

# City of Alexandria, Virginia

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## MEMORANDUM

DATE: MARCH 31, 2016

TO: THE HONORABLE MAYOR SILBERBERG AND MEMBERS OF CITY COUNCIL  
CHAIRWOMAN LYMAN AND MEMBERS OF THE PLANNING COMMISSION

THROUGH: MARK JINKS, CITY MANAGER

FROM: KARL MORITZ, DIRECTOR  
DEPARTMENT OF PLANNING AND ZONING

SUBJECT: SMALL BUSINESS ZONING AMENDMENTS

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Alexandria’s core of small independently-owned businesses provides important economic benefits to the City and contributes to the character and authenticity of our historic community. Since 2008, the City has periodically reviewed how we regulate small businesses to make sure we strike the right balance between two important goals: supporting small business and protecting neighborhoods from the impacts of commerce. The recent closures of some businesses with a long history in the community highlighted the importance small businesses can play in the life of a community.

For this iteration of the “Small Business Zoning” initiative, staff reviewed the types of small businesses that most frequently go through the Special Use Permit (SUP) process and analyzed the potential of each of these uses to have negative impacts on the nearby community. Staff has also been tracking complaints and violations by businesses that were required to obtain SUPs. Staff used this information to develop a list of potential land uses where the SUP requirements could be reduced – in some cases to the administrative review process and in more limited cases to permitted uses. These changes, listed below, modernize the Zoning Ordinance language and reduce the costs and time needed for review procedures for many types of new and expanding small businesses, while ensuring that the Zoning Ordinance will continue to safeguard established neighborhoods and minimize potential negative community impacts.

Staff is also proposing that that the City move to a system whereby the Planning Commission takes final action on Special Use Permits, as it does on site plans and subdivisions. As the City Council is aware, Planning Commission actions on site plans and subdivisions are appealable to the City Council, and, as proposed with these new small business zoning amendments, this

would be true for Special Use Permits as well. If City officials agree that this would be a positive step, there are several different options for implementing the idea.

## **SUMMARY OF PROPOSED RECOMMENDATIONS**

### **I. Convert some Full-Hearing SUPs to Administrative SUPs where community impacts are expected to be minimal.**

The Administrative SUP review process takes about one-third of the time as a Full-Hearing SUP review, and the administrative permit carries the same regulatory weight. An administrative review process can reduce the application fee by approximately \$250. Additionally, while not required, small business owners typically choose to use an attorney for the Full-Hearing SUP process, but they rarely use such expertise for Administrative SUPs. It should be noted that the Director can require an Administrative SUP application to be docketed for Full-Hearing SUP review if community concerns are raised or if negative impacts are anticipated. All Administrative SUPs have enforceable conditions on their approval, and these businesses undergo regular zoning inspections. Staff recommends converting the following uses from a Full-Hearing SUP to Administrative SUP:

1. **Restaurants with Fast-Casual Service:** Full-service restaurants in most commercial zones are eligible for Administrative SUPs if specific standards are met. However, all counter-service restaurants are required to obtain approval through a Full-Hearing SUP. When this standard was first introduced in 2008, it was believed then that fast-casual restaurants had greater potential for neighborhood impacts than full-service restaurants. Since 2008, ‘fast-casual’ restaurants such as Chipotle, Nando’s, Sweetgreen, and District Taco, have grown in popularity with a simultaneous decline in the growth of full-service restaurants such as Steak-n-Ale, Chili’s, and Fridays. Staff believes that any impacts from fast-casual restaurants that meet all other administrative review eligibility requirements can be addressed through the conditions imposed by an Administrative SUP. It is likely that this change to this review process would reduce the number of restaurants undergoing Full-Hearing SUP reviews by approximately 44 percent, based on past data.

Staff also recommends allowing all restaurants to have up to two delivery vehicles through an Administrative SUP review instead of one. Eligibility standards that dictate a minimum number of seats should also be reduced from 40 seats to 20 seats. Many small restaurants augment their on-premises dining with delivery service. These changes would greatly reduce the time involved for the review process and reduce application costs for many small restaurants, and also ensure that administrative approvals mitigate potential impacts on surrounding communities.

Although a majority of restaurant types could become eligible for Administrative SUP review under the aforementioned amendments, nightclubs and restaurants with drive-through service would continue to require full hearing Special Use Permit review.

