

***3-b** Proposed Amendments to Chapters 5, 6, 7, 8, 31, 58, 86, and 87 of Title 11, Zoning Ordinance, of the Mesa City Code, pertaining to Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/teller Windows. The amendments include, but are not limited to: repealing in its entirety Section 11-31-18 (Drive-thru Facilities) and replacing it with a new Section 11-31-18 (Drive-thru and Pick-up Window Facilities); modifying land use tables pertaining to Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/teller Windows; removing definitions of Drive-thru Facilities and adding new definitions for Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows. **(Citywide)**

Planner: Rachel Nettles

Staff Recommendation: Adoption

Summary:

Assistant Planning Director Rachel Nettles presented the case to the board. See attached presentation.

Chair Crockett invited members from the public to come and speak.

Paul Gilbert, 701 N 44th Street: I'd like to preface my three minutes very quickly because that's a short period of time by saying I'd like to compliment the staff they've done some things right in this report. Noted would be focusing on the new restrictions on design standards. Rather than the use of eliminating numerical limits for drive-throughs, that was a big change. We're very happy to see that. Eliminating the requirements for a CUP in the LC commercial district. I like the idea of protecting employees that pick-up orders. I don't know of any jurisdiction that does that and I think it's phenomenal, so those are good things. However, there are a couple of things we would like to discuss with you. We're very concerned about the requirements for the industrial district right now, you've got PEP, LI, GI, HI and you are now requiring CUP where none existed before. This is plain and simple overkill. Other cities take a much more tailored approach. And indeed many cities in the valley and I submit the majority of them and I appear in all of them. Don't have any requirement of this type whatsoever. However, I have a suggestion. I think if you're going to require a CUP, it should only be required in industrial districts that are adjacent to residential zones or uses. You are now requiring a queuing study for every drive thru in all districts where none was required before. Again, I submit this as not necessarily and only required in certain instances. Why in Chandler and Scottsdale they only do it in required instances. Suggestion, again, this may sound a little bit repetitive, but I submit that we are to have this requirement for a queueing study only when the retail center is part of a rezoning case. You are now requiring enhanced screening for every drive thru in all districts where only 40 inch screened walls were required before suggesting only require the enhanced screening if the proposed drive thru would be adjacent to a residential district. Common theme, but I think it has a lot of applicability here. You are now proposing an automatic setback of 100 feet from any residential zone or use. We don't think that's necessary. It's not required in Chandler or Gilbert. One jurisdiction has it 125 feet. But that is an anomaly I'll submit this doesn't find place in very many other jurisdictions throughout the valley, including most of your neighbors. No CUP should

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be required we submit when a process requires a major site plan review. If you're going through a major site plan review, the city has all the tools they need to regulate a drive thru. And you don't need to get a CUP, you don't need to do a queueing study. You don't need to do all these things. If it's a major site plan amendment. In order to satisfy the city, you've got to go through the strict major site plan requirements, this is redundant, and overkill and not necessary. I don't think this case is ready to go to council. I've attended most of these meetings. I think we read everything that's been passed out. We're hearing new things tonight for the very first time. And we haven't had a chance to digest them. Although the outreach has been good. I'm not complaining, but changes continue to be made. The other thing that bothers me a little bit is that every time we reach something that's kind of an impasse, or it doesn't seem quite right. We get this feedback. Oh, well, that's okay. We'll work with you on that. Who knows who's going to be there who knows what we're going to be working with? Who knows what those standards will be? So I submit that those things still have yet to be worked out in the ordinance and that this could use some more breathing room. Thank you for your time.

Mary Grace McNear, 701 N 44th Street: I will echo some of Paul's comments, but actually I'm going to cover something different. I wanted to talk a little bit about the queuing and circulation study. I appreciated the discussion downstairs in study session, it was very helpful that the board seems to be keying on some factors that will really be important to our clients when they try to develop property in Mesa. From the standpoint of a developer sometimes we don't know who the end user is going to be. So if I'm going to fill out a queueing study how accurate is that going to be before I have my users set up for my site plan? And I assume that this queueing study is going to be required at Site Plan Review? See, it doesn't say that in the ordinance draft. But I think we're all assuming that that's where it will be required. So this is an example of some things that I just think that ordinance needs a lot more tightening. And this queuing study is still a concern to us. Because when I came here tonight, I was ready to say, before I sat through the study session, I was ready to say, how could it be that we're going to do a sound study, for every drive thru in the city of Mesa, as it turns out, we're only going to cut some study is only going to be required, if you are trying to lessen the requirements. That's not what the ordinance says. So I would say, you know, it needs some adjustment, and it needs some adjustment, and then feedback from the community before you make the changes that we were talking about today. We don't like the language, to be honest. So that allows the planning director to require additional information and a queuing study at his or her discretion. Again, it's not that we don't like staff, or we don't like to work with them. But what we see there is an opportunity for us to come in to an unknown situation, you know, tell us what the rules are, and we'll follow them. But don't leave a bunch of discretionary decisions out there to be made by staff, because that makes things uncertain, that slows things down, and it costs us money. And it's unnecessary. I mean, if there was a good reason for it, I would say great. But you know, the necessity of it has not been shown, what is the information that we give you in a queueing study changes, or user changes, and all of a sudden, our hours of operation are different? Or it takes more time, the time that we estimated to take orders or to fill orders? Are we out of compliance? What happens to our zoning if we're not in compliance in that way? Do we have to submit another study? Or do we have to update the city in some way? None of this is covered in the ordinance. And again, it's concerning that we might come in and hear oh, yeah, well, if that does change, we want you to come back,

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we want you to report to us. I mean, maybe that's not in the offing. But we didn't know that we weren't required to submit a sound study in every case until tonight, either. So again, this needs some adjustment and it is not easy to apply, whenever you come in to seek these approvals. Paul already said, we object to having to get a CUP in the industrial stone zones. In the previous session, we heard that staff on the council wants to preserve employment uses. And I heard that when I listened to the study session of council to but you know, it really, these, these, these drive three uses only take up a small portion of the industrial site. And what do they have? If they're on an industrial site? What do they have to be buffered from other commercial and industrial uses? I don't think so, this is an unnecessary obstacle. And I want to point out that in Chandler, a CUP is required in planned industrial and general industrial, and in Scottsdale in light industrial and industrial park. And in Gilbert not required in any industrial district, only a neighborhood commercial and Heritage Village. So I think we have a couple facts wrong there. Finally, well, I'm not going to repeat this, if you're going to build in some flexibility for us on these options. Please put it in the code so that we don't have to rely on comments like this meet tonight and we're not left hanging out to dry when it comes to get our approvals. Thank you so much. I add my gratefulness to the staff my gratitude for the work that they did. I've been involved in this process since the beginning. And I really appreciate some of the changes that were made. Thank you.

Alan Tom, PO Box 31465: I've been a residence here in Mesa for a long time and we're being strangled to death here. I have got a fine piece of property in northwest corner of Ellsworth Road and University. My neighbor across the street is going to put a Wendy's, Taco Bell and a Dutch Brothers that are across the street and we have almost the same identical site. For 60 years I play by the rules I got my zoning in place why am I being strangled with possibilities of 100 foot setback. I did nothing wrong, I pay property taxes there and I want to get three fast foods on my property that are on the northwest corner and you know what kind of property that is, it's a very unique piece of property. They just built a new residential development several millions of dollars their new concept of small miniature home and renting them out there's 160 of them over there. Now I got my property might have up to 300 feet on Ellsworth and University you guys are all very intelligent a 100 foot setback and I'm going to put three fast food restaurants there suppose Raising Caine's wants to go there and an In and Out Burger or Chick-fil-A, they're going to make it so I might only have one restaurant. Why am I being punished for this? I've done nothing wrong. There are so many things to be said. It's unbelievable. I don't have enough time. 8, 9 or 10 years ago, I had the right to put another convenience store on my corner. The city of Mesa took that away from me. I didn't even know about that. You know, we're grandfathered in. And I have two really smart kids that are government lawyers one is a head county attorney out of state and another one at Arizona Supreme Court decision precedent case she is very sharp. I brought this up to her and she said dad any legal zoning usage you have she said the regulation shows up you cannot develop from that, they are taking the fifth and 14th United States Constitution and she's a very smart young lady. The northeast corner of Power Road and Main Street that we have 30 acres and I want to put eventually one of these days a fast food restaurant in the corner but we got a mobile home park well that's a residential property. Now the 100 feet setback maybe I can't get the stacking. I mean, it's a strangle in our country here we have stringent rules or regulations we can embrace. You also make them want to be friendly for

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businesses. How can this be friendly for business over here? You get a design review board. They address all these situations already. It's like what these people here sit where we're being straight. I could sit here for hours and talk. I got my zoning place. And the time is now like University and Ellsworth over there at Northwestern you. Why can I get three fast foods like my neighbor is going to get? And I said, I'm being emotional. My wife told me not give me emotional, but how can you be not emotional? You know, and I talked enough. And all I can say is please put on your thinking cap this cannot happen there were already been strangled to death already, you know.

Jeff Welker, 3125 E Dover St: And as I anticipated, Paul, Mary Beth and Mr. Tom have stolen all my thunder and left me with little to talk about but I want to add my voice to theirs. And thank staff for the hard work they've put forward on a very difficult task the city council handed them, it's not easy. In a former life, I used to make presentations in the study session chambers below and up here to the city council. When I was an employee for the city of Mesa, I was trained by a really knowledgeable manager. And he said, when you're making your presentations to boards or to the city council, you can gauge how well you're doing with an ordinance amendment or a new ordinance. Based upon how many questions come at you, and how long it takes to help those board members or council members understand what you're presenting to them. You spent, I'm going to guess a little over an hour earlier this afternoon down in the chambers, bouncing questions back and forth off of staff in some cases, the same question multiple times and example being why do we need to study queuing and stacking and provide those detailed and expensive reports? If we comply with the standards that are established in the ordinance? A fair question. It was asked numerous times by these board members. And I think this board is a thoughtful board and ask thoughtful questions. But it's an example. And others have cited other examples of the ambiguities that are in the current version of the ordinance being proposed the amendments. And I agree with Paul that I don't think this is ready for city council primetime. And instead, I think staff should go back and try to address these ambiguities. I appreciate, for example, the explanation on what happens with existing sites where most of the shopping center has been built that maybe there's a PAD or two that has been left for years and years, and was developed under much different standards than today. How does that work? And staff points out various things within the current ordinance and other sections that could be used to help mitigate those issues. And they're correct, they exist. But I think the ambiguity is how they're applied with these new amendments, which how would they work with them? Because I can guarantee you that that would be left to interpretation by applicants, landowners, staff, council members and boards. And I think that the ordinance would benefit from greater guidance and more specificity on how these unique scenarios work. I also think it would be helpful and promote adherence. If you say if you adhere to standards, you don't have to use and provide this study. And if you need to deviate from the standards, then the study would be an obvious way to present data to staff to consider as to why your deviation might be helpful. I appreciate the board listening to our comments and hearing our concerns. The folks I get to work with own existing shopping centers, and the retail and commercial world is much different than it used to be where we used to have large grocery stores anchoring these sites now. Now they're anchored by AutoZone. And these parcels and the drive throughs that are proposed ours in some cases, one of the very few things that helped keep those centers alive financially. And when the city with good intentions, creates

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more onerous demands and greater costs and time on these centers, they jeopardize their long term viability. And so we would ask that staff be tasked with taking those things back working on them and coming back and making those changes and sharing them with you to show where they've addressed those items. And thank you for that time.

Carol Harder, 1515 E Bethany Home: I think I'm going to address the elephant in the room and that is that when this started out there was this perception that by following some of this that more sit down restaurants or more restaurants with patios with things that I think almost any of us if we were asked what would you rather have on the corner close to your home that you could ride your bike to? I want a true food right I want a I want a place where I can go with my children beyond on a patio, I can tell you we own five shopping centers in Mesa. None of those users are knocking on our door. And so the perception that by doing this means that we're going to get more of those users we don't see that I haven't seen that in probably at least four years now, since COVID happened. So it's just going to make it so that we're the pads are going to sit vacant, which is the last thing that anybody wants. And we as developers, we would love the ability to have even more discussion with staff on addressing those concerns. And is there a middle ground? Is there a way to get to something that is more of what the residents want? And I think one of the challenges is going to be if you look around at the sit down restaurants in Mesa, especially in central Mesa, right Country Club and Southern, Mesa and Southern Main and Lindsay, the people aren't, if you look at the sit down restaurants, the residents aren't going there, they're going to the drive thrus. And so this is, this is not going to help to get to that. I think there's other ways to do that. So, thank you very much for everybody's time.

Assistant Planning Director Rachel Nettles added this has been a thorough process. And we have tried to take in consideration all the feedback and different opinions that we've heard from the various stakeholders. Tonight, we're hearing from one set of those stakeholders. And it's unfortunate that we're not hearing the other voices. But it is our responsibility as staff to kind of represent those as well. And we are in a spot where we are trying to balance the needs of both of these parties. We've done our best to come to a reasonable compromise to accomplish those. No zoning ordinance is going to be perfect. We still continue to hear kind of conflicting consensus from stakeholders about wanting more definition and restriction and details about what there is and then more flexibility we've tried to put processes in place that allows some flexibility and deviations. We've really been intentional about looking at our zoning districts and where those are allowed. We have heard a lot of feedback from our economic development community and different council members and concerns about the amount of drive thrus that are eating up our industrial and employment areas within the city. We think that through the council use permit that that still provides opportunities for those, but it provides a good check and ability for the community to really assess what's best for the city.

Planning Director Mary Kopaskie-Brown added that we heard a lot about the protection of residential districts. And yes, that is one part of this. So the design standards we have come up with really have a couple of goals. It is to protect those residential properties that are adjacent to these uses. But it's also about the image of the city of Mesa. We hear over and over again, there are four or five drive thrus in a row. What does that do to our major corridors where people are driving regularly? What is the image of our city with that? What we've done in listening to our stakeholders is there really is a lot of compromise in this as it relates to those design

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standards that we put in place to try to make our public realm more attractive. It's not just about the adjacent residential uses. It's about what we see every day as we're driving down our streets. I think that seeing that this is not ready to go to counsel is a little troubling and that they're hearing new things today because we've not introduced anything that we haven't talked about that was not presented at the public meeting that we had earlier this month. Everything we've talked about was in there. We've made some modifications to them. But everything was in that in the ordinance that was discussed at a public meeting. As it relates to the queuing study, we have a lot of residents who are asking for more, as it relates to those queuing studies. They want full traffic impact studies, they want a full study where we look at the cumulative impacts as you would with any traffic impact study, what we've done in listening to the industry is said, look, what is the compromise? The compromise is, we want to make sure that it's safe for cars, we want to make sure it's safe for pedestrians, we want them to show us how they're going to do that, we're putting that onus on the development community, the developer who's coming in and doing those drive throughs, to say how they're going to protect the people that are going to be in that shopping area to ensure that cars aren't queuing onto a street, rather than putting that onus onto the city staff, once it happens to fix it. So what we're trying to do is get ahead of it before it occurs. As it relates to the noise. Again, we're trying to predict people's quality of life, what we're saying is, if there is noise being generated by your use, you need to mitigate it, and you need to show us how you're mitigating it, again, to protect those residences that are surrounding those properties. There are so many processes already built into the code with very clear criteria and standards on how what process would apply to any individual situation on a parcel. Whether it's a PAD based on your lot size, whether it's a BIZ based on your lot size, whether you need to go through the SCIP process, there's so many processes already in place. To put those just related to drive thrus really is counterintuitive to how a zoning code works. And that is your processes set up to go through and put all of the different things that you're doing in your zoning code, through the same processes. Rather than all of these exceptions you only need if you're in an industrial area adjacent to a residential property, it defeats the purpose of having that transparent equity for everyone to go through those same processes. And that really is how a zoning code should be written to ensure that people are having very consistent, transparent processes that they're going through. I do want to just again, point out a lot of our industrial lands were right now drive thrus are permitted. That is where we're seeing a lot of our drive thrus and our industrial land is getting eaten up by those drive thrus. So what we're trying to do is say, yes, they should be there, they should be allowed with a CUP. So that people who work in that area have a place to go to lunch. But we do need to protect our industrial lands, we do need to protect those job opportunities. That's why they're being proposed for the CUP, we looked at all the surrounding jurisdictions, to see that we are meeting the same kind of practices, we're not doing anything out of the ordinary with these recommendations. I don't think any of what we're trying to do is to say we're going to get more sit down restaurants, that economic development is working on with City Council based on some direction for a study that they're working on. This is about the image of our city. This is about what you see when you drive down Power Road or you drive down Broadway or you drive down Main Street. This is about people who live adjacent to these areas, to make sure that their quality of life is as protected as mine is and as protected as yours.

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Assistant City Attorney Charlotte McDermott added I just wanted to address some of the comments that were made this evening about the proposed text amendments requiring a council use permit when one is not currently required. As discussed in a study session, there is a process in the ordinance for a waiver, where property owner can request a waiver to the changes in the proposed text amendments that would require that council use permit. And that would basically put the property owner in the same position that they exist today. And the timing and who can request the rate waiver and the waiver requirements and the specific information that they have to submit is all set forth in the ordinance.

Boardmember Blakeman expressed concern with the current proposed text amendments and stated that the CUP requirement changes will create a lengthy and complex process for applicants. In addition the process to get deviations from the new standards is confusing, we don't know where the approvals are going to come from, how high up do they need to go and what departments will need to be involved in the final approval process. Additionally, the 100-foot setback requirement is very complex in how it will work and I have some reservations.

Boardmember Peterson also expressed concern with the current proposed amendments

Discussion ensued amongst the boardmembers on the options available to them for voting.

Boardmember Peterson motioned to deny the proposed amendments to Chapters 5, 6, 7, 8, 31, 58, 86, and 87 of Title 11, Zoning Ordinance, of the Mesa City Code, pertaining to Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/teller Windows. The amendments include, but are not limited to: repealing in its entirety Section 11-31-18 (Drive-thru Facilities) and replacing it with a new Section 11-31-18 (Drive-thru and Pick-up Window Facilities); modifying land use tables pertaining to Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/teller Windows; removing definitions of Drive-thru Facilities and adding new definitions for Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows. **(Citywide)** The motion was seconded by Boardmember Blakeman.

Vote: 5-0 (Chair Ayers, Vice Chair Pitcher; absent)

Upon tabulation of vote, it showed:

AYES – Crockett - Peterson, Montes, Blakeman, Carpenter

NAYS – None

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