

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

November 16, 2009

CALL TO PODIUM:

Greg Ossont

RESPONSIBLE STAFF:

Greg Ossont, Director
Planning & Code Administration

Jacqueline Marsh, Planner

Lauren Pruss, Planning Director

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing -JOINT
	Historic District
	Consent Item
	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other: Staff Guidance

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	9/30/2009
	10/7/2009
Hearing Date	10/19/2009
Record Held Open	11/06/2009
Policy Discussion	11/16/2009

**TITLE: Text Amendment T-393
Joint Public Hearing**

Ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article VI, entitled, "Administration and Enforcement of Chapter," § 24-178, entitled, "Use and Occupancy Permits for new, altered, or nonconforming uses," to create new subsections §24-178(g) entitled "Temporary Uses;" §24-178(g)(1) through §24-178(g)(3) so as to allow temporary uses.

SUPPORTING BACKGROUND:

The joint public hearing on T-393 was held on October 19, 2009. On November 4, 2009, the Planning Commission was presented with a Draft Ordinance of T-393 that reflected the topics of discussions raised during the joint public hearing. References to the Master Plan, "adjacent and abutting land," and project development commencement were deleted in order to simplify the temporary use approval procedure.

Language from two previous standards was combined to create a new standard for time limitations. Essentially, the Mayor and City Council would review the proposed temporary use, determine an appropriate time period (not to exceed one year) and the need for any interim periodic reviews based on staff recommendations.

The Planning Commission held a discussion on its recommendation to the Mayor and City Council on T-393. Attached is the CPC (Exhibit #12) that provides a synopsis of the concerns raised by the Planning Commission and a revised version of the text amendment (Exhibit #13) that addresses some of the Commission's comments.

In accordance with Section 24-197(c), the Council may act upon the text amendment without a recommendation from the Commission.

Attachments: Index of Memoranda and Exhibits (in bold)

DESIRED OUTCOME:

Conduct Policy Discussion. Provide staff guidance

INDEX OF MEMORANDA
T-393

1. Application for T-393
2. Draft Ordinance – T-393 (First Draft, October 19, 2009)
3. Letter to Gaithersburg Gazette dated September 25, 2009, requesting a Legal Ad in the September 30 and October 7, 2009, issues
4. Notice of the October 19, 2009, Joint Public Hearing to interested parties sent on September 29, 2009
5. Letter submitted by Peter Henry, dated September 30, 2009
6. Letter submitted by James Clifford, dated October 2, 2009
7. **Cover sheet from Joint Public Hearing, October 19, 2009**
8. **Draft Ordinance – T-393 (Second draft, dated October 27, 2009)**
9. **Letter submitted by Peter Henry, dated October 27, 2009**
10. **Draft Ordinance – T-393 (Third draft, dated October 30, 2009)**
11. **Staff Comments from November 4, 2009 Planning Commission meeting**
12. **CPC from Planning Commission to Mayor and City Council, dated November 5, 2009**
13. **Draft Ordinance – T-393 (Fourth draft, dated November 9, 2009)**

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

October 19, 2009

CALL TO PODIUM:

Greg Ossont

RESPONSIBLE STAFF:

Greg Ossont, Director
Planning & Code Administration

Jacqueline Marsh, Planner

Lauren Pruss, Planning Director

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing -JOINT
	Historic District
	Consent Item
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	Resolution
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**TITLE: Text Amendment T-393
Joint Public Hearing**

Ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article VI, entitled, "Administration and Enforcement of Chapter," § 24-178, entitled, "Use and Occupancy Permits for new, altered, or nonconforming uses," to create new subsections §24-178(g) entitled "Temporary Uses;" §24-178(g)(1) through §24-178(g)(6) so as to allow temporary uses.

SUPPORTING BACKGROUND:

On September 21, 2009, during its policy discussion on sketch plan amendment Z-313 and schematic development plan SDP-09-003, the Mayor and City Council directed staff to prepare a text amendment that would allow temporary uses.

Staff has drafted the attached text amendment that lists criteria an applicant must meet in order to establish a temporary use on property in the city.

