



PLANNING COMMISSION

Planning & Development Services Department • 201 N. Stone Ave. • Tucson, AZ 85726-7210

DATE: February 3, 2010

TO: Planning Commission

FROM: Ernie Duarte
Executive Secretary 

SUBJECT: Amendment to the City of Tucson's Land Use Code Affecting the Location of Charter Schools in Single Family Residences

Issue – This is scheduled for a public hearing. The proposed amendment (Attachment A) prohibits a single family residence on less than one acre from being occupied as or converted into a State regulated charter school.

Recommendation – Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation to approve.

Background – On October 1, 2009, House Bill 2099 (Attachment B) amended the Arizona Revised Statutes Section 15.189.01 relating to how zoning regulations may affect charter schools in similar ways that zoning affects public schools (see Attachment C for further explanation). Most of the bill does not require any amendments to the City of Tucson's LUC. However, there is one provision that states a "County or municipality may adopt zoning regulations that prohibit a charter school from operating in an existing single family residence that is located on property of less than one acre."

The proposed amendment adds a provision to the Performance Criteria for Educational Uses located in Section 3.5.3.7 of the *Land Use Code*. In previous drafts, the proposed amendment added a new subsection "H" to Section 3.5.3.7. In the current draft, the proposed amendment is incorporated into an existing subsection "B" pertaining to site area performance criteria for Educational Uses. The proposed change was made in order to group all site area-related provisions together in one subsection. The wording of the proposed amendment is the same as in previous drafts, only its placement within Section 3.5.3.7 has changed.

Stakeholder Comments

Planning Commission: Planning Commissioner Cathy Rex asked if a variance would be required to locate a charter school in a single family residence on less than one acre.

Staff Response: No. As stipulated in Section 3.5.3.7 (Performance Criteria for Educational Uses), "[n]o variances are permitted; however, if the criteria cannot be met, the applicant can request approval through a Special Exception Land Use if permitted within the zone." Special Exception Land Uses are considered for approval through the Zoning Examiner Full Notice

Procedure, which requires a neighborhood meeting, notice to property owners within 300 feet and neighborhood associations within one mile, and a public hearing.

Neighborhood Associations: Staff has received feedback on the proposed amendment from two neighborhood associations: Desert Palms Park Neighborhood Association and Civano Neighbors.

Joan Cummins, on behalf of the Desert Palms Park Neighborhood Association, submitted a letter in support of the proposed amendment (see Attachment D).

Simmons Buntin, President of Civano Neighbors, opposes the proposed amendment stating that it would prevent schools like the Civano Community School (a publicly chartered school) from opening. The Civano Community School is now located in a larger non-residential facility, but it started in a house on a residential lot.

Staff Response: Elementary and secondary schools are currently permitted in residential zones as long as the site is a minimum of five (5) acres, unless greater site area is required by the Development Designator or ratio of site area per student calculation. The proposed amendment reduces the minimum lot size requirement to one (1) acre for charter schools.

Regarding the Civano Community School, the school is located within the Civano Master Planned Area Development (PAD) zoning district. PADs allow for a special zoning district that is comprehensively planned where uses and development regulations can be different from the traditional zoning districts of the LUC. The Civano Master PAD does not require a minimum lot size for educational uses within residential zones.

Attachments:

Attachment A: Draft Charter School text amendment

Attachment B: House Bill 2099

Attachment C: Letter from the City's Zoning Administrator, Craig Gross, dated August 17, 2009

Attachment D: Letter of support from the Desert Palms Park Neighborhood Association

ATTACHMENT A

City of Tucson Land Use Code
Article III. Development Regulations
Division 5. Performance Criteria

3.5.3. CIVIC USE GROUP

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3.5.3.7 Educational Uses. Educational Uses are subject to the following performance criteria. No variances are permitted; however, if the criteria cannot be met, the applicant can request approval through a Special Exception Land Use if permitted within the zone.

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B. *Site Area*

1. Except as provided below for charter schools, the minimum required site area for educational uses in residential zones is five (5) acres, unless a greater site area is required under the applicable Development Designator, or the ratio of one thousand four hundred fifty-two (1,452) square feet of site area for each student proposed for the school, whichever is greater, up to a maximum of ten (10) acres for elementary schools (Grades K-6), twenty (20) acres for middle schools (Grades 7 and 8), and forty (40) acres for high schools (Grades 9-12). For the purposes of this requirement, the number of students applied in this calculation is the number for which the school has been approved by the authorizing agency. If a maximum number of students is not stipulated as part of the approval from the authorizing agency, then the number used in the calculation shall be the amount proposed by the applicant.
2. A single family residence on less than one acre shall not be occupied as or converted into a charter school.
3. In nonresidential zones, the minimum site area shall be in accordance with the applicable Development Designator for the use.

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ATTACHMENT B

AMENDING SECTION 15-189.01, ARIZONA REVISED STATUTES;
RELATING TO CHARTER SCHOOLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-189.01, Arizona Revised Statutes, is amended to read:

15-189.01. Charter schools; zoning; development fees

A. Charter schools shall be classified as public schools for the purposes of ZONING AND the assessment of zoning fees, site plan fees and development fees. MUNICIPALITIES AND COUNTIES SHALL ALLOW A CHARTER SCHOOL TO BE ESTABLISHED AND OPERATE AT A LOCATION OR IN A FACILITY IN WHICH SCHOOLS OPERATED BY SCHOOL DISTRICTS ARE NOT PROHIBITED BY THE ZONING REGULATIONS OF THE COUNTY OR MUNICIPALITY, EXCEPT THAT A COUNTY OR MUNICIPALITY MAY ADOPT ZONING REGULATIONS THAT PROHIBIT A CHARTER SCHOOL FROM OPERATING IN AN EXISTING SINGLE FAMILY RESIDENCE THAT IS LOCATED ON PROPERTY OF LESS THAN AN ACRE.

B. A CHARTER SCHOOL IS SUBJECT TO THE SAME LEVEL OF OVERSIGHT AND THE SAME ORDINANCES, LIMITATIONS AND REQUIREMENTS, IF ANY, THAT WOULD BE APPLICABLE TO A SCHOOL THAT IS OPERATED BY A SCHOOL DISTRICT.

C. THE CONSTRUCTION AND DEVELOPMENT OF THE CHARTER SCHOOL FACILITY SHALL BE SUBJECT TO THE BUILDING CODES, INCLUDING LIFE AND SAFETY BUILDING CODES, OF THE MUNICIPALITY, COUNTY OR STATE.

D. Municipalities and counties shall adopt procedures to ensure that hearings and administrative reviews involving charter schools are scheduled and conducted on an expedited basis and that charter schools receive a final determination from the municipality or county within thirty days of the beginning of processes requiring only an administrative review and within ninety days of the beginning of processes requiring a public hearing and allowing an appeal to a board of adjustment, city or town council GOVERNING BODY or board of supervisors.

~~B.~~ E. No political subdivision of this state may enact or interpret any law, rule or ordinance in a manner that conflicts with subsection A.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

ATTACHMENT C

DATE: August 17, 2009

TO: PDS Staff

FROM: Craig L. Gross
Zoning Administrator
Planning and Development Services Dept.

SUBJECT: CHARTER SCHOOLS

On July 10, 2009, the Governor signed House Bill 2099, amending the Arizona Revised Statutes related to Charter Schools. The Bill goes into effect on September 30, 2009.

The new law requires that charter schools be classified the same as public schools for zoning and zoning fee purposes. It also states that a charter school is subject to the same level of oversight and the same ordinance limitations and requirements applicable to a school district. This means that zoning only applies to charter schools as it applies to public school district.

Under Arizona law, a public school district is considered a separate political subdivision and exempt from zoning requirements provided the public school district is acting in its governmental capacity. The City is required to treat a charter school as it would treat a public school district. In applying this principle, the City determines whether the property is owned and operated by the school district and whether the school district is acting in its governmental capacity (building a school) before it applies the exemption.

Therefore, to be exempt from zoning the charter school would have to own the property, operate the school, and be acting in its governmental function (building a school, etc.). For example, a charter school would not be exempt from zoning if it was building a gas station or operating a charter school on property they do not own. To be exempted from zoning regulations a charter school will be required to provide documentation to the City that they own the property and will be operating the school.

Building Code

Local building codes apply to construction of public buildings including new construction of school district buildings per ARS Sec. 34-461. HB 2099 also states that charter school construction and development shall be subject to the municipalities building code.

I expect many questions will arise which we can deal with on a fact-by-fact basis as necessary.

CC: City Attorney's Office

ATTACHMENT D

To city council members and interested persons:

My name is Joan Cummins. I am here to express my neighborhood association's approval of the amendment under discussion. I have been actively involved with Desert Palms Park Neighborhood Association for many years. As city liaison I am representing this neighborhood of 183 homes in Ward 2.

Desert Palms Park Association is a volunteer association as opposed to a home owner's association so we rely on city codes to keep up the appearance and livability of our community. Our association was dismayed to learn that there are no coded restrictions to using a private residence for a charter school. We are asking you to approve the amendment prohibiting a single family residence on less than an acre from being occupied or converted into a State regulated charter school.

Thank you.

Delivered to city council on January 6, 2010

Joan Cummins

dojocummins@cox.net

Received
1-6-10
J.M.

