

Staff Summary Report



Development Review Commission Date: 06/08/10

Agenda Item Number: ___

SUBJECT: Hold a public hearing for a Code Text Amendment for ZONING AND DEVELOPMENT CODE AMENDMENTS.

DOCUMENT NAME: DRCr_ZDCamendments_060810
ZONING AND DEVELOPMENT CODE (0414-01, -03, -04, -06, -07)

COMMENTS: Request for **ZONING AND DEVELOPMENT CODE AMENDMENTS (PL100051)** (Development Services Department, applicant) consisting of changes with the Zoning and Development Code regarding drive-through facilities; charter schools; paved surfaces; meeting/decision notices; directional signs; and modified definitions for recreational vehicle, tobacco retailer, and trailer. The request includes the following:

ZOA10002 – (ORDINANCE NO. 2010.17) Code Text Amendment for Sections 1-208, 3-102, 3-202, 3-302, 3-408, 4-502, 4-602, 4-903, 6-302, 7-119, and 7-121

PREPARED BY: Ryan Levesque, Senior Planner (480-858-2393)

REVIEWED BY: Lisa Collins, Development Services Planning Director (480-350-8989)

A handwritten signature in black ink, appearing to be 'K' or 'L', located to the right of the 'REVIEWED BY' line.

LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO: Staff held an introduction study session with the Development Review Commission on May 11, 2010, regarding the proposed amendments.

- PAGES:**
1. List of Attachments
 - 2-3. Comments
 7. History & Facts / Zoning & Development Code Reference
- ATTACHMENTS:**
- 1-8. Ordinance No. 2010.17

COMMENTS:

This request includes a variety of code text amendments within the Zoning and Development Code. The amendments consist of a cumulative list of changes within the Code for response to State level regulations, administrative corrections, zoning interpretations and best practices, and response to changing uses and trends as a result from the City's approval and decision-making process. These include the following:

Official Action (Section 1-208)

This is a clarifying amendment. Modifying the words "mailed notices" to "written notices" provides continuity in the language identified in other areas of the Code pertaining to decisions and notices. Staff communications to customers are now typically provided in electronic format, including receipt of approval letters. This change is compatible with our effort to provide more environmental friendly ways to communicate.

Charter Schools (Section 3-102, 3-202, 3-302)

This change is in response to recent amendments within the Arizona Revised Statutes pertaining to municipal zoning for charter schools. The overall intent of the regulation states that charter schools shall be considered, for the purpose of zoning, the same as a public school. (Pursuant to A.R.S. 15-189.01) Municipalities may also limit the use of charter schools within single-family residences on less than one (1) acre properties. This regulation is included within the Code's land use charts, requiring a use permit for further evaluation.

Drive-Through Facilities (Section 3-408)

This is a proposed new Code change intended to provide alternative regulations for drive-through facilities. This change considered past staff processing of new drive-through facilities and recent approvals of drive-through variances for the regulation. When the new adoption of the Zoning and Development Code was created on January 20, 2005, new provisions were introduced, which included regulations for drive-through facilities, requiring the drive lanes to be oriented toward the side or rear yards. The intent behind the regulation was to mitigate designs that were auto-oriented and which limited pedestrian access at the street to the building.

This proposed change will continue to focus on avoiding conflict with pedestrians and motorists, whether located facing the street or interior, while providing necessary design elements that aide in reducing pedestrian conflicts and aesthetic improvements. The Zoning and Development Code continues to have limitations within the Transportation Overlay District on a new drive-through, and other areas of the City that require processing a use permit to consider its appropriateness.

Driveway and Private Street Construction (Section 4-502 L and 4-602 B)

This is a clarifying amendment for improved paving surfaces. This modification will ensure consistency and compliance with Maricopa County dust control provisions. These changes address the Code requirement for paving surfaces on driveways, parking areas and private streets.

RVs and Trailers (Section 4-602 B, 7-119, 7-121)

This is a change in the interpretation of types of RV or other trailers not allowed to park in the required front and street side yards. This amendment proposes to include "unmounted truck campers" not allowed in the front yard and street side yard setback without first approval of a use permit. Clarification is also included in the definitions for Trailers and Recreation Vehicles, more specifically, including "mounted truck campers" to be defined as an RV. This would require such vehicle, if in excess of 21'-0" in length, to comply with Section 4-602(B)(7).

