
Sec. 117-51. Conditional use permits.

- (a) *Purpose.* The purpose of this section is to provide the city with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health, and safety. A conditional use is a use that, because of certain characteristics, cannot be properly classified as a permitted use in the zoning district within which it is proposed. Conditional use permits are designed to meet the problem which arises where certain uses, although generally compatible with the basic use classification of a particular zone, should not be permitted to be located as a matter of right in every area included within the zone because of hazards inherent in the use itself or special problems which its proposed location may represent.
- (b) *Procedure.*
- (1) Request for conditional use permits, as provided within this chapter shall be filed with the city on an official application form. Such application shall be accompanied by a fee and escrow as provided for in section 117-48. Such application shall also be accompanied by a sufficient number of copies as required by the zoning administrator of detailed written and graphic materials fully explaining the proposed change, development, or use. The request shall be considered as being officially submitted when the information requirements of this section are met.
 - (2) Proof of ownership or authorization: If the applicant is other than fee title owner, then the fee title owner must also join in the application.
 - (3) Upon the request for a conditional use permit being officially submitted, a public hearing before the planning commission shall be scheduled following proper hearing notification.
 - (4) Notice of hearing.
 - a. Notice of a hearing for a conditional use request shall consist of the following:
 1. The address and a legal description of the parcel;
 2. Description of request;
 3. Time of hearing;
 4. Place of hearing; and
 5. Purpose of hearing.
 - b. The notice shall be published in the official newspaper at least ten days prior to the hearing and written notification of said hearing shall be mailed at least ten days prior to all parcel owners within 350 feet of the boundary of the parcel for which a conditional use is being sought. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the records of the proceeding.
 - c. For the purposes of written notification, and in the absence of more accurate information, the parcel owner of record at the county shall be used.
 - d. Failure of a property owner to receive the notice shall not invalidate any such proceedings as set forth within this section provided a good faith attempt has been made to comply with the notice requirements of this section.
 - (5) When an applicant proposes any construction or alteration that would exceed a height of 200 feet above ground level at the site, or any construction or alteration of greater height than an imaginary surface extending upward and outward at a slope of 100 feet to one inch from the nearest point of the nearest runway of a public airport, then the zoning administrator shall notify the Mn/DOT commissioner at least 30 days in advance.

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- (6) The planning commission shall conduct the hearing, ~~report its findings and make recommendations to the council.~~ receive technical reports when appropriate, and general assistance from city staff in preparing a determination on the request.
- (7) The planning commission ~~and the council~~ shall consider possible adverse effects of the proposed conditional use. This consideration shall be based upon (but not limited to) the following factors:
- a. The nature of the land upon which the use is to be located.
 - b. The nature of adjoining land or buildings.
 - c. The effect upon traffic into and from the premises, or to any adjoining roads.
 - d. Whether or not the use will be unduly dangerous or otherwise detrimental to persons residing or working in the vicinity of the use, or to the public welfare.
 - e. Whether or not if this use will substantially adversely impair the use, enjoyment or market value of any surrounding property.
 - f. Whether the proposed use will be harmonious with and in accordance with the specific objectives of the comprehensive plan.
 - g. Whether the proposed use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and whether such a use will not change the essential character of that area.
 - h. Whether the proposed use will be hazardous or disturbing to existing or future neighboring uses.
 - i. Whether the proposed use will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, or schools; or whether the persons or agencies responsible for the establishments of the proposed use shall be able to adequately provide any such service.
 - j. Whether the proposed use will create excessive additional requirements at public cost for public facilities and services and whether it will be detrimental to the economic welfare of the community.
 - k. Whether the proposed use will involve uses, activities, processes, materials and equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.
 - l. Whether the proposed use will be consistent with the intent and purposes of this chapter.
- (8) At any time during the consideration of the request for a conditional use permit, the ~~council~~, planning commission, and/or city staff shall have the authority to request additional information from the applicant or to retain expert testimony with the consent and at the expense of the applicant, the information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this chapter. Failure on the part of the applicant to supply all necessary supportive information shall be grounds for denial of the request or rejection of the application as incomplete.
- (9) The planning commission shall make a findings of fact and recommend such actions or conditions relating to the request as it deems necessary to carry out the intent and purpose of this chapter.
- ~~(10) The council shall not consider a request for a conditional use permit until it has received a report and recommendation from the planning commission. Upon completion of the report and recommendation of the planning commission, the request for a conditional use permit shall be placed on the agenda for the next regular council meeting occurring no sooner than ten days after the final action of the planning commission on the request; provided, however, that such ten-day period may be waived by~~

