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APR 12 2007

MEMORANDUM Planning and Development – CC Memo No. 07-075

DATE: MARCH 22, 2007

TO: MAYOR AND CITY COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
 DOUG BALLARD, PLANNING & DEVELOPMENT DIRECTOR
 JEFF KURTZ, ASSISTANT PLANNING & DEVELOPMENT DIRECTOR

FROM: HANK PLUSTER, INTERIM LONG RANGE PLANNING MANAGER

SUBJECT: **ZCA07-0001 EXTENSION OF LIQUOR PREMISES IN CCD**
 Introduction and Tentative Adoption of Ordinance No. 3905
 Introduction and Tentative Adoption of Ordinance No. 3908

Request: Amend City Code Sections 35-3203/D (Zoning Code, City Center District), 46-4.2/A and 46-4.2/B (Encroachment Permits for Sidewalk Furniture) to allow liquor uses in CCD to extend their serving premises into the adjoining sidewalk right-of-way

Applicant: City of Chandler (City Initiative)

RECOMMENDATION

Upon finding consistency with the Chandler General Plan and the stated purpose of the City Center District (CCD), Planning Commission and Staff recommend amending the various sections of City Code as noted above, allowing liquor uses in CCD to extend their serving premises into the adjoining sidewalk right-of-way (Exhibit “A”, draft text attached).

BACKGROUND

The City Center zoning district (CCD) was written and adopted in 2000 to best accommodate uses and development standards unique to a downtown setting, based upon considerations of limited lot sizes/widths, zero building setbacks, parking availability, existing sidewalk colonnades, etc., within downtown Chandler (Exhibit “B”, map attached). Since that time, a variety of new commercial uses have opened for business on the downtown square, including some restaurants and other retail uses, all of which are consistent with the intent of the CCD to feature specialty commercial, cultural, dining,

entertainment, and other storefront uses. With an encroachment permit, existing restaurants are already enabled to put tables and chairs out on the sidewalk for food service, and staff anticipates that other existing as well as prospective restaurant and liquor uses will want the opportunity to extend their liquor premises. However, current code expressly prohibits liquor sales in the right-of-way citywide.

DISCUSSION

As true for all other city zoning districts, liquor sales and service in the CCD are subject to Use Permit approval by Planning Commission and City Council. Since the desire to extend one's liquor premises onto the sidewalk right-of-way would originate from the business inside the adjoining building on private property, staff found logic in making the extension of premises subject to Use Permit approval as well. It triggers public notice to adjoining property owners and businesses with a forum to express concerns or support, it provides the customary means of addressing compatibility issues by specifying certain conditions, and it gives the City a formal mechanism through Mayor and Council to authorize a commercial activity in the public right-of-way. The requirement for the applicant to subsequently seek a Class 2 encroachment permit is essentially a follow-up action by staff, i.e., to address the required details of indemnifying the City and posting the proper insurance, approving/inspecting the method of attaching fencing on the sidewalk, restoring the sidewalk to its previous condition when the use ceases, etc.

In addition to City approvals, all liquor uses are subject to licensure by State Liquor Control, who in turn requires some sort of "permanent" barrier enclosure to formally identify and separate the outdoor serving area. To meet this requirement of the State while at the same time insuring some degree of visual uniformity along the downtown square, a forty-two inch (42") high wrought iron fence enclosure would be required for the outdoor serving area, with self-latching and self-closing gates provided as necessary. Further, a minimum six ft. (6') unobstructed sidewalk width must be maintained at all times, measured from the fence enclosure to the inside face of the nearest column, street light, utility box or other fixture [in cases where the right-of-way is being reconstructed or modified by City approval, that minimum clearance may be reduced to five ft. (5')].

With respect to the existing colonnade along San Marcos Place, Buffalo and Boston Streets, the sidewalk widths vary from eleven feet (11') to thirteen feet six inches (13'-6"). In most cases, the greatest depth of sidewalk that might be enclosed for an extension of liquor premises—after maintaining the six ft. (6') sidewalk clearance—would be seven and a half feet (7 ½'). However, somewhat greater depths might be proposed for building fronts that do not currently adjoin the colonnade but are still within the CCD zoning district. For any particular case, the enclosed serving area could extend for all or only a portion of the adjoining building front.

As drafted, the proposed code amendment identifies only the basic standards and requirements for extending liquor premises in the CCD. Each case may present details and circumstances that are relatively unique, such as colors, materials, lighting, music, hours of operation outdoors, etc., all of which can best be addressed on a case-by-case basis through the Use Permit process.

Making provisions for extending liquor premises in the CCD necessitates amending other sections of the City Code as well, i.e., Section 46-4 pertaining to issuing encroachment permits for sidewalk furniture. Hence the attached draft also includes modified language for the other applicable sections of City Code, in addition to the Zoning Code.

PUBLIC NOTICE/INPUT

Prior to posting the legal ad (1/8th page display ad presenting the draft text), Staff gave a presentation to a group of downtown Chandler merchants and business owners, outlining the standards and requirements proposed, and later, a briefing to the Downtown Chandler Community partnership (DCCP). Both groups have expressed support for the proposed amendments (Exhibit "C", letter from DCCP attached).

One item of discussion that came up at both presentations was the impact of Prop 201 (Smoke-Free Arizona) that goes into effect statewide on May 1st. While all public places must be kept free of smoke indoors and within a specified distance of primary entrances, the new law will enable a business operator to designate an outdoor patio area for smoking as long as outdoor smoke is prevented from entering the building through door, window or vent openings. Consensus of the downtown merchants/business owners group was to have a level playing field with all other restaurants—citywide and beyond—wishing to designate an outdoor area for their patrons to smoke. Staff certainly concurs with the equal application of rules and regulations of the State (staff initially had considered prohibiting smoking within the outdoor serving area).

Although not required by Code, Staff has also sent courtesy notice of the Commission and Council hearings, as well as the draft text, to all owners and tenants of properties located within the CCD.

PLANNING COMMISSION VOTE REPORT:

Motion to Approve: In Favor: 4 Opposed: 0 Absent: 3 (Anderson, Gulsvig, Creedon)

RECOMMENDATION

Planning Commission and Staff recommend approval to amend the various sections of City Code as noted above, allowing liquor uses in CCD to extend their serving premises into the adjoining sidewalk right-of-way in accordance with the requirements set forth in the attached (Exhibit "A").

PROPOSED MOTIONS

- a) I move to introduce and tentatively adopt Ordinance No. 3905, amending City Code Section 35-3203/D (Zoning code, City Center District), to allow liquor uses in CCD to extend their serving premises into the adjoining sidewalk right-of-way, as set forth in Exhibit "A", attached.
- b) I move to introduce and tentatively adopt Ordinance No. 3908, amending City Code Sections 46-4.2/A and 46-4.2/B (Encroachment Permits for Sidewalk Furniture) to allow liquor uses in CCD to extend their serving premises into the adjoining sidewalk right-of-way, as set forth in Exhibit "A", attached.

Attachments: Ordinance No. 3905
Ordinance No. 3908
Exhibit "A", Draft text
Exhibit "B", Map of CCD
Exhibit "C", Letter from DCCP

ORDINANCE NO. 3905

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTION 35-3203/D, OF ARTICLE XXXII, CHAPTER 35, CODE OF THE CITY OF CHANDLER; RELATING TO EXTENSION OF LIQUOR PREMISES IN THE CITY CENTER ZONING DISTRICT (CCD).

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 March 21, 2007;

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

SECTION 1. Section 35-3203/D, Article XXXII, Chapter 35, Chandler City Code, is hereby amended to read as follows:

- 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 (6) ft. 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) ft. 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.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this 12th day of April, 2007.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____, 2007.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 3905 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2007, and that a quorum was present thereat.

CITY CLERK

Approved as to form:

6813
CITY ATTORNEY

Published:

ORDINANCE NO. 3908

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTION 46-4, DIVISION II, CHAPTER 46, CODE OF THE CITY OF CHANDLER; RELATING TO SIDEWALK FURNITURE AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN THE PUBLIC RIGHT-OF-WAY.

