
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: December 2, 2003

SUBJECT: Petition No. 400-01-66 – Larry H. Miller Management Company request to amend the Zoning Ordinance relating to Temporary Uses and the maximum time limit for tents associated with outdoor sales (Sec. 21A.42.070.F)

STAFF REPORT BY: Janice Jardine, Land Use and Public Policy Analyst

ADMINISTRATIVE DEPT. AND CONTACT PERSON: Community and Economic Development – Planning Division
Doug Dansie, Principal Planner

OPTIONS:

1. Forward the proposed ordinance to a future Council meeting for a public hearing.
2. Identify changes to the proposed ordinance and forward to a future Council meeting for a public hearing.
3. Request additional written information and refer to an additional Council work session.
4. Other options identified by Council Members.
5. Any combination of the above.

NEW INFORMATION AND MATTERS AT ISSUE:

NEW INFORMATION:

- A. On January 7, 2003, Council Members received a briefing regarding the proposed Zoning Ordinance text change relating to temporary uses and the maximum time limit for tents associated with outdoor sales to remain in place. At the end of the discussion, the Administration indicated that they would address the issues and questions that were raised and provide additional information to the Council.
- B. Issues discussed at the Council briefing included:
 1. Size including limiting square footage and differentiate between sizes such as separate criteria for a canopy over a patio versus a tent enclosed on the sides or in a separate location.
 2. Long-term safety issues and aesthetics including life/safety, fire and building code, traffic and parking impacts, visual appearance and impacts on the surrounding neighborhood.
 3. Differentiate between the type and scale of the use such as major events, existing business activities and non-profit/homeowner type uses.
 4. Limiting the types of uses and sub-leasing.
 5. The potential of creating an unintended impact of unfair competition for existing businesses.
 6. Limiting locations – downtown versus non-residential zones citywide.
 7. Reducing the timeframe to address the potential for a tent to be used as a permanent structure.
 8. The potential for someone to put up tent(s) in the same general area but different locations one right after the other.
 9. How other cities deal with this issue (not including tents for special events).
- C. On May 13, 2003, at the request of the Administration, the Council adopted a motion to refer this item back to the Administration for additional review.

- D. The Administration has submitted a new ordinance for Council consideration. Key elements identified by the Administration in the proposed ordinance are summarized below. Please see the Administration's transmittal and the proposed ordinance for details.
1. Tents smaller than 200 sq. ft. and canopies smaller than 400 sq. ft. associated with a business that is legally licensed as a permanent or temporary business are permitted:
 - a. In all nonresidential zoning districts
 - b. Up to a maximum of 45-days per calendar year
 2. Tents larger than 200 sq. ft. and canopies larger than 400 sq. ft. associated with a business that is legally licensed as a permanent or temporary business are permitted:
 - a. In the following zoning classifications:
 - Downtown D-1, D-2, D-3 and D-4
 - Manufacturing M-1 and M-2
 - General Commercial
 - Public Lands PL and PL-2
 - Business Park
 - Research Park
 - Open Space
 - b. Up to a maximum of 45-days per calendar year
 - c. The Zoning Administrator may extend the maximum time limit to 180-days per calendar year based on the following:
 - The intended use meets the parking requirements
 - A positive recommendation from the following City Depts./Divisions
 - Transportation
 - Public Utilities.
 - Business Licensing
 - Fire
 - Police
 - Historic Landmark Commission (if applicable)
 3. The Zoning Administrator may waive the zoning district bulk and yard requirements.
 4. Tents smaller than 200 sq. ft. and canopies smaller than 400 sq. ft. are permitted in all residential districts without a permit for personal home use for not more than 5 days.
 5. Tents larger than 200 sq. ft. and canopies larger than 400 sq. ft. are permitted for personal home use for not more than 5 days with Fire Department approval.
 6. Canopies are defined as a tent structure that is open on more than 75% of its sides.

MATTERS AT ISSUE:

- A. Council Members may wish to request additional language be added to the proposed ordinance that would clarify or further define personal home use such as including reference to homeowner hosted functions to address special activities such as fundraising. The Council Office had a complaint this summer from a homeowner who was hosting a special event for a non-profit organization and couldn't get approval.
- B. Council Members may wish to discuss with the Administration steps or options that would address the issues of unfair competition and visual impacts as previously discussed by the Council.
- C. Council Members may wish to discuss with the Administration the criteria used by the Zoning Administrator to waive the bulk and area requirements in the zoning districts as specified in the proposed ordinance.
- D. In a related matter, the temporary tent issue was raised this spring in regard to firework stands. At that time, the Administration noted the need to address time frames and re-evaluate regulations for other temporary uses. The Administration indicated they would pursue additional amendments to the City Code and Zoning Ordinance. Council Members may wish to request an update on the status of the revisions.

