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Late Hour Business Compatibility Policy

The City of Chandler recognizes the need for certain commercial businesses to operate during late hours, even 24 hours a day, in response to customer needs, business competition, and other considerations. However, the City also recognizes the substantial right of residents whose properties immediately adjoin such commercial uses to be assured the safe, quiet enjoyment of their residences. Hence the purpose of this policy is to set forth some guidelines and considerations for determining, and ultimately achieving, land use compatibility when late hour businesses seek occupancy in close proximity to residential development.

Definition

For the purpose of this policy, a “late hour business” is defined as follows:

Any retail store, restaurant, bar, convenience store, gas station, commercial service, entertainment, or drive-thru use that customarily opens its doors to the public, either in whole or in part, one or more hours between midnight and 6:00 AM, one or more days each week.¹ This category shall not include hospitals and medical care facilities, hotels, self-storage uses, offices, industrial uses, transportation services, day care, group homes, construction activities, or utility companies, nor shall this category include any business licensed to sell or serve liquor under the provisions and requirements of the Arizona Revised Statutes Title IV, that close their doors to the public at 2:00 AM and no longer serve their patrons in any manner after 2:30 AM, and is otherwise in conformance with all requirements of the Chandler City Code.

Applicability

The Compatibility Policy for Late Hour Businesses is triggered when consideration is being given to any of the following types of applications by Planning Commission, and subsequently City Council, to allow new commercial uses that may include late hour businesses as defined herein, within 300 ft.² of existing residential zoning:

- New zoning; or
- Amending an existing commercial zoning designation; or
- New use permit.

The specific zoning districts to which this policy is applied are applications pertaining to any Planned Area Development (PAD) designation for commercial (late hour) uses.

¹ State statutes enable liquor businesses as licensed to sell liquor for on-site or off-site consumption until 2 AM; hence the City cannot impose stipulations or other regulations in conflict with these provisions.

² The 300 ft. distance is measured on a straight line from the boundary of the nearest parcel zoned for residential use, to the nearest exterior building wall of the commercial use, where the commercial building is not separated or buffered by an arterial street, freeway, railroad, or other nonresidential building.

This policy does not apply to any existing late hour business already operating prior to the effective date of this policy, nor does it apply to any zoning approval or Use Permit approval as may have been granted for commercial use(s) prior to the effective date of this policy. However, in the event that an existing commercial site would seek a zoning amendment or a new Use Permit to allow new use(s), then this policy may be applied for the purpose of affecting **subsequent** late hour businesses locating within that center.

This policy is not applicable to Use Permit requests or other zoning applications as may be submitted for sites located within, or immediately adjoining, the CCD (City Center District). The purpose of the CCD as set forth in Section 35-3200 of the Zoning Code is to promote a special character and visual identity distinct from any other area of the City, and limited to accommodate specialty retail, cultural dining, entertainment, and other storefront businesses traditional to a downtown setting. Achieving this type of unique character and limited mix of commercial uses may require considerations in support of extended, and even 24 hour, land uses.

Required Declaration and Notice

An applicant requesting zoning or Use Permit approval for any commercial use(s) must declare, at the time of filing such application, the intent to allow or not allow late hour business occupancies.

- An application as may be approved for which late hour business occupancies **are not** requested shall be stipulated, "Late hour business occupancies as defined by policy (Resolution No. 3801) shall be prohibited; any future request to allow a late hour business shall be subject to Use Permit approval by Council, upon recommendation by Planning Commission, in accordance with the considerations set forth in this policy."
- An application as may be approved by Council for which late hour business occupancies **are** requested, may be stipulated to allow any and all such occupancies, irrespective of when such use(s) would actually take occupancy and begin operation, or such approval may be limited to certain specified late hour occupancies not to exceed a certain threshold of intensity (e.g., a maximum allowable square footage, parking intensity, occupant load, or other measure as may be determined by the Zoning Administrator). Those uses not approved by right upon the initial application would require subsequent Use Permit approval by Council, upon recommendation by the Planning Commission, all in accordance with the considerations set forth in this policy.

When applicable, notice to adjoining property owners as required by the City Zoning Code for zoning and Use Permit applications, shall indicate that late hour occupancies are being requested.

Compatibility Considerations

The following compatibility considerations are intended to be **guidelines**, rather than absolute design standards or a "punch-list" of minimum requirements that necessarily guarantees approval by Planning Commission and City Council. Specific design standards would be inappropriate in a policy such as this, to the extent that a design solution that works in one situation may be unacceptable or inadvisable in another. Hence the following list of considerations are to be applied on a case-by-case evaluation of the late hour uses proposed, and the physical characteristics of the commercial site vis-à-vis the adjoining residential property(ies). The intent is that the developer and affected neighbors work through a process that achieves mutually acceptable design solutions or other agreements in the interests of land use compatibility, in direct response to specific issues/concerns.

- Noise: Consider noise as may be generated from the late hour use(s) themselves, such as from patrons, mechanical equipment, entertainment (whether indoor or outdoor), loud speakers, etc., or from accessory activities such as car start-ups by employees or patrons, car radios, trash pick-up, delivery vehicles, site maintenance/parking lot sweepers, etc. Consideration might be given to noise containment/attenuation for exterior building walls, relocation or removal of noise sources, muffling

devices, or other noise buffering techniques, or possibly rescheduling the noise generating activities to daytime (non-sleeping) hours that are less sensitive.

- **Traffic:** Consider the various forms of traffic to be generated or attracted by the specific use(s), including pedestrian as well as vehicular, and what volumes might be generated during the late hours. Is a drive-thru or take-out service associated with the occupancy(ies), either as primary or accessory uses? Is such traffic confined to the interior of the building or to the property lines of the site, or is there potential for spill-over traffic resulting in off-site parking, pedestrian shortcuts and trespasses? Will vehicles entering/exiting the commercial site cast headlights upon adjoining residences? Are there door locations in the building, or outdoor seating/gathering places for patrons or employees that might impact adjoining residences? Are there potential conflicts between vehicular traffic, pedestrian movements, and other activities related to the building, such as deliveries/unloading, outdoor storage, mechanical equipment, etc., that may affect the quiet and safety of adjoining residences?
- **Light:** Identify the appropriate types of exterior lighting and foot candle level of illumination, to insure adequate visibility of the building exteriors, entrance/exit doors, parking, pedestrian walks, and outdoor seating as appropriate, to insure security without light spilling over to adjoining residences. Consider the height and location of the light sources, whether fixtures are mounted on building(s) or on poles, their orientation and the means of shielding the point source from direct view of residences.
- **Odor:** Identify the sources of odor that may be associated with the use(s), whether primary (emitted from the building through exhaust vents) or incidental (exhaust fumes from vehicles queuing in line at a drive-thru, delivery vehicles idling while unloading, or odors from trash receptacles). Particular attention should be given to restaurants and the degree to which odors exhausted from the kitchen (and/or designated smoking areas) can be scrubbed effectively. Determine the time periods for which odor emissions may be strongest, and the most effective means of containment.
- **Litter:** Consider the byproducts associated with the particular use, such as paper cups, wrappers, containers from a restaurant drive-thru or outdoor dining area; plastic bags from a convenience store, drug or grocery store, etc. Is the nature of the products being retailed such that the customer prior to leaving the premises often discards wrappers or containers? What is the management plan to deal with litter control, such as staffing whose duties include policing the premises on a regular daily basis? Besides aesthetic impacts, will windblown trash likely affect adjoining residential properties (means of confinement on-site)? Is the means of trash containment and capacity adequate to prevent spillovers? If retail uses are being considered, how are shopping carts managed/contained in the parking lot?
- **Site Maintenance:** Consider the times of day designated for trash pick-up, parking lot sweeping, landscape maintenance, etc., vis-à-vis what may be traditional sleeping hours for adjoining residences. What are the noise levels and air exhausts associated with these activities (e.g., dust, air-blown litter, trash, debris, mechanical blowers/vacuums, etc.), and can such effects be fully confined to the site? Is the program for site maintenance consistent with the trash/litter to be generated by certain uses, particularly restaurants, drive-thrus, grocery and convenience stores?
- **Security Issues:** Does the nature of the late hour occupancies prompt security concerns, and if so, is there a security program proposed to handle such concerns (e.g., on-site supervision/surveillance by store personnel, video cameras, effective on-site lighting for parking lots and other outdoor activity areas, secured entries/exits, etc.)? Do the uses proposed create the likelihood of loitering outside? Are there concerns identified by the Police Department with respect to fights, vandalism, and other crime/nuisance potential associated with either the late hour occupancies, or with the physical design of the premises?

Potential Solutions

There could be any number of physical design techniques, stipulations and agreements to achieve land use compatibility, depending in large part upon the circumstances of the particular situation. Potential solutions include, although not necessarily limited to, fence wall heights; the number type, location, and planting size of landscape materials; setbacks that might be increased by virtue of incorporating retention basins and the width of service drives; the location, orientation, and method of screening loading docks and bay doors; building orientations and features, including the location of exterior doors, windows, exterior lighting, loudspeakers, etc.; noise attenuation in exterior building walls; grade differential between finished floor elevations; site plan orientations relative to points of vehicular access, building placement(s), and the location of the more disruptive functions, such as loading, vehicle repair, employee parking, outdoor serving areas, materials storage, etc.

Other solutions that are not necessarily related to design might involve restricting certain hours of operation for those uses not otherwise enabled by state statutes (or restricting the hours of using a service drive for other than public safety access); specifying certain maximum square foot floor areas or occupant loads for late hour uses, beyond which another Use Permit or zoning amendment would be required for approval by Council; relocation of certain use(s) to another portion of the site that produces a lesser impact upon adjoining residences; identifying a contact person representing site management to whom residents are enabled to bring subsequent compatibility issues; writing restrictive covenants to be recorded with the commercial site designed to insure compatibility with adjoining residences in response to specific concerns identified.

There may be certain types of late hour occupancies for which the only effective means of achieving land use compatibility are through distance separations. For example, concerns may be greatest for drive-thru and other high turnover/convenience uses located less than 300 ft. from residential zoning, and in particular, the location of such elements as the primary customer entrances/exits, on-site parking for customers and employees, queuing lanes, order boards, intercom speakers, light poles, etc.

Again, as stated elsewhere in this policy, the purpose here is to achieve compatibility between late hour uses and adjoining residences through a process, on a case-by-case basis, that enables affected neighbors to receive notice and express concerns, if any, and to resolve them through techniques that are mutually agreed upon by the parties involved.

***Adopted by City Council 12-16-04
Resolution No. 3801***