

MEMORANDUM

TO: Historic Preservation Commission

THROUGH: John Southard, Historic Preservation Officer

FROM: Chad Weaver, Community Development Director;
Ambika Adhikari, Principal Planner;
Robbie Aaron, Planner II

DATE: February 12, 2020

SUBJECT: Updates on the Development Bonus Program (DBP) for Urban Code District (UCD), and Urban Core Master Plan (UCMP)



PURPOSE:

This memo provides a summary of the progress related to the Development Bonus Program (DBP) for the Urban Code District (UCD), and Urban Core Masterplan (UCMP).

BACKGROUND INFORMATION:

The City of Tempe has engaged BAE Urban Economics (BAE) to assist in the development of a voluntary DBP that incentivizes developers to provide on-site, and off-site public amenities or in-lieu funds towards community benefits.

The Development Bonus Program (DBP) for Urban Code District (UCD), and Urban Core Master Plan (UCMP) is a voluntary program available to the property owners and developers to achieve additional heights and densities in exchange for providing public benefits in or through their projects. There are four areas where developers can choose to provide public benefits:

- Affordable Housing,
- Outdoor Gatherings Spaces,
- Sustainability-related Investments, and
- Historic Preservation.

Several municipalities in Arizona use voluntary DBPs to encourage the incorporation of community benefits such as sustainable development, affordable/workforce housing, and park space in developments. Under a DBP, cities provide developers the opportunity to earn additional project value in exchange for developer contributions that result in community benefits. If the value of the developer contributions is less than half of the additional value created by the bonus for the development, the developer has incentives to voluntarily participate in the program.

DEVELOPMENT BONUS PROGRAM:

The Development Bonus Program (DBP) drafted by staff and the consultant is a voluntary program available within the UCD that would allow developers to achieve additional building heights and densities in exchange for a defined set of community benefits (Bonus Elements), including affordable and workforce housing, sustainability elements, and/or outdoor public gathering space and connections. The program requires developers to provide at least one category of community benefits or connectivity onsite. Developers can also use an Affordable Housing In-Lieu Fee to make up any gap required to achieve the minimum designated points required to obtain a development bonus. Developers can also transfer potential development rights which can be sold/transferred to another eligible property through a Transfer of Development Right (TDR) mechanism, which is discussed below.

The program also provides reference for calculating recommended building heights and densities when developers apply for UCMP heights through a Planned Area Development (PAD) or Development Agreement process.

TRANSFER OF DEVELOPMENT RIGHTS (TDR) FOR HISTORIC PRESERVATION:

Tempe enjoys a rich multi-cultural heritage evident through its historic buildings, neighborhoods and structures. Less visible, but equally important, are the archaeological resources of Tempe's past. Protection and enhancement of Tempe's heritage is critical to preserving the unique identity of our community. The blending of the past with the present enriches our city and all of its citizens.

However, the tools available for historic preservation are limited and the development of regulations that enable preservation is critical to protecting Tempe's past. To encourage Historic Preservation, the DBP heights can be accessed through historic preservation on properties that are Historic Eligible, on the Tempe Historic Property Register, or on the National Register of Historic Places. Because many of the parcels containing historic properties do not have enough space on site to accommodate additional development, the DBP provides developers an opportunity to earn additional height through a Transfer of Development Rights (TDR) program. To receive the TDR, the owner of historic property would need to provide the City with a perpetual historic and façade conservation easement, sign a Development Agreement with the City, and commit to historic preservation treatments acceptable to the Historic Preservation Commission (HPC).

DETAILS OF THE DBP:

The attached memo from BAE Urban Economics, and draft DBP and TDR Ordinance provide the details of how the DBP program is structured, how developers earn bonus points and what heights and densities are available for the bonus points.

ATTACHMENTS:

- Draft DBP Memo from BAE Urban Economics
- Draft DBP & TDR Ordinance

--End--

DRAFT DEVELOPMENT BONUS PROGRAM FOR URBAN CODE DISTRICT AND URBAN CORE MASTER PLAN

Memorandum

To: Tempe Historic Preservation Commission, City of Tempe
From: BAE through Ambika P. Adhikari, Principal Planner, Community Development
Date: February 12, 2020
Re: Draft Development Bonus Program Update

This Memorandum (memo) provides an overview of the City of Tempe Voluntary Development Bonus Program (DBP) for Urban Code District (UCD), and Urban Core Master Plan (UCMP). Several municipalities in Arizona use voluntary DBPs to encourage the incorporation of community benefits such as sustainable development, affordable/workforce housing, and park space in developments. Under a DBP, cities provide developers the opportunity to earn additional project value in exchange for developer contributions that result in community benefits. If the value of the developer contributions is less than the additional value created by the bonus for the development, the developer is incentivized to voluntarily participate in the program.

