

Staff Summary Report



Development Review Commission Date: **05/22/07**

Agenda Item Number: 2

SUBJECT: Hold a public hearing for CODE TEXT AMENDMENTS to the Zoning and Development Code.

DOCUMENT NAME: DRCr_ZDCamendments_052207

SUPPORTING DOCS: Yes **ZONING & DEVELOPMENT CODE (0414)**

COMMENTS: Request for **CODE TEXT AMENDMENTS (PL070198)** (City of Tempe, applicant) for changes to the Zoning and Development Code pertaining to separation requirements for tobacco retailers; setback reductions when adjacent to a public alley, including related items for the following:

ZOA07001 – (Ordinance No. 2007.36) Code Text Amendments pertaining to Section 3-202, 3-401, 3-423 and 7-109 of the Zoning and Development Code.

PREPARED BY: Ryan Levesque, Senior Planner (480-858-2393)

REVIEWED BY: Lisa Collins, Planning Director (480-350-8989) 

LEGAL REVIEW BY: Gina Huerta, Assistant City Attorney (480-350-8611)

FISCAL NOTE: N/A

RECOMMENDATION: **Staff – Approval**

ADDITIONAL INFO:

A neighborhood meeting is not required with this application. A memo of proposed changes within the Zoning and Development Code was forwarded to the Neighborhood Advisory Commission for review.

ATTACHMENTS:

1. List of Attachments
 - 2-3. Comments
 3. Reasons for Approval / History & Facts / Zoning & Development Code Reference
-
- A. Ordinance No. 2007.36
 - B. Separation Map Example
 - C. Accessory Building Statistics

COMMENTS:

Based on recent public hearing requests and activities related to single-family residential, the following code text amendments to the Zoning and Development Code are proposed for consideration.

Separation requirements for Tobacco Retailers, when in proximity to a Public or Private School.

Staff has proposed limiting “tobacco retailers”, as defined by the Zoning and Development Code, from locating near public or private schools with elementary or secondary education by 1,320 feet (¼ mile). This would include schools with grade levels of either 1st through 12th grade, as well as, private and other charter schools having similar grade levels. The provision would restrict the use of a ‘tobacco retailer’ near a school site, and still require a use permit if the business is located outside of the quarter mile separation. See attachment for example of separation map when adjacent to a school site. Staff has also provided a definition for hookah lounges, which are considered a tobacco retailer within the Code.

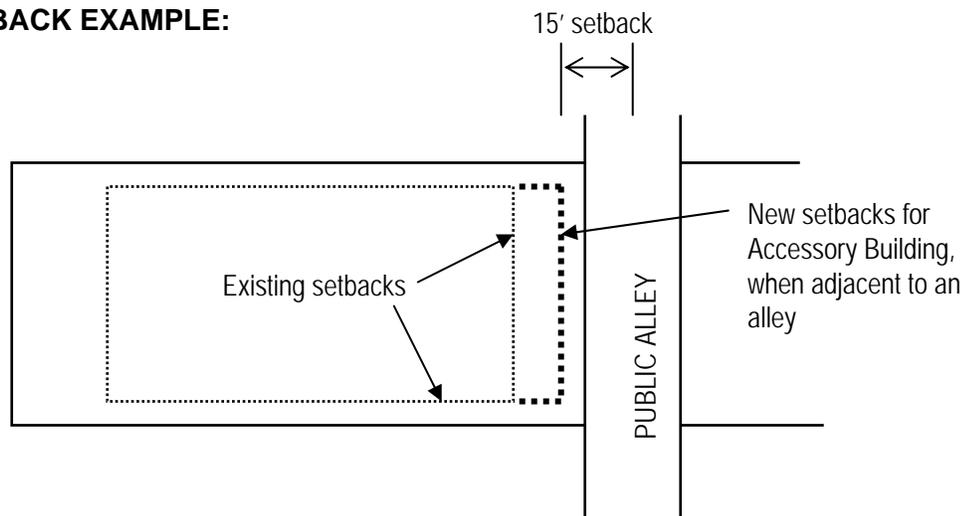
The separation requirement is intended limit the locations of tobacco retailers within proximity of elementary and secondary schools. There have been recent citizen concerns regarding the potential of these stores marketing to school-aged (minor) children. Evidence indicates cigarette smoking by children and teenagers in the United States is a major public health problem. The proposed quarter-mile (1,320’) separation distance is consistent with other similar requirements within the Zoning and Development Code and will not have a negative economic impact upon responsible tobacco retailers.

Reduce Rear Yard Setbacks for when adjacent to a public alley.

The Zoning and Development Code (adopted January 20, 2005) requires accessory buildings to process a use permit and conform to the setbacks of the district. The most common setback for rear yards is 15 feet. Previous ordinance regulations required a 7 feet setback on all property lines for the accessory building. The result of the Code change requires the placement of an accessory building in the middle of the backyard or adjacent to the home. Since the new regulation, staff has processed several requests for rear yard setback reductions (See Attachment C). Staff is recommending relief in the rear yard setback when adjacent to a public alley. The premise behind the change is that rear yard setbacks are intended to provide adequate separation from adjoining properties in a single-family neighborhood, while still maintaining a private yard for the personal enjoyment of the resident. If an alley exists, there is perceived to be less imposition on the adjacent properties. If concerns arise from these situations the use permit process is still in place to provide further analysis of the request on a case-by-case basis.

The following regulation as proposed would allow a reduced setback if an alley exists (typically 16-20 feet wide). The property may measure the rear yard setback from the center of the alley to determine the setbacks for the accessory building, resulting in allowing the setback to be 5-7 feet from the property wall.

R1-6 ZONING SETBACK EXAMPLE:



REASONS FOR APPROVAL:

1. The proposed Code Text Amendments are consistent with the goals and objectives of the General Plan 2030.
2. The separation requirement for tobacco retailers will not create a deleterious effect on potential locations for business owners.
3. The setback reductions for accessory buildings implements the General Plan's Neighborhood Element by encouraging reinvestment and redevelopment appropriate to each neighborhood, by promoting neighborhood preservation and enhancement within the neighborhoods.

HISTORY & FACTS:

- January 20, 2005 City Council adopts new Zoning and Development Code, including changes to accessory buildings and structures. Previous Ordinance 808 required accessory buildings be setback seven (7) feet on all sides and located in the rear half of the lot. ZDC now requires accessory buildings to conform to zoning districts required setbacks and process a use permit.
- December 5, 2006 At a public hearing, the Hearing Officer recommends for consideration, potential amendments regarding excessive setbacks for accessory structures and buildings.
- December 20, 2006 At a public hearing, the Hearing Officer recommends for consideration, potential amendments restricting and/or separating "smoke shops" from uses such as high schools and other similar, sensitive land uses.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-304, Zoning Map & Code Text Amendments

ORDINANCE NO. 2007.36

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE, PART 3 – LAND USE, SECTION 3-202, 3-401, AND 3-423, AND PART 7 – DEFINITIONS, SECTION 7-109, RELATING TO TOBACCO RETAILERS AND ACCESSORY BUILDINGS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That a portion of Table 3-202A and Table 3-202B of Section 3-202 of the Zoning and Development Code, pertaining to tobacco retailers, is hereby amended to read as follows:

Table 3-202A – Permitted Land Uses (R/O, CSS, CC, PCC, RCC)						
Uses	Status of Use District					
	R/O	CSS	CC	PCC-1	PCC-2	RCC
Tobacco retailer [SECTION 3-423]	N	U(S)	U(S)	U(S)	U(S)	U(S)

Table 3-202B – Permitted Land Uses (MU-1, MU-2, MU-3, MU-4 and MU-Ed)					
Uses	Districts				
	MU-1	MU-2	MU-3	MU-4	MU-Ed
Tobacco retailer [SECTION 3-423]	U(S)	U(S)	U(S)	U(S)	U(S)

Section 2. That Section 3-401(C) of the Zoning and Development Code is hereby amended to read as follows:

C. Accessory Building. Buildings that exceed two hundred (200) s.f. in area or eight (8) feet in height are *accessory buildings* (e.g., freestanding garages, large sheds, workshops, etc.). Such buildings shall not be used for sleeping or living purposes, shall not have cooking facilities, are limited to the height of the existing residence, and must meet the *setbacks* for the district.

1. Use Permit. A *use permit* is required for *accessory buildings* in the AG and all Single-Family Residential Districts.

2. SETBACK REDUCTION. THE REAR YARD SETBACK FOR AN ACCESSORY BUILDING MAY BE REDUCED WHEN ADJACENT TO A DEDICATED PUBLIC ALLEY. SETBACK REQUIREMENTS SHALL BE MEASURED FROM THE MIDPOINT OF THE ALLEY.

Section 3. That Section 3-423 of the Zoning and Development Code is hereby amended to read as follows:

Section 3-423 Use Separation Requirements.

A. Non-Chartered Financial Institutions.

1. *Non-chartered financial institutions* shall not be located on a *lot* within 1,320 feet, measured by a straight line in any direction, from the lot line of another *non-chartered financial institution*.
2. *Non-chartered financial institutions* shall not be located on a lot within five hundred (500) feet, measured by a straight line in any direction, from the lot line of a residential district.
3. The requirements pursuant to Section 3-423(A) shall also apply to *Non-chartered financial institutions* which are ancillary to another existing or permitted use.

B. Auto Title Loan.

1. *Auto Title Loan* businesses shall not be located on a *lot* within 1,320 feet, measured by a straight line in any direction, from the lot line of another *auto title loan*. The requirements in this section shall also apply to *auto title loan* businesses which are ancillary to another existing or permitted use.

C. TOBACCO RETAILER.

1. TOBACCO RETAILERS SHALL NOT BE LOCATED ON A LOT WITHIN 1,320 FEET, MEASURED BY A STRAIGHT LINE IN ANY DIRECTION, FROM THE LOT LINE OF A CHARTER SCHOOL, PRIVATE SCHOOL, OR PUBLIC SCHOOL, WHICH PROVIDES ELEMENTARY OR SECONDARY EDUCATION. INSTRUCTIONAL OR VOCATIONAL SCHOOLS ARE EXCLUDED FROM THE SEPARATION REQUIREMENT.

Section 4. That Section 7-109 of the Zoning and Development Code relating to the definition of hookah lounge, is hereby amended to read as follows:

HOOKAH LOUNGE MEANS ANY BUSINESS WHICH PRIMARILY SERVES TOBACCO AND RELATED PRODUCTS, WHEREBY PATRONS SHARE THE TOBACCO FROM A COMMUNAL HOOKAH OR WATER PIPE WHICH IS PLACED AT EACH TABLE. THE BUSINESS MAY SELL BEVERAGES AND SNACKS, BUT THE GROSS SALES OF THESE ITEMS SHALL NOT EXCEED THAT OF TOBACCO AND RELATED PRODUCTS.

Section 5. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2007.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DISTANCE SEPARATION FROM A SCHOOL

