

Chapter 64 Unified Development Code

Article V Procedures

DRAFT 10/06/17 – FOR DISCUSSION ONLY

Contents

Article V	Procedures	1
Section 64-71	General Procedural Requirements & Authority	1
Section 64-72	Filing Applications	3
Section 64-73	Pre-Application	3
Section 64-74	Notice Provisions	5
Section 64-75	Public Hearings	6
Section 64-76	Neighborhood Meetings	6
Section 64-77	Rezoning and Text Amendments	9
Section 64-78	Conditional Use Permits	13
Section 64-79	Alternative Compliance	16
Section 64-80	Subdivision Plats-Generally	19
Section 64-81	Preliminary Plan	20
Section 64-82	Engineering Plans	23
Section 64-83	Final Plat	24
Section 64-84	Minor Plats	26
Section 64-85	Minor Lot Adjustments	28
Section 64-86	Vacating Plats or Streets	30
Section 64-87	Building Permits	31
Section 64-88	Certificates of Occupancy	33
Section 64-89	Appeal of Zoning Decisions	35
Section 64-90	Variance of Zoning Regulations	37
Section 64-91	to	39
Section 64-92	Reserved	39
Endnotes		40

Tables

Table V-1	Common Procedural Elements	1
Table V-2	Process Summary	2
Table V-3	Type and Description of Notice	5

Article V Procedures

Section 64-71 General Procedural Requirements & Authority¹



Purpose: This Article -

- Establishes the workflows associated with zoning and subdivision plat processes, and
- Assures that the processes comply with state law, and
- Assign decision making authority, completeness review, and deadlines to ensure that the processes are efficient and fair to applicants, and
- For discretionary or legislative decisions, provide notice and an opportunity to be heard by persons affected by the application.

A. Applicability

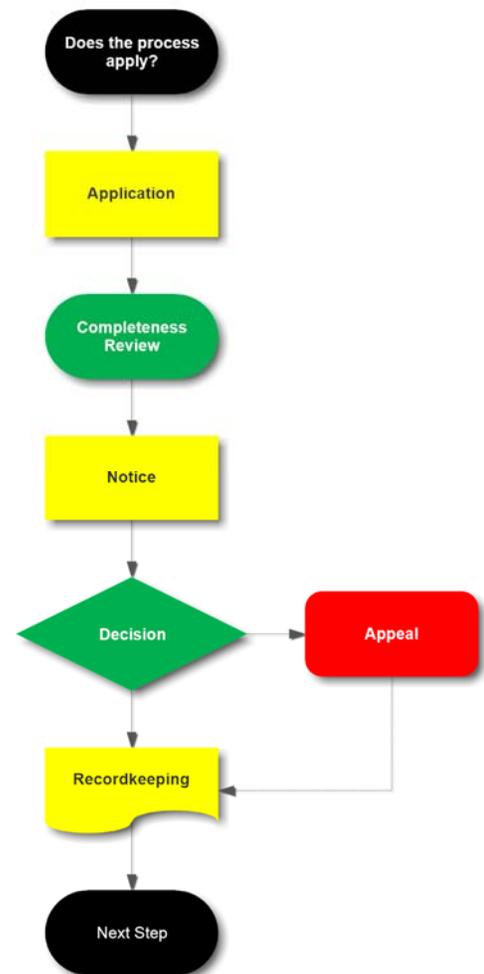
- 1. Generally.** This Article applies to any application for zoning or subdivision approval in the City of Mobile.
- 2. Permits and licenses.** If a use is subject to the provisions of this chapter, no permit, license, or other document of approval shall be issued by any City department, agency or board until the Director certifies that it complies with this chapter.

B. Common Procedures

- 1.** This Articles sets up rules for procedures, such as pre-application, neighborhood notification, notices and public hearings. It then describes the process for specific land use decisions. The procedures all have a common workflow and description, as follows:

Table V-1 Common Procedural Elements

Element	What does this mean?
Applicability	The type of development or situation that is subject to the process.
Initiation	This is how the applicant begins the process, including which department or official receives the application.
Completeness	This is how the City of Mobile determines that the application has sufficient information to be processed.
Notice	This describes the type of notice, and how it is provided.
Decision	This states who approves the application, and the type of proceeding that leads to the decision.
Approval Criteria	These are any standards that apply to the application. All applications are subject to this Chapter and zoning district regulations.
Subsequent Applications	If an application is denied, some processes have a waiting period before that type of application can be re-filed for the property.
Appeals	This provides a way to review an application that is denied, or that have conditions that the applicant disagrees with.
Scope of Approval	This states the activities that the application authorizes. For example, some approvals send the applicant to the next step in the overall process, while others authorize construction or use.
Recordkeeping	This states how the formal decision of approval is maintained.



Article V Procedures | Section 64-71 General Procedural Requirements & Authority

2. The processes established in this Article are summarized below:

Table V-2 Process Summary

Process	Agency				Notice			Cross-Reference
	Director	Planning Commission	City Council	Board of Adjustment	Publication	Mail	Signs	
Text Amendments	I	R-PH	D-PH		✓			Section 64-77
Rezoning	I	R-PH	D-PH		✓			Section 64-77
Conditional Use Permits	I	R-PH	D-PH				✓	Section 64-78
Alternative Compliance	D			A-PH		✓		Section 64-79
Preliminary Plan	I	D-PH				✓		Section 64-81
Engineering Plans	D	A-PH						Section 64-82
Final Plat	D							Section 64-83
Minor Plats	I	D-PH				✓		Section 64-84
Minor Lot Adjustment	D							Section 64-85
Vacating Streets or Reservations	I							Section 64-86
Building Permit Certification	D		D-PH					Section 64-87
Certificate of Occupancy Certification	D		D-PH					Section 64-88
Zoning Appeals	I			D-PH		✓	✓	Section 64-89
Zoning Variances	I			D-PH		✓	✓	Section 64-90

Note: this table is a general summary. Refer to the referenced sections for the specific procedure. If there is any conflict between the text section referenced here and this Table, the text section controls.

- Key:**
- I = intake, review and referral
 - R = Recommendation
 - D = Decision
 - A = Appeal
 - PHL = public hearing
 - ✓ = required

Section 64-72 Filing Applications

A. General Requirements

- 1.** Applications filed under this Chapter must include the information required by Article 12 (Submittal Requirements). All applications shall be made on forms prepared by the Director.
- 2.** The Council may establish fees for all applications required in this Chapter by resolution.

B. Completeness Review

- 1.** The City of Mobile will not process incomplete applications.
- 2.** An application is not complete until all required items are submitted (see Article 12).
- 3.** When applications are filed, the Director will review them for completeness.
- 4.** The time period to process an application does not commence until the Director determines that the application is properly submitted and the applicant has corrected any deficiencies in the application.
- 5.** Review for completeness of application forms is solely to determine whether preliminary information required for submission with the application is sufficient to allow further processing. It does not constitute a decision as to whether an application complies with this Chapter.
- 6.** The Director will determine whether the application is complete and will transmit the determination to the Applicant. If the Director determines that the application is not complete, the Director will specify those parts of the application that are incomplete and will indicate how they can be made complete, including a list and description of the information needed to complete the application. The Director and the decision making agency are not obligated to further review the application until the required information is corrected.
- 7.** The Director or the approving authority may provide submission deadlines for materials required in support of any application provided for in Article 12. Compliance with those deadlines is required to have the application placed on an agenda to be heard by the approving authority.

Section 64-73 Pre-Application²

A. Applicability

- 1.** This section applies to any of the following applications:
 - (a)** Rezoning,
 - (b)** Conditional use permits,
 - (c)** Appeals or variances to the Board of Adjustment, or
 - (d)** Preliminary Plans (Subdivision).
- 2.** The Director may waive the pre-application meeting upon finding that the applicant has sufficient familiarity with the approval process that a pre-application meeting would not serve a valid purpose.

Article V Procedures | Section 64-73 Pre-Application

B. Timing

The pre-application meeting shall occur:

- 1.** If the application requires a Neighborhood Meeting (see Section 64-76 below), at least 14 days before the Neighborhood meeting is scheduled, or
- 2.** For all other applications subject to this subsection, at least 10 days before the application is filed.

C. Meeting Contents

- 1.** The applicant and Director shall meet at the Planning Department offices.
- 2.** The applicant shall provide a brief overview of the project, including proposed location, uses, densities, project layout, and design features.
- 3.** The Director will provide information and comments at the pre-application meeting, but will not take formal action on the application. In addition to provision of verbal information, the Director may provide a Pre-application meeting checklist.
- 4.** The applicant's and Director's comments are for purposes of information, but are not binding on either the City or the applicant.
- 5.** The pre- application meeting shall include the following:
 - (a)** A discussion of technical studies, plans and other information deemed relevant to the specific application request,
 - (b)** Discussion of the anticipated level of citizen interest,
 - (c)** Identification of neighborhood notification and Neighborhood Meeting requirements, if applicable, and
 - (d)** A discussion of the general project consistency with the Comprehensive Plan.

D. Documentation

- 1.** If presented during the meeting, Director will review and complete an informational checklist, based on the scope of the application.
- 2.** The Director will record in writing any pertinent information concerning the project scope, as described by the applicant, as well as verbal guidance provided by City staff.
- 3.** After the pre-development meeting is completed, the Director and the applicant shall certify that the meeting occurred. The Director will a copy of the certification as an official record for the project file.

Section 64-74 Notice Provisions

A. Generally

1. State law establishes various requirements for public notice. Unless otherwise provided, the notice established in this Article is as provided in Table V-3 below.
2. This Chapter does not prohibit the Director from providing additional notice not required by this Article or state law.