The City of Tempe has engaged BAE Urban Economics (BAE) to evaluate and assist in the development of a voluntary DBP that incentivizes developers to provide onsite, and off-site public amenities or in-lieu funds towards community benefits.

This memo provides a draft of the structure of the DBP, requirements for participating in the program, the participation process, and the substance of an associated Transfer of Development Rights (TDR) program applicable only for Historic Preservation bonus. This program is being prepared concurrently with the adoption process of the Urban Code District (UCD) and Urban Core Master Plan (UCMP) efforts to encourage developer participation when UCD and UCMP are implemented.

1. Structure of the DBP Program

Tempe's DBP is a voluntary program available within the UCD that would allow developers to achieve additional building heights and/or densities in exchange for a defined set of community benefits (Bonus Elements), including affordable and workforce housing, sustainability elements, historic preservation assurance (when applicable), and/or connected outdoor public gathering space.

San Francisco

2600 10th St., Suite 300
Berkeley, CA 94710
510.547.9380

Sacramento

803 2nd St., Suite A
Davis, CA 95616
530.750.2195

Los Angeles

448 South Hill St., Suite 701
Los Angeles, CA 90013
213.471.2666

Washington DC

1140 3rd St. NE, 2nd Floor
Washington, DC 20002
202.588.8945

New York City

234 5th Ave.
New York, NY 10001
212.683.4486

The program requires developers to provide at least one category of community benefits or connectivity onsite. Developers can then use an Affordable Housing In-Lieu Fee or Sustainability elements to make up any gap required to achieve the designated points required to obtain a development bonus.

The DBP also provides reference for calculating and negotiating recommended building heights and densities when developers apply for UCMP heights through a Planned Area Development (PAD) or Development Agreement process.

Program Approach

Success of the DBP will depend on voluntary developer participation. To incentivize developers to participate, the program is structured to seek bonus element contributions equal only to approximately half the additional project value (profits) that a developer would earn from building to higher maximum heights and/or densities (Incremental Project Value)¹.

Developers are often willing to share parts of additional project value with investments in the development towards community benefits. However, they need incentives in the form of additional profits to undertake any processes or requirements outside the normal courses of business. Developers are unlikely to make ongoing commitments to affordable housing, historic preservation – or to a lesser extent, public gathering space and sustainability improvements – without realizing greater financial gains than developing under the base zoning entitlements.

In its experience negotiating developer community benefits agreements and creating special assessment districts across the United States, BAE notes that developers are most likely to participate in programs where the developers can retain at least fifty percent of the Incremental Project Value after they provide public benefits. Thus, as a general guideline, the DBP uses the following calculation to determine the value of Bonus Elements that a developer would be willing to contribute in exchange for additional development rights:

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

Although the City is not extracting 100 percent of the developer's Incremental Project Value, it is achieving total public benefits that outweigh the costs to provide the bonus elements. For example, sustainability elements in a development contribute to a healthier urban environment and better air quality; outdoor gathering spaces increase mobility and vibrancy and contribute to placemaking efforts; historic preservation provides for the ongoing

¹ Incremental Project Value equals the value of a project under bonus development less the value of the project under a base development scenario.

conservation of local neighborhood and/or cultural character; and affordable housing provides residential opportunities to lower income residents, increases educational outcomes, and enhances economic development potential for the City. The City will enjoy a total high value because of the tangible and intangible benefits to the community and the City as a whole. All the public benefits included in the DBP are among the priorities of the City as envisioned in the City's Strategic Priorities.

DBP Bonus

Bonus development is achieved through the accumulation of Bonus Element Points (points). A developer may obtain a Bonus through the accumulation of 100 points except that in UC-5 and UC-6, 10 bonus points will suffice. Table 1 shows base and bonus heights and densities in each UC Zone. Base and bonus development heights and densities are structured to minimize changes in construction types, which can have an adverse impact on profitability for developers.