~~the council. Such reports and recommendations shall be entered in and made part of the permanent written record of the council meeting.~~

~~(11)~~(10) Upon receiving the report and recommendation of the planning commission, the council shall have the option to set and hold an additional public hearing if it deems necessary. The applicant or the applicant's representative shall appear at the board public hearing in order to answer questions concerning the request for a variance.

~~(12)~~ If, upon receiving the reports and recommendations of the planning commission, the council finds that specific inconsistencies exist in the review process and thus the final recommendation of the council will differ from that of the planning commission, the council may before taking final action, refer the matter back to the planning commission for further consideration. This procedure shall be followed only one time for any one conditional use permit request.

~~(13)~~(11) After receiving the reports and recommendations of ~~the planning commission~~ city staff and, receiving any additional information referred to in this division, and considering the criteria listed in this division, the ~~council~~ planning commission shall with a majority vote take one of the following actions:

a. *Approval.*

1. By resolution adopt findings of fact and conclusions that support approval of the requested conditional use permit.
2. By resolution authorize the issuance of a conditional use permit. The resolution should list any condition or conditions that the ~~council~~ planning commission considers necessary to meet the purpose of this chapter and protect the public health, safety and welfare.

b. *Denial.*

1. By resolution adopt findings of fact and conclusions that support denial of the requested conditional use permit.
2. By motion deny the issuance of a conditional use permit. This motion to deny shall be considered as the ~~council's~~ planning commission's final action on the request for a conditional use permit.

~~(14)~~(12) Whenever an application for a conditional use permit has been considered and denied by the ~~council~~ planning commission, a similar application for the conditional use permit affecting substantially the same parcel shall not be considered again by the ~~council~~ planning commission for at least one year from the date of its denial. The ~~council~~ planning commission may permit the submittal of a new request for a conditional use permit within one year of denial if it finds that the new request or circumstances surrounding the new request have changed significantly.

~~(15)~~(13) If a request for conditional use permit receives approval of the ~~council~~ planning commission, the city staff at the applicant's expense shall record such with the county recorder's office.

(c) *Information requirement.* The information required for all conditional use permit applications generally consists of the following items, and shall be submitted when applicable or requested by the city:

(1) *Site development plan.*

- a. Location of all buildings on parcels including both existing and proposed structures.
- b. Location of all adjacent buildings located within 150 feet of the exterior boundaries of the property in question.
- c. Location and number of existing and proposed parking spaces.
- d. Vehicular circulation.

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- e. Architectural elevations (type and materials used in all external surface).
 - f. Location and type of all proposed lights.
 - g. Curb cuts, driveways, number of parking spaces.
 - h. Site plan details such as trash receptacles, etc.
- (2) *Dimension plan.*
- a. Affected parcel dimensions and area.
 - b. Dimensions of proposed and existing structures.
 - c. "Typical" floor plan and "typical" room plan.
 - d. Setbacks of all buildings located on property in question.
 - e. Proposed setbacks.
 - f. Sanitary sewer and water plan with estimated use per day.
- (3) *Grading plan.*
- a. Existing contours at two-foot intervals.
 - b. Proposed grading elevations.
 - c. Drainage configuration.
 - d. Storm sewer catchbasins, invert elevations, and storage areas.
 - e. Spot elevations.
 - f. Proposed road profile.
- (4) *Landscape plan.*
- a. Location of all existing trees, type, diameter, and which trees will be removed.
 - b. Location, type and diameter of all proposed plantings.
 - c. Location and material uses for all screening devices.
- (d) *Amended conditional use permits.* An amended conditional use permit may be applied for and administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include requests for substantial changes in conditions or expansions of use, and as otherwise described in this chapter.
- (e) *Cancellation of conditional use permits.* Unless otherwise specified by the [council planning commission](#) at the time it is authorized, a conditional use permit shall become null and void one year after the final action of the [council planning commission](#) if not initiated or utilized, or if the use is discontinued for a continuous 12-month period, unless a petition for an extension of time in which to complete or utilize the use that has been granted by the [council planning commission](#). The city shall notify the CUP holder of these time restrictions at time of issuance. Extension shall be requested in writing and filed with the city at least 30 days before the expiration of the original conditional use permit. The request for extension shall state facts showing a good faith attempt to complete or utilize the use permitted in the conditional use permit. Such petition shall be presented to the planning commission for a recommendation to the [council planning commission](#) and acted upon by the [council planning commission](#).
- (f) *Duration of conditional use permits.* A conditional use permit shall remain in effect as long as the conditions agreed upon are observed and the permit holder is in compliance with all other regulations or standards of this chapter.

(g) *Performance security.*

- (1) Upon approval of a conditional use permit and when deemed necessary, the permittee shall provide the city with a financial surety, in an amount and form determined to be acceptable to the city. Said surety shall guarantee compliance with any required improvements or development associated with the issuance of the conditional use permit. Upon completion of the required improvements or development, the surety shall be returned to the permittee. The determination of acceptable completion of the required improvements or construction shall be a decision of the city. Failure to comply with required improvements or construction shall result in forfeiture of the surety and city ~~council~~ [planning commission](#) shall have the authority to revoke the conditional use permit.
- (2) The permittee shall be responsible for all city costs incurred in administering the conditional use permit. When deemed necessary, the city shall have the authority to require the permittee to maintain a minimum balance in an escrow account at the city for the full term of the conditional use permit. The purpose of the surety is to ensure that the city will be reimbursed for city expenses incurred in the administration and enforcement of the terms of the permit.

(h) *Revocation of conditional use permits.* In the event that violations of any conditions set forth in the conditional use permit occur, the ~~council~~ [planning commission](#) shall have the authority to revoke the conditional use permit. The following procedure shall be used to consider the revocation of a conditional use permit.

- (1) The parcel owner shall be notified of the possible violations of the conditional use permit and given 30 days to correct the violation and submit a written response to the notice.
- (2) If the violations are not corrected in the 30-day time frame, a public hearing conducted by the city ~~council~~ [planning commission](#) shall be scheduled.
- (3) At the public hearing for the purpose of revoking a conditional use permit the ~~council~~ [planning commission](#) shall consider the written response of the parcel owner and evidence of the violation. With a majority vote the ~~council~~ [planning commission](#) shall take one of the following actions:
 - a. *Revocation of the conditional use permit.*
 1. By resolution adopt findings of fact and conclusions that support revocation of the conditional use permit.
 2. By motion revoke the conditional use permit. This motion shall be the ~~council's~~ [planning commission's](#) final action on the revocation of a conditional use permit.
 - b. *Continuation of conditional use permit.*
 1. By resolution adopt findings of fact and conclusions that support continuation of the conditional use permit.
 2. By motion confirm the continuation of the conditional use permit.

[\(i\) Appeal Procedure. The planning commission shall serve as the board. However, any action of the board may be appealed to the council by any affected person if notice of such an appeal is received by the zoning administrator within ten days of the final action of the board.](#)

(Code 1978, § 9.03.05; Ord. No. 73-05, 5-21-1973; Ord. No. 86-2, 8-25-1986; Ord. No. 03-20, 8-25-2003)

State law reference(s)—Conditional uses and conditional use permits, Minn. Stats. § 462.3595.