



## *PLANNING COMMISSION STAFF REPORT*

Date: June 8, 2011

Case No.: 5.1211

Type: Zone Text Amendment

Location: City-wide

Applicant: City of Palm Springs

To: Planning Commission

From: Craig A. Ewing, AICP, Director of Planning Services

Subject: Zoning Ordinance Amendment Relating to "Outdoor Accessory Uses" in Commercial Zones and "Religious Institutions"

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### PROJECT DESCRIPTION

The project is an amendment to the Palm Springs Zoning Code regarding the regulation of outdoor accessory uses in commercial zones and the establishment of "religious institutions" throughout the City. This report provides an analysis of the two issues and options for their regulation, including a recommendation for each. A public hearing is required.

### RECOMMENDATION

That the Planning Commission conduct a public hearing and forward to the City Council its recommendation for amending the Zoning Ordinance to allow greater flexibility in the treatment of outdoor accessory uses in commercial zones, and to provide greater clarity in the establishment of religious institutions. A draft resolution is attached.

### PRIOR ACTIONS

On September 3, 2008, the Planning Commission conducted a study session on the subjects and initiated a Zone Text Amendment to consider revisions regarding outdoor accessory uses in commercial zones and "churches", as used in the Code.

On October 22, 2008, the Planning Commission conducted a public hearing and adopted a resolution recommending a Zone Text Amendment to revise the regulations regarding outdoor accessory uses in commercial zones and “churches”.

On May 11, 2011, the Planning Commission continued two separate applications for Land Use Permits for outdoor display in the C-B-D zone (LUP 11-024 / 301 N. Palm Canyon Drive, and LUP 11-025 / 123 N. Palm Canyon Drive).

## ANALYSIS

In 2008, the Planning Commission considered an amendment to several sections of the commercial zones to allow outdoor vending of “other uses” subject to determination by the Planning Commission. With the action of May 11, 2011 to continue two requests for outdoor display, staff is returning to the Commission with its prior recommendation to confirm what approach the Commission wishes to recommend to the City Council.

### *Land Use Permits – Outdoor Accessory Uses*

As previously discussed in 2008, the Zoning Code allows Land Use Permits (LUP's) to be issued by staff for a variety of uses. A group of uses subject to Land Use Permits are outdoor retail activities in certain commercial zones. A merchant may obtain a Land Use Permit for outdoor uses which are “accessory” to the main business in the following zones:

- Central Business District (C-B-D),
- Retail Business (C-1)
- General Commercial (C-2) and
- Large-Scale Retail Commercial Zone (C-1AA)

Outdoor accessory uses may be conducted on private property, within the public right-of-way (sidewalk) or within a publicly designated area as part of a festival or downtown event. At the end of each listing in these four zones is the following language:

*Vending carts dispensing the following:*

- i. Food,*
- ii. Beverages,*
- iii. Crafts,*
- iv. Floral items,*
- v. Other uses as determined by the planning commission.*

Staff is recommending that the last phrase – “other uses as determined by the planning commission” be moved from a sub-section of vending carts, to the more general list of items allowed by a Land Use Permit. This change would allow merchants to petition the Planning Commission for outdoor uses that may not have been contemplated by the City, without having to include vending carts as part of their proposal. Staff also supports retaining this provision in each of the four commercial zones listed above.

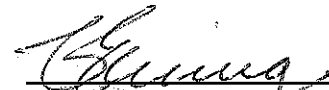
Both staff and the Planning Commission in 2008 anticipated that the proposed amendment would provide additional opportunities for merchants to revitalize their businesses and enliven the look and feel of the adjacent sidewalks. Staff noted that the change would still require an applicant to seek Commission approval for their new idea,

and the Land Use Permit would still allow the City to place conditions on the specific site and operation.

With the Commission's reluctance to review the two applications in May, 2011, staff believes that a revisiting of the recommendation would be appropriate. A copy of the draft resolution and ordinance language is attached, as are minutes of the relevant Commission meetings. (The attached draft ordinance also includes language related to churches and religious institutions, and no change is recommended to those proposed amendments.)

#### ENVIRONMENTAL DETERMINATION

Staff has evaluated the potential environmental impacts of the proposed Zoning Ordinance text amendment and determined that it is Categorically Exempt under Section 15305 – Minor Alterations in Land Use Limitations – of the Guidelines for the Implementation of the California Environmental Quality Act. The proposed amendment does not result in any changes in land use or density.

  
\_\_\_\_\_  
Craig A. Ewing AICP  
Director of Planning Services

cc: Draft Resolution, including draft zone text amendment  
Planning Commission Meeting Minutes (September 3 and October 22, 2008 and  
March 11, 2011)  
Planning Commission Staff Reports (October 22, 2008, March 11, 2011)  
Palm Springs Zoning Code (excerpts)

RESOLUTION NO. \_\_\_\_

OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL AMEND SECTIONS 92.09.01, 92.12.01, 92.13.01 AND 92.14.01 OF THE PALM SPRINGS ZONING CODE RELATING TO OUTDOOR USES, AND 91.00.10, AND CERTAIN OTHER SECTIONS OF THE PALM SPRINGS ZONING CODE RELATING TO CHURCHES AND RELIGIOUS INSTITUTION

WHEREAS, Section 93.20.00 of the Palm Springs Zoning Ordinance establishes regulations for the design, placement and use of signs; and

WHEREAS, on September 3, 2008, the Planning Commission voted to direct staff to initiate a Zoning Ordinance Text Amendment (Case No. 5.1211) to address certain outdoor commercial activities, as well as the definition and regulation of "churches"; and

WHEREAS, on October 22, 2008 and on June 8, 2011 the Planning Commission conducted duly noticed public hearings on the proposed amendment, at which hearings the Commission carefully reviewed and considered all of the evidence presented in connection with the project, including but not limited to the staff report and all written and oral testimony presented, and

WHEREAS, the Planning Commission hereby determines that the proposed Zoning Ordinance text amendment is Categorically Exempt under Section 15305 – Minor Alterations in Land Use Limitations – of the Guidelines for the Implementation of the California Environmental Quality Act and that the proposed amendment does not result in any changes in land use or density.

THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE AS FOLLOWS;

Section 1: The Planning Commission hereby finds that adoption of the proposed Zoning Text Amendment would:

- a. Provide for additional flexibility in the establishment of outdoor commercial activities, while preserving the Commission's oversight role of such uses; and
- b. Provide a definition for religious institutions that is more consistent with current zoning practices and the Religious Land Use and Institutionalized Persons Act of 2000; and
- c. Allow for the establishment of religious institutions in a wider variety of zones, subject to the approval of a conditional use permit.

**Section 2:** The adoption of the proposed Zone Text Amendment would be consistent with the intent of the Zoning Ordinance and the City's General Plan because it provides:

- A. Flexibility for merchants in the C-B-D, C-1, C-1AA and C-2 zones, while assuring that outdoor uses will contribute positively to the overall character of the City's retail commercial areas.
- B. Adequate and uniform provisions for the treatment of religious institutions within the City.

**Section 3:** Based upon the foregoing, the Planning Commission does hereby recommend to the City Council amendment of the Palm Springs Zoning Code to establish standards and regulations for "outdoor uses" and "religious institutions", as attached hereto and made a part of this resolution as Exhibit A.

ADOPTED this 8<sup>th</sup> day of June, 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

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Craig A. Ewing, AICP  
Director of Planning Services

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTIONS 92.09.01, 92.12.01, 92.13.01 AND 92.14.01 OF THE PALM SPRINGS ZONING CODE RELATING TO OUTDOOR USES, AND 91.00.10, AND ALL OTHER SECTIONS OF THE PALM SPRINGS ZONING CODE RELATING TO CHURCHES AND RELIGIOUS INSTITUTIONS.**

City Attorney's Summary

*This Ordinance modifies how "outdoor uses" may be allowed by the Planning Commission in certain commercial zones, establishes a definition for "religious institutions" and allows "religious institutions" to be established in most zones, subject to a Conditional Use Permit.*

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ORDAINS:**

Section 1. The following Sections shall be revised to allow "outdoor uses" to include "Other uses as determined by the planning commission" and deleted from "vending carts dispensing the following": Sections 92.09.01.C.2, 92.09.01.C.3, 92.09.01.C.4 (C-B-D Zone), 92.12.01.C.2, 92.12.01.C.3, 92.12.01.C.4 (C-1 Zone), 92.13.01.C.2, 92.13.01.C.3, 92.13.01.C.4 (C-1AA Zone), 92.14.01.C.2, 92.14.01.C.3 and 92.14.01.C.4 (C-2 Zone).

Section 2. Sections 91.00.10 shall be amended to include the following definition:

Religious Institution - Facilities operated by religious organizations for worship, or the promotion of religious activities, including churches, mosques, synagogues, temples, etc., and religious schools; and ancillary uses on the same site, such as living quarters for ministers and staff, and child day care facilities accessory to the religious facility itself. Other establishments maintained by religious organizations, including full-time educational institutions, hospitals, and other potentially related operations (for example, a recreational camp) are classified according to their respective activities.

Section 3. Sections 92.00.01.C (G-R-5 Zone), 92.01.01.D (R-1 Zone), 92.02.01.C (R-G-A Zone), 92.03.01.C (R-2 Zone), 92.04.01.D (R-3 Zone), 92.05.01.D (R-4 Zone),

92.11.01.D (C-S-C Zone), 92.12.01.C (C-1 Zone), 92.14.01.A (C-2 Zone) shall be amended to delete the word "churches" and renumbered accordingly.

Section 4. Section 94.02.00.A.1 shall be amended to read, as follows:

1. The following uses may be permitted subject to the provisions of this section. The commission shall review and approve or disapprove the use. The commission's action shall be final unless appealed to the council.
  - a. Uses listed in the zones as "Uses Permitted by Conditional Use Permit".
  - b. High-rise buildings permitted by a zone's development standards, and pursuant to Section 93.04.00.
  - c. Religious institutions in any zone, except in the "A" (Airport) "N" (Noise Impact and Nonsuit Covenant Combining Zone), and W (Watercourse) zones

Section 5. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
JAMES THOMPSON, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
DOUGLAS HOLLAND, CITY ATTORNEY

**DRAFT**

- 1B Case 11-024 LUP - A Land Use Permit determination request by ev R & D for outdoor display of four (4) for sale electric bicycles in the

**Central Business District located at 301 N. Palm Canyon Drive, Zone CBD, Section 15. (Project Planner: Glenn Mlaker, AICP, Assistant Planner)**

Glenn Mlaker, Assistant Planner, provided background information as outlined in the staff report dated May 11, 2011.

Commissioner Conrad expressed concern with "A" frame signs and outdoor displays in the CBD zone on a Land Use Permit (LUP) basis. Ms. Conrad suggested direction from the City Council be obtained with regards to the continued allowance of these type of displays and signs and/or setting restrictions for the maximum number and specification on the types allowable.

Commissioner Conrad requested City Council provide further direction on a comprehensive overview of the downtown area pertaining to outdoor displays, maximum number, types of displays and the number of illegal displays in the downtown area.

**ACTION:** To continue to a date uncertain and direct staff to provide a comprehensive overview on 'A' frames and outdoor displays in the CBD zone and seek direction from the City Council on the maximum number allowed, types of displays and number of illegal displays. **Motion Tracy Conrad, seconded by Doug Donenfeld and unanimously carried 4-0 on a roll call vote.**

**AYES:** Tracy Conrad, Doug Donenfeld, Doug Hudson, and Chair Caffery.

**NOES:**

**ABSENT:** Leslie Munger, and Philip Klatchko.

- 1C. **Case 11-025 LUP - A Land Use Permit determination request by Latino Books Y Mas for outdoor display of one (1) postcard rack and two (2) rolling cases in the Central Business District located at 123 N. Palm Canyon Drive, Zone CBD, Section 15. (Project Planner: Glenn Mlaker, AICP, Assistant Planner)**

Glenn Mlaker, Associate Planner, provided background information as outlined in the staff report dated May 11, 2011.

**ACTION:** To continue to a date uncertain and direct staff to provide a comprehensive overview on 'A' frames and outdoor displays in the CBD zone and seek direction from the City Council on the maximum number allowed, types of displays and number of illegal displays. **Motion Tracy Conrad, seconded by Doug Hudson and unanimously carried 4-0 on a roll call vote.**





## Planning Commission Staff Report

Date: May 11, 2011

Case No.: 11-024 LUP

Type: Planning Commission Determination

Zone: CBD

Location: 301 North Palm Canyon Drive

APN: 513-082-028

Applicant: Robert Questa – e v R & D

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: Glenn Mlaker, AICP, Assistant Planner

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### **PROJECT DESCRIPTION:**

The project is a request of the Planning Commission to determine that outdoor display of four (4) "for sale" electric bicycles is a permitted use allowed with a land use permit within the Central Business District (CBD) Zone. The proposed request is to allow outdoor display in front of a retail store on private property within the CBD Zone at 301 North Palm Canyon Drive.

### **RECOMMENDATION:**

That the Planning Commission determine that the outdoor display of four (4) "for sale" electric bicycles are permitted with a land use permit within the Central Business District (CBD) Zone.

### **ANALYSIS:**

Robert Questa, representative for the company e v R&D, has submitted a land use permit request for the retail property located at 301 North Palm Canyon Drive. The request is to allow for outdoor display of four (4) "for sale" electric bicycles in front of a retail store on private property within the CBD Zone.

