



STAFF REPORT

Development Services Department

DATE: February 11, 2020

TO: Honorable Chairman and Planning Commission

FROM: Jason Kruckeberg, Assistant City Manager/Development Services Director
Lisa L. Flores, Planning & Community Development Administrator

SUBJECT: POLICY 20-01 - TEMPORARILY MODIFY NON-CONFORMING USE POLICY TO ALLOW FLEXIBILITY FOR PROPERTY OWNERS IN THE "DOWNTOWN" COMMERCIAL ZONES (DOWNTOWN MIXED USE, MIXED-USE, COMMERCIAL MANUFACTURING AND CENTRAL BUSINESS DISTRICT)
Recommendation: Forward a Recommendation to the City Council Approving the Administrative Policy Change

SUMMARY

In the past several years, there have been a number of changes to the allowable land uses in certain commercial zones in the City. In general, these changes were focused on Downtown Arcadia and were geared toward attempting to attract or retain active land uses by requiring certain uses (e.g. general office) be restricted only to the upper levels of buildings. These changes were recommended by the Downtown Arcadia Improvement Association with the goal of establishing a vibrant downtown area over time, and they were approved by the City Council as part of the overall adoption of the new Development Code in 2016. Now, three years after implementation of these changes, there are some modifications proposed to ensure that buildings do not sit vacant.

It is recommended that the City's policies related to the timing of non-conforming uses be modified to allow more flexibility to property owners as they replace uses within their buildings. Rather than making these changes through a formal text amendment, it is recommended that this modification be made at the policy level.

BACKGROUND

In 2016, the Downtown Arcadia Improvement Association (DAIA) recommended a series of changes to zoning in the Downtown, with the stated goal being the

creation of a vibrant downtown area. The belief from the DAIA was that the City's zoning at the time was too permissive, and allowed too broad of a range of land uses to fill tenant spaces. The DAIA believed that uses such as general and professional offices, medical offices, service-related uses, and the like were creating "functional vacancies" in the Downtown, and not helping to promote an active, vibrant streetscape.

The DAIA's recommendations were included into the City's Development Code Update project in 2016 and were approved as land use regulations. The most dramatic change that these new regulations imposed was to prohibit general and professional office uses on the ground floor of buildings in the Central Business District and Mixed Use Zones. To a lesser degree, similar prohibitions on medical office uses and industrial uses in certain areas have also been a focus of questions and concerns.

To restrict buildings to retail, commercial, or similar "active" uses is a common zoning method used to try to create a vibrant area. This zoning tool has been used in many cities successfully to direct uses like restaurants and retailers into certain areas. However, other external factors must be present for restrictive zoning to work in this capacity. Some of these factors include: a strong market for retail and restaurant, building stock that is easily retrofitted or modified to allow the provision of these uses, existing foot traffic, and the presence of "anchors". Over the past three years, it has been clear that several of these factors simply have not been present in Downtown Arcadia.

Although the recommendation from the DAIA was well reasoned, the results of this policy change have been mixed. For example, we have had several uses that have come in as "retail" but, once approved, they act as a functional vacancy, never opening their doors or conducting business. In these cases, the tenants pay rent, but they receive no obvious customers, and they do nothing to promote or enhance the Downtown. This has been a source of frustration for the DAIA, the Staff, and residents. Cities typically do not have an automatic mechanism to require that these uses actually operate as retail. A city can go through the process of revoking a business license for operating a use that was not described on the license, but that does not necessarily extend to a use that simply does not open their doors, or has limited or no customer interaction. On the opposite side of this equation, the current regulations are not allowing an office use that would likely open its doors, conduct business, and have customers. Essentially, our land use controls are not always working toward the intended goal if "retail" uses are closed and contribute nothing, and office uses are not allowed because they are deemed not active enough.

Despite these notable issues, it is not the recommendation of the Staff to change the allowable land uses. It takes time for a commercial district to evolve and change and three years is not a long enough time horizon. However, where this issue becomes most clear is when EXISTING office uses or medical or industrial

uses vacate a building. A strict interpretation of the current Code would require that, after a 90-day period of inactivity, these uses are no longer allowable and must transition to a more “active” use. These circumstances are difficult for a property owner and this is the focus of this policy change.