Directional Sign (Section 4-903 F)

This is a change proposed in the requirements for directional signs. As previously required in the Zoning Ordinance 808, signs are not allowed to display advertising copy or identification on these signs. The directional signs are intended to provide basic directional information for the flow of traffic and are not intended to lead vehicles to a specific identified business.

General Plan Amendments (Section 6-302)

This is an amendment proposed for notice posting requirements for general plan amendments. This change would allow posting signs for a general plan amendment more than 30 days before the first public hearing. This allows an applicant additional time when coordinating the neighborhood meeting notification requirements for the code, which is typically at least 30 days or more before the first public hearing.

Definitions for Tobacco Retailer (Section 7-121)

This is a clarifying amendment to the definition of tobacco retailer. This change would include "electronic cigarettes", also known as an e-cig, to be considered a tobacco retailer. Tobacco retailers are required to obtain a use permit in most commercial districts, including separation requirements from certain aged schools. An e-cig, as previously opined, would be classified as tobacco paraphernalia, which is used as a device to inhale nicotine.

PUBLIC INPUT

There has been no additional public input at this time.

CONDITIONS OF APPROVAL:

N/A

HISTORY & FACTS:

- May 11, 2010 At the Development Review Commission study session, staff provided an overview of these proposed amendments for future consideration at a public hearing.
- June 8, 2010 Scheduled hearing with the Development Review Commission for this request.
- June 24, 2010 Proposed City Council introduction and first public hearing for this request.
- July 1, 2010 Proposed City Council second public hearing for this request (action hearing).
- July 31, 2010 Potential effective date of ordinance, if approved.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-304, Zoning Map Amendment

ORDINANCE NO. 2010.17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE, CHAPTER 1 – INTRODUCTION, SECTION 1-208, CHAPTER 3 – LAND USE, SECTIONS 3-102, 3-202, 3-302, 3-408; CHAPTER 4 – DEVELOPMENT STANDARDS, SECTIONS 4-502, 4-602, 4-903; CHAPTER 6 – APPLICATIONS AND REVIEW PROCEDURES, SECTION 6-302; AND CHAPTER 7 – DEFINITIONS, SECTIONS 7-107, 7-119, 7-121.

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

Section 1. That Section 1-208(B) of the Zoning and Development Code, pertaining to an official action, is hereby amended to read as follows:

B. Notice. The failure of any *person* to receive mailed WRITTEN notice or failure to post a notice shall not invalidate any actions pursuant to this Code, except as otherwise determined by the City Attorney.

Section 2. That Section 3-102 of the Zoning and Development Code, pertaining to farming and charter schools, is hereby amended to read as follows:

Table 3-102 – Permitted Land Uses (AG, SFR, MF, MH, RMH, TP)				
Uses	Status of Use in District			
	AG	SFR	MF	MH/RMH/TP
Farming [Section 2-404 3-404]	S	N	N	N
School				
Charter (<u>USE PERMIT REQUIRED IN A SINGLE-FAMILY RESIDENTIAL DISTRICT ON A LOT OF LESS THAN 1 ACRE, PURSUANT TO SECTION 6-308.</u>)	U <u>S</u>	U <u>S</u>	U <u>P</u>	U <u>P</u>
Instructional	U	U	U	U
Private	U	U	U	U
Public	P	P	P	P
Vocational	N	N	N	N

Section 3. That Section 3-202 of the Zoning and Development Code, pertaining to charter schools, is hereby amended to read as follows:

Table 3-202A – Permitted Land Uses (R/O, CSS, CC, PCC, RCC)						
Uses	Status of Use District					
	R/O	CSS	CC	PCC-1	PCC-2	RCC
Schools						
Charter	U P	U P	U P	U P	U P	U P
Instructional	P	P	P	P	P	P
Private	U	U	U	U	U	U
Public	P	P	P	P	P	P
Vocational	N	U	U	U	U	U

Table 3-202B – Permitted Land Uses (MU-1, MU-2, MU-3, MU-4 and MU-Ed)					
Uses	Districts				
	MU-1	MU-2	MU-3	MU-4	MU-Ed
Schools					
Charter	U P	U P	U P	U P	P
Instructional	U	U	U	U	P
Private	U	U	U	U	P
Public	P	P	P	P	P
Vocational	U	U	U	U	P