Please note that the temporary use would be terminated at such time the surrounding land is developed in accordance with any Master Plan recommendations. There is also the availability of a time frame that can be imposed upon the temporary use by the Council or the Planning Commission.

Attachments: Index of Memoranda and Exhibits

DESIRED OUTCOME:

Conduct Public Hearing

Staff recommends the Planning Commission hold the record open for 11 days until 5PM on October 30, 2009, with anticipated recommendation on November 4, 2009.

Staff recommends the Mayor and City Council hold the record open for 18 days until 5PM on November 6, 2009, with anticipated policy discussion on November 16, 2009.

Joint Hearing - MCC & PC
T-393
Exhibit #7

Ordinance No. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE VI, ENTITLED, "ADMINISTRATION AND ENFORCEMENT OF CHAPTER," § 24-178, ENTITLED, "USE AND OCCUPANCY PERMITS FOR NEW, ALTERED, OR NONCONFORMING USES," TO CREATE NEW SUBSECTIONS § 24-178(g) ENTITLED "TEMPORARY USES;" §24-178(g)(1) THROUGH §24-178(g)(6) SO AS TO ALLOW TEMPORARY USES

Text Amendment T-393

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Article VI, § 24-178 is amended to create § 24-178(g) as follows:

ARTICLE VI. ADMINISTRATION AND ENFORCEMENT OF CHAPTER

* * * * *

Sec. 24-178(g) Temporary Uses

The Mayor and City Council and/or the Planning Commission may by resolution establish or grant a temporary use upon a finding of the following:

1. The use shall be listed as permitted in the zoning district and not as a prohibited use or special exception;
2. The use will not adversely affect the health or safety of persons residing or working in the vicinity of the proposed uses;
3. The use will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
4. The use further enhances economic development activities in the city;
5. The initial period of the temporary use shall be set forth by the Mayor and City Council in the resolution for approval and may be terminated at such time parcels in proximity to the proposed temporary use are developed in accordance with any applicable Master Plan for the subject area;

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
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Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

6. Periodic reviews shall be conducted to ensure compliance with all conditions or requirements of the approval and allow for the granting of extensions of the subject approval. The timing of the review shall be determined by the Mayor and City Council.

As determined by the City Manager or designee, a request for such a temporary use shall be accompanied by so much of the information required by Section 24-169 as is necessary to properly detail and permit action upon the request.

ADOPTED, this ____ day of _____, 2009, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2009. Approved by the Mayor of the City of Gaithersburg this ____ day of _____, 2009.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the ____ day of _____, 2009. This Ordinance will become effective on the ____ day of _____, 2009.

ANGEL L. JONES, City Manager

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October 27, 2009

Jacqueline Marsh, AICP, Planner
Planning and Code Administration
City of Gaithersburg
31 South Summit Ave
Gaithersburg, MD 20877

RE: T-393 Temporary Uses

Dear Ms. Marsh:

Thanks to all the staff for their work on this -- just a few points:

1. Automatic vs. permissive nature -- The prior draft automatically terminated the temporary use ("shall") -- the new language is permissive in nature ("may"). This will impact financing unless the process to terminate the temporary uses can be resolved quickly and with certainty, but this is a decision for the Planning Commission and Council to make in reviewing this resolution. However, it does create procedural issues.
2. Procedural Aspects -- Beyond impact to financing sources for the new master plan development, the permissive "may" approach creates a new administrative process that must be complied with to terminate the temporary use. This new process needs to be sketched out so the parties know what needs to be done. The biggest issue is what is the process for terminating the non-conforming use would be, i.e.:
 - a. Body that will hear -- When the adjoining property is under development, whom would that adjoining property owner process the application to terminate with -- the M&CC, the Planning Commission, or the body that approved the temporary use?
 - b. Burden -- Is the burden of proving that the temporary use should be terminated upon (1) the City/adjoining landowner to the temporary use, or (2) the holder of the temporary use? This makes a very big difference in the outcomes.
 - c. Standards -- Are the standards to be applied to the termination the same as were applied for the granting of the Temporary use?
 - d. Use continued or discontinued during appeals -- Since the process is proposed to be permissive, if the Planning Commission or City Council finds that the Temporary use should be discontinued, is it to be discontinued or continued during the periods of appeals (the Board of Appeals, the Circuit Court, etc.)? Generally, the use will remain open during the entire multi-year appeals process unless thought thru at the outset.

I know it can create a burden to look at these aspects now, but it is easier to address them now rather than later when a hearing is in front of the Commission or Council. -- Thanks again for the work on this important text amendment -- it is worth doing it right.

Best regards,

Peter

Peter Henry
BP Realty Investments

Ordinance No. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE VI, ENTITLED, "ADMINISTRATION AND ENFORCEMENT OF CHAPTER," § 24-178, ENTITLED, "USE AND OCCUPANCY PERMITS FOR NEW, ALTERED, OR NONCONFORMING USES," TO CREATE NEW SUBSECTIONS § 24-178(g) ENTITLED "TEMPORARY USES;" §24-178(g)(1) THROUGH §24-178(g)(6) SO AS TO ALLOW TEMPORARY USES

Text Amendment T-393

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Article VI, § 24-178 is amended to create § 24-178(g) as follows:

ARTICLE VI. ADMINISTRATION AND ENFORCEMENT OF CHAPTER

* * * * *

Sec. 24-178(g) Temporary Uses

The Mayor and City Council may by resolution establish or grant a temporary use upon a finding of the following:

1. The use shall be listed as permitted in the zoning district and not as a prohibited use or special exception;
2. The use will not adversely affect the health or safety of persons residing or working in the vicinity of the proposed uses;
3. The use will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
4. The use further enhances economic development activities in the city;
5. The initial period of the temporary use shall be set forth by the Mayor and City Council in the resolution for approval and shall be subject to periodic reviews to ensure compliance with all conditions or requirements of the approval.

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Joint Hearing - MCC & PC
T-393
Exhibit #10

As determined by the City Manager or designee, a request for such a temporary use shall be accompanied by so much of the information required by Section 24-169 as is necessary to properly detail and permit action upon the request.

ADOPTED, this ____ day of _____, 2009, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2009. Approved by the Mayor of the City of Gaithersburg this ____ day of _____, 2009.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the ____ day of _____, 2009. This Ordinance will become effective on the ____ day of _____, 2009.

ANGEL L. JONES, City Manager

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Added to existing law by original bill.

Deleted from existing law by original bill.

Added by Amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: November 4, 2009

TEXT AMENDT.: **T-393**

TITLE: ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE VI, ENTITLED, "ADMINISTRATION AND ENFORCEMENT OF CHAPTER," § 24-178, ENTITLED, "USE AND OCCUPANCY PERMITS FOR NEW, ALTERED, OR NONCONFORMING USES," TO CREATE NEW SUBSECTIONS § 24-178(g) ENTITLED "TEMPORARY USES;" §24-178(g)(1) THROUGH §24-178(g)(6) SO AS TO ALLOW TEMPORARY USES

REQUEST: **RECOMMENDATION TO M&C**

ADDRESS: N/A

ZONE: N/A

STAFF LIAISON: **Greg Ossont, Director**
Planning and Code Administration

Jacqueline Marsh, Planner

Enclosures:

Staff Comments
Index of Memorandum and Exhibits (In **Bold**)

Joint Hearing - MCC & PC
T-393
Exhibit #11

STAFF COMMENTS

I. SCOPE OF REVIEW

This item is on the Commission's agenda for a transmittal of a recommendation to the Mayor and Council. Section 24-197(c) requires that the Planning Commission make a recommendation on any text amendment to the Zoning Ordinance, Chapter 24 of the City of Gaithersburg Code, within a timely period following the end of the public hearing and any subsequent record of the hearing.

II. BACKGROUND

The joint public hearing on T-393 was held on October 19, 2009. The Planning Commission held open its record until 5 PM on October 30, 2009.

