

## CHAPTER 10: CONDITIONAL USES

### 10.1 *CONDITIONAL USE*

#### 10.1.1 Purpose

Although each zoning district is primarily intended for a predominant type of use (i.e., dwelling units in residential districts), there are a number of uses which the City Council has identified that may be appropriate in a particular district if conditions are met that mitigate potential adverse impacts of the proposed use. For example, as a condition of approval, the traffic that would be generated by a proposed use may be offset by improvements to an adjacent intersection to increase its traffic capacity. The Conditional Use review is intended to provide additional information necessary to assure compatibility and harmonious relationships between proposed uses, surrounding properties, and the City at large.

#### 10.1.2 Approval Required

Conditional Use approval is required for the Conditional Uses identified in each Zoning District described in Chapter 6 of this Code. Conditional Use approval may be revoked upon failure to comply with all conditions attached to the original approval of the Conditional Use as set forth in a Conditional Use permit.

#### 10.1.3 Review Process

a. **APPLICATION**

An application for approval of a Conditional Use shall be filed with the City's Building Department on a form provided by the City and must include written consent by the owner of all property to be included in the Conditional Use. Other information required to be submitted on or with the Conditional Use application can be found in Chapter 3 of this Code.

b. **STAFF REVIEW**

Upon receipt of a completed Conditional Use application, the City Planner and Building Department shall conduct a review of the application. The City Planner shall prepare and deliver to the Planning Commission a written Staff Report/Recommendation, including recommended conditions on the application.

c. **PLANNING COMMISSION REVIEW**

Within a reasonable time of receipt of a complete application, the Planning Commission shall conduct a preliminary review of the application to determine whether a public hearing is advisable. Such public hearing is discretionary. In the event a public hearing is deemed advisable, the Planning Commission shall give public notice consistent with Section 1.8 (Notice) of this Code and hold a public hearing on the Conditional Use. Members of the public may submit written comments to be part of the public hearing

record or may present oral comments at the hearing.

d. **PLANNING COMMISSION ACTION**

With receipt of input from appropriate City departments or officials, and input from any public hearing, the Planning Commission shall review the project and make a preliminary determination as to any conditions of approval. If the applicant accepts the conditions imposed, the Conditional Use application shall be placed on the Planning Commission agenda for final action.

#### 10.1.4 Standards for Review of a Proposed Conditional Use

No Conditional Use permit shall be issued unless the Planning Commission finds that the application meets all of the following standards and conditions:

- a. **Protects the Safety of Persons and Property**
  - i. will not result in traffic congestion and traffic hazards;
  - ii. has adequate and necessary access for safety services (police, fire);
- b. **Will not exceed the Obligations and/or Financial Capability of the City**
  - i. will not require a level of community facilities and services greater than that which is available;
- c. **Will protect environmental values**
  - i. will not cause air, water, groundwater, light or noise pollution;
  - ii. does not have critically expansive soils, high water table, slope instability, or other soil problems;
- d. **Consistent with the City's General Plan**
  - i. will comply with the minimum requirements of the zoning district in which the use is to be established and with all other requirements of this Code.
  - ii. will be compatible with the character of the neighborhood and surrounding structures in scale, mass and traffic circulation;
- e. **Performance assured by the Applicant**
  - i. applicant has assured performance of obligations by posting bond or other adequate security as may be determined by the Planning Commission in form prescribed by Section 12.4 of this Code.

#### 10.1.5 BURDEN OF PROOF

The applicant shall have the burden of proving that the proposed conditional satisfies all of the standards and conditions set forth in Section 10.1.4, above.

#### 10.1.6 ADDITIONAL CONDITIONS

The Planning Commission may impose such conditions and safeguards to insure compliance with the requirements, standards, or conditions of this Chapter and the other provisions of this Code. The violation of any condition, safeguard or commitment of record by the applicant shall be sufficient grounds for revocation of Conditional Use approval. Conditions imposed by the Planning Commission may include, but are not limited to:

- a. Sewer;
- b. Drainage
- c. Water and other utility requirements;
- d. Special yards;
- e. Open spaces;
- f. Buffers;
- g. Fences and walls;
- h. Installation and maintenance of landscaping;
- i. Street dedications and improvements;
- j. Vehicular ingress and egress;
- k. Traffic circulation and regulation;
- l. Signs;
- m. Hours of operation;
- n. Methods of operation;
- o. Potential nuisances;
- p. Building and yard maintenance;
- q. Development standards;
- r. Development schedules;
- s. A variance from board of adjustment if applicable;
- t. Such other conditions as the council may deem necessary to ensure compatibility of the use with surrounding developments and uses and to preserve the public health safety and welfare. The city council may require that the applicant prepare and record covenants running with the land which under the conditions are binding upon the applicants and their successors.

### 10.1.5 Issuance of a Conditional Use Permit

Within a reasonable time after a conditional use has been approved by the Planning Commission, the City shall issue a written "Conditional Use Permit" identifying the property subject to the conditional use and any conditions or requirements that the permit is subject to.

### 10.1.6 Transferability

A Conditional Use Permit is transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which approval was granted.

### 10.1.7 Time Limit/Abandonment

Unless use of the property (which includes the construction of a building to house such a use) is commenced within a period of twelve (12) months from the date of Conditional Use approval, the approval shall expire and any Conditional Use Permit issued by the City thereunders shall be null and void. Likewise, if the owner of the property subject to the Conditional Use Permit ceases to use the property for the purposes allowed in the Conditional Use approval and the Conditional Use Permit for a period of twelve (12) months or longer, the Conditional Use approval and Conditional Use Permit shall be deemed abandoned and will be null and void. The event of expiration or abandonment the property owner shall have the burden of proof to show that use commenced or remained on the property during the twelve (12) month period in question.

### 10.1.8 Modification

No approved Conditional Use may be modified, structurally enlarged, or expanded unless the site plan is amended and re-reviewed and approved by the Planning Commission in accordance with the procedures and standards of this Chapter.

### 10.1.9 Related Permits and Requirements

A Conditional Use shall also be subject to all other procedures, permits, and requirements of other applicable ordinances and regulations of the City. In the event of any conflict between the provisions of a Conditional Use permit and any other permit or requirement, the more restrictive provisions shall prevail.

### 10.1.10 Fees

The City Council shall establish a fee schedule for Conditional Use applications to cover the costs of processing and review. Any fees incurred by the City for professional services associated with the Conditional Use Review, including fees for the City Planner and the City Engineer, shall be assessed to the Applicant and paid in full as a prerequisite to the issuance of any Conditional Use Permit.

### 10.1.11 Revocation of a Conditional Use Approval/Permit

The City Council may revoke a Conditional Use permit, following notice prescribed by Section 1.8 of this Code and a hearing. A Conditional Use Permit may be modified or revoked if the City Council finds one or more of the following:

- a. The permit was obtained by misrepresentation or fraud,
- b. The specific use for which the permit was granted is not being exercised; or
- c. Noncompliance with conditions imposed upon said use permit.

### 10.1.11 Appeal

Any person shall have the right to appeal the decision to grant, grant with conditions or deny a conditional use permit. Such appeal shall be made to the City Council which shall act as the "Appeal Authority" in that situation pursuant to Utah Code Ann. § 10-9a-701 (2005). In the event of a revocation of a Conditional Use approval and Conditional Use Permit by the City Council, the Board of Adjustments shall act the "Appeal Authority". Under either circumstance, all appeals shall be made to the Appeal Authority within 30 days of the date a "Final Decision" is rendered. For purposes of this Chapter, a Final Decision shall be deemed to be rendered that body issues a written decision, which may include findings of fact and conclusions of law, if requested by the applicant.