

TOWN OF ERIE
BOARD OF TRUSTEES AGENDA ITEM
May 25, 2021

SUBJECT: Ordinance No. 11-2021, An Ordinance of the Board of Trustees of the Town of Erie Amending Section 10-3-1 of the Erie Municipal Code Relating to Permitted Uses, Amending Section 10-7-5 of the Erie Municipal Code Relating to Rezoning Procedures, and Amending Section 10-11-3 of the Erie Municipal Code to Add a Definition

CODE REVIEW: Erie Municipal Code, Title 10 UDC

PURPOSE: Consideration of amendments to the Erie Municipal Code Title 10 Unified Development Code; including Section 10-3-1 relating to permitted uses, Section 10-7-5 relating to rezoning procedures, and Section 10-11-3 to add a definition.

DEPARTMENT: Planning & Development

PRESENTER: Deborah Bachelder AICP, Planning Manager/Deputy Director of Planning & Development

STAFF RECOMMENDATION: Approval of the UDC Amendments as stated in Ordinance No. 11-2021.

PLANNING COMMISSION RECOMMENDATION: Approval of Ordinance No. 11-2021 with the recommended changes listed in Resolution No. P21-07 that include:

- a. Remove Section 1.
- b. Modify Section 2. to state: Table 3-1 in Section 10-3-1 of the Erie Municipal Code is hereby amended to include "Pawnbroker Business" in the "Commercial Uses" section, with Pawnbroker Business ~~not listed as a permitted use or special review use in any zone district in~~ *the CC-Community Commercial, RC-Regional Commercial, B-Business, and LI-Light Industrial zone districts within the Town.*

The Planning Commission resolution narrowly passed on a three to two vote. The Planning Commissioners with the two dissenting votes made statements on why they did not vote for the resolution:

- One Planning Commissioner supported the Ordinance No. 11-2021 as drafted and did not agree with the modifications recommended in Planning Commission Resolution No. P21-07.
- The other Planning Commissioner did not agree with the modification proposed in the resolution for Section 2 of the ordinance. The Planning Commissioner supported removing Section 2 from Ordinance No. 11-2021.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The general intent of the proposed UDC amendments is to:

1. Update the procedure for adoption of a rezoning in Chapter 7;
2. To clarify that uses not listed in Table 3-1 Table of Permitted Uses are prohibited; and,
3. To add the use Pawnbroker Business to Table 3-1 as not permitted in any zone district and add a definition of Pawnbroker Business in Chapter 11.

Below is background of why each amendment is being proposed:

1. Chapter 7 of the UDC currently requires a legal description of all property affected by a rezoning to be written into the ordinance that the Board of Trustees adopts. Town staff is processing a rezoning that includes a map change to the airport overlay zone. Because the airport overlay zone overlaps so many properties, it would be very difficult to obtain the written legal descriptions for each of the properties that lie within the overlay zone. The amendment to the UDC will allow the Town to attach a copy, to the ordinance, of the new zoning map that illustrates the amendment in a graphic form instead of providing the arduous requirement for legal descriptions.
2. The Board of Adjustment recently held a hearing on an appeal to the Community Director's determination that a use not listed in Table 3-1 Table of Permitted Uses was prohibited. The Board of Adjustment recommended that the Town modify Section 10.3.1. to more clearly state that the uses not listed in the table are prohibited. Staff

agrees with the Board of Adjustment recommendation that the UDC be amended to clarify the language and has provided amendment language prepared by the Town attorney. With the proposed UDC text change the Planning Director will continue to review new businesses to determine if they fit into the broad, general use categories. Most new businesses can be categorized into these general use categories such as general retail, professional office, light industrial, light manufacturing and others.

3. The Board of Adjustment appeal identified to staff that the use "pawnbroker business" was not included in Table 3-1 Table of Permitted Uses. As defined by the State of Colorado, pawnbroker business is a unique use from banks and other financial institutions. Because pawnbroker business is defined differently than our general use categories, staff is recommending we add the use to Table 3-1. The proposed amendment will add pawnbroker business to Table 3-1 Table of Permitted Uses with it prohibited in all zone districts; and, to add a definition in Chapter 11 for pawnbroker business.

Proposed UDC Amendments

The information below identifies the full UDC Amendment proposed. Those items that area being added are in *italics* and those being removed have ~~strike through~~.

10.3.1 TABLE OF PERMITTED USES

Table 3-1 below lists the principal uses permitted within all standard zoning districts. Each of the listed uses is defined in Chapter 11. Specific use standards may be found in Section 3.2.

- A. *Any use not expressly listed in Table 3-1 as a permitted use or a special review use is prohibited in the Town.*

~~Classification of New and Unlisted Uses~~

~~New types of land use will develop and forms of land use not anticipated may seek to locate in the Town. When application is made for a use category or use type that is not specifically listed in Table 3-1, the following procedure shall apply:~~

- ~~1. The Director shall provide an interpretation as to the zoning classification into which such use should be placed. In making such interpretation, the Director shall consider its potential impacts, including without limitation the nature of the use; anticipated employment; transportation requirements; the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated; and the general requirements for public utilities such as water and sanitary sewer.~~

2. Standards for new and unlisted uses may be interpreted as those of a similar use by the Director.

B. Table of Permitted Uses

TABLE 3-1: TABLE OF PERMITTED USES																					
P = Permitted Use by Right S = Special Review Use Blank Cell = Prohibited																					
USE	CATEGORY	RESIDENTIAL							COMMERCIAL			INDUSTRIAL			MIXED USE			OTHER			
		RR	ER	SR	LR	MR	HR	OTR	CC	RC	B	LI	I	HI	DT	NMU	CMU	AG/OS	AP	PLI	
COMMERCIAL USES																					
Pawnbroker Business	Pawnbroker Business																				

10.7.5 REZONING

A. Purpose

The boundaries of any zone district may be changed, or the zone classification of any parcel of land may be changed, pursuant to this Section. The purpose is to make adjustments to the official zoning map that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the Town. Rezoning shall not be used to relieve particular hardships, or to convey special privileges on any person or organization. In addition, Rezoning shall not be used as a way to legitimize nonconforming uses or structures, and should not be used when a Special Review Use, Variance, or Minor Modification could be used to achieve the same result.

B. Procedure

1. Step 1 (Pre-Application Conference)
Applicable.
2. **Step 2 (Development Application Submittal)**
Applicable, see User’s Guide for submittal requirements.
3. **Step 3 (Determination of Application Completeness)**
Applicable.

4. **Step 4 (Neighborhood Meeting)**

Applicable.

5. **Step 5 (Application Referral, Review and Staff Report)**

Applicable.

6. **Step 6 (Notice)**

Applicable, as follows:

Published, mailed, and posted notice of Public Hearings on Rezoning's shall be provided. In addition, the notice shall list the protest provisions set forth in Subsection 7.5.B.8.c below. Where the Rezoning has been initiated by someone other than the property owner or their designated agent, the Community Development Director also shall mail a notice to all owners of the property to be reclassified, as shown in the current County Assessor's records.

7. **Step 7 (Public Hearings)**

Applicable. The first hearing shall be held by the Planning Commission, and the second hearing shall be held by the Board of Trustees.

8. **Decision and Findings)**

Applicable. The following additional procedures shall apply:

a. ***Review and Recommendation by Planning Commission***

- i. The Planning Commission shall hold a Public Hearing on the proposed Rezoning and shall recommend that the Board of Trustees approve, approve with modifications, or deny the Rezoning.
- ii. The Community Development Director shall forward the recommendation, to approve or approve with modifications, to the Board of Trustees with an ordinance to amend the official zoning map in accordance with the recommendation.
- iii. If the Planning Commission recommends that the Board of Trustees deny a Rezoning, that action is final unless, within 20 days of the Planning Commission's action, the applicant files a written statement with the Town Clerk requesting that an ordinance amending the zoning map in accordance with the application be submitted to the Board of Trustees.

b. **Action by Board of Trustees**

The Board of Trustees shall hold a Public Hearing on the proposed Rezoning and approve the Rezoning by ordinance, deny the Rezoning, or refer the proposed Rezoning back to the Planning Commission or to a committee of the Board of Trustees for further consideration.

c. **Protests**

Any owner of property subject to a proposed Rezoning may protest the Rezoning by filing a written protest with the Community Development Director pursuant to this Section.