2. **Child Care Homes with up to nine children:** A child care home for up to five children is permitted by right in all residential zones. A child care home with up to four additional children (nine total) requires a Full-Hearing SUP. Based on staff's experience the majority of child care home requests for up to nine children present negligible impacts on neighboring properties. Staff proposes converting child care homes with six to nine children from a Full-Hearing SUP to an Administrative SUP. Generally, this change would help provide residents with greater access to child care services in the City. This is especially helpful, as the Washington Metropolitan Area has some of the highest child daycare costs in the nation. Therefore facilitating opportunities for child care homes can often provide a more affordable option for parents. Child care homes also provide child care in locations close to children's homes, typically reducing traffic impacts and travel times for parents. Potential impacts from pick-up/drop-off procedures, such as traffic and noise can be addressed through an Administrative SUP review. Based on the history of reviews it is estimated that there would be three fewer Full-Hearing child care home SUP cases each year.
3. **Automobile Storage/Parking for 20 or more vehicles in the Industrial Zone:** Motor vehicle storage/parking for up to 20 vehicles is a permitted use in the Industrial zone, but storage/parking of more than 20 vehicles requires a Full-Hearing SUP. The impact of this use, even with more vehicles, on surrounding properties is minimal in industrial zones. Concerns related to possible impacts, such as the need for lighting and security can be addressed through an Administrative SUP approval process.
4. **Automobile and Trailer Sales in the Industrial Zone:** Car dealerships are similar in potential community impacts to other uses currently permitted in the Industrial zone. They currently require a Full-Hearing SUP but rarely generate community concern when they are reviewed. Any possible impacts of a car dealership can be controlled through the Administrative SUP process, allowing the Director to regulate hours of operation, lighting, and security issues in a manner similar to a Full-Hearing SUP.
5. **Health and Athletic Clubs:** Health clubs with exercise equipment are required to obtain a Full-Hearing SUP in most zones and are currently not permitted in some zones where they would be an appropriate land use. Staff suggests converting this use to an Administrative SUP in the zones where they currently require a Full-Hearing SUP. Staff also recommends allowing Administrative SUP review for Health and Athletic Club uses in the CL, CC and CSL zones where they are currently prohibited. This would help facilitate health clubs as a viable use for vacant commercial spaces. Parking requirements would still need to be fulfilled in the administrative process,

and if parking is deficient at a proposed site, a Full-Hearing SUP for a parking reduction would still be required. Potential impacts, such as noise and hours of operation, can be addressed through conditions in an Administrative SUP approval.

## **II. Full-Hearing SUPs to permitted uses.**

The following land uses generally have minimal community impacts and often provide valuable services to surrounding communities. Staff proposes that these uses become permitted in their respective zones.

1. **Private Commercial Schools (20+ students):** In 2008, private commercial schools with 20 or fewer students were re-classified as a personal service use and were allowed for the first time as a permitted use in most commercial zones. Since that time, staff has continued to see several applicants (11 applications received between July 2010 and December 2014) requesting Full-Hearing SUPs for commercial schools with more than 20 students. The businesses typically have minimal land use impact with regard to typical matters such as noise, odors, or trash. Although parking can sometimes be a concern with these uses, these uses would still need to meet zoning parking requirements as a permitted use. If such a business cannot provide the required parking, the business would need to request a parking reduction through a Full-Hearing SUP process to enable an evaluation in the context of local conditions. The effect of the proposed change, according to staff's preliminary analysis, would be about three fewer SUP cases per year.
2. **Retail and Personal Service Establishments in the W-1 Zone:** The W-1 zone specifically requires ground floor commercial uses to be restaurants or retail businesses; however, the zone requires all retail, regardless of size, to obtain Full-Hearing SUP approval. This requirement seems counterintuitive since ground floor retail is encouraged in this area. Staff suggests amending the permitted uses in the W-1 zone to allow ground floor retail shopping establishments with 10,000 square feet or less as a permitted use as is the case in the adjacent KR zone. An example of the need for this change is exemplified by the recent experience of Old Town Coffee & Tea, a local small business, which sought to relocate across the street from its current location into a vacant space zoned W-1. Luckily for the business this W-1 space had a grandfathered retail use approval otherwise it would have required a Full-Hearing SUP. If it had required a Full-Hearing SUP, the business owner would have elected to shut down instead of relocating because of the associated costs and time delays.

Staff also recommends adding personal service establishments to the list of permitted uses in the W-1 zone instead of requiring a Full-Hearing SUP, since personal service is permitted in every other commercial or mixed-use zone. However, due to the zone's use limitations, personal service establishments would only be permitted on an upper floor, not the ground floor. The off-street parking requirements for the personal service establishment would still need to be met for each particular location.

