

July 21, 2021

UDC REPORT

Before the council is the consideration of a new *zoning ordinance* and three new *zoning maps*. The zoning ordinance is titled the “City of Mobile Unified Development Code,” or UDC. The proposed UDC will repeal and completely replace Chapter 64 of the *Mobile City Code*. An effective date has not been specified. The three *zoning maps* depict the boundaries of twenty zoning districts, two zoning subdistricts (urban and suburban), and three overlay districts—Africatown, the Peninsula, and the Village of Springhill.

This report has two sections. Section I provides general background information about zoning laws. Section II examines the UDC for completeness and highlights significant changes from the existing zoning ordinance.

Respectfully submitted,

Wanda J. Cochran, Attorney at Law LLC

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I. ZONING BACKGROUND

Land use regulation is a core legislative function of municipal government. Prior to the 1930s few cities regulated land use beyond declaring certain activities a public nuisance. All of that changed when the U. S. Department of Commerce under the direction of then secretary, soon-to-be president Herbert Hoover developed what is now known as the *Standard Zoning and Planning Enabling Acts*.

State governments, including Alabama, were quick to adopt the model acts. Even today, over 40 states still rely upon the standard enabling acts to provide the institutional structure for local land use regulation. In Alabama, this interdependent system of land use controls is set forth in Title 11, Chapter 52 of the *Alabama Code*, which may be summarized as follows:

- The adoption of a Comprehensive Plan (Article 1);
- The adoption of a Zoning Ordinance, including text and maps (Article 4);
- The adoption of subdivision regulations (Article 2); and,
- The creation of a board of adjustment to decide appeals from the administrative decisions of staff, to grant variances, and to permit special exceptions (Article 4).

State law provides the *structure* for zoning regulations but does not dictate the *substance* of local land use regulations. So long as the zoning ordinance meets the minimum requirements of the state enabling laws, the council has wide discretion to craft regulations that meet local needs and concerns.

The roles and responsibilities of the Planning Commission, the City Council and the Board of Zoning Adjustment, as specified by the state enabling law is as follows:

A. The Role of the Planning Commission.

Once a city has established a Planning Commission, it must operate within the parameters set out in the city code and the state enabling law.¹ State law assigns four basic duties the Commission:

- to adopt a comprehensive plan for the future development of the city;
- to promote “the public interest in, and understanding of,” the plan²;
- to adopt subdivision regulations “not inconsistent with” the statutes ordinances;³ and
- to make recommendations to the council on amendments to the zoning ordinance.

The Planning Commission has no legislative authority, and the council may not delegate such authority to the commission.⁴ However, the Planning Commission plays a vital role in providing recommendations to the Council on whether a zoning amendment is consistent with the comprehensive plan, and why it should or should not be approved by the city council.

B. The Role of the City Council.

Under state law, the comprehensive plan is the foundation of land use control but it is not self-executing. The Council is responsible for implementing the plan through enactment of zoning regulations. State law specifically provides that all

¹ *Ala. Code* §11-52-1 *et seq.*; §44-51 and -52, *Mobile City Code*, 1991. *Smith v. City of Mobile*, 374 So. 2d 305 (Ala. 1979).

² *Ala. Code* §11-52-6

³ *Ala. Code* §11-52-30 *et seq.*;

⁴ *Ex parte Baldwin County Planning and Zoning Commission v. Montrose Ecor Rouge, LLC* 68 So. 3d 133 (2010).

zoning regulations “shall be made in accordance with” a comprehensive plan, which is calculated “to promote the general welfare.” *Ala. Code* §11-52-72.

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

Ala. Code §11-52-72.

The state statute quoted above is taken directly from § 3 of the 1924 *Standard Zoning Enabling Act*. The commentary to the Act explains that the directive to craft zoning regulations in accordance with the comprehensive plan is designed to “prevent haphazard or piecemeal zoning. No zoning should be done without such a comprehensive study.”

State law further requires the council to write regulations that give “reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.” § 11-52-72. The council is specifically authorized to:

- Divide the territory within the corporate limits into business, industrial and residential zones or districts (the zoning map);
- To provide the kind, character and use of structures and improvements that may be erected within the zones or districts (the zoning text);
- Adopt such ordinances as necessary to implement the regulations (zoning procedures); and
- Adopt, from time-to-time, amendments to the codes.

All regulations “shall be uniform for each class or kind of buildings throughout each district, but the regulations in any one district may differ from those in other districts. *Ala. Code* §11-52-71.

C. The Role of Board of Zoning Adjustment (BZA).

If a board of zoning adjustment is established, it must operate within parameters set out in the ordinance and state law. Under state law, *Ala. Code* §11-52-80, the board has jurisdiction to:

- hear and decide **special exceptions** to the terms of the zoning ordinance according to the general or specific rules contained in the zoning ordinance;
- hear and decide **appeals** filed by any person aggrieved by any decision of an administrative officer of the city; and
- authorize **hardship variances** (both use and dimensional) from the literal enforcement the zoning ordinance so long as the variance is not contrary to the public interest, and that “the spirit of the ordinance shall be observed, and substantial justice done.”

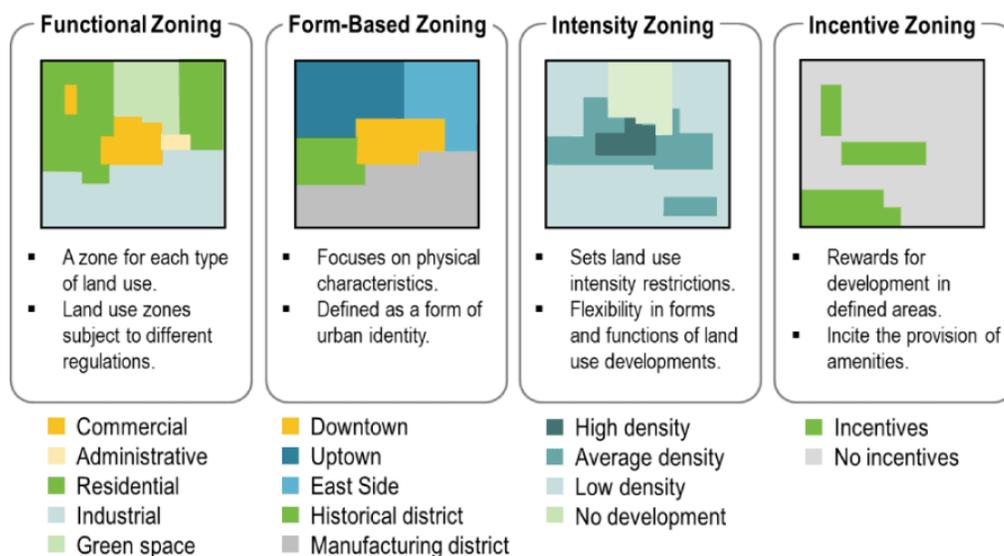
Appeals from the decisions of the BZA must be filed in circuit court within 15 days of the decision.

