MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT

Agenda Item: 9

CASE NUMBER: **ZTA 14-001** **L.U.C.B. MEETING:** **Sept. 11, 2014**

APPLICANT: **Memphis and Shelby County Office of Planning and Development**

REPRESENTATIVE: **Josh Whitehead, Planning Director**

REQUEST: **Adopt amendment to the Memphis and Shelby County Unified Development Code**

This set of amendments to the Unified Development Code (the "UDC") continues the regular update to the Code that began with Case ZTA 12-001 in 2012. Below is an executive summary of the amendments provided in this staff report.

- **Item 1** is a housekeeping item that deletes the term "Memphis City Schools" from the Code.
- **Item 2** brings the Code into accordance with state law that prohibits the sale or warehousing of fireworks.
- **Item 3** amends the Use Table to require the issuance of a Special Use Permit for membership clubs in the CMU-1 district.
- **Item 4** corrects a cross reference for parking and loading at group living establishments.
- **Item 5** requires a 150-foot separation between homes and new cell towers.
- **Item 6** is a housekeeping item that removes references to the industrial zoning districts in the section of the Code that addresses cell towers in the commercial zoning districts.
- **Item 7** adds language to the section of the Code that requires gas station canopies to be architecturally integrated with its convenience store and exempts interstate right-of-way from the separation between gas tanks and pumps and single-family residential uses.
- **Item 8** requires all new car lots established after the effective date of this text amendment in the CMU-3 district to obtain a Special Use Permit. It also squares the UDC with state law insofar as vehicle sales are concerned.
- **Item 9** removes the reference to the Health Dept. since it does not issue such permits related to chickens.
- **Item 10** limits temporary permits issued by the Building Official for special events to 30 days. It also adds language that prohibits the Building Official from issuing a temporary permit for a use that was approved by the governing bodies, the Land Use Control Board or the Board of Adjustment.
- **Item 11** is a housekeeping item that corrects grammar in the section that lists light industrial uses.
- **Item 12** addresses ambiguity in the Contextual Infill Standards section of the UDC.
- **Item 13** allows a 0-foot side setback for commercial and industrial buildings provided they are at least five feet from the building on the lot next door.
- **Item 14** increases the required parking spaces for stand-alone restaurants and bars.
- **Item 15** is a housekeeping item that addresses discrepancies in the Code regarding the maximum height of fencing and the status of vinyl-coated chain link fencing.
- **Item 16** is a housekeeping item that corrects references in the outdoor lighting section of the Code.
- **Item 17** bans exterior and window rope lighting, certain window graphics and fuel price signs of a certain height.

- **Item 18** is a housekeeping item that adds the copy to sign graphics that were inexplicitly and unintentionally removed from the Code.
- **Item 19** will require the issuance of a Special Use Permit for any restaurant with outdoor entertainment or with a patio or deck that exceeds 25% of its site area in the South Main Zoning District.
- **Item 20** will require buildings in the South Main Zoning District to be articulated in the same manner as buildings in the Midtown Overlay.
- **Item 21** is a housekeeping item that will add the abbreviations for all the Uptown zoning districts at the betting of their respective sections of the Code.
- **Item 22** will require the issuance of a Special Use Permit for any new hotels in the Uptown Special Purpose District, which is the case throughout the rest of the City and County. It will also require the issuance of a Special Use Permit for auto service and repair in the Mixed Use zoning district in Uptown.
- **Item 23** clears up a discrepancy between two sections of the Code dealing with required transparency in the Medical Overlay.
- **Item 24** corrects discrepancies in the University District Overlay.
- **Item 25** stipulates that no more than 25% of a façade in the Midtown Overlay may be made up of EIFS, metal siding or CMU and also adds this language to the University Overlay.
- **Item 26** is a housekeeping item that removes the terms "proposed" and "draft" from maps in the Midtown Overlay.
- **Item 27** adds language to the sections of Article 9 that reference the number of permissible holds the Land Use Control Board and Board of Adjustment may make on individual cases.
- **Item 28** is a housekeeping item that changes an incorrect cross reference in the neighborhood meeting section of the Code.
- **Item 29** corrects an incorrect cross reference in the section of the Code that addresses revisions to existing planned developments.
- **Item 30** stipulates that planned developments shall expire if they are not recorded within five years of being approved.
- **Item 31** stipulates that sections of an approved subdivision shall expire in two years if a final plat is not recorded.
- **Item 32** is a housekeeping item that replaces the word "Engineering" with "Engineer."
- **Item 33** is a housekeeping item that corrects a cross reference to the SCBID and Medical Overlay.
- **Item 34** prohibits the Planning Director from granting a setback encroachment into setbacks found on a subdivision plat or planned development final plan.
- **Item 35** prohibits the reduction of landscaping on sites that pre-existed the UDC.
- **Item 36** will clearly define any rental of a dwelling for a period of less than 30 days as a rooming house, which is prohibited in the single-family residential zoning districts and permitted by Special Use Permit in the multi-family residential zoning districts.

These amendments can be read in greater context by downloading the entire UDC. It is available on this website: http://www.shelbycountytn.gov/Blog.aspx?CID=7 or by googling the terms "UDC," "amendments" and "Memphis."

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:

Approval

Staff: ***Josh Whitehead*** **e-mail:** ***josh.whitehead@memphistn.gov***

Proposed language is indicated in **bold, underline**; deleted language is indicated in ~~strikethrough~~.

1. 1.2B and 9.12.1E: Memphis City Schools.

   These sections contain references to Memphis City Schools. This term should be removed since Memphis City Schools no longer exists.

2. 2.5.2 and 2.6.4G: Fireworks

   Currently, fireworks are grouped in the use chart under "explosives," which falls under the heavy industrial use category in the Use Table. These uses require the issuance of a Special Use Permit in the Heavy Industrial Zoning District. However, due to various private and public acts, fireworks are not permitted to be warehoused or sold in Shelby County. Section 2.5.2, the Use Table, should be amended to read "explosives, except fireworks," which would explicitly prohibit the sale of explosives in all zoning districts. Also, a cross reference to a new Sub-Section 2.6.4G should be added to Section 2.5.2, which will read:

   The sale or storage of fireworks is not permitted within the City of Memphis or unincorporated Shelby County.

3. 2.5.2, 8.3.11 and 8.4.7: Lodges and Private Clubs in the CMU-1 District

   A few clubs serving alcohol classify themselves as Lodges and Private or Membership Clubs in order to obtain a Certificate of Occupancy in the CMU-1 zoning district, where lodges, private clubs and membership clubs are permitted, but not bars and taverns. Bars and taverns require the issuance of a Special Use Permit in the CMU-1 district since this district is typically in close proximity to single-family homes. A case at 1688 Lamar recently arose in which a motorcycle club that labeled itself a membership club was permitted to open in the CMU-1 district. This proposal below would require a Special Use Permit for Lodges and Private Clubs in the CMU-1 zoning district by changing a solid box ("■") with a hollow box ("□") in not only the Use Table of Section 2.5.2, but also the separate Use Table of the Midtown Overlay (Section 8.4.7) and University Overlay (Section 8.3.11), the other two sections of the Code in which lodges and membership clubs are found. Also, these use tables are being amended to replace the term "Membership Club" with "Private Club" since the latter is defined in the Definition Section (Sec. 12.3.1).