From: Adam Smith
To: Erin Morris
Date: 01/29/2010 8:58 AM
Subject: Fwd: City of Tucson Land Use Code Proposed Amendment- Charter Schools

CC: Jim Mazzocco
Erin,

Please forward this e-mail regarding the proposed Charter School amendment to the Planning Commission.

Thank you,

Adam

>>> Frank Brown User <frank.brown2@cox.net> 01/29/2010 7:53 AM >>>
City of Tucson Land Use Code Proposed Amendment - Charter Schools

Mr. Smith,

As a resident of the community of Civano and a member of the Civano Neighbors Neighborhood Association I respectfully submit the following comments regarding the proposed amendment:

- * The one acre requirement is too restrictive and would preclude the establishment of charter schools in most of the residential communities in Tucson. I propose that it be reduced to a more reasonable size such as one half acre (or less).
- * Exceptions from the proposed code amendment be granted to charter schools with 10 pupils or less.
- * Exceptions from the proposed code amendment be granted to charter schools that are actively pursuing acquisition of a permanent site that meets all of the prevailing code and zoning requirements.
- * The proposed code amendment include language that provides for evaluation of each residential conversion on an individual basis.

By way of clarification, I submit these comments as a concerned citizen and am not authorized to speak on behalf of any other individual or group. However, I support the Civano Neighbors Neighborhood Association's position in this matter.

Thank you in advance for your consideration,

Frank Brown
10619 E Marchetti Loop
Tucson, AZ 85747

From: Adam Smith
To: Erin Morris
Date: 01/28/2010 9:06 AM
Subject: Fwd: Position Statement on Proposed LUC Amendment re: Charter Schools
Attachments: CivanoNeighbors_PositionStatement_CharterSchools_Jan2010.pdf

CC: Jim Mazzocco
Erin,

Please forward this letter to the Planning Commission regarding the Charter School item on next week's agenda.

Thank you,

Adam

>>> "Simmons Buntin, Terrain.org" <sb@terrain.org> 01/28/2010 7:45 AM >>>
Hi Adam,

Attached in PDF format is the Civano Neighbors position statement on the proposed Land Use Code amendment requiring a minimum lot size for charter schools occupying single-family homes. As you know from our earlier conversation, we are opposed to the amendment. The position statement further explains our concerns.

Unfortunately, no one from the Civano Neighbors neighborhood association will be able to attend the Mayor and Council hearing on Wednesday, February 3, because we have a leadership team meeting. Hopefully, however, this position statement represents us well.

Please let me know if you need any additional input; otherwise, I look forward to hearing back from you after the hearing.

Thanks much,

Simmons

Simmons Buntin
Association Spokesperson
Civano Neighbors Neighborhood Association
520.241.7390 cell
simmons@civaneighbors.com
www.CivanoNeighbors.com



**Civano Neighbors Neighborhood Association Position Statement
on City of Tucson Land Use Code Proposed Amendment – Charter Schools**

January 27, 2010

The City of Tucson is holding a public hearing to consider a text amendment to the City of Tucson Code, Chapter 23, Land Use Code, related to zoning. The proposed amendment would add to Article III, *Development Regulations, Division 5, Performance Criteria*, a new section that would prohibit a single-family residence on less than an acre from being occupied as or converted into a State-regulated charter school.

The Civano Neighbors Neighborhood Association is *opposed* to the amendment. We are not in favor of restricting where a charter school may be placed, either on a temporary or permanent basis.

As you may be aware, the Civano Community School—an innovative, award-winning charter school serving Civano and other Tucson residents—was first established in a single-family residence within Civano. It was necessary for the school, which is publicly chartered within the Vail School District, to temporarily reside in the home while options for its permanent location were created and while its permanent location was built within the community. Without the flexibility currently allowed in the Tucson Land Use Code, the school may not exist today, and that would be a tragedy.

We strongly believe that our best neighborhoods are those served by schools. Studies have shown that where schools are within walking distance, children are healthier, parents are generally more involved, and students are more likely to excel. Whether a traditionally large school on several acres or a small charter school residing in a single-family home, what matters is proximity, accessibility, and the school's commitment to being a good neighbor.

In an ideal world, neighborhood-centered schools would be built so single-family residences would not be needed to house publicly chartered schools. But the ideal world does not exist, especially under current economic conditions. Therefore, we must allow properly accredited schools to set up even in the smallest of spaces, assuming all other criteria are met.

We urge the City of Tucson not to adopt any amendment that would further restrict the creation and placement of publicly chartered schools, but rather to evaluate each residential conversion on a case-by-case basis.

For further information, please contact:

Simmons Buntin
Association Spokesperson
Civano Neighbors Neighborhood Association
520.241.7390
simmons@civanoneighbors.com