



Legislation Text

File #: 18-405, **Version:** 1

TO: Mayor Collins and Town Council Members

FROM: Brian Dalke, Interim Town Manager
Andrew M. Miller, Town Attorney

DATE: October 25, 2018

DEPARTMENT: Town Attorney

AGENDA TITLE:

Discussion and Direction Regarding SUP Managerial Amendment Process.

Town Value(s):

- Primarily one-acre, residential community
- Limited government
- Creating a sense of community
- Partnerships with existing schools and resorts to enhance recreational opportunities
- Improving aesthetics/creating a brand
- Preserving natural open space

Council Goals or Statutory Requirements:

The Town of Paradise Valley makes every effort to enhance the community's unique character for its residents and people from around the world.

RECOMMENDATION:

It is recommended that the Town Council conduct a further review the potential changes to the SUP Managerial Amendment process and provide direction on any suggested changes and the next steps to be taken.

At its Work Study Session on September 27, 2018, the Council reviewed draft changes to the Town Code to provide a process for the Town Council to appeal certain Managerial Amendments to Special Use Permits (hereinafter "Managerial Amendments"). The Council indicated that a further discussion was warranted and asked to set the item for discussion at the next Work Study Session to address the following:

1. Which managerial decisions should be appealable by Council;
2. The number of Council members necessary and the process to place an item on a Council agenda for review/appeal;
3. Timing considerations, including the Council's summer break; and

4. The scope of the review/appeal.

Detailed Background on the Four Suggested Areas of Change

The four areas of possible changes to the original conceptual changes to §1102.8.A of the Town Zoning Ordinance provisions regarding Managerial Amendments that were identified by the Council at its September 27th meeting and potential changes that address each area of suggested changes are as follows:

1. **Managerial Decisions Subject to Appeal by Council**

Based upon Council suggestion, the draft has been revised to provide that only **approvals** of a Managerial Amendment can be appealed. Thus, managerial decisions to deny or to reclassify a request for a managerial amendment to a “higher” classification would not be subject to appeal by Council.

2. **Number of Council Members Necessary to Start an Appeal**

The original draft allowed for one Council member to agendaize an appeal of a Managerial Amendment. Council discussion indicated a general interest in increasing the number of Council Members required to effectuate an appeal. Council also discussed various processes that might be used. This revised draft requires that at least **three** Council members notify the Town Manager that they seek to appeal an approval of a Managerial Amendment. Upon receipt of at least three written requests for an appeal, the Town Manager will set the item for consideration on a future Council agenda. NOTE: The revised draft does not require the Town Manager to notify the Council of receipt of any request(s) from other Council Members.

3. **Timing Considerations**

The original draft provided that an appeal would be set for consideration at the “next regularly scheduled” Council meeting. Given the Town Council’s practice of a summer break during which Council meetings are not set for several weeks (and potentially other such occurrences), the draft has been revised to provide for the appeal to be set for a Council meeting “**within __ days.**” This approach is suggested to assure a property owner that a Council review will occur within a prescribed period of time. NOTE: The Council should provide direction on the timing. Except for the summer recess period, the maximum number of days between regular Council meetings, assuming no cancelled meetings, would be 21 days.

4. **Scope of Review/Appeal**

The original draft allowed Council to make a de novo decision on the requested amendment; i.e., to either approve, deny or reclassify the request to a different category. Council expressed concern that an appeal should not simply substitute the Council’s judgment for that of the Town Manager but should first be a review to determine if the requested amendment met the criteria for a managerial amendment. This draft provides that on appeal of an approval of a Managerial Amendment, the Council shall **first determine whether the application meets the criteria** for a managerial amendment. If the criteria are **met**, the Town Manager’s decision shall be **final**. If the criteria are **not met**, the Council may take action to **deny the application, in whole or in part, or reclassify** the application to a different category of Special Use Permit amendment. NOTE: The Council may need to have further discussion on

whether to have the Council review allow for a partial denial, essentially a red pencil approach, or to only have a complete denial and only have suggestions made that certain objectionable parts of the application be removed prior to a resubmittal of the application as a Managerial Amendment.

Suggested Changes to Current Zoning Ordinance Text (for Council discussion)

The draft changes to §1102.8.A of the Town Zoning Ordinance that reflect the four concerns/changes could be effectuated by the following changes to the current Zoning Ordinance text (deleted text in ~~strikethrough~~ and new text in **bold**), with the changes from the draft reviewed at the September 27th meeting in underlined text:

1102.8 Application and Approval Process for Amendments to Special Use Permits

The application process for an amendment to a Special Use Permit is comprised of two phases. Phase I is the application submittal process, in which the applicant and Town staff work together to create a complete application. Phase II consists of the formal project review. [Please also refer to Figure 1102.4-1 for an overview of the review process.]

A. Managerial Amendments

1. The applicant must first complete the pre-application review process in accordance with Section 2-5-2(E) of the Town Code. A formal application can then be made to the Town in accordance with Section 1102.3 of this Article. The Town Manager or his designee will then review the application, make a written determination to either approve or deny the application, or reclassify the application to a different category of Special Use Permit amendment.
2. ~~The Town Manager (or the Town Manager's designee) will be required to report all decisions on Managerial Amendments to the Town Council (for informational purposes only).~~ **The Town Manager (or designee) shall transmit all the determinations approving a of all Managerial Amendments to the Town Council within two (2) business days of making the determination.**
3. **The Town Manager's (or designee's) decision shall be final unless within 10 days after the Town Manager's (or designee's) written determination at least three members of the Town Council submits a written request to the Town Manager to appeal the determination approving the Managerial Amendment application.**
4. **The Town Council shall have the authority to decide appeals from the written determination of the Town Manager (or designee) approving a Managerial Amendment application. The appeal shall be set for consideration at the next regularly-scheduled a Town Council meeting within days after the Town Manager's receipt of the third written appeal request~~by the Town Manager~~. The Town Council shall first decide, by a majority vote of the members present and not otherwise disqualified, to affirm whether the Town Manager's (or designee's) decision meets the criteria for a Managerial Amendment. If the Council decides that the criteria have been met, then there shall be no further appeal and the Managerial Amendment is final. If the Council decides that the criteria have not been met, ~~or the Town Council may affirm or deny~~ the Managerial Amendment, in whole or in part, or reclassify the application to a different category of Special Use Permit amendment. A majority vote of the voting members shall be necessary to deny or modify the decision**

of the Town Manager (or designee); otherwise the written determination shall be affirmed.

SUMMARY STATEMENT:

The Council should discuss the draft changes to §1102.8.A of the Town Zoning Ordinance and provide direction to the staff on any additional concerns or changes recommended and the process moving forward with implementation of the changes to the Managerial Amendment approval process.

BUDGETARY IMPACT:

None.

ATTACHMENT(S):

None.