As the Commission will note, there have been several modifications to the Text Amendment. References to the Master Plan, "adjacent and abutting land," and project development commencement that were the topics of discussion during the joint public hearing have been deleted in order to simplify the temporary use approval procedure

Regarding standard Number Five (5) specifically, this combines the language from two previous standards. Essentially, the Mayor and City Council would review the proposed temporary use, determine an appropriate time period and the need for periodic reviews based on staff recommendations, and then incorporate both as a part of the approval resolution.

Further, the Commission's involvement in the granting of temporary use approval has been omitted and applications are now proposed to reviewed and approval by the Mayor and City Council only.

Since the joint public hearing, there has been three additional items added to the record.

Conclusion: Staff recommends to the Planning Commission **TO RECOMMEND ADOPTION OF TEXT AMENDMENT T-393 TO THE MAYOR AND CITY COUNCIL.**

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

FROM: Planning Commission

DATE: November 5, 2009

SUBJECT: T-393 -- Ordinance to amend of Chapter 24 of the City Code (City Zoning Ordinance), Article VI, entitled, "Administration and Enforcement of Chapter," § 24-178, entitled, "Use and Occupancy Permits for new, altered, or nonconforming uses," to create new subsections §24-178(g) entitled "Temporary Uses;" §24-178(g)(1) through §24-178(g)(3) so as to allow temporary uses.

At the November 4, 2009, meeting the Planning Commission held a discussion on its recommendation to the Mayor and City Council on T-393. The Planning Commission did not make a formal recommendation of approval or denial on the text amendment, but urged the Council to consider the following:

1. A strict time limit and maximum period on the temporary use should be used in order to avoid a "defacto" approval of a land use. The Council should consider adding language prohibiting construction from taking place that may be associated with the temporary use approval. The Commission noted that temporary uses in other jurisdictions are typically limited to 30-60 days rather than several months and years.
2. The allowance of any use in the City is a land use driven decision. It is appropriate for the Planning Commission to provide a recommendation to the Mayor and City Council in a similar manner as recommendations for zoning map amendments and text amendments.
3. The opportunity for public involvement in consideration of a temporary use is essential and should be required.

Additionally, the Planning Commission inquired as to whether there would be inherent conflicts between the approval of temporary uses and the requirements of Article 66B of the Maryland Annotated Code.

The Mayor and City Council's record is scheduled to close on November 6, 2009 and the Policy Discussion on the text amendment is scheduled for November 16, 2009. In accordance with Section 24-197(c), the Council may act upon the text amendment without a recommendation from the Commission.

Joint Hearing - MCC & PC
T-393
Exhibit #12

P&C Director Greg Ossont.....

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE VI, ENTITLED, "ADMINISTRATION AND ENFORCEMENT OF CHAPTER," § 24-178, ENTITLED, "USE AND OCCUPANCY PERMITS FOR NEW, ALTERED, OR NONCONFORMING USES," TO CREATE NEW SUBSECTIONS § 24-178(g) ENTITLED "TEMPORARY USES;" §24-178(g)(1) THROUGH §24-178(g)(3) SO AS TO ALLOW TEMPORARY USES

Text Amendment T-393

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ARTICLE VI. ADMINISTRATION AND ENFORCEMENT OF CHAPTER

* * * * *

Sec. 24-178(g) Temporary Uses

1. The Mayor and City Council, upon review and recommendation from the Planning Commission, may by resolution, establish or grant a temporary use upon a finding of the following:
 - a) The use shall be listed as permitted in the zoning district and not as a prohibited use or special exception;
 - b) The use will not adversely affect the health or safety of persons residing or working in the vicinity of the proposed uses;
 - c) The use will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
 - d) The use further enhances economic development activities in the city;
2. The period of the temporary use, the length of which shall not exceed one year, shall be set forth by the Mayor and City Council in the resolution for

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approval and shall be subject to periodic reviews to ensure compliance with all conditions or requirements of the approval,

3. As determined by the City Manager or designee, a request for such a temporary use shall be accompanied by so much of the information required by Section 24-169 as is necessary to properly detail and permit action upon the request.

ADOPTED, this ____ day of _____, 2009, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2009. Approved by the Mayor of the City of Gaithersburg this ____ day of _____, 2009.

SIDNEY A. KATZ, Mayor

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ANGEL L. JONES, City Manager

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