Pursuant to Section 92.09.01(C)(2)(o)(v.) of the Palm Springs Zoning Code (PSZC), "Other uses as determined by the Planning Commission" allows for the Planning Commission, by resolution of record, to permit any other use which it may determine to be similar to those listed within the Central Business District Zone when certain findings are made.

Staff has reviewed the uses permitted with a land use permit within the CBD Zone and determined that the following uses are similar to outdoor display:

Section	Use	Permitted
92.09.01(C)(2)(a)	Art Displays	Land Use Permit
92.09.01(C)(2)(c)	Car Shows	Land Use Permit
92.09.01(C)(2)(d)	Christmas Tree Sales	Land Use Permit
92.09.01(C)(2)(l)	Plant and Floral Sales and Display	Land Use Permit

As noted in the table above, various outdoor displays are permitted within the CBD Zone on private property with a land use permit. Staff believes that attractive tasteful outdoor display can be an energizing element of the downtown experience. The City of Palm Springs Downtown Urban Design Plan which was adopted July 20, 2005 states that streets and streetscapes are to be interesting and the plan encourages downtown stores to use appropriate techniques to convey a sense of vitality and excitement. The proposed display of four (4) "for sale" electric bicycles placed under the overhanging building canopy would be consistent with the goals of the design guidelines. Therefore, staff would recommend that the use be permitted with a land use permit, subject to the following requirements:

1. Bicycles be "for sale" only; no rental – no motor scooters permitted.
2. Outdoor display be permitted for four (4) "for sale" electric bicycles.
3. Bicycles placed in curved arc underneath patio overhang.
4. All signage subject to Section 93.20.00 of the Palm Springs Zoning Code.
5. Full access in accordance with the Americans with Disabilities Act shall be maintained at all times.

#### REQUIRED FINDINGS:

Pursuant to the requirements of Section 94.01.02(B) of the PSZC, in permitting or classifying an unlisted use, the commission shall first make a finding that all of the following conditions exist:

- 1) *That the use is in keeping with the stated intent and purpose of the zone.*

*Pursuant to Section 92.12.00 of the PSZC, "The C-B-D zone is intended for the central business district, primarily retail business in character, with related hotels, multiple-family dwellings, and service, office, cultural and institutional uses. The central business district is intended to be a compact, lively, active, intensively used area catering to the pedestrian. Planted walkways, covered walks and open*

*plazas that provide for sitting, dining, conversing, gathering and window shopping are permitted and encouraged.*

The outdoor display of four (4) "for sale" electric bicycles is considered a retail business in character with the intent of the zone.

- 2) *That field investigations have disclosed that the subject use and its operation are compatible with the uses permitted in the zone wherein it is proposed to be located.*

The proposed use of outdoor display is similar to other uses currently permitted on private and public sidewalks within the CBD Zone.

- 3) *That the subject use is similar to one (1) or more uses permitted in the zone within which it is proposed to be located.*

Pursuant to 92.09.01(C)(2)(c) of the PSZC, the Central Business District allows for car shows with a land use permit. The proposed outdoor display is similar to the display of cars, but on a smaller scale oriented to pedestrian foot traffic.

- 4) *That the subject use will not cause substantial injury to the values of property in the zone within which it is proposed to be located.*

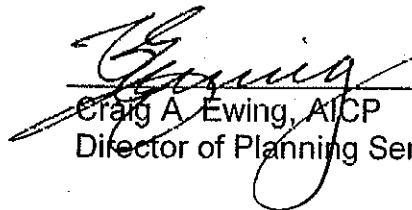
There are no known evidences or proofs to conclude that the proposed use is likely to cause substantial injury to values of property in the CBD Zone.

#### **CONCLUSION:**

The CBD zone allows various outdoor display uses such as; Art Displays, Car Shows, Christmas Tree Lots, Plant and Floral Sales and Displays; therefore, staff is recommending that the Planning Commission determine that outdoor display of four (4) "for sale" electronic bicycles is a use similar to other uses permitted with a Land Use Permit.



Glenn Mlaker, AICP  
Assistant Planner



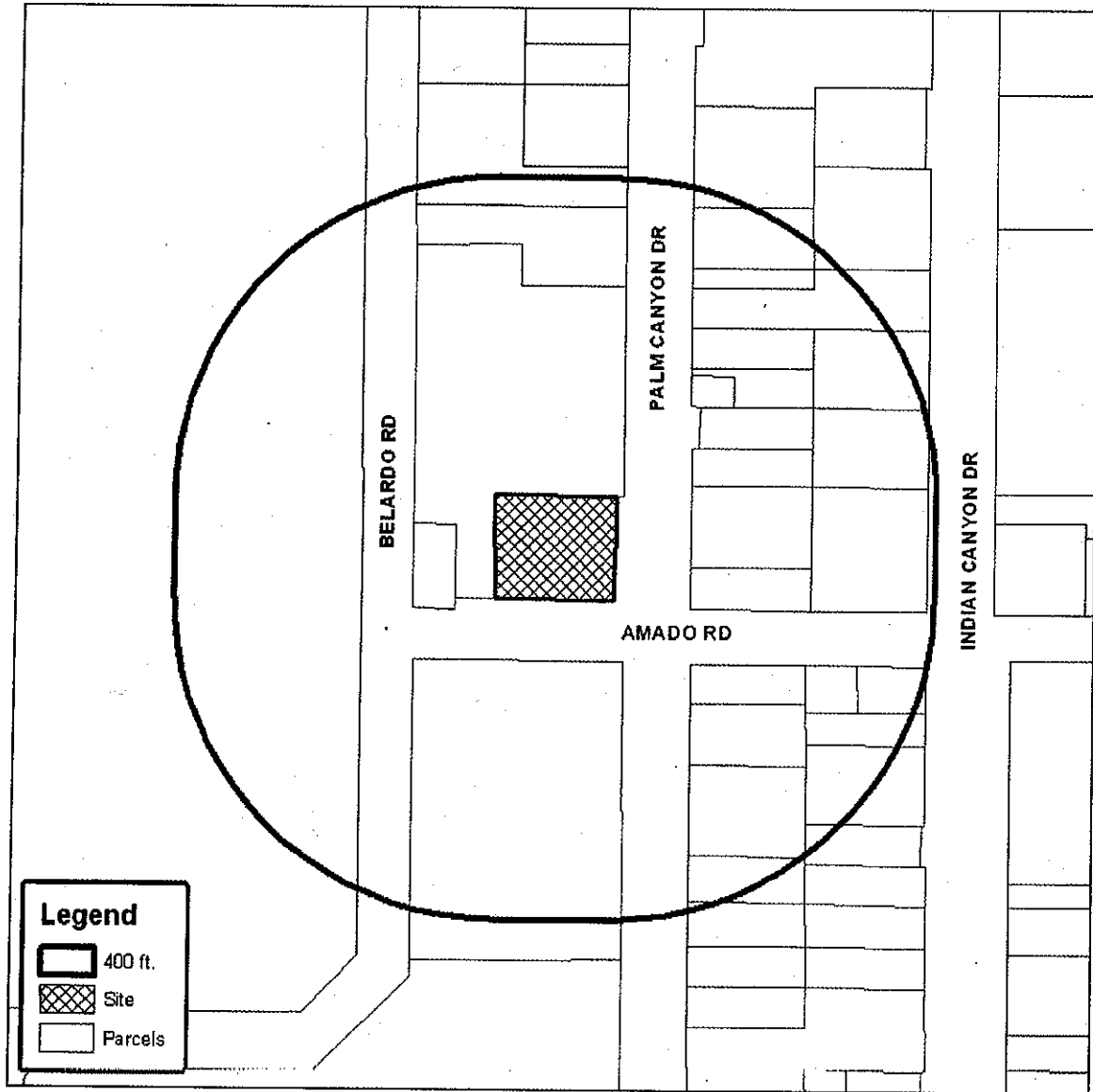
Craig A. Ewing, AICP  
Director of Planning Services

