

PLANNING COMMISSION STAFF REPORT

Major Street Pet Services Zoning Ordinance Amendment Petition PLNPCM2009-00726 November 18, 2009



Planning Division
Department of Community and
Economic Development

Applicant

Rival Investments, Jake Tate
representative

Staff

Ray Milliner (801) 535-7645
ray.milliner@slcgov.com

Master Plan Designation

City-wide

Council District

City-wide

Review Standards

21A.50.050 Standards for General
Amendments

Affected Text Sections

21A.62.040
21A.32.140

Notification

- Notice mailed on September 28, 2009
- Published in Deseret News
September 29, 2009
- Posted on City & State Websites
September 28, 2009

Attachments

- A. Proposed Ordinance
Amendments.

REQUEST

On June 17, 2009 Rival Investments represented by Jake Tate of Great Basin Engineering submitted a petition to amend the following sections of the Zoning Ordinance.

- 1) Modify Chapter 21A.62.040 Definitions – Amend the definition of a funeral home to allow activities such as cremation.
- 2) Modify Section 21A.62.040 Definitions – Amend this section to create a definition of “Animal Cremation Services”
- 3) Modify Chapter 21A.32.140 Table of Permitted and Conditional Uses for Special Purpose Districts to allow “animal cremation services” in the Commercial Corridor (CC) zone.

The stated purpose of the request is to allow an animal cremation service as in the Commercial Corridor (CC) zone. Currently cremation services of any kind are allowed only in the Open Space (OS) zone. In addition to the above changes, the Planning Commission directed staff to prepare amendments to the code to allow funeral homes in various zones throughout the City. These changes would legalize a number of nonconforming funeral homes. A summary of the proposed changes is provided below.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission review the proposed amendments to the Salt Lake City Zoning Ordinance, conduct a public hearing and forward a positive recommendation to the City Council.

Background/ Project Description

The applicant, Rival Investments is requesting approval of three amendments to the Zoning Ordinance. These amendments, if approved, would enable the establishment of a pet cremation service at 1727 South Major Street. The applicant first approached the City with a request to install a crematorium on the property in January of 2009. On February 12, 2009, the Zoning Administrator issued an administrative interpretation letter stating:

“A pet crematory/crematorium is not allowed in the CC Zoning District because the proposed use is most similar to a Funeral Home, a use that does not include the actual act of cremation, only the preparation of the dead for cremation, and a Pet Cemetery, which is not an allowed used in the CC zoning district. (Letter attached as exhibit B)”

The applicant appealed this interpretation to the Board of Adjustment, who heard the case on April 20, 2009. The Board of Adjustment determined that the Zoning Administrator did not err in his interpretation of the Ordinance, and voted to uphold his determination.

Rival Investments submitted an application for an amendment to the Zoning Ordinance on June 16, 2009. As staff reviewed and discussed the issues related with this petition it was discovered that there are a number of issues relating to the way in which the City regulates businesses that care for the deceased (see issue discussion section below). As a result, staff is requesting that the Planning Commission provide direction with regard to this application as well as for a possible expansion of the scope of the project.

This application was reviewed by the Planning Commission at an issues only hearing on October 14, 2009. At the hearing, testimony was heard regarding the environmental and visual impacts of the cremation equipment, and the Planning Commission provided staff with direction to prepare the amendments for review and a potential recommendation to the City Council. Staff has done as directed, and is now requesting that the Planning Commission forward the amendments on to the City Council with a positive recommendation.

Public Participation

Public Open House

An Open House was held on July 19, 2009. Notice of the Open House was sent to Community Council chairs, business groups and those whose names are on the Planning Divisions List serve. Notice was also posted on the City and State website.

The open house was attended by one member of the community who was adamantly opposed to the cremation service. She stated that the use is not appropriate for the CC zone, that there are businesses and residences in the immediate vicinity of the proposed Major Street location that would be negatively impacted by the cremation use.

Public Comments

Aside from comments received at the open house, staff has received one telephone call in opposition to the project and one e-mail in favor (email attached as exhibit C).

In the time since the initial public hearing, staff has received no further comments either written or oral from the public.

Summary of Proposed Code Changes

The following is a short synopsis of the changes proposed by Rival Investments (language and redlines attached as Exhibit A):

1. Chapter 21A.62.040 Definitions – This change would modify the existing definition of a funeral home from:

“FUNERAL HOME: An establishment where the dead are prepared for burial or cremation and where wakes and funerals may be held.”

To:

“FUNERAL HOME: An establishment where the activities necessary for the care and custody of the dead, including: refrigeration, embalming; cremation (as an accessory conditional use) ; other necessary care; viewings; wakes; funerals; and other rites and ceremonies consistent with the proper final disposition of the dead, are conducted.”

2. Modify Section 21A.62.040 – To create new definitions for an Animal Cremation Services and a Crematorium. Proposed language would read:

“ANIMAL CREMATION SERVICE: A service dedicated to the disposition of dead animal remains by means of cremation that may also provide necessary goods and services for the memorialization of the animal if requested.”

“CREMATORIUM: An accessory use to a funeral home where the dead, both animal and human, are prepared for and cremated, but not in the same crematorium.”

3. Modify the table of permitted and conditional uses for to allow “animal cremation services” in the Commercial Corridor (CC), Light Manufacturing (M-1) and Heavy Manufacturing (M-2) zones.
4. Modify the table of Permitted and Conditional Uses for the Central Business (D-1), Downtown Support (D-2), Downtown Warehouse/Residential (D-3), Light Manufacturing (M-1), Heavy Manufacturing (M-2), Residential Mixed Use (R-MU-35), (R-MU-45) and (R-MU) zones to allow “Funeral Homes” as either a conditional or permitted use.
5. Modify Chapter 21A.40 Accessory Uses, Buildings and Structures to create criteria allowing crematoriums as a conditional use in specified zoning districts. Criteria would be as follows:

Crematoriums may be approved as a conditional use when associated with a licensed funeral home or dedicated animal cremation service. When reviewing the application for a crematorium, the Planning Commission or administrative hearing officer will consider the following factors for approval:

1. The crematorium shall emit no visible emissions.

2. Noise emitted from the crematorium shall not exceed 65 decibels measured from the property line.
3. All activity relating to the dead shall be screened from public view, including delivery and storage of the corpse.
4. The crematorium shall not be used for the disposal of any waste materials, including medical or industrial.
5. In the case of pet crematoriums, the use shall be for the preparation and cremation of pets only. The disposal of animals from other sources such as, but not limited to, veterinarian offices, research labs, and farms.
6. The crematorium shall receive all necessary approvals from applicable state and federal agencies.
7. The crematorium use shall be consistent with all adopted City ordinance and master plans.
8. The crematorium use shall be associated with a licensed funeral home, or dedicated animal cremation service.

Analysis

The applicant has submitted this application with the intent of enabling a pet crematorium at the Major Street location in the CC zone. Nevertheless, the proposed changes will have a wide ranging impact on the way in which funeral homes (for both pet and humans) are defined and regulated throughout the City, as the proposed definition of a funeral home would apply to all funeral homes, enabling cremation as a conditional use on site, and permitting funeral homes in zones where they currently are not allowed. The existing definition only allows the preparation of a body for these activities, not the actual cremation.

At the October 14, 2009 public hearing, the applicant stated that because of technological advances, respectful and discreet care for the dead with limited impacts on the neighboring uses is viable because modern crematoriums generally do not emit visible emissions (smoke, ash, and odor). He further stated that this residue is filtered and processed greatly prior to being emitted into the atmosphere.

The creation of a definition for animal cremation services would simply create a separate definition for the applicant's use, which would then be included on the use table as an allowed use in the CC zone. This action would enable animal cremation services throughout the city, as the CC zone is located in various areas of the City, most prominently along State Street, Main Street, Redwood Road, and some spots along North Temple.

The modification of the use tables allowing funeral homes in a number of zones where they are not currently allowed, would bring most of the existing mortuaries and funeral homes in the city into compliance with the Zoning Ordinance, and enable them to expand or modify the use as a permitted use, rather than a nonconforming use. This action will also enable other funeral homes to be built or relocate into these zones.

Staff is recommending that the funeral homes in the residential zones remain prohibited uses. To permit them would significantly alter established City policy of not allowing commercial uses in residential zones. If the owner of an existing funeral home in a residential zone would like to expand the use, she would be able to submit a conditional use application for the expansion of a nonconforming use. This would enable the expansion and continued operation of the mortuary without opening the zone to new uses.

Below is a table of the existing funeral homes in the City, their location zoning and the proposed changes to the use table.

Name	Location	Zone	Proposed Change
Larkin Mortuary	260 East South Temple	R-MU	Conditional
Niel O'Donnell	372 East 100 South	R-MU	Conditional
Russon Brothers	255 South 200 East	D-1	Permitted
Garner Funeral Home	1001 11 th Avenue	OS	Permitted
Deseret Mortuary	36 East 700 South	D-2	Permitted
David Mcleod	617 East 600 South	RMF-30	No Change Not allowed
Evans and Early	574 East 100 South	RMF-45	No Change Not allowed
Larkin Sunset Lawn	2350 South 1300 East	OS	Permitted
Major Street Pet Services	1727 South Major Street	CC	Permitted

Issue Discussion

The Planning Commission discussed the issues associated with this application at the October 14, 2009 meeting. At the meeting, the Commission was asked to provide direction on the following questions:

- Are the proposed changes to the definition of a funeral home appropriate?
- Is the proposed new “Animal Cremation Service” definition appropriate?
- Should Animal cremation services be allowed in the CC zone?
- Should animal cremation services be allowed in any other zone?
- What, if anything, should be done about bringing nonconforming funeral homes into compliance (such as rezoning properties, or allowing these services in the zones where funeral homes currently exist)?

The Planning Commission responded in the affirmative to each of these questions, and directed staff to bring back language allowing funeral homes in the following zones. In order to provide the community with an opportunity to mitigate any issues that may be associated with new funeral homes, or the expansion of existing homes, staff is recommending that funeral homes in mixed use zones be featured as conditional uses and that funeral homes in residential zones remain unchanged. Staff further recommends that funeral homes in “D” zones and manufacturing zones be permitted uses on the use table.

Permitted

D-1, D-2, D-3, M-1, M-2

Conditional

R-MU-35, R-MU-45 and R-MU

This action will bring the existing funeral homes in the city into conforming status, and enable new funeral homes in these zones as well. Existing funeral homes in the residential districts will be required to receive conditional use approval if they would like to expand. With regard to the pet cremation service, the proposed modifications would allow for this business in the CC zone and the M-1 and M-2 zones.

STANDARDS FOR GENERAL AMENDMENTS

A decision to amend the text of the Zoning Ordinance or the Zoning Map by general amendment is a matter committed to the legislative discretion of the City Council and is not controlled by any one standard. However, in making its decision concerning a proposed amendment, the City Council should consider the following factors:

In making its decision concerning a proposed text amendment, the city council should consider the following factors:

1. Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the City as stated through its various adopted planning documents;

Analysis: The purpose of this rewrite is to bring the language in the Zoning Ordinance up to date with definitions in the State Code, and to accommodate the changes in technology with regard to the operation of crematoriums. These amendments will make many of the funeral homes in the City legal conforming uses, allowing them to operate and conduct business as legal permitted uses. These amendments are an attempt to clarify and resolve problems encountered while applying the current standards and definitions in the Ordinance.

Finding: Staff finds that the proposed amendments to the Zoning Ordinance are consistent with the purposes, goals, objectives and policies of the various adopted planning documents.

2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance.

Analysis: The proposed changes to the ordinance will further the purpose statement of this chapter by modifying and clarifying the requirements necessary for approval of a funeral home or animal cremation service. By making the uses conditional in certain zones, the amendments provide decision makers with an opportunity to mitigate any impacts that the uses may have on specific neighbors or properties. These modifications create standards and factors for consideration that will facilitate mitigation of adverse impacts on neighboring property owners and will clarify sections of the chapter that were not clear or concise.

Finding: Staff finds that the proposed changes to the Zoning Ordinance are consistent with the purpose statement of said chapter.

3. Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards.

Analysis: The proposed amendments are not specifically tied to any overlay zoning district. Nonetheless, they will be applicable to all conditional uses established in the Zoning Ordinance (unless specifically exempted). When reviewing a project for compliance with the Zoning Ordinance, requirements from overlay zoning districts will be a necessary component to the review. No exemption is featured in these amendments.

Finding: Staff finds that the proposed amendments will be consistent with all applicable overlay zoning districts as featured on the zoning map.

Attachment A:
Proposed Amendment Language

21A.62.040 Definitions of Terms:

FUNERAL HOME: ~~An establishment where the dead are prepared for burial or cremation and where wakes and funerals may be held."~~

An establishment where the activities necessary for the care and custody of the dead, including: refrigeration, embalming; cremation; other necessary care; viewings; wakes; funerals; and other rites and ceremonies consistent with the proper final disposition of the dead, are conducted."

ANIMAL CREMATION SERVICE:

A service dedicated to the disposition of dead animal remains by means of cremation that may also provide necessary goods and services for the memorialization of the animal if requested.

CREMATORIUM:

An accessory use to a funeral home where the dead, both animal and human, are prepared for and cremated, but not in the same crematorium.

21A.40.170 CREMATORIALS:

Crematoriums may be approved as a conditional use when associated with a licensed funeral home or dedicated animal cremation service. When reviewing the application for a crematorium, the Planning Commission or administrative hearing officer will consider the following factors for approval:

1. The crematorium shall emit no visible emissions.
2. Noise emitted from the crematorium shall not exceed 65 decibels measured from the property line.
3. All activity relating to the dead shall be screened from public view, including delivery and storage of the corpse.
4. The crematorium shall not be used for the disposal of any waste materials, including medical or industrial.
5. In the case of pet crematoriums, the use shall be for the preparation and cremation of pets only. The disposal of animals from other sources such as, but not limited to, veterinarian offices, research labs, and farms.
6. The crematorium shall receive all necessary approvals from applicable state and federal agencies.
7. The crematorium use shall be consistent with all adopted City ordinance and master plans.
8. The crematorium use shall be associated with a licensed funeral home, or dedicated animal cremation service.

21A.26.080: TABLE OF PERMITTED AND CONDITIONAL USES FOR COMMERCIAL DISTRICTS:

Miscellaneous:	CN	CB	CS1	CC	CSHBD	CG	TC75
<u>Animal Cremation Service</u>				<u>C</u>			
<u>Crematorium</u>			<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>

21A.28.040: TABLE OF PERMITTED AND CONDITIONAL USES FOR MANUFACTURING DISTRICTS:

	Permitted And Conditional Uses By District	
Use	M-1	M-2
<u>Animal Cremation Service</u>	<u>P</u>	<u>P</u>
<u>Crematorium</u>	<u>P</u>	<u>P</u>
<u>Funeral Home</u>	<u>P</u>	<u>P</u>

21A.24.190: TABLE OF PERMITTED AND CONDITIONAL USES FOR RESIDENTIAL DISTRICTS:

Legend:	C =	Conditional	P =	Permitted
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	Permitted And Conditional Uses, By District Residential Districts																		
Use	FR -1/ 43, 56 0	FR -2/ 21, 78 0	FR -3/ 12, 00 0	R- 1/ 12, 00 0	R- 1/ 7, 00 0	R- 1/ 5, 00 0	S R - 1	S R - 2	S R - 3	R - 2	R M F- 30	R M F- 35	R M F- 45	R M F- 75	R B	R - M U - 3 5	R - M U - 4 5	R - M U	R O
<u>Funeral Home</u>																<u>C</u>	<u>C</u>	<u>C</u>	
<u>Crematorium</u>																<u>C</u>	<u>C</u>	<u>C</u>	

21A.30.050: TABLE OF PERMITTED AND CONDITIONAL USES FOR DOWNTOWN DISTRICTS:

Legend:	C =	Conditional	P =	Permitted
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		Permitted And Conditional Uses By District			
Use		D-1	D-2	D-3	D-4
	<u>Funeral Home</u>	<u>P</u>	<u>P</u>	<u>P</u>	
	<u>Crematorium</u>	<u>C</u>	<u>C</u>	<u>C</u>	