



City Council Staff Report

Date: October 2, 2023
To: City Council
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From: Rachel Nettles, Assistant Planning Director
Subject: Mesa Zoning Ordinance Text Amendment (**Drive-Thru Facilities**) - Proposed Text Amendments to Chapter 5, 6, 7, 8, 31, 58, 86, and 87 of Title 11 of the Mesa City Code

PURPOSE:

Over the last two years, at the direction of the City Council, Staff has been conducting public outreach and research related to the City's development standards for Drive-thru Facilities. The review included, but was not limited to, a review of the City's current zoning regulations and research of best practices/standards from surrounding jurisdictions. The proposed text amendments address common negative impacts that Drive-thru Facilities may have on the surrounding community, including visual, lighting, traffic, odor, and noise impacts, and aligns with City Council's strategic priorities of placemaking, building communities that are safe, healthy, welcoming, and economically vibrant.

Throughout the text amendment process, City staff presented, solicited feedback, and discussed potential amendments with the public, the Planning and Zoning Board, and City Council. Approximately 180 residents and members of the development community participated in the outreach meetings process by attending in-person or virtual meetings. Staff also held three study sessions with the Planning and Zoning Board and four study sessions with City Council to seek direction and input on developing the standards and to solicit feedback on the public involvement processes.

The proposed development standards and text amendments (Proposed Text Amendments) were developed with input from stakeholders that both oppose and support amendments to the current process. A total of 13 letters in opposition and 70 letters in support have been received related to the text amendment process. The Proposed Text Amendments incorporated recommended modifications heard over the last two years from both residents and the development community. Following the public participation process, including the discussions with the development community to solicit recommendations, staff drafted development standards to be reviewed by the Planning and Zoning Board to make a recommendation to the City Council for adoption.

Overall, the primary goals of the Proposed Text Amendments include: 1) Improve the City's built environment and enhance the image of the City using development design standards; 2) Improve public safety and minimize traffic concerns related circulation, stacking and parking and pedestrian circulation around drive-thrus; and 3) Minimize impacts on residential properties proximate to drive-thru facilities. Below is the summary and explanation of the Proposed Text Amendments.

SUMMARY AND EXPLANATION OF THE PROPOSED TEXT AMENDMENTS:

1) Modify the land use review process for Eating and Drinking Establishments with Drive-thru Facilities in the Neighborhood Commercial (NC), Planned Employment Park (PEP), Light Industrial (LI), General Industrial (GI), and Heavy Industrial (HI) zoning districts.

Currently, the Mesa Zoning Ordinance (MZO) allows Drive-thru Facilities in the Limited Commercial (LC), General Commercial (GC), Planned Employment Park (PEP), Light Industrial (LI), and General Industrial (GI) Districts. In the Neighborhood Commercial (NC), Mixed Use (MX), Downtown Business-2 (DB-2), and Heavy Industrial (HI) Districts they require a Special Use Permit (SUP) and in the Downtown Business-1 (DB-1) require a Council Use Permit (CUP).

Purpose of the Neighborhood Commercial District:

Per Section 11-6-1 of the MZO, the purpose of the NC District is to provide areas for locally oriented services and development with strong pedestrian networks which serve the immediate neighborhood within ½ to two miles. The NC District is meant to be integrated into the fabric of the surrounding neighborhood and therefore allows for lower intensity commercial uses that mainly serve the immediate neighborhood and create less impact to nearby residents.

Requiring a CUP in the NC District will allow City Council to consider, among other criteria, whether a proposed drive-thru design and operations are appropriate for its setting and not harmful to the surrounding area.

Purpose of the PEP, LI, GI, and HI Districts

Chapter 7 of the MZO states that the general purpose and intent of the employment zoning districts is to designate land for industrial, office, and research and development uses. The various employment districts are intended for employment generating uses which range in intensity from business parks, warehousing, manufacturing, and heavy industrial processing. Commercial activities are described as allowed on a limited scale to support other activities.

This is further supported by the Employment character area designation of the General Plan which uses the employment zoning districts as the primary zoning districts to fulfill the intent of providing for a wide range of employment activities in high-quality settings. Commercial uses are described as secondary uses that may be allowed to support the overall intent of the character area.

Requiring a CUP in the employment zoning districts will allow the City Council to consider, among other criteria, whether the proposed commercial use is appropriate for its setting and consistent with the purpose of the zoning district and the overall goals of the General Plan.

Staff reviewed the specific purpose of the districts and, based on the intent of the districts, is recommending that Drive-thru Facilities require a CUP in the NC, PEP, LI, GI, and HI Districts.

2) Modify the definition of Drive-thru Facilities and add land use classifications for Pick-up Window Facilities and Drive-up ATM/Teller Window.

When evaluating the City's current standards for Drive-thru Facilities, staff recognized the inherent differences between certain facilities and their impacts. By creating separate land use classifications for Pick-up Window Facilities and Drive-up ATM/Teller Windows, the City is able to create specific development standards that recognizes the uniqueness of the two different uses and, in some cases, allow them by right.

Staff recommends that the existing definition of Drive-thru Facilities be modified and a new definition for Pick-up Window Facilities and Drive-up ATM/Teller Windows be created to account for this difference. The proposed definitions for Drive-Thru-Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Window include:

Drive-thru Facilities. Establishments providing, goods, food, or beverage through a window to patrons remaining in an automobile, where an order menu board is present, and orders are placed on site via an order menu box or via an employee taking orders from patrons remaining in an automobile.

Pick-up Window Facilities. Establishments providing goods, food, or beverage through a window to patrons remaining in an automobile, where orders are placed by patrons before reaching the establishment, and where no order menu board, order menu box, or employee taking orders from patrons remaining in an automobile are present. An establishment with parking spaces designated for pick up orders are not included in this definition.

Drive-up ATM/Teller Window. Banking and financial institutions that provide a driveway approach for automobiles to serve patrons remaining in an automobile, including stand-alone automated teller machines, automated teller machines attached to a building or structure, and service windows on a building or structure.

3) Modify development standards for Drive-thru Facilities and establish development standards for Pick-up Window Facilities and Drive-up ATM/Teller Window and.

In conjunction with the changes discussed above, MZO Section 11-31-18, Drive-Thru Facilities, will be repealed and replaced with a new MZO Section 11-31-18, Drive-thru Facilities and Pick-up Window Facilities. The new section will include:

- (1) General development standards for both Drive-thru and Pick-up Window Facilities;
- (2) Requirements for an on-site circulation and stacking study for Drive-thru Facilities;
- (3) Stacking requirements for Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows;
- (4) Screening and buffering requirements; and

- (5) Employee protection requirements for drive-thrus that have employees taking orders outside.

The current MZO includes development standards that are not being modified, except for minor clarifications. For example, the stacking requirements (100-feet between the drive-thru window and order-placing box and 40' between the order-placing box and the entry to a drive-thru lane) is being retained. The 40" screen wall adjacent to an arterial street is being retained, but staff is recommending additional landscaping and an architecturally integrated awning, canopy, or trellis to better screen the drive thru lane when it is adjacent to an arterial.

Staff recommends the following new proposed standards organized by topic.

General Requirements - Section 11-31-18(B)

- References to pick-up lanes and drive-up lanes were added to capture that requirements apply to Pick-up Window Facilities, Drive-up ATM/Teller Windows, and Drive-thru Facilities.

Onsite Circulation and Stacking Study - Section 11-31-18(C)

- Requirement for an Onsite Circulation and Stacking Study for Drive-thru Facilities was added.
- This study will describe the operations of the Drive-thru Facility in terms of business hours, method by which orders are placed, average service time, arrival rates, and anticipated stacking analysis.
- Based on this study, modifications to the MZO development standards related to stacking may be requested.

Stacking Requirements - Section 11-31-18(D)

- A minimum 50-foot stacking distance was added between the entry of the drive-thru lane/pick-up lane to a street access driveway or cross access drive aisle to address potential overflow onto public streets and onsite circulation. This mimics the City's requirement for a 50-foot setback of cross-access drive-aisles and parking spaces from a street driveway access.
- A minimum 100-foot stacking distance was added specific to Pick-up Window Facilities, requiring 100 feet between the pick-up window and the entry to the pick-up window lane.
- A minimum 40-foot stacking distance was added for Drive-up ATM/Teller Windows from the ATM/Teller window to the entry of the queuing lane.
- An allowance for modifications to the stacking requirements of Section 11-31-18(D) was added. Modifications may be considered upon evidence from the onsite circulation and stacking study that the proposed stacking is sufficient to meet the demands of the proposed development.

Screening/Buffering Requirements - Section 11-31-18(E)

- Two alternative treatments were added for when site conditions would not prevent a drive-thru lane or pick-up lane from locating parallel to an arterial roadway.
 - The first method involves providing the previously required 40-inch screen wall; however, in addition, additional landscaping must be provided.

- The second method involves providing an architecturally integrated awning, canopy, or trellis system that covers the entire drive-thru lane or pick-up lane as well as additional landscaping. The second method requires less additional landscaping than the first method since more screening is accomplished through the architectural treatment.
- A 100-foot setback was added from a drive-thru lane/pick-up window to a residentially zoned property or residential use. This requirement ensures buffering between different uses and helps mitigate the impacts of these facilities on neighbors. Modifications to the base standards may be considered and approved by the Planning Director if evidence from a sound study demonstrate that noise can be mitigated through other treatments.

Employee Protection Area - Section 11-31-18(F)

- Drive-thru Facilities whose operations include employees who take orders outside of the eating establishment would be required to provide a raised two (2) foot wide pedestrian path and an architecturally compatible shade structure for the employee protection.

REQUEST FOR WAIVER OF THE “DRIVE-THRU LAWS”:

Section 9 of the Ordinance provides that an owner of real property who claims that their rights to use, divide, sell, or possess, and that the fair market value of, their real property was reduced by the enactment or applicability of the newly enacted land use laws applicable to Drive-thru Facilities contained in Section 1 of the Ordinance (“Drive-thru Laws”) may request a waiver of the Drive-thru Laws on their specific parcel.

For clarification purposes only, the “Drive-thru Laws” do not include the laws applicable to Drive-up ATM/Teller Windows or Pick-up Window Facilities in Section 1 of the Ordinance or the development standards in Section 2 of the Ordinance.

Section 9 sets forth who can request a waiver and the requirements for a waiver request (including the deadline for submitting a request and the specific information that must be included). If a waiver is granted, the owner is granted the right to use the specific parcel in compliance with the MZO as if the Drive-thru Laws were not adopted. For example, for a specific parcel zoned Neighborhood Commercial (NC) or Heavy Industrial (HI) on the effective date of the Ordinance, the owner would be required to obtain a Special Use Permit (SUP) as set forth in the MZO as it existed immediately prior to the effective date of the Ordinance; they would not be required to obtain a Council Use Permit (CUP) as set forth in the Drive-thru Laws.

A Waiver automatically terminates when the specific parcel is rezoned. A Waiver does not limit or prevent, with a rezoning, a development agreement, and does not alter or affect an existing development agreement, that restricts or prohibits certain land uses including Drive-thru Facilities.

PLANNING AND ZONING BOARD PUBLIC HEARING AND RECOMMENDATION:

On September 20, 2023, the Planning and Zoning Board considered the proposed drive-thru text amendments and voted to not recommend adoption of the proposed text amendments to City Council (Vote 5-0).

At the public hearing Board members expressed concerns with some of the Proposed Text Amendments and stated the possibility of needing more time to re-evaluate the proposed standards before making a recommendation to the City Council. Provided below is a summary of the specific items discussed and a summary of the Board's comments.

- 1) **Proposed updates to Chapters 6 and 7 to require a Council Use Permit (CUP) in the NC, PEP, LI, GI, and HI zoning districts.**
 - A. Comparison maps presented by Staff comparing lands available in Mesa with surrounding jurisdictions is misleading because much of the LI areas are already developed with industrial uses.
 - B. The CUP would lengthen the process and create complexity.
 - C. Drive-thrus are demanded by consumers and the implications of the CUP requirements are not clear.
 - D. May reduce the number of drive-thrus moving forward.
 - E. The Proposed Text Amendments will not increase the number of sit-down restaurants.
 - F. Need to be clear when a CUP would be required.

Staff Recommendation based on the Planning and Zoning Board Concerns – Staff is recommending no changes to the proposed processes outlined in the Proposed Text Amendments which includes a recommendation to require a CUP in the NC, PEP, LI, GI, and HI districts.

The maps presented are a comparison of zoning districts in the jurisdictions where drive-thrus may be developed either by right or with the approval of a Conditional Use Permit, not a representation of vacant land. The maps represent the zoning districts in Mesa and surrounding jurisdictions which have the zoning in place that would allow for the drive-thru facilities.

In response to earlier questions from City Council regarding how many more zoning cases would require City Council approval with the proposed amendments, staff completed an analysis that shows that of the 71 drive-thru cases processed between January 2021 and June 2023, five projects that were not already required to go to City Council would have required City Council approval of the CUP.

- 2) **Proposed Section 11-31-18(C) Onsite Circulation and Stacking Study**
 - A. Minimum standards are included so the required study is duplicative.
 - B. It is not clear if the Study is required for those that meet the standards and those that do not.
 - C. Onerous on projects that meet the minimum development standards as it is hard to deviate from standards.
 - D. Consideration for a prescriptive model rather than standards for circulation, stacking and parking.
 - E. The processes would be cumbersome to receive deviations – this could be costly for development.
 - F. There are a lot of hoop-jumping waivers.

- G. Not clear who approves the deviations.
- H. Drive-thru developers have done research to understand their needs – they know what they are doing with their site plans – why do we not trust their site plan and why are the extra requirements added?
- I. Operations and drive-thru sites are unique and standard requirements may not be appropriate for every site

Staff Recommendation to the Planning and Zoning Board Concerns: Staff is recommending no changes to this requirement. The Onsite Circulation and Stacking Study will ensure that unique situations on individual properties and cumulative impacts are considered. In addition, requiring the Onsite Circulation and Stacking Study will ensure potential circulation impacts and hazards for pedestrians or vehicles are mitigated.

3) Proposed Section 11-31-18(E)(2) – 100 Foot Separation from Residential Property

- A. The requirement seems arbitrary.
- B. The property adjacent to a drive-thru may not contain a home or backyard (e.g., parking lot or dumpsters) – a graphic may be helpful.
- C. Egregious standard in many cases when it may not be required.
- D. Need a decibel standard so that decisions can be made on the modifications proposed.
- E. Background noise may be louder than the call box.
- F. It does not seem that other jurisdictions have this requirement.

Staff Recommendation to the Planning and Zoning Board Concerns: Staff recommends amending Section 11-31-18(E)(2) of the MZO to allow deviations from the 100-foot standard if a sound study submitted by the applicant. The distance could be decreased if the applicant demonstrates that the drive-thru noise level at the property line will not exceed 60 dB (level of a normal conversation). If the ambient noise level exceeds 60 dB, the noise study will demonstrate that the drive thru will not increase the existing level. As a matter of information, ambient decibel levels in residential areas is typically 45-55 dB depending on the time of day and the decibel level of freeway auto traffic is approximately 60 dB.

4) Legal Waiver

- A. The process for the Legal Waiver is unclear.
- B. Not sure how property owners would protect their rights related to Prop 207.

Staff Recommendation to the Planning and Zoning Board Concerns – Staff is recommending no changes to the proposed processes outlined in the Proposed Text Amendments. Any owner may request a binding waiver of the enforcement of the Proposed Text Amendments. The waiver process is consistent with Arizona Revised Statutes (“A.R.S.”) § 12-1134. The owner would submit a written demand to the Planning Division that includes: (1) the specific amount of just compensation; (2) a statement that the rights to use, divide, sell, or possess, and that the fair market value of, the owner’s specific parcel were reduced by the enactment or applicability of the Drive-thru Laws; and (3) evidence that the owner submitting the waiver request owned the specific parcel on the effective date of this Ordinance.

This waiver only applies to the revised process (CUP requirement), and all development standards would have to be met. If the waiver is not requested within three years, the property will be subject to the Proposed Text Amendments as it relates to the revised process.

This waiver would be terminated if a property is rezoned.

Public Comments at the Planning and Zoning Board Public Hearing - five speakers opposed the Proposed Text Amendments. In summary, comments included:

- Concerned with the changes to the CUP process in the PEP, LI, GI, and HI Districts – a tailored approach could be taken to only require these when adjacent to residential districts.
- Queuing Studies should only be required as part of a rezoning case.
- Screening should only be required if the drive-thru is adjacent to a residential district.
- 100-foot setback is not necessary
- Do not require a CUP for Site Plan Amendments
- Case not ready for Council – new things presented for the first time – changes continue to be made – concern with processes not being clear
- May not know an end user so queuing studies may not be accurate
- Not clear when the queuing study is required
- More feedback is needed from the community
- Rules are changing
- Not sure what happens with existing pads that have been approved
- These amendments will not increase the number of sit-down restaurants

NEIGHBORHOOD PARTICIPATION PLAN AND PUBLIC COMMENTS:

Amendments. Exhibits 4 – Public Comment in Opposition and Exhibit 5 – Public Comment in Support includes all written correspondence received for the Proposed Text Amendments to date. In summary, the comments included:

Feedback from Development Community:

- Council approval would be costly, time consuming, and arbitrary
- City’s goals could be accomplished through design standards
- Proposed amendments not in-line with other jurisdictions relaxing regulations

Feedback from Residents:

- Council should consider limiting the number of drive-thrus to address onsite congestion and encourage more out of car shopping
- There are enough QSR options already available
- Desire for higher-quality development

A summary of outreach efforts includes:

Event	Date
City Council Study Session	February 24, 2022
Planning & Zoning Board	March 23, 2022
Development Advisory Board	April 2022
Public Meeting #1 (virtual)	June 29, 2022
City Council Study Session	July 11, 2022
Public Meeting #2 (virtual)	September 21, 2022
Public Meeting #3 (In-Person)	September 27, 2022
One-on-One Meetings	Multiple
Public Meeting #4 (In-Person/Virtual)	November 1, 2022
Focus Group #1 (In-Person)	January 12, 2023
Focus Group #2 (Virtual)	January 17, 2023
Public Meeting #5 (In-Person and Virtual)	January 30, 2023
City Council Study Session	May 25, 2023
Planning and Zoning Board Study Session	August 23, 2023
Public Meeting #6 (In-Person)	September 6, 2023

At the various meetings, staff presented and discussed the proposed amendments with stakeholders and received stakeholder feedback that was considered throughout the process. Alternatives were presented based on the feedback that staff received at each step of the outreach process. Staff continued to ensure that while addressing stakeholder comments, the City’s goals were accomplished. For example, the Proposed Text Amendments were modified to address opposition and concern related to prohibiting drive-thrus in the NC district; requiring a CUP in the LC district; and regulating the concentration of drive-thrus at street intersections and within group commercial centers.

The development community continued to express concern for the Proposed Text Amendments to the existing regulations. This included comments that other jurisdictions were relaxing their regulations while Mesa was looking to increase theirs. Stakeholders also expressed the desire to use design standards to address potential impacts rather than limit the number of facilities at a particular location. Staff continued to research and reached out to surrounding jurisdictions for their regulations and processes. The research did provide valuable insight into how Drive-thru Facilities are regulated in the Valley. These Proposed Text Amendments are designed to bring Mesa’s regulations in line with those of surrounding jurisdictions, provide design standards to better regulate facilities, and better comply with the intent of Mesa’s zoning districts and General Plan designations.

RECOMMENDATION:

Staff recommends adoption of an Ordinance to amend the MZO, Exhibit 1 – 2023 Amendments to the Tables in the Mesa Zoning Ordinance, Title 11, Chapters 5, 6, 7, 8, and 58 pertaining to Drive-Thru Facilities and Pick-Up Window Facilities and Exhibit 2 – Drive-thru Proposed Text Amendment Ordinance with the modifications identified in this staff report.

ATTACHMENTS:

Exhibit 1 – 2023 Amendments to the Tables in Mesa Zoning Ordinance, Title 11, Chapters 5, 6, 7, 8, and 58 pertaining to Drive-Thru Facilities and Pick-Up Window Facilities

Exhibit 2 – Drive-thru Proposed Text Amendment Ordinance

Exhibit 3 – P&Z Staff Report

Exhibit 4 – Public Comment in Opposition – Up to September 21, 2023

Exhibit 5 – Public Comment in Support – Up to September 21, 2023

Exhibit 6 – P&Z Meeting Minutes