ANALYSIS

As alluded to above, the largest issue with the change to the regulations has been the prohibition of office uses on the ground level of buildings. There have been several properties where representatives have requested to change a commercial or retail use to office and have been at the end of the 90-day period. This has led to confusion on the part of owners and associated real estate professionals given that office uses are common in the Downtown and, in fact, may be located next door or in similar buildings to the use that is trying to transition. Despite this, in these cases, the prohibition on office uses is the direction that the Staff has taken if the 90-day nonconforming use period is shown to have elapsed.

The other question that has arisen from time to time is for EXISTING office uses, and whether these uses can change to a new office use without needing to adhere to the prohibition on ground floor office uses. This question is more difficult to answer because there is some confusion as to the original intent of the rules, and the Development Code did not specifically address this situation. It is certainly acknowledged that the retrofitting and reorganization needed to change a building that was built as an office building and has been used as an office building is challenging and costly. Turning these spaces into a restaurant for example, is very difficult. Partially because of this, when office buildings are coming on the market, there is little to no interest in changing them to more “active uses”. This raises the question of if it was the intent of the change in land use regulations to require that these buildings be converted to a different use.

Recently, the Development Services Department has faced this issue several times. In these cases, the continuation of office uses was allowed because these properties fell within the guidelines of a continuation of a non-conforming use. However, the question remains, if an existing use does not fall within the non-conforming use regulations, what is the City’s policy?

Since the original recommendation came from the DAIA, these issues were presented to the DAIA at their Regular Board Meeting on November 14, 2019. While the Board discussed the issue in detail at that meeting, they directed the issue to one of their subcommittees, the Business Attraction Retention Planning & Development Opportunities Committee. Following this committee’s discussion, the full Board voted to pass along the following recommendations at their meeting on December 12, 2019:

Question #1: Was the prohibition on ground-level office uses in the CBD and MU zones intended to apply to ALL existing buildings, or should buildings currently occupied by office uses be allowed to retain that use beyond the allowed 90-day nonconforming use period?

Recommendation: Allow existing professional office spaces to retain nonconforming status beyond 90 days until such time that the district is determined to be vibrant enough that the underlying economics begin to support voluntary conversion of these units to retail/restaurant/other more active uses. In 24 months, reevaluate status of district revitalization and whether to continue with this policy.

Question #2: In terms of the continuation of existing uses, what about existing medical office uses and industrial uses? If they currently occupy a building, should they be allowed to continue beyond the 90-day nonconforming use period? (note: this would apply to the CBD, MU, DMU, and CM zones).

Recommendation: Allow existing medical office spaces to retain nonconforming status beyond 90 days until such time that the district is determined to be vibrant enough that the underlying economics begin to support voluntary conversion to retail/restaurant/other more active uses. In 24 months, reevaluate status of district revitalization and whether to continue with this policy.

Recommendation: Allow existing nonconforming industrial spaces to retain nonconforming status beyond 90 days provided the new use does not have any detrimental environmental, noise, or other significant impacts. Require city review of new industrial use and if acceptable for new tenants to file an affidavit with city prior to business license approval agreeing to certain restrictions related to environmental and other impacts. Similar to office uses, reevaluate this policy in 24 months.

These recommendations are well reasoned and get to the point that the district simply may not be ready for such restrictive zoning. The recommendations would approve a two-year period to allow the continuation of general office, medical office, and industrial uses. At the end of this two-year period, the situation would be reviewed again to determine the best method to proceed. Additional protections are recommended for industrial spaces to require a review of potential detrimental impacts that could stem from certain uses. This additional review would occur at the time of issuance of any business license for a use of this kind, and it seems to be a sensible recommendation for such uses.

It is important to note that these policy changes would be applicable to properties in all of the "Downtown" zones, which include Mixed Use (MU), Downtown Mixed

Use (DMU), Central Business District (CBD), and Commercial Manufacturing (CM). These zones are referred to as the “Downtown” zones within the Development Code, even though some of these zoning designations apply to property that is not technically within the “Downtown” area. This includes property that is zoned MU along Live Oak and Las Tunas, and south along First Avenue.

This policy modification is permitted in the Development Code through Section 9108.01.030 of the Development Code, which provides the review authority of the City Council on “...other applicable policy or regulatory matters related to the City’s planning process as specified in the City Charter, the Municipal Code, and this Development Code”. It is recommended that this issue strictly be reviewed as a temporary action at this point. The impacts of the decision will be reviewed over the next two years and then re-evaluated to determine whether a full text amendment is necessary or a change in land use restriction is warranted.

ENVIRONMENTAL ANALYSIS

This policy change is not considered a project per the California Environmental Quality Act (CEQA) Guidelines, as it can be seen with certainty that no impacts will result from the change. Therefore, the policy change is exempt pursuant to Section 15061(b)(3).

PUBLIC COMMENTS/NOTICE

Notification of this policy modification was published in the Arcadia Weekly on January 30, 2020. In addition, postcards were mailed to owners of all properties in the affected zones.

RECOMMENDATION

It is recommended that the Planning Commission consider the policy changes proposed in this Staff Report and forward a recommendation to the City Council and that the implementation of these policies is only for a two-year trial period.

If any Planning Commissioner or other interested party has any questions or comments regarding this matter prior to the February 11, 2020 hearing, please contact Lisa Flores, Planning & Community Development Administrator at (626) 574-5445, or by email at lflores@ArcadiaCA.gov.



Lisa L. Flores
Planning & Community Development Administrator

Attachment No. 1

Use Table 2-10 – Commercial and Downtown Zones

Section 9102.05 – Downtown Zones

Subsections:

- 9102.05.010 Purpose and Intent
- 9102.05.020 Land Use Regulations and Allowable Uses in Downtown Zones
- 9102.05.030 Development Standards in Downtown Zones
- 9102.05.040 Additional Development Standards in Downtown Zones
- 9102.05.050 Mixed-Use Lot Consolidation Incentive Program
- 9102.05.060 Site Plan and Design Review
- 9102.05.070 Other Applicable Regulations

9102.05.010 Purpose and Intent

Amended by Ord. No. 2356

The purposes of the Downtown zones are to:

1. Promote mixed use residential, retail, and office development at locations that will support transit use; and
 2. Promote commercial and mixed-use development that will foster and enhance surrounding residential neighborhoods by improving access to a greater range of facilities and services.
- A. CBD Commercial Business District Zone.** The Commercial Business District zone is intended to promote a strong pedestrian-oriented environment and to serve community and regional needs for retail and service uses, professional offices, restaurants, public uses, and other similar and compatible uses. Residential uses are permitted above ground floor commercial or adjacent to a commercial development. Both uses must be located on the same lot or on the same project site. This zone implements the General Plan Commercial designation.
- B. MU Mixed Use Zone.** The Mixed Use zone is intended to provide opportunities for commercial and residential mixed-use development that takes advantage of easy access to transit and proximity to employment centers, and encourages pedestrian activity. A wide range of integrated commercial and residential uses are appropriate. Residential uses are permitted above ground floor commercial or adjacent to a commercial development. Both uses must be located on the same lot or on the same project site, and exclusive residential structures are not allowed. This zone implements the General Plan Mixed Use designation.
- C. DMU Downtown Mixed Use Zone.** The Downtown Mixed Use zone is intended to provide opportunities for complementary service and retail commercial businesses, professional offices, and residential uses located within the City's downtown. A wide range of commercial and residential uses are appropriate, oriented towards pedestrians to encourage shared use of parking, public open space, and interaction of uses within the zone. Residential uses are permitted above ground floor commercial or adjacent to a commercial development. Both uses must be located on the same lot or on the same project site, and exclusive residential structures are not allowed. This zone implements the General Plan Downtown Mixed Use designation.
- D. C-M Commercial Manufacturing Zone.** The C-M zone is intended to provide areas for a complementary mix of light manufacturing businesses, minor vehicle service and repairs, and support office and retail uses. A wide range of small-scale industrial and quasi-industrial uses with minimal impact to surrounding uses are appropriate. Retail uses are limited to business services, food service, and convenience goods for those who work in the area. Residential uses are not permitted in this zone. This zone implements the General Plan Commercial/Light Industrial designation.