Developers wishing to apply for the UCMP heights shown in Table 1 would first be required to comply with Bonus eligibility requirements as a prerequisite. Additional heights are contingent upon providing commensurate amount of public benefits provided by the developer and meeting all applicable UCMP design guidelines. The amount of public benefits in proportion of the heights and densities sought will be negotiated between the City and developer.

The UCMP heights are negotiated on a case-by-case basis.

Table 1: DBP Base and Bonus Development

Urban Code District	UCD Base	UCD Bonus (a)	UCMP
UC-1	125 ft 65+ du/acre	160 ft 65+ du/acre	250+ ft 65+ du/acre
UC-2	90 ft 65+ du/acre	130 ft 65+ du/acre	130 ft 65+ du/acre
UC-3	90 ft Up to 65 du/acre	130 ft 65+ du/acre	160-250+ ft 65+ du/acre
UC-4	70 ft Up to 45 du/acre	90 ft Up to 65 du/acre	130-250+ ft 65+ du/acre
UC-5	55 ft Up to 25 du/acre	60 ft 25 to 45 du/acre	90 ft Up to 65 du/acre
UC-6	40 ft Up to 20 du/acre	45 ft Up to 20 du/acre	45 ft Up to 25 du/acre
UCMP Only			Varies. See UCMP map

Note:

(a) 100 points required to achieve UCD bonus in UCs 1 through 4; ten points needed in UCs 5 and 6.

Entitlement Review Benefits

The DBP provides more than just additional development potential. Developments in UC Zones 3-6 can participate in the DBP through an Administrative Review. All other participation requires Council Review. The administrative review is for the calculations of heights and densities available according to the bonus points earned. All projects are required to go through a normal Development Plan Review (DPR) process to get approval for the building design and site plan.

Even for the developments requiring Council Review, staff will calculate the bonus heights and densities and only the design and site plan will require public reviews. This process is designed to provide certainty and predictability of development rights to the development community, and in most cases, reduce the need for Council project approvals and associated staff time.

2. Bonus Elements Menu and Points

The Bonus Elements menu provides transparency and flexibility to the development community when they participate in the DBP. A developer can participate in the DBP by including one or more onsite Bonus Elements that can be combined, if necessary, with an In-Lieu Fee payment. Points are assigned to each Bonus Element and the developer can choose the most suitable combination to earn Bonus Points for the development.

In UCs 1-4, a developer must achieve 100 Bonus Points to participate in the Development Bonus Program. However, the DBP only requires 10 points for UCs 5 and 6 because the incremental height allowed is only five feet. Table 2 shows the points earned per different levels of public benefits.

Table 2: Bonus Elements and Points by Zone

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

Notes:

(a) "n/a" indicates that Bonus Points are not available in this category.

(b) In-Lieu Fee per point based on prototypical parcel size within each UCD. For parcel sizes larger than 0.7 acres in UCs 1 and 2; and larger than 3.0 acres in UCs 3 and 4; Fee per Point may be scaled upward for larger sites as approved by the Community Development Director or designee.

(c) Public Outdoor Gathering Space required as part of UCD can be counted towards Bonus Points, provided that the lot coverage exceeds 90 percent of the net site area.

(d) For parcel sizes larger than 0.7 acres in UCs 1 and 2; and 3.0 acres in UCs 3 and 4, Bonus Points for Sustainability Elements may be scaled downward for larger sites as approved by the Community Development Director or designee.

To calculate the Bonus Points available within each category and UC, a series of development prototypes were created within each UCD subzone that are reflective of local projects built recently or currently under construction.²

On-Site Affordable Housing

Developers can automatically earn 100 Bonus Points by providing covenanted affordable housing units within their residential development projects.

To comply with this option, a developer would choose one of the percentages of housing units corresponding affordability levels shown in Table 2. For example, a residential developer in UC-3 would provide **either**:

- 3 percent of Total Project Units to households earning 50 percent of Area Median Income (AMI)³, *or*
- 5 percent of Total Project Units to households earning 80 percent of AMI, *or*
- 10 percent of Total Project Units to households earning 100 percent of AMI

Onsite Affordable Units must be incorporated in a similar size, mix, and configuration as the overall project. In other words, the units provided as affordable units will have the same number of average bedrooms as the average number of bedrooms in the development.

