

# MEMORANDUM

TO: Zoning Committee of the Planning Commission

FROM: Deborah Albert

DATE: December 22, 2014

SUBJECT: ZO Update Phase IIC: short term and accessory use standards

**Zoning Ordinance Update Phase IIC.** The goal for the overall Zoning Ordinance Update is to make the Ordinance easier to use, understand and administer. Topics for this final phase include:

- Introduction of a use classification system
- Updates to use tables to reconcile them with the new classification system
- Updates to use standards and development of selected new use standards
- General updates to definitions and terms.

The agenda for the upcoming ZOCO meeting includes review of proposed new short term and accessory use standards. Relevant excerpts of the proposed amendments are posted to the ZOCO web page for quick access to these sections of the draft amendments.

**Short term use standards.** Short term use standards were previously discussed by ZOCO at the September 18, 2014 ZOCO meeting. Since then, staff discussed the proposed standards with the Economic Development Commission (Dec. 9) and the BIDs and Partnerships (Dec. 15). Significant revisions have been made based on comments from all three of these discussions, and are discussed below. All comments on this topic and staff responses are attached.

**Background:** Explicitly included in the scope of the Zoning Ordinance Update, is a task to create use standards for short term uses. In the past, many have questioned the definition of “temporary” uses and the time period during which temporary uses may be allowed. In fact, there are several uses throughout the Ordinance that are allowed

on a “temporary” basis that include specific time frames. In order to clarify this issue, and because different uses are allowed for different periods of time, these standards are proposed as “short term use standards,” and are allowed anywhere from one or two days for a fixed number of times per year, to up to three years with potential for renewal. Proposed revisions to short term use standards, since the previous ZOCO discussion, are described below.

***Revisions to proposed draft***

General provisions (for all short term uses) (12.10.2). The general provisions have been expanded to include compliance with regulations for the permit for short term use (15.10) previously included in its own subsection. Additionally, the lighting provision, previously included only in the indoor and outdoor events subsection, has been moved to the general provisions to be applicable to all uses (see more about this provision in the discussion of indoor and outdoor events below).

Construction equipment, fences and offices (12.10.6). Construction equipment must meet all provisions of the zoning ordinance. Standard site plan conditions allow such equipment to violate setback provisions during construction of site plan properties, however, no such provisions are provided for by-right development, which may encounter the same issues with regard to space on the development site during construction. Comments received on the previous draft included consideration for impact on single-family residential properties

Proposed revisions to the draft include a requirement that a fence of a minimum of six-feet in height be provided along the common lot line where a development project abuts an R or RA district. Staff will continue to refine this provision to account for topographical limitations on the provision of such a fence.

Indoor and outdoor events and activities in vacant buildings or properties (12.10.5). Buildings approved by site plan (or use permit) typically include conditions that identify allowed use(s) in the building. If a different use is proposed that is not allowed by the site plan, the property owner must request a change in use via a site plan amendment. The intent of such conditions is to control the uses allowed under this special exception development, which allows for more density, height or other modifications from by-right requirements. However, in order to facilitate special events, vitality in the County’s commercial corridors, and interim use of vacant properties, special events have been allowed in such properties on a short term basis. If requested use is already allowed by the site plan, the temporary use can be allowed with the issuance of a Certificate of Occupancy by the Zoning Administrator. However, if the use is not allowed by the site plan (even where allowed by-right in the subject zoning district), a site plan amendment is required. Staff proposes that provisions for allowing the short term use of vacant buildings (typically, but not limited to, office buildings) for other uses, would be in keeping with the intent of the legislative approval associated with a particular building by allowing “other” uses only on a short term basis.

The previous draft included three different subsections to regulate 1) indoor events, 2) outdoor events (currently allowed in C-1 districts, but with no criteria); and 3) seasonal stands (currently allowed in C-1 districts with different time frames for different types of stands). In the revised draft, all three topics have been combined into one subsection under a common set of regulations. Other revisions include the following:

*General reorganization of the draft provisions*

- The lighting restrictions were previously only included in the indoor and outdoor events subsection, but have been moved to the general provisions, applicable to all short term uses, and have been reduced from a required plan to a general provision that allows the Zoning Administrator to impose conditions to ensure that the use does not impose excessive glare into residential areas.