4. 2.6.1F(3): Parking, etc. at Group Living Establishments

   This section of the Code, which deals with the location of parking and loading for group homes (nursing homes, supportive living facilities, etc), should reference the section of the UDC that addresses streetscape plates.

   F. All Group Living
      1. All group living facilities must meet all state licensing requirements.
      2. **Nursing Homes, Full-Time Convalescent Centers, Hospices, Assisted Living Facilities and Independent Living Facilities**
         a. A Class III buffer (see Section 4.6.5) shall be established along any side of the property adjacent to a residential use. An alternative buffer may be approved through the site plan review process.
         b. All parking, loading**,** ~~and~~ unloading~~,~~ and deliveries shall take place from the rear of the property or**, if located along the side or in front of the property,** shall be

sufficiently screened ~~from view~~ **by the installation of an S-8, S-9, S-10 or S-11 Streetscape Plate** as set forth in ~~Sub-~~Section ~~4.6.5F~~ **4.3.3**.

This proposal will also involve adding and changing the following definitions:

FULL-TIME CONVALESCENT CENTER: See Assisted Living Facility.
HOSPICE: See Assisted Living Facility.
RESIDENTIAL HOME FOR THE ELDERLY~~, ASSISTED LIVING FACILITY~~: A building where at least two…

5. 2.6.2I(2)(a)(6) and 2.6.2I(2)(e): Setbacks for Cell Towers

Currently, there is no minimum setback between cell towers and adjacent homes. There also appears to be a redundancy between the two sections of the Code dealing with cell towers in close proximity to residential areas. The proposal below would set a 150-foot separation between cell towers and single-family homes, but also clear up the conflict between the less-specific Sub-Item 2.6.2I(2)(a)(6) and Item 2.6.2I(2)(e) by deleting the former:

2.6.2I(2)(e) **CMCS facilities shall adhere to the setback requirements of the zoning district in which they lie. In addition, the CMCS tower shall be set back a minimum of 150 feet from any adjacent, habitable single-family residential dwelling existing at the time of the application of the CMCS facility, as measured from the centerline of the proposed CMCS tower to the outer wall of the closest point of the adjacent dwelling.** ~~The minimum setback requirement for support structures including associated attachments shall correspond to the zoning district in which they are located, except that a minimum buffer equal to the height of the tower shall be maintained between any support structure (excepting sites incorporating stealth design) and a parcel with a single-family dwelling located in any single-family residential district.~~ Exceptions to the minimum setback requirements **of the zoning district** may be permitted through Special Use Review**, but not to the minimum 150-foot separation between a CMCS tower and an adjacent single-family residential dwelling** ~~pursuant to Paragraph 2.6.2I(2)(a)(6)~~. ~~The tower height shall not be used to calculate the minimum setback requirements.~~

For information purposes, here is Sub-Item 2.6.2I(2)(a)(6), which is proposed to be deleted in its entirety.

The minimum setback requirements of the zoning district shall apply to the equipment, structures, and other buildings which are auxiliary to functions of the tower. Exceptions to the minimum setback requirements may be permitted. The tower height shall not be used to calculate the minimum setback requirements. The district height restrictions do not apply to tower height and the height permitted for each new application shall be set on the basis of its own merits.

6. 2.6.2I(3): Cell Towers in Non-Industrial Districts

The cell tower section of the UDC is split into three main sub-parts: those that require Special Use Permits due to their proximity to the single-family residential areas, those that may be approved administratively in the non-industrial zoning districts and those that may be approved administratively in the industrial zoning districts. The second sub-part, which is codified as Paragraph 2.6.2I(3) of the UDC, primarily covers the commercial zoning districts. However, throughout this section, references

are made to the three industrial districts (the IH, WD and EMP zoning districts). This proposal removes all references to these zoning districts, since they are covered in Paragraph 2.6.2I(4). These references should be deleted as such:

2.6.2I(3)(b)(1)

The edge of the tract or lot line the tower is locating on within the City limits of Memphis shall not be closer than 500 feet from any property zoned R- or RU- or used for residential use including the residential portion of a planned development and residential uses within the CA District; 1,500 feet is applicable to sites within unincorporated Shelby County. Interstate highway right-of-way (which is zoned R-15) is exempt from this measurement. If the distance requirement cannot be met, a special use permit is required ~~except for those cases locating in the EMP, WD and IH districts~~.

2.6.2I(3)(b)(3)

All CMCS towers must be spaced a minimum distance of one-quarter mile as measured from property line to property line. ~~In the EMP, WD and IH districts, the spacing shall be measured from the boundary of the leased area or property line, whichever is closer to the tower base.~~

2.6.2I(3)(i)(1)

Applications for all towers~~, including towers proposed within the EMP, WD and IH districts~~ shall be subject to review by the Memphis-Shelby County Airport Authority within the area outlined by the-following boundaries: I-240, Lamar Avenue, Getwell Road, State Line Road and I-55. The Airport Authority shall have a ~~l~~**1**4-day period to provide comments. The application may be appealed to the Memphis City Council.

2.6.2I(3)(i)(2)

Within the CBD District **and the Central Business Improvement District (CBID) outside of CBD**, towers and facilities are subject to review and approval by the Design Review Board of the Downtown Memphis Commission. The action of the Design Review Board may be appealed to the Memphis City Council. ~~The applicant may appeal directly to the City Council if the Design Review Board fails to act within six weeks.~~

2.6.2I(3)(i)(3)

~~Within the Central Business Improvement District (CBID) outside of CBD, applications for all towers including towers proposed within the EMP, WD and IH districts shall be subject to review by the Downtown Memphis Commission. The Downtown Memphis Commission shall have a 14-day period to provide comments. The application may be appealed to the Memphis City Council.~~

2.6.2I(4)(d)

Applications for all towers, including towers proposed within the EMP, WD and IH districts shall be subject to review by the Memphis-Shelby County Airport Authority within the area outlined by the-following boundaries: I-240, Lamar Avenue, Getwell Road, State Line Road and I-55. The Airport Authority shall have a ~~l~~**1**4-day period to provide comments. The application may be appealed to the Memphis City Council.

2.6.2I(4)(e)
Within the Central Business Improvement District (CBID) outside of CBD, applications for all towers including towers proposed within the EMP, WD and IH districts shall be subject to review by the **Design Review Board of the** Downtown Memphis Commission. The **Design Review Board** ~~Downtown Memphis Commission~~ shall have a 14-day period to provide comments. The application may be appealed to the Memphis City Council.

7. 2.6.3J: Gas Stations

This section of the UDC requires gas station canopies to be architecturally integrated with the principal building. This is typically a convenience store or a small strip center. The following language will assist in staff's review of new gas stations.