Although the City's Housing Services Division will provide ongoing monitoring for affordable housing units, the inclusion of rent or deed-restricted units can be generally outside of a developer's normal course of operations. The City recognizes that providing affordable and workforce housing on site should provide 100 Bonus Points to the developer without the need for the inclusion of other Bonus Elements.

Bonus Points have been calibrated to be roughly equivalent to the developer's foregone revenue amounts in each affordability category, with requirements for a larger percentage of units to be provided at higher affordability levels to obtain the same amount of Bonus Points.

The Onsite Affordable Housing option is not available to commercial uses or office development, as these uses are not appropriate for affordable units. Commercial-only projects can provide other onsite benefits to earn points, including making up gaps in points through Affordable Housing In-Lieu Fee payments.

² City and local developers indicated that new developments would likely reflect compact development on small parcels. The parcels modeled were 0.7 acres in UCs 1 and 2; and 3.0 acres in UCs 3 and 4. To the extent that the current point schedule promotes the assembly of development parcels, the DBP allows the City to scale in-lieu fees upward or downward as approved by the Community Development Director or designee.

³ The AMI for the Phoenix-Mesa-Scottsdale MSA in 2019 was \$72,900 (for a family of 4) (<https://www.huduser.gov/portal/datasets/il/il2019/2019summary.odn>).

On-Site Public Outdoor Gathering Space

Under the DBP, all district parcels are eligible to earn Bonus Points for Public Outdoor Gathering space.

- A minimum of five percent of net lot coverage dedicated to Public Outdoor Gathering Space is required to earn Bonus Points all districts.
- A maximum of 20 percent of net lot coverage dedicated to Public Outdoor Gathering Space can be applied to Bonus Points in all districts.
- Minimum lot coverage requirements to opt in to the UCD are treated separately, and can count towards Bonus Point accumulation only in cases where the lot coverage exceeds 90 percent of net site area.

Points can be earned in multiples of the base rate. For example, a project in UC-3 can earn 20 points by dedicating 10 percent of its net site area for Public Outdoor Gathering Space, or 30 points by dedicating 15 percent of its site area as shown in Table 2. A project would not, however, earn more than 30 Bonus Points by dedicating 18 percent of its net site area to Public Outdoor Gathering Space.

Eligible Public Outdoor Gathering Spaces are based on definitions and development standards listed in the UCD. Selected standards for outdoor gathering spaces are provided below:

1. Incorporates a minimum of five of the following pedestrian scale features:
 - Lighted bollards
 - Movable tables and chairs
 - Benches or swings
 - Seat walls and / or raised landscape planters
 - Shade trees
 - Pots or hanging baskets filled with seasons plant material
 - Informal kiosks
 - Stage, amphitheater, or other performance space,
 - Sculptures, or other public art features
 - Water features
 - On site parking for bikes and micro-mobility equipment
2. Integrates landscaping and/or structures to provide shading for the outdoor gathering spaces.
3. Provides direct access to sidewalks and pedestrian walkways.

On-Site Sustainability Elements

Under the DBP, a developer may earn Bonus Points for every \$250,000 in spending on qualified Sustainability Expenditures described below.

- Bonus Points for Sustainability Elements can be obtained in multiples of the minimum points awarded per UC for each \$250,000 in qualified expenditures, but cannot be gradually scaled.
- Bonus Points for Sustainability Elements are capped at 90 points in UCs 1 and 2, and capped at 75 points in UCs 3 and 4.

In no circumstance may a project earn 100 Bonus Points in qualified Sustainability Expenditures alone, but will need to earn bonus points for other elements. For example, a project in UC 3 could earn up to 75 points by providing \$1.25 million in Sustainability Elements, but would need to make up the additional 25 points by dedicating 10 percent net lot coverage to Public Outdoor Gathering Space (20 points); and pay in In-Lieu Fee of \$75,000 (5 points).

