
**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION****Meeting Date: 10/28/2014
Agenda Item: 5**

ACTION: Request for a Zoning and Development Code Text Amendment for GENERAL PLAN AMENDMENT VOTING, consisting of changes to voting procedures when a development or project requests a change to the voter-approved General Plan. The applicant is the City of Tempe.

FISCAL IMPACT: This ordinance change does not directly impact revenue.

RECOMMENDATION: Staff – Approval

BACKGROUND INFORMATION: GENERAL PLAN AMENDMENT VOTING (PL140346) The General Plan was ratified by Tempe voters in May 2014. Based on prior amendments to the General Plan Land Use and Density maps, it was determined that a larger affirmative vote was necessary to support proposed changes and preserve the intent of the new long range vision for the City. Language regarding the amendment process is outlined in both the General Plan and the Zoning and Development Code. The General Plan 2040 stipulates a 2/3 vote for all amendments to the General Plan, this request would update the Zoning and Development Code to conform to the language of the new General Plan. The request includes the following:

ZON14009 Code Text Amendment to require a 2/3 simple majority affirmative vote for all General Plan amendments, found in Chapter 3 Section 6-302(C).

ATTACHMENTS: Ordinance

STAFF CONTACT(S): Diana Kaminski, Senior Planner, (480)858-2391

Department Director: Dave Nakagawara, Community Development Director

Legal review by: N/A

Prepared by: Diana Kaminski, Senior Planner

COMMENTS:

The City of Tempe adopted General Plan 2040 in December 12, 2013. Tempe voters ratified the General Plan by public vote on May 20, 2014. This process occurs every 10 years. The General Plan includes maps identified as the "Projected Land Use Map" and "Projected Residential Density Map". When a property owner proposes a project which requires a change to the zoning of a property, the General Plan maps are referenced to see if the request is in conformance with the General Plan. If a request is not in conformance, the applicant may request a General Plan Map Amendment to maintain consistency between the land use, density and requested zoning. These amendments are brought forward to the City Council in a public hearing process. General Plan 2040 requires a simple-majority vote (two-thirds of all City Council members) for any General Plan Amendment, there is no differentiation in voting requirements between major amendments and amendments. On August 18, 2014, the City Council Committee of the Whole discussed placing a greater emphasis on the voter-approved General Plan maps by requiring a super majority vote of the City Council for any proposed map change.

This request includes a Zoning Map Amendment. The applicant is requesting the Development Review Commission provide a recommendation to City Council for this text change.

PUBLIC INPUT

A neighborhood meeting is not required for code text amendments. Staff has not solicited or received public input on this text amendment.

PROJECT ANALYSIS

The proposed modification to the voting process for all General Plan Map Amendments (Resolution items) would require a two-thirds (2/3) vote of the acting City Council. Such change in the Zoning and Development Code would not affect the process of a zoning map protest, or whether the General Plan Map Amendment triggers a Major Amendment, which has separate criteria, notification and hearing processes, but would also require a simple-majority vote. The proposed change to the voting requirements for General Plan Amendments would not have impacted the results of the past three year's amendments to the General Plan. A chart on page 3 illustrates the record of City Council decisions on requests to amend the General Plan 2030, all of which were made with a super majority affirmative vote for the request.

General Plan Amendments 2010-2013						
APD #	Resolution Number	Address	Tempe City Council Approved	Date	Comments	Vote
GEP10001	2010.58	577 E. Baseline Rd.	Yes	06/24/2010		6 to 0
GEP10002	2010.40	1212 N. McClintock Dr.	Yes	01/27/2011		7 to 0
GEP10003	2011.06	430 N. Scottsdale Rd.	Yes	03/24/2011		7 to 0
GEP11001	2011.25	1429 N. Scottsdale Rd.	Yes	07/07/2011		7 to 0
GEP11002	2011.81	1155 W. Elliot Rd.	Yes	10/20/2011		7 to 0
GEP11005	2012.18	855 S. Rural Rd.	Yes	03/22/2012	Conflict of interest	6-0-1
GEP11006	2012.19	1126 N. Scottsdale Rd.	Yes	03/08/2012	Conflict of interest	6-0-1
GEP12002	2012.55	4455 S. Rural Rd.	Yes	08/09/2012		7 to 0
GEP12003	2012.60	600 West 1st Street	Yes	08/09/2012	Conflict of interest	6-0-1
GEP12005	2013.33	2520 S. Plaza Dr.	Yes	05/09/2013		7 to 0
GEP12006	2013.14	1004 N. Miller Rd.	Yes	02/21/2013		7 to 0
GEP13001	2013.23	2148 E. Apache Blvd.	Yes	03/21/2013		7 to 0
GEP13002	2013.50	1102 E. Weber Dr.	Yes	05/30/2013	"The Newport at Tempe" project	5 to 1
GEP13003	2013.71	1010 E. Lemon St.	Yes	06/27/2013		7 to 0
GEP13004	2013.93	1260 E. University Dr.	Yes	08/22/2013	Conflict of interest	6-0-1
GEP13005	2013.12	425 W. 6th St.	Yes	11/07/2013		7 to 0

City of Tempe policy is to periodically review the General Plan. This periodic review process allows for reasonable changes, referred to as amendments to the General Plan, based on public input, Board and Commission recommendations, as well as economic and environmental conditions. This process is also essential in keeping any adopted General Plan viable and assures that the Plan is in concert with planning and development policies of the Mayor and City Council. The amendment process defines a course of action for both public and private interests, beginning with a formal request to make a change or amendment to the adopted General Plan.

Determination of Major Amendment

Pursuant to Arizona legislation, a major amendment is a substantial alteration of the municipality's land use mixture or balance, as established in the municipality's existing general plan land use element. For major amendments, State legislation also requires the plan must hold two or more public hearings before the Development Review Commission and must be adopted by a two-thirds majority of the City Council. A proposed plan or project would require a major amendment to the General Plan if any one of the following applies:

- A specific plan that decreases any land use category within the specified area by one percent,
- The plan or project results in significant alteration to or deviation from the Water Master Plan,
- The plan or project results in significant alteration to or deviation from the Comprehensive Transportation Plan (Transportation Master Plan), or
- The plan or project decreases the acreage of any projected land use at the time of application by the following criteria:

- a. Residential land use by one percent
- b. Open Space land use by one percent
- c. Any other land use category by two percent

The complexity of the proposed amendment and/or attendant issues will determine the extent and nature of support material needed for the amendment. The Community Development Director will make this determination.

Criteria For Considering A General Plan Amendment:

1. Written justification for the amendment should consider long-term and short-term public benefit and how the amendment, considering Land Use Principles, will help the city attain applicable objectives of the General Plan.
2. If the proposed amendment is only to the General Plan's text, there should be objective discussion of the amendment's long-term and short-term public benefit and the larger issue of its impact on the city attaining applicable objectives of the General Plan.
3. If the proposed amendment impacts the General Plan's Projected Land Use Map only, there should be objective discussion of the amendment's impact on the projected land use within a minimum of a half-mile of the property.
4. With a proposed amendment to the General Plan Projected Land Use Map, the applicant/developer's written discussion on the proposed amendment should respond to the Land Use Principles in the Land Use Element of the General Plan. The principles are presented below, in a generalized request/response format:
 - a. Describe the public benefit of the proposed amendment in terms of increase/decrease in intensity and its impact on adjacent land uses versus the impact of the present land use designation
 - b. Describe the public benefit of the proposed amendment in terms of impact on the city's infrastructure (i.e. water, sewer, utilities, streets, in terms of anticipated traffic generation, projected carrying capacity, projected volume, availability of transit, need for additional access, or city services such as fire and police staffing and response times, etc.) versus the impact of the present land use designation
 - c. Describe the proposed development quality of life in terms of how its components reflect unique site design, building design, landscaping and parking; integrate or provide access between varied uses; deal creatively with multi-modal transportation; and reduce/eliminate physical barriers, as well as provide residential, employment, shopping and local services opportunities
 - d. Describe the use of open space, parks or green belts, and how the development separates, as well as links, residential and nonresidential components, if the proposed development incorporates a residential component. If applicable, describe how the proposed development impacts existing parks
 - e. Describe the proposed development in terms of supporting regional and local transit objectives for arterial streets; implementing the goals and objectives of the transit plan; describe the internal street system in terms of supporting the above goals and objectives and incorporating uniquely designed transit facilities along the arterial streets
 - f. Describe the proposed amendment in terms of effects on the school districts (enrollments and facilities)
 - g. Identify additional quality of life components of the proposal in the criteria to justify a General Plan Amendment
5. If there are concerns, consideration of the proposed amendment shall be granted only if potentially negative influences are mitigated and deemed acceptable by the City Council.

