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MEMORANDUM **Transportation & Development – PZ Memo No. 11-008**

DATE: JANUARY 7, 2011

TO: PLANNING AND ZONING COMMISSION

THRU: R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR RZ
JEFF KURTZ, PLANNING ADMINISTRATOR
KEVIN MAYO, PLANNING MANAGER KM

FROM: BILL DERMODY, SENIOR CITY PLANNER BD

SUBJECT: ZCA10-0008 CITY OF CHANDLER/OUTDOOR PATIOS

Request: City initiative to amend Chapter 35 (Zoning Code) of the Chandler City Code, by amending Sections 35-200, 35-1708, and 35-3203 pertaining to outdoor patios in conjunction with liquor use permits

Applicant: City of Chandler

RECOMMENDATION

Upon finding consistency with the General Plan, South Arizona Avenue Corridor Plan, and the stated purpose of the City Center District (CCD), Staff recommends approval of a Zoning Code amendment as set forth in the attached Draft Ordinance No. 4280 (Exhibit "A"), pertaining to outdoor patios.

BACKGROUND

Staff recommends amending the City Code in several ways with the primary intent of increasing flexibility in the design of outdoor patios used in conjunction with liquor use permits that encroach into the right-of-way in Downtown Chandler, as well as to more closely align the CCD and Planned Area Development (PAD) regulations while maintaining aesthetic integrity and pedestrian functionality. The proposed code amendment would make several changes, including allowing patio barriers to consist of materials other than wrought iron, allowing barriers to be less than 42" high, allowing patios to be detached from the building in portions of the CCD, and modifying the amount of required pedestrian clearance depending on business location (along arterial streets, along smaller streets, or under the colonnade) rather than simply its zoning district (PAD vs. CCD). The code amendment is prompted by recent requests from Downtown

businesses for outdoor patios that do not fully meet existing regulations, with the anticipation that other similar requests will follow in the future.

A draft of the proposed City Code changes is among the memo attachments, with a summary of some of the changes in the table below. More history behind the changes and explanations for them follow the table.

PROPOSED PAD/CCD	EXISTING PAD	EXISTING CCD
Patio barrier may be any material approved through the use permit process	Barrier must be wrought iron	Barrier must be wrought iron
Barrier must be at least 32" high	Barrier must be exactly 42" high	Barrier must be exactly 42" high
8' minimum pedestrian clearance if along an arterial street, 6' minimum clearance along other ROWs; also, consideration of clearance as small as 6' along arterials in response to a special circumstance that affects a minimal portion of frontage	8' minimum pedestrian clearance in all areas, whether along arterial street or not; no consideration of special circumstances	6' minimum pedestrian clearance in all areas, including along arterial streets (Arizona Avenue)
Patio may be either attached or detached from the building if not under colonnade (under colonnade must still be attached)	Patio may be either attached or detached	Patio must be attached, whether under colonnade or not
Detached patios may not be separated by more than 30' from the building, nor be separated by an alley or road, and must be directly in front of the building unless otherwise approved by Council	No such restrictions on detached patios	Detached patios may not be separated by an alley or road
Barrier materials' quality and design must be commensurate to that of the main building	Barrier material design must be commensurate to the building style	Barrier material design not addressed, other than use of wrought iron

Since 2007, the City Code has allowed properties zoned CCD, generally located on the historic downtown square, to extend their premises to serve liquor in the adjacent public right-of-way through a use permit approved by City Council. In May 2010, the City Code was amended to

similarly allow for certain properties zoned PAD to extend their liquor-serving premises into the adjacent public right-of-way. The PAD properties eligible for such extensions of premises must be 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 only approved area plan that meets this criterion is the South Arizona Avenue Corridor Plan.

In the interest of refining existing code and aligning PAD and CCD language, the proposed amendments would essentially create three categories of outdoor patios, whether in the specified PAD areas or in CCD: (1) along an arterial street (e.g. Arizona Avenue); (2) along other rights-of-way, but not under the city-owned colonnade; and (3) under the colonnade. The amendments refine oversimplifications in the existing code language that treat all CCD properties with potential outdoor patios as if their frontages were under the colonnade and all PAD properties with potential patios as if they fronted on Arizona Avenue. In reality, there are CCD properties that front on Arizona Avenue (e.g. Coach & Willie's, Latitude Eight) and others that front on West Boston beyond where the colonnade ends – these properties are in a significantly different situation that merits a different set of rules not customized for the colonnade. Likewise, there are many potential PAD properties in the South Arizona Avenue Corridor Plan that do not front on Arizona Avenue. In the Corridor Plan, Arizona Avenue sidewalks are to maintain a pedestrian clearance of 8' while east-west paseos have clearances of only 6' – no such distinction is made in the existing code, which specifies an 8' sidewalk clearance in all places.

The reduction in minimum barrier height is considerable due to changes in the State of Arizona's implementation of its liquor policy. Existing City Code language, both in PAD and CCD, specifies that outdoor patio encroachments into the right-of-way be enclosed by a 42"-high wrought iron fence. This language mirrored Staff's understanding of State of Arizona liquor regulations. However, State of Arizona policy has changed in this regard and now allows for barriers established by objects such as pots or couches, with no minimum height, at the discretion of state inspectors. Though the state has in practice allowed patio barriers as low as 28" in other communities, Staff recommends establishing a minimum height of at least 32" (regardless of barrier material), finding that lower heights present a safety problem for pedestrians.

DISCUSSION

The proposed code amendment is prompted by recent requests by businesses in the CCD to build creative and lively outdoor patio designs not allowed by current code. In each case, all parties involved – the proprietor, Staff, Planning Commissioners, downtown stakeholders – generally agreed that the creative designs would be an improvement over current code and would benefit the broader area. The code amendment allows for such flexibility without compromising aesthetics or pedestrian functionality. The amendment also refines existing language and improves consistency between PAD and CCD regulations, which are both anticipated to affect businesses (often neighboring businesses in similar circumstances) in Downtown Chandler and the South Arizona Avenue Corridor. The additional flexibility will allow for more diverse and creative outdoor patio designs that add to the vibrancy of Downtown Chandler.

A previous concern aired with regard to using nontraditional patio barriers formed by couches or other furniture is that the furniture should not be easily moved by passersby, lest the furniture encroach too far into the pedestrian realm or that the liquor service area not be sufficiently demarcated. This concern is addressed by existing code language and emphasized further by the proposed amendment. Existing code specifies in both CCD and PAD that patios be enclosed by barriers that "cannot be removed, relocated, or otherwise altered by a patron or passerby". The code amendment adds the requirement that "the method of affixing the enclosure to the ground" be specified and approved by the city through the encroachment permit process.

NOTIFICATION

As required by the Arizona Revised Statutes, hearing dates for Planning Commission and City Council, as well as the complete text of the draft Code amendment, have been published in the newspaper at least fifteen days prior to the first public hearing for Planning Commission. Although not required by Code, Staff has also sent courtesy notice of the Commission and Council hearing dates as well as a summary of the proposed amendment to all property owners and restaurant proprietors in the CCD and its immediate surrounding area. Additionally, Staff has contacted several Downtown Chandler stakeholders directly for input.

A stakeholder expressed concern that the term "commensurate" relates to size more so than quality. Another stakeholder believed that the regulations should be less restrictive with regard to the amount of right-of-way encroachment in order to allow for case-by-case solutions. This input has not yet been incorporated into the attached draft language. Both stakeholders are generally supportive of the proposed changes.

A third stakeholder expressed concern that patios under the colonnade are too large already and, whatever changes are made, they should certainly not be allowed to become any larger. (The amendment as currently drafted would not affect patio size under the colonnade.)

RECOMMENDED ACTION

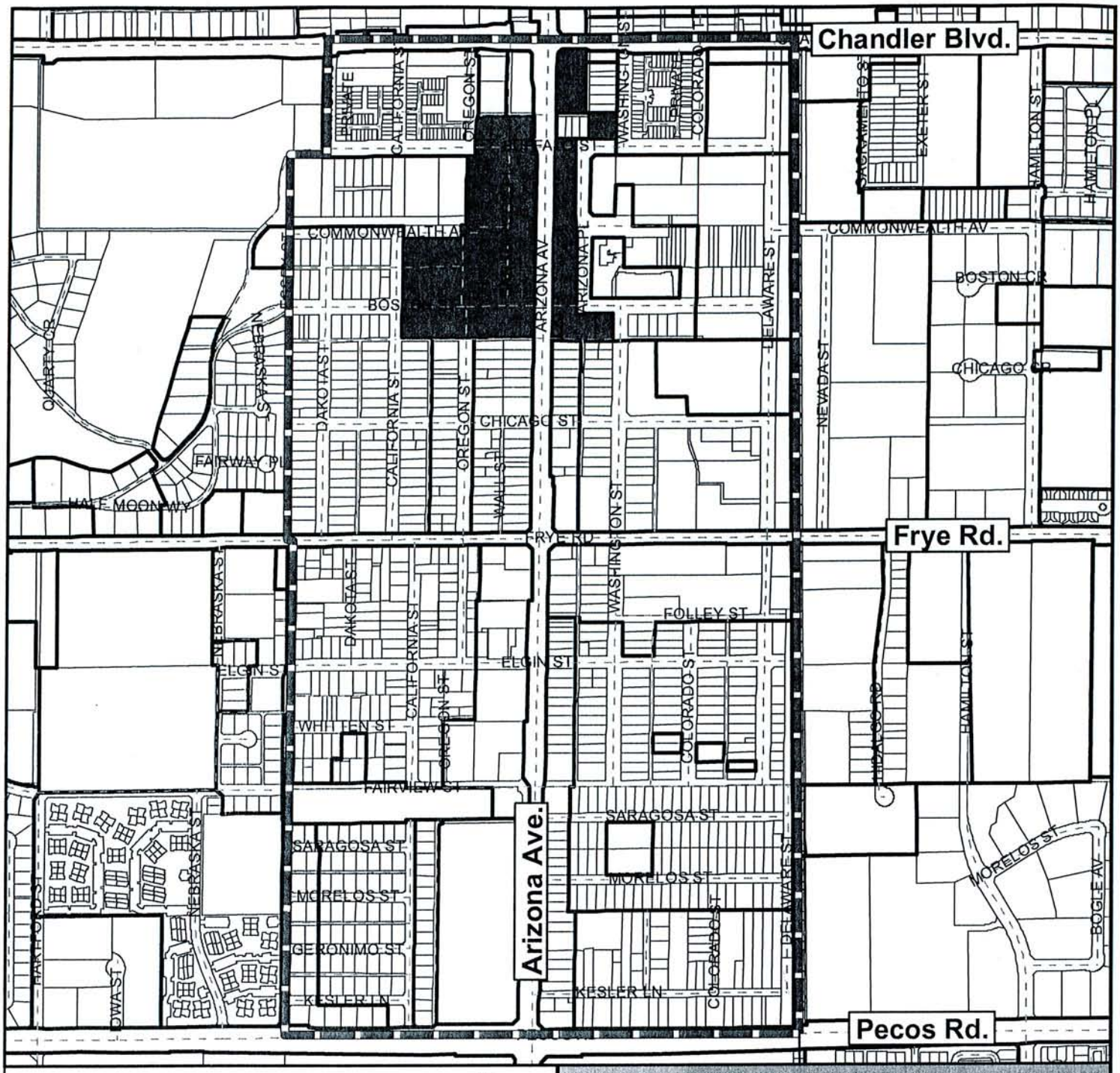
Upon finding consistency with the General Plan, Staff recommends approval of a Zoning Code amendment as set forth in the attached Draft Ordinance No. 4280 (Exhibit "A"), pertaining to wireless communication facilities.

PROPOSED MOTION

Move to recommend approval ZCA10-0008 CITY OF CHANDLER/OUTDOOR PATIOS Zoning Code amendment pertaining to outdoor patios as set forth in Exhibit "A", as recommended by Staff.

Attachments

1. Vicinity Map – CCD and South Arizona Avenue Corridor Study
2. Draft Ordinance No. 4280 (Exhibit "A")



Vicinity Map

CCD Zoning District

South Arizona Avenue Corridor Area Plan

CITY OF CHANDLER 1/1/2011

ORDINANCE NO. 4280

AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA, AMENDING THE ZONING CODE OF THE CITY OF CHANDLER, CHAPTER 35, CODE OF THE CITY OF CHANDLER; RELATING TO EXTENSION OF LIQUOR PREMISES IN THE PLANNED AREA DEVELOPMENT DISTRICT (PAD) AND CITY CENTER 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 January 19, 2011;

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

SECTION 1. Sections *35-200, 35-1708,* and *35-3203* of Chapter 35 of the Chandler Zoning Code are hereby amended to read as follows:

Section 35-200. Definitions. Add the following additional definition:

Spirituous beverage: **Any beer, wine, or spirituous liquor, as each of those terms is defined in A.R.S. § 4-101.**

Section 35-1708 Extension of premises to serve or consume liquor within a public right-of-way. (Planned Area Development zoning district)

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)**. The use permit required for this purpose shall be known herein as an "extension of premises permit"** 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. The use allowed under an extension of premises permit shall be an accessory use to the building or suite in which food or spirituous beverages are lawfully sold or served, and all services to the designated sidewalk area identified in the extension of premises permit shall originate from such building or suite. If such sidewalk area is detached from said building or suite, then the sidewalk area shall be located directly in front of the said building or suite frontage unless otherwise approved by City Council, and in no event shall the sidewalk area be separated by more than thirty (30) feet from the building or suite.

~~B~~**C**. 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~~**D**. The area of the sidewalk within the public ~~**street**~~ right-of-way in which spirituous beverages are to be served shall be ~~**completely**~~ enclosed **on all sides** by a ~~**wrought iron fence**~~ **barrier** measuring at least ~~**forty-two (42)**~~ **thirty-two (32)** 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**~~ **The quality and design of the barrier's materials shall be** commensurate to ~~**the architectural style**~~ **that** 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~~**E**. A minimum eight (8) foot clearance shall be maintained **within an arterial street right-of-way** between the enclosure required in subsection 35-1708.D 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. **Said clearance may be reduced within an arterial street right-of-way to a minimum of six (6) feet by City Council only upon finding that such reduction is necessary to accommodate a special circumstance that is not self-imposed by the applicant and the length of such reduction along the building frontage constitutes a minimal portion of the building frontage or is not extended more than necessary to address said special circumstance. A minimum six (6) foot clearance shall be maintained within all other rights-of-way.** ~~**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, said minimum clearance may be reduced to ~~six (6) feet~~ **as little as 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 enclosure.

~~E~~**F**. 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~~**G**. 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~~**D** 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~~**H**. The operator ~~of the extended premises~~ **for which an extension of premises permit is granted** shall be responsible for maintaining the **enclosure barrier required in subsection 35-1708.D and 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 **and stains** as may otherwise be generated from the serving area.

~~H~~**I**. 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~~**D** above, **the method of affixing the enclosure to the ground,** 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.

J. The sidewalk area designated in an extension of premises permit shall not be separated or detached from its associated building or suite by any part of a public right-of-way devoted to use as an alley, parking lane or parking space, loading zone, bus stop, or moving lane of traffic.

Section 35-3203. Uses requiring use permit approval. (CCD zoning district)
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**, service** or production of ~~**beer, wine, or spirituous liquor**~~ **any spirituous beverage from any premises**, including **without limitation** brewpubs and microbreweries, **and regardless of** whether **the spirituous beverage is** 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:**~~

E. An extension of a premises in which any spirituous beverage is lawfully sold, served or produced for the purpose of allowing the service or consumption of any spirituous beverage outdoors on the sidewalk within an adjoining public right-of-way . The use permit required for this purpose shall be known herein as an "extension of premises permit" and shall be subject to the following requirements:

1. ~~**Such**~~**The use allowed under an** extension of premises **permit** shall be ~~**contiguous and**~~ **an** accessory **use** to the building **or suite** in which food or spirituous beverages are **lawfully** sold or served, and all services to the **designated sidewalk area identified in the** extension of premises permit shall originate from such building **or suite**. **If the sidewalk area designated in the extension of premises permit is located under the city-owned colonnade, then the sidewalk area shall be contiguous to said building or suite. If such sidewalk area is not located under the city-owned colonnade and is detached from said building or suite, then the**

sidewalk area shall be located directly in front of the said building or suite frontage unless otherwise approved by City Council, and in no event shall the sidewalk area be separated by more than thirty (30) feet from the building or suite.

2. No extension of premises permit shall allow the service or consumption of a spirituous beverage on any portion of a public right-of-way devoted to use as an alley, parking lane or parking space, loading zone, bus stop, or moving lane of traffic.

3. The sidewalk area designated in an extension of premises permit shall not be separated or detached from its associated building or suite by any part of a public right-of-way devoted to use as an alley, parking lane or parking space, loading zone, bus stop, or moving lane of traffic.

~~2~~**4**. The area of the sidewalk within the public ~~**street**~~ right-of-way in which spirituous beverages are to be served shall be ~~**completely**~~ enclosed **on all sides** by a ~~**wrought iron fence**~~ **barrier** measuring ~~**forty-two (42)**~~ **at least thirty-two (32)** 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**~~. **The quality and design of the barrier's materials shall be commensurate to that of the building or suite from which the services to the extension of premises originate.**

~~3~~**5**. A minimum ~~**six (6)**~~ **eight (8)** foot clearance shall be maintained **within an arterial street right-of-way** between the ~~**fence**~~ enclosure required in subsection 35-3203.~~**D.2**~~**E.4** 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. **Said clearance may be reduced within an arterial street right-of-way to a minimum of six (6) feet by City Council only upon finding that such reduction is necessary to accommodate a special circumstance that is not self-imposed by the applicant and the length of such reduction along the building frontage constitutes a minimal portion of the building frontage or is not extended more than necessary to address said special circumstance. A minimum six (6) foot clearance shall be maintained within all other rights-of-way.** In cases where a right-of-way is being reconstructed or otherwise modified by City approval, said minimum clearance may be reduced to **as little as** 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~~**6**. 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~~**E.4** 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~~**7**. The operator of the ~~extended~~ premises **for which an extension of premises permit is issued** shall be responsible for maintaining the **enclosure barrier required in subsection 35-3203.E.4 and 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 **and stains** as may otherwise be generated from the serving area.

~~6~~**8**. 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~~**E.4** above, **the method of affixing the enclosure to the ground,** 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.

~~E~~**F**. Ground floor offices, medical and dental offices and clinics, but excluding in all instances any veterinarian hospitals, veterinarian offices, or kennels.

~~F~~**G**. Transient service facilities, subject to the policy guidelines set forth in Resolution No. 2379, adopted by Council on July 13, 1995, and as may subsequently be amended.

~~G~~**H**. Upper floor residential dwelling units, but excluding in all cases any single-room occupancies.

~~H~~I. Any other use determined by City Council to be compatible with other uses in this district, and consistent with the Chandler General Plan.

INTRODUCED AND TENTATIVELY APPROVED by the City Council this _____ day of _____, 2011.

ATTEST:

_____ _____
CITY CLERK MAYOR

PASSED AND ADOPTED by the City Council this _____ day of _____, 2011.

ATTEST:

_____ _____
CITY CLERK MAYOR

CERTIFICATION

I, HEREBY CERTIFY, that the above and foregoing Ordinance No. 4280 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2011, and that a quorum was present thereat.

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

PUBLISHED: