



City of Phoenix
PLANNING AND DEVELOPMENT DEPARTMENT

Staff Report
Zoning Ordinance Text Amendment
Z-TA-7-16

Application No Z-TA-7-16: Add Chapter 6, Section 600 (General Provisions), amend Chapter 6, Section 605 (Residential Estate RE-43 District), Section 606 (Residential Estate RE-24 District), Section 608 (Residence Districts), Section 622 (Commercial C-1 District - Neighborhood Retail), Section 623 (Commercial C-2 District - Intermediate Commercial), Section 624 (Commercial C-3 - General Commercial), and Section 627 (Light Industrial District), and amend Chapter 7, Section 701 (Bulk Regulations) of the Phoenix Zoning Ordinance to clean up and clarify existing enforcement language.

Staff recommendation: Staff recommends approval of Z-TA-7-16 as shown in the recommended text in Attachment A.

Purpose/Background

This is a clean-up text amendment and the intent of these changes is to clarify existing enforcement language within the Zoning Ordinance. Section 600 will be added to Chapter 6 to include existing language and clarify that uses that are not specifically permitted or similar to those specifically permitted are prohibited. This language currently exists in Chapter 7, Section 701; however, to be more effective with enforcement this language should be located at the beginning of Chapter 6 which identifies each zoning district and permitted uses.

In addition, there are portions of the existing language that are unclear and outdated. For example, where a use permit is required the term “may” is sometimes used. Some could argue that the term “may” does not constitute a requirement. In order to alleviate any confusion regarding when a use permit is required, the term “may” will be removed and replaced with “only upon securing a use permit”.

Another portion of the existing language that is unclear and often results in confusion are the provisions regarding outdoor display of merchandise in the C-2 (Intermediate Commercial) and C-3 (General Commercial) districts. The display of merchandise outdoors (excluding second hand/use merchandise) is permitted in the C-2 and C-3 districts subject to obtaining a use permit. There have been several requests for zoning interpretations whether the display of second hand/use merchandise outdoors requires a use permit or not, or not permitted at all. Staff has had to clarify these provisions multiple times over the years; therefore, new language has been added to provide clarification that outdoor display of second hand/use merchandise is not permitted in the C-2 and C-3 districts.

Staff Report: Z-TA-7-16

November 23, 2016

Page 2 of 11

Conclusion

The proposed text amendment provides clarity and strengthens existing language in order to be more effective with enforcement of the Zoning Ordinance. Staff recommends approval of the change to the Zoning Ordinance as proposed in Attachment A.

Writer

T. Gomes

11/23/2016

Attachments

A. Proposed Language

ATTACHMENT A
Text Amendment Z-TA-7-16 – Enforcement Clean Up

Proposed Language:

Add Chapter 6, Section 600 (General Provisions) to read as follows:

- A. THE ZONING DISTRICTS, REGULATIONS, AND THE USES THAT ARE PERMITTED IN EACH ZONING DISTRICT AS PERMITTED USES ARE HEREBY ESTABLISHED. ANY USE THAT IS NOT SPECIFICALLY PERMITTED OR ANALOGOUS TO THOSE SPECIFICALLY PERMITTED IS HEREBY DECLARED TO BE A PROHIBITED USE AND UNLAWFUL. A PERMITTED USE THAT IS NOT PERMITTED IN ANY DISTRICT SHALL NOT BE CONSIDERED AN ACCESSORY USE IN THAT DISTRICT.

Amend Chapter 6, Section 605.A. (Residential Estate RE-43 District) to read as follows:

A. Permitted Uses

3. Model homes and/or subdivision sales offices when located in model homes subject to approval of the Planning and Development Department, and subject to the following conditions:
- a. Such model home and/or subdivision sales offices shall be located in a subdivision which is owned by or held in trust for the subdivision developer proposing to erect the model homes and/or proposing to operate the sales office.
 - b. Subdivision sales offices and/or model homes shall be permitted for a period not to exceed 36 months from the date of approval for the sales offices and/or model homes.
 - c. ~~The Zoning Administrator may grant a use permit to extend~~ Tthe time limit allowed in Section 605.A.3.b for an additional 36 months SHALL BE EXTENDED ONLY UPON SECURING A USE PERMIT.

