

SECTION 1007 – CONDITIONAL USE PERMITS (CUP)

SECTION

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1007.01: PURPOSE: The purpose of a conditional use permit (CUP), 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. In making this determination, whether or not the conditional use is to be allowed, the City may consider the nature of the adjoining land or buildings, the effect upon traffic into and from the premises, or on any adjoining roads, and all other or further factors as the City shall deem a prerequisite of consideration in determining the effect of the use on the general welfare, public health and safety.

1007.02: INITIATION OF PROCEEDINGS: Pursuant to Minnesota Statutes 15.99 as amended, an application for a conditional use permit shall be approved or denied within sixty (60) days from the date of its official and complete submittal unless extended pursuant to Statute or a time waiver is granted by the applicant. Additional City requirements are as follows:

1007.03: PROCEDURE: The process for filing a conditional use permit is outlined below:

Subd. 1. Process.

1. Prior to filing an application for conditional use permit, the prospective applicant(s) shall schedule a preliminary meeting with the Zoning Administrator or designee to discuss items including, but not limited to the nature of the proposed use, consistency of the proposal with applicable City policies and standards, and information required for a formal application.

2. The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a non-refundable filing fee and escrow as established by City Council resolution. Within fifteen (15) business days of application submittal, the City Administrator or designee will issue a letter identifying any incomplete items required to process the application. The request shall be considered as being officially submitted when all of the information requirements are deemed to be complete by the Zoning Administrator and the applicable fees and escrows have been paid. The formal review will not commence until such a time, as the application is complete. (Ord. 2003-12, 9/10/03).
3. Following receipt of a complete application, as determined by staff review, the Zoning Administrator or designee will submit copies of the proposal to the appropriate City staff, consultants and all affected jurisdictions responsible for review of the amendment.
 - a. The Commission of the Department of Natural Resources shall be notified in writing and said notice shall be postmarked at least ten (10) days in advance of the public hearing of any request for a Shoreland Management conditional use permit pursuant to the requirements of Section 1065, (Shoreland Management) of this Ordinance.
 - b. Conditional Use Permit applications within or affecting the Floodplain Districts shall be submitted by mail to the Commissioner of Natural Resources sufficiently in advance so that the Commissioner will receive said application at least ten (10) days prior to the public hearing date.
4. The Zoning Administrator or designee shall set the date for a public hearing and publish the date, time, meeting location, subject site location and brief description of the proposal in the official newspaper at least ten (10) days prior to the public hearing. Written notices shall be mailed at least ten (10) days prior to the public hearing to all owners of land within five hundred fifty (500) feet of the boundary of the property to which the conditional use permit relates.
5. Failure of a property owner to receive said notice(s) shall not invalidate any such proceedings as set forth in this Section.
6. The Planning Commission shall hold the public hearing to consider the application and the possible adverse effects of the proposed conditional use permit. The judgment of the Planning Commission with regard to the application shall be based upon (but not limited to) the following factors:
 - a. The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the objectives of the Comprehensive Plan, including public facilities and capital improvement plans.

- b. The proposed action meets the purpose and intent of this Ordinance and the intent of the underlying zoning district.
- c. The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.
- d. There is an adequate buffer yard or transition provided between potentially incompatible uses or districts.
- e. The proposed use is or will be compatible with present and future land uses of the area.
- f. The proposed use conforms with all performance standards contained within this Ordinance.
- g. Traffic generation by the proposed use is within capabilities of streets serving the property.
- h. In addition to the above general criteria, the proposed conditional use permit meets the criteria specified for the various zoning districts outlined as follows.

(1) In Residential Districts:

- (a) Traffic. Non-residential traffic is channeled into thoroughfares or onto a street abutting business or industrial uses leading directly to thoroughfares, and not onto minor residential streets.
- (b) Screening. The proposed use will be sufficiently separated by distance or screening from adjacent residentially zoned land so that existing homes will not be materially depreciated in value and there will be no deterrence to development of vacant land.
- (c) Compatible Appearance. The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.

(2) In Business Districts:

- (a) Traffic. The proposed use will not cause traffic hazards or congestion.

- (b) Nearby Residences. Adjacent residentially-zoned land will not be adversely affected because of traffic generation, noise, glare, or other nuisance characteristics.
- (3) In Industrial Districts:
 - (a) Nuisance. Nuisance characteristics generated by the use will not have an adverse effect upon existing and future development in adjacent areas.
 - (b) Nearby Residences. Adjacent residentially - zoned land will not be adversely affected because of traffic generation, noise, glare, or other nuisance characteristics.
- (4) In Shoreland Districts: Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures and criteria and conditions for review of conditional uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:
 - (a) Evaluation Criteria. A thorough evaluation of the waterbody and the topographic, vegetation, and soil conditions on the site shall be made to ensure the following:
 - 1) The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
 - 2) The visibility of structures and other facilities as viewed from public waters shall be limited.
 - 3) The site is adequate for water supply and on-site sewage treatment.
 - 4) The type, use, and number of watercraft that the project will generate shall be compatible in relation to the suitability of public waters to safely accommodate these watercraft.
 - (b) Conditions Attached to Conditional Use Permits. The City Council, upon consideration of the criteria listed above and the purposes of this Ordinance, shall attach the conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this Ordinance. The

conditions may include, but shall not be limited to, the following.

- 1) Increased setbacks from the ordinary high water level.
 - 2) Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
 - 3) Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.
- (5) Conditional Uses in Floodplain Districts. See Section 1064 (Floodplain Management) of this Chapter for additional requirements and provisions regarding uses within Floodplain Districts.
- (6) In Floodplain Districts: The following additional evaluation criteria and conditions apply within Floodplain Districts:
- a) Plans in triplicate shall be drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
 - b) One copy of the information described in item a) above shall be transmitted to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
 - c) Based upon the technical evaluation of the designated engineer or expert, the City Council shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
 - d) Factors upon which the decision of the City Council shall be passed. In approving a Conditional Use Permit the City shall

consider all relevant factors specified in other sections of this Chapter, and:

- 1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - 2) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
 - 3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - 4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - 5) The importance of the services provided by the proposed facility to the community.
 - 6) The requirements of the facility for a waterfront location.
 - 7) The availability of alternative locations not subject to flooding for the proposed use.
 - 8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - 9) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
 - 10) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - 11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - 12) Such other factors which are relevant to the purposes of this Chapter.
- e) Upon considering the factors identified in items 1 through 12 above, and the purpose of Chapter 1064 (Floodplain Districts) the City Council shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purpose

of the Floodplain Management provisions of this Chapter. Such conditions may include, but are not limited to, the following:

- 1) Modifications of waste treatment and water supply facilities.
 - 2) Limitations on period of use, occupancy, and operation.
 - 3) Imposition of operational controls, sureties, and deed restrictions.
 - 4) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
 - 5) Flood proofing measures, in accordance with the State Building Code and this Chapter. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area. (Ord. 2004-09, 4/14/04).
7. The Planning Commission and City staff shall have the authority to request additional information be provided by the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Ordinance. Failure on the part of the applicant to supply all necessary supportive information may be grounds for denial of the request.
 8. The applicant or a representative of the applicant shall appear before the Planning Commission in order to present the case for the conditional use permit and to answer questions concerning the proposal. Failure of the proponent to appear at either the Planning Commission or City Council consideration of the matter shall constitute grounds for tabling or rejection of the application. The applicant shall be responsible to pay all fees associated with re-notification (including staff time, publication and postage charges) for an application that is tabled due to failure of the applicant to attend the meeting.
 9. The Planning Commission shall make a recommendation to the City Council to approve, deny, or conditionally approve the application within sixty (60) days of the receipt of the complete conditional use permit application. The recommendation shall consider the criteria for decision outlined in item 6 of this Subdivision.

10. Upon receiving the recommendation of the Planning Commission and the City staff, the City Administrator shall schedule the application for consideration by the City Council. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
11. When the City Council receives the recommendation of the Planning Commission on conditional use permits, or if the Planning Commission has not given the City Council a recommendation within sixty (60) days after submittal of a complete application, the City Council shall set a time for a public hearing on the request. The notice shall be published and mailed as set forth in this Section.
12. Upon receiving the report and recommendation of the Planning Commission and City Staff, the City Council shall hold a public meeting to act on the application. The City Council may before taking final action, refer the matter back to the Planning Commission for further consideration based upon new information, or the City Council finds that specific inconsistencies exist in the review process. The City Council shall provide the Planning Commission with a written statement detailing the specific reasons for referral. The City Council shall approve, deny or conditionally approve the conditional use permit (based upon the criteria for decision outlined in Item 6 of this Subdivision), within sixty (60) days of receipt of the complete application, unless an extension has been provided pursuant to Minn. Stat. 15.99 or an alternate date has been agreed to in writing by the applicant.
13. Approval of a conditional use permit shall require passage by a majority vote of the Council members present at the City Council meeting. Said approval shall be in the form of a resolution setting forth the findings of fact and conditions of approval associated with the conditional use permit.
 - a. A copy of approved final decisions granting conditional uses under local shoreland management controls shall be sent to the Commissioner of Natural Resources or the commissioner's designated representative and postmarked within ten (10) days of final action.
 - b. A copy of approved final decisions granting conditional uses under local floodplain management controls shall be sent to the Commissioner of Natural Resources or the commissioner's designated representative and postmarked within ten (10) days of final action. (Ord. 2004-09, 4/14/04).
14. Denial of applications for conditional use permits shall be accompanied by written findings of fact of the City Council including supporting data setting forth the reasons for the denial in terms of the ways in which the proposed use fails to meet the standards and intent of the Comprehensive Plan and/or this Ordinance and is otherwise injurious to the public health, safety and welfare.