The following Sustainability Elements qualify for Bonus Points:

A. Resilience to Extreme Heat

1. Provide shade coverage on at least 30% of the east and west above-grade walls and retaining walls from grade level to a height of 20 ft or the wall height. Shade coverage shall be calculated at 10 am for the east walls, and 3 pm for the west walls on summer solstice. Any vegetation providing shading shall consist of biodiverse plantings of native plants and adapted plants.
2. At least 50% of the site hardscape that is not covered by solar energy systems shall be shaded by biodiverse planting of native and adapted plants. The shade coverage on hardscape shall be the arithmetic mean of the shade coverage at 10 am, noon, and 3 pm on summer solstice.
3. A minimum of 75% of the roof shall be covered with any of the following products.
 - a. Roof coverage materials with a three-year aged SRI value of 35.
 - b. Vegetative terrace or roofing system that consist of plants that are suitable for the microclimate, and which provide foliage to at least 50% of the designated area for vegetation.

Note: Photovoltaic solar installation shall be excluded from the required roof area calculations.

4. Site development incorporates minimum 3 ft. deep window overhang(s) or similar architectural features to shade 75% of all west facing windows and 50% of all proposed glazed windows. The shade coverage shall be the arithmetic mean of the shade coverage at 10 am, noon, and 3 pm on summer solstice.
5. Provide on at least 50% of the site hardscaped area, permeable paving, structured soil/grass, open grid paving or similar material which allows for water to permeate the surface to promote natural drainage and filtration.
6. Site development incorporates functional rainwater harvesting that irrigates at least 75 percent of the total landscape area.

B. Greenhouse Gas Emissions Reduction

1. Ensure 80% of all parking spaces are EV charger ready (wiring) and with 10% of spaces with EV chargers installed.
2. Site development at grade and roof incorporates solar panels which cover 20 percent of the net site area, with a minimum size of 250 watts for each panel.
3. Allocate space and pathways for future installation of on-site renewable energy systems including solar panels and battery deployment.
4. Any other sustainability feature (s) from the International Green Construction Code (IgCC) 2018 or updated IgCC codes adopted by City of Tempe to enhance the sustainability of the development, to be reviewed and accepted by the Community Development Director or designee.
5. Achieve energy conservation levels that are at least 50% of the baseline energy consumption in the project, and get it certified by a third party.
6. Provide for on-site microgrid (local energy grid with control capability powered by distributed generators, batteries or renewable resources) investment for critical uses (30% of expected summer electrical load).

Affordable Housing In-Lieu Fee Payment

To achieve additional bonus points even after providing onsite community benefits, a developer may pay an affordable housing in-lieu fee to make up the difference to reach the 100 points needed for a bonus. Since the City wants to prioritize on-site benefits, developers can only earn a maximum of 70 points from in-lieu fees towards achieving the Bonus. In-lieu fee amounts per point vary by UC zone. The amounts are paid on a per bonus point basis. For example, if a developer needs thirty points to achieve the required total of 100 bonus points,

that developer would pay 30 times the amount of the in-lieu fee per point for its associated UC zone. Table 2 shows the in-lieu fee amount for each bonus point by UC zone.

Historic Preservation

The DBP can also be accessed through historic preservation on properties that are Historic Eligible, Historic Registered, and National Registered properties. Because many of the parcels containing historic preservation properties do not have enough site space to accommodate additional development, the DBP provides developers an opportunity to earn development bonus points through a Transfer of Development Rights (TDR) program. To receive the TDR, the owner of historic property would need to provide the City with a perpetual historic and façade conservation easement, sign a Development Agreement with the City, and commit to historic preservation treatments acceptable to the Historic Preservation Commission (HPC).

Like the on-site affordable housing, historic preservation alone automatically can result in 100 points towards achieving the bonus and does not require the provision of additional on- or off-site community benefits.

The next section provides a description of Transfer of Development Rights process for historic preservation.

Transfer of Development Rights (TDR) Program

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

As part of the DBP, the City of Tempe is also creating a TDR program to promote voluntary historic preservation. TDR allows owners of historic eligible, local historic register, and national historic register properties to obtain Incremental Project Value in exchange for voluntarily committing to the preservation of Tempe's historic properties. The City can protect historic resources and establish a process and procedure by which a landowner can transfer the development rights of a certain property with historic structures or historic significance and apply the rights to another property that is eligible to receive additional development rights. Projects eligible to participate and that voluntarily participate in the DBP via Historic Preservation will receive bonus development rights in the form of TDR. TDR transfers with the sending property until sold to a receiving property, where the rights will reside once purchased.