AMENDMENT PROCESS

Any amendment must follow the following process:

The Community Development Department Director or designee shall review a proposed amendment.

1. With the submission of a formal application, the Community Development Director or designee will prepare a staff report on the proposed amendment, with a recommendation and support material for consideration by the Development Review Commission
2. The Development Review Commission will hold a minimum of two public hearings on a proposed major amendment, or a minimum of one public hearing on an amendment, and forward a recommendation to the City Council
3. The City Council, with the recommendation of the Development Review Commission and attendant support material, will hold two public hearings on the proposed amendment. The material will include a Resolution to adopt the amendment to the General Plan
4. If the City Council approves the proposed amendment by a two-thirds majority vote, the Resolution is the formal acknowledgment of the Council amending the General Plan.

ZONING CODE TEXT WITH PROPOSED REVISIONS

C. Procedure.

1. Commission Action:

- a. Amendments. The applicable decision-making body shall hear and forward its recommendation to the City Council after at least one (1) public hearing in accordance with the public hearing procedures in Part 6, Chapter 5, Public Meetings and Public Hearings; and
- b. Major amendments. The applicable decision-making body shall hold at least two (2) public hearings, in accordance with the public hearing procedure. Hearings shall be in different locations to encourage community participation. The first hearing shall be held for the purpose of gathering public information only. A recommendation shall be forwarded to the City Council only after the second public hearing.

2. City Council Action:

- a. Amendments. Applications for a general plan amendment shall be heard by the City Council during at least one (1) public hearing;
- b. Major Amendments. Applications for a general plan major amendment shall be heard by the City Council during at least (2) public hearings;
- c. The initial public hearing(s) shall be held for the purpose of gathering public information only. The final hearing on an application for a major amendment must be held at one (1) annual public hearing in the calendar year that the proposed major amendment was filed. This annual meeting shall be held in October, at a date to be determined by the City Council; and
- d. *(no changes here)*
- e. All other General Plan Amendments, including map amendments, shall be approved by an affirmative vote of three-fourths of all members of the City Council. If any members of the City Council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths of the remaining City Council members, provided that such required number of votes shall in no event be less than a majority of the full membership of the Tempe City Council.

Conclusion

Based on the information provided and the above analysis, staff recommends approval of the requested Zoning Code Text Amendment.

REASONS FOR APPROVAL:

1. The General Plan was approved by voters and remains the long range vision for the City, when amendments are necessary they would be supported by a simple-majority of the City Council at the time of the request.
2. The Zoning and Development Code would be amended to conform to the General Plan, maintaining continuity between the vision and regulatory documents of the City.
3. Providing for a simple-majority for all amendments provides an amendment process that is consistent for all requests.

HISTORY & FACTS:

October 8, 2013	General Plan 2040 1st Development Review Commission Public Hearing (in South Tempe)
October 22, 2013	2nd Development Review Commission Public Hearing (in North Tempe) and Recommendation to City Council
November 7, 2013	1st City Council Public Hearing on Final General Plan 2040
November 21, 2013	2nd City Council Public Hearing on Final General Plan 2040
December 12, 2013	3rd City Council Public Hearing on Final General Plan 2040 (continued from the November 21, 2013 Formal Council Meeting)
January 9, 2014	Council resolution approving a Special Election on May 20, 2014
May 20, 2014	Election for Ratification of the General Plan 2040 by Tempe voters
August 18, 2014	City Council Committee of the Whole reviewed proposed amendments to the Zoning Code to require a super majority vote prior to changing the recently adopted General Plan.
September 5, 2014	City Council directed Community Development staff to revise the Zoning Code to require a super majority vote for all amendments to the General Plan Land Use and Density maps.
September 23, 2014	Staff discussed the proposed change at the Development Review Commission Pre-Session.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-302, General Plan Amendment
Section 6-304, Zoning Map Amendment

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE CITY OF TEMPE ZONING AND DEVELOPMENT CODE TEXT OF CHAPTER 3, SECTION 6-302 (C), RELATING TO THE AMENDMENT OF THE GENERAL PLAN, PURSUANT TO PART 6, CHAPTER 3, SECTION 6-304.

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

Section 1. That the City of Tempe Zoning and Development Code Text is hereby amended, pursuant to the provisions of Zoning and Development Code, Part 6, Chapter 3, Sections 6-304, by requiring a simple-majority two-thirds (2/3) vote for all General Plan Amendments.

PART 6 CHAPTER 3 SECTION 6-302 ZONING MAP AMENDMENTS (INCLUDING OVERLAY DISTRICTS) AND CODE TEXT AMENDMENTS

C. Procedure.

1. Commission Action:

- a. Amendments. The applicable decision-making body shall hear and forward its recommendation to the City Council after at least one (1) public hearing in accordance with the public hearing procedures in Part 6, Chapter 5, Public Meetings and Public Hearings; and
- b. Major amendments. The applicable decision-making body shall hold at least two (2) public hearings, in accordance with the public hearing procedure. Hearings shall be in different locations to encourage community participation. The first hearing shall be held for the purpose of gathering public information only. A recommendation shall be forwarded to the City Council only after the second public hearing.

2. City Council Action:

- a. Amendments. Applications for a general plan amendment shall be heard by the City Council during at least one (1) public hearing;
- b. Major Amendments. Applications for a general plan major amendment shall be heard by the City Council during at least (2) public hearings;
- c. The initial public hearing(s) shall be held for the purpose of gathering public information only. The final hearing on an application for a major amendment must be held at one (1) annual public hearing in the calendar year that the proposed major amendment was filed. This annual meeting shall be held in October, at a date to be determined by the City Council; and

- d. ~~MAJOR AMENDMENTS SHALL ALSO BE APPROVED BY AN AFFIRMATIVE VOTE OF AT LEAST TWO-THIRDS (2/3) OF THE CITY COUNCIL. ALL GENERAL PLAN AMENDMENTS, INCLUDING MAP AMENDMENTS, SHALL BE APPROVED BY AN AFFIRMATIVE VOTE OF TWO-THIRDS (2/3) OF ALL MEMBERS OF THE CITY COUNCIL. IF ANY MEMBERS OF THE CITY COUNCIL ARE UNABLE TO VOTE ON SUCH A QUESTION BECAUSE OF A CONFLICT OF INTEREST, THEN THE REQUIRED NUMBER OF VOTES FOR PASSAGE OF THE QUESTION SHALL BE TWO-THIRDS (2/3) OF THE REMAINING CITY COUNCIL MEMBERS, PROVIDED THAT SUCH REQUIRED NUMBER OF VOTES SHALL IN NO EVENT BE LESS THAN A MAJORITY OF THE FULL MEMBERSHIP OF THE TEMPE CITY COUNCIL.~~

Section 2. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2014.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney