
DENVER ZONING CODE (DZC) UNLISTED ACCESSORY USE DETERMINATION: OUTDOOR ANIMAL RUN ACCESSORY TO ANIMAL SERVICES AND SALES, HOUSEHOLD PETS ONLY IN INDUSTRIAL AND CAMPUS CONTEXT ZONE DISTRICTS

PROPOSAL

Zoning permitting staff has requested clarification on whether an outdoor animal run can be permitted as accessory to an “Animal Services and Sales, Household Pets Only” primary use where allowed in Industrial and Campus Context zone districts.

Outdoor animal runs are currently permitted with limitations (L-ZP) as accessory to Animal Services and Sales, Household Pets Only primary use in most zone districts where such primary use is allowed. The use limitations cross referenced in these other zone districts is found in DZC §11.4.12.

In contrast, the use tables in Div. 9.1, Industrial context, and Div. 9.2, Campus context, show Animal Sales, Service, Household Pets Only as permitted (P-ZP). In these two contexts, there is no cross reference to the use limitations in section §11.4.12. Accordingly, there is currently no express allowance for outdoor animal run in these two contexts, as this Accessory Use is only allowed via the limitation listed in §11.4.12.1.C. This unlisted Accessory Use determination clarifies that outdoor animal runs are permitted with the same limitations stated in §11.4.12.1.C as common, customary, and incidental accessory uses to Animal Sales, Service, Household Pets Only primary uses where allowed in the Industrial and Campus zone districts. These are the same limitations that apply in all other contexts and zone districts.

WHAT ARE OUTDOOR ANIMAL RUN ACCESSORY TO ANIMAL SERVICES AND SALES, HOUSEHOLD PETS ONLY IN INDUSTRIAL AND CAMPUS CONTEXT ZONE DISTRICTS?

DZC §11.4.12.1 includes use limitations for “Animal Services and Sales, Household Pets Only” in all zone districts where the use is permitted with limitations. These limitations apply in all contexts and zone districts except in the Industrial and Campus contexts. One of the applicable limitations, and the subject of this use determination, is §11.4.12.1.C. This provision applies to an allowance for accessory outdoor animal runs, and states:

The [Animal Services and Sales – Household Pets Only] use must be completely enclosed except that outdoor animal runs or other areas in which dogs will be allowed outside of an enclosed structure off leash (hereinafter “outdoor run”) are permitted subject to compliance with the following conditions:

1. Outdoor runs, including the addition, expansion, or relocation of an existing outdoor run, shall be reviewed according to §12.4.2, Zoning Permit Review with Informational Notice.
2. Outdoor runs shall not be permitted within 20 feet of a habitable residential structure on a zone lot in a SU, TU, TH, or RH zone district.
3. The outdoor run may operate only between the hours of 6:30 a.m. and 9:00 p.m.

4. No more than 25 non-neutered or non-spayed dogs over the age of 6 months may be kept on the premises at any time

APPLICABLE RULES

Accessory Uses incidental to Primary Nonresidential 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 OUTDOOR ANIMAL RUN ACCESSORY USES COMMON AND CUSTOMARY TO ANIMAL SERVICES AND SALES-HOUSEHOLD PETS ONLY IN THE INDUSTRIAL AND CAMPUS CONTEXTS?

An unlisted Accessory Use must be common and customary relative to the permitted nonresidential Primary Use(s). It is common and customary for outdoor animal runs to be located on the same zone lot and operated in conjunction with Animal Services and Sales, Household Pets Only. Outdoor animal runs are explicitly allowed, subject to limitations in §11.4.12.1.C, in all contexts except the Industrial and Campus contexts. This includes the Suburban, Urban Edge, Urban, General Urban, Urban Center, and Downtown contexts. (Note: In the Open Space context, Animal Services and Sales, Household Pets Only is not permitted at all, and neither is the outdoor animal run accessory use.) In a few zone districts, such as S-MX-2X, E-MX-2x, E-MS-2X, U-MX-2X, and U-MS-2X districts, the Zoning Permit with Informational Notice (L-ZPIN) provision also applies. In only the Industrial and Campus zone districts are outdoor animal runs not expressly allowed in conjunction with an Animal Services and Sales, Household Pets Only primary use.

In practice in Denver and nationally, it is both common and customary to find outdoor animal runs operated as part of an Animal Services and Sales, Household Pets Only primary use in all types of neighborhoods and contexts, including industrial areas and in some campus settings. The most common examples are the dozens of "doggie day care" businesses, with outdoor animal runs, found across the Denver metro area.

The reason that outdoor animal run is not explicitly allowed in the Industrial or Campus Contexts is likely due to a code drafting error, and not because of any policy-based distinctions in land use compatibility or external effects compared to other contexts. The use tables indicate L-ZP and reference limitations in §11.4.12. in all contexts except the Industrial and Campus contexts. The notation in the Industrial and Campus context for Animal Services and Sales, Household Pets Only is P-ZP, and does not include the cross-reference to §11.4.12, which allows outdoor animal runs subject to limitations. This P-ZP notation and lack of allowance for outdoor animal run is likely an unintentional code drafting error and consequence. This error will be corrected in an upcoming text amendment bundle. In the meantime, this unlisted accessory use determination applies to allow an outdoor animal run as an allowed "unlisted" accessory use.