Table V-3 Type and Description of Notice

Type of notice	Description
Publication	The Director will publish in a newspaper of general circulation throughout the City.
Mail	The Director will mail the notices. Regular mail is sufficient, unless certified mail is required by a specific process or state law.
Signs	<ol style="list-style-type: none"> 1. The applicant will provide and place weatherproof signs as required by this Code or state law. 2. All signs must be posted in visible locations. 3. The sign shall conform to specifications published by the Director. 4. The applicant shall, at its sole cost and expense, remove the sign(s) within 7 working days following the public hearing, unless the decision is appealed. If an appeal is filed and considered, the applicant shall remove the sign(s) within 7 working days after a final decision on appeal.
Electronic Transmission	<ol style="list-style-type: none"> 1. The City may communicate with the applicant or persons requesting notice by electronic transmission. 2. Electronic transmission may include email, or communication through social media or online notification procedures established by the Director.

B. Required Information

Notice shall include the following information, unless the process includes a different requirement:

1. A synopsis of the proposed ordinance or application,
2. Time, date, and place of the public hearing or meeting;
3. The type of land use or development decision that is being considered;
4. If a public hearing is required, a statement that at the time and place of the hearing all persons who desire will have an opportunity to be heard in opposition to or in favor of the ordinance or application;
5. A telephone point of contact within the Planning Department; and
6. The Planning Department’s website address (URL).

C. Failure to Provide Notice

The failure of the City of Mobile to provide any notice not otherwise required under State law does not affect the validity of any action undertaken pursuant to this Chapter, and no person may challenge an action for lack of notice where the City has complied with the applicable State law governing notice.

Section 64-75 Public Hearings

A public hearing gives interested parties an opportunity to be heard. The specific processes for providing testimony and conducting the hearing are established by the agency that conducts the hearing.

Section 64-76 Neighborhood Meetings



Purpose: This Section establishes a neighborhood meeting process for designated applications. This process does not give residents a veto over proposed developments and does not supersede the UDC standards that apply to a development. Instead, this process creates a forum to resolve disputes, and to involve neighborhood residents in reviewing applications at an early stage of the development process.

A. Applicability

1. **Applications.** This section applies to any of the following applications, subject to subsection 2 below:
 - (a) Rezoning (including planned development), or
 - (b) Conditional use permit, or
 - (c) Appeals or variances to the Board of Adjustment, or
 - (d) Preliminary subdivision plat.
2. **Scope or Location of Application.** This section applies to any application described in subsection 1 above that:
 - (a) Is located within:
 - (1) any of the following areas depicted on the Future Land Use Map of the *Map for Mobile*: Neighborhood Center, District Center, Mixed Commercial Corridor, Traditional Mixed-Use Corridor, or Downtown Waterfront, or
 - (2) the Downtown District (“D”), or
 - (b) Requires a change of use, and/or a request for a re-plat associated with a new commercial project, or
 - (c) Contains proposed structures located within a designated Special Flood Hazard Area, as shown on the FEMA Flood Insurance Rate Map, or
 - (d) Proposes impacts to wetlands identified on the National Wetlands Inventory map.

B. Notice

1. Signs

- (a) The applicant will provide and place at least 1 weatherproof sign on the property at a location that is visible from the public right-of-way and no more than 10 feet from front street line of the project site. Minimum height for letters and numbers is 6 inches for uppercase and 4 inches for lowercase letters.



Article V Procedures | *Section 64-76 Neighborhood Meetings*

(b) Posting of multiple signs on the property may be warranted, based on the configuration of the site and the total linear feet of street frontage abutting the development site, as follows:

(1) Corner lots shall include at least 1 sign posted along each street abutting the project site.

(2) Project sites with continuous frontage abutting existing streets shall post signs at a ratio of 1 additional sign per 200 linear feet of street frontage.

(c) The sign(s) shall include the information required by Section 64-74.

(d) The applicant shall, at its sole cost and expense, remove the sign(s) within 7 working days after the neighborhood meeting.

2. Online. The Planning Department shall post notice of the neighborhood meeting on its official website. In addition to information required by subsection 1 above, notice of the neighborhood meeting shall include a location map and project description summary.

3. Timing. The signs and website information shall be posted no more than 30 calendar days before, and no later than 10 calendar days before, the proposed Neighborhood Meeting.

C. Proceedings of Neighborhood Meeting

The applicant or its or their designated design professional(s) shall facilitate at least one Neighborhood Meeting as follows:

1. The Neighborhood Meeting shall include a complete overview of the proposed application. The applicant shall provide a project description, site plan, building elevations and complete explanation and details of the proposed development which are sufficient for residents to gain an understanding of the specific application.

2. The meeting may be held on weekdays, between the hours of 4:00 P.M. and 7:00 P.M.

3. Meetings must be held in a public or institutional building such as a school, library, community center, fire station, or similar facility, which will accommodate the anticipated attendance.

D. Statement of Neighborhood Meeting

1. After the Neighborhood Meeting, the applicant shall prepare the following summary material as exhibits to the application:

(a) The verified address list of surrounding property owners to whom notification was required and provided,

(b) Certified mail postage documentation from the U.S. Postal Service,

(c) A sign-in sheet documenting meeting attendance,

(d) Written summary or minutes of the meeting,

(e) The date and location of the meeting,

(f) An audio or audio/video recording of the meeting,

(g) A list of questions and comments posed by the parties in attendance,

(h) The applicant's response to those questions and comments, including any issues that remain unresolved, and

(i) The time at which the meeting adjourned.

Article V Procedures | *Section 64-76 Neighborhood Meetings*

2. The summary documentation will become part of the application.

E. Application Submission

No application meeting the above criteria shall be accepted by the City for processing unless the above meeting procedures are met and the requisite documentation accompanies the application.

Section 64-77 Rezoning and Text Amendments³

A. Applicability

This section applies to any rezoning or text amendment, defined as follows:

1. **Rezoning:** Any amendment to the Zoning Map.
2. **Text Amendment:** An ordinance to amend the regulations or standards established in this Chapter.

For purposes of this Section, “amendment” refers to any Rezoning or Text Amendment.

B. Initiation

1. An amendment to the Zoning Regulations may be initiated by:
 - (a) the City Council on its own motion, or
 - (b) the Planning Commission on its own motion, or
 - (c) any person⁴ by filing a written application with Director.
2. An amendment to the Subdivision Regulations⁵ may be initiated by the Planning Commission.

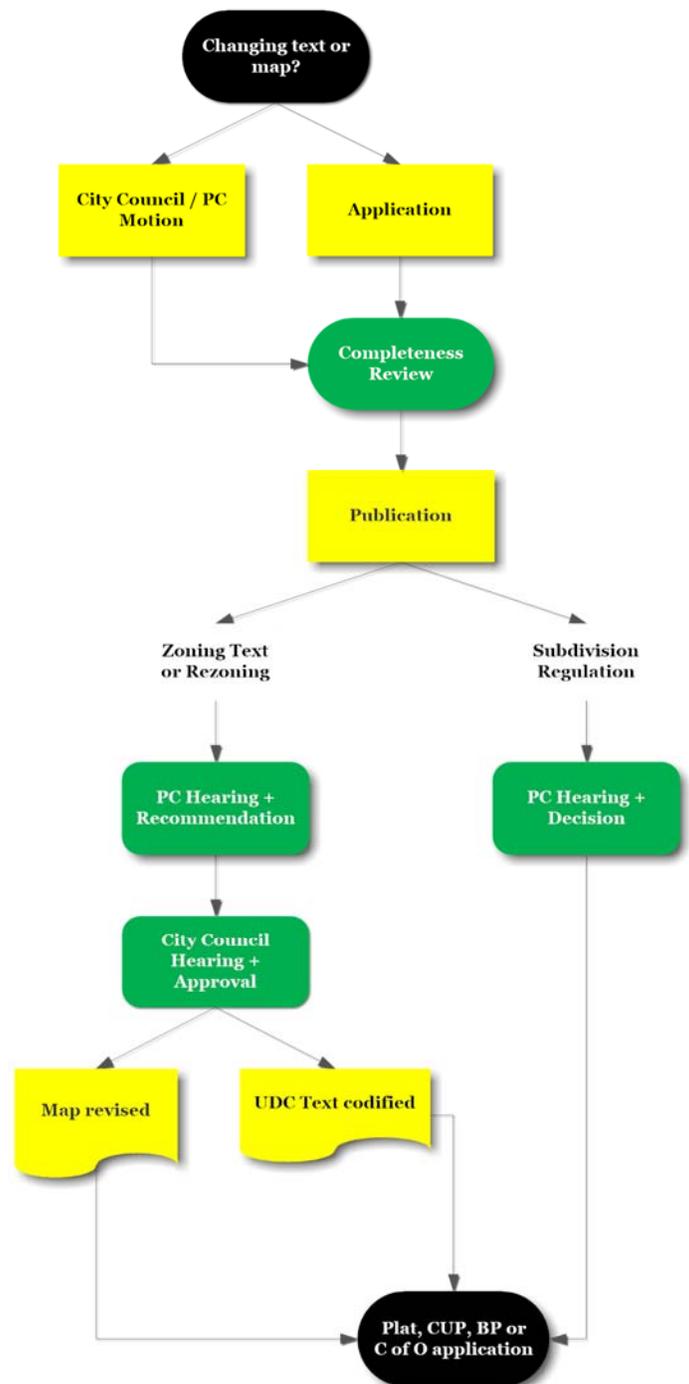
⇔ Refer to Article XII for submittal requirements

C. Completeness

1. For a rezoning initiated pursuant to subsection B.1.(c), see § Section 64-72.
2. An amendment initiated by the City Council or Planning Commission does not require completeness review, and is deemed complete when the motion to initiate the amendment is approved.

D. Notice

1. In addition to the information required by Section 64-74, the following notice is required for a rezoning or a Text Amendment to the Zoning Regulations:



Notice	When	Where / To Whom / Additional Requirements
Publication	15 days or 3 consecutive weeks	<ul style="list-style-type: none"> Newspaper of general circulation in the City, per Code of Ala. § 11-52-77 Provided before the Planning Commission's public hearing

2. State law does not require notice for an amendment to the Subdivision Regulations.

E. Decision

1. **Zoning Regulations (Rezoning or Text Amendment)**

(a) **Administrative Review.** The Director shall transmit the application with a report and recommendation to the Planning Commission within 30 days after it is deemed complete.

(b) **Planning Commission Review**

(1) Upon receipt of the application or initiated amendment, the Planning Commission shall set the application for a public hearing to examine the amendment.⁶

(2) **Planning disposition.** Following receipt of an application, or upon initiation of an amendment by the Planning Commission or the city council, the planning commission shall fix a reasonable time for a public hearing and shall give notice to the applicant.

(3) The Planning Commission shall hold a public hearing on the rezoning or text amendment.

(4) Following the public hearing, the Planning Commission shall prepare a record of its proceedings and recommend that the application be approved, approved with conditions, or denied. The City Clerk shall file the certified record and recommendation to the City Council for final action.

(c) **City Council Action**

(1) **Public Hearings Required.** The City Council shall examine Planning Commission recommendation. No amendment shall be enacted unless the City Council conducts a public hearing.

(2) **City Council Approval.** The City Council may, in its discretion:

a. **Elect not to hold a public hearing.** If the City Council takes no action within 30 days after Planning Commission's recommendation is received by the City Clerk, the application is deemed denied. The City Council may elect to hold a public hearing at any public meeting during this 30 day period.

b. **Hold a public hearing.** If the City Council holds a public hearing:

1. The City Clerk shall notify the applicant of the time and place and give public notice as required by law.

2. At the conclusion of the hearing, the City Council shall approve, approve with conditions, or deny the amendment.

(3) **Conditions**

a. An application for rezoning may include a concept plan. The City Council may condition the amendment to require the development to comply with the concept plan. If a rezoning and concept plan is approved, the applicant may not commence construction or use of any building, structure or use unless:

1. The applicant submits a site plan to the Director, and
2. The Director determines that the site plan is consistent with the approved Concept Plan and any conditions of approval.

↔ *Refer to Article 12 for contents of concept and site plans.*

- b. If the area fails to develop within the specified time or in accordance with any condition, a rezoning may be initiated as provided in subsection B.
- c. Conditions fixed in amendments relating to rezoning shall run with the land in the area involved and bind applicants for amendments, their heirs, successors and assigns.

2. Subdivision Regulations⁷

(a) Administrative Review. If the Planning Commission requests, the Director shall file a report and recommendation to the Planning Commission.

(b) Planning Commission Adoption. The Planning Commission may adopt any amendment to the Subdivision Regulations by resolution carried by the affirmative votes of a majority of its members.

F. Approval Criteria

Changes to this Chapter, including the zoning map, are committed to the City Council's legislative discretion and shall be consistent with the Comprehensive Plan.

G. Subsequent Applications

1. This subsection applies to a **rezoning** application that –
 - (a) Is finally acted upon by the City Council, or
 - (b) Receives no action by the Planning Commission within 30 days after an application is deemed complete, or by the City Council within 30 days after the Planning Commission's recommendation is transmitted, or
 - (c) Is officially advertised for public hearing but is subsequently withdrawn.
2. If subsection G.1 applies, the area subject to the proposed rezoning shall not be considered again by the Planning Commission or City Council for the same classification for at least 6 months from the date the application was denied. This period begins on the date of the final legal action on the application or the date of the expiration of the time period in subsection 1(b) above, or the date of withdrawal of the officially advertised petition.

H. Appeals

Not applicable. The applicant or any party with standing may seek judicial review of the final decision in accordance with Alabama law.

I. Scope of Approval

An amendment does not authorize development. Any development that occurs after the amendment is adopted is subject to all applicable requirements of this Chapter.

J. Recordkeeping

1. The City Clerk shall codify a text amendment as part of this Chapter.

Article V Procedures | *Section 64-77 Rezoning and Text Amendments*

- 2.** After a rezoning is approved, the Director shall revise the applicable map layers in the City of Mobile Geographic Information Systems (GIS) to conform to the approved rezoning.

Section 64-78 Conditional Use Permits⁹

A. Applicability

This section applies to any use designated as a conditional use in the applicable zoning district (see § 64-27).

B. Initiation

1. The applicant files an application for a conditional use permit with the Director.

⇔ *Refer to Article XII for submittal requirements*

2. The applicant may file an application for a conditional use permit concurrent with an application for rezoning.

C. Completeness

See § Section 64-72.

D. Notice

The following notice is required for a conditional use permit:

Notice	When	Where / To Whom / Additional Requirements
Signs	15 days	<ul style="list-style-type: none"> • See Section 64-74

E. Decision

1. Planning Commission Report and Recommendation

- (a) The Planning Commission shall conduct a public hearing on the proposed amendment after the required notice is provided.
- (b) The Planning Commission shall submit a report with its recommendations relative to the conditional use permit and its reasons for making the recommendation.

2. Council Action¹⁰

- (a) The Council shall not take action on the application until the Council receives the Planning Commission's final report and recommendation.
- (b) The Council may adopt, by rule, a consent agenda procedure where final action on a conditional use permit is taken on the basis of the Planning Commission's record.
- (c) After receiving the Planning Commission's recommendation, the Council will approve, approve with conditions, or deny the conditional use permit.

F. Approval Criteria

The City Council shall not approve a conditional use unless the proposed use:



Article V Procedures | Section 64-78 Conditional Use Permits

- 1.** Is consistent with the Comprehensive Plan, and
- 2.** Is consistent with all applicable requirements of this Chapter, including –
 - (a)** The applicable zoning regulations, and
 - (b)** Any applicable development standards in Article IV, and
 - (c)** Any applicable use regulations in Article VI, and
- 3.** Is compatible with the character of the neighborhood within the same zoning district in which it is located. The proposal, as submitted, modified or conditioned, shall have no more adverse effects on health, safety or comfort of persons living or working in the neighborhood, or shall be no more injurious to property or improvements in the neighborhood than would any other use generally permitted in the same district. In making this determination, the City Council will consider the location, type and height of buildings or structures, the type and extent of landscaping and screening, lighting, hours of operation, or any other conditions that mitigate the impacts of the proposed development; and
- 4.** Includes adequate public facilities and utilities as provided in Article IV; and
- 5.** Is subject to adequate to provide ingress and egress that minimize traffic hazards and traffic congestion on the public roads; and
- 6.** Is not noxious or offensive by reason of emissions, vibration, noise, odor, dust, smoke or gas; and
- 7.** Will not injure the use and enjoyment of the property in the immediate vicinity for the purposes already permitted, or substantially diminish or impair the property values within the neighborhood; and
- 8.** Will not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district; and
- 9.** Is not detrimental to the public health, safety, morals, comfort, or general welfare.

G. Subsequent Applications

- 1.** This subsection applies to a conditional use permit application that –
 - (a)** Is finally acted upon by the City Council, or
 - (b)** Receives no action by the Planning Commission within 30 days after an application is deemed complete, or by the City Council within 30 days after the Planning Commission's recommendation is transmitted, or
 - (c)** Is officially advertised for public hearing but is subsequently withdrawn.
- 2.** If subsection G.1 applies, the Planning Commission will not consider another petition requesting or proposing the same use for the same property within a period of 6 months. This period begins on the date of the final legal action on the application or the date of the expiration of the time period in subsection 1(b) above, or the date of withdrawal of the officially advertised petition.

H. Appeals

Not applicable. The applicant or any party with standing may seek judicial review of the final decision in accordance with Alabama law.

Article V Procedures | *Section 64-78 Conditional Use Permits*

I. Scope of Approval

A conditional use permit does not authorize development. After a conditional use permit is approved, the applicant may file an application for a Building Permit or Certificate of Occupancy (see Section 64-87 & Section 64-88).

