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**STAFF REPORT**  
**PLANNING AND ZONING COMMISSION**

For the March 23, 2016 meeting

**TO:** Planning and Zoning Commission members

**FROM:** Sheena Nuetzman, Planning Director

**SUBJECT:** Revision of Temporary Structures and Uses Ordinance – Chapters 152 and 171  
(discussion only)

Staff will be tasked with an entire Zoning Ordinance revision over the next year, but more immediate changes may be presented to the Commission and City Council before a complete revision as such. In a separate attachment you will find the existing Temporary Structures (Ch. 152) and Temporary Uses (Ch. 171) chapters which are currently separate from one another. Temporary Structures is located in the Building and Property Regulations Ordinance while Temporary Uses is located in the Zoning Ordinance. Staff has recommended these ordinances be combined and placed together in the Zoning Ordinance.

A revision of the two codes has been drafted and can also be found in a separate document. Staff is asking Commission members to review the ordinance for suggestions and input to make the code better and more realistic in enforcement. Significant components of the draft ordinance include combining the ordinances to simplify and eliminate redundancy, eliminated the 48” staking requirement for bulk materials and added best practices. Staff is also looking for discussion regarding temporary commercial trailer storage. Many complaints are received on trailers that are put out of public sight, yet are still supposed to be charged.

**ACTION REQUESTED**

Review the proposed revisions of the combined chapters 152 and 171, provide input and set a date for a public hearing.

**171.10 TEMPORARY USES AND STRUCTURES.** These regulations are intended to prescribe the conditions under which limited duration ~~agricultural, commercial, and civic~~ activities (e.g., Christmas tree sales, pumpkin sales, landscape material sales, grand openings, and special events, etc.) may be conducted. The intent is to allow for the temporary storage and the display and marketing of merchandise on a seasonal basis in an attractive manner to serve the desires of the general public, but prevent the creation of any nuisance or annoyance to the occupants of adjacent buildings, premises or property, and the general public. It is also the intent to establish minimum standards for the operation of temporary uses in a manner that will provide for the health, safety, and welfare of the patrons, employees, the general public, etc. that may utilize or be affected by the establishment of the temporary use.

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#### **171.11 DEFINITIONS**

1. Temporary Use. A temporary use may be defined as short term or long term. A short-term use is a use with a maximum duration of four consecutive days or less. A long-term use is a use in duration of more than four consecutive days.

2. Temporary Structure. "Temporary structure" means any shed, structure, building, trailer, tent or enclosure of any kind used for storage, commercial or business or residential purposes which any person or business intends to place on the same lot with or on any lot immediately adjacent to, any permanent structure used for business or commercial or residential purposes. This term includes "temporary portable storage container," which is defined as a large container designed and rented or leased for the temporary storage of commercial, industrial, or residential household goods and that does not contain a foundation or wheels for movement. All other words or phrases shall have the same meaning assigned to them in Chapter 166 of this Code of Ordinances.

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A. — 171.12 COMPLIANCE WITH CHAPTER PROVISIONS. No temporary use or structure permit shall be issued except for when hereinafter provided.

**171.13 PERMIT REQUIRED.** The following uses are eligible for a temporary ~~use~~ permit, provided they meet the following criteria: and obtain prior approval from the Zoning Administrator. No temporary use shall occur, and no temporary structures shall be erected, without first obtaining a permit from the Zoning Administrator. All permits are subject to approval by the Zoning Administrator. Further, the Zoning Administrator may impose certain reasonable requirements as may be required to prevent any negative impact to surrounding properties. City sponsored events are exempt from these requirements.

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1. Construction Related. If a building permit has been issued for construction of a new building on the same property or if a contractor has another non-building related construction project, the applicant may also apply for a temporary use permit for the purpose of installing any temporary structures used as temporary living, office, shop, or storage on the property provided they directly relate to the new construction activity and the temporary structure is removed upon completion of the construction project. Specific uses under this category may include the following:

A. Real estate offices and model homes

B. Any structure used for temporary living, construction offices, workshops, and storage

C. Any other construction related uses not specified in this section which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section.

2. Event Related. These uses are intended to serve special events such as grand openings, parking lot sales, group assembly activities, etc. These uses typically involve the use of a tent, outdoor shelter, or any other enclosure and temporary structure. Garage sales are exempt from these provisions, provided they do not occur any more frequently than one 3-day event per 180-day period. Garage sales occurring more frequently shall be considered a commercial retail sales business in a residential zone which is prohibited. Specific uses under this category may include the following:

A. Parking lot sales, sidewalk sales (private sidewalks only), clearance sales, or other temporary uses which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section.

(For purposes of this section, the term "sidewalks" does not apply to outside areas adjacent to sidewalks that were specifically built for outside sales.)

B. Grand openings and special events, and grand openings which are not sponsored by the City or Chamber.

C. Group assembly activities not sponsored or endorsed by the City (e.g., carnivals, fairs, rodeos, sport events, concerts, and shows).

D. Temporary food and beverage uses.

E. Any other event related uses not specified in this section which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section.

3. Seasonal Related. These uses typically involve the erection or setup of a temporary structure in order to display seasonal goods and wares. These permitted uses and any related structures expire upon the completion of the season or at another specified date. Specific uses under this category may include the following:

A. Retail sales of Christmas trees and pumpkins

B. Retail sale of agricultural products and landscape nursery material, such as materials listed in subparagraph 4(H)(3) of this section unless establishment sells and is zoned for sales of similar materials.

C. Nurseries and greenhouses

D. Any other seasonal related uses not specified in this section which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section.

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**171.14 PRIOR DETERMINATION FOR TEMPORARY USE PERMIT APPROVAL.** The Zoning Administrator shall only approve an application for a temporary use permit if all of the following findings can be made:

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1. The proposed temporary use will be compatible with adjacent uses and will not adversely affect the surrounding neighborhood by means of odor, noise, dust, or other nuisance.
2. The additional parking required by the temporary use will be provided on site, if applicable, or adequate street parking is available in the immediate area.
3. Increased traffic caused by the temporary use will not adversely affect the surrounding neighborhood or city at large.
4. The proposed temporary use is consistent with the comprehensive plan, this Code of Ordinances, and all City and State regulations.
5. Unless specifically exempted by the Zoning Administrator, the temporary use must involve sales compatible with merchandise sold within the main business structure.

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**171.15 GENERAL REGULATIONS.** Each temporary use shall:

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1. Be described in a permit issued by the Zoning Administrator prior to commencement of the sale. This permit shall be in addition to all other licenses, permits, or approvals otherwise required by any governmental entity.
2. Parking Spaces.
  - A. The number of additional parking spaces required, if any, and the location of such additional parking spaces, for the temporary activity shall be determined by the Zoning Administrator. The number of permanent parking spaces allowed to be used under the short-term temporary use permit shall be reviewed and determined by the Zoning Administrator.
  - B. The maximum number of permanent parking spaces allowed to be used for the operation of a long-term temporary use shall not exceed twenty percent (20%) of the parking on a site plan that was approved by the City to be counted toward the allowable size of the long-term temporary use or twenty percent (20%) of the site area, whichever is more restrictive.
3. All sites shall be completely cleaned of debris and temporary structures including (but not limited to) trash receptacles, signs, stands, poles, electric wiring, or any other fixtures and appurtenances or equipment connected therewith, within five days after the termination of the sale or special event.
4. A bond or cash deposit in the amount of five hundred dollars (\$500.00) shall be deposited with the City to assure adequate cleanup of activities that occur on vacant or

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undeveloped lots, and/or involving the construction or placement of temporary structures. The bond for long-term temporary food and beverage uses shall be in the amount of seven hundred fifty dollars (\$750.00). Activities located in fully developed shopping centers will be exempt from bonding, with the exception of uses that involve construction or placement of a temporary structure, and any long-term temporary food and beverage facilities shall be required to post a bond or cash deposit. [The Zoning Administrator may waive this requirement for normal & customary uses incidental and complimentary to the principal use.](#)

[5.](#) Sanitary facilities, either portable or permanent, shall be made available to all employees, attendants and participants of the activity during its operational hours, as approved by the Zoning Administrator in concurrence with the City Engineer and County Health Department, unless stipulated otherwise in this chapter. If the restroom facilities are located within an adjacent building, the written authorization of the owner of the adjacent building shall be required specifically stating that the restroom facilities will be made available to the employees, attendants and participants at all times during the hours of operation of the temporary use activity.

[6.](#) No area of public right-of-way may be used without obtaining approval from the Zoning Administrator, [who will confer with the](#) Chief of Police, Fire Chief, ~~and~~ Public Works Director, [and permission to encroach from](#) the City Administrator.

[7.](#) Proof of ownership or a signed letter, either from the property owner or an authorized representative for the property on which the activity is to take place, shall be presented at the time the temporary permit is requested.

[8.](#) All temporary structures including (but not limited to) greenhouses, trailers, mobile homes, [signs](#), etc., shall conform to the zoning setback requirements unless stated otherwise in this chapter. Temporary structures are also subject to permit requirements as set forth in Chapter 152 of this Code of Ordinances.

~~[9.](#) Multiple concurrent temporary uses on the same property are prohibited.~~

#### 171.16 SPECIFIC REQUIREMENTS FOR RELATED AREAS.

##### 1. Construction Related.

##### A. Construction Offices and Related Structures.

- (1) Permitted Zone: Any
- (2) Maximum Duration: 24 months.
- (3) Normal setbacks for the land use classification district shall apply.
- (4) Limited to one per property and located entirely within the property boundaries.

(5) Located so not to obstruct vehicle sight lines.

(6) Effectively screened from view of the street or any adjacent public space.

(7) Will not obstruct any on-site car parking bays or vehicular maneuvering area which is required to be provided for the approved use(s) of the property.

B. Real Estate Sales Offices and Model Homes.

(1) Permitted Zone Locations: all residential zones.

(2) Maximum Duration: 24 months.

(3) On-Site Sales Office: On-site temporary real estate sales office or temporary model home complex may be established only within the boundaries of a residential subdivision, as an accessory facility, for the limited purpose of conducting sales of lots within the same division.

(4) Off-Site Sales Office: Off-site sales or offers to sell off-site lots or dwelling units, from any temporary office or trailer complex established pursuant to this section shall not be permitted unless a special use permit is approved by the City.

(5) Definition of Off-Site Sales Office: "Off-site lots" means those lots outside the boundaries of a residential subdivision which subdivision contains an approved real estate sales office or model home complex, and which lots are not adjacent to or contiguous with that subdivision.

(6) Requirements: Any temporary real estate sales office or model home established or maintained pursuant to this section shall meet the following requirements:

a. Receipt by the City of an agreement and a cash deposit or surety bond in a form approved by the Zoning Administrator in an amount sufficient to guarantee to the City the removal of the sales office or model home complex, or the restoration of the premises in conformity with the approved development plan and with the applicable provisions of this Code of Ordinances within 60 days after the last residence or lot within the subdivision has been sold and escrow closed. If after 60 days, no action has been taken to restore the site or premises, the City may take action to restore the site by utilizing the bond or monies deposited or other methods at its disposal.

b. Screening of parking areas by walls, fencing, landscaping, or other methods shall be provided as approved by the Zoning Administrator.

(7) Conditions: A temporary real estate office or temporary model home complex may be constructed in advance of the filing of a final plat map, subject to the following requirements:

- a. The street plans for the entire plat shall be filed with the Public Works Department.
- b. The Public Works Director shall have approved the engineering plans.
- c. Prior to the operation of such office or complex, all applicable requirements of the Iowa and City subdivision laws and real estate sales laws shall be fulfilled.

(8) Maximum Duration: The temporary real estate sales office and temporary model home complex may be maintained until all of the on-site lots in the subdivision have been sold and escrow closed.

2. Event Related.

A. Lot and Sidewalk Commercial Activities.

- (1) Permitted Zone Locations: all commercial districts.
- (2) Maximum Duration: four consecutive days, not to exceed four events in a 12-month period.
- (3) Setbacks: All merchandise, trucks, trailers, etc., shall be set back a minimum of 35 feet from all property lines.
- (4) Area of Operation: The area of the operation shall not exceed 800 square feet and no dimension shall exceed 40 linear feet.
- (5) Transient Merchants: Transient merchants shall be subject to the licensing requirements of Chapter 122 of this Code of Ordinances. Said license shall be secured prior to issuance of a temporary use permit.

