CITY OF PHOENIX
PHOENIX, OREGON

ORDINANCE NO. 955

AN ORDINANCE AMENDING THE PHOENIX LAND DEVELOPMENT CODE, CHAPTERS 4.4.6 AND 4.6.3.

WHEREAS, changes to the process for modifications to an approved permit are in compliance with Comprehensive Plan policies; and

WHEREAS, changes to the Phoenix Land Development Code will improve clarity and ease of use of the Code; and

WHEREAS, the City has provided notification to the Department of Land Conservation and Development as required by ORS 197 and the Phoenix Land Development Code; and

WHEREAS, the Planning Commission held a public hearing on May 12, 2014 and took any public testimony regarding the proposed changes; and

WHEREAS, the Planning Commission voted to recommend approval of the attached amendments to the City Council based upon the findings contained in a Staff Report; and

WHEREAS, the Public Hearing on July 21, 2014, was duly noticed and the public was given the opportunity to testify on the proposed changes; and

WHEREAS, the Land Development Code has an adopted procedure (Chapter 4.7) to amend the Land Development Code; and

WHEREAS, the Council, after considering the recommendation of the Planning Commission and staff, and public testimony received at this hearing, has decided to approve the proposed amendment to the Land Development Code in accordance with this procedure;

NOW THEREFORE, The City Council of the City of Phoenix ORDAINS as follows:

Section 1. The Findings for this amendment are included in the attached Staff Report for LDC: 14-08, Exhibit A.

Section 2: The Land Development Code Chapter 4 is amended as proposed in Exhibit B.

Section 3. Effective Date: This ordinance shall become effective 30 days after adoption.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 21st day of July, 2014.

Mayor

ATTEST:

City Manager/ Recorder

EXHIBIT B
CHAPTERS 4.4.6 AND 4.6.3 OF THE CITY OF PHOENIX LAND DEVELOPMENT CODE (PLCD), AS AMENDED BY ORDINANCE 955 ON JULY 21, 2014, SHALL READ AS FOLLOWS:

Chapter 4.4 - Conditional Use Permits

4.4.6 – Modifications

Any expansion to, alteration of, or accessory use to a conditional use shall follow procedures in Chapter 4.6.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Chapter 4.6 -Modifications to Approved Plans and conditions of Approval

4.6.3 Major Modifications

A. Major Modifications Defined. The Planning Director shall determine that a major modification is required if one or more of the changes listed below are proposed:

1. A change in land use, if new use will adversely impact adjoining properties or if no prior permit exits;

2. An increase in the number of dwelling units;

3. A change in the type and/or location of access ways, drives, or parking area that affect off-site traffic;

4. An increase in the floor area proposed for non-residential use by more than 10 percent where previously specified;

5. A reduction of the area reserved for common open space and/or usable open space so long as the resulting area satisfies the minimum open space requirement as established by the original approval;

6. A reduction to specified setback requirements by more than 10 percent, or to a degree that the minimum setback standards of the land use district cannot be met; or

7. Changes similar to those listed in 1-6, which are likely to have an adverse impact on adjoining properties.

B. Major Modification Request. An applicant may request a major modification as follows:

1. If the Planning Director determines that the proposed modification is a major modification, the applicant shall submit an application for the major modification.

2. The modification request shall be subject to the same review procedure (Type I, II, or III) and approval criteria used for the initial project approval; however, the review shall be limited in scope to the modification request. For example, a request to modify a parking lot shall require Site Design Review only for the proposed parking lot and any changes to associated pathways, lighting, and landscaping. Notice shall be provided in accordance with the applicable review procedure.

3. If no prior permit exists, the modification request shall be subject to the same review procedure (Type I, II or III) and approved criteria that would be used if this were a new development.

CITY OF PHOENIX
O • R • E • G • O • N

PO Box 330 • Phoenix, OR 97535

PLANNING DEPARTMENT (541) 535-2050 • FAX (541) 535-5769

TITLE: **AMENDMENT TO PHOENIX LAND DEVELOPMENT CODE REGARDING MODIFICATION PROCEDURES, AMENDING CHAPTER 4.4 AND 4.6**

FILE NUMBER: LDC: 14-08

APPLICANT: City of Phoenix

STAFF REPORT: Available April 15, 2014 at the City of Phoenix, 112 W 2nd Street (M-F, 8:00 am to 5:00 pm) or on the website (www.phoenixoregon.net). For more information, call City of Phoenix, Planning Office, (541)535-2050.

DATE OF PLANNING COMMISSION HEARING: May 12, 2014

I. PROJECT INFORMATION: In response to a request from the Phoenix Planning Commission, the Staff has researched and prepared amendments to the Phoenix Development Code and Municipal Code to 1.) consolidate procedures for modifying approved plans; and; 2.) correct inconsistencies between the procedures.

The current process to modify an existing Conditional Use Permit is shown in two locations that contradict each other. This proposal brings the information to one location. It also reduces the requirements for a change of use that will not adversely impact adjoining property owners. This will reduce costs and time for those applicants.

II. PROPOSED AMENDMENTS: The proposed amendments are:

Chapter 4.4 - Conditional Use Permits

4.4.6 – Modification

Any expansion to, alteration of, or accessory use to a conditional use shall ***follow procedures in Chapter 4.6.*** ~~require Planning Commission or the Planning Director's approval of a modification to the original conditional Use Permit. If permitted, the modification shall be reviewed as a Site Plan Review. A minor modification may be reviewed using the Type II procedure. Type III review procedures to an approved Conditional Use Permit is considered one of the following:\~~

~~A. Modification to a structure that increases the square footage of a building or buildings included original site plan approved by 35% or more.~~

~~B. Revisions to parking alignment and/or related vehicle circulation patterns.~~

Footnote: Italics indicate new language; strikeouts indicate deleted language

Chapter 4.6 -Modifications to Approved Plans and conditions of Approval

4.6.3 Major Modifications

A. Major Modifications Defined. The Planning Director shall determine that a major modification is required if one or more of the changes listed below are proposed:

1. A change in land use, ***if new use will adversely impact adjoining properties or if no prior permit exits;***
2. An increase in the number of dwelling units;
3. A change in the type and/or location of access ways, drives, or parking area that affect off-site traffic;
4. An increase in the floor area proposed for non-residential use by more than 10 percent where previously specified;
5. A reduction of ~~more than 10~~ ***25*** ~~percent of~~ the area reserved for common open space and/or usable open space ***so long as the resulting area satisfies the minimum open space requirement as established by the original approval;***
6. A reduction to specified setback requirements by more than 10 percent, or to a degree that the minimum setback standards of the land use district cannot be met; or
7. Changes similar to those listed in 1-6, which are likely to have an adverse impact on adjoining properties.

B. Major Modification Request. An applicant may request a major modification as follows:

1. If the Planning Director determines that the proposed modification is a major modification, the applicant shall submit an application for the major modification.
2. The modification request shall be subject to the same review procedure (Type I, II, or III) and approval criteria used for the initial project approval; however, the review shall be limited ***in*** scope to the modification request. For example, a request to modify a parking lot shall require Site Design Review only for the proposed parking lot and any changes to associated pathways, lighting, and landscaping. Notice shall be provided in accordance with the applicable review procedure.
3. ***If no prior permit exists, the modification request shall be subject to the same review procedure (Type I, II or III) and approved criteria that would be used if this were a new development.***

4.6.4 Minor Modifications

A. Minor Modification defined. Any modification to a land use decision or approved development plan that is not within the description of a major modification as provided in Chapter 4.6.3 – Major Modifications, above, shall be considered a minor modification.

B. Minor Modification Request.

III. COMPLIANCE WITH DEVELOPMENT CODE PROVISIONS: Amendments to the Phoenix Land Development Code must comply with Section 4.7.2 of the Phoenix Land Development Code, which states that legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV Procedure in Chapter 4.1.6 – Type IV Procedure (Legislative) and shall conform to Section 4.7.2.B and 4.7.6, as applicable.

Section 4.7.2 – Demonstration of compliance with section 4.7.2.

> **FINDING:** This proposed amendment will be reviewed by the Planning Commission at a noticed public hearing. Their recommendation will be presented to the Phoenix City Council at a noticed public hearing. The hearing by the Planning Commission was noticed by posting the information on the City of Phoenix website beginning March 25, 2014.

> **FINDING:** The Department of Land Conservation and Development was notified with an application mailed February 24, 2014 and a Staff report email sent on March 25, 2014.

> **FINDING:** A copy of all notifications is available at the City Planning Office.

Section 4.7.3.B .1 – Demonstration of compliance with all applicable Comprehensive Plan policies and map designations. Where this criterion cannot be met, a Comprehensive Plan amendment shall be a prerequisite to approval.

> **FINDING:** The changes to the process for modifications to a current permit are in compliance with Comprehensive Plan policies. It is combining two sections which currently conflict. The new language will have the process in one location and will also clarify questions that have arisen.

Section 4.7.3.B.2 – Demonstration of compliance with all applicable standards and criteria of this Code and other applicable implementing ordinances.

> **FINDING:** The proposed changes do not impact other applicable standards.

Section 4.7.3.B.3 – Evidence of change in the neighborhood or community or a mistake or inconsistency in the Comprehensive Plan or Land Use Map regarding the property that is the subject of the application; and the provisions of Chapter 4.7.6 – Transportation Planning Rule Compliance, applicable.

> **FINDING:** The proposed change is not based on a mistake in the Comprehensive Plan or the Land Use Map. The proposed change does protect the operation of the State transportation facility.

Section 4.7.6 – Transportation Planning Rule, Subsection B, requires that amendments to land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan.

> **FINDING:** The new language will have no impact on transportation in Phoenix.

Footnote: Italics indicate new language; strikeouts indicate deleted language

FINDING: The proposed amendments comply with Sections 4.7.3 and 4.7.6 of the Phoenix Development Code.

IV. RECOMMENDATION: Staff recommends that the Planning Commission review the requirement to modify a land use permit, take testimony and direct Staff on a recommendation to City Council.

Footnote: Italics indicate new language; strikeouts indicate deleted language