J. Recordkeeping

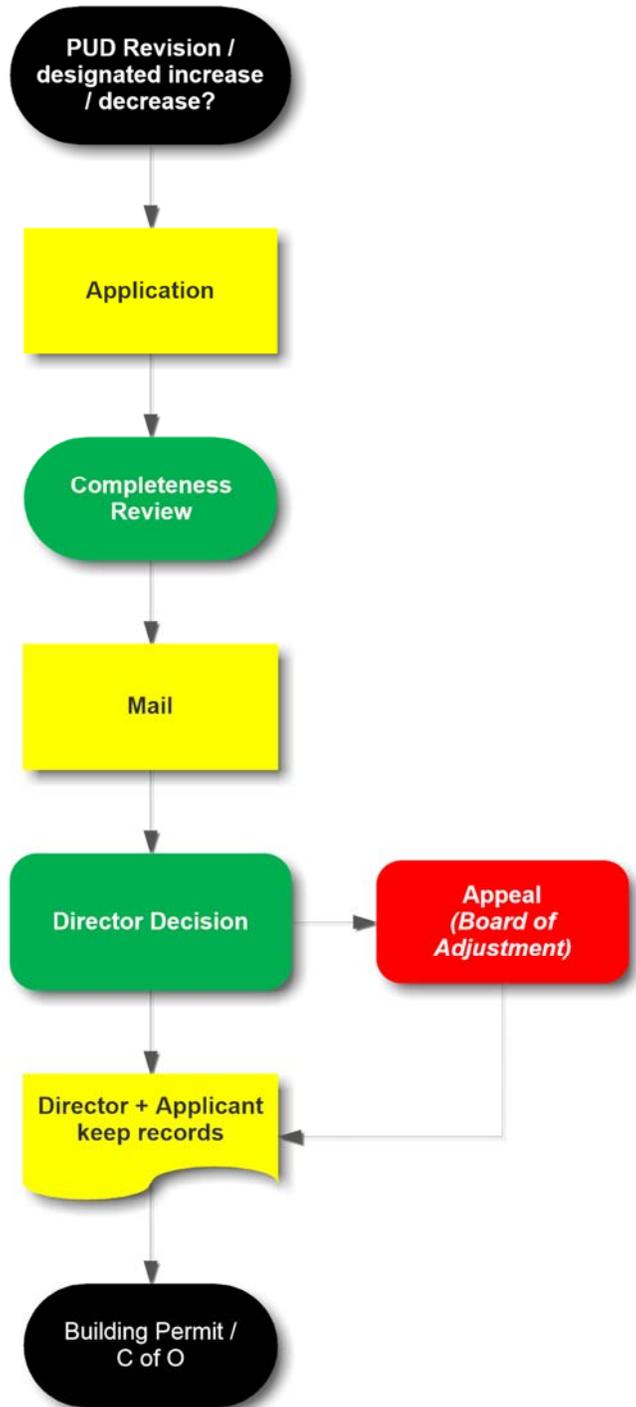
The Director and the applicant shall maintain copies of the conditional use permit approval, and all supporting documentation.

Section 64-79 Alternative Compliance

A. Applicability

This section applies to:

1. Any revision to a Planned Unit Development (PUD) development plan approved before [redacted], 2018,¹¹ within the following parameters:
 - (a) An increase in floor area or number of dwelling units not exceeding 5%.
 - (b) Substitution of landscape materials if the new materials are the same general size and type.
 - (c) Minor changes to elevation, building materials, parking lot design, screening fences or walls, building location, or similar elements of site or building design, that would improve the site or are needed because of circumstances not foreseen at the time the development plan was approved by the Planning Commission.
2. The yard, area, coverage and height requirements of Article III (Zoning Districts), as provided below:
 - (a) increases in density of no more than 5% of what is otherwise permitted in the applicable district;
 - (b) increases in height, excluding fences and hedges, of no more than 20% of what is otherwise permitted in the applicable district;
 - (c) building encroachments into a required yard or open space of no more than 20% of the minimum width or depth of the required yard or open space;
 - (d) reductions of no more than 10% from the minimum lot area regulations; or
 - (e) reductions of the required landscaping or open space by no more than 5%; or
 - (f) increases in the spacing of public entrances, or reductions of percent transparency, required by Article II by no more than 5%.
3. A reduction in the minimum number of required parking spaces required by Section 54-51 by up to 25%.



Article V Procedures | Section 64-79 Alternative Compliance

[↔ see Section 64-48.D for alternative compliance process for landscaping and tree preservation]

B. Initiation

1. The applicant shall file an application for alternative compliance with the Director.
2. If the application would increase the number of dwelling units by 50 or the non-residential or mixed use floor area by 20,000 square feet over the baseline level permitted by the PUD development plan or zoning district, the applicant shall submit a traffic impact study that complies with Section 64-42 (Adequate Public Facilities).

C. Completeness

See § Section 64-72.

D. Notice

The following notice is required before an application for alternative compliance is approved:

Notice	When	Where / To Whom / Additional Requirements
Mail or Electronic Transmission	15 days	<ul style="list-style-type: none">• The applicant and to the person whose name and address appears in the application as the owner of the land.• Owners of land immediately adjoining the subject property.

E. Decision

1. The Director will approve, approve with conditions or deny the application, with written findings, within 30 days after the application is deemed complete.
2. The Director may impose conditions as needed to:
 - (a) protect the public health, safety or welfare, and
 - (b) has mitigated any impacts on traffic, stormwater, noise, or public health, welfare, and safety
 - (c) assure compliance with the approval criteria (see subsection F, below), objectives of the Comprehensive Plan and purpose and intent of the zoning district.
3. The Director shall transmit a copy of the decision the applicant and all persons who received notice of the application.

F. Approval Criteria

The Director shall find that the application:

1. Complies with all applicable provisions of this Chapter, and
2. Is consistent with the Comprehensive Plan, and
3. Meets the following character requirements:
 - (a) The application is substantially consistent with the character of the surrounding neighborhood in terms of building scale, predominant building height and setbacks, and building design and materials, or
 - (b) The application brings the lot or parcel into compliance with the composite standards (Article II) of the applicable zoning district.

Article V Procedures | *Section 64-79 Alternative Compliance*

- 4.** Does not violate any condition of a currently effective PUD development plan, rezoning, conditional use permit, or subdivision plat.

G. Subsequent Applications

Not applicable.

H. Appeals

Any party aggrieved by the Director's decision may file an appeal with the Board of Adjustment [\Leftrightarrow *see Section 64-89*].

I. Scope of Approval

Alternative Compliance authorizes the applicant to apply for a building permit or certificate of occupancy that authorized the use, construction or expansion of a building or structure as shown in the approved Alternative Compliance application, subject to all other provisions of this Chapter or any effective condition of rezoning, conditional use permit or subdivision plat approval.

J. Recordkeeping

The Building Official will maintain a record of approved Alternative Compliance applications. The applicant must maintain a copy of the approved Alternative Compliance application, including any attachments.

Section 64-80 Subdivision Plats-Generally¹²

A. General Procedure

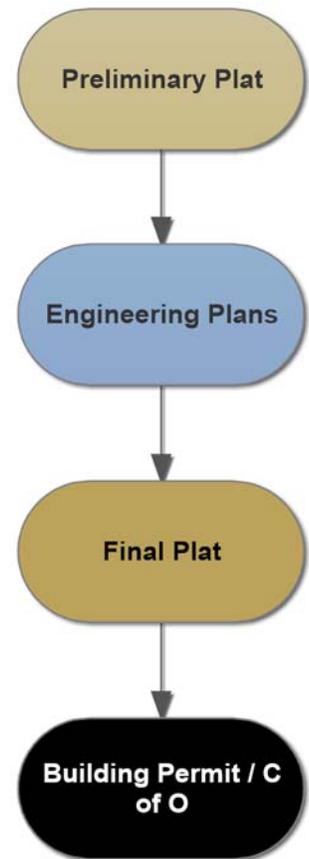
The procedure for review and approval of a subdivision by the Planning Commission consists of three consecutive steps as follows:

Step	Description	Reference
1 Preliminary Plan	Preparation and filing for review and tentative approval of a Preliminary Plan. The Preliminary Plan provides the general design parameters for preparing a Final Plat.	⇔ Section 64-81
2 Engineering Plans	Review and approval of the construction of improvements.	⇔ Section 64-82
3 Final Plat	The Final Plat provides an accurate record of street and property lines and other elements being established on the land and the conditions of their use.	⇔ Section 64-83

⇔ *Refer to Article XII for submittal requirements for Preliminary Plans, Engineering Plans, and Final Plats.*

B. Correlation

1. The procedure established in this Section 64-81 to Section 64-84 correlate and expedite the submission, review, and action on proposed subdivisions or resubdivisions. These sections recognize that the development process requires review and approval of several different officials and agencies such as: the City and County Engineers, the County Health Officer, the Board of Water and Sewer Commissioners, and in some instances, the State Highway Department, the Mobile County School Board, the U. S. Corps of Engineers, and others concerned with the improvements and other aspects of land subdivision.
2. The Director will correlate and expedite the subdivision approval process. The applicant is encouraged to consult directly with officials and agencies having jurisdiction, but the reports, recommendations, approvals and disapprovals of such officials and agencies are made to the Director. The Director will correlate those reports and recommendations so that information is furnished to the Planning Commission and the applicant clearly and promptly.
3. All applications shall be made on forms furnished by the Director.
4. If the land subdivision is connected to a rezoning, conditional use permit, or other review required by the Zoning Regulations, the applicant shall:
 - (a) File the zoning application concurrent with the subdivision application, and the applications will be considered concurrently wherever possible. For example, a preliminary plan may be filed concurrent with an application for rezoning or a conditional use permit; or
 - (b) Obtain the zoning approvals before filing a subdivision application.



Section 64-81 Preliminary Plan¹³

A. Applicability

Preliminary plan approval is required before a final plat application is submitted. A preliminary plan is not considered a “plat” for purposes of recording.

B. Initiation

1. The applicant shall file the Preliminary Plan application with the Director.
2. The application shall be filed the deadline schedule established by the Director.

⇔ Refer to Article XII for submittal requirements

C. Completeness

See § Section 64-72.

D. Notice

The following notice is required for a preliminary plan:

Notice	When	Where / To Whom / Additional Requirements
Mail (registered or certified)	5 days	<ul style="list-style-type: none"> • The applicant and to the person whose name and address appears upon the plan as the owner of the land. • Owners of land immediately adjoining the platted land <p>⇔ Refer to Code of Alabama § 11-52-32</p>

E. Decision

1. **Referral.** The Director shall submit the application to the Planning Commission for review, and shall refer the application for review and report to the City Engineer or County Engineer (as appropriate), the Board of Water and Sewer Commissioners, the County Health Officer, and other appropriate officials.
2. **Action on Preliminary Plan.**
 - (a) The Planning Commission tentatively approve or approve with conditions, or deny, the Preliminary Plan at the next regular meeting after the Preliminary Plan is filed.
 - (b) The Director shall provide a written copy of the Planning Commission’s decision to the applicant.
 - (c) If the application is tentatively approved, the Planning Commission may state the specific changes, if any, required to be made in the Preliminary Plan.
 - (d) If the application is disapproved, the Planning Commission shall state the grounds of disapproval.