2.6.3J(2)(c) The canopy shall be **either** ~~integrated~~ **1)** architecturally **and structurally integrated and architecturally compatible or 2) architecturally compatible** with the design of the principal building **by exhibiting one or more of the following features, which** ~~and~~ shall be complimentary to the **principal building:** ~~overall~~ **roof pitch, architectural detailing, materials, and** color scheme ~~of the building façade from which it projects~~. **Examples of architecturally integrated and compatible fuel canopies are provided in Item (e) below.**

2.6.3J(2)(e): [new section] **Examples of architecturally integrated and compatible fuel canopies.**

2.6.3J(2)(f): [new section] **Example of architecturally incompatible fuel canopy.**

Also, gas station pumps and tanks are prohibited from being within close proximity of single-family homes. The language in the Code reads that such gas pumps and tanks shall be separated from any single-family zoning district. This includes most interstate highways, which are within the single-family zoning district. The language below addresses this situation.

2.6.3J(1)(c): No sign of any type or any gasoline pump, tank, or EV charger shall be located within 20 feet of any residential district. Furthermore, no gasoline pump, tank or tank vent pipe located at gasoline stations constructed on or after August 21, 2012, or at those gasoline stations that have been vacant for more than 365 days, shall be located within 125 feet of any single-family residential district. **This Item shall not apply to any portion of a residential district that lies within a state, city or county right-of-way.**

8. 2.6.3P: Vehicle Sales and Leasing

Several state provisions related to vehicle sales should be added to the UDC in an effort to avoid conflicts between local and state law. The following items are proposed to be added to the section of the Code pertaining to vehicle sales and service. This will involve moving several provisions of the Code into a new Paragraph 2.6.3P(3).

2.6.3P(3) Provisions Related Specifically to Vehicle Sales and Leasing

a. (currently Item 2.6.3P(1)(g): Road testing of vehicles may be restricted to non-residential areas.
b. (currently Item 2.6.3P(1)(h): New car display shall not be artificially elevated above the general topography of the site.
c. (currently Item 2.6.3P(1)(k): If the automobile dealership ceases to operate, all attached and detached signs depicting the dealership shall be removed from the property.
d. (currently Item 2.6.3P(1)(l): Any vehicle sales, rental or leasing facility located in the CMU-3 zoning district ~~constructed after October 8, 2013~~ **established after [insert effective date of this zoning text amendment],** or reactivated after one year of discontinuance, shall require the issuance of a Special Use Permit.
e. A minimum of 288 square feet of office space shall be provided.
f. Functioning restroom facilities, in accordance with the Building Code, shall be provided.
g. For sites utilized for vehicle sales, there shall be room for 15 spaces for overnight service or repair storage, or on-going vehicle sales display and three dedicated spaces for customer parking. All spaces shall be clearly delineated.

Please note the proposed change to Item (d) above. A previous zoning text amendment, ZTA 13-003, required that all new car lots constructed after October 8, 2013, in the CMU-3 zoning district obtain a Special Use Permit from the Memphis City Council and/or Shelby County Board of Commissioners. The use of the term "constructed" has allowed some car lots to be established on sites within the CMU-3 district that did not involve new construction. The intent of the ordinance was to require Special Use Permits for all new car lots in the CMU-3 zoning district. The language above in Item (d) clarifies this.

9. 2.7.11A: Chickens on Residential Lots

Under the UDC, chickens may be kept on residential lots as an accessory use to the principal residential use. However, the current language requires the permit from the Health Department. The Health Department does not issue permits for chickens, so the following language is proposed to be removed:

Live chickens are permitted as an accessory use to a single-family principal structure on single family detached lots of not less than 5,000 square feet, provided that 15 square feet of space is afforded per chicken and the number of chickens permitted on a lot shall not exceed one bird

per 1,500 square feet of lot size up to a maximum of 6 chickens~~, subject to the issuance of a permit from the health officer~~.

10. 2.8.3: Temporary Use Permits

Temporary Permits are governed by Chapter 2.8 of the UDC. Currently, the Code provides great discretion to the Building Official, insofar as duration and frequency, in the issuance of these permits. One type of Temporary Permit is the Special Event Permit, which is a "catch all" category of temporary permits not covered under the other categories of temporary permits. Due to a recent Special Event Permit that was issued for a somewhat lengthy duration that became a problem with neighboring property owners at the Tennessee Brewery, the proposal below would limit the time period on Special Event Permits.

2.8.3C Special events occurring for a time period **not exceeding 90 consecutive days** ~~and frequency~~ as approved by the Building Official on a case-by-case basis.

Also, a few cases have arisen in the past where an applicant first receives governing body(s), the Land Use Control Board or the Board of Adjustment approval for a particular use, but then wishes to avoid certain conditions placed on that use by these boards by requesting a temporary use permit from the Building Official. The following language would prevent this from occurring in the future:

2.8.3H(12) [new section] **The Building Official shall not issue a temporary use permit for a use that is the same, or substantially the same, as a use that was approved for the subject site by the Board of Adjustment, Land Use Control Board or governing bodies, provided the board's or body's approval has not expired.**

The language below will require the Building Official to make the same finding of fact for a temporary permit as is required of the Memphis City Council for Special Use Permits:

2.8.3H(13) [new section] **The Building Official shall make a finding for all temporary use permits that the use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare.**

Finally, the language below will allow the Building Official to revoke a temporary use permit at any time if it proves to have a negative impact on its surrounding neighborhood.

2.8.3(14) [new section] **The Building Official may revoke a temporary use permit at any time after issuance if he or she determines that any of the standards of this Sub-Section are not met. If such a revocation occurs, the applicant must file a letter of intent and appropriate filing fee with the Board of Adjustment within seven days of the revocation or terminate the temporary use. The applicant must file a complete application with the Board of Adjustment within fourteen days of the revocation to be heard at the Board's next available public hearing, according to its application deadline schedule, or terminate the temporary use. The applicant may continue the temporary use during this appeal period, provided the initial time period has not lapsed.**

11. 2.9.5B: Light Industrial Uses

The following addition of an "and" and a comma will help clarify this section dealing with light industrial uses:

Food **and** beverage products**,** except animal slaughter, stockyards

12. 3.9.2B(1): Contextual Infill Standards

On August 13, 2014, the Court of Appeals of Tennessee handed down its opinion on the two-lot subdivision at the corner of Poplar and Belle Meade (Case S11-007), which was rejected by the Memphis City Council on appeal. In that opinion, *Wills v Memphis*, the Court found that the use of the term "development" in the UDC's Contextual Infill Standard section was ambiguous in that it did not define whether the date of "development" was the date of a lot being platted or home being built. The proposal below would clarify the applicability of the Contextual Infill Standards, which essentially requires the surrounding conditions of a residential neighborhood be replicated in certain infill developments.

The contextual infill development standards shall be used on any residential site **that meets the following conditions:**

a. **For sites within an existing subdivision or planned development, no** ~~without~~ front setbacks **are** indicated on **the** ~~its~~ ~~subdivision~~ plat **or plan**,
b. **The site** ~~that~~ is less than two acres in size,
c. **The site** ~~that~~ is within the area identified on the map below**;** and
d. **The site is** abutted on two or more sides by **parcels containing** existing single-family detached or single-family attached **dwellings** ~~development~~ **that were built on** lots platted or established **by deed** before 1950 in a residential **zoning** district. For the purpose of this **Item** ~~paragraph~~, **the term "abutting" shall include parcels directly across any street from the site** ~~development containing dwelling units fronting an abutting street to the subject site shall be considered an abutting development~~.