B. Grand Opening Sales and Special Events.

- (1) Permitted Zone Locations: all zoning districts.
- (2) Maximum Duration: four consecutive days, not to exceed four events in a 12-month period.
- (3) Other: All such events shall be conducted by a business located on the property.

C. Group Assembly Activities.

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- (1) Permitted Zone Locations: any zoning district.
- (2) Maximum Duration: 14 consecutive days, not to exceed four events in a 12-month period.
- (3) Exception: Upon approval of the Zoning Administrator, the number of events in the Town Center district may exceed four in a 12-month period.
- (4) Hours of Operation: Residential zones, 7:00 a.m. to 10:00 p.m. except on Fridays and Saturdays to 12:00 midnight with approval of the Chief of Police; all other zones as determined by the Zoning Administrator.

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D. Temporary Food and Beverage Facilities. Short-term temporary food and beverage facilities shall comply with the regulations stated elsewhere in this section for lot and sidewalk commercial activities or grand openings and special events. Long-term temporary food and beverage facilities shall comply with the following standards:

- (1) Permitted Zone Locations: all nonresidential zoning districts.
- (2) Maximum Duration: April 1 October 31 of a calendar year, inclusive.
- ~~(3) Maximum Square Footage of Structure: 160 square feet.~~
- (3) Health Standards and Licensing: The applicant must obtain licensing, liquor permits, certificates of inspection, or any other documentation necessary to comply with all applicable requirements of the State, County or City regarding health standards and for seasonal liquor license, whenever applicable.
- (4) Waste Disposal: The applicant shall provide, as determined by the Zoning Administrator, adequate facilities for disposal of trash, waste, and grease.
- (5) Water Service: The structure used for the dispensing of food and beverage shall provide self-contained hot and cold running water with appropriate holding facilities for wastewater.
- (6) Wastewater Disposal: Any wastewater shall be collected and disposed in a manner acceptable to the City and shall be ~~fulfilled~~ explained in the application for a permit.
- (7) Restroom Facilities: Portable or permanent restroom facilities shall be provided at all times during the temporary use activity.
- (8) Indemnification and Proof of Insurance: The owner or operator of any long-term temporary food and beverage facility shall provide evidence of comprehensive general liability coverage and contractual liability insurance by

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an insurance company licensed to do business in the State in the limits of at least \$1,000,000.00 for each personal injury accident and/or death, \$1,000,000.00 for each aggregate personal injury and/or death, and \$1,000,000.00 for each property damage accident. The evidence shall name the City as a coinsured and shall state that it cannot be canceled or materially altered without giving the City at least 30 days' written notice by registered mail, return receipt requested. The owner or operator of the long-term temporary food and beverage facility or the property owner shall execute an agreement, acceptable to the City, which indemnifies and holds harmless the City from any and all liability, damages, claims, costs, expenses, interest, and reasonable attorney fees relating to the long-term temporary food and beverage facilities on said person's property.

(9) Electrical Service: Electrical service shall be provided as follows: (i) overhead power connection with a minimum clearance above grade of 14 feet; (ii) installation of an underground conduit; or (iii) other method acceptable to the City. The use of an overhead connection shall only be allowed in those areas where overhead electrical service exists. Use of an extension cord, cable or wire, whether lying on the ground or otherwise connected to a power source, is expressly prohibited for long-term temporary food and beverage uses. An electrical permit shall be obtained prior to any electrical installation or connection.

(10) Screening of Wheels and Axle: If a structure brought onto a site for dispensing food and beverages is a trailer, an apron or shroud which is acceptable to the Zoning Administrator shall be placed around the base of the structure to screen the wheels and axle.

(11) Signage: No detached or freestanding signage shall be permitted. The maximum amount of allowed wall signage shall be based upon one foot of sign for each foot of length on the longest side of the structure. All other provisions of the sign code shall apply.

(12) Removal: At the expiration of the annual temporary use permit, any structures, barricades, seating facilities, or other facilities associated with the temporary use shall be removed from the site in accordance with provisions stated in subsection 3 of this section. No temporary food and beverage facilities shall be allowed to be stored on a site that is not zoned appropriately for storage and warehousing, screened in accordance with City Code requirements, and/or having received prior Council approval through an entitlement process for storage and warehousing.