*Applicability*

- In buildings approved for retail, service and commercial uses (as defined by the proposed use classification)
- On properties with an entrance on a principal or minor arterial

*Uses allowed*

- Indoor uses include all uses allowed in the subject zoning district, notwithstanding site plan conditions that approve a property for a specific use.
- Outdoor uses include carnivals, circuses, fairs, dog or horse shows, and outdoor retail sales events (including seasonal stands)
- Outdoor events would be allowed to have tents and other temporary structures, subject to bulk, placement coverage and by-right height limitations in the subject zoning district.
- Staff also proposes to consider pop-up restaurants associated with a restaurant with a valid certificate of occupancy on the same block or within a defined distance.

*Frequency and length*

- The revised draft would allow up to 90 days per year per building or property. This provision has been revised a number of times based on feedback received, in order to allow for the most flexibility. While there have been multiple requests for longer term events, staff proposes that uses inconsistent with approved site plans are reasonable on a short term basis, whereas longer term events should be consistent with approved site plan uses so as not to undermine the community process and legislative approval for the subject property.
- Seasonal stands, which in the current Ordinance are allowed for different time frames depending on the retail item (e.g. Christmas trees, vegetables, fireworks, flowers) have been combined in the revised draft, within the 90 day/year time frame proposed for all other indoor and outdoor events.

### *Signs*

- Signs, consistent with those allowed by the sign regulations for the subject zoning district, that do not require permits may be permitted for short term uses during the time of the use and up to one week prior to the event. Signs that do not require permits include window signs, directional signs and in some locations, temporary sidewalk signs.

Pop-up parks (12.10.6). Pop-up parks were proposed in the September 5 public draft, and included a proposed new defined term. Provisions would allow for vacant parcels, including unbuilt portions of site plans, to be used as parks for an interim use period. Recent examples include the Central Place property and the existing pop-up park on the Korean Embassy property. Such use would be allowed for up to three years under a single short term use permit. Unlike other proposed short term use provisions, pop-up parks would not have a restricted time frame beyond the three years, allowing for the possibility of renewal after the initial three year period. Comments received and proposed revisions include:

- Inquiries about allowances for vending and farmers' markets in pop-up parks given a proposed prohibition on commercial uses on such properties. The revised proposal eliminates the prohibition on all commercial uses, and alternatively would make pop-up parks eligible to be considered for allowed short term uses (such as indoor and outdoor events) and for open-air markets.
- A discussion of a public process requirement for pop-up parks. Staff does not propose including a public process requirement at this time, due to the short term nature of such use.

No additional changes have been made to short term use standards in the following categories:

- Contractors' storage and staging yards, off-site (12.10.3)
- Public, civic and institutional buildings uses (12.10.7)
- Storage pods (12.10.8)
- Permits for short term use (15.10)

**Accessory use standards.** A number of accessory uses are allowed by the Zoning Ordinance, and listed in the accessory use table for each set of zoning districts (P, R, RA, C, M), however, there are no standards or definition in the Zoning Ordinance for what constitutes an accessory use. Development of such standards was explicitly included in the scope of the Zoning Ordinance Update. This topic was included on the September 18 ZOCO agenda, but was not discussed at that meeting due to time constraints. Proposed standards include:

- Defining accessory buildings and uses as incidental and subordinate to the principal use on the lot;
- Requiring accessory uses to be associated with a principal use on the same lot;
- Requiring all accessory uses to meet all placement and dimensional requirements;
- Requiring accessory uses to be in keeping with the character of the primary use;

The use classification system will also provide examples of accessory uses typically associated with each category of principal uses.

**Zoning Ordinance Update Phase IIC Comments Received (as of Dec. 22, 2014)**  
**Short Term Use Standards Only**

ZOCO Comment	Staff Response	Date
<b>Short term use standards (12.10)</b>		
Construction equipment, fences and offices. Consider impact on R-districts before allowing more broadly for by-right uses – for both use within R-districts and on commercial properties abutting R-districts.	Staff concurs. Revised proposed provisions will provide an allowance for the Zoning Administrator to approve placement of equipment in required setbacks during time of construction, but only subject to Zoning Administrator approval, upon application. Additionally, a fence is proposed to be required abutting R and RA districts	11/18/14
Indoor events in vacant commercial buildings. ZOCO and community members were generally supportive of the concept, however, suggested that additional criteria are needed to ensure that parking and impacts on surrounding properties are addressed.	Staff concurs. The revised draft has been significantly modified, however, consistent with practice, parking for short term events is not proposed.	11/18/14
Indoor events in vacant commercial buildings. Avoid use of the term “commercial buildings” as it is vague and not defined	Staff concurs and has removed this terminology.	11/18/14
Outdoor events. This provision needs some criteria; consider strategies to allow for longer time periods, events on a repeat basis; a balance between reasonable criteria and over-regulation.	Staff concurs, and has substantially revised this proposal. The revised draft combines provisions for indoor and outdoor events on vacant properties or portions of vacant properties. A revised time frame is also proposed, that would allow for maximum flexibility, by allowing short term uses for up to 90 days per year per property.	11/18/14
Pop-up parks. Would farmers markets be allowed in pop-up parks? This would be a commercial activity.	The revised draft would allow short term activities to occur in pop-up parks, including open-air markets (as approved by use permit) and removes a complete prohibition on commercial activity.	11/18/14
Pop-up parks. Consider allowances for vending (e.g. food trucks)		
Pop-up parks. Consider defining “commercial uses”	This term has been removed from the draft provision.	11/18/14
Storage pods. ZOCO members disagreed about the time frame proposed, with one member suggesting 90 days is too long and another suggesting it is too short. Others commented that storage pods are also allowed with a ROW permit so there are other options.	Staff has considered the comments and concludes that the proposed 90 days is a reasonable timeframe. No change to the draft provision is proposed.	11/18/14

KEY to Affiliation: A = Attorney; BID = Business improvement district or partnership staff; CA = Civic Association member; CF = Civic Federation; member; DP = Design professional; EDC = Economic Development Commission; PM = Property manager; R = Resident.

Public Comment	Staff Response	Date and Affiliation
<b>Short term use standards (12.10)</b>		
<b>Uses and zoning districts – indoor and outdoor events</b>		
Create overlay districts corresponding to BID boundaries	The intent of creating short term use standards is to address areas beyond just those covered by BIDs or Partnerships	12/15/14 (BIDS)
Short term uses need to be easy, quick, applied equally to all commercial districts	Staff concurs. Most short term use standards proposed, allow short term uses in all C and M districts, and for some uses, in P districts.	12/15/14 (BIDS)
BIDs and Partnerships put forward a work plan each year that goes through the County Manager and is approved by the County Board. These work plans could provide an outline for uses allowed.	Staff will review existing BID work plans and concludes that draft short term uses should explicitly be able to address the types of events included in existing work plans. The intent of the proposed standards is to provide regulations that provide the Zoning Administrator some flexibility within the bounds of regulations that provide reasonable expectations for the types of events and activities allowed.	12/15/14 (BIDS)
Can allowances for short term uses be identified through conditions in the site plan process?	This question is best addressed during review of individual site plans.	12/15/14 (BIDS)
<b>Frequency and timing – indoor and outdoor events (12.10.5)</b>		
What about events that occur regularly on a weekly basis (e.g. Monday yoga in the water park; food truck Thursdays; etc.)	Staff has revised the proposed time frame to allow for maximum flexibility, to up to a total of 90 days/year per property.  A gathering of food trucks on private property (or public property that is not in the public right-of-way), occurring on a weekly basis, would be allowed subject to approval of a use permit for an open-air market by the County Board.	12/15/14 (BIDS)
In order to market events in a particular space, events need to occur on a regular or ongoing basis in order to build an audience for a particular space.	Staff understands that in addition to the marketing of a space in a particular location, the expense of preparing a space necessitates the allowance to use a single space for multiple events. For this reason, and in response to other feedback, staff has revised the proposed time frame to allow for maximum flexibility, to up to a total of 90 days/year per property.	12/15/14 (BIDS)

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<b>Examples of issues encountered – indoor and outdoor events (12.10.5)</b>		
Site plan problem. One example identified by Rosslyn: Bennet Park-Ritz property, of which the ground floor was approved as a community benefit for art use. The BID suggests that the space is not usable, and has proposed to add tables and chairs so events could take place in the space. This was not allowed by zoning.	One of the issues specifically intended to be addressed with the short term use standards, is to allow for use of vacant spaces within buildings governed by site plans for a specific use. This particular example would need more research, especially if the space was adopted through a site plan with the intent that it would remain vacant. However, generally, a vacant office or retail space, for example, should have access to the short term uses in these proposed standards.	12/15/14 (BIDS)
<b>Process – indoor and outdoor events (12.10.5)</b>		
Need to have some reasonable expectation about what is allowed and that approval is going to be granted because once the event is marketed and the space is brought up to code, a lot of investment has been made. Need the CO to be issued earlier in the process.	Staff will be developing an application period subsequent to adoption, and this information will be helpful in understanding the needs, and developing an efficient process.	12/15/14 (BIDS)
The special events committee process is helpful because it allows for a pre-meeting to discuss all the issues and details before filling out an application; this process brings together many departments to ensure that everything is addressed. However, there have still been issues in select cases where a relevant agency (e.g. NPS) was not included and therefore problems were still encountered at permitting.		12/15/14 (BIDS)
Music: live entertainment at events has been difficult. Through the special event process, music has not been a problem (e.g. blues festival). But for a market, cannot get permission for a guitar player, while a street musician can come up and play any time.	Live entertainment is allowed only by use permit and only associated with a restaurant. Within the scope of this update, staff does not anticipate developing separate zoning regulations to allow live entertainment for short term uses or for uses other than restaurants.	12/15/14 (BIDS)
<b>Specific issues – indoor and outdoor events (12.10.5)</b>		
“Vacant” space must be flexible – and not limited to an entire building or entire floor being vacant. Typically, these spaces are made available at the option of the property owner, and varies as to the amount of space.	Staff concurs, and has edited the proposed text to ensure that vacant buildings or spaces within buildings may be eligible for short term uses.	12/15/14 (BIDS)
12.10.6 what is a lighting plan. This sounds onerous. A photometric study, required for some major projects is very expensive.	Staff has moved this provision to 12.10.2 (general standards for short term uses), such that a lighting plan is no longer proposed to be required, however, no short term use may project excessive glare into residential areas or streets, and the Zoning Administrator may impose conditions on the approval if this is or becomes a problem.	12/15/14 (BIDS)

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Signs: need for a limited time before the event. Event marketing takes place about one month out. Signs would be a limited time before the event – one to two weeks out. Banners would be helpful.	Staff has extended the allowance for signs that do not require permits to be placed up to one week prior to the event in addition to during the event; All signs must be in compliance with §13.	12/15/14 (BIDS)
Outdoor cafes/beer gardens associated with a nearby restaurant. ABC will issue a one-day permit in an outdoor space to allow a restaurant with an ABC license to utilize an outdoor space in proximity to the restaurant. Short term uses should provide for similar allowance.	Staff concurs, and is considering allowing short-term restaurant uses within a defined proximity to a restaurant with a valid certificate of occupancy for up to one day at a time within the short term use allowances.	12/15/14 (BIDS)
<b>Interim uses – indoor and outdoor events (12.10.5)</b>		
There is a need for interim uses as well as short term uses (e.g. for a longer period of time)	Staff concludes that short term uses may be reasonably approved in order to utilize vacant spaces and activate commercial areas. However, longer term use of vacant properties for uses inconsistent with site plan (or use permit) approvals should be addressed through County Board action (e.g. site plan or use permit amendment) so as not to undermine the community process that precedes such approval, and the legislative process that allows for development of such properties.	12/15/14 (BIDS)  12/9/14 (EDC)
<b>12.10.5 Indoor events in vacant commercial buildings</b> One time per year is too restrictive, as it is costly to meet the certificate of occupancy requirements for a special event in a vacant building. Once that work is done, it is advantageous to be able to use the space for other short term events. Consider allowing: <ul style="list-style-type: none"> <li>• A defined number of days/year or events/year</li> <li>• Clarify per building or site plan?</li> <li>• Identification of geographic areas</li> <li>• Longer term uses, such as artist studios</li> </ul>	The revised draft combines provisions for indoor and outdoor events, and proposes a simplified time frame to allow for maximum flexibility, to up to a total of 90 days/year per property	9/18/14 (BID)
<b>12.10.5 Outdoor events.</b> 10 days is too short and would be cost-prohibitive.		9/18/14 (PM)
<b>12.10.5:</b> Why are Christmas Trees and pumpkin stands permitted for 30 days but fireworks only for 14 days?	The time frames for Christmas trees and pumpkin stands in the previous draft were not changed from the adopted Ordinance. However, the revised draft regulates all types of retail stands with other indoor and outdoor events, and allows a flexible time frame as described above.	11/4/14 (A)
<b>12.10.5:</b> The time and occurrence limitations on indoor events in commercial buildings and outdoor events are too limited. Property owners need additional flexibility in order to make these activities worthwhile.		11/4/14 (A)
<b>12.10.5:</b> The time and occurrence limitation for vegetable and fruit stands may be too limiting.		11/4/14 (A)