F. Approval Criteria

1. **Generally.** The Planning Commission will approve the preliminary plat if –
 - (a) The application complies with all applicable requirements of this Chapter, and
 - (b) The application is consistent with the Comprehensive Plan and the particular requirements and conditions affecting installation of improvements.
2. **Modifications**
 - (a) The Planning Commission may modify the application of the Subdivision Regulations if:
 - (1) the strict application of any the Subdivision Regulations of this Chapter:
 - a. would result in peculiar and practical difficulties or exceptional and undue hardship,
 - b. the modification would relieve the difficulty or hardship, and
 - c. the difficulty or hardship is inherent in the exceptional topographic or other extraordinary or exceptional characteristics of the tract proposed to be subdivided and not the result of the applicant's actions; or
 - (2) The modification is necessary to:
 - a. Avoid any damage to or removal of any public tree, heritage tree, or heritage live oak tree, or
 - b. Avoid an encroachment into or degradation of a Riparian Buffer Zone as designated in Section 64-50, or
 - c. Increase the amount of common open space or civic space (as defined in Section 64-52) above the minimum requirements. The placement or amount of parking lot landscaping or stormwater management facilities is not grounds for a modification, unless those features would fully qualify as common open space or civic space as defined in this subsection.
 - (b) No modification shall be made that:
 - (1) conflicts with the Comprehensive Plan or the intent and purposes of this Chapter, or
 - (2) that varies the Zoning Regulations of this Chapter. If the subdivision is subject to the City's zoning jurisdiction, the applicant may file a variance request from the Board of Adjustment before filing an application for final plat approval.

[↔ *see Section 64-90 Variance of Zoning Regulations*]
 - (c) Any modification shall be the minimum modification that will make possible the reasonable subdivision of the land.

G. Subsequent Applications

Not applicable.

H. Appeals

Not applicable.

I. Scope of Approval

- 1.** Tentative approval of a Preliminary Plan does not constitute acceptance of the "plat" of the proposed subdivision, but only provides a guide to preparation of the Final Plat.
- 2.** Tentative approval of a Preliminary Plan is effective for 2 years. The Planning Commission may grant an additional extension for up to 1 year if requested by the applicant.
- 3.** If a Final Plat is not been timely submitted, the Preliminary Plan is null and void. The applicant may file a new application for Preliminary Plan approval.
- 4.** If a Final Plat of part of the subdivision is timely submitted and approved:
 - (a)** The Preliminary Plan approval is automatically extended for an additional 1 year from the date of the Final Plat approval for that part of the subdivision.
 - (b)** The same automatic extension applies to subsequent Final Plat applications for part of the subdivision. However, after the initial Preliminary Plan effective period (see subsection 2 above), the Preliminary Plat is subject to new or changed conditions. A corrected preliminary plan with all conditions fulfilled shall be submitted to the Director prior to the construction or installation of any improvements.

J. Recordkeeping

A preliminary plan application is not recorded. The Director will maintain a record of approved preliminary plans. The applicant must maintain a copy of the approved preliminary plan, including any attachments.

Section 64-82 Engineering Plans¹⁴

A. Applicability

1. Engineering Plans (including drawings and specifications) shall be approved before improvements shown in a Preliminary Plan are constructed or installed.
2. The Engineering Plans may include only the portion of the approved Preliminary Plan which the applicant proposes to develop at the time.

B. Initiation

1. Engineering Plans shall be filed after approval of the Preliminary Plan and prior to the construction or installation of any of the improvements.
2. The applicant shall prepare and submit to the City Engineer or County Engineer, as appropriate, or to other officials or agencies concerned, the necessary copies of the Engineering Plans.
3. The applicant shall consult with the City Engineer or County Engineer, as appropriate, and with other officials and agencies concerned with construction or installation of improvements.

C. Completeness

See § Section 64-72.

D. Notice

Not applicable.

E. Decision

1. The City Engineer or County Engineer, as appropriate, and other officials and agencies concerned shall notify the applicant of the approval or disapproval of the Engineering Plans.
2. The reviewing agencies may notify the applicant of any specific changes required in order to comply with their regulations.
3. If the Engineering Plans are disapproved, the reviewing agency shall provide the applicant any grounds for disapproval.

F. Approval Criteria

The Engineering Plans shall comply with all applicable requirements of this Chapter, and other applicable standards and regulations of the City of Mobile, the County of Mobile, and of other agencies concerned.

G. Subsequent Applications

Not applicable.

H. Appeals

Not applicable.



Article V Procedures | Section 64-83 Final Plat

I. Scope of Approval

After the Engineering Plans are approved, the applicant may construct improvements in accordance with the applicable regulations and conditions of approval.

J. Recordkeeping

The Director and applicant will maintain a copy of approved engineering plans.

Section 64-83 Final Plat¹⁵

A. Applicability

1. Final plat approval is required before a plat is recorded.
2. Final plat is filed after the preliminary plan is approved.
3. The Final Plat shall be based upon the Preliminary Plan, together with any required changes.
4. The Final Plat may include only the portion of the approved Preliminary Plan which the applicant proposes to develop at the time.

B. Initiation

The applicant shall file the Final Plat application with the Director.

⇔ *Refer to Article XII for submittal requirements*

C. Completeness

See § Section 64-72.

D. Notice

Not applicable.

E. Decision

1. **Referral.** The Director may refer the application for review and report to the City Engineer or County Engineer (as appropriate), the Board of Water and Sewer Commissioners, the County Health Officer, and other appropriate officials.
2. **Action on Final Plat**
 - (a) The Director shall act approve or deny the Final Plat within 30 days of its submission.
 - (b) The Director shall communicate the decision to the applicant in writing.
 - (c) If the application is approved, the Director shall enter the approval upon the Final Plat by the signature of the Secretary of the Planning Commission.
 - (d) If the application is disapproved, the Director shall state the grounds for disapproval.



F. Approval Criteria

Final approval of the plat will be given upon:

- 1.** fulfillment of all conditions attached to, and conformance with the preliminary plan; and
- 2.** certification of the proper installation of the improvements and compliance with the requirements of Article IV of the UDC.

G. Subsequent Applications

Not applicable.

H. Appeals

Not applicable.

I. Scope of Approval

- 1.** A final plat does not authorize construction, except for the installation of improvements as provided above.
- 2.** The final plat approval shall include an offer of dedication of any streets, alleys, utility improvements or other public lands.
- 3.** No Building Permit shall be issued or granted for the development or use of the lot, parcel, or site of the proposed development until the final plat is approved. After the final plat is recorded, a Building Permit may be issued for development on the lot.

J. Recordkeeping

1. Recording of Plat

- (a)** The Final Plat shall be recorded in the Office of the Judge of Probate of Mobile County within 12 months after the date of approval.
- (b)** The Planning Commission may approve an application for an extension of time to record the final plat upon a written request of the applicant during the initial 12 month period.
- (c)** If the Final Plat is not timely recorded, it becomes null and void.

- 2. Copies of Final Plat.** The applicant shall file a copy of the recorded final plat with the Director.

Section 64-84 Minor Plats



Purpose: this procedure simplifies the preparation and expedites the processing of the plats of small resubdivisions.

A. Applicability

A minor plat is a subdivision:

1. Which includes up to 5 lots are created from one or more land parcels constituting an existing subdivision, and
2. With an aggregate of up to 4 acres, and
3. In which every lot abuts and has legal access to an existing dedicated street.

B. Initiation

The applicant shall file an application for Final Plat approval with the Director. No Preliminary Plan or Engineering Plans are required.

⇔ Refer to Article XII for submittal requirements

C. Completeness

See § Section 64-72.

D. Notice

The following notice is required for a Minor Plat:

Notice	When	Where / To Whom / Additional Requirements
Mail (registered or certified)	5 days	<ul style="list-style-type: none"> • The applicant and to the person whose name and address appears upon the plan as the owner of the land. • Owners of land immediately adjoining the platted land <p>⇔ Refer to Code of Alabama § 11-52-32</p>

E. Decision

1. **Referral.** The Director shall submit the application to the Planning Commission for review, and shall refer the application for review and report to the City Engineer or County Engineer (as appropriate), the Board of Water and Sewer Commissioners, the County Health Officer, and other appropriate officials.
2. **Action on Minor Plat**
 - (a) The Planning Commission shall approve, approve with conditions, or deny the Minor Plat at the next regular meeting after it is filed.
 - (b) The Director shall provide a written copy of the Planning Commission's decision to the applicant.



- (c) If the application is disapproved, the Planning Commission shall state the grounds of disapproval.

F. Approval Criteria

- 1. The Planning Commission will approve the Minor Plat if –
 - (a) The application complies with all applicable requirements of this Chapter, and
 - (b) The application is consistent with the Comprehensive Plan and the particular requirements and conditions affecting installation of improvements.

G. Subsequent Applications

Not applicable.

H. Appeals

Not applicable.

I. Scope of Approval

- 1. A minor plat does not authorize construction, except for the installation of improvements as provided above.
- 2. The minor plat approval shall include an offer of dedication of any streets, alleys, utility improvements or other public lands.
- 3. No Building Permit shall be issued or granted for the development or use of the lot, parcel, or site of the proposed development until the minor plat is approved. After the minor plat is recorded, a Building Permit may be issued for development on the lot.

J. Recordkeeping

1. Recording of Plat

- (a) The Minor Plat shall be recorded in the Office of the Judge of Probate of Mobile County within 12 months after the date of approval.
- (b) The Planning Commission may approve an application for an extension of time to record the final plat upon a written request of the applicant during the initial 12 month period.
- (c) If the Minor Plat is not timely recorded, it becomes null and void.