### III. Definition clarifications.

Certain definitions and use categories in the Zoning Ordinance do not correspond with current business practices or fail to address new business types that have been recently proposed. The following are business types for which definition revisions are recommended:

1. **Animal Care Facilities:** The Zoning Ordinance currently contains separate use categories for “pet supplies, grooming/training with (or without) overnight accommodations,” “kennels,” and “overnight pet boarding.” Currently there is no category for “veterinary clinic or animal hospital.” These different categories often overlap and can sometimes give contradictory approval information for staff and the owners of veterinary, dog day care, obedience training and grooming businesses. Proposed are new definitions for “animal care facility with overnight boarding,” “animal care facility without overnight boarding,” and “veterinary/animal hospital” to clarify the approval requirements for these business types. These animal care facilities would be permitted by right or by SUP reviews depending on the zone. Staff also proposes to maintain a separate use category and create a definition for “animal shelters,” since the boarding for these animals is typically of a longer duration and at a larger scale than an animal care facility.
2. **Automobile Repair Establishments:** The Zoning Ordinance classifies automobile repair facilities as either ‘light’ or ‘general,’ but the distinction is unclear and is unrelated to the land use impacts possibly created by these businesses. Staff proposes to distinguish businesses that provide engine repair and internal automobile repairs from those that do intensive body and tire work, which has a more significant community and environmental impact. Re-classification would make the distinction clearer for zoning enforcement and would allow light automobile repair businesses to perform a wider array of repairs in some existing commercial zones through the Full-Hearing SUP review process.
3. **Nightclubs:** Staff proposes adjustments to the Administrative SUP review criteria based on the “nightclub” definition in the Zoning Ordinance to ensure that restaurants that have the characteristics of a nightclub would continue to require a Full-Hearing SUP.
4. **Food/Beverage Production:** Staff has received several inquiries from small businesses such as craft breweries, artisan distillers, confectionaries, and other small-scale production facilities interested in locating in the City. For establishments that propose to operate with a retail component, the retail “bakery” definition term would be changed to “food and beverage production” to accommodate these businesses where production and direct sales to consumers take place in the same space. The manufacturing definition would also be amended to include “food and beverage production” for businesses that would not include a retail component.

#### **IV. Other revisions.**

The following proposals are amendments that would support existing small businesses in the City which seek modest expansions.

1. **Revise criteria for Minor Amendments allowed by Administrative SUP:**
  - a. **Increase floor area allowance for business enlargements from 20 percent to 33 percent:** Currently, the Zoning Ordinance allows a Minor Amendment by Administrative SUP if any business wants to increase its floor area by up to 20 percent of the current total floor area. If a business wants to increase its floor area by more than 33 percent, a Development Site Plan review is required. However, for the applicant who wants to add 20.1 percent to 32.9 percent of new floor area, a Full-Hearing SUP is required. Staff recommends closing the gap between these two thresholds by requiring an Administrative SUP approval for all floor area increases less than 33 percent and maintaining the Development Site Plan review for increases of 33 percent or more. In a recent example, a small ice cream business required a Full-Hearing SUP to add 320 square feet for storage space although this expansion had no negative impacts on the surrounding community and did not intensify the existing retail operation.
  - b. **Addition of twelve indoor seats, not to exceed 100 seats:** Staff proposes changing the minor amendment criteria for restaurants to allow an addition of up to 12 indoor seats by Administrative SUP. This would replace the current standard which allows the lesser of 20 percent of existing seats or 12 seats to be added. A restaurant would not be allowed to exceed 100 total indoor seats through the administrative process. Additionally, this minor amendment for 12 additional seats would only be allowed one time over the life of the permit.
2. **Eliminate parking requirement for 20 outdoor seats city-wide:** The concept of exempting outdoor dining seats from standard parking requirements was first introduced along King Street in 2005 and in Del Ray in 2006 as a way to encourage outdoor dining in these areas. The Zoning Ordinance was amended in 2010 to include a uniform exemption of the first 20 outdoor dining seats, limited to the Mount Vernon Urban Overlay zone and the NR (Arlandria) zone. Staff recommends expanding this exemption throughout the City to similarly encourage outdoor dining in other commercial and mixed use areas.

#### **V. Only require Planning Commission approval for all non-development special uses permits.**

Staff is proposing that the City Council consider delegating to the Planning Commission the authority to approve non-development, use-based special use permits. Other types of SUPs, such as those associated with a Development Special Use Permit (including those for parking

reductions or FAR increases) would continue to require City Council approval. This process would improve efficiency while maintaining a public process. In general, non-development SUPs that require a hearing would follow a similar process as site plans and subdivisions, which the City Charter authorizes the Planning Commission to take final action on. Planning Commission actions on SUPs would be appealable to the City Council, like subdivisions or site plans.

Currently, the City Charter does not grant this power to the Planning Commission. If this idea is supported, it could be implemented through a Charter change, which would be the cleanest approach, or the City Council could delegate authority to the Planning Commission in the same way that it delegated some SUP approval authority to staff (for the administrative approval process).