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<p><b>12.10.5 Outdoor events.</b> Consider the following:</p> <ul style="list-style-type: none"> <li>• Use of shipping containers in surface parking lots of vacant buildings</li> <li>• Retail uses</li> <li>• Parking provision for such uses should not be an issue if the building is vacant</li> <li>• That food trucks are allowed on vacant properties with a license under the vending ordinance and how such provisions work with zoning placement requirements</li> </ul>	<p>Revised provisions explicitly allow use of shipping containers (subject to bulk and placement requirements); and retail uses in vacant buildings and vacant portions of buildings.</p> <p>Currently the Zoning Administrator does not require parking for short term events. Staff has removed parking requirements from the proposed draft.</p>	9/18/14 (BID)
<p><b>12.10.5 Outdoor events.</b> Civic associations should be able to sponsor such events; and that for such events, notification should be required, similar to that required for use permit.</p>	<p>The proposed short term use provisions do not regulate who may sponsor an event, however, the sponsor of an event would have to work in cooperation with the property owner to obtain permission to conduct the event.</p>	(CA) 11/18/14
<p><b>12.10.5 Indoor events in vacant commercial buildings.</b> Civic associations should be able to access this provision.</p>		9/18/14 (CA)
<p><b>12.10.5 Indoor events in vacant commercial buildings.</b> How does a pop up use comply with sign regulations under a comprehensive sign plan?</p>	<p>The revised draft includes a provision to allow indoor short term uses to have all signs that do not require permits, consistent with Ordinance provisions, regardless of whether or not they are shown in a comprehensive sign plan (neither window signs, temporary sidewalk signs, nor directional signs require permits). In addition, in response to feedback, subsequent revisions also allow signs to be placed up to one week prior to an event.</p>	9/18/14 (BID)
<p><b>12.10.5 Indoor events in vacant commercial buildings.</b> Events in the past have been in partnership with the County in order to enliven mixed-use areas, and such a standard could be considered</p>	<p>Staff proposes a set of standards to regulate short term events rather than limiting such events to specific sponsors.</p>	9/18/14 (BID)
<p><b>12.10.5. Indoor events in vacant commercial buildings.</b> Consider the negative impacts of vacant buildings as a reason for creating a regulatory tool to allow such events</p>	<p>Staff concurs.</p>	9/18/14 (BID)
<p><b>12.10.6 Pop-up parks.</b> Pop-up uses are generally feasible because they are quick and cheap, and a public process requirement would be cost- and time-prohibitive</p>	<p>Staff concurs, and does not propose to require a public process. These provisions are intended to activate commercial/mixed-use areas, particularly vacant properties.</p>	9/18/14 (PM)
<p><b>12.10.6 Pop-up parks.</b> Consider event programming that might be in conflict with the proposed prohibition on commercial uses, as well as use of kiosks in pop-up parks.</p>	<p>The revised draft removes this outright prohibition, and instead, would allow events in pop-up parks, as allowed by the short term uses in this section, and would also allow open-air markets (subject to use permit approval).</p>	9/18/14 (BID)
<p><b>12.10.6</b> The prohibition against commercial activity in pop-up parks too limiting and could foreclose otherwise desirable events (e.g., short-term food tasting events in a pop-up park).</p>		11/4/14 (A)

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