3. [Seasonal Related.](#)

A. Retail Sales of Christmas Trees and Pumpkins.

(1) Permitted Zone Locations: all commercial and mixed use districts.

(2) Maximum Duration: forty calendar days prior to December 25 for Christmas tree sales; October 1 through November 1 for pumpkin sales.

B. Agricultural Produce Stands.

(1) Permitted Zone Locations: any zoning district.

(2) Termination: Stands and displays shall be removed when not used for a period of 30 consecutive days.

H. Retail Sales of Landscape Nursery Materials.

(1) Permitted Zone Locations: all commercial districts.

(2) Maximum Duration: ~~spring sales: April 1 – July 15; fall sales: September 1 – October 31.~~

(3) Restrictions of Merchandise and Products: This use is limited to the display of green goods, i.e., living plants, and associated garden products. Associated garden products may include:

a. Bagged bulk materials such as topsoil, mulch, compost, peat, fertilizer, etc.

b. Garden pavers, stone and prefabricated stepping stones.

c. Bird baths or similar lawn ornaments as a minor portion of the products displayed.

d.        Other products determined to be consistent with the intent of this subsection, with the approval of the Zoning Administrator.

(4) Safety Standards: In order to promote the safety of the patrons of these facilities, the following shall be required:

a. Bulk material shall be neatly and safely stacked ~~no higher than 48 inches above the pavement.~~

b.- All sales areas shall be separated from vehicular uses by the placement of a fence or barrier acceptable to the Zoning Administrator to prevent pedestrian and vehicular conflicts. If a barrier is of an open nature where patrons can reach through and obtain access to the merchandise, a four foot walkway shall be located adjacent to the

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barrier to prevent patrons from standing outside the barrier in traffic ways to shop.

c. The door openings for any greenhouses, shade structures or similar enclosure shall have a minimum ten-foot setback from drive aisles where an opening in the barrier is provided aligned with the door of the structure.

d. Where openings in the barriers occur for pedestrian access, sight visibility shall be maintained so that vehicles can clearly see pedestrians approaching the opening from a distance of no less than 50 feet.

e. Temporary drive aisles shall be maintained at a minimum 24-foot width for two-way traffic and shall be delineated by the placement of traffic barriers, fencing, or some other physical marker that clearly informs drivers of the end of the parking area and the start of the drive aisle. A clear line of sight shall be maintained at the entrance and exit of the temporary drive aisles.

f. Vehicle loading areas shall be located in an area that minimizes pedestrian and vehicle conflict and provides for the safe loading of merchandise and vehicle access to and from the traffic lanes to the loading area, preferably without backing movements.

(5) Applications for Temporary Garden Center Permit: Application for a the temporary use of a garden center permit shall be made on the prescribed forms provided by the City. The application shall be accompanied by the prescribed number of copies of a project plan and such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed use. A plan of the layout of the proposed use shall be submitted to the City with the application on a base plan prepared in accordance with the site plan requirements of the City. The proposed layout of the garden center area may be drawn onto a copy of a previously approved site plan for the temporary use permit submittal. The layout plan shall identify the following:

a. The area on the site proposed to be utilized as part of the temporary garden center and associated sales areas.

b.- The areas dedicated to the display of green goods, i.e., flowers, trees, shrubs, etc., and the area of the site dedicated to bulk material storage.

c.- Proposed modifications to the traffic patterns and methods proposed to notify patrons and identify the temporary traffic pattern changes, i.e., signage, traffic cones, fencing and barriers, etc.

d. Proposed vehicle loading zone.

e. Proposed temporary barriers or corral with an architectural elevation, photo or sketch of the barriers' proposed construction.

f. Location of electrical connection and water connection, if applicable.

(6) Waste Disposal: The applicant shall provide, as determined by the Zoning Administrator, adequate facilities for disposal of trash, waste, pallets, dead plants, broken bags and empty plant transport and display racks.