Sending Properties

Properties that participate in the UCD and meet DBP Historic Preservation eligibility requirements (i.e., have structures that are listed on the National Register of Historic Places (NR), Tempe Historic Property Register (THPR), Tempe Historic Eligible (HE), and structures which are fifty (50) years or older and upon review are deemed eligible for the National Register of Historic Places) can become sending properties. In addition to opting into the UCD, the sending property owner must also undertake the following:

- Provide a permanent historic conservation easement on the property to the City
- Preserve the historic property to Historic Preservation Commission (HPC) approved standards
- Sign a Development Agreement with the City

Once the TDR is approved, the development rights of the sending properties will be severed from the property.

Receiving Properties

Any property within UCs 1-5 that is eligible to receive a Bonus under the DBP — and has opted-in to the UCD and met the baseline requirements - is eligible to purchase and receive TDR, including the sending property site if it is large enough to accommodate both the historic building and new development. A Receiving Property does not need to acquire Bonus Points to build to the development potential obtained through TDR. However, under no circumstances can a receiving property exceed its specific UCMP heights and densities. A receiving property must use the processes specified under the Development Bonus Program pursuant to its Zone to obtain additional bonus entitlements.

Procedure for Transfer

The procedure for the implementation of the TDR shall be in accordance with the TDR ordinance which will describe how a sending and receiving properties will be required to document the transfer. In addition, the sending and receiving properties will be rezoned with an overlay showing the changes in development rights. Once the TDR is approved, the development rights of the sending property will be permanently severed. The receiving property will be rezoned to reflect the new development rights.

TDR Calculation

The TDR on a property will be calculated as follows:

1. Determine the existing height (at building roof eave, not apex), and floorplate of the existing building in the sending property to calculate existing volume (in cubic feet) of development.
2. Determine the development potential (cubic feet) in the sending property under the corresponding Tier 2 Bonus using the bonus height times the square footage of the sending site's maximum developable floorplate (i.e., site size less any required setbacks, open space, etc.).
3. Subtract the development potential cubic feet from the existing building cubic feet. This is the amount of TDR available to be sent to a receiving property.

The calculation established above can be summarized in through the following formula:

Cubic Feet of Bonus Development Potential (sending site max floorplate Sq. Ft. x Tier 2 bonus height)	-	Existing Building Cubic Feet (existing floorplate Sq. Ft. x existing building height at roof eave)	=	Total permitted development transfer in cubic feet
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An ordinance will be developed for TDR, that will include the elements discussed above.

3. Examples of Achieving Bonus Points

This section provides some examples of how a developer could voluntarily participate in the DBP.

UC-3 Multifamily

Assume a Development Bonus Potential on a Site: A maximum of 130 ft and 65+ du/acre (100 points required)

Example parcel: 3 acres

- Base Development: 187,104 Square Feet, or 195 units
- Bonus Development: 223,283 Square Feet
- Bonus Increment: 36,179 Square Feet, or 60 units
- Potential Value Capture: \$1.53 million

Path to bonus points (example)

- Provide 10% of net lot area as outdoor public gathering space (20 points)
- Provide \$1.25 million in qualified sustainability expenditures (75 points)
- Total onsite element points: 95
- Total Bonus Points Required: 100
- Gap: 5 points obtained through in-lieu fee payment of \$15,000 per bonus point.

Table 3: UC-3 Multifamily

	UC-3 Multifamily		Points
	Base	Bonus	
Parcel Size (acres)	3.00	3.00	
Parcel Size (sf)	130,680	130,680	
Profits	\$1,653,623	\$4,721,403	
Additional Project Value Available for Value Capture		\$3,067,780	
Potential Value Capture		50%	
		\$1,533,890	
Sustainability Element Expenditures		\$1,250,000	75
Public Outdoor Gathering Space (10%)		<u>\$196,020</u>	<u>20</u>
<i>Subtotal</i>		<i>\$1,446,020</i>	<i>95</i>
<u>Gap Required through In-Lieu Fee</u>		<u>\$75,000</u>	<u>5</u>
Total		\$1,521,020	100

Source: BAE; 2019.

