

Date August 20, 2007

WHEREAS, on August 6, 2007, by Roll Call No. 07- 1519, it was duly resolved by the City Council that the proposal by ColorAll Technologies to amend the Zoning Ordinance, to permit limited transient automobile scratch and dent repair as an accessory use to vehicle display lot, rental car agency, and fleet vehicle operations as more fully described in Exhibit "A" attached hereto, be set down for hearing on August 20, 2007, at 5:00 p.m., in the Council Chambers at City Hall; and

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on August 9, 2007; and

WHEREAS, in accordance with the notice, those interested in the proposed amendments, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa:

That upon consideration of the facts, statements of interested persons and arguments of counsel, the objections to said proposed amendments to the Zoning Ordinance be and the same are hereby overruled, and the hearing closed.

MOVED by _____ to adopt and approve, subject to final passage of the enacting ordinance.

FORM APPROVED:

Roger K. Brown

Roger K. Brown
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

.....
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

August 6, 2007

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held June 21, 2007, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-3 as follows:



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

Commission Action:	Yes	Nays	Pass	Absent
David Cupp	X			
Shirley Daniels	X			
Dann Flaherty		X		
Bruce Heilman				X
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz		X		
Kaye Lozier	X			
Jim Martin	X			
Brian Millard		X		
Brook Rosenberg				X
Mike Simonson	X			
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			

APPROVAL of a request from ColorAll Technologies represented by Dustin Smith (agent), for text amendments to Chapter 134 (Zoning Ordinance) to permit limited transient automobile scratch and dent repair services within a tent as an accessory use to vehicle display lot, rental car agency and fleet vehicle operations as more specifically described in the accompanying communication. (10-2007-5.02)

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the text amendments contained in Exhibit "A".

STAFF REPORT

I. GENERAL INFORMATION

Color All Technologies is a mobile auto body-shop franchise that proposes to provide minor automobile scratch and dent repair services on a transient basis to vehicle display lots, rental car agencies and fleet vehicle operators in the City of Des Moines. The operations would be conducted on the site of the vehicle display lot, rental car agency, or fleet vehicle center in a tent that is less than 200 square feet in size. The operations involve formulating and mixing of paint in 2-ounce increments, storage of volatile materials totaling no more than 20 gallons, and use of an High Volume Low Pressure (HVLP) airbrush turbine system that utilizes forced and heated air at a low pressure of less than 3 p.s.i. at the gun tip.

On November 28, 2006, a letter was issued to Color All Technologies stating that, based upon review of the corporate documentation that was submitted for "Color All Technologies – A Bodyshop on Wheels" and the current zoning ordinance, the operations constituted a principal use of an "automobile body and fender repair shop". Such uses are currently required to be located entirely within a building.

Color All appealed the decision of the Zoning Enforcement Officer to the Board of Adjustment. On May 23, 2007 a motion to overturn the Zoning Enforcement Officer's decision failed by a vote of 3-3. Therefore, the proposed use is allowed only where body shops are permitted and subject to all operations being contained entirely within a building.

Color All was encouraged to pursue a zoning text amendment and submitted a request on May 25, 2007 to allow transient minor vehicle paint and dent repair as a principal permitted use in all C-2, M-1, and M-2 zoned areas.

II. ADDITIONAL APPLICABLE INFORMATION

The R&O Subcommittee of the Plan and Zoning Commission met on June 6 and June 13, 2007 to review the request from Color All. The zoning text recommended by the R&O Subcommittee is attached (see Exhibit "A"). The proposed text amendments would permit limited transient automobile scratch and dent repair services within a tent as an accessory use to vehicle display lot, rental car agency and fleet vehicle operations.

The Des Moines Fire Department has indicated that the proposed operations will comply with the City's Fire Code subject to limitations. Color All is required to comply with all Federal, State and Local environmental and air quality regulations. In general, the quantities of paint and the method of application are compliant with EPA regulations.

SUMMARY OF DISCUSSION

Mike Ludwig: Presented staff report and recommendation. Staff recommended it only be approved as an accessory use to a vehicle display lot, rental car agency and fleet operations. A certificate of zoning compliance from the zoning enforcement officer would be required and staff would have to ensure their operations were in accordance with an approved site plan. They would only be able to operate on sites that are on a ½ acre minimum. Explained there are scratch and dent services already being offered on individual car lots and enforcement was stayed by the Board of Adjustment while Zoning Enforcement officer's decision was being appealed.

Kaye Lozier joined the meeting at 6:24 p.m.

Brian Millard: Asked if there would be a permit fee and what it would be.

Mike Ludwig: Explained the City Council would set the fee and indicated currently zoning certificates of compliance do carry a fee of \$50.00.

Fran Koontz: Questioned how the use would be enforced and why those who are currently operating illegally would be allowed to continue.

Dustin Smith, 4500 Westown Parkway, West Des Moines: Represented the applicant. Explained the applicant requested review of the proposed service over a year ago. Explained the history of the request and indicated they could live with some of the text amendments, but needed clarification regarding some of them and explained. Also noted the operations would be in the back of sites and not in the side or front. Requested permission to utilize open tents during the summer months due to the heat. Asked the Commission to consider limiting the actual paint application process to two (2) ounces or less but that the mixing of painting be limited to four (4) ounces.

Fran Koontz: Asked where the service would be provided on used car lots with no back yards.

Mike Ludwig: Indicated it was not limited to the rear yard; it could be in the side yard, just not in the required front yard.

Dustin Smith: Explained if there was no side or rear yard it would have to be in a tent. Explained the technology could not be used indoors or it would create other EPA issues. The service is strictly provided outdoors.

Tim Urban: Asked legal counsel for a definition of "public view".

Roger Brown: Explained it cannot be viewed from a public street.

Tim Urban: Asked about the adaptability of the service during certain times of year, if the reason to put it inside a tent is to hide it. Suggested it be located in a tent or in a location outside of public view or if in a tent it be screened from public view within the tent.

Dustin Smith: Agreed if it only needed to be shielded from public view they could use a standard tent they could purchase at Menards. Added the text regarding leaving the tent for 3 consecutive days could be stricken from the amendment since they take the tent down nightly anyway. They would be willing to eliminate the reference to overnight entirely.

Kent Sovern: Explained the R&O was trying to allow enough flexibility without leaving the door wide open. He offered an amendment to restrict the use to not allow leaving the tent on site overnight.

Mike Ludwig: Indicated in the Corporate brochure the structure showed an inflatable arched dome with open ends, but other operators may have a tent.

Larry Hulse: Explained staff wrote the text using "tent" because it is to be a temporary structure.

Dustin Smith: Explained the ordinance as presented was crafted by the City Legal department. He requested the structure not be required to be completely enclosed.

David Cupp: Asked about the service being provided to private residences.

Mike Ludwig: Indicated that is service to residential properties is prohibited. The proposed amendment would only allow it as an accessory use in commercial or industrial zoning districts.

Roger Brown: Explained the current language is for vehicle display lots and the street operators to work on their own vehicles. It is not for the service to set up temporary shops and move around town every day to do retail for anyone who drops by. The biggest use is for businesses that have their own van, but also the car lots.

Tim Urban: Asked if a service vehicle could go out to someone's home and take care of minor damage because that type of business is being relegated to the subject permitted use.

Mike Ludwig: Indicated glass repair is minor enough that there is no grinding or painting and a difference has been distinguished between painting activities and glass removal and repair.

Tim Urban: Asked what the difference would be if the subject nominal repair activity doesn't violate the hazmat codes.

Roger Brown: Explained glass services go out and repair windows; that service will not be stopped. What is generating the complaints is commercial businesses where the activity is going on day after day or week after week. The legislation being proposed addresses the commercial operation and provides a distinction.

Larry Hulse: Explained the question is whether the Commission wants the service to be regulated or not.

Mike Ludwig: Indicated the applicant has specifically indicated they do not take residential customers. They deal with car lots, fleet service rentals and car rental businesses only.

Fran Koontz: Asked where the franchise was located.

Dustin Smith: Indicated it is in Pleasant Hill.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak on this item.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Larry Hulse: Explained if there are concerns or problems that come up they will be addressed at that time and changes can always be made to the ordinance as long as the process is followed. He noted the changes to be made at the request of the applicant as follows:

- "not" was omitted from the last sentence of the first condition and should read, "The zoning enforcement officer may revoke the zoning certificate of compliance if the provision of such services at any site does *not* comply with the requirements of this section."
- Consent of the property owner to be the tenant; deferred to Legal counsel
- Ability to open the tent enclosure during hot weather
- Condition #6 c to regulate the mixing in quantities of four (4) ounces to allow proper mixing
- Condition #6 h to indicate structures are not to remain overnight

Kent Sovern: Explained as it went through the R&O they were concerned about other less well-documented operators who might go for a retail outlet and insert themselves into neighborhoods that might not be consistent with the Commission's view. Moved staff recommendation with the following changes:

- insertion of the word "not" in the first condition;
- addition of the words "or tenant" in the second condition;
- the operations must be entirely inside a tent or screened from public view;
- limit mixing activities to quantities of 4 ounces or less;

- strike "for more than 3 consecutive days in any two week period" and substitute the words "at the end of the normal business day" in condition #6h.

Dann Flaherty: Asked if the zoning would go with the owner of the property.

Roger Brown: Explained the right to have an accessory use would go with the primary use as a vehicle display lot; it is a policy issue.

Larry Hulse: Suggested indicating, "authorized tenant", to hold the owner accountable.