- i. The protest shall object to the Rezoning, contain a legal description of the property on behalf of which the protest is made, and be signed by the owners of at least 1/3 of the property, excluding right-of-ways, of the land to which the Rezoning applies.
- ii. To be valid, the protest must be received by the Town Clerk after notice of a Public Hearing before the Board of Trustees on a Rezoning and at least 1 business day before the time set for the Board of Trustees Public Hearing on the Rezoning.
- iii. Board of Trustees approval of a Rezoning subject to a valid protest under this Subsection shall require an affirmative vote of 5 Board members.

d. **Form of Amending Ordinance**

An ordinance rezoning property amending the Zoning Map shall contain the following:

- i. The name of each zone use district which the ordinance applies; and
- ii. The legal description of the affected property, land within each zoning district applied by the ordinance. a map showing the affected property, or any other information identifying the property.

e. **Successive Applications**

Following denial of a Rezoning request, no new application for the same or substantially the same Rezoning shall be accepted within 1 year of the date of denial, unless denial is made without prejudice.

9. **Step 9 (Approval Criteria)**

Applicable, as follows: The Board of Trustees may approve Rezonings, and the Planning Commission may recommend approval, if the Rezoning corrects a technical mistake or the Rezoning meets all of the following criteria:

- a. The Rezoning will promote the public health, safety, and general welfare;

- b. The Rezoning is generally consistent with the Town’s Comprehensive Master Plan and the purposes of this UDC;
- c. Adequate facilities and services (including streets and transportation, water, gas, electric, police and fire protection, and sewage and waste disposal, as applicable) will be available to serve the subject property while maintaining adequate levels of service to existing development;
- d. The Rezoning is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated;
- e. The Rezoning is not likely to result in significant adverse impacts upon other property in the vicinity of the subject property;
- f. Future uses on the subject property will be compatible in scale with uses on other properties in the vicinity of the subject property; and
- g. The Zoning is generally consistent with the Towns’ economic development goals and objectives in bring positive growth and sustainable revenues to the Town.

10. Step 10 (Conditions of Approval)

Applicable.

11. Step 11 (Amendments)

Not applicable.

12. Step 12 (Lapse)

Applicable, in addition:

The approved Rezoning documents shall be recorded within 60 days of approval. Upon written request by the applicant or Staff, the Community Development Director may grant 1 extension for a maximum of 60 days due to unique circumstances that make it impractical to file the Rezoning documents within 60 days from approval. Rezoning approval shall be null and void and shall automatically lapse if recordation does not occur within the time specified.

10.11.3 TERMS DEFINED

The following words, terms and phrases, when used in this UDC, shall have the meanings ascribed to them in this Section:

Pawnbroker business

Any business including a pawnbroker, as defined by C.R.S. 29-11.9-101, as amended.

Approval Criteria

The following are the approval criteria of Section 7.21.C.9, Amendments to the Text of the Code that are to be considered when reviewing the proposed UDC Amendment.

1. The proposed amendment will promote the public health, safety, and general welfare;
2. The proposed amendment is generally consistent with the Town's Comprehensive Master Plan and the stated purposes of this UDC; and
3. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions.

Planning Commission:

The Planning Commission held a review of the proposed Amendments in Ordinance No. 11-2021 on May 5, 2021. The Planning Commission held a lengthy discussion on the amendments in which the following issues were discussed or comments were made regarding each section of the ordinance.

Ordinance Section 1: UDC Chapter 3 Table of Permitted Uses – adding statement that uses not expressly listed in Table 3-1 is prohibited.

- Concerned that the new text will appear negative to new businesses wanting to locate to Erie.
- Does not like that we would say no.
- We need to make it easier for businesses to locate in Erie; not harder.

Ordinance Section 2: UDC Table 3-1 Table of Permitted Uses – add “Pawnbroker Business” to table as not permitted in any zone district.

- Concerned with adding a specific use for the purpose of excluding them from locating in Erie.
- Appears overly restrictive.
- Other communities have this use; why can’t we have it as a special review use?
- Shouldn’t the community decide on where pawnbroker businesses should be located?

Ordinance Section 3: UDC Chapter 11 Definitions

All five Planning Commissioners supported the new definition for “pawnbroker business”.

Ordinance Section 4: UDC Chapter 7 Review and Approval Procedures

All five Planning Commissioners supported Section 4 of the Ordinance regarding the amendment to the rezoning process to allow a zoning map to be attached to an Ordinance rezoning property.

Public Notice:

Public notice has been provided as required in UDC 10.7.12 C.6.

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