#### **Attachments**

1. Vicinity Map
2. Draft Resolution
3. Site Photos and Site Plan



# Department of Planning Services Vicinity Map



## CITY OF PALM SPRINGS

**CASE NO:** 11-024 LUP

**APPLICANT:** ev R & D Bicycle Sales

**DESCRIPTION:** Land Use Permit Determination for outdoor display of four "for sale" electric bicycles located at 301 N. Palm Canyon Drive, Section 15.



## Planning Commission Staff Report

Date: May 11, 2011

Case No.: 11-025 LUP

Type: Planning Commission Determination

Zone: CBD

Location: 123 North Palm Canyon Drive, Suite 525

APN: 513-560-008

Applicant: Luciano Ramirez – Latino Books Y Mas

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: Glenn Mlaker, AICP, Assistant Planner

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### **PROJECT DESCRIPTION:**

The project is a request of the Planning Commission to determine that outdoor display of one postcard rack and two rolling cases are permitted uses allowed with a land use permit within the Central Business District (CBD) Zone. The proposed request is to allow outdoor display in front of a retail store on private property within the CBD Zone at 123 North Palm Canyon Drive, Suite 525.

### **RECOMMENDATION:**

That the Planning Commission determine that the outdoor display of one postcard rack and two rolling cases are permitted with a land use permit within the Central Business District (CBD) Zone.

### **ANALYSIS:**

Luciano Ramirez, owner of Latino Books Y Mas, has submitted a land use permit request for the retail property located at 123 North Palm Canyon Drive, Suite 525. The request is to allow for one postcard rack and two rolling cases in front of a retail store on private property within the CBD Zone.

Pursuant to Section 92.09.01(C)(2)(o)(v.) of the Palm Springs Zoning Code (PSZC), "Other uses as determined by the Planning Commission" allows for the Planning Commission, by resolution of record, to permit any other use which it may determine to be similar to those listed within the Central Business District Zone when certain findings are made.

Staff has reviewed the uses permitted with a land use permit within the CBD Zone and determined that the following uses are similar to outdoor display:

Section	Use	Permitted
92.09.01(C)(2)(a)	Art Displays	Land Use Permit
92.09.01(C)(2)(c)	Car Shows	Land Use Permit
92.09.01(C)(2)(d)	Christmas Tree Sales	Land Use Permit
92.09.01(C)(2)(l)	Plant and Floral Sales and Display	Land Use Permit

As noted in the table above, various outdoor displays are permitted within the CBD Zone on private property with a land use permit. Staff believes that attractive tasteful outdoor display can be an energizing element of the downtown experience. The City of Palm Springs Downtown Urban Design Plan which was adopted July 20, 2005 states that streets and streetscapes are to be interesting and the plan encourages downtown stores to use appropriate techniques to convey a sense of vitality and excitement. The proposed display of one postcard rack and two rolling cases placed on the sidewalk in front of the store would be consistent with the goals of the design guidelines. Therefore, staff would recommend that the use be permitted with a land use permit, subject to the following requirements:

The outdoor display of one postcard rack and two rolling cases shall conform to the following standards:

- a. The display device shall be 'purpose-built' for the displaying of authorized goods.
- b. The post card rack and rolling case shall be of first-class design and construction, and shall present a finished appearance.
- c. Colors shall match those muted colors of the exterior of the building to be served by the display. No bright accent colors shall be permitted.
- d. The display device shall be maintained in good repair and appearance at all times, and shall be immediately removed from public view in the event it suffers damage or is otherwise in need of repair.
- e. Full access in accordance with the Americans with Disabilities Act shall be maintained at all times.

#### REQUIRED FINDINGS:

Pursuant to the requirements of Section 94.01.02(B) of the PSZC, in permitting or classifying an unlisted use, the Commission shall first make a finding that all of the following conditions exist:

- 1) *That the use is in keeping with the stated intent and purpose of the zone.*

Pursuant to Section 92.12.00 of the PSZC, *"The C-B-D zone is intended for the central business district, primarily retail business in character, with related hotels, multiple-family dwellings, and service, office, cultural and institutional uses. The central business district is intended to be a compact, lively, active, intensively used area catering to the pedestrian. Planted walkways, covered walks and open plazas that provide for sitting, dining, conversing, gathering and window shopping are permitted and encouraged."*

The outdoor display of one postcard rack and two rolling cases associated with an existing book store is considered a retail business in character with the intent of the zone.

- 2) *That field investigations have disclosed that the subject use and its operation are compatible with the uses permitted in the zone wherein it is proposed to be located.*

The proposed use of outdoor display is similar to other uses currently permitted on private and public sidewalks within the CBD Zone.

- 3) *That the subject use is similar to one (1) or more uses permitted in the zone within which it is proposed to be located.*

Pursuant to 92.09.01(C)(2)(c) of the PSZC, the Central Business District allows for art displays with a land use permit. The proposed outdoor display is similar to an art display oriented to pedestrian foot traffic.

- 4) *That the subject use will not cause substantial injury to the values of property in the zone within which it is proposed to be located.*

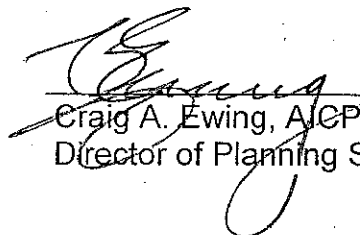
There are no known evidences or proofs to conclude that the proposed use is likely to cause substantial injury to values of property in the CBD Zone.

#### CONCLUSION:

The CBD zone allows various outdoor display uses such as; Art Displays, Car Shows, Christmas Tree Lots, Plant and Floral Sales and Displays; therefore, staff is recommending that the Planning Commission determine that outdoor display of one postcard rack and two rolling cases is a use similar to other uses permitted with a land use permit.



