

## FORMER CHAPTER 59 (FC59) USE DETERMINATION: IN PUD 626, A VETERINARY BUSINESS CAN BE CLASSIFIED AS A PERMITTED PROFESSIONAL OR PERSONAL SERVICE USE

**Date of Use Determination:** March 18, 2022

**Applicability:** All property with the PUD 626 Zone District Designation

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## REQUEST FOR A USE DETERMINATION

On February 22, 2022, Confluence Park Apartments, LLC (Applicant), requested a primary use determination for the property they own that is fully contained in the Zone District Boundaries of PUD 626 ("PUD 626"). The request is to determine if a proposed business called Sploot Veterinary Care ("Sploot") is a permitted primary use under PUD 626. Sploot would provide the following professional veterinary services and care to household pets:

- Wellness and preventive care, such as dental care, wellness exams, puppy and kitten exams, and vaccinations;
- Urgent care and sick visits, including emergency services, testing and radiology, and telehealth;
- Veterinary surgery, including spays and neuters, mass removals, bladder stone removals, intestinal & gastric foreign body removal, and dental surgeries; and
- Additional veterinary services, including behavioral services, dermatology, allergies, euthanasia, and nutrition.

A veterinary service is not listed specifically as a permitted primary use in the PUD; therefore, the Applicant requests a determination whether PUD 626 will allow such a use. A decision by the Zoning Administrator is required to determine which, if any, specifically permitted use in the PUD includes a veterinary use as described above.

## APPLICABLE ZONING RULES AND REVIEW CRITERIA

### APPLICABLE ZONING RULES

The Property is zoned PUD 626, a full copy of which is attached as Exhibit A to this determination. The property was rezoned from R-MU-3 with waivers and a condition to PUD 626 in 2009 by Ordinance No.587, and the Property has not been rezoned to the Denver Zoning Code. Therefore, the Property is governed by Former Chapter 59 (FC59). PUD 626 sets forth several "uses by right" and specifies that the terms and uses defined in Section 59-2 of FC59 shall be used for purposes of administering PUD 626. Neither FC59 nor PUD 626 includes or defines specifically a "Veterinarian" or "Veterinary Services" land use.

Under general rules of zoning code interpretation, where PUD 626 states a specific use or definition, that use/definition will be enforced. Where the PUD is silent, the definitions of Former Chapter 59 will provide the applicable zoning guidance and rules. Lastly, where the PUD and Former Chapter 59 are either silent or vague, the decision of the Zoning Administrator is guided by the general authority for code interpretations stated in Former Chapter 59, Section 38(a), Administration.

## ANALYSIS

### PUD 626 USE CATEGORIES & DEFINITIONS

PUD 626 provides a list of “Proposed Permitted Uses” (Exhibit A, pp.5-6) that are organized into three general use categories:

- (1) Residential,
- (2) Retail, service, office, and
- (3) Arts, entertainment, recreation, institutions.

For purposes of this use determination, the Residential category clearly does not contain a proposed permitted use that could include animal services like the proposed veterinary services business.

The “Retail, service, office” category allows specific “Office: non-dental, non-medical” and “Retail, service, repair, consumer, small scale” uses, which are both further defined in the Definitions section of FC59. (Exhibit A, p. 6)

The “Arts, entertainment, recreation, institutions” category allows specific “Clinic, office, laboratory, dental, or medical” and “Professional or Personal Services” use, which are also further defined in FC59. (Exhibit A, p. 6)

PUD 626 provides one use definition that supersedes the same use definition in FC59. “Office: Medical, Dental” is defined by PUD 626 to mean: “Occupancy primarily for the provision of medical, dental, or other health services. *Does not include and veterinary or animal services.*” (Exhibit A, p. 5, emphasis added.) Therefore, the specific “Clinic, office, laboratory, dental or medical” use permitted in PUD 626 under the “Arts, entertainment, recreation, institutions” category, which is interpreted to include the PUD-defined “Office: Medical, Dental” use, clearly excludes a business like Sploot or similar veterinary/animal services use.

Accordingly, the only permitted uses listed as permitted in PUD 626 that could arguably include a veterinary/animal services use like Sploot are:

1. Retail, service, repair, consumer, small scale
2. Office: non-dental, non-medical, or
3. Professional or Personal Services

### FORMER CHAPTER 59 USE DEFINITIONS

As described above, the three permitted uses in PUD 626 that might arguably allow the proposed Sploot veterinary service are all defined in FC59, as described, and analyzed below.

#### 1. Retail, service, repair, consumer small scale

“Establishments of ten thousand (10,000) square feet or fewer-of gross floor area engaged in the sale or rental of goods at retail, engaged in providing a service(s) to individuals, and/or engaged in the provision of repair services to consumers and households. This category

***excludes animal sales or service***; building and garden materials, supplies, sales, or rental; food sales or markets; and motor vehicle and related equipment sales, leasing, rental, or repair; as well as those uses listed under retail, service, repair, special. All uses shall be enclosed unless otherwise indicated." FC59 §59-2 (242) (emphasis added).

The above-referenced and excluded "animal sales or service" is not a defined term or use in FC59; however, the use "Animal sales, service, or care, household pets" is defined in FC59 as: "An establishment engaged in sale, grooming, day care, boarding, or providing treatment or care for animals, including sales of animal supplies and overnight observation kennels for household pets only. The entire use must be enclosed, with specific procedures outlined for outdoor runs". FC59 §59-2(16). The phrase "animal sales or services" referenced in the FC59 definition of "Retail, service, repair, consumer small scale" is interpreted to have the same meaning as the defined "Animal sales, service, or care, household pets" use found in §59-2 (16).

Under the above interpretation and analysis, the "Retail, service, repair, consumer small scale" use permitted in PUD626 clearly excludes an animal sales, service, or care business. Therefore, because there is no overriding definition or statement in the PUD document (Exhibit A), a veterinary service business like Sploot is not permitted as a "Retail, service, repair, consumer small scale" use otherwise allowed in PUD 626.

## **2. Office: non-dental, non-medical**

"Occupancy primarily for the provision of professional, executive, management, or administrative services; excluding, however, clinic or office, dental or medical." FC59 §59-2 (182).

The PUD 626 permitted "Office: non-dental, non-medical" does not specifically include or exclude an office or clinic providing animal/veterinary services in its definition. However, the specific "professional, executive, management or administrative" services listed that a permitted office use must primarily provide are substantially different from the primary services provided at a veterinary/animal service business like Sploot. Moreover, this "Office: non-dental, non-medical" expressly excludes medical or dental services for humans, which raises doubt whether the exact same services provided to animals would be allowed.

At a vet/animal service business, the primary services will not be executive, managerial, or administrative; they will be more like the excluded medical/dental office or clinic, such as diagnostic, testing, medical treatment/care, surgical, and respite services (to animals). In addition, the "Office: non-dental, non-medical" use permitted by PUD 626 typically would not generate the same type or volume of customers and vehicle traffic/deliveries or routinely involve the use and disposal of hazardous materials, while both the prohibited medical/dental office and the proposed veterinary use would. Accordingly, the permitted "Office, non-dental, non-medical" use allowed in PUD 626, as defined in FC59, is interpreted to exclude the provision of animal-care services like those proposed by a veterinary business like Sploot.

### 3. Clinic, office, laboratory, dental, or medical

"A building or group of buildings in which the primary use is the provision of health care services to patients or clients. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, massage therapy, mental health professional, physical and/or occupational therapy, related medical services, vocational training, placement service and social and recreational activities suitable for disabled adults and children or similar service or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists. No fabricating is conducted on the premises, except the custom fabrication of dentures or similar dental appliances. *This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services.* The sale of merchandise is allowed only as an accessory use." FC59 §59-2 (70) (emphasis added).

Clearly, the "Clinic, office, laboratory, dental, or medical" use permitted in PUD626 excludes animal sales or services from being allowed as this use type. Therefore, because there is no overriding definition or statement in PUD 626 (Exhibit A), the exclusion also applies to PUD 626. An animal-care / veterinary business like Sploot cannot be permitted as a "Clinic, office, laboratory, dental, or medical" use under PUD 626.

### 4. Professional or personal services

"A service establishment including, but not limited to, barber shop, beauty shop, *medical clinic*, cleaner, bank, copy center, health club *and other similar services.*" FC59 §59-2 (214) (emphasis added).

As shown in the analysis above, when FC59 wishes to exclude veterinary services from a specific use type that encompasses similar uses, FC59 explicitly excludes "veterinarians" or "animal sales or services". For example, with respect to the "Clinic, office, laboratory, dental or medical" use, which is included in PUD 626 and defined in FC59, the code specifies that "This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services" FC59-2(70).

It is clear from the previous definitions that FC59 acknowledges that veterinarians and animal services are like medical/dental office and other clinical uses and to Retail, service, repair, and consumer uses. FC59 recognizes "Professional and Personal Services Use" as yet another specific type of use distinct from the "Clinic, office, laboratory, dental or medical" use and the "Retail, service, repair, consumer, small scale" use in that the definition cited above both expressly includes "medical clinic" and does not expressly exclude veterinary/animal services. In this case, since generic "medical clinics" are allowed with no express exclusion of animal services, and because a veterinary use is substantially similar in character and impact to a medical clinic and other referenced uses listed within the definition, a veterinary service business is properly included as "other similar service" in the above definition. Accordingly, a veterinary/animal services business like Sploot is allowed in PUD 626 as a permitted Professional and Personal Services primary use.

This interpretation is not weakened by the fact that FC59 defines a use called "Animal sales, service, or care, household pets only", and that such use is not included in PUD 626. Many specific uses can be categorized under multiple defined uses in FC59 §59-2. For example:

- A "medical clinic" is included within the definition of the following FC59 uses: "Professional or personal services" and "Clinic, office, laboratory, dental or medical"
- A bank is included within the definitions of "Banking and financial services," and "Professional or personal services."
- A beauty and/or barbershop is included within the definitions or "Professional and personal services," "Consumer service, large scale" "Consumer service, medium scale," "Consumer service, small scale," and "Retail, service, repair, consumer, small scale."

It would be clearly contrary to FC59 to prohibit a barbershop in PUD 626 despite the allowance of "Professional or personal services" simply because "Consumer service, small scale" was not included in PUD 626. Similarly, it would be contrary to FC59 to prohibit Sploot or other veterinary services despite the allowance of "Professional and personal services" simply because "Animal sales, service, or care, household pets only" is not included in PUD 626. Therefore, veterinary services may be properly interpreted within the "Professional or personal services" use permitted in PUD 626.

## CONCLUSION

Is 'Sploot', a full-service animal care/ veterinary business, a permitted use within the PUD 626 zone district? PUD 626 provides a list of proposed permitted uses, allotted area limitations on categories of permitted uses, and an intent to provide supportive commercial uses for the primarily residential project. Of all the uses permitted in PUD 626, four include activities that most closely capture the activities and services proposed by Sploot:

- (1) Office: Medical, Dental;
- (2) Retail, service, repair, consumer, small scale;
- (3) Office: non-dental, non-medical; and
- (4) Professional or Personal Services.

The first two of those four permitted uses, "Office, Medical, Dental" and "Retail, service, repair, consumer, small scale use," specifically exclude animal/veterinary services from their definitions. The definition of the third permitted use, "Office: non-dental, non-medical", with its emphasis narrowed to offices providing primarily professional, executive, managerial, and administrative services, is contrary to the primary activities a proposed animal/veterinary services office or clinic would typically provide.

The definition of the fourth "Professional or personal service" use does not exclude animal/veterinary services, and expressly allows a "medical clinic". The definition, in addition to allowing a "medical clinic," also includes a catch-all allowance for "other similar services." The range of typical veterinary services is substantially like the range of services offered by a permitted "medical clinic," with the only difference being the species of patients (human vs. animal).

Allowing a veterinary/animal services use is also consistent with the express intent of PUD 626 to provide supporting commercial sales and services convenient to the hundreds of residents living in PUD

626. Finally, the zoning of properties neighboring PUD 626 also speak to an intent to allow full-service animal care/veterinary businesses in the same neighborhood: The adjacent Commons PUD #531 zoning allow the same “Professional or personal services” use as PUD 626 and the adjacent C-RX-8 properties zoned under the Denver Zoning Code specifically allow animal sales/services for household pets, including veterinary clinics/offices.

## FINAL USE DETERMINATION AND DECISION

Based on the above analysis, I determine that the provision of animal care / veterinary services the same or substantially like the services provided by the proposed Sploot business constitutes a “Professional or Personal Service” primary use as defined in FC59, §59-2(214). Accordingly, an animal care/veterinary service business is a permitted use in the PUD 626 zone district. This primary use determination applies only to properties with the PUD 626 zoning designation.

## APPEAL

This final use determination may be appealed to the Denver Zoning Board of Adjustments within 15 days from the date of this written decision, according to FC59, §59-39 Appeals from the Department.

Approved by:



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Tina Axelrad, Zoning Administrator

Date: March 18, 2022