Amend Chapter 6, Section 606.A. (Residential Estate RE-24 District) to read as follows:

A. Permitted Uses

3. Model homes and/or subdivision sales offices when located in model homes subject to approval of the Planning and Development Department, and subject to the following conditions:
 - a. Such model home and/or subdivision sales offices shall be located in a subdivision which is owned by or held in trust for the subdivision developer proposing to erect the model homes and/or proposing to operate the sales office.
 - b. Subdivision sales offices and/or model homes shall be permitted for a period not to exceed 36 months from the date of approval for the sales offices and/or model homes.
 - c. ~~The Zoning Administrator may grant a use permit to extend~~ The time limit allowed in Section 606.A.3.b for an additional 36 months SHALL BE EXTENDED ONLY UPON SECURING A USE PERMIT.

Amend Chapter 6, Section 608.E. (Residential Districts) to read as follows:

E. Permitted Uses with Conditions and May Require Approval of a Use Permit Pursuant to Section 307

4. Model homes and/or subdivision sales offices when located in model homes subject to approval of the Planning and Development Department's representative to the Site Planning Division, and subject to the following conditions:
 - a. Such model home and/or subdivision sales offices shall be located in a subdivision or portion thereof which is owned by or held in trust for the subdivision developer proposing to erect the model homes and/or proposing to operate the sales office.
 - b. Subdivision sales offices and/or model homes shall be permitted for a period not to exceed 36 months from the date of approval for the sales offices and/or model homes.
 - c. ~~The Zoning Administrator may grant a use permit to extend~~ The time limit allowed in Section 608.E.4.b for an additional 36 months SHALL BE EXTENDED ONLY UPON SECURING A USE PERMIT.

- g. Modular subdivision sales office, subject to the following criteria:

- (3) ~~The Zoning Administrator may grant a use permit to extend~~
The time limit allowed in Section 608.E.4.g.2 for an additional
36 months SHALL BE EXTENDED ONLY UPON SECURING
A USE PERMIT.

**Amend Chapter 6, Section 622.E. (Commercial C-1 District – Neighborhood Retail)
to read as follows:**

E. Yard, Height and Area Requirements

4. For any other non-residential uses permitted in this district except as
provided in Section 622.E.3 the following requirements shall apply:

- f. For new commercial and office development on parcels of five acres
or less that are to be constructed adjacent to pre-existing structures
that have less than a 25-foot front building setback:

- (5) ~~The Zoning Administrator or Board of Adjustment may issue A~~
use permit in accordance with the provisions of Section 307 IS
REQUIRED to modify:

- k. ~~The Zoning Administrator or Board of Adjustment may issue a use~~
~~permit to modify~~ THE lot coverage, landscape or structure setback
requirements up to twenty-five percent (25%) of the established
setback for one (1) and two (2) story structures MAY BE MODIFIED
ONLY UPON SECURING A USE PERMIT AND when:

**Amend Chapter 6, Section 623.C. (Commercial C-2 District – Intermediate
Commercial) to read as follows:**

C. District Restrictions.

2. ~~The Board of Adjustment or Zoning Administrator may issue a use permit for~~
The display of merchandise outdoors (~~excluding second hand/used merchandise sales~~) as an accessory use to the permitted uses set forth in Section 623.D IS PROHIBITED UNLESS A USE PERMIT IS OBTAINED and subject to the following standards for the outdoor display area:
- a. A maximum three hundred (300) square feet of display area, can be located anywhere along the building except as noted in 2.b.;
 - b. No display or sale is permitted within ten (10) linear feet of either side of the building entrance or exit;
 - c. The depth, measured from the front facade of the building, may not exceed ten (10) feet unless otherwise approved by the Planning and Development Department upon a determination that a greater depth does not interfere with any pedestrian passage;
 - d. Payment for the products displayed must occur indoors;
 - e. Outdoor display or sales shall not be located within any required setbacks or in the parking lot.
 - f. OUTDOOR DISPLAY OF SECOND HAND/USED MERCHANDISE SALES IS PROHIBITED.