Glenn Mlaker, AICP  
Assistant Planner



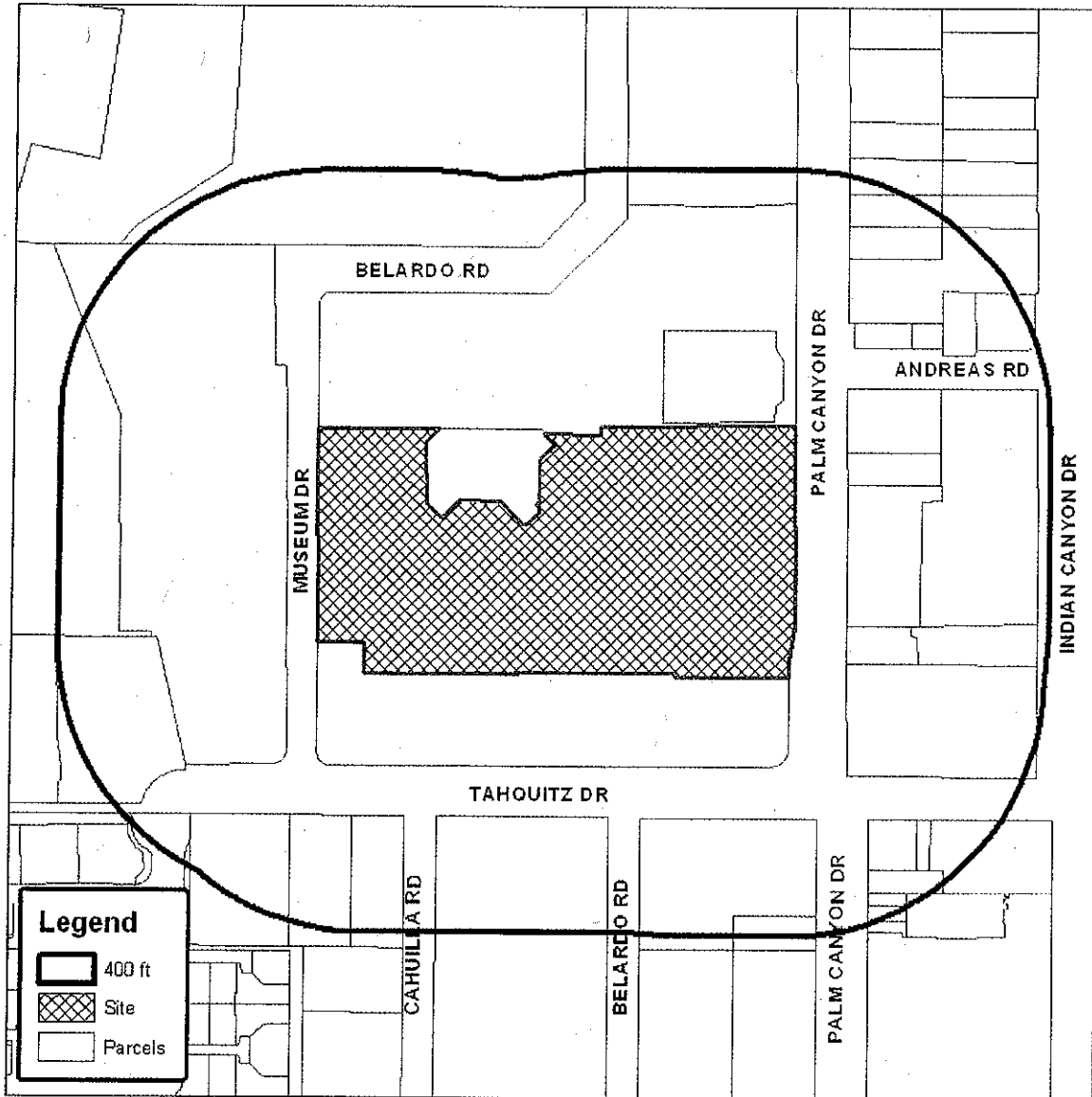
Craig A. Ewing, AICP  
Director of Planning Services

#### Attachments

1. Vicinity Map
2. Draft Resolution
3. Site Photos



# Department of Planning Services Vicinity Map



## CITY OF PALM SPRINGS

**CASE NO:** 11-025 LUP

**APPLICANT:** Latino Books Y MAs

**DESCRIPTION:** Land Use Permit Determination for outdoor display of one postcard rack and two rolling carts for book displays located at 123 North Palm Canyon Drive, Suite 525, Section 15.



~~Chair Hochanadel opened the Public Hearing:~~

~~-Mel Shah, applicant, (responding to questions from the Commission) provided further details pertaining to the wine tasting and the retail sale of wine.~~

~~There being no further appearances, the Public Hearing was closed.~~

~~Commissioner Caffery commended the applicant on the stylish appearance of the store.~~

~~M/S/C (Donenfeld/Vice Chair Cohen, 6-0, 1 absent/Ringlein) To approve, subject to Conditions of Approval.~~

~~(This item was taken out of order.)~~

→ **3B. Case 5.1211 - An application by the City of Palm Springs to amend the Palm Springs Zoning Code relating to the establishment of policies and standards for outdoor accessory uses and religious institutions. (Project Planner: Craig A. Ewing, Director of Planning)**

Director of Planning Ewing provided background information as outlined in the staff report dated October 22, 2008. Mr. Ewing noted that on September 3, 2008, the Planning Commission conducted a study session on the subjects and initiated a Zone Text Amendment to consider revisions regarding outdoor accessory uses in commercial zones and "churches", as used in the Code.

Commissioner Donenfeld noted a concern with the use of the word "etc." in the definition of "religious institutions" because it could be ambiguous in its interpretation and suggested deleting it. Commissioner Caffery concurred.

Chair Hochanadel opened the Public Hearing; there being no appearances, the Public Hearing was closed.

Commissioner Scott expressed concern with prohibition of churches in various zones and suggested churches be allowed in the majority of the zones. Staff noted that religious institutions are moving away from a traditional separate campus and moving towards tenant spaces.

Discussion occurred on regulations for conditional use permits and zones that may not be appropriate.

Commissioner Caffery stated that he is not opposed to churches in the CBD zone and suggested review of each request on a case-by-case basis with a conditional use permit.

M/S/C (Scott/Caffery, 5-0, 1 absent/Ringlein, 1 abstained/ Conrad) To recommend approval to the City Council to amend the Palm Springs Zoning Code regarding the regulation of outdoor accessory uses in commercial zones and the establishment of "religious institutions", as amended:

- Remove the word "etc" in the definition of "Religious Institution".
- To allow "Religious Institutions" located in any zone with a Conditional Use Permit; except as specifically prohibited in the N and W overlay zones, and the O zone.

Commissioner Conrad noted her abstention on this Item due to her absence of September 3<sup>rd</sup>.

#### ~~PLANNING COMMISSION COMMENTS:~~

Several of the Commissioners had questions pertaining to the protocol for a conflict of interest discussed at the "Ethics Training" last week. Commissioner Scott questioned if the members of the Architectural Advisory Committee are permitted to present their own projects.

Staff responded that further clarification would be brought back to the Commission.

#### **PLANNING DIRECTOR'S REPORT:**

Staff reported that the City Council will hold a joint meeting tonight with the Village Fest Board and a study session.

Staff reported that this Friday the Environmental Impact Report (EIR) for the Museum Market Plaza Specific Plan will be released and the Commission would be receiving a printed copy. Staff noted the first public hearing will be scheduled for November 19th and the 2<sup>nd</sup> follow-up hearing will be on December 3<sup>rd</sup>. Staff noted that comments on the EIR will be received during the public hearing.

#### **ADJOURNMENT:**

There being no further comments the meeting adjourned 2:57 p.m.

  
\_\_\_\_\_  
Craig A. Ewing, AICP  
Director of Planning Services



## *PLANNING COMMISSION STAFF REPORT*

Date: October 22, 2008

Case No.: 5.1211

Type: Zone Text Amendment

Location: City-wide

Applicant: City of Palm Springs

To: Planning Commission

From: Craig A. Ewing, AICP, Director of Planning Services

Subject: Zoning Ordinance Amendment Relating to "Outdoor Accessory Uses" in Commercial Zones and "Religious Institutions"

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### PROJECT DESCRIPTION

The project is an amendment to the Palm Springs Zoning Code regarding the regulation of outdoor accessory uses in commercial zones and the establishment of "religious institutions" throughout the City. This report provides an analysis of the two issues and options for their regulation, including a recommendation for each. A public hearing is required.

### RECOMMENDATION

That the Planning Commission conduct a public hearing and forward to the City Council its recommendation for amending the Zoning Ordinance to allow greater flexibility in the treatment of outdoor accessory uses in commercial zones, and to provide greater clarity in the establishment of religious institutions. A draft resolution is attached.

### PRIOR ACTIONS

On September 3, 2008, the Planning Commission conducted a study session on the subjects and initiated a Zone Text Amendment to consider revisions regarding outdoor accessory uses in commercial zones and “churches”, as used in the Code.

## ANALYSIS

In accordance with Section 94.07.01 of the Palm Springs Zoning Code, the Planning Commission may recommend amendments to the Zoning Code following a noticed public hearing. Based on the direction provided at the Commission’s study session of September 3, 2008, staff has prepared the following discussion and recommendation for a Zone Text Amendment regarding Outdoor Accessory Uses and Religious Institutions. A public hearing has been noticed for these items.

### *Land Use Permits – Outdoor Accessory Uses*

At present, the Zoning Code allows Land Use Permits (LUP’s) to be issued by staff for a variety of uses. A group of uses subject to Land Use Permits are outdoor retail activities in certain commercial zones. A merchant may obtain a Land Use Permit for outdoor uses which are “accessory” to the main business in the following zones:

- Central Business District (C-B-D),
- Retail Business (C-1)
- General Commercial (C-2) and
- Large-Scale Retail Commercial Zone (C-1AA)

Outdoor accessory uses may be conducted on private property, within the public right-of-way (sidewalk) or within a publicly designated area as part of a festival or downtown event. At the end of each listing in these four zones is the following language:

*Vending carts dispensing the following:*

- i. Food,*
- ii. Beverages,*
- iii. Crafts,*
- iv. Floral items,*
- v. Other uses as determined by the planning commission.*

Staff is recommending that the last phrase – “other uses as determined by the planning commission” be moved from a sub-section of vending carts, to the more general list of items allowed by a Land Use Permit. This change would allow merchants to petition the Planning Commission for outdoor uses that may not have been contemplated by the City, without having to include vending carts as part of their proposal. Staff also supports retaining this provision in each of the four commercial zones listed above.

Staff does not anticipate that the proposed amendment would result in a wholesale change to the outdoor areas of the City’s commercial zones. However, it may provide some additional opportunities for merchants to revitalize their businesses and enliven the look and feel of the adjacent sidewalks. Staff notes that the change would still require an applicant to seek Commission approval for their new idea, and the Land Use Permit would still allow the City to place conditions on the specific site and operation.

The attached draft ordinance provides specific amendment language to reflect this recommendation.

#### *Churches and Religious Institutions*

At present, all religious institutions in the City are named “churches” in the Zoning Code. Further, churches are defined in the Zoning Code as structures dedicated to worship:

*“Church” means a permanently located building commonly used for religious worship, fully enclosed with walls (including windows and doors) and having a roof (canvas or fabric excluded) and conforming to applicable legal requirements affecting design and construction.*

Staff believes that the current wording not reflect what many religious traditions use to describe their facilities or practices. Most modern zoning codes avoid the use terms which imply a particular religious faith or practice (see attached sample listing). Further, the City’s definition focuses on a “building commonly used for religious worship...”, yet many smaller religious groups are seeking worship space within industrial or commercial complexes which are not commonly used for worship.

Staff also notes that the City must take account of the federal “Religious Land Use and Institutionalized Persons Act” (RLUIPA) of 2000, which requires that the City do the following with regarding to religious institutions and its zoning powers:

1. Make adequate provisions for churches and other religious institutions so that these uses are not unreasonably limited within the City.
2. Assure that any regulations directed at religious institutions are based on indirect impacts of the use – traffic, noise, etc. – rather than regulating the use itself.
3. Assure that the regulations are applied uniformly among religious institutions, other non-commercial, and commercial activities.

Staff believes that the City’s Zoning Code should be brought up to date with regard to regulating religious institutions as a land use, while remaining sensitive to RLUIPA. In order to accomplish these objectives, staff recommends that the use and definition of the word “church” be replaced with the phrase, “religious institution”, which would be defined as:

*Religious Institution - Facilities operated by religious organizations for worship, or the promotion of religious activities, including churches, mosques, synagogues, temples, etc., and religious schools; and ancillary uses on the same site, such as living quarters for ministers and staff, and child day care facilities accessory to the religious facility itself. Other establishments maintained by religious organizations, including full-time educational institutions, hospitals, and other potentially related operations (for example, a recreational camp) are classified according to their respective activities.*

Staff also recommends that the Commission review the zones within which churches are presently permitted or conditionally permitted and make any desired adjustments. The following chart summarizes how the City treats churches by zone:

Zone	Allowed by Right	Allowed by LUP	Allowed by CUP
G-R-5			X
R-1			X <sup>1</sup>
R-G-A			X <sup>2</sup>
R-2			X
R-3			X
R-4			X
C-S-C			X <sup>3</sup>
C-1			X
C-2	X		
H-C	X		
M-1-P			X
M-1	X		
M-2	X		
U-R			X <sup>4</sup>

<sup>1</sup> Allowed only on Major or Secondary Thoroughfares.

<sup>2</sup> Allowed only on sites of 2 acres or more.

<sup>3</sup> Free-standing only

<sup>4</sup> Allowed only with a Planned Development District

Churches are not permitted in the following zones:

- P – Professional
- C-B-D – Central Business District
- C-D-N – Designed Neighborhood Shopping Center
- C-1AA – Large-scale Retail Commercial
- C-M – Commercial Manufacturing
- E-I – Energy Industrial
- A - Airport

Churches are specifically prohibited in the N and W overlay zones, and the O zone.

Staff believes that the current listing for churches is adequate for “religious institutions” and will not result in a significant change to the City’s approach to these activities and facilities. No change in the treatment of these uses by zone is recommended.

#### ENVIRONMENTAL DETERMINATION

Staff has evaluated the potential environmental impacts of the proposed Zoning Ordinance text amendment and determined that it is Categorically Exempt under Section 15305 – Minor Alterations in Land Use Limitations – of the Guidelines for the

Implementation of the California Environmental Quality Act. The proposed amendment does not result in any changes in land use or density.

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Craig A. Ewing AICP  
Director of Planning Services

cc: Draft Resolution, including draft zone text amendment  
Examples of Definitions for Religious Institutions, etc.  
Planning Commission Meeting Minutes (September 3, 2008)  
Planning Commission Staff Report (September 3, 2008)

CITY OF PALM SPRINGS  
 PLANNING COMMISSION STUDY SESSION  
 MINUTES OF SEPTEMBER 3, 2008  
 Large Conference Room, City Hall  
 3200 East Tahquitz Canyon Way  
 Palm Springs, CA 92262

**CALL TO ORDER:**

The meeting was called to order at 2:06 p.m.

**ROLL CALL:**

	<b>Present This Meeting:</b>	<b>Present to Date:</b>	<b>Year: FY 2008/2009 Excused Absences:</b>
Chairman Hochanadel	X	7	0
Vice Chairman Cohen	X	6	1
Toni Ringlein	X	6	1
Jon Caffery	X	6	1
Bill Scott	X	4	3
Tracy Conrad		4	3
Doug Donenfeld	X	7	0

**REPORT OF POSTING OF AGENDA:**

The agenda was available for public access at the City Hall exterior bulletin board (west side of Council Chamber) and the Planning Services counter by 5:00 p.m. on Friday, August 29, 2008.

**PUBLIC COMMENTS:**

Vice Chairman Hochanadel opened Public Comments. There being no appearances, Public Comments was closed.

- 1. Case 5.1211 ZTA – Palm Springs Zoning Code – Initiation of Amendments Related to Land Use Permits and Religious Institutions. (Craig A. Ewing, Director of Planning Services)

***Proposed Amendment No. 1 – Land Use Permits – Outdoor Accessory Uses***

Director of Planning Ewing reported that staff is proposing to the Planning Commission and City Council a series of minor zoning amendments beginning



with this proposal. Mr. Ewing stated that presently the zoning code allows Land Use Permits (LUP's) to be issued by staff for a variety of uses and a group of uses subject to LUP's are outdoor retail activities. Staff referred to Exhibit "A" (a list of outdoor uses allowed in the CBD zone by Land Use Permit). In reviewing this language, staff believes it would provide greater flexibility for downtown merchants and the Planning Commission by moving the phrase, "Other uses as determined by the planning commission" from a sub-section of vending carts, to the more general list of items allowed by a LUP. This change would allow merchants to petition the Planning Commission for outdoor uses without having to include vending carts as part of their proposal. Staff advised the Commission that this change could open up the potential for many unforeseen circumstances such as an excessive quantity of dvd/video racks. Nonetheless, the change would require the applicant to seek Commission approval and the LUP would still allow the City to place conditions on the specific site and operation. Commissioner Caffery noted his preference to keep the zoning code related to Land Use Permits and outdoor retail activities as is, with no changes. The Commission discussed prohibited uses and similar uses permitted by commission determination. The majority of the Commission concurred with staff's recommendation.

M/S/C (Ringlein/Cohen, 5-1/Caffery, 1 absent/Conrad) To initiate a Zone Text Amendment Related to Land Use Permits, in accordance with Palm Springs Zoning Code Section 94.07.01 – Zoning ordinance text amendment.

~~Proposed Amendment No. 2 – Churches and Religious Institutions~~

~~Mr. Ewing reported that the current wording in the Zoning Code regarding religious uses as "churches" defined as a facility for worship. Staff noted that "religious uses" raises the following concerns:~~

- ~~1. The word "church" does not reflect what many religious traditions use to describe their facilities or practices. Most modern zoning codes use the term "religious institutions" to accommodate different faiths.~~
- ~~2. The definition focuses on a "building commonly used for religious worship . . . ", yet many smaller religious groups are seeking worship space within industrial or commercial complexes which are not commonly used for worship.~~

~~Mr. Ewing noted that in the year 2000, the federal government enacted the "Religious Land Use and Institutionalized Persons Act" (RLUIPA) and provided~~



CITY OF PALM SPRINGS  
DEPARTMENT OF PLANNING SERVICES

MEMORANDUM

**Date:** September 3, 2008  
**To:** Planning Commission  
**From:** Craig A. Ewing, AICP, Director of Planning Services  
**Subject:** Palm Springs Zoning Code – Initiation of Amendments Related to Land Use Permits and Religious Institutions

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Staff is proposing to the Planning Commission and City Council a series of minor zoning amendments to help bring the City's Zoning Code into a more clear and orderly statement of the City's development policies. These changes will occur over a several amendments, beginning with the present proposal. Staff recommends that the Planning Commission initiate the Zone Text Amendment described in this memo, as allowed by Code Section 94.07.01.A.1a:

**94.07.01 Zoning ordinance text amendment.**

- A. *Procedure.*
  1. *Initiation.*
    - a. *The planning commission may initiate proceedings by motion and then hold public hearings and make a recommendation as provided below.*

**Proposed Amendment No. 1 – Land Use Permits – Outdoor Accessory Uses**

At present, the Zoning Code allows Land Use Permits (LUP's) to be issued by staff for a variety of uses. An LUP is considered a minor use permit. It is neither subject to advance notice nor to a public hearing. It may be conditioned, and its approval may be appealed to the Planning Commission. LUP's are governed by Section 94.02.01 of the Zoning Code; however, each zone district includes a list of uses that may be allowed by an LUP.

A group of uses subject to Land Use Permits are outdoor retail activities. A merchant may obtain a Land Use Permit for outdoor uses which are "accessory" to the main business in the following zones:

- Central Business District (C-B-D),
- Retail Business (C-1)
- General Commercial (C-2) and
- Large-Scale Retail Commercial Zone (C-1AA)

Outdoor accessory uses may be conducted on private property, within the public right-of-way (sidewalk) or within a publicly designated area as part of a festival or downtown event. A listing from the C-B-D zone is typical and attached as Exhibit A.

At the end of each listing in these four zones is the following language:

*Vending carts dispensing the following:*

- i. Food,*
- ii. Beverages,*
- iii. Crafts,*
- iv. Floral items,*
- v. Other uses as determined by the planning commission.*

In reviewing this language, staff has explored the possibility of allowing greater flexibility to merchants and the Planning Commission by moving the phrase, "Other uses as determined by the planning commission" from a sub-section of vending carts, to the more general list of items allowed by a Land Use Permit. (A review of Exhibit A may help clarify staff's proposal.) This change would allow merchants to petition the Planning Commission for outdoor uses that may not have been contemplated by the City, without having to include vending carts as part of their proposal.

Staff does not anticipate that the proposed amendment would result in a wholesale change to the outdoor areas of the City's commercial zones. However, it may provide some additional opportunities for merchants to revitalize their businesses and enliven the look and feel of the adjacent sidewalks. Staff notes that the change would still require an applicant to seek Commission approval for their new idea, and the Land Use Permit would still allow the City to place conditions on the specific site and operation.

Staff recommends that the Commission initiate this amendment for all four commercial zones; it may then review the concept for its appropriateness in each of the zones.

### **Proposed Amendment No. 2 – Churches and Religious Institutions**

At present, all religious institutions in the City are named "churches" in the Zoning Code. Further, churches are defined in the Zoning Code as structures dedicated to worship:

*"Church" means a permanently located building commonly used for religious worship, fully enclosed with walls (including windows and doors) and having a roof (canvas or fabric excluded) and conforming to applicable legal requirements affecting design and construction.*

Staff believes that the current wording in the Zoning Code regarding religious uses raises two concerns:

1. The word "church" does not reflect what many religious traditions use to describe their facilities or practices. Most modern zoning codes use the term "religious institutions" to accommodate different faiths.
2. The definition focuses on a "building commonly used for religious worship...", yet many smaller religious groups are seeking worship space within industrial or commercial complexes which are not commonly used for worship.

The regulation of religious activities is a sensitive issue. Religious freedom is a core value enshrined in the United States Constitution, and in 2000 the federal government enacted the "Religious Land Use and Institutionalized Persons Act", commonly referred to as "RLUIPA". The Act is summarized by the following statement from the US Department of Justice:

*RLUIPA prohibits zoning and landmarking laws that substantially burden the religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This prohibition applies in any situation where: (i) the state or local government entity imposing the substantial burden receives federal funding; (ii) the substantial burden affects, or removal of the substantial burden would affect, interstate commerce; or (iii) the substantial burden arises from the state or local government's formal or informal procedures for making individualized assessments of a property's uses.*

*In addition, RLUIPA prohibits zoning and landmarking laws that: (1) treat churches or other religious assemblies or institutions on less than equal terms with nonreligious institutions; (2) discriminate against any assemblies or institutions on the basis of religion or religious denomination; (3) totally exclude religious assemblies from a jurisdiction; or (4) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.*

In order to assure that the City's Zoning Code does not create a possible conflict with RLUIPA, the City must generally do the following:

1. Make adequate provisions for churches and other religious institutions so that these uses are not unreasonably limited within the City.
2. Assure that any regulations directed at religious institutions are based on indirect impacts of the use – traffic, noise, etc. – rather than regulating the use itself.
3. Assure that the regulations are applied uniformly among religious institutions, other non-commercial, and commercial activities.

Staff at this time does not believe that the Palm Springs Zoning Code poses any problems with federal law, but any changes should be undertaken with care to the requirements of RLUIPA.

Staff believes that the City's Zoning Code should be brought up to date with regard to regulating religious institutions as a land use, while remaining sensitive to RLUIPA. The following amendments are recommended:

1. Replace the word "church" with the phrase, "religious institution"
2. Develop a new definition for "religious institutions" that describes the activity, rather than the facility.
3. Review the zones within which churches are permitted or conditionally permitted and make any desired adjustments.

Attachments:

- A. Uses permitted by Land Use Permit in the C-B-D Zone

Exhibit "A"

**92.09.01 C-B-D Zone - Uses permitted.**

...  
C. Uses Permitted by Land Use Permit.

- ...  
2. Outdoor uses as an accessory to a permitted main use and located on the same property as the permitted use:
- a. Art displays;
  - b. Artisans, artists;
  - c. Car shows;
  - d. Christmas tree sales not as an accessory use to a main use;
  - e. Display cases in malls or courts;
  - f. Farmers market;
  - g. Fashion shows;
  - h. Festivals, exhibits and special events;
  - i. Florists;
  - j. Musicians/entertainment (subject to provisions of noise ordinance);
  - k. Outdoor dining including beverage service;
  - l. Plant and floral sales and displays;
  - m. Postcard displays (limited to one per store frontage);
  - n. Theatre and public assembly;
  - o. Vending carts dispensing the following:
    - i. Food,
    - ii. Beverages,
    - iii. Crafts,
    - iv. Floral items,
    - v. Other uses as determined by the planning commission.
3. Outdoor uses as an accessory to a permitted main use and located on public property including the public right-of-way (streets and sidewalks):
- a. Art displays;
  - b. Artisans, artists;
  - c. Festivals, exhibits and special events;
  - d. Florists;
  - e. Musicians/entertainment (subject to provisions of noise ordinance);
  - f. Outdoor dining including beverage service;
  - g. Plant and floral sales and displays;
  - h. Vending carts dispensing the following:
    - i. Food,
    - ii. Beverages,
    - iii. Crafts,
    - iv. Floral items,
    - v. Other uses as determined by the planning commission.
4. Outdoor uses located on public property including the public right-of-way (streets and sidewalks) when conducted in a designated area approved by the city council and undertaken as part of a festival, event or program to promote commercial, artistic or cultural activity in the downtown district:
- a. Art displays;
  - b. Artisans, artists;
  - c. Bicycle rental;
  - d. Car shows;
  - e. Farmers market;
  - f. Fashion shows;

- g. Festivals, exhibits and special events;*
- h. Florists;*
- i. Musicians/entertainment (subject to provisions of noise ordinance);*
- j. Outdoor dining including beverage service;*
- k. Plant and floral sales and displays;*
- l. Theatre and public assembly;*
- m. Tourism activities kiosks;*
- n. Vending carts dispensing the following:*
  - i. Food,*
  - ii. Beverages,*
  - iii. Crafts,*
  - iv. Floral items,*
  - v. Antiques and collectibles,*
  - vi. Other uses as determined by the planning commission.*