- E. The Administration's transmittal notes representatives of the tent industry raise issues regarding the efficiency of the current permitting process. The Permits office committed to providing written clarification of the permit processes and outreach information to tent providers including providing an expedited process and simplifying payment methods. Council Members may wish to inquire as to whether the documentation is complete and available for review.

The following information was provided previously. It is provided again for your reference.

KEY ELEMENTS:

- A. The proposed text change would extend the current maximum 10-day time limit for tents associated with outdoor sales as temporary uses to remain in place:
- 45 days per calendar year through an over-the-counter permit, and
 - allow an extension of time (over the proposed 45 day limit) up to a maximum 180 days through the Planning Commission conditional use process.
- B. The Administration notes that the proposed change was initiated due to the Delta Center operating an outdoor food concession throughout the summer to provide restaurant services primarily for construction workers working on the Gateway shopping center. The management company wished to have the tent in place for the duration of the summer but the ordinance currently only allows a maximum of 10 days. The petitioner notes that it is expensive to put up and take down temporary tents and that the proposed change would:
- Eliminate the need for tents to be taken down and put up several times.
 - Allow an opportunity to recover some of the costs for setting up and dismantling tents, and
 - Allow a more equitable treatment for businesses that wish to use temporary tents. (The petitioner notes that the tent erected behind the centerfield wall at Franklin Covey Field appears to operate under a different set of rules.)
- C. Other examples of businesses that would benefit from the proposed text change identified by Planning staff include the Outdoor Retailer's Convention that uses temporary tents for 19 days during the convention and Bricks Club (private club) intent to enclose a patio area during the winter months.
- D. The purpose of the Zoning Ordinance Temporary Use section is to provide general regulations, applicable in all non-residential zoning districts, for uses and structures that have only a seasonal or temporary duration, such as uses and structures associated with carnivals and fairs, the Christmas season, or construction projects. The intent is to regulate all temporary uses conducted on private property. (Sec. 21A.42)
- E. Art festivals, neighborhood fairs, vending carts and other similar activities, authorized by other City regulations to operate on public or private property or within the public way, are not subject to the temporary use zoning regulations.
- F. Other uses permitted separately in the Temporary Use section of the Zoning Ordinance (Sec. 21A.42.070) include:
- Outdoor sales of plant products during spring and summer – permitted April through October
 - Christmas tree and other seasonal item sales- permitted a maximum of 45 days
 - Festivals, bazaars, outdoor sale events, carnivals, circuses and other special events – permitted a maximum of 14 days
 - Farmers' markets – permitted June through October
 - Movie or film locations – no maximum time limit
 - Construction trailers and temporary contractor's storage yards – no maximum time limit
 - Outdoor sales of fireworks – no maximum time limit

- Relocatable offices – no maximum time limit
 - Bus shelters, kiosks and other temporary buildings – permitted a maximum of 6-months
- G. Temporary uses may be approved by the Zoning Administrator subject to the applicable requirements and conditions identified in the Zoning Ordinance or identified by the Zoning Administrator including:
- Use limitations applicable in the district in which the temporary use is located
 - Hours and days of operation
 - Mitigation of traffic and parking impacts
 - Limitations on temporary signage
- H. In addition, temporary tents are regulated through the Fire Department and must comply with specific Fire Code requirements.
- I. The Administration notes major issues raised during the review process and the Planning Commission hearing included:
- Fire Code compliance, tent size, height and visual compatibility, traffic and parking impacts, compliance with Health Department regulations, and potential impacts on surrounding businesses and neighborhoods.
 - Modification of the Planning staff recommended time frame. Staff recommended 21 to 180 days approved by the Zoning Administrator with input from affected City departments/divisions. (the Planning Commission is recommending 45 days with an over-the-counter permit and up to 180 days through the conditional use process.)
 - The potential for temporary uses and tents to by-pass the normal review and code compliance processes and create an unfair competition advantage impacting surrounding businesses.
 - The potential for tents to be used as permanent structures.
 - Restricting the types of uses that would be permitted in temporary tents to uses that would not be in direct competition with surrounding businesses.

MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR ADMINISTRATION:

Council Members may wish to consider or discuss with the Administration steps taken or options to address the following issues and concerns.

- A. Has the Administration and the Planning Commission considered using an overlay zone in very specific areas rather than applying the proposed changes on a citywide basis? This could limit the use of temporary tents to commercial areas within a specific geographic boundary or to commercial areas that do not abut residential neighborhoods similar to the regulations for sidewalk vending carts. What are the pros and cons?
- B. The Administration’s transmittal notes that comments relating to the proposed text changes were requested from Community Council Chairs by letter. Were the City Boards or Commissions and various business organizations such as the Business Advisory Board, Transportation Advisory Board, Downtown Alliance, Chamber of Commerce and the Vest Pocket Business organization involved in the review process? If so, what type of comments or input were received?
- C. The Planning Commission’s minutes reflect a major focus on issues relating to the Delta Center and the surrounding area. Because the proposed change would be applied on a citywide basis, what steps have been taken to address potential unintended impacts on other areas and neighborhoods of the City?
- D. One Planning Commissioner inquired as to best practices, standards or ordinances from other cities. Planning staff indicated that other cities had not been contacted. Would Council Members like Council staff to contact other cities and provide additional information?