In 1990, Mobile abolished special exceptions, and created a new form of conditional use call Planning Approval. The UDC proposes to abolish Planning Approval and replace it with two different types of conditional uses: the Conditional Use Permit and the Special Exception.

Section 64-5-6 of the UDC provides that *conditional use permits* will be heard by the planning commission. A report and recommendation will be transmitted to the council who will, after a public hearing, make the final decision The procedure for *special exceptions* is different. Section 64-5-11 of the UDC provides that special exceptions shall be heard by the BZA, subject only to appeal to circuit court.

D. Types of Zoning.

Mobile has had some form of zoning since at 1930s. With the exception of the Downtown Development Code and the Village of Spring Hill, all of Mobile’s zoning ordinances (including the UDC) create single-purpose districts, also known as “functional” or “Euclidean-type” zoning.⁵ The state enabling law, *Ala. Code* §11-52-71, contemplates Euclidean-type zoning. The chart below illustrates the various types of zoning. Many cities utilize more than one approach.



- **Functional (a.k.a. Euclidean zoning).** The most prevalent form of zoning where land use zones are defined according to their function such as commercial, residential, or business. Each zone type has specific rules about the types of activities that may occur in the district and the structures that can be built. This is the type of zoning contemplated by the state enabling law, *Ala. Code* 11-52-72. Both the UDC and the current zoning ordinance utilize this type.

⁵ Euclidean zoning is named for the Village of Euclid, Ohio whose zoning laws were upheld by the United States Supreme Court in 1926 as a legitimate exercise of the police power. *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926)

- **Form-based zoning.** Defines zones according to their physical characteristics and specifies the forms of the structures that may be built. It typically has a simplified use table. Mobile’s Downtown Development Code and the Spring Hill Code are examples of form-based codes.
- **Intensity zoning.** Defines land use zones by the level of permitted intensity, such as the number of residential units per unit of surface or allowed commercial surface. Such regulations enable a level of flexibility in urban development since it permits developers to select which types of development takes place as long as this development abides by density constraints.
- **Incentive zoning.** Often part of revitalization or development plans where developers are allowed to build residential, commercial, or industrial (manufacturing, warehousing) projects in specific areas by providing various incentives such as tax abatement or basic infrastructure (road, utilities, public transport services). Further, developers can be granted lower restrictions, namely density limits, if amenities are such as park areas and infrastructure, are developed as well. The adaptive reuse section of the UDC offers relaxed regulations, but does not require any offsetting design requirements, amenities, nor does it provide for any other incentives.

Earlier versions of the UDC (version 1 and version 2) closely tracked the recommendations of the comprehensive plan (Map for Mobile) to create a blend of traditional zoning districts coupled with requirements for building forms tailored for each type of district. Beginning with version 3, however, the UDC reverted to the concept of single use districts and more or less dropped the form-based regulations. The reason given for the change was that there was widespread opposition; however, none of the comments were publicly disclosed, and the specific reasons underlying the opposition is unknown.

E. Zoning Administration.

Zoning Ordinances are technical documents and reasonable minds may differ over the correct interpretation of a given section. Lack of precision in an ordinance often generates litigation. The general rule of interpretation is that the text of the ordinance is controlling—an ordinance means it means what it says.

Adding definitions and explaining the purpose and intent of a zoning ordinance reduces the need for interpretation and the incidence of litigation. Definitions and other interpretive rules give guidance not only to the courts, but to property owners, potential developers and the agencies and staff that are charged with its enforcement and interpretation.

1. The Duties and Responsibilities of the Planning Commission.

Mobile's current zoning ordinance establishes, but does not define, the role of the planning commission. Sections 44-51 and 52 of the *Mobile City Code*, which were adopted in 1965, simply direct the planning commission to "exercise all things authorized by" state law. This lack of direction makes it difficult for anyone to actually understand how the zoning ordinance interfaces with the work of the planning commission. An ordinance which specifies the purpose, powers and duties of the commission; its meeting structure, record keeping responsibilities, staffing and reports, would provide much needed clarity.

2. The Duties and Responsibilities of the Board of Adjustment.

Section 64-2 of the current zoning ordinance defines the board of zoning adjustment as "the board established in this chapter," but the chapter never actually establishes the board. In 2018, the Council vetted a draft ordinance to formally create a board of zoning adjustment but the ordinance was put on hold pending completion of the draft UDC.

The UDC greatly expands the role of the board of adjustment by reintroducing "special exceptions" to the zoning ordinance, a practice that was eliminated in 1990. Despite its name, a special exception is not an exception to the zoning ordinance. Instead, it is a type of conditional use which is specifically allowed by the ordinance. For example, in the UDC, "Recreational Vehicle Park" is a special exception in B-3 districts. Section 64-5-11 E.1.(h) describes the conditions that are appropriate for this type of development: compliance with Board of Health Regulations and all

applicable city ordinances; no mobile or manufactured homes; and no occupancy longer than two weeks. In addition, the applicant must demonstrate compliance with the general criteria in 64-5-11 E. that the proposed use will not adversely affect the neighborhood.

The board of adjustment may not rezone property. Its role is making decisions on special exceptions is quasi-*judicial*—this means that the board must ascertain all relevant facts as presented at a public hearing and decide whether the evidence presented is sufficient to show compliance with the standards delineated the zoning ordinance. *Ala. Code* §11-52-80(d).

3. Duties & Responsibilities of Planning Staff.

The planning staff plays an important role in providing support and information to citizens, developers, the city council, boards and agencies about the city’s zoning regulations. How the planning staff should function is not clearly defined in either the UDC or the current ordinance. For example, should the staff take a position (for or against) an application, or should staff be directed only to develop and report the facts underlying a particular matter, and to prepare a detailed analysis of the relevant regulations? Taking a position may be perceived as advocacy, thereby undermining the staff’s role as neutral advisor.

Section 64-5-9 of the UDC authorizes the “Director of the Planning Department or their designee” to make administrative interpretations of the UDC, but the UDC does not specify who will be deemed the “Director of Planning,” for the purpose of making interpretations. There is no such position listed on the city’s official organizational chart (Ordinance 02-048, adopted October 11, 2016). Nor does the UDC give direction how the decisions are to be made and published, or how these rules will be tracked over time.

Transparency and consistency in decision-making is important, especially when the decision concerns the public regulation of private property. State law

allows any person aggrieved by an administrative officer’s decision to an appeal to the board of adjustment. Adoption of the UDC will likely see an increase in appeals, especially in the beginning. It is important that staff and board members receive adequate training to ensure decisions are properly documented and published.

The following chart summarizes and compares the different functions of the planning commission, the board of adjustment and staff.

ACTOR	CURRENT ACTION/DECISION	UDC ROLE
Staff	Issues permits, prepares reports	Not specified
	Initiates Enforcement Actions	
	Interprets zoning ordinance, subject to appeal	
Planning Commission	Adopts Comprehensive Plan	No change
	Adopt Sub Regs/Make decisions subject to appeal to circuit court.	No change
	Decides Planning Approval, subject to appeal to the city council	Repealed
	Decides PUD, subject to appeal to the city council	Repealed/replaced with “Planned Development”
	Make recommendations to the city council for amendments to the zoning ordinance and map.	No change
	NEW: PC makes recommendations to council on conditional uses and planned developments	New: Council makes final decision on both.
Bd. of Adjustment	Hears appeals from staff decisions, subject to appeal to circuit court	No change
	Decides applications for variances, subject to appeal to circuit court	No Change
		NEW: Decides Special Exceptions
City Council	Adopts Zoning Ordinances / Text and Map Amendments	No change.
	Decides Appeals of Planning Approval Decisions	Repealed /Council to make final decision on Conditional Uses
	Decides Appeal from PUD decision of Planning Commission	Repealed/replaced with Planned Development

II. COMPLETION ISSUES.

The following list examines the UDC for completeness, identifies significant changes to the current zoning code, and/or highlights policy shifts.

A. Mapping.

1. The Zoning Map is not Defined.

State law, *Ala. Code* § 11- 52-77(2)(c) requires the Council to adopt an official zoning map which shows the location of all properties in the city and the corresponding zone. This map is to be published in the same manner as the zoning ordinance. A publicly available zoning map provides notice to property owners of the zoning district regulations that impact their property.

The city's official zoning map is defined in § 64-2 of the city code as "the districts and the boundaries thereof [as] shown on the "Zoning Map of the City of Mobile, 1967," which map is hereby made a part of this chapter." The UDC does not define the term "zoning map" but simply states that "the zoning districts, subdistricts and area plans are shown on the" zoning map. (UDC §64-2-2). There is no provision for the establishment of digital zoning maps, how they are to be maintained and updated, or who (or what department) is responsible for mapping accuracy.

The following link from Montgomery County, Maryland ([Montgomery County Zoning \(mcatlas.org\)](https://mcatlas.org)) is an example of a digital zoning map. The following text is displayed alongside the map:

About the Digital Zoning Map

This is the official Digital Zoning Map for the Maryland-Washington Regional District in Montgomery County, adopted by the District

Council under Division 59.2.2 of the zoning code. The Montgomery County digital maps are certified by the Planning Director. The certification is part of the digital zoning layer, which is permanently kept and maintained by the Planning Department.

Case numbers for all previous zoning and conditional use approvals are indicated on the digital map

The zoning for a property can only be changed by a:

District Map Amendment;
Sectional Map Amendment;
Local Map Amendment; or
Corrective Map Amendment
Copies of the Digital Zoning Layer

Offline digital copies of the digital map are filed with Director of DPS, the Hearing Examiner, the Clerk of the Circuit Court, and the Executive Director of the Board of Appeals.

Any individual may obtain a certified paper copy of the Montgomery County digital zoning layer from the Planning Department to verify the zoning of a property.

Certified copies are officially stamped by the Planning Director and include the date on which the property's zoning was verified.

The City of Mobile's GIS system currently displays some zoning information; however, it has not been formally adopted by the council and the UDC makes no provision for ensuring that the zoning map is accurate. The zoning map is the core document which provides notice to property owners, developers and the public concerning the uses to which real property may be put.

2. The Base Zoning Map is Inaccurate.

The accuracy of the base zoning map(s) which have been transmitted to the city council for adoption is questionable. The following is a list of omission and concerns:

(a) PUD Re-zonings:

Simply stated, a planned unit development, or PUD, is a negotiated zoning district. The UDC renames this type of district as PD or Planned Development. Both are a species of conditional zoning which allows a developer to use property in a way that the zoning ordinance would otherwise prohibit. Cluster developments are a good example. In exchange for better design and preservation of open space, PUD zoning allows a developer to reduce setbacks, increase density, and change or combine uses, such as a mixed business/residential uses.

The use of PUD or PD zoning is common among cities. Mobile's PUD ordinance was first authorized in 1977. At that time, the ordinance required that all PUDs be recorded on the "zoning map," which is consistent with the practice of other cities.

In 1987, however, the council approved a zoning text amendment which changed the word "zoning map" to "zoning atlas." It is unclear whether this change was intentional; nevertheless, the ordinance has since been interpreted to mean that PUDs are no longer required to be identified as a special zoning district on the zoning map. Instead, PUDs are identified on a "zoning atlas" which is not a publicly available document.

It should be noted that in the current zoning ordinance there is no minimum size required for a PUD zoning. The UDC is different. Article 2 of the UDC sets the acreage for Planned Developments as a minimum of five contiguous acres in "areas east of I-65 and north of I-10," of and a minimum of ten contiguous acres "in areas west of I-65 or South of I-10." The UDC does not define the term "contiguous" which has been the subject of litigation in other jurisdictions, e.g., may a parcel be

split by a right of way and still be contiguous? .⁶ In addition the minimum acreage requirements in Article 2 appear to be contradicted in Article 5 which that the minimum size for a planned development is one acre.

(b) Council-Imposed Conditions.

Besides PUDs, the council from time to time imposes special conditions on traditional re-zonings. For example, a request to up-zone property to B-3 may be allowed only on the condition that there be no alcohol sale on the site. These council-imposed restrictions are not mapped or of record, which creates uncertainty for subsequent purchasers. The only way for a subsequent buyer to know that conditions exist is on a particular parcel is to consult the ordinance authorizing the rezoning, which is in the City Clerk's office, or hire a lawyer to do the research.

During the UDC comment period, one local attorney expressed concern about the accuracy of the existing maps, and the reliability of the mapping going forward.