9102.05.020 Land Use Regulations and Allowable Uses in Downtown Zones

Amended by Ord. No. 2348 & 2356

Amended by Ord. No. 2369 & 2370

- A. Allowed Uses.** Table 2-10 (Allowed Uses and Permit Requirements for Downtown Zones) indicates the land use regulations for the Downtown zones and any permits required to establish the use, pursuant to Division 7

(Permit Processing Procedures). The regulations for each zone are established by letter designations as follows:

“P” represents permitted (allowed) uses.

“A” represents accessory uses.

“M” designates uses that require the approval of a Minor Use Permit subject to requirements of Section 9107.09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“C” designates uses that require the approval of a Conditional Use Permit subject to requirements of Section 9107.09 09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“UF” designates uses that are permitted on upper floors only, and are not allowed on the ground floor of a structure.

“--” designates uses that are not permitted.

B. Director Determination. Land uses are defined in Division 9 (Definitions). In cases where a specific land use or activity is not defined, the Director shall assign the land use or activity to a classification substantially similar in character. Land uses not listed in the table or not found to be substantially similar to the land uses below are prohibited.

C. Specific Use Regulations. Where the last column in Table 2-10 (Allowed Uses and Permit Requirements for Downtown Zones) includes a Section, Subsection, or Division number, the regulations in the referenced Section, Subsection, or Division shall apply to the use.

| Table 2-10 Allowed Uses and Permit Requirements for Downtown Zones | P A C M -- (UF) | Permitted by Right | | | | Specific Use Regulations |
|--|--------------------------------|-------------------------------|-----|----|--|--------------------------|
| | | Permitted as an Accessory Use | | | | |
| Land Use | CBD | MU | DMU | CM | | |
| Business, Financial, and Professional | | | | | | |
| Automated Teller Machines (ATMs) | P | P | P | P | | |
| Check Cashing and/or Payday Loans | -- | -- | -- | - | | |
| Financial Institutions and Related Services | M | M | M | - | | |
| Government Facilities | C | C | C | C | | |
| Offices, Business and Professional | P (UF) | P (UF) | P | P | | |
| Eating and Drinking Establishments | | | | | | |
| Accessory Food Service | A | A | A | A | | |
| Alcohol Sales (On-Sale, Accessory Only) | M | M | M | M | | |
| Bars, Lounges, Nightclubs, and Taverns | C | C | C | C | | |
| Outdoor Dining (Incidental and on Public Property) – 12 seats or fewer | P | P | P | P | See Subsections 9104.02.230 (Outdoor Dining Uses on Public Property) and 9104.02.240 (Outdoor Dining – Incidental) | |
| Outdoor Dining (Incidental and on Public Property) – more than 12 seats | M | M | M | M | See Subsections 9104.02.230 (Outdoor Dining Uses on Public Property) and 9104.02.240 (Outdoor Dining – Incidental) | |
| Restaurant – Small (with no Alcohol Sales) | P | P | P | P | | |
| Restaurant – Large (with no Alcohol Sales) | P | P | P | P | | |

