

OFFICE OF THE CITY ATTORNEY

OPINION NO. 93-06

TO: Philip V. Bloom, Development Services Director
FROM: Stephen M. Kemp, City Attorney
DATE: June 21, 1993
SUBJECT: Request for Opinion on Interpretation of Sign Code

QUESTION:

You have inquired as to the applicability of the City's Sign Code regulations to signs advertising home grown produce.

OPINION:

For purposes of this opinion, the following background information is provided. The property in question is located on a 2.24 commercial acre parcel. The individual residing on the property grows produce, some of which is consumed and the remainder sold to third parties. During the growing season, the property owner places small signs on his property advertising the availability of produce for sale.

The first issue to be resolved is whether the exemption for agricultural uses in the zoning code is applicable. Agriculture is defined in Section 14-5-2 of the Peoria Zoning Code. Essentially, agriculture consists of growing crops on more than two commercial acres.

In this case, the issue is whether a principal residence, located in an R-1-35 zoning district that is used for growing some crops for personal consumption and the remainder for sale, is by definition agricultural and therefore exempt from regulation under the zoning code. If such a residence is defined as agricultural, then it would be exempt from the zoning restrictions applicable to an identical parcel adjacent. Such a result would defeat the purpose of establishing zoning districts.

Basic rules of statutory construction provide that codes should be interpreted to avoid an absurd result. Janson on behalf of Janson v. Christensen, 167 Ariz. 470, 808 P.2d 1222 (1991). To hold that individual single parcels within a zoning district could be exempt from zoning restrictions by growing crops would destroy any ability to restrict uses, which is inherent in zoning. Therefore it is the opinion of this office that Section 14-1-5.B. does not apply to provide an agricultural exemption to produce grown in a residential zoning district by the resident owner of the property.

A second issue is whether the growth of produce for personal consumption and sale by an owner of the property is a home occupation under Section 14-3-17 of the zoning code. Home occupation is defined in Section 14-2-28 of the zoning code as "an accessory and incidental use of a dwelling unit or residential lot comprising an occupation or profession."

The issue in question is whether the growing of crops for personal consumption and sale is supplemental and subordinate to the residential use of the property and comprises an occupation or profession. Clearly the growing of crops would appear to be an accessory and incidental use. Then the question is whether the growing of such crops comprises an occupation or profession. An occupation is defined as "an activity serving as one's regular employment". See, Webster's II, New Riverside University Dictionary, 1984, 1988.

Profession in its customary usage is defined as an occupation or vocation requiring training in the arts or sciences and advanced study in a specialized field. See, Webster's II, New Riverside University Dictionary, 1984, 1988. While the growth of produce and crops is admirable, it would not appear to meet the definition of a profession.

Therefore it is the opinion of this office that the occasional growth of produce on a residential lot on an occasional, irregular basis is not a Home Occupation as defined under Section 14-2-28 of the Code. It should be noted that if such growth of produce occurred on a on-going, regularly scheduled basis and the growth of produce was the activity serving as the regular employment of the resident, such growth of produce could fall into the definition of a Home Occupation. Additionally, the City may amend the definition to include such uses. However, that decision is one for the City Council, not an issue of interpretation of the existing definition. State v. Ring, 131 Ariz. 374, 641 P.2d 862 (1982)

Finally, the issue must be addressed as to the signage restrictions applicable to a residential use in a zoning district. While at first blush, this could be characterized as a non-residential use, it appears to be consistent with other accessory uses in a residential zoning district, such as garden house, tool house, etc. Therefore, the growth of produce for personal consumption and occasional, irregular sale would be accessory to the existing residential use.

Residential sign code uses are regulated pursuant to Section 14-34-11 of the zoning code. The sign code regulates three types of residential signs. (1) Single family residence identification signs, (2) multi-family complex identification signs, (3) home occupation signs. None of these uses appear to cover a sign advertising an occasional, irregular use.

While Section 14-34-8, prohibits all other types of signs not specifically authorized, no such prohibition exists in Section 14-34-11 against other types of uses accessory in a residential area from having signs. Penal statutes that prohibit conduct and impose liability are to be interpreted strictly and in a manner to provide notice of the prohibited conduct. State v. Kerr, 142 Ariz. 426 (App. 1984). Therefore, it must be concluded that if the City Council desired to prohibit all other uses in a residential zoning district from having signs, it would have indicated such intent and provided such notice.

Section 14-34-16 of the zoning code sets forth the permit requirements. The section provides in part:

- A. Permit shall not be required for the following signs, provided, however, that such signs shall be subject to any and all applicable provisions of Article 14-34: . . .
- B. Any sign four (4) feet square or less in area not otherwise prohibited by this ordinance.

Based on the foregoing, it must be concluded that signs advertising an accessory use of growing produce in a residential area are not specifically prohibited by the zoning code. Such signs do not require a permit if they are four feet square or less in area. If they are greater in size or meet the definitions of Section 14-34-8 for signs, then the permitting requirements shall be applicable.

Finally, it should be noted that it is the responsibility of the city council to legislate and to express that legislative intent. It is not appropriate to expand the legislation beyond the plain meaning indicated. In the area of zoning, Arizona Law requires that any ambiguity or uncertainty must be decided in favor of the

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property owner. Outdoor Systems Inc, v. City of Mesa, 169 Ariz. 301, 819 P.2d 44 (1991); Robinson v. Lintz, 101 Ariz. 448 420 P.2d 923 (1966). Therefore, uncertainty or ambiguity in the zoning code must be resolved in favor of the property owner.

If you should have any questions, please do not hesitate to contact me.

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