Each rezoning, conditional use, PUD modification and special exception [under UDC V3] is going to start to take on the characteristics of what we currently know of as a PUD. The City Council and the ZBA are encouraged to impose conditions to be recorded in Probate Court pertaining to their various approvals, and this could easily become site plan specific approvals for each development. . . . The zoning map will become useless as you will need to find the actual ordinances and probate court records for each parcel to know what zoning and land use conditions are attached to it. This will make the code and zoning map less self-explanatory, harder for the Staff to administer, and harder for the public to use. We already have so many PUDs that the City refuses to even show them on the zoning map, so it erroneously shows those PUD properties as some color for a regular zoning district. Commercial and residential property transactions will take longer to close in order to do all the due diligence needed, and that is even if

⁶ Fort Morgan Civic Ass'n. Inc. v. Baldwin County Com'm, 890 So.2d 139 (Ala. Civ. App. 2003).

you assume no zoning change is ultimately required. This is a solid step back from the current zoning code in terms of efficiency, ease of administration and user-friendliness, and one of the goals of this entire process was to improve from the current code on these points. I anticipate the City needing to hire more staff to properly answer the requests for zoning confirmation that will become either increasingly hard to answer (if they include all the conditions and special rules for the property) or will not be worth the paper they are written on (if they simply give the zoning map district for a parcel of property and nothing else).

(Page numbers omitted).

(c) Some Districts are Omitted from the Zoning Map.

The three new zoning maps that have been presented to the council depict the boundaries of the base zoning districts; two zoning subdistricts (urban and suburban); and three overlay districts—Africatown, the Peninsula, and the Village of Springhill. However, several districts are missing from the zoning map:

- *Historic District Overlay.* Chapter 14 of the UDC is entitled “Historic District Overlay,” yet the boundaries of the historic districts are not depicted on the zoning map. The regulations in Chapter 14 give have special dimensional requirements for properties located in a “historic district,” but the UDC does not specify whether rules apply to national register districts, heritage districts, or other locally designated districts. All of the historic districts would benefit from the setback and height regulations in Chapter 14 because it would eliminate the need to get a variance from the board of adjustment. Chapter 14 should clarify the rules, and also cross-reference the other rules that may apply in the historic districts; specifically the design review requirements that are found in Chapter 44 of the city code.
- *University District.* In the current city code, there are special parking regulations for the “University District.” This district is not mapped.
- *Other Districts.* The UDC creates five entirely new districts which are not mapped: Commercial Warehouse, Mixed Maritime, Maritime Light, Maritime Heavy, Conservation District.

B. Definitional Issues.

1. Use Table—Missing or Incomplete Definitions.

The public, property owners and land professionals frequently consult zoning codes to identify what regulations affect property:

- The first step is to locate the property on the *zoning map*, which shows the zoning district or districts that apply to the site (R-1, B1, etc).
- Step two is to consult the district regulations that are contained in the *zoning text*. The district regulations specify the dimensional requirements, such as setbacks, building height, etc.
- Step three is to determine the permitted uses of the property by consulting the use table. The use table states whether a particular use is allowed by right, allowed as a conditional use, or prohibited.

The use table in the city’s current zoning ordinance (Chapter 64 of the City Code) contains over 500 uses, some of which are defined, some are not. The UDC reduces the number of defined uses to about 200, and organizes them into coherent categories; however, many of the terms are either not defined, or incompletely defined. The following lists the missing/unclear terms. Note: all page numbers refer to UDC version 5.

UDC PAGE 30

- Terms missing definitions:
 - *Taxidermy*
 - *Art gallery*
 - Definition of “art studio” does not include gallery
 - *Carnival/circus*
- *Adult business (Adult Entertainment Enterprise)**
 - Note: there is no definition of “adult business;” there is only a definition of “adult entertainment enterprise”

UDC PAGE 31

- Terms missing definitions:
 - *Auto service*
 - Note: there is no definition of auto service, but there is a definition of “automobile service station” and “auto repair”
 - *Gasoline sales, with auto repair*
 - *Gasoline sales, with auto service*
 - Note: there is only a definition of “gasoline sales,” which may include “auto service facilities conducted inside the Building or an accessory car wash”
 - *Broadcasting facility with tower*
 - Note: there is only a definition of “broadcasting facility”

UDC PAGE 32

- Terms missing definitions:
 - *Broadcasting facility without tower*
 - Note: there is only a definition of “broadcasting facility,” defined as “Towers used for the transmission of television or radio programming, including Towers supporting television and/or radio transmitting Antennas and Towers that require an elevated site.”
 - *Telecommunications facility class 1 permit (see also Telecommunications facility class 2 and 3 permits; Telecommunications facility class 4 permit)*
 - Note: there is only a definition of “telecommunications facilities” which does not mention “permit”
 - *Weather or environmental monitoring station*
 - *Home – child day care (limited to 6 children)*
 - Note: there is a definition of Day care, child (home based)
 - *School (private)*
 - *Automated teller machine, freestanding drive-up*

UDC PAGE 33

- Terms missing definitions:
 - *Mobile food vendor park*
 - Note: there is a definition of “mobile vendor,” but it does not mention “park”
 - *Armory (private)*
 - Note: there is a definition of “armory”, but not a private one
 - *Correctional facilities (private)*
 - Note: there is a definition of “correctional facilities”, but not private ones
 - *Emergency response facility (private)*
 - *Postal services (private)*

UDC PAGE 34

- Terms missing definitions:
 - *Hotel/motel/hostel*
 - Note: there is a definition of “hotel/motel,” but it does not include hostels
 - *Coal handling operation**
 - Note: there is a definition of “coal handling facility”
 - *Contractor with storage yard*
 - Note: there is a definition of “contractor,” which includes “storage yards for equipment, materials, supplied and/or vehicles.”