The Zoning Administrator finds that the proposed Accessory Use – outdoor animal runs – is common and customary to Animal Services and Sales, Household Pets Only primary use in the Industrial and Campus Contexts.

ARE OUTDOOR ANIMAL RUNS TYPICALLY INCIDENTAL TO “ANIMAL SERVICES AND SALES, HOUSEHOLD PETS ONLY” IN AN INDUSTRIAL OR CAMPUS CONTEXT?

Outdoor animal runs are incidental and accessory to the primary Animal Services and Sales, Household Pets Only primary use. Outdoor animal runs are only permitted in conjunction with a primary Animal Services and Sales, Household Pets Only primary use, which must be primarily operated in all zones/contexts within a completely enclosed structure. Outdoor animal runs are not permitted as a stand-alone use. Where expressly allowed, they are subject to the limitations in §11.4.12.1.C, which limits their scale and impact, and clearly keep them within the definition of an “accessory use” as incidental to the primary use. These limitations ensure that outdoor animal runs are reviewed according to the criteria for ZPINs in §12.4.2, are not located within 20 feet of residences in residential zone districts, have limited hours of operation, and limit the number of non-neutered or non-spayed dogs to 25. Therefore, I find that the proposed Accessory Use – outdoor animal run – is incidental or secondary to Animal Services and Sales, Household Pets Only in the Industrial and Campus Contexts.

IS ALLOWING OUTDOOR ANIMAL RUN ACCESSORY TO “ANIMAL SERVICES AND SALES, HOUSEHOLD PETS ONLY” 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 outdoor animal run as accessory to Animal Services and Sales, Household Pets Only 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, while minimizing the potential for substantial adverse impacts.

Allowing outdoor animal run as accessory to Animal Services and Sales, Household Pets Only is consistent with the intent of the applicable neighborhood context and zone districts. The outdoor animal run accessory use is consistent with the types of primary industrial and commercial uses allowed in Industrial Zones. The only Campus zone district that allows Animal Services and Sales, Household Pets Only as a primary use is the CMP-National Western Center (NWC) zone districts. Outdoor animal run accessory use is consistent with the intent of the CMP-NWC zone districts to accommodate a variety of commercial activities, including animal health (DZC §9.2.6.1).

Per DZC, §12.4.6.4.A.2, the Zoning Administrator finds this interpretation is consistent with the intent of the Industrial Context to accommodate industrial uses, and with the intent of the Campus NWC zone to accommodate animal health activities. I find that the proposed accessory use — outdoor animal run as accessory to Animal Services and Sales, Household Pets Only in the Industrial and Campus Contexts — 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 OUTDOOR ANIMAL RUN 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.

An outdoor animal run would be permitted only in zone districts which already permit Animal Services and Sales, Household Pets Only. Animal Services and Sales, Household Pets Only already allows animal sales. Outdoor animal runs are accessory to Animal Services and Sales, Household Pets Only, and allow exercise for animals (typically dogs). An outdoor animal run use would typically have no additional impact on volume and type of sales, type of items sold, transportation requirements, storage needs, types of structures, or parking requirements, above and beyond the demand or impact of the primary use itself.

Outdoor animal runs are subject to the limitations in §11.4.12.1.C, which limits their scale and potential for adverse impacts on surrounding properties. These limitations ensure that outdoor animal runs are reviewed according to the criteria for ZPINs in §12.4.2, are not located within 20 feet of residences in residential zone districts, have limited hours of operation, and limit the number of non-neutered or non-spayed dogs to 25. These limitations limit the external effect of this accessory use on adjacent properties, and have been deemed sufficient by the City to control for such external effects in all the other zone districts where animal sales/services are expressly allowed.

I find that the character and impact of outdoor exercise runs uses accessory to Animal Service and Sales, Household Pets Only 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 an accessory outdoor animal run is allowed as incidental, common, and customary to an Animal Service and Sales, Household Pets Only Primary Use where allowed in the Industrial and Campus contexts and zone districts.

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. These conditions will ensure that outdoor animal run Accessory Uses remain incidental to the associated Animal Service and Sales, Household Pets Only 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 reasonable **Conditions** shall attach to the allowance for outdoor animal run accessory to an Animal Service and Sales, Household Pets Only Primary Use:

1. **Name of Use:** The subject unlisted Accessory Use shall be called “outdoor animal run.”
2. **Where Allowed:** Outdoor animal run is permitted subject to limitations as accessory to the Primary Use of “Animal Service and Sales, Household Pets Only”, where such Primary Use is allowed in the Industrial and Campus contexts.

3. **Applicable Use Limitations:** Where permitted, and subject to the conditions listed herein, an outdoor animal run Accessory Use shall comply with the use limitations as stated in §11.4.12.1.C.

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:

A handwritten signature in black ink that reads "Tina R. Axelrad". The signature is written in a cursive style and is followed by a horizontal line.

Tina Axelrad, Zoning Administrator

Date: July 18, 2019 (Revised: 6/10/2020)

TA/ms