



PLANNING + NEIGHBORHOOD SERVICES DEPARTMENT
Land Use Review Division

MEMO – UDC Internal Policies Q1 2024

To: Planning + Neighborhood Services

From: Michael Tassi, Assistant Planning Director

A handwritten signature in blue ink, appearing to be "MT", written over the name Michael Tassi.

Date: April 11, 2024

RE: UDC policies Q1 2024

During the course of implementation of the Unified Development Code (UDC), Planning staff have identified some issues that require an official Written Interpretation pursuant to Section 7.5.529 and other issues that only require a determination from the Manager to ensure consistent application of the UDC.

This policy memo intends to memorialize the determination of the Manager regarding several topics within the UDC that have come up since the June 5, 2023, implementation date prior to Code amendments. Necessary amendments to the UDC will be presented to appointed and elected officials in the future to codify the policies below. At which point, the UDC will be the determining document and this memo will have no further effect.

Lastly, the suggested "Future Code Fix" at the end of each topic is a starting point for future code amendments and not an attempt to set policy. Some of the proposed fixes are obvious, but some may take additional discussion.

1. Parks use category and the PK zoning district – It is the Manager's determination that the PK (Public Parks) Zone permits the "Park" use by right as it is the primary intent of the defined zone district.

As stated in the 'Purpose' subsection of UDC Subsection 7.2.503.A for 'PK: Public Parks', "the PK zone district is intended for land set aside for use as, for example, public recreation and Open Space. These parks may include playground equipment, athletic fields, sport courts, swimming pools, and other facilities and programmed activities normally associated with public parks. Parks may also be reserved for natural or environmental reasons, such as preservation of wildlife, vegetation, or significant natural, cultural, or historic resources." Uses that are permitted in the PK Public Parks zone district can be found in Table 7.3.2-A; however, the 'Park' use is not shown as being permitted.

Prior to adoption of the UDC, the 'Park' use was permitted in the PK zone district, and it was the intent of the RetoolCOS project to carry forward several existing zone districts and permitted use categories. In this case, the logical permitted use was not carried forward as an oversight.

- Future Code Fix – Add "P" to the use table (Table 7.3.2-A) for the Park use in the PK zone.

2. Subsection 7.3.302.B and the Safe Harbor provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA) – It is the Manager’s determination that the requirements of Subsection 7.3.302.B do not apply to Religious Institutions.

The additional standards applied to Religious Institutions in the Subsection were carried forward from the previous Chapter 7 Zoning & Subdivision Ordinance, and, when translated into the UDC, the impact became more cumbersome, contrary to the provisions of RLUIPA. Per an email from Trevor Gloss of the City Attorney’s Office to Michael Tassi, Assistant Planning Director, on 8/30/23, Subsection 7.3.302.B is problematic under RLUIPA; therefore, it should be ignored with respect to Religious Institutions under the “safe Harbor” provision of the Act (42 U.S.C § 2000cc-3e)).

- Future Code Fix – Remove the term “Religious Institutions” from this Subsection and scrub the UDC for additional requirements that may be impacted by RLUIPA.

3. Fuel Dispensing Separation – It is the Manager’s determination that the referenced setback provision for Fueling Dispensing Stations is intended to be measured from a fuel dispensing use’s property line to the adjacent residential zoning or use property line. Furthermore, it is intended that the Fueling Dispensing Station be separated 250’ from both residential uses and zone districts.

As defined in Subsection 7.3.303.1.3 ‘Fuel Dispensing Stations’, a two-hundred and fifty (250) foot separation from residential zone districts (R-E, R-1 9, R-1 6, R-2, R-4, R-5, R-Flex Low, R-Flex Medium, and R-Flex High) shall be honored. This additional standard was included during the RetoolCOS public hearing process at the direction of the City Council.

- Future Code Fix – Amend the language to be specific as to how the required separation is measured and applied.

4. Carport Front Yard versus Front Setback – It is the Manager’s determination that Front Yard Carports can occupy the front yard beyond the front yard setback.

Subsection 7.5.505.B (Front Yard Carport Permits – Applicability) states that a permit is needed before erecting a carport in the “front yard setback” of a property. Further Subsection 7.3.304.C.2a indicates that Carports are allowed in the “front yard setback.” However, Subsection 7.3.304.A.4c indicates that Accessory Structures are not permitted within the “front yard,” which by definition includes both the area within the setback and the area beyond the setback. The Carport Permit ordinance was incorporated into the UDC with no changes from the previous Chapter 7 Zoning & Subdivision Ordinance, as adopted by the City Council in 2021 and was not part of the RetoolCOS project scope. The Carport Ordinance was drafted with the intent to allow Carports within the front yard whether they are within or beyond the front yard setback.

- Future Code Fix – Correct term agreement within Sections 7.3.304 and 7.5.505 to clarify that Carports are allowed within the “front yard.”

April 2, 2024

5. Administrative Adjustments used for any development type – It is the Manager’s determination that Administrative Adjustments can be used for any application/permit type, not just those accompanied by a Development Plan or Plat.

Subsection 7.5.524.B1 (Applicability) states that Administrative Adjustments, “...are available for consideration during review of a Development Plan or Final Plat for all types of development in all zone districts...;” however, Subsection 7.5.515.B2(a) (Development Plans/Applicability), does not require a Development Plan for new single family or duplex construction or an addition to existing single-family or duplex construction. It was not the intent to exclude any type of development from the use of the Administrative Adjustment tool regardless of the process used to evaluate the type of development.

- Future Code Fix – Amend Subsection 7.5.524.B.1 (Applicability) to allow all types of development, regardless of which process is used.

6. Determination of Multi-Family land use – It is the Manager’s determination that a property which includes three or more dwelling units (primary not accessory) is considered a multi-family land use regardless of how those units are configured (e.g. attached, detached, or some combination of both).

Subsection 7.6.301.D (Definitions) defines a multi-family dwelling (Dwelling, Multi-Family) as having “3 or more contiguous dwelling units having common or party walls on a single lot, a single-family detached dwelling as a building with one dwelling unit on one lot”, and single-family attached (Dwelling, Single-Family Attached) as “two or more attached dwelling units on individual lots” with a common or party wall (“unpierced wall”). Neither of these definitions provides for a product type that exists in Colorado Springs whereby multiple single-family (attached or detached) units are provided on a single lot. The practice has been to consider this type of development as multi-family. To clarify, this determination does not intend to include accessory dwelling units in the “count” when determining number of dwellings on a lot.

- Future Code Fix – Amend the ‘Dwelling, Multi- Family’ definition in Subsection 7.6.301.D to include more than 3 single-family units on a single-lot and address the ADU issue if necessary.