UDC PAGE 35

- Terms missing definitions:
 - *Boat launch*
 - *Kayak/canoe launch*

UDC PAGE 36

- Terms missing definitions:
 - *Dry cleaning and laundry pick-up*
 - *Dwelling, single-family detached*
 - Note: there is a definition of “dwelling, single-family” but it does not mention “detached”
 - *Convenience store (with gasoline sales)*
 - Note: there is a definition of “convenience store” but it does not mention “gasoline sales”; there is also a definition of “gasoline sales” but it does not mention “convenience store”
 - *Hardware/home improvement stores and building materials < (less than) 30,000 sf*
 - Note: there is a definition of “hardware/home improvement stores and building materials” but it does not mention “sf”

UDC PAGE 37

- Terms missing definitions:
 - *Hardware/home improvement stores and building materials > (greater than) 30,000 sf*

- Note: there is a definition of “hardware/home improvement stores and building materials” but it does not mention “sf”
- *Liquor store*
- *Manufactured (mobile) home dealers*
 - Note: there is a definition of “manufactured home dealers,” which includes “mobile homes, parts and equipment”
- *Retail, general < (less than) 60,000 sf*
- *Retail, general > (greater than) 60,000 sf*
 - Note: there is a definition of “retail, general” but it does not mention “sf”
- *Airport*
- *Dredged material management facility*

UDC PAGE 38

- Terms missing definitions:
 - *Utility, intermediate (need not be within an enclosed structure)**
 - Note: there is a definition for utility, intermediate, but it does not include “(need not be within an enclosed structure)*”
 - *Utility, major (need not be within an enclosed structure)**
 - Note: there is a definition for utility, major, but it does not include “(need not be within an enclosed structure)*”
 - *Utility, minor (need not be within an enclosed structure)**
 - Note: there is a definition for utility, minor, but it does not include “(need not be within an enclosed structure)*”
 - *Hazardous substance storage**
 - Note: there is a definition of “hazardous substance storage tank”
 - *Liquefied natural gas storage and processing*
 - Note: there is a definition of “oil and gas storage”
 - *Outdoor storage*
 - Note: there is a definition of “outside storage”
 - *Self-service storage facility*

UDC PAGE 39

- Terms missing definitions:
 - *Wholesale distribution, warehousing and storage (less than 40,000 sf GFA)*
 - Note: there is a definition of “wholesale distribution, warehousing and storage” but it does not mention “sf”
 - *Recycling drop off*
 - Note: there is a definition of “recycling drop-off center”
 - *Caretaker or guard*
 - Note: there is a definition for “caretaker or guard dwelling”
 - *Electric vehicle charging station*

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- Terms missing definitions:
 - *Parking garage, private*
 - Note: there is a definition of “parking garage,” but it does not mention “private”
 - *Wharf and dock shed*
 - *Above ground storage tanks**
 - Note: there is a definition of “above-ground oil storage tank”
 - *Construction office or office trailers**
 - *Heavy duty commercial vehicle parking**
 - Note: there is a definition of “heavy duty commercial vehicle,” but it does not mention “parking”
 - *Portable storage units**
 - *Real estate sales offices and model home complexes**
 - *Temporary residential dwellings**

2. The Zoning Districts are not Defined.

Article 2 of the UDC establishes 20 separate zoning districts; three zoning subdistricts (Urban, Suburban and Conservation); and four neighborhood-specific districts (Africatown, the Peninsula, the Village of Springhill, and the Historic Districts). The UDC uses many of the *district names* that are in the current zoning ordinance (R-1, R-2, B1, etc.) but does not carry forward any of the *definitions*. For example, in the current code B-2 is defined as follows:

B-2 districts: Neighborhood business districts. These districts are composed of land and structures occupied by or suitable for furnishing the retail goods, such as groceries and drugs, and the services, such as barbering and shoe repairing, to satisfy the daily household needs of the surrounding residential neighborhoods. Often located on a thoroughfare or near the intersection of two (2) thoroughfares, these districts are small and are within convenient walking distance of most of the areas they will serve. The district regulations are designed to permit the development of the districts for their purpose and to protect the abutting and surrounding residential areas by requiring certain minimum yard and area standards to be met, standards that are comparable to those called for in residential districts. It is intended that additional neighborhood business districts will be created, in accordance with the amendment procedure set forth herein, as they are needed to serve new residential areas. To ensure that such new districts are actually developed to supply the business needs of the neighborhoods, the amendment creating the district may set a time limit for its development.

The UDC classification called B-2 is not defined. The absence of a definition is significant because the UDC repeals the existing ordinance in its entirety: “The Zoning Ordinance of the City of Mobile adopted by Ordinance No. 80-057 on May 16, 1967, and all amendment thereto, are hereby repealed effective _____.” That means that the new districts *are not the same* as the old districts. Without a definition it could be interpreted that every property in Mobile is now a non-conforming use. The chart below shows the current district structure and the districts proposed in the UDC:

District Name in Current Code	Defined in Chapter 64?	UDC Name	Defined in UDC?	Mapped?
R-A: Residential-agriculture	Yes	Same name	No	Yes
R-1 : One-family	Yes	Single Family Residential	No	Yes
R-2 : Two-family	Yes	Two-Family Residential	No	Yes
R-B: Residential-business	Yes	Same Name	No	Yes

District Name in Current Code (Chapter 64)	Defined in Chapter 64?	UDC Name	Defined in UDC?	Mapped?
B-1: Buffer Business	Yes	Same name	No	Yes
T-B: Transitional Business	Yes	Same name	No	Yes
B-2: Neighborhood business	Yes	Same name	No	Yes
B-3: Community Business	Yes	Same name	No	Yes
B-4: General business	Yes	Same name	No	Yes
District Name in Current Code (Chapter 64)	Defined in Chapter 64?	UDC Name	Defined in UDC?	Mapped?
I-1: Light industry	Yes	Same name	No	Yes
I-2: Heavy Industry	Yes	Same name	No	Yes
Not in current code		CW Commercial Warehouse	No	No
Not in current code		Maritime Mixed	No	No
Not in current code		Maritime Light	No	No
Not in current code		Maritime Heavy	No	No
Not in current code		Urban Subdistrict	No	Yes
Not in current code		Suburban Subdistrict	No	Yes
Not in current code		Conservation District	No	No

3. The UDC's definition of "comprehensive plan" is unclear.

To satisfy the state law directive that zoning regulations be made "in accordance with" the city's comprehensive plan, page 2 of the UDC contains a finding of the city council that the new zoning ordinance conforms to the comprehensive plan:

The City finds that this Chapter is consistent with, and implements, the City's Comprehensive Plan (*Map for Mobile*), the *Future Land Use Plan*, and the *Major Street Plan*.

The reason this finding is required by state law is to ensure that land use decisions have a common reference point, which protects against piecemeal zoning and claims of arbitrary action.

There is no overall City of Mobile Comprehensive Plan. There are a collection of plans with no direction for their use. On page 272 of the UDC, the term “comprehensive plan” is defined as:

The comprehensive plan made and adopted by the Mobile City Planning Commission, as provided by law, for the physical development of the City of Mobile and surrounding areas. The term includes any unit or component part of such plan and any amendment to such plan or part thereof when adopted. In this chapter, the “Comprehensive Plan” refers to the documents titled “Map for Mobile” as adopted by the Planning Commission on November 15, 2015, as amended, and for the purposes of the zoning regulations, the Future Land Use Plan” as adopted by the Planning Commission on May 18, 2017 as amended.

The Map for Mobile, page 22, specifically incorporates the following Plans into the overall comprehensive plan:

Year (if known)	Name of Plan	Entity Adopting
2002	Tricentennial Greenspace Master Plan	Unknown
2003	Smart Growth for Mobile	None/Internal Policy Document
2005	Bring Back Broad (Complete Street)	Unknown
2008	Blueprint for Spring Hill	Planning Commission
2012	New Plan for Old Mobile -- A Comprehensive Plan for Traditional Neighborhoods	PC/ Mobile City Council
2014	Downtown Mobile: Keeping it Easy	Planning Commission
2015	Major Street Plan	Planning Commission
2016	<i>Map for Mobile</i>	Planning Commission
	Mobile, Aeroplex; Brookley Master Plan	Unknown
	Destination 2040	Mobile Metropolitan Planning (MPO)
	Three Mile Creek Watershed Plan	

The sheer number of Plans that comprise the Map for Mobile means that there will likely be competing and/or inconsistent goals for a given area. The UDC's failure to establish a hierarchy of plans, or to provide directions on how the various plans are to be harmonized increases the likelihood of claims of arbitrary decision-making and litigation.

4. Missing Regulations.

The proposed UDC is not a unified development code as that term is commonly understood. According to the American Planning Association, a unified development code:

combines traditional zoning and subdivision regulations, along with other desired city regulations, such as design guidelines, sign regulations, and floodplain and stormwater management, into one document.

The UDC does not meet this standard because it omits the subdivision regulations, stormwater rules, historic district rules, and other regulations that impact the development of private property. While there is no legal requirement that a zoning reproduce all of the rules in one document, confusion could be avoided if the UDC if the rules were cross referenced, or if the name were changed to the more accurate "Zoning Code."

Alabama Code §11-52-32(b) provides that every subdivision plat "approved by the municipal planning commission shall, by virtue of the approval, be deemed to be an amendment to the . . . municipal plan." State law also prohibits the planning commission from approving subdivision plats that violate the zoning ordinance:

The municipal planning commission shall have the power to agree with . . . requirements or restrictions governing buildings and premises within the subdivision, *provided the requirements or*

restrictions do not authorize the violation of the then effective zoning ordinance of the municipality.

Ala. Code §11-52-32(c) (emphasis added.)

Subdivision regulations are particularly important because they impose minimum requirements for street design, utilities, drainage, and vehicular ingress/egress. Mobile's current subdivision regulations were adopted in 2012 and in addition to the above, impose dimensional standards for lots, allow the approval of "innovative" subdivisions and grant waivers to certain requirements. The rule that subdivision rules must complement, not contradict, the zoning regulations ensure that the two documents create a cohesive set of regulations. The UDC's omission of the subdivision regulations is particularly significant because if adopted, the UDC will render the current subdivision regulations obsolete, and create inconsistencies with the zoning ordinance contrary to *Ala. Code* §11-52-30.

5. One-lot subdivisions.

A related issue is the current practice of requiring "one-lot subdivisions," which is not authorized in the current zoning ordinance or state law. It is unclear how or why the practice, which appears to be unique to Mobile, was adopted. The policy argument against the practice is that it adds expense to infill development projects (especially those undertaken in the city's older areas) where meets-and-bounds legal descriptions are common. For example, if Habitat for Humanity wants to develop a vacant parcel of property, it must create a "one-lot subdivision" before obtaining a building permit, even if it is not changing the dimensions of the parcel. This requires a plat to be prepared by a professional surveyor at substantial cost.

In any event, the one-lot practice is hard to reconcile with state law. *Ala. Code* §11-24-1(a):

(4) SUBDIVISION. The development and division of a lot, tract, or parcel of land into two or more lots, plats, sites, or otherwise for the

purpose of establishing or creating a subdivision through the sale, lease, or building development. Development includes, but is not limited to, the design work of lot layout, the construction of drainage structures, the construction of buildings or public use areas, the planning and construction of public streets and public roads, and the placement of public utilities. A subdivision does not include the construction or development of roads or buildings on private property to be used for agricultural purposes.

If the Council determines the practice has value, then it should be specifically defined and included in the UDC. The current city code 64-4 (B) has the following provisions that touch upon the issue, but *are not* carried forward in the UDC:

B. Supplementary area regulations.

1. *Dwelling on small building site.* Where a lot located in a residence district and on the effective date of this ordinance was lawfully existing and of record and held in separate and different ownership from any lot immediately adjoining and having continuous frontage, such lot may be used as the building site for a one-family dwelling.

2. *Business or industry on small building site.* Where a lot located in an R-B district, a B-1 district, an H-B district, a I-1 district or an I-2 district contains an area less than the required building site area for the district and on the effective date of this ordinance was existing and of record and held in separate and different ownership from any lot immediately adjoining, such lot may be used as the building site for any use permitted in the district.

6. The UDC District Structure is inconsistent with the Map for Mobile.

State law requires that all zoning regulations “shall be made in accordance with” a comprehensive plan, calculated “to promote the general welfare.” *Ala. Code* §11-52-72. Just as the current zoning ordinance was intended to implement the 1961 Comprehensive Plan, the UDC is intended to implement the “Map for Mobile,” the city’s latest comprehensive plan. Section 64-1-5 of the UDC states: the “city finds that this Chapter is consistent with and implements the city's comprehensive plan (Map for Mobile), the Future Land Use Plan, and the Major Street Plan.”

The Map for Mobile specifies the goals and policies for land use law and decisions, “directing growth to occur not strictly according to use but according to character.” (Page 28, Map for Mobile). The development framework envisions that over time, Mobile will become a mixed-use, pedestrian-friendly city. Early in the UDC development process, the administration circulated a fact sheet stating that at the end of the zoning review, White & Smith (the legal consultants on the rezoning project) would present the city with new subdivision regulations, development ordinances, a major street plan and a future land use plan. Attorney Mark White said at the time: “This is a comprehensive code update. It’s going to touch every aspect of Mobile’s zoning and subdivision regulations, when we’re all done. You’re going to have an entirely complete, brand new code.”⁷

Versions 1 & 2 of the UDC followed the recommendations in the Map for Mobile and established entirely new zoning districts to create “a modern regulatory code, promoting best practices.”⁸ The recommended district structure was:

LDR:	Low Density Residential
MXDR:	Mixed Density Residential
DT:	Downtown
DC:	District Center
NCT:	Neighborhood Center Traditional
NCS:	Neighborhood Center Suburban
TC:	Traditional Corridor
MCC:	Mixed Commercial Corridor
LI:	Light Industry
HI:	Heavy Industry
INS:	Institutional Land Use
POS:	Parks and Open Space
DW:	Downtown Waterfront
WDU:	Water Dependent Uses

⁷ https://www.al.com/news/mobile/2016/06/map_for_mobiles_future_its_all.html

⁸ City of Mobile Unified Development Code, January 2019 *Overview of Key Provisions*.

Beginning with version 3 of the UDC, the district structure identified in the *Map for Mobile* was abandoned and replaced with district names that are *similar* to the current zoning districts (R-1, R-2, etc.); but the districts are not in fact the same due to the changes in the use chart, certain dimensional changes, and the new rules for the overlay and subdistricts.

The UDC provides no direction to resolve the disconnect between the district structure envisioned in the comprehensive plan, and the one proposed in the UDC. Page 154 of the comprehensive plan includes a “Zoning District Conversion Matrix.” The text accompanying the conversion matrix says:

The [Future Land Use Map] and accompanying narrative will be largely implemented through the City’s Zoning Ordinance, while the [Major Street Plan] will be implemented both through the City’s Subdivision Regulations and Engineering Right-of-way Standards.

If the intent of the conversion matrix is to migrate the city to new zoning districts and regulations over time, the process for doing so must be spelled out in the UDC. This is because the creation and definition of zoning districts, including the standards that apply in such districts, is exclusively a legislative function. *Ala. Code* §11-52-71-72.

C. Policy Changes.

The UDC creates significant policy changes, as compared to the current zoning ordinance.

1. Increased Density.

Density is the amount of development permitted on a single lot. There are no density-specific regulations in the current code. Instead, the intensity of development is determined by lot dimensions. For example, a multifamily development in an R-3 zoning district must have a minimum of 10,000 square feet for the first two dwelling units and an additional 1,500 square feet for each additional dwelling unit. The following table compares the current and proposed dimensional requirements for **R-1** properties:

Current Code Dimensions for R1	UDC Urban Subdistrict R-1	UDC Suburban Subdistrict R-1
Lot area: 7,2000 sq. ft.	4,000 sq. ft.	7,200 sq. ft.
Front yard minimum: 25'	5 feet min., no maximum	25 feet min., no max.
Side yard 8' (sum=20')	5 feet	5 feet
Rear yard 8'	5 feet	8 feet
Building Height Max. 35'	35	35
Building Site Maximum Coverage 35%	50%	35%

As shown, the greatest increase in density will occur in the Urban Subdistrict. Although density is a stated goal of the comprehensive plan, it is unclear why a forty percent reduction is warranted in urban areas. Earlier versions of the UDC (v.1 and v.2) paired increased density with the concepts of “design-driven” infill to complement existing neighborhoods, including mixed-use housing types. The UDC, however, makes no provision for mixed use, design forms, or other elements such as open or civic space that would ameliorate the impact of density increases.

Lot sizes for the Suburban Districts appear to be unchanged. However, it is unclear whether these lot sizes will be strictly enforced in the subdivision regulations. For example, the current subdivision regulations allow the planning

commission to modify the requirements of the subdivision regulations if “they demonstrate unusual difficulties or innovative design.” (p.20 *City of Mobile Subdivision Regulations*). Section VIII.B of the regulations state that the planning commission will not allow any modification “that will produce a conflict with the Comprehensive Plan” but the regulations do not state that the dimensional requirements of the zoning ordinance will be respected in every case.

2. Density calculations.

Instead of relying on lot dimensions to set density requirements, which is the approach taken in the current zoning code, the UDC adds a new concept of “dwelling units per acre.” Dwelling units per acre (du/ac) is generally understood as a measurement of how many individual dwellings may be located on a single property. The physical size of the lot determines how many dwelling units can fit on a particular site. For example, a single-family house on one acre would have a density of 1 du/ac. (An acre contains 43,560 square feet.) A 50-unit apartment building on a half-acre parcel would have a density of 100 du/ac.

The UDC does not define the term dwelling unit per acre, nor does it specify how the calculation is to be made. For example, is the calculation gross or net of setbacks, sidewalks, civic space or other public improvements.? Will it be applied to the site, or is it to be applied to the block or neighborhood? Are non-residential uses to be included in the calculation?

The UDC does not specify dwelling units per acre in R1 districts but retains minimum square footage requirements for residential lots. The rules should be clarified to take into account the new rules that permit, by right, accessory dwelling units in R-1 districts.

The following table shows the density requirements for multifamily districts in the UDC:

NEW DENSITY CALCULATIONS FOR MULTIFAMILY R3

R-3	Urban	Suburban
Lot Area	4,000	10,000
Density	30 d/u per acre	25 d/u per acre
Coverage	50%	45%
Common Open Space per unit	100 sf	700
Civic space	None	None

The absence of a calculation method makes it impossible to know how the new code will be interpreted and/or administered. It is also unclear whether the current practice of using up-zoning from R-1 to R-2 as a technique to increase density for single family dwellings will continue

3. Conditional uses have changed.

The Use Table in the current regulations specify for each zoning district uses that are allowed by right, uses that are prohibited, and a type of conditional use called planning approval. The UDC chart of permitted uses also specifies uses that are allowed by right and uses that are prohibited; however, the UDC eliminates planning approval as it is currently used today.

The UDC adds two new forms of conditional use—the conditional use permit and the special exception. Both allow a property owner to use his or her property in a manner which the regulations expressly allow under conditions that are set out in the ordinance. Both are authorized by state law, and many cities use both. For example, Huntsville, Montgomery, and Birmingham use both special exceptions and conditions

The only significant difference between conditional use and a special exception is that special exceptions are heard by the board of adjustment, with an appeal to

circuit court, while applications for conditional use permits are heard by the planning commission with final approval by the city council.

Another concern is that there are only seven members of board of adjustment and five votes are required to approve an application. Several board of adjustment members are in the real estate profession, so it is conceivable that recusals could cause delays.

The UDC converts nearly all planning approvals (between 70-100) into special exceptions. Conditional use permits are reserved for hazardous materials manufacturing and storage; oil and gas drilling; pipelines and other intense uses.

Article 4 of the UDC contains all of the special regulations that apply to many of these uses such as home occupations, adult entertainment enterprises, coal handling operations, hazardous materials, and the like. The Article 4 regulations are important because they guide the decisionmaker, whether it is the City Council or the Board of Adjustment, in determining whether a conditional use should be allowed in a particular district.

Many of the rules, however, do not provide clear guidance. The absence of defined terms and standards is legally dangerous because it opens up the city to claims of ad hoc decision-making. For example, the UDC states that drilling for oil is a conditional use allowed in all residential districts; however, the UDC does not provide any guidance or standards for how such decisions will be made. Similarly, the UDC classifies a carnival/circus as use that may be allowed by special exception in residential districts, yet there is no definition of the term nor are there any standards for determining when such use is appropriate. 4. Group Homes are allowed by right in any residential district.

4. Group Homes are allowed by right in R-1 Districts.

The UDC allows Group Homes—residences occupied by up to ten unrelated adults—by right in any residential district provided that the dwelling units are not within 1,000 feet of one another (See *Sec. 64-4-14(A)*). The UDC authorizes the Board of Zoning Adjustment to grant special exceptions for group homes that will house more than 10 persons. The board of adjustment may also approve homes within the 1,000-foot distance limitations. Appeals would then be to the circuit court.

Land use regulations which involve group living arrangements may implicate both the American with Disabilities Act and the Fair Housing Act; however, neither of these federal laws mandate 10 persons by right in every zoning district, nor do they specify how cities are to reasonably accommodate group living.

The Fair Housing Act makes the following provision: (b)(1) Nothing in this title [FHA] limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

42 USC § 3607.

The United States Supreme Court has stated that rules that cap the total number of occupants in order to prevent overcrowding of a dwelling "plainly and unmistakably," fall within § 3607(b)(1)'s absolute exemption from the FHA's. "[R]ules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not." *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 735.

The City's current occupancy standards are found within its Residential Building Code and Property Maintenance Code. Chapters 28 and 52, *Mobile City Code*. The

proposed UDC then, permitting ten unrelated persons per single “family” dwelling unit, depending on the size of the house, may create a conflict with these standards.

5. Accessory Dwelling Units are now allowed by right in R-1 zones.

The UDC permits accessory dwelling units (ADUs) by right in R-1 and R-2 zones. ADUs mean that two families may live on a single lot. ADUs are typically a separate guest house or a detached garage with a rented apartment above. The UDC limits the size of the accessory unit to 1000 square feet or more than 50% of the principal structure’s floor area. (See *Sec. 64-4-2(A)*).

6. The UDC Creates a New 50% Rule for Non-Conforming Uses and Structures..

Non-conforming land uses, commonly referred to as “Grandfathered Uses,” exist whenever zoning rules are changed. Non-conforming uses include the use of property as well as non-conforming structures. Since the goal of a new zoning ordinance is to eliminate, over time, non-conforming uses, zoning ordinances establish various conditions that must be met to retain the non- conforming use status such as:

- If a building is destroyed, the uses may be reestablished only under certain conditions.
- If a building is substantially renovated, it may be required to adhere to the new zoning codes.
- If a use has been abandoned for a certain period of time, it may not be re-established.
- To prevent non-conforming uses from becoming blighted properties, maintenance and repair is allowed.

These requirements are in the current zoning ordinance, but not all of them are carried forward into the UDC. For example Mobile’s current code provides that

nonconforming structures may continue in a “state of good repair.” (See Sec. 64-7.B) and also provides that if the nonconforming structure is enlarged or extended, “the enlargement or extension shall conform to the height, building site area, building site coverage, and yard requirements of the district in which it is located and to the off-street parking requirements and the off-street loading requirements of this chapter.” (64.7.B).

Section 64-6-2 of the UDC changes these rules to require zoning compliance only when the building expansion exceeds 50%. Similarly, the current ordinance, §64-8.2.b. requires a certificate of occupancy showing compliance with the zoning ordinance for both for new structures, and existing structures that have been altered.

Sec. 64-8. - Administration and enforcement.

A. General provisions for administration and enforcement.

2. Certificate of occupancy. No structure or land shall be used, occupied, or changed in use until a certificate of occupancy shall have been issued thereto by the Urban Development department, and until the Planning Commission shall have issued a certificate that the proposed use of the land or the new structure to be placed thereon or the existing structure to be altered thereon is in full compliance with the provisions of this ordinance.

b. Structures. Application for a certificate of occupancy for a new structure or for an existing structure to be altered shall be made coincident with the application for a building permit, after erection or alteration of such structure shall have been completed in compliance with the provisions of this chapter and compliance has been confirmed, and written request is made to the Urban Development department, the certificate of occupancy shall be issued by the department provided the Planning Section has confirmed that such use or structure is in compliance with this chapter.

(Emphasis added).

The failure of the UDC to carry forward current rules means it is unlikely that non-conforming structures will ever have to upgrade to the new zoning standards.

7. Development Incentives.

The UDC introduces a new concept called “adaptive reuse.” A rehabilitation of the following types of building will trigger an adaptive reuse “incentive”:

- (a) Has been vacant for at least two (2) years, and is a local or nationally designated Historic Structure, or located in Historic District; or
- (b) Was constructed at least fifty (50) years before the effective date of this Chapter; or
- (c) Is vacant, uninhabitable and hazardous to Persons and property because of its physical condition; or
- (d) Has been declared to be a public nuisance by the City Council.

An “adaptive reuse” of one of these buildings qualifies for an exemption from landscaping, parking and building design standards. Although page 115 of the UDC limits the uses to which such buildings may be put; however, the lack of definitions may lead to unintended consequences. For example, the UDC refers to both local and nationally designated zoning districts; however, none of these designations appear on the official zoning map.

8. Reduction of Green Space in Urban Areas/Increase in Suburban Areas.

The UDC, like the current zoning ordinance, exempts, R-1 and R-2 residential properties from tree and landscaping requirements. For commercial properties in the Urban Subdistrict, landscaping has been reduced from 12% to 5%. In Suburban Subdistricts, the amount of landscaping increases to 15%. In residential districts in Urban areas, the amount of green space may be impacted by the following: allowable site coverage has increased from 35% to 50%; and, lot sizes have decreased from 7200 sq ft to 4000 sq ft.

9. Mandatory Hearings on Rezoning Applications.

Page 217 of the UDC requires the Council to hold public hearings on every zoning amendment. This is a change from existing practice.