

Summary of Proposed Use Determination Process
Codes & Ordinances, 02-21-12

- Purpose is to more clearly define what a use determination is, when a use determination is made, and how a use determination is appealed.
- Proposal includes a qualitative standard that limits formal use determinations to “unclassified” or novel land uses that don’t clearly fit within any of the defined land use categories.
 - Director would make the determination as whether a use is unclassified. If the determination takes much thought, then the use should be regarded as unclassified and a formal, appealable determination made.
 - This standard is similar to that found in other jurisdictions where interested parties may appeal land use determinations.
- The process envisions 2 types of use determinations: project and non-project determinations.
 - A project determination is made when a site plan application is submitted and the director determines that the use is unclassified. Notice of the determination is required, and anyone entitled to notice may appeal the determination to the BOA.
 - A non-project determination can be requested by anyone and is not related to a specific development application.
 - If a non-project determination isn’t associated with a particular address, then it is non-binding and will not prohibit appeals if an actual site plan application is later submitted for that use. It will, however, be used to guide the department’s determinations going forward.
 - If a non-project determination includes an address, and the applicant wants to rely on that application later on, then notice is required to be sent just as if the determination was made in connection with an actual site plan. If no appeals are filed, or if the Board upholds the determination, then the use determination can’t be appealed later on when the applicant submits a site plan.

DRAFT ORDINANCE RE: USE DETERMINATIONS

PART 1. City Code Section 25-2-2 (*Determination of Use Classification*) is amended to read:

§ 25-2-2 DETERMINATION OF USE CLASSIFICATION.

(A) The director of the [~~Neighborhood~~] Planning and Development Review [~~Zoning~~] Department shall determine the appropriate use classification for an existing or proposed use or activity.

(B) If a particular use is not classified within a zoning category or land use definition, [~~In making a determination under this section,~~] the director [~~of the Neighborhood Planning and Zoning Department~~] shall determine the appropriate use classification based on the [~~consider~~] the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.

(C) If a use requires a determination under Subsection (B) of this section, a person [~~An interested party~~] may request that the director issue a formal use determination and appeal the [a] determination [~~of the director of the Neighborhood Planning and Zoning Department under this section~~] to the Board of Adjustment under Section 25-1-197 (Use Determinations).

(D) The director [~~of the Neighborhood Planning and Zoning Department~~] shall notify the Planning Commission and the Zoning and Platting Commission of the filing of an appeal within 30 days of the filing, and of the disposition of the appeal within 30 days of disposition.

(E) The director [~~of the Neighborhood Planning and Zoning Department~~] shall maintain a list of determinations made under this section.

PART 2. City Code Chapter 25-1, Article 7 (*Appeals, Variances, Special Exceptions, and Adjustments*) is amended to add a new Division 2 to read as follows and to renumber the remaining divisions of Article 7 accordingly:

Division 2. Administrative Decisions.

§ 25-1-197 USE DETERMINATIONS.

(A) This section applies to a formal determination by the director under Section 25-2-2 (*Determination of Use Classification*) regarding whether a land use that is not specifically classified under Chapter 25-2, Subchapter A (*Zoning Uses*) is a permitted, prohibited, or conditional use.

(B) Except as otherwise provided by this section, a use determination may be requested at any time by filing an application on a form provided by the director and by paying a fee established by separate ordinance.

(C) In addition to any additional information required by the director, an application for a use determination must:

- (1) state whether the determination is requested in connection with a specific project, and if so, reference the application number;
- (2) if the determination is not related to a specific development application, state whether it is requested for a particular address;
- (3) describe the land use(s) for which a determination is sought; and
- (4) include any information that the applicant requests the director to consider in making the use determination, including but not limited to an explanation of the similarities, if any, of the use to other classified uses.

(D) A use determination for a project that is subject to a pending development application is a "project use determination" and is subject to the requirements of this subsection.

- (1) The director shall determine whether a site plan application requires a use determination under Section 25-2-2 (*Determination of Use Classification*) within the applicable review period specified by Section 25-5-114 (*Time Periods for Determination; Notice*) or Section 25-5-143 (*Director's Report*).
- (2) If the director determines that a use determination is required, the applicant must submit a request for a project

use determination under Subsection (B) before the application expires.

- (3) Within 14 days after receiving a request for a project use determination, the director shall issue a determination under Subsection (F) of this section and provide notice of the determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*).
- (4) Any person entitled to notice of a use determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*) may appeal the decision to the Board of Adjustment no later than 14 days after notice is provided.
- (5) Unless a project use determination is reversed or modified by the Board of Adjustment, the director shall follow the determination in reviewing any subsequent development applications for the project or applications for substantially similar projects.

(E) A request for a use determination that is not associated with a pending development application is a "non-project use determination" and is subject to the requirements of this subsection.

- (1) A non-project use determination may be requested by anyone, at any time, for a use that requires a determination under Section 25-2-2 (*Use Determination*).
- (2) In addition to the requirements in Subsection (C) of this section, an application for a non-project use determination may:
 - (a) include any information requested by the director regarding the size, scale, or intensity of the use for which a determination is requested; and
 - (b) include a specific address, if the applicant intends to rely on the determination in connection with a development application for a particular property.

- (3) Within 14 days after receiving a request for a non-project use determination, the director shall provide notice of the determination:
 - (a) to the applicant, if the determination is not associated with a specific address; or
 - (b) to all parties entitled to notice under Section 25-1-133(A) (*Notice of Applications and Administrative Decisions*), if the determination is associated with a particular address.
 - (4) Any person entitled to notice of a non-project use determination under this subsection may appeal the determination to the Board of Adjustment within 14 days.
 - (5) The director may not make a decision on an application that is subject to a use determination until the appeal period for the determination has run or, if the determination is appealed, until after the Board of Adjustment has voted on the appeal.
 - (6) Unless a non-project use determination is overturned by the Board of Adjustment, the director shall follow the determination in reviewing development applications for the address associated with the application, if any, and for substantially similar projects.
- (F) A use determination issued by the director under this section must:
- (1) include all information required under Section 25-1-133(C) (*Notice of Applications and Administrative Decisions*);
 - (2) state the director's determination as to whether each use for which a determination is sought is permitted, prohibited, or conditional;
 - (3) explain the factors considered by the director in making the determination under Section 25-2-2 (*Determination of Use Classification*), including the similarity of a use to other classified land uses; and

- (4) describe any conditions on the use determination, including limitations on the size, scale, location, or intensity of the use.
- (G) A use determination issued under this section:
- (1) does not make previously permitted land uses non-conforming under Section 25-2-941 (*Nonconforming Use Defined*), unless the Land Development Code is amended to reflect the determination; or
 - (2) may not be used to render decisions interpreting site development regulations.