Brian Millard: Explained he followed the issue as it returned to the Board of Adjustment; he expressed concern about letting a transient vendor come into Des Moines and set up a business that other businesses are already providing; concerned with the problems with transient businesses and established businesses that the transient businesses take business away from property tax-paying business; he would not support the request.

Fran Koontz: Would not support the request because of established businesses that would be negatively affected by the transient business. Also expressed concern for used car lots that back up to residents, playgrounds and other uses and the volatile material that would be used by the transient service. She did not want things being blown up as a result of the materials. If there are people currently running the services without having a permit they should have been stopped; questioned how the ordinance could be supported.

Mike Simonson: Called the question.

Motion passed 10-3 (Dann Flaherty, Brian Millard & Fran Koontz were in opposition).

Kent Sovern left the meeting at 7:11 p.m.

Respectfully submitted,



Michael Ludwig, AICP
 Planning Administrator

MGL:dfa

Attachment

Exhibit "A"

(With revisions recommended by the Plan and Zoning Commission)

Proposed amendments to the Zoning Ordinance to permit limited transient automobile scratch and dent repair services within a tent as an accessory use to vehicle display lot, rental car agency and fleet vehicle operations.

Chapter 134. Zoning

Article III. Districts

Division 20. C-2 General Retail and Highway Oriented Commercial

Sec. 134-948. Permitted accessory uses.

The permitted accessory uses in the C-2 general retail and highway-oriented commercial district are as follows:

- ~~1. shall be the a~~Accessory uses permitted in the C-1 district, except storage of material incidental to a principal uses, other than a retail use, may not exceed 40 percent of the floor area used for such nonretail use.
2. Temporary scratch and dent repair services, subject to the limitations in section 134-956 of this division.

(O.7226, 7830, 8215, 8242, 8388, 9186, 9213, 9460, 10,142, 10,391, 10,823, 10,940, 11,009, 11,069, 11,083, 11,185, 11,300, 11,376, 11,410, 11,507, 11,761, 12,012, 13,067, 13,179, 13,232, 13,377, 13,484; C91, § 2A-17(B))

Section 134-956. Temporary scratch and dent repair services.

Temporary scratch and dent repair service for vehicles is an allowed accessory use to a principal use as a vehicle display lot, rental car agency, and businesses which operate a fleet of vehicles, subject to the following conditions:

1. A certificate of zoning compliance must be obtained from the zoning enforcement officer for each new site where such services are to be provided, which shall be issued only if the applicant demonstrates that such service can be provided in compliance with the requirements of this section. The zoning enforcement officer may revoke the zoning certificate of compliance if the provision of such services at any site does not comply with the requirements of this section.
2. The service must be provided with the consent of the property owner or authorized tenant, upon a site that either contains at least 0.5 acres of land, or is operated in compliance with an approved vehicle display lot site plan.
3. Such services shall be limited to minor dent and blemish removal/repair on vehicles owned, or leased and operated by the business which is the principal use of the site, and the performing of minor reparative and touch-up painting to damaged or blemished areas of such vehicles, and shall exclude replacement of auto body components, cutting, welding or frame repair.
4. The area in which such service activities are conducted shall be:
 - a) Entirely within a tent or other completely enclosed structure;

- b) Entirely upon a paved surface, and outside any required yard and not exceeding 200 square feet in area;
- c) At least 50 feet from any stormwater intake, surface drain or open water that is downhill from the site, unless such intake or drain is temporarily plugged;
- d) Separated from any dwelling upon adjoining property by at least 50 feet.
- 5. Except in "M" industrial districts, such service activities, including set-up and take-down, shall occur only between the hours of 7 a.m. and 10 p.m. each day.
- 6. The operation of such service shall conform to the following standards:
 - a) The storage, use and disposal of all paints, coatings, cleaning solvents and thinners used in conjunction with painting and repair activities shall comply with all applicable federal, state county and local laws, regulations, ordinances and orders.
 - b) Paint shall be applied using a high volume, low pressure coating delivery and application system, and no compressed air equipment shall be utilized.
 - c) Paints and coatings shall be formulated and mixed in quantities of four (4) ounces or less.
 - d) All paints shall be of a non-reactive nature.
 - e) Storage of volatile materials shall not exceed 20 gallons.
 - f) "Wet-sanding" is prohibited. All dust from sanding activities must be vacuumed during the sanding process and upon completion the day's activities.
 - g) The business shall maintain on site and available for review by the employees and agents of city, a copy of the manufacturer's specifications that demonstrate that the rated transfer efficiency for the painting equipment used or available for use on the site is at least 85%.
 - h) Except in industrial districts, no equipment or tools associated with the service, including any temporary tent or enclosure, shall be left on the site at the end of the normal work day.

Secs. 134-9576--134-980. Reserved.