Amend Chapter 6, Section 623.E. (Commercial C-2 District – Intermediate Commercial) to read as follows:

E. Yard, Height and Area Requirements

4. For any other non-residential uses permitted in the district, except as provided in Sections 623.E.3 and 623.E.5, the following requirements shall apply:

- f. For new commercial and office development on parcels of five acres or less that are to be constructed adjacent to pre-existing structures that have less than a 25-foot front building setback:

- (5) ~~The Zoning Administrator or Board of Adjustment may issue A~~ use permit in accordance with the provisions of Section 307 IS REQUIRED to modify:

- k. ~~The Zoning Administrator or Board of Adjustment may issue a use permit to modify~~ THE lot coverage, landscape or structure setback requirements up to twenty-five percent (25%) of the established setback for one (1) and two (2) story structures MAY BE MODIFIED ONLY UPON SECURING A USE PERMIT AND when:

5. Any Large Scale Commercial Retail development shall conform to the following requirements:

- f. Standards for permanent outdoor garden sales (garden/outdoor living center):

- (2) ~~The Zoning Administrator or Board of Adjustment may issue a use permit in accordance with the provisions of Section 307 to increase T~~the outdoor sales area MAY BE INCREASED from 35,000 gross square feet to a maximum area of 50,000 gross square feet ONLY UPON SECURING A USE PERMIT AND when:

- g. Temporary outdoor display and sales:

- (C) ~~The Zoning Administrator or Board of Adjustment may issue a use permit in accordance with the provisions of Section 307 to modify T~~the allowable square footage and/or proximity of the display area to the building entrances/exits MAY BE MODIFIED by ~~fifty percent (50%)~~ ONLY UPON SECURING A USE PERMIT when it is clearly demonstrated that the proposed modification is not detrimental to adjacent property and the public welfare in general.

Amend Chapter 6, Section 624.C. (Commercial C-3 District – General Commercial) to read as follows:

C. District Restrictions.

2. ~~The Board of Adjustment or Zoning Administrator may issue a use permit for~~
The display of merchandise outdoors ~~(excluding second hand/used merchandise sales)~~ as an accessory use to the permitted uses set forth in Section 624.D IS PROHIBITED UNLESS A USE PERMIT IS OBTAINED and subject to the following standards for the outdoor display area:
- a. A maximum three hundred (300) square feet of display area, can be located anywhere along the building except as noted in 2.b.;
 - b. No display or sale is permitted within ten (10) linear feet of either side of the building entrance or exit;
 - c. The depth, measured from the front facade of the building, may not exceed ten (10) feet unless otherwise approved by the Planning and Development Department upon a determination that a greater depth does not interfere with any pedestrian passage;
 - d. Payment for the products displayed must occur indoors;
 - e. Outdoor display or sales shall not be located within any required setbacks or in the parking lot.
 - f. OUTDOOR DISPLAY OF SECOND HAND/USED MERCHANDISE SALES IS PROHIBITED.

Amend Chapter 6, Section 624.E. (Commercial C-3 District – General Commercial) to read as follows:

E. Yard, Height and Area Requirements

4. For any other non-residential uses permitted in this district, except as provided in Sections 624.E.3 and 624.E.5, the following requirements shall apply:

- f. For new commercial and office development on parcels of five acres or less that are to be constructed adjacent to pre-existing structures that have less than a 25-foot front building setback:

- (5) ~~The Zoning Administrator or Board of Adjustment may issue A~~ use permit in accordance with the provisions of Section 307 IS REQUIRED to modify:

- i. ~~The Zoning Administrator or Board of Adjustment may issue a use permit to modify~~ THE lot coverage, landscape or structure setback requirements up to ~~twenty-five percent (25%)~~ of the established setback for one (1) and two (2) story structures MAY BE MODIFIED ONLY UPON SECURING A USE PERMIT AND when:

5. Any Large Scale Commercial Retail development shall conform to the following requirements:

- f. Standards for permanent outdoor garden sales (garden/outdoor living center):

- (2) ~~The Zoning Administrator or Board of Adjustment may issue a use permit in accordance with the provisions of Section 307 to increase~~ The outdoor sales area MAY BE INCREASED from 35,000 gross square feet to a maximum area of 50,000 gross square feet ONLY UPON SECURING A USE PERMIT AND when:

- g. Temporary outdoor display and sales:

- (C) ~~The Zoning Administrator or Board of Adjustment may issue a use permit in accordance with the provisions of Section 307 to modify~~ Tthe allowable square footage and/or proximity of the display area to the building entrances/exits MAY BE MODIFIED by ~~fifty percent (50%)~~ ONLY UPON SECURING A USE PERMIT when it is clearly demonstrated that the proposed modification is not detrimental to adjacent property and the public welfare in general.

Amend Chapter 6, Section 627.A and C. (A-1 Light Industrial District) to read as follows:

- A. **Purpose.** The A-~~1~~, Light Industrial District, is a district of Industrial uses designed to serve the needs of the community for industrial activity not offensive to nearby commercial and residential uses.

- C. **District Restrictions.** Unless otherwise specifically provided in this Section, the following restrictions shall apply to this district:

3. ~~The Board of Adjustment or Zoning Administrator may issue a use permit for~~
The display of merchandise outdoors (excluding second hand/used merchandise sales) as an accessory use to the permitted uses set forth in Section 627.D IS PROHIBITED UNLESS A USE PERMIT IS OBTAINED and subject to the following standards for the outdoor display area:
- a. A maximum three hundred (300) square feet of display area, can be located anywhere along the building except as noted in ~~23.b.~~;
 - b. No display or sale is permitted within ten (10) linear feet of either side of the building entrance or exit;
 - c. The depth, measured from the front facade of the building, may not exceed ten (10) feet unless otherwise approved by the Planning and Development Department upon a determination that a greater depth does not interfere with any pedestrian passage;
 - d. Payment for the products displayed must occur indoors;
 - e. Outdoor display or sales shall not be located within any required setbacks or in the parking lot.
 - f. OUTDOOR DISPLAY OF SECOND HAND/USED MERCHANDISE SALES IS PROHIBITED.

Amend Chapter 6, Section 627.F. (A-1 Light Industrial District) to read as follows:

- F. **Site Standards.** Except as provided in 627.F.3, the following standards shall apply.

3. Any Large Scale Commercial Retail development shall conform to the following requirements:

- f. Standards for permanent outdoor garden sales (garden/outdoor living center):

- (2) ~~The Zoning Administrator or Board of Adjustment may issue a use permit in accordance with the provisions of Section 307 to increase T~~ the outdoor sales area MAY BE INCREASED from 35,000 gross square feet to a maximum area of 50,000 gross square feet ONLY UPON SECURING A USE PERMIT AND when:

- g. Temporary outdoor display and sales:

- (C) ~~The Zoning Administrator or Board of Adjustment may issue a use permit in accordance with the provisions of Section 307 to modify T~~ the allowable square footage and/or proximity of the display area to the building entrances/exits MAY BE MODIFIED by ~~fifty percent (50%)~~ ONLY UPON SECURING A USE PERMIT when it is clearly demonstrated that the proposed modification is not detrimental to adjacent property and the public welfare in general.

Amend Chapter 7, Section 701 (Bulk Regulations) first paragraph as follows:

~~The use districts, regulations, and the uses that are permitted in these use districts are hereby established. Any use that is not specifically permitted or analogous to those specifically permitted is hereby declared to be a prohibited use and unlawful. A use that is not permitted in any district shall not be considered an accessory use in that district. Notwithstanding any specific regulations enumerated below for each district, the following general regulations, where applicable, shall apply.~~