- E. The two examples used relating to the potential for the 180-day conditional use appears to be commercial expansion opportunities (such as the Delta Center food service and the private club patio enclosure).
1. The Council may wish to discuss the policy implications and equity issues that might be associated with allowing businesses and organizations to expand their activities for six months of the year using temporary structures.
 2. The Council may wish to evaluate whether the use of temporary tents for 6 months per year is the best approach for business expansion opportunities, or whether these opportunities should be considered using the City's existing ordinances. (i.e. should a private club patio be enclosed for use in winter months using this ordinance or the existing ordinances, building and fire codes.)
 3. It should be noted that the 180-day conditional use would not be limited to business expansion opportunities. Automobile tent sales, parking lot retail sales and other activities are also potential uses.
 4. While parking and transportation issues are to be considered as part of the approval process, there is no requirement specified that the City's parking requirements be followed for the special 180-day conditional use. As such, there could be an impact on abutting businesses and/or neighborhoods.
 5. Beyond parking impacts due to more customers or visitors, it would be possible to use a portion of the parking lot for a temporary tent thus further reducing the available parking.
 6. The use of temporary tents may increase the walkable nature of communities and bring additional activity and a festive atmosphere to surrounding areas.
 7. While conditional uses are issued at the discretion of the Planning Commission, the Council has previously noted that nearly all conditional use requests are approved, either as submitted or with modifications.
- F. In a related matter, the Temporary Use Chapter of the Zoning Ordinance provides separate regulations and maximum time limits for a variety of uses. (Please refer to the Key Elements section, Item F. of this staff report.) The ordinance states "*Bus shelters, kiosks and other temporary buildings are permitted in all commercial, manufacturing and downtown districts. Such uses shall be limited to a period not to exceed six (6) months. Such facilities shall not be located in any required yard or any required parking area and sales from these facilities shall be prohibited.* (Sec. 21A.42.070.J) Council Members may wish to clarify with the Administration what types of bus shelters are covered by these regulations.

MASTER PLAN AND POLICY CONSIDERATIONS:

- A. The City's Strategic Plan and the Futures Commission Report contain statements that support creating attractive conditions for business expansion including retention and attraction of large and small businesses, but not at the expense of minimizing environmental stewardship or neighborhood vitality. The documents express concepts such as maintaining a prominent sustainable city, ensuring the City is designed to the highest aesthetic standards and is pedestrian friendly, convenient, and inviting.
- B. The City's 1990 Urban Design Element includes statements that emphasize preserving the City's image, neighborhood character and maintaining livability while being sensitive to social and economic realities. Applicable policy concepts include:
- Allow individual districts to develop in response to their unique characteristics within the overall urban design scheme for the city.
 - Ensure that land uses make a positive contribution to neighborhood improvement and stability and building restoration and new construction enhance district character.
 - Require private development efforts to be compatible with urban design policies of the city regardless of whether city financial assistance is provided.
 - Treat building height, scale and character as significant features of a district's image.
 - Ensure that features of building design such as color, detail, materials and scale are responsive to district character, neighboring buildings, and the pedestrian.

- C. During the Council's recent discussions relating to growth, annexations and housing policy, Council Members have expressed support for developments that promote livable community concepts such as:
- pedestrian and bicycle friendly environments
 - compact, transit and pedestrian oriented developments
 - neighborhood anchor areas or commercial and/or business uses that are necessary to the function of residential neighborhoods or are compatible with residential activity
 - local services that are conveniently available or can be provided and are accessible on foot

CHRONOLOGY:

The Administration's transmittal provides a chronology of events relating to the proposed Zoning Ordinance text amendment. Key dates are listed below. Please refer to the Administration's chronology for details.

- January 17, 2002 Letter and draft ordinance sent to all Community Council Chairs requesting input and comments.
- March 21, 2002 Planning Commission Hearing

cc: Dave Nimkin, Rocky Fluhart, DJ Baxter, Ed Rutan, Lynn Pace, Chief Querry, Kevin Nalder, Dan Andrus, Alison Weyher, David Dobbins, Brent Wilde, Craig Spangenberg, Enzo Calfa, Cheri Coffey, Doug Dansie, Council Constituent Liaisons

File Location: Community and Economic Development Dept., Planning Division, Zoning Text Amendment, Temporary Uses – tents associated with outdoor sales