(7) Restroom Facilities: ~~Permanent Restroom~~ facilities shall be provided ~~in an adjacent building~~ at all times during the temporary use activity. ~~No portable restroom facilities shall be allowed.~~

(8) Indemnification and Proof of Insurance: The owner or operator of any long term temporary use shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least \$1,000,000.00 for each personal injury accident and/or death; \$1,000,000.00 for each aggregate personal injury and/or death; and \$1,000,000.00 for each property damage accident. The evidence shall name the City as a coinsured and shall state that it cannot be canceled or materially altered without giving the City at least 30 days' written notice by registered mail, return receipt requested. The owner or operator of a temporary garden center or the property owner shall execute an agreement, acceptable to the City, which indemnifies and holds harmless the City from any and all liability, damages, claims, costs, expenses, interest, and reasonable attorney fees relating to the garden center and associated facilities on the property.

(9) Electrical Service: Any electrical service shall be provided as follows: (i) overhead power connection with a minimum clearance above grade of 14 feet; (ii) installation of an underground conduit; or (iii) other method acceptable to the

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City. The use of an overhead connection shall only be allowed in those areas where overhead electrical service currently exists in the area. Use of extension cords, cables, or wires, whether lying on the ground or otherwise connected to a power source, is expressly prohibited for long-term garden center uses. An electrical permit shall be obtained prior to any electrical installation or connection.

(10) Removal: At the expiration of the temporary use permit, any structures, barricades, shelving, pallets, leftover merchandise, or other facilities associated with the temporary use shall be removed from the site in accordance with provisions stated in subsection 3 (“General Regulations”) of this section.

**171.17 CONDITIONS OF APPROVAL.** The Zoning Administrator may impose such conditions on a temporary use permit as is necessary to meet the purposes of this section and protect the public health, safety, and welfare and adjacent uses. ~~Conditions which may be imposed may include, but are not limited to:~~

~~A. Yard setbacks and open space requirements.~~

~~B. Parking.~~

~~C. Fences, walls, or other screening.~~

~~D. Signs.~~

~~E. Vehicular and pedestrian ingress and egress.~~

~~F. Property maintenance during the course of the activity.~~

~~G. Control of illumination, noise, odor, vibration or other nuisances.~~

~~H. Hours of operation.~~

~~6. Application and Permit Processing. A temporary use permit shall be required for all temporary uses listed in this chapter. A temporary use permit must be issued prior to the commencement of any temporary use. The Zoning Administrator may, from time to time, specify the form of the temporary use permit application. Applications for said temporary use permit shall be secured from the Zoning Administrator, in the manner prescribed by this chapter, who shall cause the application to be directed to all concerned City departments and divisions. Affected departments or divisions shall comment on the application. Temporary uses~~

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~~may be subject to additional permits or inspections as required by any applicable law or regulation.~~

~~7. Use of Tents and Canopies. Tents and canopies may be used for promotional and recreational functions, provided they comply with provisions in this Code of Ordinances, specifically provisions detailed in Chapter 152 (Temporary Structures).~~

**171.18 FEES.** For uses other than long-term temporary food and beverage uses, the application fee for a temporary use permit shall be in the amount as established from time to time by resolution of the Council. The application fee for a long-term temporary food and beverage permit shall be in the amount as established from time to time by resolution of the Council, payable each year of operation.

**171.19 VIOLATIONS AND PENALTIES.** The operation of a temporary use is a privilege allowed by this section. Failure to maintain a temporary use in compliance with the conditions of approval and the regulations of this section shall constitute a nuisance and may be punished as set forth in Chapter 50 of this Code of Ordinances. A written notice of a violation of the temporary use permit shall be sent to the operator of the temporary use and the property owner, if different than the operator, and the operator shall have a maximum of five (5) days, as determined by the Zoning Administrator, to bring the site into compliance. If the operator fails to correct the violation in the prescribed time, the City may revoke the temporary use permit and issue a cease and desist order for the temporary use. There shall also be a one-year moratorium from that date on the issuance of any other temporary use permits on the property and a one-year probationary period for the second year following the violation. During the probationary period, if the operator of a temporary use fails to maintain the premises and the use in conformance with the conditions of approval and this Code, after the notification procedures noted above, the City may revoke the temporary use permit and no other temporary use permits shall be issued on the property for a period of two (2) years.

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