13. 3.10.2B and 3.10.3H: 0-Foot Side Yard Setbacks

The main section of the UDC that covers setbacks on non-residential lots is Sub-Section 3.10.2B. However, it does not allow for attached buildings or buildings with 0-foot setbacks, which are permitted along designated frontage roadways (see Footnote 2 in Sub-Section 3.10.3H). The previous Zoning Code contained no required side yard setbacks for commercial and industrial buildings, but this sometimes resulted in buildings with little space between them for firefighters to access this area to extinguish fires and owners to maintain them. The note below would be provided at the bottom of Sub-Section 3.10.2B, which would allow for a 0-foot side setback provided there is a 5-foot separation between detached buildings. This will be a new note "4," and the other three notes will be numbered rather than indicated with asterisks. This change will also be effectuated at the bottom of the table in Sub-Section 3.10.3H.

A 0-foot side setback is permitted. For structures built after [insert effective date of this ZTA], and for any expansions to existing buildings after this date, a 5-foot separation is required between detached buildings on separate lots.

14. 4.5.3B: Parking Ratios for Restaurants and Bars

The UDC requires one parking space per 300 square feet of restaurant square footage, which represents a reduction in the number of required spaces for restaurants and bars. This parking requirement, when combined with the allowance under the UDC to count street parking that abuts the restaurant site, has resulted in a number of restaurants that require no off-street parking (such as

Second Line at Monroe and Cooper and the new Broadway Pizza on Mendenhall) due to outdoor space being exempt from parking requirements. The proposal below would require one space per 300 square feet, including any outdoor space. The patio at Second Line contains about 1000 square feet, which would have required four parking spaces had it been developed after this amendment will have taken place.

Restaurant (see 2.9.4G)	Drive-in restaurant	1.0 per 100 SF FA
	All other uses	1.0 per 300 SF FA **(square footage shall include outdoor patios and decks)**

15. 4.6.7D and 4.6.7E(1): Fence Height and Permissible Fence Materials

Currently, the UDC does not regulate the height of fencing for sites outside of the single-family and CA zoning districts. The added language to Sub-Section 4.6.7D will address this discrepancy (Sub-Section 4.6.7C covers front yard fencing):

> 4.6.7D Fence Height. A fence or wall **not subject to Sub-Section 4.6.7C** may not exceed nine feet in height ~~in any required side or rear setback area~~.

In addition, there appears to be a conflict between the section of the Code that deals with materials of fencing (Paragraph 4.6.7E(1) below) and the section that covers chain link. The proposed language will address this possible conflict:

> 4.6.7E(1) Permissible Materials. Fences and walls must be constructed of high quality materials, such as decorative blocks, brick, stone, **masonry panels,** treated wood and wrought iron**; and, where permitted, vinyl-coated chain link**. Electrified fences, barbed wire or concertina wire fences are not permitted in a residential district.
>
> **4.6.7E(7)** [new section] **Metal Panel Fencing. Metal panel fencing is only permitted in the industrial zoning districts.**

Since the proposed language above involves the introduction of new terms, the following definitions should be added to Section 12.3.1, Definitions:

> **METAL PANEL FENCING: Any fencing made of a solid, opaque metal material.**
> **MASONRY PANELS: Panels made up of a masonry material fabricated off-site and erected on-site.**

16. 4.7: Outdoor Lighting

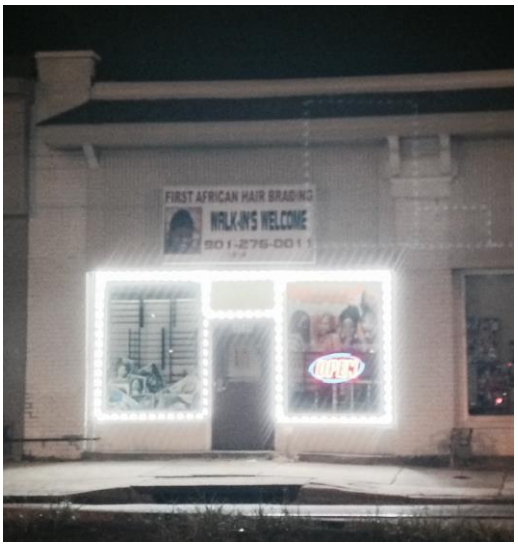
This section of the UDC deals with outdoor lighting. There are a few formatting amendments:

- A new Item 4.7.3A(2)(b)(c) is required for the section that begins with the sentence "The design complies if:" and its "a" and "b" should be renumbers as "1" and "2."
- The reference in Sub-Item 4.7.3A(2)(b)(c) should read Table **E** and not Table F (there is no Table F).

- Paragraph 4.7.3B(3) should be renumbered as 4.7.3B(**2**) since there no "2."

17. 4.9.4A, 2.6.3J(1)(g), 4.7.3F, 12.3 and 4.9.6E: Rope Lighting, Window Graphics and Fuel Price Signs

In the past few years, some businesses, particularly gas stations, have installed rope lights around their windows in an effort to draw customers. The proposal below would eliminate the use of rope lighting since it is both aesthetically garish and its brightness causes unnecessary glare at night. In addition, the language on window graphics needs clarity, as many businesses fill their windows completely with such graphics. Sub-Section 4.9.4A is essentially a list of prohibited signs.



4.9.4A(9) [new section] **Rope lighting along the exterior of any structure, along the perimeter of any window or within three feet of the interior of any window. Rope lighting shall not be considered a "structure" for the purpose of this Code and shall furthermore not be afforded any nonconforming status under Article 10. All rope lighting, regardless of its time of installation, shall be deemed a violation of this Code and shall be removed within 60 days of a citation issued pursuant to this Code.**

4.9.4A(10) [new section] **Window graphics that exceed the dimensions provided in Paragraph 4.9.2D(9).**

Also, the title of Section 4.9.4 needs to be rephrased as "Prohibited Signs**, Lighting and Graphics**," as does the introductory sentence of Sub-Section 4.9.4A.

Given that many of this rope lighting is found on gas stations, a cross reference should be added to Paragraph 2.6.3J(1), which lists the use standards for gas stations.

2.6.3J(1)(g) [new section] **Rope lighting is prohibited, per Paragraph 4.9.4A(9).**

A reference to this new section should also be added to the Outdoor Lighting section of the Code:

4.7.3F [new section]: **Rope Lighting**
Rope lighting is prohibited, per Paragraph 4.9.4A(9).

A definition of "rope lighting" shall be added to the list of sign definitions in Section 12.3.4 with a cross reference in the regular definition section of 12.3.1:

12.3.4 ROPE LIGHTING: Rope lighting, also known as fiber-optic cable lighting, is made up of tiny lights, available in either incandescent or LED bulbs, spaced about an inch apart and surrounded by clear, flexible PVC tubing.

