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**CITY OF TEMPE**  
**DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 08/24/2021**  
**Agenda Item: 7**

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**ACTION:** Request for code text amendment to the ZONING AND DEVELOPMENT CODE, consisting of corrections and clarifications to various sections of the code. The applicant is City of Tempe.

**FISCAL IMPACT:** While this ordinance change does not directly impact revenue, the planned development will result in collection of the standard development fees, calculated according to the approved fee structure at the time of permit issuance.

**RECOMMENDATION:** Approve subject to conditions

**BACKGROUND INFORMATION:** ZONING AND DEVELOPMENT CODE (PL190141) The current Zoning and Development Code was adopted and implemented in 2005 and has had 54 amendments in the past 15 years. City staff have been tracking and compiling needed Zoning and Development Code changes, corrections and items in need of clarification dating back to when the current General Plan 2014 and Building Code 2018 went into effect. On September 20, 2018, the City Manager's Working Group on "Exploring Strategies to Retain and Grow Businesses in Tempe" provided the City Council Committee of the Whole work study a list of development process improvements. One of the items identified the need to regularly update our City Codes and ordinances. As part of an initial phase for Zoning and Development Code amendments, City staff has prepared clean-up text amendments based on interpretations and clarifications they have developed over the past few years. This code text clean-up was presented to the Development Review Commission during study session on April 23, 2019 and to the Neighborhood Advisory Commission on April 24, 2019. A second phase of the process will begin in 2020 to prepare an amendment for updates or new concepts for consideration into the Zoning and Development Code. This request includes the following:

ZOA190004 Code Text Amendment within the Zoning and Development Code, amending Part 3 Land Use: Sections 3-201, 3-202, 3-401 And 3-420. Part 4 Development Standards: Sections 4-303, 4-401, 4-502, 4-503, 4-602, 4-605, 4-606, 4-702, 4-706, 4-803 And 4-903. Part 5 Overlay Zoning Districts: Section 5-403. Part 6 Applications and Review Procedures: Sections 6-203, 6-302, 6-306, 6-308 And 6-502. Part 7 Definitions: Section 7-113 "L" Definitions

**ATTACHMENTS:** Ordinance, Project File

**STAFF CONTACT(S):** Diana Kaminski, Senior Planner (480) 858-2391

Department Director: Shelly Seyler, Interim Community Development Director

Legal review by: Teresa Voss, Assistant City Attorney

Prepared by: Diana Kaminski, Senior Planner

Reviewed by: Suparna Dasgupta, Principal Planner

**COMMENTS:**

This request is for multiple corrections and clarifications to various sections of the current Zoning and Development Code, to facilitate easier use of the document. These modifications include corrections to the land use tables and graphics, addition of images to further illustrate concepts of the code, and corrections to text within different chapters. These changes are the culmination of a five-year process of gathering input from customers, staff and commissioners, as well as applying interpretations and opinions issued by the Zoning Administrator. For example, a table that has been used since the prior Zoning Code Ordinance 808 and is regularly referenced by staff when assisting customers with the location of accessory buildings was left out of the 2005 code and will now be included in the updated code. Any concepts that proposed new code were tabled as part of the phase two effort, to allow time for a public process for code text changes. This request includes the following:

ZOA190004      Zoning Code Text Amendment

Staff is requesting the Development Review Commission provide recommendations to City Council the above code text clarifications and corrections.

**SUMMARY EXPLANATION OF CHANGES:**

The proposed changes are based on changes to State Statutes, Building Codes and use of the Zoning Code for the past fifteen years, tracking common questions from customers and input from applicants during processing cases.

Section 3-102, Table 3-201 Clarification in table for parking facilities for commercial uses as they pertain to multi-family zoned properties, referencing an existing section of the code to make it easier to identify what is allowed or not allowed.

Section 3-201.B.3 Clarification of City Center Zoning District, the only district intended to have a specific area, and not intended to be allowed to expand into other areas of the City; this clarifies the general area of the existing zoning in this district.

Tables 3-202 A & B. Recent cases involving distillery and other forms of alcohol production have led to applying the brewery use by policy interpretation to other forms of manufacture. Clarify the land use to table to allow manufacture of all types of alcohol (now restricted to brewery).

Section 3-401.C & D. as written only apply to single-family residential districts; however, accessory buildings are allowed in multi-family districts that are used for single family use; this promotes maintenance of the character of the area by allowing properties with single-family uses to add an accessory building. Modify to include properties that have single-family dwellings.

Section 3-401C. A table that has been used since the prior Zoning Code Ordinance 808 was not included in the new code in 2005; staff has been referencing this graphic explain the allowed setback location and height allowed for accessory buildings; this chart helps residents interpret building height for accessory buildings.

Section 3-401C3a. The height for accessory buildings can be above 15ft with approval of a Use Permit, not a Use Permit Standard. Saying Use Permit Standard is incorrect and confusing.

Section 3-420 Clarify the requirement for use permit to allow a two-story detached accessory building; this has been the policy however the code does not clearly state this.

Figure 3-401C1 had the dimension line for the building height incorrectly shown on a sketch, this was corrected.

Tables 4-202A & B In the setbacks rows, delete "patio wall" since a site wall is not a part of the building. Add a footnote to clarify that a Use Permit is required for a second story addition or rebuild.

Table 4-202B R/O side common wall setback correction from 10' to 0' to recognize common walls as allowed in this district.

Sections 4-303H & L Conflict between H streetlights for private streets determined through DPR and L private streets shall conform to city light levels; we don't do DPR for private streets, we require private streets to meet lighting levels.

Section 4-401A. Purpose statement is awkward, it has verb incompatibility or grammatical issues.

Section 4-502A. The word service is italicized because there is a definition for this word, however the definition of service is related to uses on a site. In this context, it is level of service, (possibly LOS should be defined), but this is a format correction, do NOT italicize a word that is being used in a different context from our definition. Remove the word Thus from the paragraph, it is conversational and not necessary.

Section 4-502G. Fire and Refuse Vehicle Maneuvering Diagram needs update to include fire code requirement for wider drives depending on building height, clean up text for consistent format Maximum and Minimum spelled out before dimensions.

Section 4-503C1. Delete the word likely before users, not needed.

Section 4-602B5. Correct the reference to height of curb, although a bumper is required the height is not enforced due to lower profile vehicles and changes in materials used. This paragraph also references a landscape setback; however, the code does not have a landscape setback, it is a parking setback.

Section 4-602D1. Clarify that tandem can be used as part of the required off-street parking, it is not clear. No changes to requirements for Use Permit for this form of parking.

Section 4-602D2. Driveways, drive throughs and fire lanes are not be used for parking, storage or outdoor display, the word storage was not specified and has been an issue for maintaining clear path of travel for refuse and fire vehicles, the word storage was added clarify the intent.

Section 4-605. Clarification that parking affidavits must be recorded, this was not clear in the code as written.

Section 4-606A6. Clarifying that patio balconies are intended for outdoor livable space and can not be counted as the primary parking space for bicycle parking and correcting the dimensions needed for bicycle parking spaces. Bike parking is intended to provide equal access to commuters and not require transporting up elevators or stairs to an upper floor unit to secure by providing secure ground floor bicycle parking.

Section 4-702B Reference to the ADWR plant list limits the design diversity of properties, the intent is to require low water use plants, but if the ADWR list is not updated regularly, it may be limited to the species available in 2007 (last update) and may not include newer species. To provide flexibility and biodiversity, while meeting the intent of low water use plants, they may be identified as xeric by professional local sources in lieu of the ADWR list.

Section 4-706A.5. Building Code changed a few years ago to be less restrictive for perimeter walls; rather than needing a building permit for walls taller than six feet, permits are required for walls greater than 7' in height, need to correct code to match building code as well as clarify that this applies to any form of fence or wall.

Section 4-706E. Clarify parking screening to include all forms of parking, remove the word lot.

Section 4-803C3. Refers to grade (italicized) which is a definition different from intent of this sentence, adjacent grade is not taken from top of curb at center point of street frontage. Need to change from grade to surface to avoid confusion with definition of grade.

Section 4-803C5. Lighting industry standard does not refer to incandescent, it refers to lumens, this was left in from the prior code and should be removed, reference lumens only.

Section 4-803D. Reorganize the lighting section to use a chart for required light levels rather than paragraphs. This proposed amendment does not modify the locations or lighting levels, it reformats the current code requirements into an easier to read format. Future code changes will evaluate the actual lighting levels and propose changes to illumination.

Section 4-903. Sign Types were modified for clarification based on prior changes to the codes.

Section 5-403C Add Table 4-607A CC District Parking Standards into section that allows alternate development standards.

6-203B.3 & 6-402.E.2.c Code has conflicts in notification process. Sec. 6-203B3 states that tenants are notified if the property is zoned commercial, industrial or mixed use only, but Sec. 4-6-402E2c the second section states that all tenants within the subject site are to be notified (regardless of land use). The first would not apply to multi-family, but the second would.

Section 6-306 With Planned Area Developments entitling the DPR for larger projects, there has been a one year discrepancy in the deadline for expiration, this modification matches the expiration of a DPR associated with a PAD.

Section 6-308C. changes to authorized hearing body, this section referred to Hearing Officer specifically, rather than more general language of "decision-making body" change to be consistent with other sections.

Section 7-113 Definition of Lot line, Rear clarified so that it makes sense and replaced a diagram.

Section 6-502c. Legal Protest Requirement change to comply with state law changes.

## **PUBLIC INPUT**

- Neighborhood meeting not required for code text corrections and clarifications.
- April 23, 2019 staff presented the proposed changes to the Development Review Commission and asked for all input to be received by the end of May.
- April 24, 2019 staff presented the proposed changes to the Neighborhood Advisory Commission. Staff briefly described some of the primary planned changes and the reasoning behind them. Commissioners inquired if anything in the code applies to electric scooters or the color of exterior lighting. These types of changes would be addressed in the second phase, as they would be new concepts to introduce to the code, not corrections to existing code. Staff requested commissioner input about any of their personal experiences with code and any issues encountered as well as assistance with identifying typos, consistency of changes in each section and areas needing clarification. Staff asked for all input to be received by the end of May. Comments received were grammatical in nature, or required changes to policies within the code, which would be included in a later larger Code Text Amendment.
- March 24, 2020 Due to the time between first discussion of the amendments and formal hearings, staff took the draft ordinance back to the Development Review Commission for a second study session to update them on the content changes and schedule.
- July 27, 2021 The Development Review Commission was provided information during study session for a review of the process and update on the proposed changes. No questions or comments were received from the public in attendance online.

## **REASONS FOR APPROVAL:**

Based on the information and analysis prepared, staff recommends approval of the code text amendment ordinance to facilitate easier use of the code by clarifications and corrections to the policies herein. Many of these amendments will make it easier for applicants to use and understand the code, by clarifying portions that have been unclear and required further explanation. This ordinance supports the General Plan 2040 goals and strategies, including the following:

- Land Use: LU4 Encourage a balanced community with a diversity of uses and employment opportunities. LU5 Provide land use and transportation integrated planning, design and development that reinforces and enhances the character of the entire community. LU8 Develop and implement plans that address particular geographic area needs. LU9 Promote neighborhood enhancement and livability.

- Economic Development: ED4 Remain flexible in a constantly changing economy.
- Community Design: CD10 Maintain or reduce lighting impacts on night skies.
- Neighborhood Preservation and Revitalization: NP2 Continue to educate and involve the public and neighborhoods in the city processes. NP3 promote neighborhood maintenance and enhancement.
- Housing: Facilitate property reinvestment to maintain the condition and value of existing housing.
- Parking and Access Management: PAM1 Promote consolidated and shared use parking areas. PAM3 Ensure neighborhoods are not adversely impacted by parking issues.

**HISTORY & FACTS:**

January 20, 2005	City Council adopted the Zoning and Development Code, a new Zoning Ordinance 2003.36 and repealing Zoning Ordinance 808, which had been in effect since this date.
August 24, 2021	Development Review Commission is scheduled to hear this requested series of code text clarifications and corrections.
September 9, 2021	City Council is scheduled for the first public hearing to introduce the code text clarifications and corrections.
October 14, 2021	City Council is scheduled for the second and final public hearing to take action on the code text clarifications and corrections.

**ZONING AND DEVELOPMENT CODE REFERENCE:**

6-304 Zoning Map Amendments (including Overlay Districts) and Code Text Amendments