15. Whenever an application for a conditional use permit has been considered and denied by the City Council, a similar application for the conditional use permit affecting substantially the same property shall not be considered again by the Planning Commission or City Council for at least one (1) year from the date of its denial.

1007.04: APPLICATION SUBMITTAL REQUIREMENTS:

Subd. 1. General Information Requirement. The information required for all conditional use permit applications shall include:

1. Completed application form signed by the fee owner of the subject site (in the case of a map amendment), or applicant (in the case of a text amendment).
2. Written narrative and graphic materials fully explaining the proposed change, development, or use.
3. Payment of application fee(s) and escrow(s) as set forth by City Council resolution.
4. The applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the conditional use permit application relates.
5. The property corners and the location of all proposed buildings shall be staked at the subject site.

Subd. 2. Conditional Use Permit Site Plan Requirements. The site plan criteria cited in Section 1013, (Site Plans) of this Ordinance shall be submitted with the CUP application.

1007.05: GENERAL PERFORMANCE STANDARDS: As may be applicable, the evaluation of any proposed conditional use permit request shall be subject to and include, but not be limited to, the following general performance standards and criteria:

Subd. 1. Performance Standards.

1. The use and the site in question shall be served by a street of sufficient capacity to accommodate the type and volume of traffic which would be generated and adequate right-of-way shall be provided.
2. The site design for access and parking shall minimize internal as well as external traffic conflicts and shall be in compliance with Section 1030, (Off-Street Parking and Loading) of this Ordinance.

3. If applicable, a pedestrian circulation system shall be clearly defined and appropriate provisions made to protect such areas from encroachment by parked or moving vehicles.
4. Adequate off-street parking and off-street loading shall be provided in compliance with Section 1030 (Off-Street Parking and Loading) of this Ordinance.
5. Loading areas and drive-up facilities shall be positioned so as to minimize internal site access problems and maneuvering conflicts, to avoid visual or noise impacts on any “adjacent” residential use or district, and provided in compliance with Section 1030 (Off-Street Parking and Loading) of this Ordinance.
6. Whenever a non-residential use “is adjacent to” a residential use or district, a buffer area with screening and landscaping shall be provided in compliance with Section 1027 (Landscape, Screening and Tree Preservation) of this Ordinance.
7. General site screening and landscaping shall be provided in compliance with Section 1027 (Landscape, Screening and Tree Preservation) of this Ordinance.
8. All exterior lighting shall be so directed so as not to cast glare toward or onto the public right-of-way or neighboring residential uses or districts, and shall be in compliance with Section 1032 (Performance Standards) of this Ordinance.
9. Potential exterior noise generated by the use shall be identified and mitigation measures as may be necessary shall be imposed to insure compliance with Section 1032 (Performance Standards) of this Ordinance.
10. The site drainage system shall be subject to the review and approval of the City Engineer.
11. The architectural appearance and functional design of the building and site shall not be so dissimilar to the existing or potential buildings and area so as to cause a blighting influence. All sides of the principal and accessory structures are to have essentially the same or coordinated, harmonious exterior finish materials and treatment.
12. Provisions shall be made for daily litter control, an interior location for recycling, and trash handling and storage or an outdoor, enclosed receptacle area shall be provided in compliance with Section 1032 (Performance Standards) of this Ordinance.
13. All signs and informational or visual communication devices shall be in compliance with the City Sign Ordinance.

14. The use and site shall be in compliance with any federal, state or county law or regulation that are applicable and any related permits shall be obtained and documented to the City.
15. Any applicable business licenses mandated by City Code are approved and obtained.
16. The hours of operation may be restricted when there is judged to be an incompatibility with a residential use or district.
17. The use complies with all applicable performance standards of the zoning district in which it is located and where applicable, any non-conformities shall be eliminated.
18. Additional Stipulations. All conditions pertaining to a specific site are subject to change when the City Council, upon investigation in relation to a formal request, finds that the general public health, safety and welfare, can be served as well or better by modifying or expanding the conditions set forth herein.

1007.06: PERMIT MODIFICATIONS: Holders of a conditional use permit may propose modifications to the permit at any time. No changes in the approved plans or scope of the conditional use shall, however, be undertaken without prior approval of those changes by the City. Proposed permit modifications shall be classified as major or minor, as determined by the Zoning Administrator. Major permit modifications may include, but shall not be limited to, hours of operation, number of employees, expansion of structures and/or premises, operational modifications resulting in increased traffic, and the like. Permit modifications shall be further subject to and processed as follows:

Subd. 1. Minor Permit Modifications. Additional Qualifications. In addition to other considerations noted above, minor permit modifications shall meet the following criteria:

1. Sites shall be in non-residential zoning districts, and shall not abut any residential zoned property.
2. All sites must be in the urban service area as defined by the Comprehensive Plan.
3. All sites must be legal parcels of record at the time of application.
4. All applications for permit modification shall be complete and in full accordance with the requirements of Subd. 1007.06 (CUP, Permit Modifications) of this Ordinance. All applicable fees shall be paid.
5. All permit modification proposals shall meet or exceed the standards of all applicable codes, ordinances, and policies and shall be free of variances from those standards.

6. Only applications for pre-existing, pre-approved uses explicitly classified as conditional uses within the respective zoning districts of this Ordinance are eligible for administrative approval.
7. Administrative approval of minor permit modifications shall be subject to the requirements of Section 1003 (Administrative Permits) of this Ordinance.

Subd. 2. Major Permit Modifications. Qualifications. Any permit modification not classified or qualifying as minor shall be classified as major.

1. Major permit modifications shall be processed according to the procedure set forth for processing conditional use permits and shall be subject to all requirements and standards of this Section.

1007.07: REVOCATION: The Planning Commission may recommend, and the City Council may direct, the revocation of any conditional use permit for cause upon determination that the authorized conditional use is not in conformance with the conditions of the permit or is in continued violation of this Ordinance, City Codes, or other applicable regulations. The City Council or Planning Commission shall initiate an application and the Zoning Administrator shall notify the responsible person that they have an opportunity to show cause why the permit should not be revoked. The application shall be processed and considered pursuant to the procedure set forth for processing conditional use permits by this Section. The Zoning Administrator shall provide the applicant a copy of the proceedings and findings of the Planning Commission and City Council.

1007.08: EXPIRATION: Unless the City Council specifically approves a different time when action is officially taken on the request, conditional use permits which have been issued under the provisions of this Section shall expire without further action by the Planning Commission or the City Council, unless the applicant commences the authorized use within one (1) year of the date the conditional use permit is issued; or, unless before the expiration of the one (1) year period; the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by City Council resolution. The request for extension shall state facts showing a good faith attempt to complete or utilize the use permitted in the conditional use permit. A request for an extension not exceeding one (1) year shall be subject to the review and approval of the Zoning Administrator. Should a second extension of time or any extension of time longer than one (1) year be requested by the applicant, it shall be presented to the Planning Commission for a recommendation and to the City Council for a decision.

1007.09: FILING CUP WITH SHERBURNE COUNTY:

Subd. 1. Filing Requirement. A certified copy of all conditional use permits shall be filed with the County Recorder of Sherburne County pursuant to Minnesota Statutes. The applicant shall have the responsibility of filing the resolution with Sherburne County and paying all costs for such recording. A building permit for the subject construction shall not be issued until proof of recording has been provided to the City Administrator. A copy of the recorded conditional use permit or other documentation from Sherburne County listing the document number, recording date and appropriate signatures, shall be delivered to the Zoning Administrator as evidence of satisfying this requirement.

1007.10: INSPECTION: The City hereby reserves the right upon issuing any conditional use permit to inspect the premises to ensure compliance with the provisions of this Ordinance or any conditions additionally imposed.

1007.11: SITE IMPROVEMENT PERFORMANCE AGREEMENT: Upon approval of a conditional use permit the City may require the applicant to enter into a performance agreement prior to issuing of building permits or initiation of work on the proposed improvement or development. Said agreement shall guarantee conformance and compliance with the conditions of the conditional use permit and the codes of the City. The performance agreement shall be prepared and approved by the City Attorney and shall provide for all of the items specified by Section 1031 (Performance Agreements) of this Ordinance.