12.3.1 ROPE LIGHTING: See Signage Definitions, Section 12.3.4.

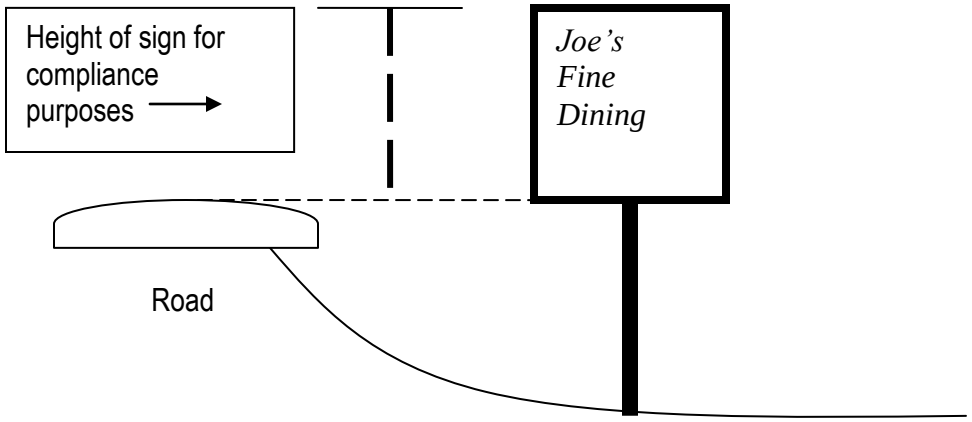
In addition, a Murphy Express gas station was recently constructed at the northwest corner of Summer and Sycamore View. The numbers on the fuel price sign are approximately ten feet in height (see image below).

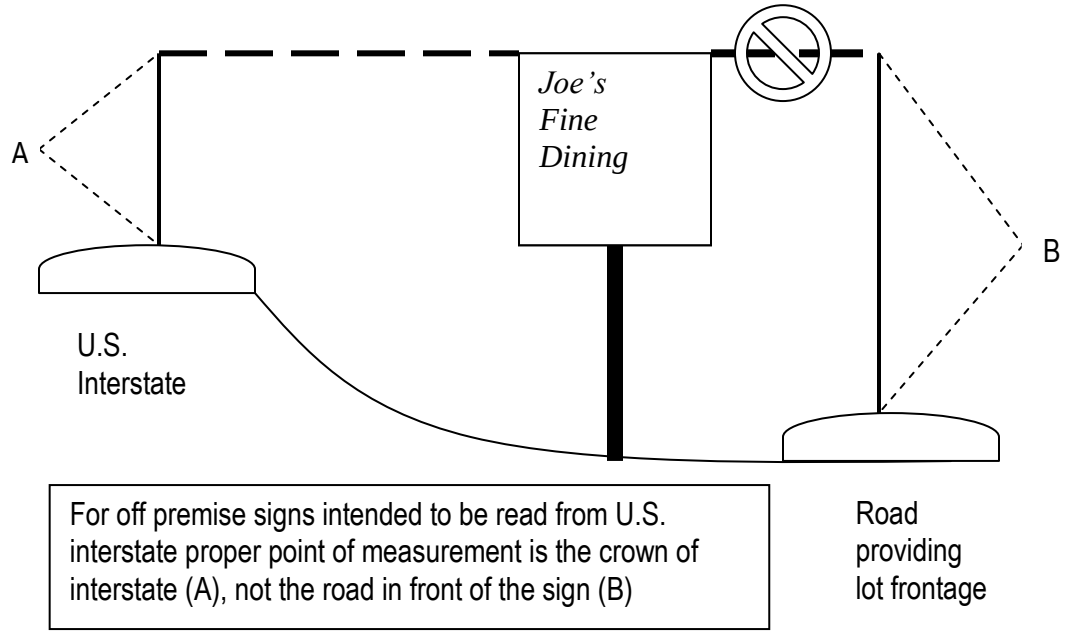
The language below would limit the size of gas fuel price signs:

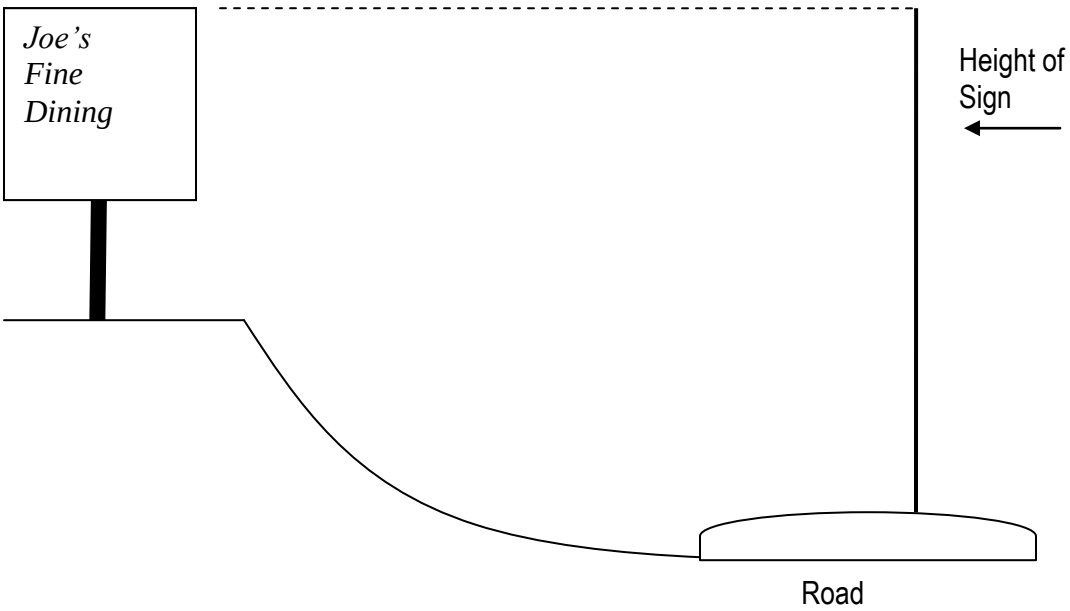
> **4.9.6E(2)(i):** [new section] **Fuel price signs. For fuel price signs with multiple grades listed, the maximum height of any numeral shall be 18 inches. For fuel price signs with a single grade listed, the maximum height of any numeral shall be three feet.**

18. 4.9.6B: Missing Copy in Sign Graphics

The copy of this section of the UDC, dealing with sign height, is missing. This proposal adds this language back to the graphics:







19. 7.2.2C(3): Uses Permitted in the South Main Zoning District

The South Main Zoning District is found in the SCBID Special Purpose District. It is primarily a mixed use district, where residential units are in close proximity to commercial uses. However, there has been a rise in complaints by the residents throughout the South Main Zoning District about certain commercial uses with outdoor activities. The proposal below would require any restaurant or bar that has outdoor entertainment or that has a large outdoor area to receive a Special Use Permit:

> **Any restaurant, tavern, cocktail or night club with outdoor entertainment or with outdoor space, such as a patio or deck, that exceeds 25% of the area of the site. For sites with multiple uses, only the portion of the site that contains the restaurant, tavern, cocktail or night club and its accessory uses shall be used to calculate this 25%.**

20. 7.2.2D(3): Articulated Buildings in the SCBID

Paragraph 7.2.2D(3) does not permit buildings of 100 feet or greater of street frontage in the South Central Business Improvement District Special Purpose District. The intent of this provision was to prevent buildings with no human scale. The Midtown District Overlay, which is codified as Chapter 8.4 of the UDC, was adopted after the SCBID and contains language better crafted to meet this goal. This proposal would replace the current language of Paragraph 7.2.2D(3) with language found in the Midtown District Overlay:

> **Façades greater than 100 feet in length along a street frontage, as measured horizontally, shall be articulated to provide visual interest and a human scale by incorporating any combination of the following features: columns, pilasters, balconies, piers, variation of material building and setback variations of at least 3 feet. No uninterrupted length of any façade shall exceed 100 horizontal feet.** ~~The maximum amount of street frontage shall be 100 linear feet. On corner lots, the maximum street frontage shall be 100 feet on each street. The Land Use Control Board may approve a greater amount of street frontage in accordance with the SCBID Special Exception Standards (see Section 7.2.10.~~

21. 7.3.4, et seq: Uptown Zoning Districts and 1.13.4 and 2.1: Special Purpose Districts

The opening sentence to Section 7.3.4 references a map that was submitted to the Land Use Control Board and Memphis City Council when the Uptown Special Purpose district was adopted. This map has been incorporated into the zoning atlas and no longer needs referencing in this sentence. The proposal below address this:

> The ~~map and~~ text below provide**s** a general description of the eight special zoning districts and/or provisions established for the Uptown Memphis study area. ~~The color reference for each district relates to the map.~~

Also, the captions to Section 7.3.5, et seq, should include the abbreviations found in Section 7.3.4 (ie, Moderate-Density Residential District **(MDR)**). Finally, the tables in Section 1.13.3 and Chapter 2.1 shall be amended so each individual zoning district within the Uptown and SCBID Special Purpose Districts are included in these tables, which list all of the zoning districts.

22. 7.3.11: Hotels and Auto Service Repair in Uptown

Uptown has its own use chart, which is Section 7.3.11 of the UDC. Since hotels require a Special Use Permit in all other parts of the City, this use chart should be amended to change hotels from uses by right to those that require the issuance of a Special Use Permit from the Memphis City Council. This will involve changing the "X" and "X15" in this table to an "**S**." See table below.

The use chart in Section 7.3.11 also contains a use known as "General Service and Repair." This has been both to include auto service and repair and to exclude it, depending on the personnel being asked at the Office of Planning and Development. The following addition to the use chart for Uptown will clarify this issue by explicitly listing this use and tying it to gas stations, which are permitted by issuance of a Special Use Permit in the MU (Mixed Use) zoning district, permitted by right in the ULI (Uptown Light Industrial) zoning district and disallowed it in all other Uptown zoning districts. See table below.

USES PERMITTED	**MDR**	**HDR**	**MU**	**UH**	**ULI**
Hotel		~~X15~~ **S**	~~X~~ **S**	~~X~~ **S**	
Gasoline sales **and Motor Vehicle Service and Repair**			S		X
General Service & Repair Shop **(not including motor vehicle service and repair)**			X		X

23. 8.2.5C: Transparency in the Medical Overlay District

Sub-Section 8.2.5C contains two contradictory sections that stipulate the required ground floor transparency (or windows) along Urban Frontage within the Medical Overlay District. The first section, the table, says 50%. Given that the more intense frontage, Shopfront, requires 60%, this proposal would change the Urban Frontage regulations to 50% to square with the table. This is in keeping with the concept that Urban Frontage is slightly less conducive to pedestrian retail uses than Shopfront Frontage.

24. 8.3: University District Overlay

The University District Overlay contains the following two discrepancies: The minimum floor-to-ceiling height requirements of the Midtown and Medical Overlays apply to all upper floors, not just the second

floor. The University Overlay's floor-to-ceiling height refers only to the second floor. Therefore, Sub-Section 8.3.6D should be amended in three locations to read "upper floor" and "upper floor(s)" rather than "second floor." Also, the third line in the table in Sub-Section 8.3.6D should read "Building Width (**max** ft., not *min* ft)."

25. 8.4.5B(1)(d), 8.4.10B, 8.3.10H and 9.21.2D(1): EIFS, Metal Siding and CMU in the Midtown District Overlay

Item 8.4.5B(1)(d) permits the approval of an administrative deviation by the Planning Director for the creative use of metal panels, concrete masonry units (CMU) and exterior insulating finishing systems (EIFS). This section needs a cross reference to Sub-Section 8.4.10B, which provides additional details on building materials. In addition, Paragraphs 8.4.10B(2), (3) and (4) should provide a 25% limitation to the use of metal panels and EIFS and a 50% limitation on the use of CMU.

> 8.4.5B(1)(d). Minimum Building Standards. Creative use of metal panels, concrete masonry units (CMU), exterior insulating finishing systems (EIFS) and precast concrete may be approved administratively**, but only in conformance with Sub-Section 8.4.10B**.
>
> 8.4.10B(2). Metal sided buildings are not allowed on commercial sites. **Creative use of metal panels, approved in accordance with Item 8.4.5B(1)(d), shall not make up more than 25% of any building elevation that is either visible from the public right-of-way or faces an abutting residential zoning district.**
>
> 8.4.10B(3). Concrete Masonry Units shall only be used when combined with other masonry. **Creative use of Concrete Masonry Units, approved in accordance with Item 8.4.5B(1)(d), shall not make up more than 50% of any building elevation that is either visible from the public right-of-way or faces an abutting residential zoning district.**
>
> 8.4.10B(4). Exterior Insulating Finishing Systems (EIFS) shall be used for decorative elements only where used in the lower 2 stories of a building. **Creative use of EIFS, approved in accordance with Item 8.4.5B(1)(d), shall not make up more than 25% of any building elevation that is either visible from the public right-of-way or faces an abutting residential zoning district.**

This language should also be included in the University District Overlay:

> **8.3.10H** [new section] **Minimum Building Standards**
>
> 1. **Creative use of metal panels, concrete masonry units (CMU), exterior insulating finishing systems (EIFS) and precast concrete may be approved through the Administrative Deviation process, but only in conformance with this Sub-Section.**
> 2. **Mobile buildings are only allowed on active construction sites.**
> 3. **Metal sided buildings are not allowed on commercial sites. Creative use of metal panels, approved in accordance with Paragraph 1 above, shall not make up more than 25% of any building elevation that is either visible from the public right-of-way or faces an abutting residential zoning district.**

4. **Concrete Masonry Units shall only be used when combined with other masonry. Creative use of Concrete Masonry Units, approved in accordance with Paragraph 1 above, shall not make up more than 50% of any building elevation that is either visible from the public right-of-way or faces an abutting residential zoning district.**
5. **Exterior Insulating Finishing Systems (EIFS) shall be used for decorative elements only where used in the lower 2 stories of a building. Creative use of EIFS, approved in accordance with Paragraph 1 above, shall not make up more than 25% of any building elevation that is either visible from the public right-of-way or faces an abutting residential zoning district.**
6. **Tilt-up Precast-concrete buildings are not allowed on commercial sites.**
7. **Aluminum and vinyl siding are not allowed on commercial buildings.**

Finally, Paragraph 9.21.2D(1) should also be amended so these sections are more prevalent to the reader of the Code:

> Creative use of metal panels, concrete masonry units (CMU), exterior insulating finishing systems (EIFS) and precast concrete may be approved administratively, where such materials are otherwise prohibited by this Code. **For properties in the Midtown District Overlay, see Item 8.4.5B(1)(d). For properties in the University District Overlay, see Sub-Section 8.3.10H.**

26. 8.4.8A and 8.4.9: Boundary and Height Standards Maps for Midtown Overlay
The Midtown Overlay contains two maps that still contain the words "proposed" and "draft." These were part of the original Midtown Overlay as it was being drafted. Now that the overlay has been adopted and fully integrated into the UDC, these terms should be removed from these maps.

> 8.4.8A, Boundary Map of the Midtown Overlay: remove the word "Proposed" from the term "Proposed Overlay Area (Revised 02/18/10)"
>
> 8.4.9, Height Standards Map of the Midtown Overlay: remove the word "Proposed" and the term "Proposed Overlay Area (Revised 02/18/10)" and remove the word "Draft" from the term "Midtown Overlay – Draft Height Map."

27. Article 9: Holds by the Land Use Control Board and Board of Adjustment

Article 9 deals with processes associated with individual zoning requests. Each of these zoning request processes stipulate that the Land Use Control Board or the Board of Adjustment must act on a particular case within a certain time period. The purpose of this language is to avoid the Boards from holding a case in perpetuity against an applicant's wishes in an effort to reject the case without actually voting on it. It also prevents a case to be held indefinitely by the applicant to "wear down" the opposition. However, the inability to hold a case more than once sometimes forces the Boards to vote on a project that has not been thoroughly vetting between applicant and opposition. The proposed language below for each of these processes would allow one hold to be made without the consent of the applicant, and then one up to two additional holds if the applicant consents. It will also make each of these sections match each other with the following language: "The Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant."

9.4.4 (text amendments):
B. The Land Use Control Board shall make a recommendation on the request for a text amendment after deliberation and prior to the close of the public hearing. The Land Use Control Board may, prior to the close of the public hearing, defer a decision **in accordance with Sub-Section C below** ~~until the next regular meeting of the Board~~, at which time it shall recommend approval, rejection, or approval with conditions~~, unless held at the request of the applicant~~.
C. The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.5.7A (rezonings):
(2) The Land Use Control Board shall make a recommendation on the request for a zoning change after deliberation and prior to the close of the public hearing. The Land Use Control Board may, prior to the close of the public hearing, defer the decision **in accordance with Paragraph 3 below** ~~until the next regular meeting of the Board~~, at which time it shall recommend approval, rejection, or approval with conditions, ~~unless held at the request of the applicant~~.
(3) The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.6.7 (special use permits and planned developments):
B. The Land Use Control Board shall, after deliberation and prior to the close of the public hearing, recommend approval, rejection, approval with conditions or take the matter under advisement or defer decision **in accordance with Sub-Section C below** ~~until the next regular meeting of the Board at which time it shall recommend approval, rejection, or approval with conditions, unless held at the request of the applicant~~. ~~The Land Use Control Board shall act upon a special use or planned development application within 75 days after the application has been determined complete, without exception.~~
C. The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.7.7E (subdivisions)
(2) The Land Use Control Board shall approve, approve with conditions, or reject the major preliminary plan after deliberation and prior to the close of the public hearing. The Land Use Control Board may, prior to the close of the public hearing, take the matter under advisement or defer decision **in accordance with Paragraph 3 below** ~~until the next regular meeting of the Board~~.
(3) The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.8.4 (street and alley closures)

B. The Land Use Control Board shall make a recommendation on the application after deliberation and prior to the close of the public hearing. The Land Use Control Board may, prior to the close of the public hearing, take the matter under advisement or defer decision **in accordance with Sub-Section C below** ~~until the next regular meeting of the Board~~.

C. The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.9.5 (street dedications)

B. The Land Use Control Board shall make a recommendation to approve, reject, or approve with conditions the application after deliberation and prior to the close of the public hearing. The Land Use Control Board may, prior to the close of the public hearing, take the matter under advisement or defer decision **in accordance with Sub-Section C below** ~~until the next regular meeting of the Board~~.

C. The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.10.3 (street name changes)

B. The Land Use Control Board shall make a decision on the application after deliberation and prior to the close of the public hearing. The Land Use Control Board may, prior to the close of the public hearing, take the matter under advisement or defer decision **in accordance with Sub-Section C below** ~~until the next regular meeting of the Board, at which time it shall approve, reject, or approve with conditions, unless held at the request of the applicant~~.

C. The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.14.4 (special exceptions)

C. The Land Use Control Board may approve the special exception, deny the special exception, or defer decision **in accordance with Sub-Section D below** ~~until the next regular meeting of the Board~~.

D. The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.14.5B (appeal of special exceptions): The governing bodies shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification. The governing bodies shall by resolution approve, approve with conditions, or reject the application. The governing bodies may **also** defer action ~~until the next regular meeting at which time it shall approve, reject, or approve with conditions, unless held at the request of the applicant~~.

9.22.5 (variances)
B. Prior to the adjournment of the meeting at which such public hearing is concluded, the Board shall act on the requested variance, or take the matter under advisement, or defer decision **in accordance with Sub-Section C below** ~~until the next regular meeting of the Board~~.
C. The Board of Adjustment may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.
D. Notice of the Board's decision, along with its written findings shall be mailed to the applicant.

9.23.1C (appeals)
(3) …The Board of Adjustment or Land Use Control Board may take the appeal under advisement or defer decision **in accordance with Paragraph 4 below** ~~until the next regular meeting~~.
(4) The Board of Adjustment or Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.

9.24.5 (conditional use permits)
B. Prior to the adjournment of the meeting at which such public hearing is concluded, the Board shall act on the requested conditional use permit, or take the matter under advisement, or defer decision **in accordance with Sub-Section C below** ~~until the next regular meeting of the Board~~.
C. The Board of Adjustment may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a period not to exceed one month without the consent of the applicant.
D. Notice of the Board's decision, along with its written findings shall be mailed to the applicant.

28. 9.3.2B(3): Neighborhood Meetings

Sub-Section 9.3.2B(3) references "Paragraph 4 below." This should read "Paragraph **5**."

29. 9.6.11(1)(a) and 9.6.11E(2)(e): Changes to Permitted Uses in Existing Planned Developments

Item 9.6.11E(1)(a) allows for a change to the permitted list of uses in an existing planned development, provided the change involves the conversion of a more intensive use to a less intensive use. This section of the Code references an Item 9.6.11E(2)(e), which falls under the heading of "Major Modifications," which are reviewed by the Land Use Control Board. However Item 9.6.11E(2)(e) does not exist. The language below would add a new Item 9.6.11E(2)(e) and rectify this situation.

9.6.11E(1)(a) [existing section, under the "Amendments" heading"] A change to the permitted uses in a planned development, except in situations where a use of a **lower** ~~higher~~ classification is proposed to be changed to a use of a **higher** ~~lower~~ classification (see Item 9.6.11E(2)(e) below);

9.6.11E(2)(e) [new section, under the "Major Modification" heading]: **Changing the permitted uses in a planned development may be processed as a major modification if uses of a lower classification are being changed to uses of a higher classification. See Sub-Section 10.2.5B for classifications of uses.**

30. 9.6.14A and 9.6.11E(2)(f): Expiration of Planned Development Outline Plans

The UDC requires a Planned Development final plan to be filed with the Office of Planning and Development within five years of the approval of its outline plan or the outline plan expires. However, a filing with the Office of Planning and Development is the first of many steps to effectuate a final plan. It is then routed to City or County Engineering and then recorded with the Register of Deeds. In the past, applicants have filed their final plan with the Office of Planning and Development with no intention of moving forward on the project, but only to lock in the zoning entitlement of the outline plan. The language below would instead require final plans to be filed *and recorded* within *six* years, which would allow a plan to be reviewed by Planning and Engineering for up to one year. The language also addresses those planned developments with no expiration clauses.

> Planned developments shall expire five years after the approval of the outline plan unless a final plan is filed with the Office of Planning and Development within that five-year period. **Final plans filed with the Office of Planning and Development shall expire six years after the approval of the outline plan unless a final plan is recorded with the Register of Deeds.**
>
> **(1) Final plans already filed.**
> **Final plans that have been filed with the Office of Planning and Development prior to the effective date of this text amendment ([insert date here]), but not recorded, shall expire five years from the date they are filed.**
>
> **(2) Outline plans with no expiration date.**
> **Any planned development that was approved prior to the effective date of this text amendment ([insert date here]) without an expiration clause in its outline plan conditions shall require a Major Modification if no final plan is recorded with the Register of Deeds. Such Major Modification shall require notice to all property owners within 500 feet. See Item 9.6.11E(2)(f).**
>
> **(3) Time extensions…**
>
> **9.6.11E(2)(f)** [new section]: **A Major Modification is required for the submittal of a final plan for a planned development that was approved prior to the effective date of this text amendment ([insert date here]) without an expiration clause in its outline plan conditions, if no final plan is already recorded with the Register of Deeds. Such Major Modification shall require notice to all property owners within 500 feet. See Paragraph 9.6.14A(2).**

31. 9.7.7I(3): Expiration of Subdivision Preliminary Plans

Sub-Section 9.7.7I deals with Preliminary Plans for Major Subdivisions. Essentially, preliminary plans are the conceptual plan approved by the Land Use Control Board or governing bodies (for appeals). Preliminary plans expire two years after their approval. If a preliminary plan has not expired, a final plat may be filed for the entire subdivision or a phase within the subdivision, reviewed by OPD and then recorded. The current language of this section of the UDC does not definitively state that any areas within a preliminary plan that has not had a final plat recorded expires. The proposed language below will address this discrepancy by stating that any area of a preliminary plan that has not had a final plat filed within two years of its approval expires and requires a new preliminary plan.

9.7.7I(3), Sections: A subdivision containing multiple phases may be conditioned by the Land Use Control Board to a sequence requiring the recording of final **plats** ~~plans~~. **The Land Use Control Board may approve an expiration date exceeding 24 months for a subdivision with multiple phases; otherwise, an approved major preliminary plan shall retain its validity for 24 months. A final plat recorded for one phase in a major subdivision with multiple phases shall retain the 24-month validity for only that area of the preliminary plan included in the recorded final plat.**

9.7.7I(4), Time Extension: **An approved major preliminary plan shall retain its validity for 24 months.** An applicant may request an extension of time. Requests for extensions shall be submitted in writing to the Planning Director prior to the expiration date. The applicant shall indicate the reasons for the extension and the estimated sequence for finalizing the development. When granted, an extension shall be for a 24-month period. An application for a time extension shall be subject to the provisions of Chapter 9.16.

32. 9.12.3B(3)(b) and 9.13.4D(2): City and County Engineer

Item 9.12.3B(3)(b) and Paragraph 9.13.4D(2) should be amended to replace the word "Engineering" with the word "Engineer."

33. 9.13.1: SCBID and Medical Overlay District

Section 9.13.1 should reference the SCBID district as Chapter **7.2**, not 7.1 and the Medical Overlay as Chapter **8.2**, not 8.12.

34. 9.21.2A(1): Setback Encroachments

This section of the UDC allows OPD to approve an encroachment into any setback that is proscribed in the UDC, but not a "platted" setback; ie, those setbacks found on subdivision plats and planned development final plans. Language should be added to this section that explicitly bars the Planning Director from approving a 10% encroachment into platted setbacks since these are often also considered private covenants. The proposed language below would also provide a cross-reference to the section of the Code that gives the Board of Adjustment this authority, which triggers public notice:

Setback encroachment – increase of up to 10% of the maximum permitted setback and up to 10% of the minimum permitted setback. **The Planning Director is not authorized to grant an administrative deviation for encroachments into setbacks indicated on a subdivision plat or planned development final plan, unless otherwise conditioned by the subdivision plat or planned development plan. Any encroachments into these setbacks must be approved by the Board of Adjustment (see Sub-Section 3.2.9F).**

35. 10.4.2: Nonconforming Landscaping

The old Zoning Code had language that explicitly prohibited any reduction of landscaping on a site with landscaping, buffers, etc. that did not meet the current regulations. The proposed language below restores this prohibition.

10.4.2 [new section, which will also convert the existing language in Chapter 10.4 as a new Section 10.4.1 with the new title "Continuation"] **Nonconforming Landscaping. Landscaping screening, buffers, landscaped portions of streetscape plates and other forms of**

landscaping that existed at the time of the adoption of this Code shall not be reduced below the requirements of this Code.

36. 12.3.1, 2.5.2, 7.3.11, 8.3.11 and 8.4.7: Rooming Houses

There has been a great deal of complaints lodged with the Offices of Planning and Development and Construction Code Enforcement over the rise of internet-based nightly and weekly room rentals in the single-family zoning districts. Common examples are found on the websites airbnb.com and vrbo.com. The current Planning Director and the Building Official, the administrators of the Offices of Planning and Development and Construction Code Enforcement, both of whom are granted interpretation authority of the UDC, both define these types of operations as rooming houses/bed and breakfasts/hotels, none of which are not permitted in the single-family zoning districts. However, a definition of the term "Rooming House" that was more explicit in this regard would greatly assist in this interpretation. Currently, the definition of "Rooming House" is the same as "Boarding House/Rooming House." The proposal below would tailor the term "Rooming House" specifically to nightly or weekly rental within a dwelling. The proposal will also amend the use tables in Sections 2.5.2, 7.3.11, 8.3.11 and 8.4.7 to require the issuance of a Conditional Use Permit for rooming houses, as well as insert the term "Conditional Use Permit" into the keys of those use tables that do not already have it listed.

> ROOMING HOUSE: A **dwelling** ~~building~~ where lodging is provided for compensation for **at least one, but not more than four,** ~~five or more~~ ~~persons, who are not~~ transients **at one time**, by prearrangement for **a** ~~definite~~ period~~s~~ **of less than 30 days**, ~~provided that no convalescent or chronic care is provided~~.

Additionally, the definition of "Boarding House" should have its reference to "Rooming House" removed since the two will be treated as two separate uses.

> BOARDING HOUSE~~, ROOMING HOUSE~~: A building where lodging is provided for compensation for five or more persons, who are not transients, by prearrangement for definite periods, provided that no convalescent or chronic care is provided.

This will also require a definition of the term "transient:"

> **TRANSIENT: A person who is staying or working in a place for only a short time.**