Section 4. That Section 3-302 of the Zoning and Development Code, pertaining to charter schools, is hereby amended to read as follows:

Table 3-302A Permitted Land Uses (LID, GID, HID)			
Uses	Districts		
	LID	GID	HID
Schools			
Charter	N P	U P	U P
Instructional	N	U	U
Private	N	U	U
Public	P	P	P
Vocational	N	U	U

Section 5. That Section 3-408 of the Zoning and Development Code, pertaining to the drive-through facilities, is hereby amended to read as follows:

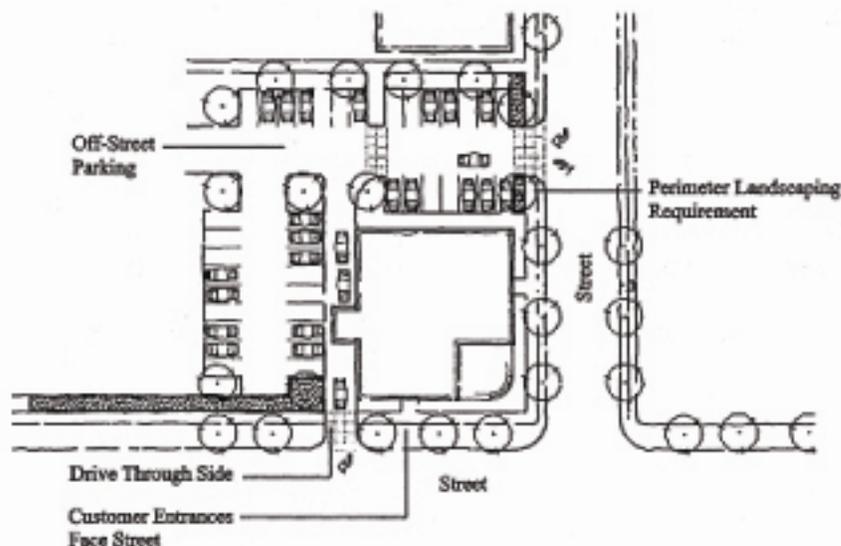
Section 3-408 Drive-Through Facilities.

New *drive-through facilities* shall be oriented toward side or rear yards and not placed between the street right-of-way and the primary customer entrance. Minimum width of drive-through lane is nine (9) feet.

DRIVE-THROUGH FACILITIES SHALL BE DESIGNED TO MINIMIZE CONFLICTS WITH THE PEDESTRIAN PATHWAY FROM THE PUBLIC STREET AND TO ALL BUILDING ENTRANCES. MINIMUM WIDTH OF DRIVE-THROUGH LANES AT STRAIGHT-AWAY IS NINE (9) FEET. DRIVE-THROUGH PICK-UP WINDOWS LOCATED ON THE SOUTH OR WEST BUILDING ELEVATION SHALL PROVIDE SHADE BY MEANS OF A BUILDING CANOPY OR ADDITIONAL TREES ALONGSIDE THE DRIVE LANE. WHEN NEW DRIVE-THROUGH FACILITIES ARE ORIENTED TOWARDS THE STREET THE FOLLOWING STANDARDS SHALL BE PROVIDED:

- A. ALL MANEUVERING DRIVE LANES SHALL PROVIDE FOR A MINIMUM TWENTY (20) FEET OF LANDSCAPE BUFFER FROM THE STREET SIDEWALK;
- B. A SCREEN WALL, THREE (3) FEET IN HEIGHT, SHALL BE LOCATED ALONG THE DRIVE-THROUGH LANE WHERE BUILDING FACADES FACE THE STREET AND AT THE MENU BOARD, IN COMPLIANCE WITH SECTION 4-706(E);
- C. A DELINEATED PEDESTRIAN PATHWAY WITH A TRAFFIC CALMING DEVICE SHALL BE PROVIDED WHERE DRIVE LANE INTERSECTS THE PATHWAY, IN COMPLIANCE WITH SECTION 4-503; AND
- D. SCREEN WALLS SHALL BE SEPARATED A MINIMUM OF SIX (6) FEET FROM PATHWAY CROSSING TO ALLOW VISIBILITY OF PEDESTRIANS AND VEHICLES.

Figure 3-408 Drive-Through Facilities Diagram



Section 6. That Section 4-502(L) of the Zoning and Development Code, pertaining to the driveway surface, is hereby amended to read as follows:

L. Driveway and Private Street Construction. The following *development* and *maintenance* standards shall apply to all driveways and *private streets*:

1. Surface. Driveways, *parking* areas, aisles, and turn-arounds ARE ALLOWED ONLY ON IMPROVED PAVED SURFACES. PAVEMENT MAY BE CONCRETE, ASPHALT, BRICK, CONCRETE PAVERS, OR ALTERNATIVELY A STABILIZED, DUST-PROOF, POROUS MATERIAL (E.G. DECOMPOSED GRANITE) APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR, OR DESIGNEE. WHERE DECOMPOSED GRANITE OR SIMILAR POROUS PAVEMENT IS USED, IT SHALL CONFORM WITH THE AMERICANS WITH DISABILITY ACT DESIGN GUIDELINES AND PROVIDE A TWENTY (20) FOOT ON-SITE DRIVEWAY ENTRANCE CONSISTING OF UNIT PAVERS OR ANOTHER HARD SURFACE. ~~shall be paved with asphalt or concrete; or alternatively, a dust-proof, porous paving material (e.g. decomposed granite) may be used when approved by the Community Development Director, or designee, as part of a storm drainage retention plan. When such porous paving material is used, tire cleaning strip(s) shall be provided at each egress (i.e. to prevent any loose gravel from entering the right-of-way). Use of porous paving materials shall conform to ADA design guidelines. (Refer to Federal ADA guidelines).~~
2. Storm Drainage Management. All *development* and redevelopment projects shall convey storm drainage from driveways in conformance with an approved storm drainage retention plan.

Section 7. That Section 4-602(B) of the Zoning and Development Code, pertaining to parking standards for all districts, is hereby amended to read as follows:

B. Parking Standards Applicable in All Zoning Districts.

1. *Parking* spaces shall conform to the clear vision requirements in Section 4-702(G) and the vehicle and pedestrian circulation standards in Sections 4-502 and 4-503 respectively;
2. *Parking* is allowed only on IMPROVED paved *parking* surfaces. Pavement may be concrete, asphalt, BRICK OR CONCRETE PAVERS, or ALTERNATIVELY A STABILIZED, DUST-PROOF, porous material (E.G. DECOMPOSED GRANITE) approved by the Community Development Director, or designee. Where decomposed granite or similar porous pavement is used, it shall conform ~~to ADA WITH THE AMERICANS WITH DISABILITIES ACT DESIGN~~ guidelines and the *parking lot* entrance(s) and exit(s) shall have tire cleaning strips to remove loose particles from the tires of vehicles;
3. A *parking* area shall be located on the *lot* it serves, or on a *contiguous lot*. Whenever required *parking* is provided on a *contiguous lot* a parking covenant and agreement shall be filed with the Community Development Department prior to issuance of a building permit;

4. *Parking* for uses located on property zoned as multi-family residential, commercial, *mixed-use* or *office/industrial* may not be provided on any property in a single-family (R1) district. *Parking* for any non-residential use permitted in the single-family zoning districts may be located in any other zoning district;
5. A curb or bumper guard at least six (6) inches in height shall be installed so that no part of any vehicle extends into any *landscape setbacks* or *landscape* areas required by this Code or beyond any *property line*. *Parking* may overhang non-required landscape by two (2) feet in which case the length of *parking* stall shall be reduced by two (2) feet;
6. A curb or bumper guard at least six (6) inches in height shall be installed so that no part of any vehicle extends into a pathway or beyond any *property line*. *Parking* may overhang pathways by two (2) feet when pathway is a minimum six (6) feet in width. No vehicle may overhang any bikeway facility or public sidewalk;
7. *Recreational vehicles* exceeding twenty-one (21) feet in length and all boats, ~~and trailers~~ AND UNMOUNTED TRUCK CAMPERS shall not be parked in the required front *yard building SETBACK* or required *street side yard SETBACK*, except for periods of up to forty-eight (48) hours within seven (7) consecutive days for the purpose of loading, unloading and cleaning. Such vehicles parked or stored in the defined setbacks shall be subject to a *use permit*; and
8. All *parking* spaces shall be adequately marked, and the paved area shall be properly drained and kept free from dust or loose particles at all times.

Section 8. That Section 4-903(F) of the Zoning and Development Code, pertaining to directional signs, is hereby amended to read as follows:

F. Directional Sign. *Directional sign* requirements are as follows:

1. May be a maximum of three (3) feet in height and two (2) square feet in area; ~~and~~
2. SHALL NOT CONTAIN IDENTIFICATION OR ADVERTISING COPY; AND
- ~~2~~ 3. No *sign* permit is required unless such *sign* is illuminated.

Section 9. That Section 6-302(C) of the Zoning and Development Code, pertaining to procedures for general plan amendments, is hereby amended to read as follows:

C. Procedure.

1. Commission Action:
 - a. Amendments. The applicable decision-making body shall hear and forward its recommendation to the City Council after at least one (1) public hearing in accordance with the public hearing procedures in Part 6, Chapter 5, Public Meetings and Public Hearings; and

- b. Major amendments. The applicable decision-making body shall hold at least two (2) public hearings, in accordance with the public hearing procedure. Hearings shall be in different locations to encourage community participation. The first hearing shall be held for the purpose of gathering public information only. A recommendation shall be forwarded to the City Council only after the second public hearing.
2. City Council Action:
 - a. Amendments. Applications for a general plan amendment shall be heard by the City Council during at least one (1) public hearing;
 - b. Major Amendments. Applications for a general plan major amendment shall be heard by the City Council during at least (2) public hearings;
 - c. The initial public hearing(s) shall be held for the purpose of gathering public information only. The final hearing on an application for a major amendment must be held at one (1) annual public hearing in the calendar year that the proposed major amendment was filed. This annual meeting shall be held in October, at a date to be determined by the City Council; and
 - d. Major amendments shall also be approved by an affirmative vote of at least two-thirds (2/3) of the City Council.
3. Final Hearing Notification Requirements. At least sixty (60) days before either an amendment or major amendment, staff shall transmit the proposal to the applicable decision-making body and submit a copy for review and comment to:
 - a. The planning agency of Maricopa County;
 - b. Each municipality that is *contiguous* to the corporate limits of the city;
 - c. The regional planning agency within which the city is located;
 - d. The Department of Commerce or any other state agency that is subsequently designated as the general planning agency for the state; and
 - e. Any person or entity that requests in writing to receive a review copy of the proposal.
4. Notice of time and place of hearings and availability of relevant materials shall be:
 - a. Advertised by publication at least once, in a newspaper of general circulation in the city, at least fifteen (15) and not more than thirty (30) calendar days before the first hearing;
 - b. Posted on the website at least fifteen (15) and not more than thirty (30) calendar days before the first hearing;
 - c. Posted at the City Council Chambers and Clerks Office at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law;

- d. If modifying a map, then post property with dates, times and locations of the public hearings, and a summary of the amendment. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way or a *public street* or road for maximum visibility. Posting shall be done not less than fifteen (15) ~~and not more than thirty (30)~~ calendar days before the first hearing. It shall be the responsibility of the applicant to maintain the notice once it has been placed on the subject property; and
- e. If modifying a map, then mailed notification of public hearings shall be sent not less than fifteen (15) and not more than thirty (30) calendar days before the first hearing to:
 1. The applicant or representative and the owners of the subject property;
 2. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant; and
 3. The chairperson of the registered neighborhood association(s) and home owners association(s) in which subject property is located.

Section 10. That Section 7-119 of the Zoning and Development Code, pertaining to the definition of recreational vehicle, is hereby amended to read as follows:

Recreational vehicle (RV) means any motor vehicle that is designed or customarily used for sleeping or camping INCLUDING, BUT NOT LIMITED TO, MOTOR HOMES AND MOUNTED TRUCK CAMPERS.

Section 11. That Section 7-121 of the Zoning and Development Code, pertaining to the definitions for tobacco retailer and trailer, is hereby amended to read as follows:

Tobacco retailer means any person or business who primarily sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia, or who distributes samples of tobacco products or paraphernalia. These businesses include but are not limited to, tobacco shops, cigars and pipe retailer, cigarette OR ELECTRONIC CIGARETTE retailer, and *smoking establishments*.

Trailer means any platform or frame with wheels that is designed or customarily used to carry personal property and for being drawn or towed by a motor vehicle INCLUDING, BUT NOT LIMITED TO, TRAVEL TRAILERS AND CAMPING TRAILERS.

Section 12. 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 _____, 2010.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney