

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: \_\_\_\_\_  
Amend No. \_\_\_\_\_

Date prepared: July 19, 2010

Council Meeting Date: August 17, 2010

---

**TO:** Carl Swenson, City Manager

**THROUGH:** Susan J. Daluddung, AICP, Deputy City Manager 

**FROM:** Glen Van Nimwegen, AICP, Planning and Community Development Director 

**SUBJECT:** TA 10-0101, Amendments to Zoning Ordinance: Amend Section 14-2 (Definitions) and Section 14-90 (Non-Residential Districts) of the Peoria Zoning Ordinance with respect to Tobacco Retailers; Outdoor Patios; Bars, Taverns, Lounges; Gasoline Service Stations; Drive-Through Restaurants, Retail Liquor Stores, Electric Vehicle Charging Equipment, and Charter Schools.

**RECOMMENDATION:**

The Mayor and Council concur with the Planning and Zoning Commission's recommendation to adopt the attached Ordinance to amend Article 14-2 and Article 14-9 of the Zoning Ordinance as it pertains to tobacco retailers, retail liquor stores, outdoor patios, drive-through restaurants, gas stations, bars, taverns and lounges, electric vehicle charging equipment, and charter schools.

**PLANNING & ZONING COMMISSION ACTION (July 15, 2010):**

On July 15, 2010, the Planning and Zoning Commission voted unanimously in favor of recommending approval of the request to amend Article 14-2 and Article 14-9 of the Zoning Ordinance. No one spoke in favor or against the request.

**SUMMARY OF AMENDMENTS:**

Amendments to definitions, and land use types and standards will assist staff with implementation of the goals and policies of the General Plan, promote sustainability and improve compatibility between adjacent land use types. The more notable changes are summarized on the following page. The supporting analysis and detail are fully described on the attached staff report to the Planning and Zoning Commission.

---

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business
- Public Hearing: No Action Taken

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# \_\_\_\_\_ LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

- **Gas Stations:** Prohibited within 200-feet of residentially zoned property; requiring at least 500-feet of separation between gas stations when located on the same side of the street; requiring canopy lighting to be flush with the canopy ceiling; and requiring fuel tanks exceeding 1,000 gallons to be underground.
- **Bars / Tavern / Lounges:** Prohibited within 200-feet of residentially zoned property.
- **Drive-through Restaurants:** Drive-through restaurants within 200-feet of residentially zoned property to require issuance of a Conditional Use Permit (CUP); and enhanced landscape buffers and standards addressing the location of menu boards.
- **Outdoor Dining Patio:** Modifying requirement for Conditional Use Permit for all circumstances to those patios within 200-feet of residentially zoned property.
- **Electric Vehicle Charging Equipment:** Permitted as an accessory use within all non-residentially zoned property (Commercial & Industrial).
- **Retail Liquor Store:** Clarified the definition of 'Retail Liquor Stores' to exclude establishments (e.g. pharmacies, grocery stores, gas stations) holding a Series 9 License and where a minor portion of the stock-in-trade is derived from alcohol sales.
- **Tobacco Retailer:** Minor housekeeping change to broaden definition to include hookah lounges, cigar bars and similar tobacco uses consistent with the Smoke Free Arizona legislation.

**ATTACHMENTS:**

- July 15, 2010 Planning and Zoning Commission Staff Report (Including Exhibit A)
- Draft Ordinance

**CONTACT:** Ed Boik, Planner, 623-773-7565



# **ZONING ORDINANCE TEXT AMENDMENT**

---

## **REPORT TO THE PLANNING AND ZONING COMMISSION**

**CASE NUMBER:** TA 10-0101  
**DATE:** July 15, 2010  
**AGENDA ITEM:** 5R

---

**Applicant:** City of Peoria Planning Division

**Request:** Amend Section 14-2, Definitions and Section 14-9, Non-Residential Districts of the Peoria Zoning Ordinance with respect to Tobacco Retailers; Outdoor Patios; Bars, Taverns, Lounges; Gasoline Service Stations; and Drive-Through Restaurants.

**Support / Opposition:** As of the date of this printing, Staff has not received public comment for this proposal.

**Recommendation:** **Approve** as requested.

---

### **BACKGROUND**

1. The proposed amendments are a variety of housekeeping items and code enhancements. Specifically, recent experience with outdoor patios, bars, taverns, lounges, gas stations and drive-through restaurants has shown that modifications to land use standards and limitations and use permissions are necessary to achieve the intents of the General Plan, protect residential uses and promote commerce in the City. Additionally, clarified definitions and minor modifications to the land use table will enhance the usability of the code and keep it compliant with recent state legislation.
2. On May 20, 2010 The Planning and Zoning Commission was briefed on the proposed amendments and offered staff discussion and guidance. The Commission asked staff to review residential separation distances for gas stations and review design standards for drive-through restaurants. Staff examined the comments and recommends no change to the amendments. As proposed, they align with existing City noise and light codes and they are comparable to other community's zoning codes. All other items were favorably received.

## **ANALYSIS AND DISCUSSION**

### *Tobacco Retailer*

3. In recent years, hookah lounges, cigar bars and similar tobacco uses have become more common in the Phoenix metro area. Although considered a permitted "retail use" in most circumstances, no formal definition exists to describe these uses. The Smoke Free Arizona legislation allows smoking within these types of businesses. In response to this, staff proposes to define "Tobacco Retailer" as any business which has more than 50% of its sales derived from tobacco and/or tobacco accessory sales and may allow smoking within the business. This is consistent with the Smoke Free Arizona legislation. The definition is broad enough to capture cigar bars, tobacco stores, and hookah lounges yet narrow enough to exclude restaurants, bars and other retail stores. The use is also proposed to be a permitted use in the C-2 through C-5 zoning districts.

### *Outdoor Dining*

4. In 2006, outdoor dining was made a conditional use and standards were enacted to address location, hours, noise and light. This change was pursued due to compatibility issues with adjacent residential uses and poor experiences with a couple of existing outdoor dining facilities. Twenty outdoor dining cases have been processed as conditional uses since the text amendment took effect. Of those, two were within 200 feet of residential property and none were denied. The two within 200-feet of residential property generated some interest from the nearby property owners. The property owners did not object to the proposals when it was shown that adequate protection was put in place.
5. Because the vast majority of outdoor dining requests have not been adjacent to or nearby residential uses, mandating all outdoor dining requests as conditional uses is unnecessarily arduous in most circumstances. The proposed amendment allows outdoor dining as a permitted use unless it is within 200-feet of residential zoned property. In those cases, it is a conditional use. Whether reviewed as a permitted use or a conditional use, use standards limiting the location and design of the outdoor dining remain in place. Outdoor dining reviewed as conditional uses are also subject to hours of operation, noise, light and screening standards.

### *Gas Stations*

6. Recent experience has shown that additional gas station development standards are needed to ensure compatibility with adjacent uses. Additionally, the standards intend to mitigate negative impacts arising from gas station equipment

and proximity to other gas stations. Specifically, the following standards are proposed:

7. Gas stations are prohibited within 200-feet of residential zoned property. This is comparable to the standards utilized by other communities and is a sufficient distance to prevent light, noise, odor and other impacts from affecting residential property. Additionally, intervening buildings, landscaping, walls and parking areas will diminish the intensity of any impacts to a level well within the accepted community standards.
8. Gas stations must be at least 500-feet apart when located on the same side of the street. The intent of this code is to cause gas stations to locate on opposite sides of intersections and streets. Without this standard, multiple gas stations could locate on the same side of the street which is poor allocation of land use and a potential traffic/safety issue. This standard is designed to allow gas stations to locate on opposite corners of arterials and the opposite sides of arterials so that vehicles traveling from all directions may be adequately serviced.
9. Canopy lighting shall be flush with the canopy ceiling. Flush mounted lighting is designed so that lighting is directed downward rather than outward. Lighting which is directed in all directions contributes to light pollution, light trespass, and glare issues.
10. Fuel tanks larger than 1,000 gallons must be underground. Many gas stations in the northwest valley also retail bulk propane. Propane is also a viable alternative fuel and it is probable that more gas stations will consider propane sales as alternative fuel vehicles become more common.

The proposed standard requires that tanks larger than 1,000 gallons are located underground. Smaller above ground tanks will be required to be horizontally mounted and at least 25-feet from any public street so that they are made inconspicuous and not used as attention-getting devices.

#### *Drive-Through Restaurants*

11. Drive-through restaurants are permitted uses. There are also limited performance and development standards in the Zoning Code to address the unique characteristics of this use. Through review of other municipal development codes and examination of recent cases, a number of development standards are proposed to improve the compatibility with adjacent uses, improve the aesthetics of drive-through facilities and mitigate impacts on nearby residential uses.
12. Drive-through facilities within 200-feet of residential zoned property will be conditional uses; those beyond 200-feet are permitted uses.

13. A landscaping island, striping or other type of delineation will be required to separate the drive-through lane from drive aisles and parking lot. This improves safety of pedestrians and predictability of traffic movements.
14. Drive-through aisles, menu boards, order boxes, and pick-up windows will be at least 50 feet from residential uses. A 30-foot wide residential landscape buffer is required in addition to the 50-foot separation requirement. Together, the extra separation and buffering will reduce the impacts of light, noise, and odor on nearby residential properties.
15. Certain drive-through restaurants have intense drive-through traffic volumes. As conditional uses, the Planning and Zoning Commission can stipulate drive-through lane design and length requirements.
16. Lastly, restriction of operating hours; light, noise, visual, and odor mitigation; and other conditions may be imposed by the Planning and Zoning Commission to mitigate impacts generated by the use.

#### *Tavern, Bars, and Lounges*

17. Much like gas stations, recent case experience has shown that additional land use standards are necessary to ensure the use does not negatively impact residential zoned property. Therefore, the use will be prohibited within 200-feet of residential property. Additional controls related to operating hours, screening, outdoor patio area, live entertainment and other impacts will be required as relevant to the circumstances.
18. Currently, five taverns, bars and lounges are within 200-feet of residential zoned property. The existing taverns, bars, and lounges which are within 200-feet of residential zoned property will become legal non-conforming uses and will be permitted to continue operating.

#### *Electric Vehicle Charging Equipment*

19. To promote alternative fuel vehicles and sustainable practices, "Parking Spaces with Electric Vehicle Charging Equipment" is allowed as an accessory use in all non-residential districts.

#### *Retail Liquor Store*

20. The existing definition inadvertently defines any business which holds a Series 9 liquor license (packaged items) as a "retail liquor store." As a result, pharmacies, gas stations, grocery stores, and other retail stores are required to obtain a conditional use permit to receive a Series 9 license. Alcohol sales make up a minor portion of the total sales for these uses unlike a liquor store in which alcohol sales are the majority of sales. The proposed modification will exempt the noted types of businesses from the definition so that only retail liquor stores are subject to the conditional use permit and relevant use standards.

*Charter Schools*

21. To comply with recent state legislation, a very minor amendment to “Public/Private Schools, College and University Facilities, excluding Colleges and University Campuses” is proposed to add “Charter Schools”.

**FINDINGS AND RECOMMENDATION**

22. Based on the following findings:
- The proposed amendments are consistent with the goals, objectives and policies of the Land Use element of the General Plan which promote compatibility between differing uses and promote high-quality architectural and site development;
  - The proposed amendments promote economic development by refining when Commission review is necessary for certain uses and providing guidance for compatible development practices;
  - Upon review of the application, the Planning Manager has determined that a Proposition 207 waiver is not required for this application.

It is recommended that the Planning and Zoning Commission take the following action:  
**Recommend approval to the City Council Case TA 10-0101.**

**ATTACHMENTS:**

Exhibit A                      Proposed Amendments, legislative format

Prepared by:                  Edward Boik  
   Planner



## **ARTICLE 14-9-5 LIMITATIONS ON USE**

### **A. *Automobile Related***

5. Gas Service Stations shall be subject to all of the following additional requirements: (Ord. No. 03-171)
  - a. Minimum frontage of one hundred-eighty (180) feet on one arterial street is required.
  - b. No part of any building, canopy, fuel dispenser, or accessory equipment shall be within 200 feet of any residentially zoned property.
  - c. A minimum of 500 feet separation is required between gas service stations located on the same side of the street. Gas Service Stations separated by arterial streets are not subject to this requirement.
- ~~b-d~~ All of the following development standards shall apply:
  - 1) The minimum side and rear building setback including canopies, from a property line abutting a residential zoning district: ~~twenty-five~~thirty (2530) feet.
  - 2) The minimum side and rear building setbacks including canopies, from a property line abutting a non-residential zoning district: ten (10) feet.
  - 3) The minimum street setback for buildings, ~~including fuel dispensers, accessory equipment, and canopies~~: twenty-five (25) feet.
  - 4) All fuel pump mechanism and any accessory equipment dispensing fuel shall be covered by canopies.
  - 5) Under canopy mounted lights shall be flush with the underside of the canopy.
  - 6) Fuel tanks larger than 1,000 gallons must be located underground. Above ground tanks shall be screened from street view, shall not exceed 6-feet in height and shall be setback at least 25-feet from any public street.

### **B. *Eating & Drinking Establishments***

2. Restaurants with Drive-Throughs:
  - a. All drive through lanes, menu boards, speaker box, and other related elements shall be located at least 50 feet from any residential property or use. Speakers at drive-throughs shall not be audible from residential zoned property. Sound shall be mitigated by the use of sound attenuation walls, landscaping or other measures.
  - b. The drive-through lane shall be separated from parking areas and driving lanes by a minimum 5-foot wide landscaping island or other alternative as approved by the Planning Manager.
  - c. Drive-through canopies and other appurtenances shall be architectural compatible with the main building architecture.
  - d. Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but are not limited to, a restriction on operating hours, additional screening, relocation of the drive through, modification of the minimum drive-through stacking requirements, noise and visual mitigation and other measures appropriate to the relevant circumstances.
23. Outdoor Dining and Seating AreasPatios: (Ord. No. 06-07)

- a. Such areas shall be located immediately adjacent to the restaurant or establishment to which it is an accessory use.
- b. The use shall not interfere with pedestrian access, fire lanes, driveways, or traffic visibility at driveways or street intersections.
- ~~c. Such areas shall not exceed 25% of the gross floor area (GFA) of the establishment. The Planning and Zoning Commission may waive this requirement if it is found that sufficient mitigation measures are provided to eliminate potential adverse impacts on adjacent properties.~~
- ~~d.~~ d. Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but ~~is~~ are not limited to, a restriction on operating hours, additional screening, re-location of the outdoor dining and seating patio area, noise and visual mitigation and other measures appropriate to the relevant circumstances.

3.4. Tavern, Bar, or Lounge:

- a. The exterior building wall shall not be located within one-thousand (1000) feet of the property lines of a state designated Local Alcohol Reception Center.
- b. The exterior building walls of the use shall be located at least two-hundred (200) feet from the property lines of a residentially zoned property;
- c. Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but are not limited to, a restriction on operating hours, additional screening, relocation of any outdoor patio areas, live entertainment standards, noise and visual mitigation and other measures appropriate to the relevant circumstances.

~~Tavern, Bar, Lounge or establishment that sells beer or intoxicating liquor on the premises for consumption on premises shall be subject to the following additional requirement:~~

~~———— The exterior building wall shall not be located within one thousand (1000) feet of the exterior property lines of a state designated Local Alcohol Reception Center.~~

ORDINANCE NO. 2010-23

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 14 OF THE PEORIA CITY CODE (1977 EDITION), BY AMENDING ARTICLE 14-2 DEFINITIONS AND ARTICLE 14-9 NON-RESIDENTIAL DISTRICTS, PROVIDING FOR SEPARABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Maricopa County, Arizona, held a public hearing on July 15, 2010, to consider a proposed amendment to the Peoria City Code, after notice in the manner provided by law; and

WHEREAS, due and proper notice of such Public Hearing was given in the time, form, substance, and manner provided by law including publication of such in the Peoria Times on June 25, 2010; and

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Arizona at its regularly convened meeting of July 15, 2010, voted to recommend to the Mayor and Council of the City of Peoria, Arizona, that amendments be made to the Peoria City Code (1977 edition); and

WHEREAS, the Mayor and Council of the City of Peoria, Arizona, have considered the recommendation of the Planning and Zoning Commission of the City of Peoria, Arizona, and deem it to be in the best interest of the public health, safety and welfare of the residents of the City of Peoria, Arizona to amend Article 14-9, Non-Residential Districts, of the Peoria City Code (1977 edition):

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peoria, Arizona as follows:

SECTION 1. Article 14-2, Definitions and Article 14-9, Non-Residential Districts, of Chapter 14 of the Peoria City Code (1977 edition) shall be amended to read as shown in Exhibit A.

SECTION 2. Effective Date. This Ordinance shall become effective on the date provided by law.

SECTION 3. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona this 17th day of August, 2010.

\_\_\_\_\_  
Bob Barrett, Mayor

\_\_\_\_\_  
Date Signed

ATTEST:

\_\_\_\_\_  
Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

Published in: Peoria Times  
Pub. Dates: August 20, 2010 and August 27, 2010

Effective Date:



**ARTICLE 14-9-5 LIMITATIONS ON USE**

A. *Automobile Related*

5. Gas Service Stations shall be subject to all of the following additional requirements: (Ord. No. 03-171)

- a. Minimum frontage of one hundred-eighty (180) feet on one arterial street is required.
- b. No part of any building, canopy, fuel dispenser, or accessory equipment shall be within 200 feet of any residentially zoned property.
- c. A minimum of 500 feet separation is required between gas service stations located on the same side of the street. Gas Service Stations separated by arterial streets are not subject to this requirement.

~~b-d~~ All of the following development standards shall apply:

- 1) The minimum side and rear building setback including canopies, from a property line abutting a residential zoning district: ~~twenty-fivethirty~~ (2530) feet.
- 2) The minimum side and rear building setbacks including canopies, from a property line abutting a non-residential zoning district: ten (10) feet.
- 3) The minimum street setback for buildings, including fuel dispensers, accessory equipment, and canopies: twenty-five (25) feet.
- 4) All fuel pump mechanism and any accessory equipment dispensing fuel shall be covered by canopies.
- 5) Under canopy mounted lights shall be flush with the underside of the canopy.
- 6) Fuel tanks larger than 1,000 gallons must be located underground. Above ground tanks shall be screened from street view, shall not exceed 6-feet in height and shall be setback at least 25-feet from any public street.

B. *Eating & Drinking Establishments*

2. Restaurants with Drive-Throughs:

- a. All drive through lanes, menu boards, speaker box, and other related elements shall be located at least 50 feet from any residential property or use. Speakers at drive-throughs shall not be audible from residential zoned property. Sound shall be mitigated by the use of sound attenuation walls, landscaping or other measures.
- b. The drive-through lane shall be separated from parking areas and driving lanes by a minimum 5-foot wide landscaping island or other alternative as approved by the Planning Manager.
- c. Drive-through canopies and other appurtenances shall be architectural compatible with the main building architecture.
- d. Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but are not limited to, a restriction on operating hours, additional screening, relocation of the drive through, modification of the minimum drive-through stacking requirements, noise and visual mitigation and other measures appropriate to the relevant circumstances.

23. Outdoor Dining and Seating Areas/Patios: (Ord. No. 06-07)

- a. Such areas shall be located immediately adjacent to the restaurant or establishment to which it is an accessory use.
- b. The use shall not interfere with pedestrian access, fire lanes, driveways, or traffic visibility at driveways or street intersections.
- ~~c. Such areas shall not exceed 25% of the gross floor area (GFA) of the establishment. The Planning and Zoning Commission may waive this requirement if it is found that sufficient mitigation measures are provided to eliminate potential adverse impacts on adjacent properties.~~
- dc. Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but ~~is~~ are not limited to, a restriction on operating hours, additional screening, re-location of the outdoor ~~dining and seating~~patio area, noise and visual mitigation and other measures appropriate to the relevant circumstances.

3.4. Tavern, Bar, or Lounge:

- a. The exterior building wall shall not be located within one-thousand (1000) feet of the property lines of a state designated Local Alcohol Reception Center.
- b. The exterior building walls of the use shall be located at least two-hundred (200) feet from the property lines of a residentially zoned property;
- c. Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but are not limited to, a restriction on operating hours, additional screening, relocation of any outdoor patio areas, live entertainment standards, noise and visual mitigation and other measures appropriate to the relevant circumstances.

~~Tavern, Bar, Lounge or establishment that sells beer or intoxicating liquor on the premises for consumption on premises shall be subject to the following additional requirement:~~

~~\_\_\_\_\_The exterior building wall shall not be located within one thousand (1000) feet of the exterior property lines of a state designated Local Alcohol Reception Center.~~