

Article 6: Conditional Use Permits

Section 6.01 Application of Conditional Uses

Recognizing that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, certain Conditional Uses listed herein, when found to be in the interest of the public health, safety, morals, and general welfare of the community, may be permitted, except as otherwise specified, in any district from which they are prohibited.

Before the location or establishment thereof, or before any change or use of the premises existing at the time of the effective date of this Code or permitted as herein provided is made, a development plan in sufficient detail and a statement as to the proposed use of the buildings, structures, and premises shall be submitted to the Planning Commission as specified in Article 11 and 12 of this Code. The Planning Commission shall hold a public hearing following the provisions also outlined in Section 10.04 of this Code and shall review such development plan and statements and shall, after a careful study of the effect that such buildings, structures, or uses will have upon the surrounding property, submit a recommendation to the Governing Body.

Following receipt of the Planning Commission's recommendation, the Governing Body may, within the specifications herein provided, permit such buildings, structures, or uses where requested, provided that the public health, safety, morals, and general welfare will not be adversely affected, that ample off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values. In this regard, the Governing Body may impose reasonable conditions on the approval of a Conditional Use Permit including, but not limited to, those items identified in Article 11 and 12 of this Code.

Section 6.02 Additions and Changes to Conditional Uses

All requests for additions and structural alterations to Conditional Uses previously approved by the Governing Body shall be considered in the same procedure as outlined in Section 6.01 herein.

Section 6.03 Conditional Uses Enumerated

All Conditional Uses are listed by District within the Table in Section 5.06 herein.

Section 6.04 Continuance of a Conditional Use

A Conditional Use shall be allowed to continue, unless specified otherwise as a condition of authorization, as long as all conditions placed on it are met. If that particular use ceases to exist for a period of six months, it will forfeit its approved Development Plan and will not be allowed to exist again unless a new Development Plan is approved.

Section 6.05 Decisions

A majority vote of the City Council shall be necessary to grant a Conditional Use Permit.

The applicant shall have 12 months from the approval of the Conditional Use Permit to commence the use, unless specifically granted a longer period of time.

All decisions by the City Council shall be required to provide findings of fact for their decision for either approval or denial.

Section 6.06 Transferability

Any approved Conditional Use Permit is automatically transferable upon sale of the property from the original applicant to another party. However, the new owner shall assume the responsibility for complying with:

1. the conditions of the granted permit,
2. The use shall not change or be expanded unless a new Conditional Use Permit is approved,
3. Failure to comply with the conditions of the permit shall subject the new owner to the revocation process of this Article.

Section 6.07 Revocation

Any approved Conditional Use Permit may be revoked for failure to comply with the conditions approved by the Board of Zoning Appeals. Revocation shall require that the City notify the applicant of any noncompliance, in writing, and provide the applicant 30 days to correct the issue(s).

Failure to comply with the notice shall cause a Public Hearing to be scheduled by the Board of Zoning Appeals, to review the permit and the approved conditions and the failure to act by the applicant. If the applicant is found to be noncompliant with the issued permit and conditions, the Board of Zoning Appeals shall revoke the permit and order the use to cease and desist.

Failure to follow a Cease and Desist order shall cause action to be filed by the City Attorney in Municipal Court.

Revocation may also occur, if the City documents that the use has ceased operations for 12 consecutive months. The City shall notify the applicant of the revocation in writing. The permit shall become invalid within 30 days.

Section 6.08 Standards

Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as Conditional Uses when their proposed location is supplemented by additional requirements so as to make the use requested compatible with the surrounding property, the neighborhood and the zoning jurisdiction.

In approving a Conditional Use, the minimum requirements of approval for all similar types of permitted uses in the same district must be met unless otherwise reduced by specific reference in the recommendation of the Planning Commission or the approval of the Governing Body. The requirements may be made more stringent if there is potentially injurious effects which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public.

The Planning Commission may recommend approval of a Conditional Use, and the Governing Body may approve such Conditional Use, using the following factors as guidelines:

- A. Whether approval of the Conditional Use would be consistent with the intent and purpose of this Code.
- B. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood.
- C. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided.
- D. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected.
- E. The length of time the subject property has remained vacant or undeveloped as zoned.
- F. Whether the applicant's property is suitable for the proposed use.
- G. The recommendations of permanent or professional staff.
- H. Whether the proposed Conditional Use would be in conformance to and further enhance the implementation of the Comprehensive Plan.
- I. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed Conditional Use.
- J. Whether the proposed Conditional Use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area affected.
- K. Such other factors as may be relevant from the facts and evidence presented in the application.