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Signs of Change

By Doug Snover

Imagine, if you can, the late-afternoon sun glistening behind you during a leisurely drive along Priest Drive or McClintock Road, or any number of other main streets in Tempe.

The light flashes across McDonald's familiar arches, resplendent in bright blue. Or perhaps in aqua marine, if that color better pleased the Tempe Design Review Board.

Then again, maybe you're in heavy traffic, scanning the roadside businesses for a store calling itself Flower Frenzy, which you know should be in a strip mall not far from your home.

Even if proprietor Tom Smith were standing at the door waving, you might easily pass him by. Like any good business owner, Smith wants to get your attention as you drive past his small shop on west Elliot Road. Mega-franchises like McDonald's and Blockbuster Video and Subway do, too.

These days, their task is a bit easier thanks to recent changes in the sign code provisions of the Tempe Zoning and Development Code.

Beginning in late February, Tempe amended its sign code to grant businesses a freer hand in the signs they put out front to attract customers.

The most important changes to the local business community, according to Eric Emmert of the Tempe Chamber of Commerce, are:

More and bigger signs for businesses with freeway frontage;

More businesses can be mentioned on signs for small centers;

Banner signs are now allowed to advertise significant events, such as new management; and

City administrators can alter a small center's sign package to allow different colors on signs.

The Tempe Chamber has worked for four years to persuade city officials to cut some slack to local businesses in the sign code.

"We were hearing from businesses along the freeways that they were needing more exposure to passing traffic," Emmert said.

In response, Tempe now allows businesses located within 300 feet of freeways to have signs up to 35 feet tall and 120 square feet.

Smaller shops that share strip centers with large "anchor" tenants wanted a chance to get their names on the main signs that face the streets, he said.

"Visitors were driving by our commercial complexes looking for specific businesses and couldn't find them," Emmert said.

"The problem was that you had one sign dominated by the major retailer. Now we can let the little guys get on there, too."

Allowing businesses to fly banner signs to advertise significant events is a major improvement, Emmert said. He cited the example of a restaurant that is under new management or is offering a new menu as a typical case where a business would seek permission to fly a banner sign for a maximum of 14 days.

New businesses also will be allowed to erect "Grand Opening" signs for up to 30 days under the revised code.

Probably the most important change in the Tempe sign code, Emmert said, is the relaxation of color rules.

Previously, the landlord of a small shopping center would submit a sign package that set the color for signs on all stores within the center. Any business that wanted a different color sign had to seek special permission from the city's Design Review Board.

The new rules allow landlords to add new colors to their sign packages without seeking Design Review Board approval, he said.

In 1998, mega-franchise Blockbuster Video took the city to court over the color restrictions--and won. The Ninth Circuit Court of Appeals, which includes Arizona, held that federal law--specifically the Lanham Trademark Act--preempts cities from regulating sign colors if the

regulations force businesses to alter federally registered trademarks.

The Blockbuster case was argued on trademark protection, not free speech issues.

Not all businesses can press their case to the federal appeals courts, however.

Smith, who operates Flower Frenzy on West Elliot Road, just wanted to use the same color sign as a sister store in Chandler. Smith wanted yellow. Tempe insisted on red or blue.

"Basically, the problem we had with our signage was that they (Tempe) dictated that our sign had to be either red or blue. We're a franchise, and we have copyright protections with our signs and (yellow) logos," he said.

"If everything is red or blue, all of them wash out and no one knows they are there. Nothing really seems to jump out. Nothing says, 'Hey, I'm here.'"

Tempe Design Review Board rejected his request for a yellow sign, so Flower Frenzy opened under a red sign that neatly matched the other signs in the center. Smith, meanwhile, hired a lawyer to prepare a lawsuit while he pressed his appeal to the City Council.

"We're the second store (in the Flower Frenzy franchise), and we are trying to build some name recognition," Smith said.

"The board didn't want to listen to anything we had to say."

Smith and Flower Frenzy eventually prevailed without going to court.

"It was just a long, drawn-out process that, really, I don't think should have happened," Smith said while standing beneath a bright yellow sign.