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

SECTION 1. Sections 46-4.2/A and 46-4.2/B, Division II, Chapter 46, Chandler City Code, is hereby amended to read as follows:

- A. Business signs on sidewalks and colonnades are subject to the provisions and restrictions of Chapter 39 (Sign Code). A-frame signs are prohibited in the public right-of-way, and on private property if readily visible from the public right-of-way. Merchandise display within sidewalks and colonnades are prohibited other than for special events, as provided for in Chapter 32. **None of the permitted elements may be for the purpose of serving or consuming alcoholic beverages within the public right-of-way.**
- B. Permits for sidewalk furniture may only be granted for sidewalks adjoining property classified as **~~Neighborhood Commercial (C-1), Community Commercial (C-2), Regional Commercial (C-3), or Planned Area Development (PAD)~~ City Center District (CCD) for commercial retail use**, provided, however, bus shelters and bicycle racks and lockers may be granted in all zones.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this 12th day of April, 2007.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____, 2007.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 3908 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2007, and that a quorum was present thereat.

CITY CLERK

Approved as to form:

 GAB
CITY ATTORNEY

Published:

Amend City Code Section 35-3203/D (Zoning Code, City Center District) to read as follows (new text in bold type underlined; text to be removed shown in strikethrough type):

- 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 (6) ft. 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) ft. 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

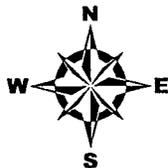
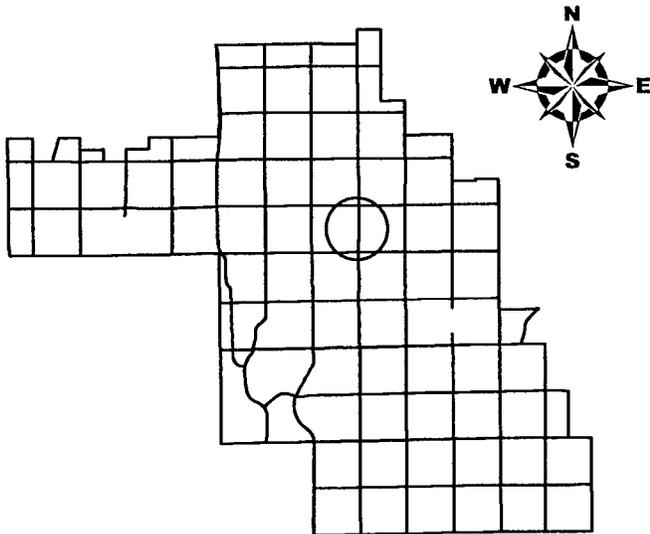
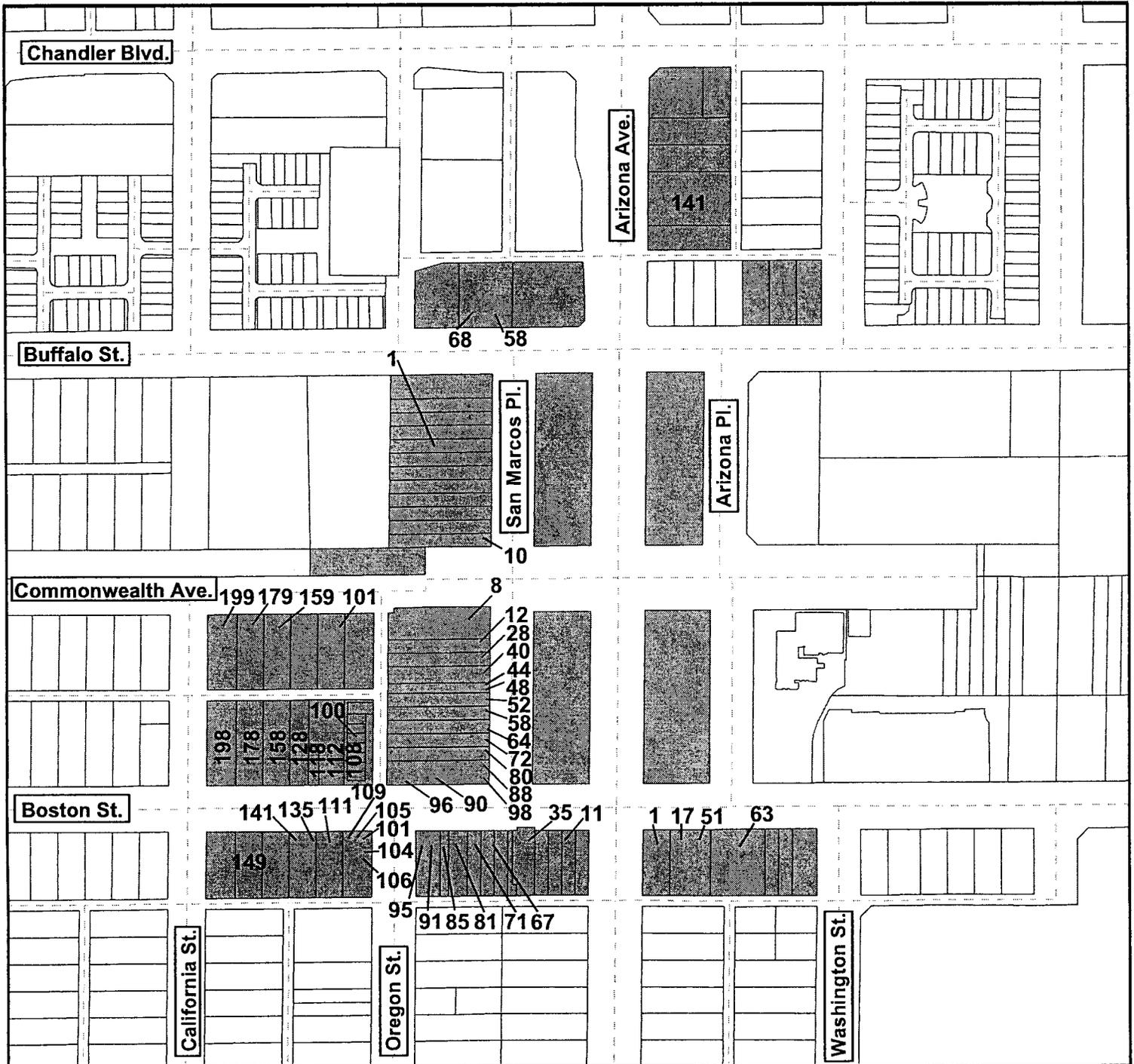
elements to be placed in the right-of-way; the location, style, and construction method for the wrought iron fence enclosure required in subsection 3203/D/2 above; and any requirements as may be necessary to insure compatibility with adjoining buildings and uses, whether public or private, shall be addressed 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.

Amend City Code Section 46-4.2/A (Special terms and conditions for the permits described in this section) and City Code Section 46-4.2/B to read as follows:

- A. Business signs on sidewalks and colonnades are subject to the provisions and restrictions of Chapter 39 (Sign Code). A-frame signs are prohibited in the public right-of-way, and on private property if readily visible from the public right-of-way. Merchandise display within sidewalks and colonnades are prohibited other than for special events, as provided for in Chapter 32. ~~None of the permitted elements may be for the purpose of serving or consuming alcoholic beverages within the public right-of-way.~~

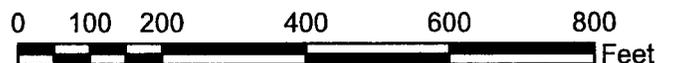
B. Permits for sidewalk furniture may only be granted for sidewalks adjoining property classified as ~~Neighborhood Commercial (C-1), Community Commercial (C-2), Regional Commercial (C-3), or Planned Area Development (PAD)~~ City Center District (CCD) for ~~commercial retail use~~, provided, however, bus shelters and bicycle racks and lockers may be granted in all zones.



Boundary Map

- 000 Street Address
- Parcels Zoned CCD
- Parcels
- Streets

EXHIBIT B





**Downtown Chandler
Community Partnership**

March 8, 2007

Hank Pluster
City of Chandler Long
Range Planning Division
215 E. Buffalo Street
Chandler, AZ 85225

Dear Hank:

On behalf of the Downtown Chandler Community Partnership, we are writing in support of Zoning Case ZCA07-0001, the Extension of Liquor Premises in the CCD.

Thank you for presenting this information at our Downtown Business and Property Owners monthly meeting, and at the DCCP monthly Board of Directors meeting. I think we rightly concluded from both of those meetings that the downtown business owners and the DCCP Board of Directors are in full support of this change to the amendment.

We believe the increase of more outdoor seating at the restaurants will only add to the ambiance of downtown and help us in our goal of increasing human traffic to the downtown area.

If there is anything further we can do to help this process, please do not hesitate to call on us.

Sincerely,


Ernie Serrano, Jr.
President


Martha J. Place
Executive Director

EXHIBIT C