Tier 2: UC-2 Historic Preservation through TDR

Development Bonus Potential: 140 ft

Existing Building

- Height: 30 Feet
- Floorplate: 4,500 Square Feet
- Total Existing Volume: 135,000 Cubic Feet (cft)

Bonus Development Potential

- Height: 130 Feet
- Floorplate: 4,500 Square Feet
- Total Bonus Volume: 585,000 Cubic Feet (cft)

TDR

- Height: 100 Feet (130'-30'), if the floor plate at the sending and receiving properties are the same
- Volume: 450,000 Cubic Feet (585,000 cft – 135,000 cft)
 - 30,000 Square Feet at an average 15 ft ceiling height
 - 37,500 Square Feet at an average 12 ft ceiling height

Table on the next page shows Pathways to Achieve Bonus Heights and Densities.

Pathways to Achieve Bonus Heights and Densities

Bonus Achieved/Bonus Elements	UCD Base Height and Density	UCD Base Height and Density + Bonus Height and Density	UCMP Heights and Densities	Remarks
Affordable/Workforce Housing	By opting in and meeting base UCD requirements	Onsite Affordable Housing achieves Tier 2 Bonus	Opt-in to the available UCD, provide bonus, and meet all applicable design guidelines. Apply for UCMP heights through a PAD or Development Agreement process.	
Sustainability	By opting in and meeting base UCD requirements for sustainability	Meet IgCC-related base requirements, spend at least \$250K on qualified expenditures (or multiples of \$250K), and provide some other combination of bonus elements as needed to achieve 100 points	Opt-in to the available UCD, provide bonus, and meet all applicable design guidelines. Apply for UCMP heights through a PAD or Development Agreement process.	
Public Gathering Space	By opting in and meeting base UCD requirements for public space	Provide minimum amount of onsite public space beyond base requirements and provide some other combination of bonus elements to achieve 100 points	Opt-in to the available UCD, provide bonus, and meet all applicable design guidelines. Apply for UCMP heights through a PAD or Development Agreement process.	
Historic Preservation	By opting in and meeting base UCD requirements for HP	Opt into UCD, go through Historic Preservation Review and Development Agreement, provide historic/façade easement. Obtain TDR equal to Tier 2 bonus height times floorplate (sq. ft.) less	Receiving properties can use TDR to achieve UCMP heights if it also opts-in to the available UCD and meets all applicable design guidelines.	Purchasers/Users of TDR cannot exceed maximum heights or densities within each UCD.

(1/28/2020) DRAFT

**ZONING AND DEVELOPMENT CODE
CITY OF TEMPE**

DENSITY BONUS PROGRAM

ORDINANCE NO. O2020.xx

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

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

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

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

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

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

A. Applicability.

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

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

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

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

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

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

B. Public Benefit Elements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following provisions qualify for inclusion in the sustainability elements:

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

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

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

b. Greenhouse Gas Emissions Reduction

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

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

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

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

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

C. Development Bonuses

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

Table 5A-107B –Base and Bonus Development (UCD Zones)

Zone/ Max Height Max Density	Base Standards	UCD Bonus
UC-1 Height Density	90-125 ft NS	160 ft 65+ du/acre
UC-2 Height Density	90 ft NS	130 ft 65+ du/acre
UC-3 Height Density	90 ft Up to 65 du/acre	130 ft 65+ du/acre
UC-4 Height Density	70 ft Up to 45 du/acre	90 ft Up to 65 du/acre
UC-5 Height Density	55 ft Up to 25 du/acre	60 ft 25 to 45 du/acre
UC-6 Height Density	40 ft Up to 20 du/acre	45 ft Up to 20 du/acre

Notes

NS = No Standard.

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

D. Development Bonus Program Entitlement Process

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

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

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

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

Chapter 2 – Transfer of Development Rights Program

Section 5A-201 – Purpose

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

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

Section 5A-202 – Applicability

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

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

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

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

Section 5A-204 - Calculation of Development Rights

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

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

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

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

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

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

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

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

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

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

G. Increased development in receiving areas.

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

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

I.

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

Section 5A-206 - Procedure for Transfer

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

development right(s) being transferred.

C. Sale or transfer transactions

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

D. Use on receiving property.

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

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

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

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

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

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

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

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

Section 5A-208 - Effect of transfer.

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

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

Section 5A-209 - Amendment and appeal procedures.

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

Section 5A-210 - Delegation of authority.

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

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

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

Mark W. Mitchell, Mayor

ATTEST:

Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney