

# 6

MAY 27 2010



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**                      **Planning and Development – CC Memo No. 10-069**

**DATE:**            MAY 6, 2010

**TO:**                MAYOR AND CITY COUNCIL

**THRU:**            W. MARK PENTZ, CITY MANAGER *WMP*  
                          PATRICK MCDERMOTT, ASSISTANT CITY MANAGER *PM*  
                          JEFF KURTZ, ASSISTANT PLANNING & DEVELOPMENT DIRECTOR *JK*  
                          KEVIN MAYO, PLANNING MANAGER *KM*

**FROM:**            DAVID DE LA TORRE, PRINCIPAL PLANNER *DDT*

**SUBJECT:**        ZCA10-0005 EXTENSION OF LIQUOR PREMISES IN PAD  
                          Introduction and Tentative Adoption of Ordinance No. 4206

Request:            Add City Code Section 35-1708 and amend City Code Sections 46-4.1 and 46-4.2/B to allow for the consideration of outdoor dining/liquor consumption on the public sidewalk when adjacent to PAD zoning located within the South Arizona Avenue Corridor.

Applicant:         City of Chandler

**RECOMMENDATION**

Upon finding consistency with the Chandler General Plan and the goals set forth by the South Arizona Avenue Corridor Area Plan to create a pedestrian-oriented environment and revitalize the South Arizona Avenue Corridor, Planning Commission and Staff recommend amending the various sections of City Code noted above, allowing liquor uses in PAD to extend their serving premises into the adjoining public sidewalk.

**BACKGROUND**

Since 2007, the City Code has allowed properties zoned City Center District (CCD) to extend their premises to serve liquor in the adjoining public right-of-way. Such requests can only be considered through Use Permit approval and are limited to CCD, which for the most part is limited to the historic downtown square.

The proposed City Code amendments would also allow properties zoned PAD to extend their liquor premises onto the public sidewalk through Use Permit approval. As proposed, such requests will be restricted to PAD districts that are located within the boundaries of an approved area plan that “expressly encourages outdoor dining within the public sidewalk to create or maintain pedestrian activity and aid in the revitalization of the area.” Currently, the Mayor and City Council have approved only one area plan that meets this criterion, the South Arizona Avenue Corridor Area Plan. This criterion to expressly encourage outdoor dining on the public sidewalk could also be included in future area plans, if there should be a desire to extend these opportunities to other areas such as East Chandler Boulevard (between Arizona Avenue and McQueen Road) and North Arizona Avenue (between Chandler Boulevard and Ray Road).

As proposed, requests for extension of liquor premises in PAD will not be allowed as a matter of right, and will only be considered through separate Use Permit approval. This requirement is consistent with requests to sell and/or serve liquor in any other zoning district, and will ensure a public process that will provide an opportunity for adjoining property owners, businesses and residents to express concerns or support, and will provide the customary means of addressing compatibility issues by specifying certain conditions.

The proposed language in draft Ordinance 4206 is very similar to City Code section 35-3203.D (attached for reference), which identifies the Use Permit requirements for extension of liquor premises in CCD. The following are some of the notable differences in the proposed draft Ordinance 4206:

- Paragraph “A” restricts requests to be located within the boundaries of a specific area plan that expressly encourages outdoor dining within the public sidewalk. This will have the effect of limiting requests from PAD zoned properties to those located within the South Arizona Avenue Corridor. If the City desired to expand this ability to other areas, similar language could be included in future area plans.
- Paragraph “C” allows materials other than wrought iron or a combination thereof to be considered for the required fence provided that the design is commensurate to the architectural style of the building. Requests in CCD are required to be wrought iron.
- Paragraph “D” requires a minimum 8-foot clearance, which is consistent with the Design Guidelines recently adopted by Mayor and Council for South Arizona Avenue Corridor. A 6-foot minimum clearance is required in CCD, due to narrower sidewalk widths along the historic square.
- Paragraph “D” allows for non-contiguous extension of premise areas. Currently, requests in CCD are required to be contiguous to the building from which the services originate. State law defines “Premises” (the area from which the licensee is authorized to sell, dispense or serve liquor) as including a patio area that is separated from the remainder of the premises if it is separated by a walkway or driveway that does not exceed 30-feet.
- Paragraph “E” prohibits any signs in the right-of-way except for signs hanging from or attached to a colonnade, canopy or exterior wall of the building. This is consistent with sign code requirements for CCD, which are addressed in City Code Section 39-9.18.

Applicants receiving Use Permit approval to extend their liquor premises onto the adjacent public right-of-way are also required to obtain an encroachment permit for sidewalk furniture in the right-of-way. The encroachment permit addresses issues such as indemnifying the City and posting the proper insurance, approving/inspecting the method of attaching fencing on the sidewalk, and restoring the sidewalk to its previous condition when the use ceases.

Draft Ordinance 4207 amends sections 4.1 and 4.2/B of Chapter 46 of the City Code to align encroachment permit requirements with the proposed zoning code amendments.

### **DISCUSSION**

The proposed amendments will enable future redevelopment projects along the South Arizona Avenue Corridor, which are anticipated to be rezoned to PAD in order to benefit from the recently adopted design guidelines, to request extension of liquor premises through Use Permit approval. Staff believes that the extension of premises to serve liquor on the adjoining public sidewalk will create pedestrian activity along the street and help reach the South Arizona Avenue Area Plan's goal of creating a more pedestrian-oriented environment.

### **NOTIFICATION**

As required by the Arizona Revised Statutes, hearing dates for the Planning Commission and City Council, as well as the complete text of the draft Code amendments have been published in an eighth-page newspaper ad at least fifteen days prior to the first public hearing.

### **PLANNING COMMISSION VOTE REPORT**

Motion to approve: In Favor: 7      Opposed: 0

### **RECOMMENDED ACTION**

Upon finding consistency with the Chandler General Plan and the goals set forth by the South Arizona Avenue Corridor Area Plan to create a pedestrian-oriented environment and revitalize the South Arizona Avenue Corridor, Planning Commission and Staff recommend amending the various sections of City Code noted above, allowing liquor uses in PAD to extend their serving premises into the adjoining public sidewalk.

### **PROPOSED MOTIONS**

- a) Move to introduce and tentatively adopt Ordinance No. 4206 as set forth in Exhibit 'A', adding City Code Section 35-1708 (Zoning Code, PAD) to allow liquor uses in PAD zoning districts to extend their serving premises into the adjoining right-of-way, as recommended by Planning Commission and Staff.

### **Attachments**

1. Draft Ordinance 4206 (Exhibit 'A')
2. City Code Section 35-3203.D (CCD Use Permit requirements for extension of liquor premises)

ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, ADDING SECTION 35-1708 OF ARTICLE XVII, CHAPTER 35, CODE OF THE CITY OF CHANDLER; RELATING TO EXTENSION OF LIQUOR PREMISES IN THE PLANNED AREA DEVELOPMENT DISTRICT (PAD).

WHEREAS, in accordance with A.R.S. 9-462, the legislative body may adopt by ordinance, any change or amendment to the regulations and provisions as set forth in the Chandler Zoning Code; and,

WHEREAS, this amendment, including the draft text, has been published as an 1/8-page display ad in a local newspaper with general circulation in the City of Chandler, giving fifteen (15) days notice of time, date and place of public hearing; and,

WHEREAS, a public hearing was held by the Planning and Zoning Commission as required by the Zoning Code, on May 5, 2010;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION 1. Section 35-1708, Article XVII, Chapter 35, Chandler City Code, is hereby added to read as follows:

35-1708. Extension of premises to serve or consume liquor within a public right-of-way.

Any extension of premises to serve or consume liquor outdoors within an adjoining public right-of-way shall require approval of a use permit by the City Council as provided for in Section 35-305(1) and shall be subject to the following requirements:

- A. Such requests shall be consistent with the Chandler General Plan and located within the boundaries of a specific area plan adopted by the City Council that expressly encourages outdoor dining within the public sidewalk to create or maintain pedestrian activity and aid in the revitalization of the area.
- B. No portion of a public right-of-way devoted to use as a parking lane or parking space(s), loading zone, bus stop, or moving lane of traffic, shall be considered eligible for such consideration.

- C. The area of the sidewalk within the public street right-of-way in which spirituous beverages are to be served shall be completely enclosed by a wrought iron fence measuring forty-two (42) inches in height from sidewalk grade, that cannot be removed, relocated, or otherwise altered by a patron or passerby. Materials other than wrought iron or a combination thereof may be considered provided that in any event the design of said fence is commensurate to the architectural style of the building from which the services to the extension of premises originate. All gates as may be provided shall be self-latching and self-closing.
- D. A minimum eight (8) foot clearance shall be maintained between the fence enclosure required in subsection 35-1708.C herein, and the inside face of any column, street light, street sign, traffic signal pole, curb line, utility equipment box, or other street fixture, to allow unobstructed pedestrian use of the public sidewalk. In cases where the extension of premises is not contiguous to the building from which services originate, a minimum eight (8) foot clearance shall be maintained between said fence enclosure and any portion of said building, and a minimum four (4) foot clearance shall be maintained between said fence enclosure and the edge of sidewalk curb. In cases where a right-of-way is being reconstructed or otherwise modified by City approval, the eight (8) foot minimum clearance may be reduced to six (6) feet. Compliance with the applicable provisions of the Americans with Disabilities Act (ADA) shall be maintained at all times within the public right-of-way adjoining the fence enclosure.
- E. Except for signs hanging from or otherwise attached to a colonnade, canopy, awning, or the exterior wall off the building, no signage is allowed in the public right-of-way, including those portions of the right-of-way affected by an extension of premises use permit.
- F. Site plan details including but not necessarily limited to such items as vehicular parking; signage; colors and materials of all elements to be placed in the right-of-way; the location, style, and construction method for the wrought iron fence enclosure required in subsection 35-1708.C above; and any requirements as may be necessary to insure compatibility with adjoining buildings and uses, whether public or private, shall be addressed as part of the Use Permit approval process in accordance with the requirements set forth in Section 35-305(1) of the City Code. Issues pertaining to light, noise, music, live entertainment, amusement devices, hours of operation, and any other characteristics related to the particular application being considered shall be addressed as part of the Use Permit process and stipulated as necessary.
- G. The operator of the extended premises shall be responsible for maintaining the affected area of the sidewalk right-of-way, both within and immediately outside the fence enclosure, in a clean and orderly manner, free of any and all litter as may otherwise be generated from the serving area.

H. After receiving Use Permit approval by the Mayor and Council to allow an extension of liquor premises into the right-of-way, the operator shall then be required to obtain an encroachment permit in accordance with the requirements of Chapter 46 of the City Code. The method of constructing the wrought iron fence enclosure as required in subsection 35-1708.C above, and the means of restoring the affected right-of-way to its previous condition at such time as the extension of premises ceases operation, shall also be subject to review and approval in obtaining the encroachment permit.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

#### CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4206 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2010, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

Approved as to form:

\_\_\_\_\_  
CITY ATTORNEY GAB

Published:

CHANDLER CITY CODE SECTION 35-3203, ARTICLE XXXII. CITY CENTER DISTRICT (CCD)

**35-3203. Uses requiring use permit approval.**

The following uses shall require approval of a use permit by City Council, upon recommendation by the Planning and Zoning Commission, subject to the review and approval criteria set forth in Section 35-305 of the Zoning Code:

A. Public assembly such as meeting halls, lodges, conference facilities, theaters, cinemas, auditoriums, places of worship, and schools.

B. Commercial recreation such as health clubs, gyms, fitness centers, racquet clubs, teen clubs, youth centers, bowling alleys, billiards, ice skating, rock-climbing, and amusement arcades.

C. Live entertainment such as concerts, stage plays, live music, karaoke, dance halls, nightclubs.

→ D. Sales or production of beer, wine, or spirituous liquors, whether offered for on-site or off-site consumption, including brewpubs and microbreweries. Any extension of such premises to serve or consume liquor outdoors on the sidewalk within an adjoining public street right-of-way shall be subject to the following requirements. Unless otherwise modified by the City, no portion of a public right-of-way devoted to use as an alley, parking lane or parking space(s), loading zone, bus stop, or moving lane of traffic, shall be considered eligible for such consideration:

1. Such extension of premises shall be contiguous and accessory to the building in which food or spirituous beverages are sold or served, and all services to the extension of premises shall originate from such building.

2. The area of the sidewalk within the public street right-of-way in which spirituous beverages are to be served shall be completely enclosed by a wrought iron fence measuring forty-two (42) inches in height from sidewalk grade, that cannot be removed, relocated, or otherwise altered by a patron or passerby. At least one (1) side of the enclosure shall consist of the exterior wall and door entry of the serving establishment, and such enclosure shall be continuous except for gates as may be necessary or required for pedestrian access. All gates as may be provided shall be self-latching and self-closing.

3. A minimum six-foot clearance shall be maintained between the fence enclosure required in subsection 35-3203.D.2 herein, and the inside face of any column, street light, street sign, traffic signal pole, curb line, utility equipment box, or other street fixture, to allow unobstructed pedestrian use of the remaining public sidewalk. In cases where a right-of-way is being reconstructed or otherwise modified by City approval, said minimum clearance may be reduced to five (5) feet. Compliance with the applicable provisions of the Americans with Disabilities Act (ADA) shall be maintained

at all times within the adjoining public street right-of-way outside of the fence enclosure.

4. Site plan details including but not necessarily limited to such items as vehicular parking; signage; colors and materials of all elements to be placed in the right-of-way; the location, style, and construction method for the wrought iron fence enclosure required in subsection 3203.D.2 above; and any requirements as may be necessary to insure compatibility with adjoining buildings and uses, whether public or private, shall be addressed as part of the Use Permit approval process in accordance with the requirements set forth in Section 35-305(1) of the City Code. Issues pertaining to light, noise, music, live entertainment, amusement devices, hours of operation, and any other characteristics related to the particular application being considered shall be addressed as part of the Use Permit process and stipulated as necessary.

5. The operator of the extended premises shall be responsible for maintaining the affected area of the sidewalk right-of-way, both within and immediately outside the fence enclosure, in a clean and orderly manner, free of any and all litter as may otherwise be generated from the serving area.

6. In the event that Use Permit approval is granted by the Mayor and Council to allow an extension of liquor premises into the street right-of-way, the operator shall then be required to obtain a Class 2 encroachment permit in accordance with the requirements of Chapter 46-4 of the City Code. The method of constructing the wrought iron fence enclosure as required in subsection 35-3203.D.2. above, and the means of restoring the affected right-of-way to its previous condition at such time as the extension of premises ceases operation, shall also be subject to review and approval in obtaining the encroachment permit.