

CHAPTER 12-22 CONDITIONAL USES

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12-22-101. Purpose.

(a) A conditional use is a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts of the proposed use.

(b) Approval of a conditional use requires review of its location, design, configuration, and impact to determine the desirability of allowing it on a site. Whether the use is appropriate requires weighing of public need and benefit against the local impact, taking into account the applicant's proposals and the City's requirements to mitigate adverse impacts through site planning, development techniques, and public improvements.

(c) Conditional uses are allowed unless appropriate conditions cannot be applied which, in the judgment of the planning commission, would mitigate adverse impacts that may arise by introducing a conditional use on the particular site.

12-22-102. Permit Required – Authority.

(a) A conditional use permit shall be required for all conditional uses within the city.

(b) The Planning Commission (or where applicable under this title, the Director) may, in accordance with this chapter and the regulations applicable to the zoning district in which the property is located, approve, impose conditions or deny an application for a conditional use permit. The Planning Commission (or where applicable under this title, the Director) may also revoke a conditional use permit as provided in this chapter.

(c) Where deemed appropriate, the Planning Commission or Director may require an applicant to provide additional information as may be appropriate to evaluate an application. Such additional information, may include, without limitation, studies by independent professionals to assess the impact of a proposed conditional use; the cost of any such study shall be borne by the applicant.

(d) The Director shall have authority to grant administrative approval of the following conditional uses that are allowed in multiple zones of the City: apiaries; urban chickens, home occupations subject to administrative review and other uses as may be designated in this Title for review by the Director.

12-22-103. Application and Review Procedures.

(a) Application: An application for a conditional use permit may be filed with the City by the owner of the subject property or by an authorized agent. If filed by an agent, the application shall include the owner's written authorization for the agent to act on the owner's behalf. The application shall be made by filing completed application forms provided by the City and other materials required by this Title or by other provisions of the City Code.

(b) The fee for any conditional use permit as provided in the City's Consolidated Fee Schedule shall accompany the application, no part of which shall be refunded.

(c) Information Required: A complete application shall include, at minimum, the following information submitted by the applicant, unless certain information is determined by the director to be inapplicable or unnecessary to appropriately evaluate the application:

(1) Detailed location, site, and building plans;

(2) Additional plans, drawings or descriptions as may be required by the City Code, this Title, the Director or the Planning Commission, including without limitation, approvals by agencies whose approvals are required for the proposed use (e.g., water and sewer service providers, the Davis County Health Department, the South Davis Metro Fire Service Area, DOPL, DEQ, UDOT, etc.) studies prepared by a professional with expertise in the field, such as studies of traffic, noise, economic impacts and environmental impacts, "will serve" letters from utility or service providers, regulating agencies, etc., and other information or documentation the director or planning commission may deem necessary for proper review and analysis of a particular application.

(d) Consideration: The application, including all submitted documents and information, as well as a staff report and recommendation, shall be considered by the Planning Commission at a scheduled meeting.

(e) Public Hearing: The Planning Commission may hold a public hearing on any application if deemed to be a matter of significant public interest or if recommended by the Director. Matters to be addressed at a public hearing shall be limited to the application, whether the standards and requirements of this chapter are met, and whether conditions may be imposed that mitigate the adverse impacts of the proposed use or development. If a public hearing is held, notice of the public hearing shall follow the established noticing requirements of State law and as required by this Title.

(f) Action on Application: At the conclusion of the public hearing, the Planning Commission shall:

(1) Approve the conditional use;

(2) Approve the conditional use subject to specific conditions or modifications;

(3) Deny the conditional use; or

(4) Continue the public hearing pending receipt of additional information deemed necessary by the planning commission.

12-22-104. Planning Commission Action.

(a) Approval Standards. A conditional use shall be approved unless the Planning Commission concludes that the following standards cannot be met:

- (1) The use complies with applicable provisions of this title;
- (2) The use is consistent with the general plan and other applicable adopted policies and standards;
- (3) The use is compatible, or with conditions of approval can be made compatible, with surrounding uses; and
- (4) The anticipated detrimental effects of a proposed use can be mitigated by the imposition of reasonable conditions.