- 2. **Copies of Minor Plat.** The applicant shall file a copy of the Minor Plat as recorded in the Office of the Judge of Probate of Mobile County with the Director.

Section 64-85 Minor Lot Adjustments



Purpose: this procedure provides a streamlined and efficient process for minor corrections or adjustments to existing lots.

A. Applicability

This section applies to any application:

1. To correct an error in a course or distance shown on a recorded plat;
2. To add a course or distance that was omitted on the preceding plat;
3. To correct an error in a real property description shown on the preceding plat;
4. To indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
5. To show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
6. To correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
7. To correct an error in courses and distances of lot lines between 2 adjacent lots if:
 - (a) Both lot owners join in the application;
 - (b) Neither lot is abolished;
 - (c) The amendment does not attempt to remove recorded covenants or restrictions; and
 - (d) The amendment does not have a material adverse effect on the property rights of the other owners in the plat;
8. To relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement; or
9. To relocate one (1) or more lot lines between one (1) or more adjacent lots if:
 - (a) The owners of all those lots join in the application;
 - (b) The amendment does not attempt to remove recorded covenants or restrictions; and
 - (c) The amendment does not increase the number of lots.

B. Initiation

An application for a minor lot adjustment and a copy of the plat creating the affected lots shall be filed with the Director. The Director will determine the extent to which the application will require review by the various departments and agencies of the city.



C. Completeness

See § Section 64-72.

D. Notice

Not applicable.

E. Decision

- 1.** The Director shall review the minor lot adjustment application.
- 2.** If the affected plat is recorded, the plat shall be clearly marked by the plat number and name, and a statement that the application amends the previously recorded plat.
- 3.** If the plat has not been recorded, the Director shall annotate the plat with the following statement: "This plat includes minor lot adjustments approved by the Director."
- 4.** The Planning Commission chair shall sign the amended plat. The amended plat shall then be recorded if all requirements have been met.

F. Approval Criteria

The minor lot adjustment shall be approved unless it is inconsistent with any of the criteria set forth in Article IV of this chapter or any condition of the approved plat.

G. Subsequent Applications

Not applicable.

H. Appeals

Not applicable.

I. Scope of Approval

- 1.** A minor lot adjustment does not authorize construction.
- 2.** After the minor lot adjustment is recorded, Building Permits may be issued for development on the lot in accordance with the amended plat.

J. Recordkeeping

1. Recording

- (a)** The minor lot adjustment shall be recorded in the Office of the Judge of Probate of Mobile County within 12 months after the date of approval.
- (b)** The Director may approve an application for an extension of time to record the final plat upon a written request of the applicant during the initial 12 month period.
- (c)** If the minor lot adjustment is not timely recorded, it becomes null and void.

- 2. Copies of Minor Lot Adjustment.** The applicant shall file a copy of the recorded minor lot adjustment with the Director.

Section 64-86 Vacating Plats or Streets

A. Applicability

Any plat or map, whether or not executed and recorded as provided in this Article, may be vacated by the owner, his executor, administrator or guardian of the lands at any time before the sale of any lot.

B. Initiation

The applicant shall file a written instrument declaring the plat to be vacated, executed, acknowledged and recorded in the same manner as conveyances of land (hereinafter "written instrument").

C. Completeness

See § Section 64-72.

D. Notice

Not applicable.

E. Decision

The Director may review the written instrument. The Director does not approve or deny the written instrument, but may advise the applicant written instrument will affect any financial guarantees or subsequent zoning approvals.

F. Approval Criteria

Not applicable, as no formal action is taken on the written instrument.

G. Subsequent Applications

Not applicable.

H. Appeals

I. Scope of Approval

The duly recorded declaration shall destroy the force and effect of the vacated plat, and divests all public rights in the streets, alleys and public grounds and all dedications laid out or described in the plat or map.

J. Recordkeeping

The written instrument vacating the plat shall be recorded in the same manner as a final plat. The applicant shall file a copy of the recorded instrument to the Director.



Section 64-87 Building Permits¹⁶

A. Applicability

This section applies to any building permit authorizing a building, structure or use subject to this Chapter.

B. Initiation

1. Applications for Building Permits are submitted to the Building Official. [\Leftrightarrow See City Code, Chapter 11]
2. The Building Permit application shall include a dimensioned plan or plat showing sufficient detail to enable the Director and Building Official to determine whether the proposed excavation, construction, use of land, moving or alteration conforms to this Chapter. [\Leftrightarrow See Article 12 for submittal requirements]
3. The Building Official shall refer the Certificate of Occupancy application to the Director for a determination of compliance with this Chapter.

C. Completeness

See § Section 64-72.

D. Notice

Not applicable.

E. Decision

The Director shall certify that the Building Permit application complies with this Chapter, or deny the certification.

F. Approval Criteria

The Building Permit application shall comply with:

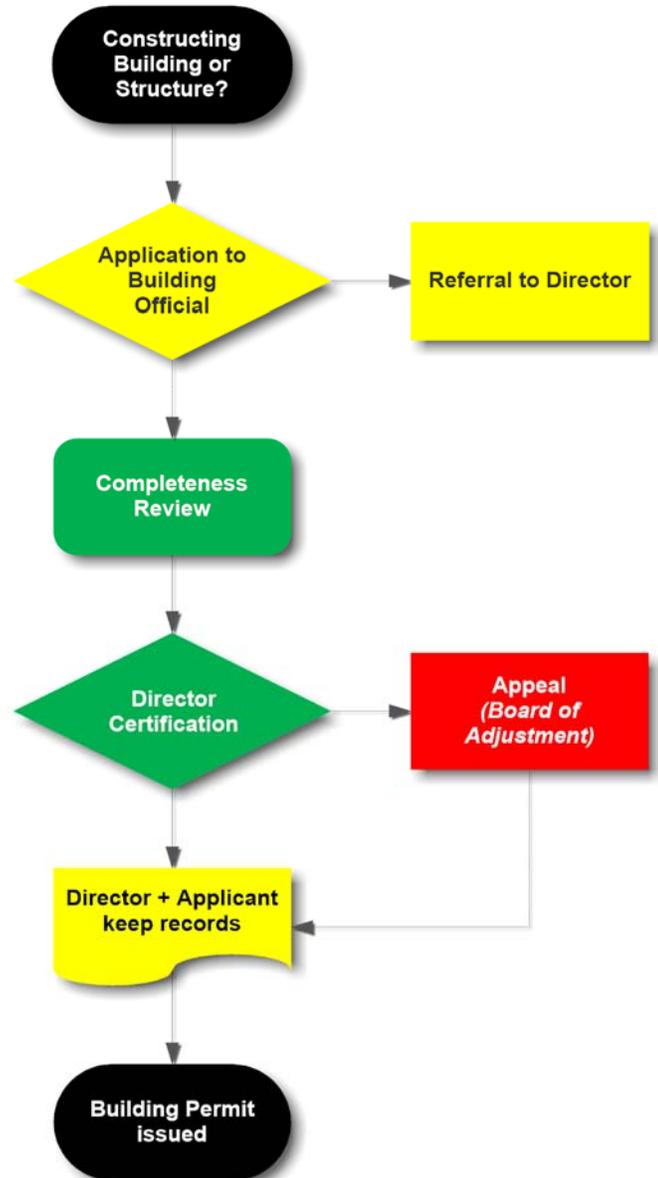
1. any applicable provisions of this Chapter, and
2. any conditions of a valid rezoning, conditional use permit, or subdivision plat approval for the property in effect when the application is filed. If any of these prior approvals have expired, the applicant must obtain a new approval before filing a Building Permit application.

G. Subsequent Applications

Not applicable.

H. Appeals

If the Director denies Building Permit certification, the applicant may appeal to the Board of Adjustment [\Leftrightarrow see Section 64-89].



Article V Procedures | *Section 64-87 Building Permits*

I. Scope of Approval

- 1.** A Building Permit authorizes construction or expansion of a building or structure as shown in the approved permit, and as provided in Chapter 11 of the City Code.
- 2.** A Building Permit does not authorize the occupancy of a building or structure, which requires a Certificate of Occupancy [\Leftrightarrow *see Section 64-88*].

J. Recordkeeping

The Building Official will maintain a record of approved Building Permits. The applicant must maintain a copy of the approved Building Permit, including any attachments.

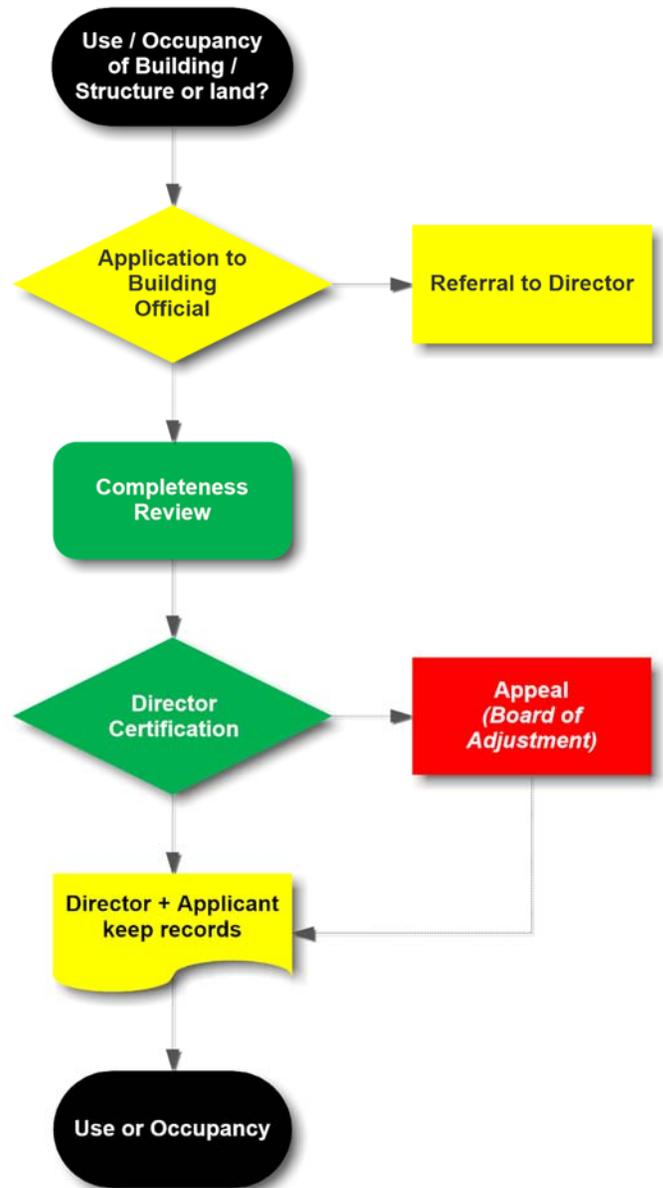
Section 64-88 Certificates of Occupancy¹⁷

A. Applicability

1. This section applies to any Certificate of Occupancy. No structure or land shall be used, occupied, or changed in use until a Certificate of Occupancy is issued in accordance with this Section and Chapter 11 of the City Code.
2. A Certificate of Occupancy is required for any change of use of a new or existing structure. A change of use occurs when a structure's primary function changes to another use as listed in the Use Table [↔ see Section 64-27]. A change of use may result in a change in site requirements such as parking, landscaping, or similar requirements. A change in use is not necessarily a change in occupancy as defined by the City of Mobile Building Code.

B. Initiation

1. Applications for Certificates of Occupancy are submitted to the Building Official. The application shall be made coincident with the application for a Building Permit, after erection or alteration of the structure is completed in compliance with this chapter. [↔ See City Code, Chapter 11]
2. An application for a Certificate of Occupancy for the use of vacant land shall be made before any such land is occupied or used.
3. The application shall include a dimensioned plan or plat showing sufficient detail to enable the Director and Building Official to determine whether the proposed use conforms to this Chapter. [↔ See Article 12 for submittal requirements]
4. The Building Official shall refer the Building Permit application to the Director for a determination of compliance with this Chapter.



C. Completeness

See § Section 64-72.

D. Notice

Not applicable.

E. Decision

The Director shall certify that the Certificate of Occupancy complies with this Chapter, or deny the certification.

F. Approval Criteria

The Certificate of Occupancy application shall comply with:

1. any applicable provisions of this Chapter, and
2. any conditions of a valid rezoning, conditional use permit, or subdivision plat approval for the property in effect when the application is filed. If any of these prior approvals have expired, the applicant must obtain a new approval before filing a Building Permit application.

G. Subsequent Applications

Not applicable.

H. Appeals

If the Director denies Certificate of Occupancy certification, the applicant may appeal to the Board of Adjustment [\Leftrightarrow *see Section 64-89*].

I. Scope of Approval

A Certificate of Occupancy authorizes the use of land or the use and occupancy of a building or structure as shown in the approved Certificate of Occupancy, and as provided in Chapter 11 of the City Code.

J. Recordkeeping

The Building Official will maintain a record of approved Certificates of Occupancy. The applicant must maintain a copy of the approved Certificate of Occupancy, including any attachments.

Section 64-89 Appeal of Zoning Decisions¹⁸

A. Applicability

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department or board of the City affected by any decision of the Director with respect to the administration or enforcement of this Chapter. For purposes of this Section, “Director” refers to the Director or to any administrative official acting to enforce this Chapter or of any ordinance adopted pursuant to this Chapter.

[⇔ see Code of Alabama § 11-52-80]

B. Initiation

1. An appeal is initiated by filing a notice of appeal with the Director and the Board of Adjustment.
2. The notice of appeal shall be filed within the time provided by the rules of the Board of Adjustment.
3. The notice of appeal shall specify the particular grounds upon which the appeal is taken.
4. Upon receipt of a notice of appeal, the Director shall transmit to the Board of Adjustment all of the original documents and materials, or true copies, constituting the record upon which the order or decision appealed from is based.

C. Completeness

See § Section 64-72.

D. Notice

The following notice is required for a hearing on appeal:¹⁹

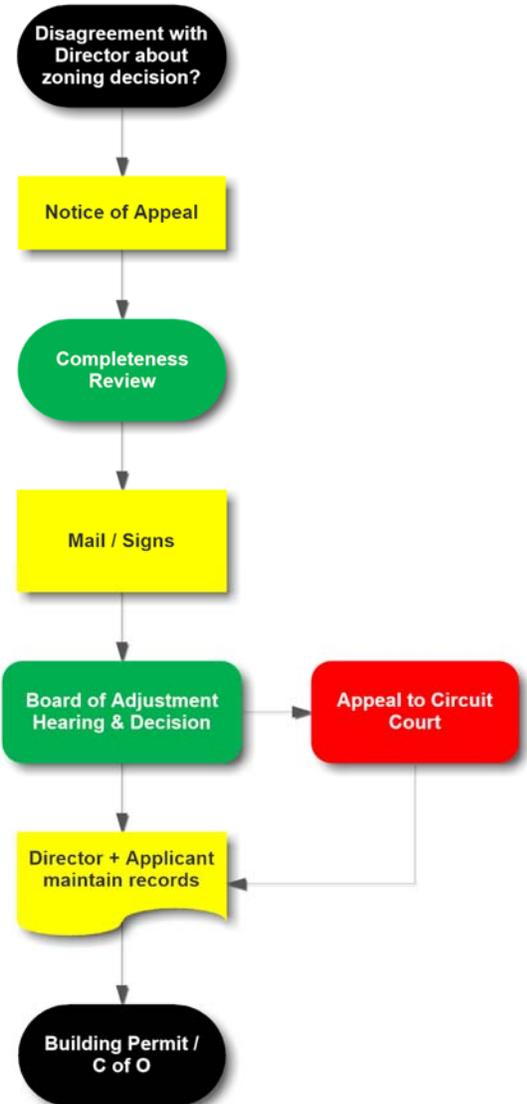
Notice	When	Where / To Whom / Additional Requirements
Mail or Electronic Transmission	15 days	<ul style="list-style-type: none"> • The applicant and to the person whose name and address appears in the application as the owner of the land. • Any other persons that the Director or Board of Adjustment determines are parties in interest to the appeal.
Signs	15 days	<ul style="list-style-type: none"> • At least one publicly visible location on the subject property.²⁰

⇔ Refer to Code of Alabama § 11-52-80

E. Decision

1. Effect of Appeal

- (a) An appeal stays all proceedings in furtherance of the action appealed.



Article V Procedures | *Section 64-89 Appeal of Zoning Decisions*

- (b) The stay is lifted if the Director certifies to the Board of Adjustment that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.
- (c) If the Director submits a certification as provided in subsection (2), the proceedings shall not be stayed other than by a restraining order granted by the Board of Adjustment or by a court of record on application, on notice to the Director and on due cause shown.

2. Hearings

- (a) The board shall fix a reasonable time for the hearing of an appeal. The hearing shall be open to the public.
- (b) Any interested party may appear in person or by agent or attorney.²¹

3. Decision.

After the hearing is concluded, the Board of Adjustment shall render a decision that:

- (a) reverses or affirms, wholly or partly, the Director's decision, or
- (b) modifies the order, requirement, decision or determination appealed from, and
- (c) includes any order, requirement, decision or determination as ought to be made. To that end, the Board of Adjustment has all the powers of the officer from whom the appeal is taken.

4. Conditions and Safeguards.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Chapter.

F. Approval Criteria

The Board of Adjustment may approve the appeal if the decision subject to the appeal:

1. Is the result of an incorrect interpretation of this chapter, or
2. Would violate Alabama or federal statutes, or
3. Would violate the applicant's state or federal constitutional rights.

G. Subsequent Applications

There is no limit on subsequent appeals. However, findings of fact from prior appeals for the same application that were not reversed by a higher tribunal (such as on appeal to a court with subject matter jurisdiction) are binding on successive appeals.

H. Appeals

A final judgment or decision of the Board of Adjustment is appealable as provided in Code of Alabama § 11-52-81.

I. Scope of Approval

If the appeal is approved, the applicant may apply for any permits or approvals required for development or establishment of the use, building or structure, as provided in this Chapter and any order, requirement, decision or determination of the Board of Adjustment.

J. Recordkeeping

The Director will maintain a file of the final decision on appeal. The applicant must maintain a copy of the final decision on appeal, including any attachments.

Section 64-90 Variance of Zoning Regulations²²

A. Applicability

This section applies to any request for a variance from the Zoning Regulations of this chapter.

B. Initiation

1. A variance request is initiated by filing a notice of appeal²³ specifically requesting a variance with the Director and the Board of Adjustment.
2. The notice of appeal shall be filed within the time provided by the rules of the Board of Adjustment.
3. The notice of appeal shall specify the particular grounds upon which the variance is requested.
4. Upon receipt of a notice of appeal, the Director shall transmit to the Board of Adjustment all of the original documents and materials, or true copies, constituting the record upon which the order or decision appealed from is based.

C. Completeness

See § Section 64-72.

D. Notice

The following notice is required for a hearing on appeal:²⁴

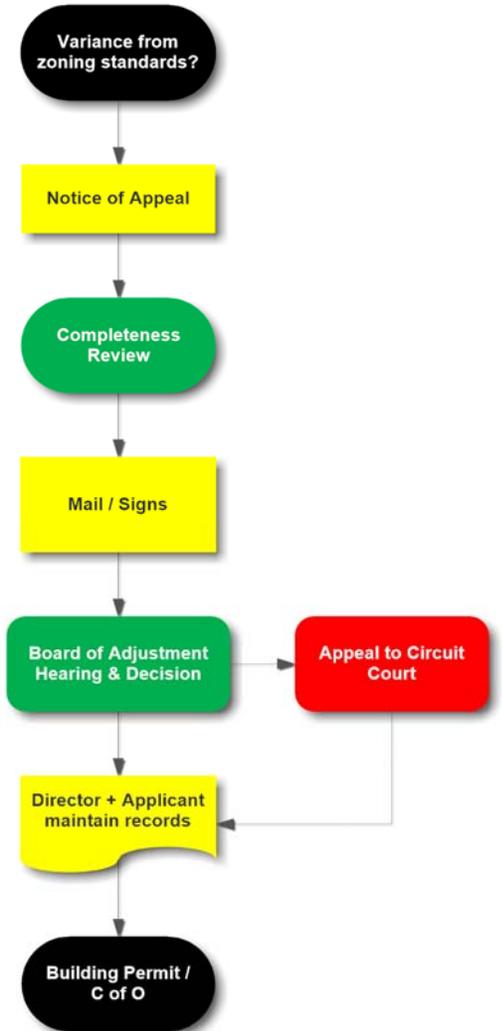
Notice	When	Where / To Whom / Additional Requirements
Mail or Electronic Transmission	15 days	<ul style="list-style-type: none"> • The applicant and to the person whose name and address appears in the application as the owner of the land. • Any other persons that the Director or Board of Adjustment determines are parties in interest to the appeal.
Signs	15 days	<ul style="list-style-type: none"> • At least one publicly visible location on the subject property.²⁵

⇔ Refer to Code of Alabama § 11-52-80

E. Decision

1. Effect of Appeal

- (a) An appeal stays all proceedings in furtherance of the action appealed.
- (b) The stay is lifted if the Director certifies to the Board of Adjustment that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.
- (c) If the Director submits a certification as provided in subsection (2), the proceedings shall not be stayed other than by a restraining order granted by the Board of Adjustment or by a court of record on application, on notice to the Director and on due cause shown.



2. Hearings

(a) The board shall fix a reasonable time for the hearing of an appeal. The hearing shall be open to the public.

(b) Any interested party may appear in person or by agent or attorney.²⁶

3. Decision. After the hearing is concluded, the Board of Adjustment shall render a decision that:

(a) reverses or affirms, wholly or partly, the Director's decision, or

(b) modifies the order, requirement, decision or determination appealed from, and

(c) includes any order, requirement, decision or determination as ought to be made. To that end, the Board of Adjustment has all the powers of the officer from whom the appeal is taken.

F. Approval Criteria

1. The Board of Adjustment may approve a variance if the applicant demonstrates that:

(a) the variance will not be contrary to the public interest, and

(b) the variance is needed to resolve special conditions, and

(c) literal enforcement this Chapter will result in unnecessary hardship.

2. No variance shall be authorized:²⁷

(a) In order to relieve an owner of a lot of restrictive covenants applicable to the lot which are recorded in the probate court;

(b) Where economic loss is the sole basis for the application for variance; or

(c) Where the variance is otherwise unlawful under Alabama law.

G. Subsequent Applications

There is no limit on subsequent variance requests. However, findings of fact from prior appeals for the same application that were not reversed by a higher tribunal (such as on appeal to a court with subject matter jurisdiction) are binding on successive appeals.

H. Appeals

A final judgment or decision of the Board of Adjustment is appealable as provided in Code of Alabama § 11-52-81.

I. Scope of Approval

If the variance is approved, the applicant may apply for any permits or approvals required for development or establishment of the building, structure or use, as provided in this Chapter and any order, requirement, decision or determination of the Board of Adjustment.

J. Recordkeeping

The Director will maintain a file of the final decision on the variance. The applicant must maintain a copy of the final decision on the variance, including any attachments.

Article V Procedures | *Section 64-91 to*

Section 64-91 to

Section 64-92 Reserved.

Endnotes

¹ See 64-8.A.

² This section does not include pre-development meetings as currently discussed with staff.

³ From 64-9.

⁴ The definition of “person” already includes firms or corporations.

⁵ This Article refers to zoning regulations and subdivision regulations. Article 10 will define those parts of the UDC that are considered Zoning Regulations and those that are considered Subdivision Regulations, as follows:

Subdivision Regulations The provisions of this Chapter that are authorized by Title 11, Chapter 52, Article 2 of the Code of Alabama including:

- The following sections of Article IV (Development Standards): 64-46 (Easements), 64-47 (Improvement Guarantees), 64-53 (Stormwater Management), 64-54 (Streets), 64-55 (Utilities), and those provisions of the following sections that apply to subdivision approvals: 64-41 (General Provisions), 64-42 (Adequate Public Facilities), 64-43 (Access Management and Driveways), 64-44 (Blocks, Lots & Yards), 64-52 (Open / Civic Space Standards).
- The following sections of Article V (Procedures): 64-79 (Subdivision Plats-Generally), 64-80 (Preliminary Plats), 64-81 (Engineering Plans), 64-82 (Final Plat), 64-83 (Minor Plats), 64-84 (Lot Splits), 64-85 (Vacating Streets or Reservations), and those provisions of the following sections that apply to subdivision approvals: 64-71 (General Procedural Requirements & Authority), 64-72 (Filing Applications), 64-73 (Pre-Application), 64-74 (Notice Provisions), 64-75 (Public Hearings), and 64-76 (Neighborhood Meetings).

Those provisions of the following Articles that apply to subdivision approvals: Articles I (Introduction), VII (Nonconformities), VIII (Enforcement), IX (Agencies), X (Definitions), XI (Legal Provisions), and XII (Submittal Requirements).

Zoning Regulations The provisions of this Chapter that are authorized by Title 11, Chapter 52, Article 4 of the Code of Alabama including:

- Articles II (Composite Standards), III (Zoning Districts), and VI (Use Regulations).
- The following sections of Article IV (Development Standards): 64-45 (Building Design & Height), 64-48 (Landscaping & Tree Preservation), 64-49 (Lighting), 64-50 (Natural Resource Protection), and 64-51 (Parking and Loading), and those provisions of the following sections that apply to zoning approvals: 64-41 (General Provisions), 64-42 (Adequate Public Facilities), 64-43 (Access Management and Driveways), 64-44 (Blocks, Lots & Yards), 64-52 (Open / Civic Space Standards).
- The following sections of Article V (Procedures): 64-78 (Conditional Use Permits), 64-88 (Appeal of Zoning Decisions), and 64-89 (Variance of Zoning Regulations), and those provisions of the following sections that apply to zoning approvals: 64-77 (Rezoning and Text Amendments), 64-71 (General Procedural Requirements & Authority), 64-72 (Filing Applications), 64-73 (Pre-Application), 64-74 (Notice Provisions), 64-75 (Public Hearings), 64-76 (Neighborhood Meetings), 64-86 (Building Permits), 64-87 (Certificate of Occupancy), and 64-90 (Modifications).
- Those provisions of the following Articles that apply to zoning approvals: Articles I (Introduction), VII (Nonconformities), VIII (Enforcement), IX (Agencies), X (Definitions), XI (Legal Provisions), and XII (Submittal Requirements).

⁶ Material about optional notice by mail or posting is deleted here, because Section 64-74 already allows the agency to provide more notice than is required.

⁷ From Subdivision Regulations IX.F.

⁹ From 64-12.1.b.

¹⁰ The Planning Commission currently approves uses that require planning approval. City Council approval is consistent with practice in other Alabama jurisdictions, and has been approved by the courts. *Shade Mountain Plaza, LLC v. City of Hoover*, 886 So.2d 829 (Ala. App. 2013). As an alternative, the City could replace the conditional use procedure with special exceptions, which require Board of Adjustment approval. Ala. Code 11-52-80.

¹¹ The effective date of the new UDC will be inserted here.

¹² From Subdivision Regulations III.A, B.

¹³ From Subdivision Regulations III.C.

¹⁴ From Subdivision Regulations III.D, VI.A-B.

¹⁵ From Subdivision Regulations III.E.

¹⁶ From 64-4.A.1.

¹⁷ From 64-4.A.2.

¹⁸ From 64-8.B.4.

¹⁹ The current zoning regulations and statute simply provide for “due notice to the parties in interest.” This provides some specific procedures to clarify how notice is provided.

²⁰ The statute, Code of Ala. § 11-52-80(c), requires “public notice” of the hearing. It does not specify how “public notice” is provided. This addition clarifies how public notice occurs.

²¹ From 64-8.B.6.c.

²² From 64-8.B.6.

²³ Code of Ala. § 11-52-80(d)(3) provides that the Board may “authorize [a variance] upon appeal in specific cases.”

²⁴ The current zoning regulations and statute simply provide for “due notice to the parties in interest.” This provides some specific procedures to clarify how notice is provided.

²⁵ The statute, Code of Ala. § 11-52-80(c), requires “public notice” of the hearing. It does not specify how “public notice” is provided. This addition clarifies how public notice occurs.

²⁶ From 64-8.B.6.c.

²⁷ These are carried forward from the existing regulations, but the reference to sufficient area for another district is eliminated because that provision is deleted from the draft ordinance. A general reference to court interpretations is included, as courts frequently consider variance cases on appeal and the interpretations could change.