| Table 2-10 Allowed Uses and Permit Requirements for Downtown Zones | P A C M -- (UF) | Permitted by Right Permitted as an Accessory Use Conditional Use Permit Minor Use Permit Not Allowed Upper Floor Permitted, Not Allowed on Ground Floor | | | | Specific Use Regulations |
|--|--------------------------------|--|--------|-----------|----|--|
| | | CBD | MU | DMU | CM | |
| Land Use | | | | | | |
| Restaurant – Small or Large With late hours – open between midnight and 6:00 A.M.) | M | C | M | C | | See Subsection 9104.02.150 (Extended Hours Uses) |
| Restaurant – Small or Large Serving Alcohol, within 300 ft of residential zone | M | M | M | C | | See Subsection 9104.02.040 (Alcoholic Beverage Sales) |
| Restaurant – Small or Large Serving Alcohol, not within 300 ft of residential zone | P | M | P | C | | |
| Education | | | | | | |
| Schools, Public and Private | -- | -- | -- | -- | | |
| Trade and Vocational Schools | C (UF) | -- | C (UF) | C | | |
| Tutoring and Education Centers | C (UF) | -- | -- | C (UF) | | |
| Industry, Manufacturing and Processing, and Warehousing Uses | | | | | | |
| Brewery and Alcohol Production, with or without onsite tasting and associated retail commercial use | M | -- | M | C | | |
| Data Centers | -- | -- | -- | C | | |
| Food Processing | -- | -- | -- | C | | |
| Fulfillment Centers | -- | -- | -- | C | | |
| Light Industrial | -- | -- | -- | M | | |
| Warehouse Retail (under 40,000 square feet) | -- | -- | -- | P | | |
| Warehouse Retail (40,000 square feet and over) | -- | -- | -- | C | | |
| Recycling facilities | | | | | | |
| Heavy processing | -- | -- | -- | -- | | |
| Large collection | -- | -- | -- | C | | |
| Light processing | -- | -- | -- | -- | | |
| Reverse Vending Machine(s) | -- | -- | -- | P | | |
| Small collection | -- | -- | C | P | | |
| Research and Development | -- | -- | C | P | | |
| Storage – Accessory | A | A | A | A | | |
| Storage – Personal | -- | -- | -- | M | | |
| Wholesaling | -- | -- | -- | C | | |
| Medical-Related and Care Uses | | | | | | |
| Day Care, General | -- | -- | -- | C | | |
| Hospitals and Medical Clinics | -- | -- | -- | C | | |
| Medical and Dental Offices | P (UF) | P (UF) | P (UF) | P (UF) | | |
| Recreation and Entertainment | | | | | | |
| Arcade (Electronic Game Center) | M | M | M | C | | |

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|--|--------------------------------|--|--------|-----|----|---|
| | | CBD | MU | DMU | CM | |
| Land Use | | | | | | |
| Commercial Recreation | C | C | C | C | | |
| Karaoke and/or sing-along uses | M | M | M | C | | See Subsection 9104.02.190 (Karaoke and/or Sing-Along Uses) |
| Health/Fitness Facilities, Small | M | M | M | M | | |
| Health/Fitness Facilities, Large | M (UF) | M (UF) | CUP | C | | |
| Indoor Entertainment | C | C | C | M | | |
| Studios – Art and Music | M | M | M | P | | |
| Residential Uses | | | | | | |
| Accessory Dwelling Unit | A | A | A | | | If the site currently has a single-family dwelling or a multifamily dwelling. |
| Live/Work Unit | -- | M (UF) | M (UF) | -- | | See Subsection 9104.02.210 (Live/Work Units) |
| Multifamily Dwelling | M | M | M | -- | | Permitted only in conjunction with a commercial use. Residential uses are permitted above ground floor commercial or adjacent to a commercial development. Both uses must be located on the same lot or on the same project site. See Section 9102.05.010 |
| Supportive Housing – Housing Type | M (UF) | M (UF) | M (UF) | -- | | |
| Transitional Housing – Housing Type | M (UF) | M (UF) | M (UF) | -- | | |
| Short-Term Rental | -- | -- | -- | -- | | No Person shall post, publish, circulate, broadcast, or maintain any advertisement of a Short-Term Rental in any zone allowing residential uses. See Section 9104.02.300 |
| Home Sharing | -- | -- | -- | -- | | No Person shall post, publish, circulate, broadcast, or maintain any advertisement for Home Sharing in any zone allowing residential uses. See Section 9104.02.300 |
| Retail Uses | | | | | | |
| Alcohol Beverage Sales | | | | | | |
| Alcohol Sales (off-sale) | M | M | M | C | | See Subsection 9104.02.040 (Alcoholic Beverage Sales) |
| Alcohol Sales (off-sale, accessory only) | M | M | M | M | | |
| Building Material Sales and Services | -- | -- | -- | -- | | |
| Pawn Shop | -- | -- | -- | -- | | |
| Plant Nursery | -- | -- | -- | -- | | |
| Pet Stores, without grooming | P | P | P | -- | | |
| Pet Stores, inclusive of grooming services | M | M | M | P | | |
| Recreational Equipment Rentals | P | P | P | P | | |
| Retail Sales | P | P | P | P | | |
| Retail Carts and Kiosks – Indoor | P | P | P | P | | |
| Retail Carts and Kiosks – Outdoor | M | M | M | M | | See Subsection 9104.02.110 (Displays and Retail Activities – Outdoor) |
| Secondhand Stores | -- | -- | -- | M | | |

| Table 2-10 Allowed Uses and Permit Requirements for Downtown Zones | P A C M -- (UF) | Permitted by Right Permitted as an Accessory Use Conditional Use Permit Minor Use Permit Not Allowed Upper Floor Permitted, Not Allowed on Ground Floor | | | | Specific Use Regulations |
|--|--------------------------------|--|----|-----|----|---|
| | | CBD | MU | DMU | CM | |
| Land Use | | | | | | |
| Swap Meets | -- | -- | -- | -- | | |
| Vehicle Rentals | -- | -- | -- | P | | |
| Vehicle Sales – New and/or Used | C | -- | -- | C | | At least 50% of the vehicles sold or leased from the applicable site during each calendar year shall be new automobiles. |
| Service Uses | | | | | | |
| Animal Boarding/Kennels | -- | -- | -- | C | | |
| Animal Grooming | M | M | M | P | | |
| Bail Bond Services | -- | -- | -- | -- | | |
| Funeral Homes and Mortuaries | -- | -- | -- | -- | | |
| Hotels and Motels | C | C | C | C | | |
| Maintenance and Repair Services, Large Appliance | -- | -- | -- | P | | |
| Maintenance and Repair Services, Small Appliance | P | P | P | P | | |
| Personal Services, General | P | P | P | P | | |
| Personal Services, Restricted | -- | -- | -- | C | | |
| Postal Services | P | P | P | P | | |
| Printing and Duplicating Services | P | P | P | P | | |
| Veterinary Services | -- | -- | -- | C | | |
| Vehicle Repair and Services | | | | | | |
| Service/Fueling Station | C | -- | -- | -- | | |
| Vehicle Washing/Detailing | A | -- | -- | C | | |
| Vehicle Repair, Major | -- | -- | -- | M | | |
| Vehicle Repair, Minor | A | -- | -- | P | | |
| Transportation, Communication, and Infrastructure Uses | | | | | | |
| Antennas and Wireless Communication Facilities - Co-location | P | P | P | P | | Exception: All facilities are permitted on City-owned properties and public rights-of-way. New standalone facilities are not permitted in Architectural Design (D) overlay zones. See Subsection 9104.02.050 (Antennas and Wireless Communication Facilities) |
| Antennas and Wireless Communication Facilities – Panel | P | P | P | P | | |
| Antennas and Wireless Communication Facilities - Standalone Facility | -- | -- | -- | C | | |
| Car Sharing | P | P | P | P | | Car sharing parking spaces may not occupy any space required for another use. |
| Off-Street Parking Facilities (not associated with a primary use) | C | C | C | C | | |
| Recharging Stations | P | P | P | P | | |

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|--|--------------------------------|--|----|-----|---|--------------------------|
| | | CBD | MU | DMU | CM | |
| Land Use | | | | | | |
| Utility Structures and Service Facilities | P | P | P | P | Subject to Site Plan and Design Review pursuant to Section 9107.19 (Site Plan and Design Review). | |
| Other Uses | | | | | | |
| Assembly/Meeting Facilities, Public or Private | -- | -- | -- | M | | |
| Donation Box – Outdoor | -- | -- | -- | M | | |
| Extended Hours Use | M | C | M | C | See Subsection 9104.02.150 (Extended Hours Uses) | |
| Places of Religious Assembly | -- | -- | -- | M | | |
| Drive-Through or Drive-Up Facilities | -- | -- | -- | C | See Subsection 9104.02.130 (Drive-through and Drive-up Facilities) | |
| Reverse Vending Machines – Consumer Goods | P | P | P | P | Allowed indoors only | |
| Vending Machines | P | P | P | P | Allowed indoors only | |
| Urban Agriculture | A | A | A | A | | |

(1) Accessory dwelling units are subject to the development standards in Subsection 9102.01.080.