(b) Detrimental Effects Determination: In analyzing the anticipated detrimental effects of a proposed conditional use, the Planning Commission, shall consider compliance with each of the following:

- (1) This title specifically authorizes the use where it is located or proposed;
- (2) The use is consistent with applicable policies set forth in the City's general plan, as amended, current and future land use maps, and is otherwise in harmony with the general objectives of this title and the requirements and purposes of the particular zone in which the subject property is located.
- (3) The use is well suited to the character of the site and adjacent uses as shown by an analysis of the intensity, size, and scale of the use compared to existing uses in the surrounding area;
- (4) The mass, scale, style, design, and architectural detailing of the surrounding structures as they relate to the proposed use;
- (5) Access points and driveways are designed to minimize grading of natural topography, direct vehicular traffic onto major streets, and not impede flows of vehicular and pedestrian traffic;
- (6) The internal circulation system of the site is designed to mitigate adverse impacts on adjacent property from motorized, nonmotorized (bicycles, etc.), and pedestrian traffic;
- (7) Access to the site does not unreasonably impact the service level of any abutting or adjacent street;
- (8) The location and design of off-street parking and loading complies with the parking and loading standards of this title;

(9) Utility capacity is sufficient to support the use at normal and adequate service levels;

(10) The proposed use is appropriately screened, buffered, or separated from adjoining dissimilar uses to mitigate potential use conflicts, and meets the screening and buffering requirements elsewhere in this title;

(11) The use meets city resource conservation plans and context sensitive design policies, does not negatively impact the quality of surrounding air and water, encroach into a river or stream, or introduce any hazard or environmental damage (including without limitation, noise, vibration, smoke, dust, dirt, odor, noxious matter, heat, glare, electromagnetic disturbance, radiation or similar negative impact) to any adjacent property, including tobacco smoke and nicotine and similar vapors;

(12) The hours of operation and delivery of the use are consistent with city regulations and compatible with surrounding uses;

(13) Signs and lighting are consistent with adopted City standards and otherwise compatible with, and do not negatively impact surrounding uses;

(14) The location and design of refuse collection areas do not negatively impact surrounding uses;

(15) The proposed use will not violate the noise control regulations of the City;

(16) The proposed use will not have a significant new adverse economic effect on nearby property;

(17) The use will not negatively impact the health, safety or welfare of the City, nearby neighbors or adjoining land uses; and

(18) The propose use will not create a need for essential municipal services which cannot be reasonably met.

(c) Conditions Imposed: The Planning Commission may impose any conditions or modifications necessary to address the foregoing factors which may include, but are not limited to:

(1) Conditions or modifications on the scope of the use; its character, location, hours and methods of operation, architecture, signage, construction, landscaping, access, loading and parking, sanitation, drainage and utilities, fencing and screening, and setbacks; and

(2) Conditions or modifications needed to mitigate any natural or man-made hazards; assure public safety; address environmental impacts; and mitigate dust, fumes, smoke, odor, noise, vibrations; chemicals, toxins, pathogens, gases, heat, light, and radiation.

(d) Denial of Conditional Use: A proposed conditional use shall be denied if:

(1) The proposed use is unlawful; or

(2) The reasonably anticipated detrimental effects of the proposed conditional use cannot be substantially mitigated as proposed in the conditional use application or by the imposition of reasonable conditions or modifications to achieve compliance with applicable standards set forth in this section.

(e) Notice of Decision: The planning commission shall provide written notice of the decision, including all conditions and modifications imposed, within ten (10) days of the final action.

12-22-105. No Presumption of Approval.

The description of a conditional use in the zoning regulations of a district the City does not constitute an assurance or presumption that such conditional use will be approved. Rather, in order to determine whether the conditional use is appropriate at a particular location, each proposed conditional use shall be evaluated on an individual basis, in relation to its compliance with the standards and factors set forth in this chapter and with the standards for the zoning district in which it is located.

12-22-106. Effect of Approval of Conditional Use.

The approval of a proposed conditional use by the Planning Commission shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals that may be required by the regulations of the city, including without limitation, a building permit, certificate of occupancy and subdivision approval.

12-22-107. Termination, Revocation and Enforcement.

(a) Automatic Termination. A conditional use permit shall automatically terminate without notice if the applicant fails to do any of the following within 12 months of Planning Commission approval:

(1) If construction is proposed, obtain a building permit for and complete the construction of the foundation of at least one primary building, and unless otherwise provided in the permit, complete construction of all structures and improvements within 24 months of Planning Commission approval;

(2) Obtain a business license; or

(3) Fulfill all conditions imposed by the Planning Commission.

(b) Cessation of Use. If the approved use or activity should cease for any reason for a continuous period of one year or more, the conditional use permit shall automatically terminate without notice. Approval of a new conditional use application shall be required prior to any subsequent reinstatement of the use.

(c) Revocation. Conditional use permits may be revoked by the Planning Commission if the applicant or the applicant's successors and assigns fail to comply with this title or the conditions imposed by the planning commission. A permit may be revoked if the Planning Commission determines that the conditional use permit was obtained by

misrepresentation or fraud. No conditional use permit shall be revoked until a hearing is held by the Planning Commission. The permittee shall be notified in writing of such hearing. The notification shall state the grounds for complaint, or reasons for revocation, and the time and location at which the hearing is to be held. At the hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence. After conclusion of the hearing, the Planning Commission shall determine whether or not the permit should be revoked.

(d) Enforcement. The City may enforce the requirements of this Chapter or the conditions imposed by the Planning Commission by any method legally available, including but not limited to the initiation of “show-cause” type proceedings to require a permittee to demonstrate compliance with the conditions of its permit, revocation of the conditional use permit or business license, administrative code enforcement, civil action, or criminal prosecution.

12-22-108. Use Associated with Specific Property – Duration.

(a) A conditional use permit is transferable with the title to the underlying property so that an applicant may convey or assign an approved use without losing the approval. The holder of a permit may not transfer the use from the subject property to any other site or location. If the applicant changes the use on the property, the change of use shall be deemed a voluntary termination thereof.

(b) Unless otherwise specified by the Planning Commission and subject to the provisions in this Chapter relating to the amendment or revocation of a conditional use permit, a conditional use permit shall be of indefinite duration and shall run with the land. The Planning Commission may grant a conditional use permit for a limited period of time or grant a conditional use permit that will be subject to review at a later date(s), if it finds that such a limitation is an appropriate condition to protect the health, safety or welfare of the community.

12-22-109. Appeal of Decision.

Any person shall have the right to appeal to the City Council any conditional use decision rendered by the Planning Commission by filing in writing a notice of appeal with the City Recorder. Appeals shall be conducted in accordance with Section 12-4-102.

(a) Said notice shall be filed in the office of the City Recorder.

(b) Upon receipt of a notice of appeal, the City Recorder shall notify the mayor and City Council who shall act as the Appeal Authority on the Planning Commission’s decision as provided in Chapter 4 of this title. The appeal shall be placed on the agenda of the City Council and at its next scheduled meeting; at which time the City Council shall set a date and time for an appeal hearing. Notice of the hearing shall forthwith be given to the appellant and the planning commission.

(c) The City Council shall hold the hearing on the appeal and thereafter may affirm, reverse, alter or remand the decision of the planning commission for further review and consideration. Where remanded to the Planning Commission, the Planning Commission shall review and act upon the decision of the City Council within 30 days of the Council’s decision. An appeal from a decision of the City Council shall be heard by the Hearing Officer as provided in Section 12-4-102.

12-22-110. Inspection.

Where required by the conditional use permit, the Director or designee shall perform inspections and make a determination whether the conditions thereof are met. The issuance of a business license or other city approval, including without limitation building permits, certificates of occupancy, etc. will be contingent upon the director's approval after any such inspection.