

DENVER ZONING CODE (DZC) UNLISTED ACCESSORY USE DETERMINATION: LIMITED COMMERCIAL SALES, SERVICE ACCESSORY TO NONRESIDENTIAL PRIMARY USES

PROPOSAL

Zoning permitting staff has requested clarification on whether certain Accessory Uses that are commercial in nature can be permitted as accessory to nonresidential Primary Uses.

Certain commercial sales and service uses are currently permitted with limitations as accessory to multi-unit dwelling (Residential) Primary Uses by DZC §11.8.7. However, the DZC does not explicitly address whether these uses are permitted as accessory to nonresidential Primary Uses. Such uses may have historically been allowed as accessory to a nonresidential Primary Use, however, zoning review has not always been applied consistently as it is not explicitly addressed in the DZC, and some customers may have established such uses without determining if a permit was needed. Obtaining a Zoning Permit for such uses as Primary Uses often requires a parking analysis and other requirements which would not usually be necessary if such uses were considered Accessory Uses. This unlisted Accessory Use determination provides guidance regarding what type of Limited Commercial Sales, Service uses are permitted as accessory to nonresidential Primary Uses, and what limitations apply.

WHAT ARE LIMITED COMMERCIAL SALES, SERVICE USES ACCESSORY TO NONRESIDENTIAL PRIMARY USES?

Terms used to describe the space occupied by these Limited Commercial Sales, Services uses often include cart, kiosk, stand, and booth. A common industry term is 'retail merchandising unit.' Another example is improved tenant space similar to that found in small retail facilities in a shopping mall. They are located within a Completely Enclosed Primary or Accessory Structure. They may be freestanding and not defined as a Structure, for example, a mobile cart on wheels which is not attached to the walls or floor of the Structure (See Figures 1, 2, 3, 4, 13). If not freestanding, they may be attached to the floor and/or walls of the Structure and they may share plumbing, electrical or other systems with the Structure, however they do not share a wall or walls with the Building and are not otherwise structurally integrated into the building structure (Figures 5, 6, 14). Others are completely integrated into the Building interior as tenant space, although they do not have a separate outside entrance or outdoor signs (Figures 9-12, 15-18). Their floor area is relatively small – from less than 50 square feet up to 500 or more square feet, but not exceeding 1000 square feet.

Examples include, but are not limited to:

- a food and beverage cart or kiosk, a shoe shine stand, or eating and drinking establishment or convenience store in the lobby of an office building (Fig. 1, 3, 4, 5, 15);
- a food and beverage or retail kiosk in a hotel or in a transit station or terminal (Fig. 7, 8);
- a food and beverage or gift cart or kiosk or tenant space in a hospital (Fig. 2, 6, 9, 10);
- a business office or gift shop tenant space in a hotel (Fig. 11, 12);
- a food and beverage kiosk, café, or gift shop in a library or museum (Fig. 13, 14);
- a credit union, convenience store, or small restaurant in a college or university (Fig. 16-18).

Note: Capitalized terms/words in this document are defined terms found in either DZC Article 11, Division 11.12 (Definitions of Uses), or Article 13, Division 13.3 (Definitions of Words, Terms, and Phrases).

APPLICABLE RULES

Accessory Uses incidental to nonresidential Primary Uses but not specifically listed in the applicable Use & Parking Table may be allowed according to the provisions of DZC, §11.10.1, "Unlisted Accessory Uses." DZC §11.10.1 states the Zoning Administrator shall determine and impose limitations on Accessory Uses not otherwise listed as permitted according to the procedures and review criteria stated in DZC, §12.4.6, Code Interpretations and Determination of Unlisted Uses.

In addition to the general review criteria stated in DZC, §12.4.6., to allow such unlisted Accessory Uses, the Zoning Administrator must also find that the use is "common and customary to a specific use by right" and that the use "is incidental to the specific use by right." DZC §11.10.1.1.B.

ANALYSIS

ARE LIMITED COMMERCIAL SALES, SERVICE ACCESSORY USES COMMON AND CUSTOMARY TO A NONRESIDENTIAL PRIMARY USE?

An unlisted Accessory Use must be common and customary relative to the permitted nonresidential Primary Use(s). It is common and customary for certain Limited Commercial Sales, Service uses to be located in the same Building as nonresidential Primary Uses. For example, office buildings often have shoeshine stands, food and beverage kiosks, small restaurants or convenience stores in their lobbies, serving building employees as well as customers from outside the building (Fig. 1, 3, 4, 5, 15). Hotels and transit stations or terminals may have similar uses in their lobbies or atriums (Fig. 7, 8). These may serve guests or transit patrons but may serve the general public as well. Hotels may often have a gift shop or business office tenant space to primarily serve hotel guests (Fig. 11, 12). A hospital may also have a food and beverage or retail kiosk or tenant space in a common area or atrium primarily to serve staff and visitors (Fig. 2, 6, 9, 10). A museum or library may contain a food and beverage kiosk, café, or gift shop (Fig. 13, 14). A college or university may have financial, retail, or food and beverage tenant space primarily to serve students and staff (Fig. 16-18).

These examples demonstrate that such Limited Commercial Sales, Service uses are common and customary Accessory Uses to certain nonresidential Primary Uses. Therefore, I find that the proposed Accessory Use – Limited Commercial Sales, Service – is common and customary to certain nonresidential Primary Uses as illustrated above.

ARE LIMITED COMMERCIAL SALES, SERVICE ACCESSORY USES INCIDENTAL TO A NONRESIDENTIAL PRIMARY USE?

Limited Commercial Sales, Service Accessory Uses are of a significantly smaller scale and size than the nonresidential Primary Use. Office buildings may contain from 50,000 to over 1 million square feet of office use. The Limited Commercial Sales, Service uses in question occupy less than 1,000 square feet of floor area. For example, a freestanding cart selling food and beverages may occupy 50 square feet or less (Fig. 3, 4, 13). The entire use, including seating, trash cans, a table for condiments etc. would be larger, but still much less than 1000 sq. feet. Dimensions of a typical food and beverage or retail kiosk would be 100 to 500 square feet (Fig. 2, 5-8). Again, the entire use, including associated seating, tables, stands for displaying wares etc. would be larger, but would still occupy less than 1000 square feet. Limited Commercial Sales, Service uses that comprise improved tenant space also occupy less than 1000 square feet (Fig. 9-12, 14-18).

Additional evidence that Limited Commercial Sales and Service uses are incidental to the Primary Use is that they occur inside a Completely Enclosed Structure containing the Primary Use, their lack of separate exterior entrances, lack of exterior signs, and that they often are not evident from an abutting public street.

§11.7.1.2.B.2.c limits accessory uses to 20% of gross floor area (GFA) in Mixed Use Commercial and Industrial Context Zone Districts. The limitations imposed on such uses in the conditions section at the end of this document will also ensure that such uses are indeed incidental in nature to the nonresidential Primary Use. These conditions include: that these Accessory Uses do not have separate outside entrances facing any street, are not evident from any street, and that they do not have outdoor signs of any type. Therefore, I find that the proposed Accessory Use – Limited Commercial Sales, Service – is incidental or secondary to the nonresidential Primary Use.

IS ALLOWING LIMITED COMMERCIAL SALES, SERVICE USES ACCESSORY TO NONRESIDENTIAL PRIMARY USES CONSISTENT WITH THE INTENT OF THE DZC, THE NEIGHBORHOOD CONTEXT, AND THE ZONE DISTRICT?

According to the review criteria for Code Interpretations and Determination of Unlisted Uses in DZC, §12.4.6.4.A, an unlisted Accessory Use must be shown to be consistent with the intent of the zoning code, and with the intent of the subject neighborhood context and zone district.

An explicit allowance for Limited Commercial Sales, Service uses in a nonresidential setting supports the intent of the DZC, including providing clear regulations that result in predictable review processes (§1.1.2.K) by clarifying how such accessory uses can be permitted in a clear and predictable manner. Allowing Limited Commercial Sales, Service uses as accessory to nonresidential Primary Uses also supports the intent of promoting sustainable site design practices (§1.1.2.L) by explicitly allowing certain complementary uses within the same Building as the nonresidential Primary Use(s).

Allowing Limited Commercial Sales, Service uses as accessory to nonresidential Primary Uses is consistent with the intent of the applicable neighborhood context and zone districts. Limited Commercial Sales, Service uses are currently permitted with limitations as accessory to multi-unit dwelling (Residential) Primary Uses by DZC §11.8.7. This document clarifies that such uses are also allowed as accessory to nonresidential Primary Uses, subject to similar limitations. Furthermore, as stated in the conditions section at the end of this document, such Accessory Uses would be permitted only in zone districts where the same commercial sales/service uses are already permitted as Primary Uses. In other words, this determination will not introduce entirely new uses into a given neighborhood context or zone district.

Per DZC, §12.4.6.4.A.2, the Zoning Administrator finds this interpretation is consistent with the intent of Suburban, Urban Edge, Urban, and General Neighborhood contexts to promote and protect residential neighborhoods and to provide certainty to owners, developers and neighborhood interests about the limits of what uses are allowed in a predominantly residential neighborhood. This interpretation is also consistent with the intent of the Urban Center Neighborhood context to ensure new development contributes positively to established neighborhoods and character; and is consistent with the intent of the Master Planned Context to provide clarity and predictable outcomes as development proceeds.

I find that the proposed accessory use – Limited Commercial Sales, Service as accessory to a Nonresidential Primary Use – is consistent with the intent of the DZC and with the intent of the applicable neighborhood contexts and zone districts.

IS THE CHARACTER AND IMPACT OF LIMITED COMMERCIAL SALES, SERVICE ACCESSORY TO NONRESIDENTIAL PRIMARY USE SIMILAR IN NATURE, FUNCTION, AND DURATION TO OTHER USES PERMITTED IN THE ZONE DISTRICT?

In determining whether to permit an unlisted use, the Zoning Administrator must find that the “proposed use has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s).” (DZC, §12.4.6.4.B.1). The Zoning Administrator must assess all relevant characteristics of the proposed use, including (as applicable): typical volume and type of sales; types of items sold; transportation requirements; related storage needs; types of structures associated with the use; parking requirements; external effects on surrounding properties; and any other potential impacts on adjacent properties compared to impacts from other uses permitted in the zone district.

A Limited Commercial Sales, Service Accessory Use would be permitted only in zone districts where the same use is already permitted as a Primary Use, and only as an accessory to an already permitted nonresidential Primary Use. In other words, these are typically smaller-scale uses that are already permitted as Primary Uses in the applicable zone districts. Any associated external effects or impacts would therefore be similar or less than impacts from the identical, permitted Primary Uses. Therefore, the Limited Commercial Sales, Service use accessory to nonresidential Primary Use is similar in terms of services provided, and is generally less harmful in terms of external effects or adverse impacts, compared to other nonresidential Primary Uses permitted in the applicable zone district.

I find that the character and impact of a Limited Commercial Sales, Service uses accessory to Nonresidential Primary Uses are similar in nature, function, and duration to other uses permitted in the applicable zone district(s).

CONCLUSION AND REASONABLE CONDITIONS

Based on the analysis above, I find that that Limited Commercial Sales, Service is allowed as an accessory use that is incidental, common, and customary to a nonresidential Primary Use.

As allowed by DZC §11.10.1 and 12.4.6.3.E.2, the Zoning Administrator may attach reasonable conditions to the allowance of an unlisted use. In this case, the conditions are similar, but not identical to those in DZC §11.8.7 for Limited Commercial Sales, Service as accessory to Residential Primary Uses. These conditions will ensure that Limited Commercial Sales, Service Accessory Uses remain incidental to the associated nonresidential Primary Use, consistent with the intent of the DZC, and similar in character and impact to other, similar uses permitted in the applicable zone district(s).

Accordingly, the following **Conditions** shall attach to the allowance for Limited Commercial Sales, Service accessory to a nonresidential Primary Use:

1. **Name of Use:** The subject unlisted Accessory Use shall be called “Limited Commercial Sales, Service.”
2. **Specific Accessory Use Types Allowed:** A Limited Commercial Sales, Service Accessory Use must be one of the following specific use types, as defined in Denver Zoning Code, Article 11:
 - a. Banking and Financial Services;
 - b. Retail Sales, Repair, Service;
 - c. Eating and Drinking Establishments, provided no live entertainment or accessory Amusement Devices are permitted; or
 - d. Office, but not including Dental/Medical Office and/or Clinic.

3. **Limits on Associated Primary Nonresidential Use:** Limited Commercial Sales, Service uses shall be accessory to one of the following nonresidential Primary Uses, as defined in the Denver Zoning Code, Article 11:
 - a. Hospital;
 - b. Lodging Accommodations;
 - c. Office;
 - d. Terminal, Station or Service Facility for Passenger Transit System;
 - e. University or College;
 - f. Library; or
 - g. Museum.
4. **Where Allowed:** Limited Commercial Sales, Service Accessory Uses are permitted in all zone districts where the associated nonresidential Primary Use(s) listed in condition #3 is allowed.
5. **Applicable Use Limitations:** Where permitted, and subject to the conditions listed herein, a Limited Commercial Sales, Service Accessory Use shall comply with the following limitations:
 - a. The specific type of Limited Commercial Sales, Service Accessory Use is also permitted as a Primary Use in the subject zone district;
 - b. It occurs inside a Completely Enclosed Structure also containing the associated nonresidential Primary Use;
 - c. Does not have outdoor signs of any type;
 - d. Does not have a separate outside entrance(s) facing any street, except for an emergency entrance(s);
 - e. Is not evident from any street;
 - f. Is limited to a maximum 1,000 square feet of gross floor area (footprint); and
 - g. The gross floor area of the Limited Commercial Sales, Service Accessory Use(s) shall be less than 20 percent of the gross floor area of the associated nonresidential Primary Use. When more than one accessory use is associated with a single Primary Use, this limitation shall apply to the cumulative total gross floor area of all the accessory uses in the same primary structure.

This unlisted accessory use determination does not release any owner or operator of such use from any other applicable permitting requirements, including but not limited to business license, food license, or building permits. Limited Commercial Sales, Service uses that do not comply with the conditions and limitations stated in this unlisted accessory use determination may instead be separately permitted as a Primary Use, subject to all applicable zone district and primary use standards and limitations.

This use determination is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this determination according to DZC, §12.4.8, Appeal of Administrative Decision.

Approved by:



Tina Axelrad, Zoning Administrator

Date: February 22, 2019

TA/ms

Figures 1 through 18: Examples of Limited Commercial Sales, Service Accessory Uses



Fig. 1. Shoe shine stand or cart in an office building



Fig. 2. Retail kiosk in a hospital

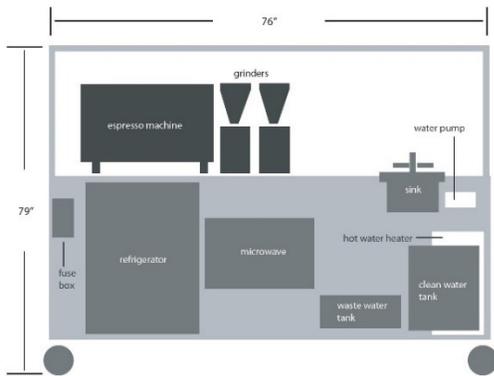


Fig. 3. Front elevation of a proposed food and beverage cart in an office building

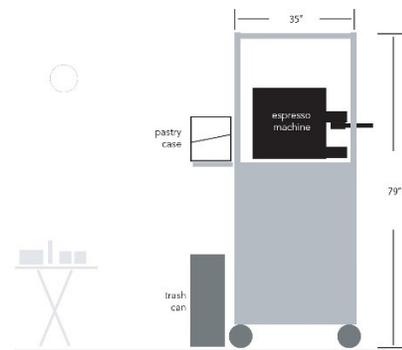


Fig. 4. Side elevation drawing of same food and beverage cart in Fig. 3



Fig. 5. Food and beverage kiosk (vacant) in an office building



Fig. 6. Food and beverage kiosk in a hospital



Fig. 7. Retail kiosk in transit station, hotel



Fig. 8. Food and beverage kiosk in transit station, hotel



Fig. 9. Food and beverage space in a hospital



Fig. 10. Food and beverage space in a hospital



Fig. 11. Gift shop in a hotel



Fig. 12. Business office in a hotel



Fig. 13. Food and beverage kiosk in a library



Fig. 14. Café in a museum



Fig. 15. Convenience store in an office building



Fig. 16. Convenience store in a university



Fig. 17. Financial institution in a university



Fig. 18. Eating and drinking establishment in a university