures. Less visible, but equally important, are the archaeological resources of Tempe's past. Protection and enhancement of Tempe's heritage is critical to preserving the unique identity of our community. The blending of the past with the present enriches our city and all of its citizens. However, the tools available for historic preservation are limited. Development of regulations that enable preservation is critical to protecting Tempe's past, both historic or prehistoric. The goal of the Transfer of Development Rights (TDR) regulations is to allow for the preservation/protection of significant historic properties while allowing for additional growth in the appropriate locations.

This Chapter establishes the process and documentation required to transfer development rights (i.e. residential density and building height) from an historic property to another property which is more suitable for potential development and with the zoning where such transfers are allowed to take place. The recordation/recordkeeping associated with the transfers shall be in compliance with ARS 9-462.01 Subsection 12 by providing property owners with defined "sending properties" with an additional economic use of their lands to encourage development to instead occur in defined "receiving areas". In addition, all such transfers shall be in compliance with the City of Tempe General Plan, Zoning and Development Code and Historic Preservation portion of the City Code.

Section 5A-202 – Applicability

Property owners of sites which have structures that are listed on the National Register of

Historic Places (NR), Tempe Historic Property Register (THPR), and Tempe Historic Eligible (HE), can participate in the TDR program by assuring the preservation of historic structures as by providing conservation easement to the City as approved by the Historic Preservation Commission, and opting-into the UCD.

Section 5A-203 - Establishment of Sending and Receiving Properties

1. **Sending Properties.** Properties that have structures that are listed on the National Register of Historic Places (NR), Tempe Historic Property Register (THPR), Tempe Historic Eligible (HE), and structures which are fifty (50) years or older and upon review are deemed eligible for the National Register of Historic Places, and opt-in the Urban Code District (UCD). Sending properties shall be established through an overlay zoning over the subject property(ies) by the property owner(s) through a public hearing process, pursuant to Section 6-304. The location and boundaries of the sending property shall be established on the City's official website map, pursuant to Section 2-107, City of Tempe Zoning Map. Properties designated with an overlay district for sending properties shall be indicated as follows:
 - a. (TDR-S), Transfer of Development Rights - Sending Property
2. **Receiving Properties.** Any property within UCs 1-5 that are eligible to apply for bonus, *and* has opted into the Urban Code District is eligible to purchase and receive development rights. Receiving properties shall be established through an overlay zoning over the subject property(ies) by the property owner(s) through a public hearing process, pursuant to Section 6-304. The location and boundaries of the receiving property shall be established on the City's official website map, pursuant to Section 2-107, City of Tempe Zoning Map. Properties designated with an overlay district for receiving properties shall be indicated as follows:
 - a. (TDR-R), Transfer of Development Rights - Receiving Property

Section 5A-204 - Calculation of Development Rights

1. The amount of development rights associated with a parcel shall be calculated as of the initial effective date of this ordinance. An owner of the parcel submits a request to the Community Development Director or designee for such a calculation.
2. For purposes of this chapter only, the amount of development rights associated with a sending property shall be calculated as follows:
 - a. Determine the existing height (at building eave) and floorplate of the existing building to calculate existing cubic feet of development. (Alternative: use the area of the total developed portion of the site)
 - b. Determine the development potential (cubic feet) under the corresponding bonus for the UC Zone using the bonus height times the square footage of the sending site's maximum developable floorplate. The bonus available for TDR is equivalent to the site earning full 100 bonus points as per Section 1.C.
 - c. Subtract the development potential cubic feet from the existing building

cubic feet. This is the amount of Transferable Development Rights available.

Section 5A – 205 - Severance of Transfer of Development Rights

- A. Severance. The owner of any eligible sending property may choose to sever development rights from the sending property, and may sell such development right(s) to any person, corporation, or limited partnership, at a price agreed upon between the buyer and seller, in accordance with the provisions of this chapter.

- B. Transfer. The owner of a receiving property may choose to purchase development rights from any person with eligible sending property to increase the amount of development permitted upon the receiving property, at a price agreed upon between the buyer and seller, in accordance with the provisions of this chapter.

- C. Restrictive covenant required. No transfer, sale or purchase of any development right shall create any rights to additional development on a receiving property unless and until a restrictive covenant meeting the requirements of section XXX of the City of Tempe Transfer of Development Rights Manual has been recorded with the Maricopa County Recorder identifying the portion of the sending property restricted from future development and the amount of development rights transferred.

- D. Registration of development rights severed on sending properties. After the sending property owner records the restrictive covenant severing development rights on the sending property, the property owner shall register the severance with the Community Development Department, which shall maintain a register of all development rights severed. The sending property owner shall present a copy of the signed restrictive covenant and a map, which shall, at a minimum, be drawn to scale and show the entire property and area from which development rights have been severed, the area to be restricted, and the amount of development rights severed. If any owner of record for the sending property or any lienholder of record on the sending property fails to sign the restrictive covenant, the City shall not register the severance or issue a development right certificate representing the development rights identified in the restrictive covenant.

- E. Issuance of development right certificate.
 - 1. At the time a development right is registered with the City, the department shall issue one numbered development rights certificate for all development rights severed.

 - 2. The development right certificate shall contain a section identifying the property where the development rights are intended to be used, the owner of the receiving property where the development rights are intended to be used, and any lienholders on that receiving property, but this section need not be completed or signed at the time the development right certificate is issued.

F. Restricted property excluded from calculation of development potential. Once a restrictive covenant has been recorded, any remaining development potential on the property shall be calculated without regard to property covered by the restrictive covenant. Property covered by the restrictive covenant may not be aggregated with any other property for purposes of calculating gross development density possible on any remaining unrestricted property. Property covered by restrictive covenants cannot be used in calculating requirements for uses under the zoning code.

G. Increased development in receiving areas.

1. Development rights may be used to increase height or density on a receiving property above the maximum permitted based on the zoning in which the receiving property is located, except as limited by the provisions of this chapter.
2. All development rights purchased shall, if the development application is approved, enable the construction of the additional development as calculated in Section 5A-203.

H. Maximum increase in development in receiving areas. The potential increase in development shall be limited to the following:

I.

1. The maximum amount of height permitted on the receiving property by the adopted Urban Core Master Plan; or
2. The maximum amount of density permitted on the receiving property by the adopted general plan; or
3. Notwithstanding the provisions of subsection b above, if the owner of a receiving property requests an amendment to the general plan applicable to the parcel in order to allow a higher level of development, the city council may, in its discretion, approve, deny, or approve the application with conditions limiting the increase in height or density through the use of acquired development rights.

Section 5A-206 - Procedure for Transfer

- A. Development rights shall only be transferred pursuant to the procedures provided in this section. Application materials and forms required for these procedures are set forth in the City of Tempe Transferable Development Rights Manual, which is available from the Community Development Department.
- B. Written consent of sellers. Each of the owner(s) of the sending property shall execute an instrument which conveys an interest in real property, and shall identify one or more development rights as the property interest being transferred, and shall include a legal description of the sending property and the quantity of

development right(s) being transferred.

C. Sale or transfer transactions

1. Registration of transfer. The owner or purchaser of a development right shall present the signed instrument of transfer together with the following:
 - i. A copy of the signed restrictive covenant required by Section 5A-205(C), showing the recording information; and
 - ii. Evidence of ownership of the sending property, to the department, which shall maintain a register of all development rights sold. If any owner of record for the sending property, or any lienholder of record on the sending property, fails to sign the instrument of transfer or the restrictive covenant or notice, the City shall not register the sale representing the development rights identified in the instrument of sale.
2. Third parties and intermediaries. The buyer of a development right need not be the owner of a receiving property on which the development right will be used. Persons may purchase development rights for resale to owners of receiving properties, or in anticipation of the purchase of a receiving property, or for future resale, or to retire them from use.
3. Registration of each sale required. Upon the issuance of a development rights certificate, that certificate shall represent the development rights severed from the sending property. A buyer of a development right may sell or transfer the development right(s) to owners of receiving properties, or to third parties, through the sale and transfer of the development rights certificate to the buyer. In order to track the purchase, sale, transfer and use of development rights, each successive purchaser of a development rights certificate shall register the sale with the department as described in this section. Failure to register the resale of a development rights certificate shall not invalidate the development rights associated with the certificate.

D. Use on receiving property.

1. Eligibility of receiving property. When an owner of development rights intends to use those development rights on a specific receiving property, the owner shall notify the department, and the department shall respond in writing within thirty (30) days to confirm whether the development rights may be used on the proposed receiving property. At the same time, the department shall review the register of development rights and confirm that the numbered development right certificates to be submitted have not been invalidated or replaced pursuant to subsection J below, and shall notify the applicant if there is any question as to the validity of the certificates proposed to be used on the receiving property. The City of

Tempe Transferable Development Rights Manual may establish requirements for submission of information in order to determine eligibility for transfer.

2. Eligibility does not constitute development approval. The department's response shall not constitute development approval for the proposed development on the receiving property, and shall not obligate the City to approve development using some or all of the development rights requested by the owner. The proposed development using the transferred development rights must obtain all required development approvals, and conditions attached to those development approvals may prevent the use of all of the development rights requested.
 3. Must use development plan review process. Acquired development rights may be used only through the development plan review approval process. Building permits shall not be issued for construction through the use of acquired development rights on lots created through the lot split process unless a development plan review is approved for the use of the development rights. As part of any approval of a development plan review reflecting the use of acquired development rights, the City may require that the owner of the receiving property waive its rights to apply for lot splits on any lands included within the application.
 4. Submission of application materials. The owner of the receiving property shall submit all required applications for a development plan review for the receiving property, and shall indicate the numbers of the development rights being used to increase the development rights above the amount otherwise permitted on the property.
 5. In addition to the application materials otherwise required, the owner of the receiving property shall submit the development rights certificate for all development rights proposed to be used in the development, with the section identifying the owner(s) and lienholder(s) of the receiving property completed and signed by both the owner(s) and lienholder(s).
 6. Submission of copy of recorded restrictive covenant. In addition to other materials required, the owner of the sending property shall submit a copy of the recorded restrictive covenant required by Section 5A-205(C).
- E. Notice. At the time an application for development including transferred development rights is approved for a receiving property, the City shall notify each owner of a property within 600 feet of the receiving property. The notice shall identify the receiving property, the type of development approved in the application and the amount of development being accomplished through the use of transferred development rights.
- F. Review and approval. The procedures for review and approval of an application including the use of transferred development rights shall be the same as those procedures that would apply if no transferred development rights were being used.

A rezoning of the receiving property shall not be required for use of development rights consistent with the provisions of this chapter. In the event that the City approves the proposed development, the documentation of the approval shall include the numbers of the development right certificates used to support the additional height or density in the development.

- G. Re-approval for additional development. If the owner of a receiving property receives development plan review approval including the use of development rights, and the owner subsequently wishes to file an application for a new development plan review approval to accommodate additional development on the receiving property (within the limits established in this chapter), the owner shall first provide written notice of the proposed application to the owners of lands located within the receiving property covered by the prior approval and who purchased their properties following the prior approval, and shall submit evidence of such notice with the new application.
- H. Retirement of development right certificates. After all required development approvals have been obtained, and the full number of development rights used on the receiving property is known or upon the request of the owner of a development rights certificate, the City shall retire those development rights certificates by retaining those certificates and stamping them with the word "retired", by indicating in the register of development rights that the specific numbered development rights are no longer valid, and by identifying any receiving property development on which they were used.
- I. Return of unused development certificates. Any development rights certificates submitted with the application that are not approved for use on the receiving property shall be returned to the applicant within thirty (30) days of a final decision on the development application, and may be used or transferred for use on another eligible receiving property. In addition, if an applicant obtains approval of a development plan review incorporating development rights, and the owner of the land covered by that development plan review subsequently obtains approval for a revised plat or development plan review incorporating less development, the City shall return to the applicant for such revised development plan review development rights previously approved to be used, but that will no longer be developed under the revised approval.
- J. Lost, destroyed, or stolen certificates. If a development rights certificate is lost, destroyed, or stolen, the person appearing in the City register as the last owner of the development rights certificate may apply to the City for the issuance of a replacement certificate. Upon receipt of the request, the City shall place a notice in a newspaper of general circulation in accordance with the City of Tempe Transfer of Development Rights Manual.
- K. Nothing in this chapter shall be construed to prohibit the severance and transfer of development rights from a sending property to a receiving property under common ownership or control.
- L. Expiration of rights.

1. If this ordinance or the enabling statute is repealed, then the rights associated by the development rights certificates shall be effective for five (5) years after repeal under the terms of this ordinance.
2. The City shall notify registered development rights certificate owners of the repeal.

Section 5A-207 - Other Methods for Transfer of Development Rights

- A. In addition to the process described in Section 5A-206, development rights may be transferred from a sending property to a receiving property by any of the following procedures.
 1. Use of development agreements for transfers. At the option of the owner of a sending property and/or a receiving property, development rights may be transferred from a sending property to the receiving property in connection with a development agreement related to the sending or receiving property.
 2. Amendment of existing development agreement. A development agreement executed before the adoption of this chapter may be amended to include provisions for the transfer of development rights, provided that the terms of the development agreement as amended:
 - a. Addresses land in a mapped sending area and/or a mapped receiving area;
 - b. Are consistent with A.R.S § 9-462.01; and
 - c. Are consistent with the terms of this chapter.

Section 5A-208 - Effect of transfer.

- A. If a transfer of development rights is completed pursuant to this chapter, all future land use decisions, such as rezoning, amendments or updates to the general plan, specific plans, variances or other actions that change the development potential of a sending property or receiving property by the City shall be consistent with the intent of the transfer.
- B. No development approvals issued for a sending property shall have the effect of permitting development equivalent to or in replacement of any of the development rights previously severed. If a land use decision to allow additional development on the sending property is made following the severance and transfer of development rights, additional development shall be permitted only on those portions of the parcel not subject to the restrictive covenant(s), and the amount of development possible on the property shall be reduced below the amount that would otherwise be available by the amount of any development rights previously severed from the property.
- C. No land use decision made after the approval of a transfer of a development right

shall affect the owner's right to that transferred development right. For example, if a property is approved for six dwelling units without the use of development rights and for seven dwelling units if a development right is acquired, and the owner has acquired a development right and a development plan for seven dwelling units has been approved, but a later land use decision reduces potential development to three dwelling units without development rights, then the parcel shall still be permitted one additional dwelling unit, for a total of four dwelling units, through the use of the acquired development right.

Section 5A-209 - Amendment and appeal procedures.

Appeal of boundaries or calculation of development rights: Decisions of the department regarding (1) the boundaries of any sending area or receiving area, (2) the estimate or calculation of development rights available for transfer from any sending property, or (3) the estimate or calculation of development rights that may be used on a receiving property, may be appealed by the owner of any property proposing to sever or use development rights to the city council. The City Council shall hear any such appeal at a public hearing.

Section 5A-210 - Delegation of authority.

The department is hereby authorized to develop forms and materials necessary to implement the clauses of this chapter, including without limitation application forms, a form of restrictive covenant to be used on sending properties, and a Transferable Development Rights Manual that may contain material supplementing, and consistent with, the provisions of this chapter.

SECTION 3. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2020.

Mark W. Mitchell, Mayor

ATTEST:

Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney