

CHAPTER 5. CONDITIONAL USE

- 7-5-1. Purpose.
- 7-5-2. Requirements.
- 7-5-3. Public hearing.
- 7-5-4. Findings of fact.
- 7-5-5. Notification of Planning Commission action.
- 7-5-6. Conditions appurtenant to property.
- 7-5-7. Building permits.
- 7-5-8. Time limits; termination of permits.
- 7-5-9. Guidelines for conditions.
- 7-5-10. Revocation.
- 7-5-11. Appeals.
- 7-5-12. Penalty
- 7-5-13. Administrative Conditional Uses

7-5-1. Purpose.

The purpose and intent of this Chapter is to allow the integration of specified uses which are allowed uses of the zoning district, but which may create detrimental effects upon neighboring land uses and occupants without the imposition of reasonable conditions calculated to mitigate those detrimental effects.

(Ord. 2016-15, 10-19-2016) (Ord. 1996-21, 09-04-1996)

7-5-2. Requirements.

(1) General requirements. A conditional use permit shall be required for all uses listed as conditional uses in each zoning district or elsewhere in this Code.

(2) Application requirements. Application for a conditional use permit shall be made by the property owner or authorized agent to the Community Development Department upon a form prescribed by the Department Director. An application which does not satisfy the requirements of this Chapter shall not be heard. An application must contain the following information:

(a) the name, address, and telephone number of the applicant;

(b) an affidavit under oath asserting ownership of the subject property, executed by the owner or authorized agent;

(c) the description of the property, including a legal description, street address, and other common means of identification;

(d) the names and addresses of all last known property owners as contained in the current records of the Tooele County recorder, within a 200-foot radius of the subject property, measured from the closest boundary of the proposed conditional use as shown on the development plan;

(e) a written statement indicating the manner of compliance with the provisions of this Code, and a written statement setting forth specifically any variance granted by the City from any provision of this Code;

(f) an accurate scale drawing showing the locations of the existing and proposed streets, property

lines, uses, structures, driveways, pedestrian walks, off-street parking, off-street loading facilities, and landscaped areas; and,

(g) such other information, plans, maps, diagrams and information that may be necessary or helpful to assure the full presentation of all pertinent facts for the record and to assist the Planning Commission in making a determination.

(3) Fees. _____

(a) Application fee. A conditional use application must be accompanied by the fee established by Resolution of the City Council. A receipt or notation of receipt number showing that the application fee has been paid must be attached to all applications as proof of filing.

(b) Extension fee. A request for conditional use permit extension must be accompanied by the fee established by Resolution of the City Council.

(c) Appeal fee. An appeal from a Planning Commission determination must be accompanied by the fee established by Resolution of the City Council.

(Ord. 2016-15, 10-19-2016) (Ord. 1996-21, 09-04-1996)

7-5-3. Public hearing.

(1) Public hearing. The Planning Commission shall hold a public hearing on all conditional use applications. The Commission shall consider conditional use permit applications at its regularly scheduled business meeting as soon as practicable after the filing of an application. Applications must be filed with the City Engineer not later than 15 days prior to the scheduled business meeting.

(2) Notice. At least 7 days prior to the date set for the hearing, the City shall mail written notice of the hearing to each property owner whose name and address accompany the application. The notice shall give the date, time, and place of the hearing, the name of the applicant, the requested conditional use, an identification of the subject property, and such other information as the Planning Commission may require. In addition to the application fee, the applicant shall pay the costs incurred by the City to provide the required notice.

(3) Procedure. At the public hearing, testimony may be given by the applicant and all other persons either in support of or in opposition to the application. The Planning Commission may take the application under advisement, but shall render its determination within 30 days of the date of the hearing.

(4) Approval. The Planning Commission shall approve the conditional use application if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

(5) Minutes. All conditions imposed upon approval of the application shall be entered into the minutes of the Planning Commission and on the conditional use permit.

(6) Code compliance. The granting of a conditional use permit shall not exempt the applicant/permittee from the requirements of this Code. (Ord. 2009-15, 12-2-2009) (Ord. 1996-21, 09-04-1996)

7-5-4. Findings of fact.

Prior to approving or denying a conditional use permit application, the Planning Commission shall make, in the business meeting at which the public hearing is conducted or the permit is approved or denied, a finding of the following facts:

(1) the reasonably anticipated detrimental effects of the proposed use upon adjacent and nearby persons and properties;

(2) the evidence identified regarding the identified reasonably anticipated detrimental effects of the proposed use;

(3) the reasonable conditions imposed, as part of the conditional use permit approval, intended to mitigate the reasonably anticipated detrimental effects of the proposed use;

(4) the reasons why the imposed conditions are anticipated or hoped to mitigate the reasonably anticipated detrimental effects of the proposed use;

(5) the evidence, if any, identified regarding the ability of the imposed conditions to mitigate the reasonably anticipated detrimental effects of the proposed use.

(Ord. 2012-25, 11-21-2012) (Ord. 1996-21, 09-04-1996)

7-5-5. Notification of Planning Commission action.

Within a reasonable time following the public hearing, the applicant shall be notified in writing of the Planning Commission's action. If the application is approved, the notification shall detail any conditions imposed, the procedures to be followed prior to obtaining a business license or building permit, and the expiration date of permit approval.

(Ord. 1996-21, 09-04-1996)

7-5-6. Conditions appurtenant to property.

All conditions imposed upon a conditional use permit shall run with the land, and shall be binding on the applicants and their heirs, successors, and assigns. (Ord. 1996-21, 09-04-1996)

7-5-7. Building permits.

(1) Following the issuance of a conditional use permit by the Planning Commission, and site plan review, if required, the Building Official may approve an application for a building permit and shall ensure that the development is undertaken and completed in compliance with said permit.

(2) Permit document. Prior to the issuance of any

building permit or business license, the permittee shall sign a conditional use permit document. The document shall include a list of all conditions imposed by the Planning Commission. A site plan may also be required.

(Ord. 1996-21, 09-04-1996)

7-5-8. Time limits; termination of permit.

(1) Effective date. The date of issuance of a conditional use permit shall be from the date of the Planning Commission's final decision on the conditional use permit application.

(2) Commencement of construction. Within 12 months from the date the Planning Commission grants a conditional use permit, the permittee shall substantially comply with all conditions imposed upon the permit. Substantial compliance shall be demonstrated by obtaining a current building permit and commencing construction. Construction shall be deemed commenced upon the completion of the foundation for at least one principal building or 20% of remodeling or other construction. If construction is not commenced within 12 months, the permit will terminate automatically and without notice to the permittee.

(3) Business license. If construction is not proposed as an element of the conditional use, a business license shall be obtained to satisfy this requirement. If a business license is not obtained within 12 months, the permit will terminate automatically and without notice to the permittee.

(4) Lapsing of permit. If the conditional use should cease for any reason for a continuous period of 12 months, the conditional use permit will terminate automatically and without notice to the permittee.

(5) Extensions. A request for extension of a conditional use permit may be filed with the Community Development Department not less than 30 days prior to the permit expiration date. Following a request for extension, the original conditional use permit shall remain valid until the request for extension is acted upon by the Planning Commission in a regularly scheduled public meeting. A request for extension shall not require a public hearing. A permit may be extended for no more than six months. Failure to request an extension in a timely manner shall cause the conditional use permit to expire without further notice, and a new conditional use permit shall be required prior to any reinstatement of the use.

(6) Reinstatement. Where a conditional use permit terminates under this Section, approval of a new conditional use permit shall be required prior to any reinstatement of the use.

(Ord. 2016-15, 10-19-2016) (Ord. 1996-21, 09-04-1996)

7-5-9. Guidelines for conditions.

(1) Applicants for conditional use permits shall satisfy all the requirements of this Code. The Planning Commission may establish all reasonable conditions it

deems necessary to protect the health, safety, and general welfare of the community. In addition, the Planning Commission may impose conditions regarding the following:

(a) conditions relating to safety for persons and property:

(i) building elevations and grading plans which will prevent or minimize flood water damage, where property may be subject to flooding; for example, down-sloping driveways;

(ii) the relocation, covering, or fencing of irrigation ditches, drainage channels, and other potential dangers existing on or adjacent to the property;

(iii) increased setback distances from lot lines;

(iv) design, construction, and location of structures, buildings, and facilities in relation to any earthquake fault or other seismic hazard, which may exist on or near the property, and limitations or restrictions to use or location of use due to site conditions, including but not limited to flood plains or landslide areas that may exist outside of the Sensitive Area Overlay areas;

(v) the arrangement and dimensions of truck loading and unloading facilities;

(vi) the construction of curbs, gutters, drainage culverts, sidewalks, streets, fire hydrants, and street lighting;

(vii) limits on time of day for the conduct of specified activities, or the absolute length of time of the proposed use; for example, commercial and industrial uses within 250 feet of a residential zoning district not operating between 10:00 p.m. and 6:00 a.m.; and,

(viii) wind energy conversion systems.

(b) conditions relating to health and sanitation:

(i) the sufficiency of water to serve the proposed land use and a water delivery system to be installed according to standards adopted by the City;

(ii) a wastewater disposal system approved by the Tooele County Health Department according to standards adopted by the City; and,

(iii) solid waste disposal receptacle enclosures constructed according to standards adopted by the City;

(iv) construction of water mains, sewer mains, and drainage facilities serving the proposed use, in sizes necessary to protect existing utility users in the district and to provide for orderly development of land in the City.

(c) conditions relating to environmental concerns:

(i) areas that may exist outside of the Sensitive Area Overlay due to soil capabilities, wildlife, and plant life;

(ii) processes for the control, elimination, or prevention of land, water, or air pollution, the prevention of soil erosion, and the control of

objectionable odors and noise;

(iii) the planting of ground cover or other surfacing to prevent dust and erosion;

(iv) the restructuring and revegetation of the land when the use involves cutting or filling the land and where such land would be adversely affected if not restructured or revegetated.

(d) conditions relating to compliance with the purposes and regulations of general plans and zoning districts:

(i) conditional uses being located only on lots fronting arterial or collector streets within the district;

(ii) the removal of nonconforming, noncompliant, nuisance, or unsafe structures, debris, or plant materials;

(iii) the screening of yards or other areas as protection from other land uses and activities;

(iv) landscaping in addition to that which may be required in other chapters of this Code, to ensure protection from neighboring land uses;

(v) the location, height, lighting, and materials used for the construction of structures to ensure protection of neighboring land uses specifically if the use abuts a residential zoning district;

(vi) the location, height, and materials of walls, fences, hedges, and screen plantings to ensure protection of adjacent development, or to conceal storage areas, utility installations, or other accessory features or structures;

(vii) the relocation of proposed or existing structures as necessary to provide for future streets on the Official Street Map, sight distances for general safety, groundwater control, or similar concerns.

(viii) the construction of recreational facilities necessary to satisfy the needs of the conditional use;

(ix) increased setback distances from lot lines;

(x) decreasing the intensity of land uses to avoid nuisances or other detrimental effects; and,

(xi) improvements which serve the property in question and which may compensate in part or in whole for possible detrimental effects to the district from the proposed conditional use.

(e) conditions relating to performance and administration:

(i) bonding or other valuable assurance in favor of the City in an amount to be determined by the City may be required for improvements or guarantees of construction relating to the conditional use permit.

(Ord. 2016-15, 10-19-2016) (Ord. 1996-21, 09-04-1996)

7-5-10. Revocation.

(1) The issuance of a conditional use permit under this Chapter grants a revocable property interest and privilege to engage in the conditional use allowed on the

permitted property. The permittee agrees, as a condition of permit issuance, to conduct the conditional use on the permitted property in conformity with the terms and conditions of the permit, the ordinances of the City, and all other applicable laws.

(2) Any conditional use permit issued pursuant to the provisions of this Chapter may be revoked by the Community Development Director for failure of the permittee to observe, or to assure observance of, all the conditions specified in the issuing of the permit, or for failure to observe other requirements of this Code in regards to the maintenance of improvements or the conduct of the use or activity as approved.

(3) An action or omission constituting grounds for revocation under this Section by an agent, employee, officer, operator, owner, guest, or patron of the permittee shall constitute the action or omission of the permittee.

(4) Prior to revocation, the Community Development Director shall make a preliminary determination to revoke. Notification of the Director's preliminary determination to revoke a conditional use permit shall be mailed by the Department by certified U.S. mail to the permittee at the mailing address identified on the conditional use permit application.

(5) Notification of conditional use permit revocation shall be mailed by the Department by certified U.S. mail to the permittee:

(a) if no timely appeal of the preliminary revocation determination was filed, at the mailing address identified on the conditional use permit application; or,

(b) if a timely appeal of the preliminary revocation determination was filed, and the determination was sustained by the Administrative Hearing Officer, at the address identified on the appeal.

(6) The City shall have the right of action to compel offending structures or uses to be removed at the cost of the violator or owner.

(Ord. 2016-15, 10-19-2016) (Ord. 1996-21, 09-04-1996)

7-5-11. Appeals.

Appeals of actions taken or decisions made under this Chapter shall be to the Administrative Hearing Officer.

(Ord. 2016-15, 10-19-2016) (Ord. 1996-21, 09-04-1996)

7-5-12. Penalty.

The following are violations of this Chapter and are class B misdemeanors:

(1) conducting a use that is identified as a conditional use in Chapter 7-14 Table 1: Table of Uses or §7-16-3 (Table 1: Table of Uses) of this Title without a valid, current conditional use permit;

(2) conducting a use in violation of the terms of a conditional use permit; and,

(3) continuing to conduct a use after a conditional

use permit for that use has been revoked.
(Ord. 2012-23, 11-21-2012)

7-5-13. Administrative Conditional Uses.

The terms of this Section shall apply only to those conditional uses listed in Subsection (1). In the event that the terms of this Section conflict with similar provision elsewhere in this Chapter, the terms of this Section shall supersede for those conditional uses listed in Subsection (1).

(1) Conditional Uses to be Reviewed Administratively. All home occupation uses requiring a conditional use permit shall be reviewed administratively.

(2) Application. All applications for a home occupation conditional use permit shall be filed with the Community Development Department as prescribed in Section 7-5-2 herein.

(3) Fees.

(a) Application Fee. An application for a home occupation conditional use permit shall be accompanied by the fee established by Resolution of the City Council. A receipt or notation of receipt number showing that the application fee has been paid must be attached to all applications as proof of filing. An application for a home occupation conditional use permit shall not be complete without a paid application fee and shall not be accepted.

(b) Extension Fee. A request for extension of a home occupation conditional use permit must be accompanied by the fee established by Resolution of the City Council and must be received prior to the expiration of the permit. An application for extension of a home occupation conditional use permit shall not be complete without a paid application fee and shall not be accepted. Time limits and extensions of a home occupation conditional use permit shall comply with the terms of Section 7-5-8 herein.

(c) Appeal Fee. An appeal from a determination on a home occupation conditional use permit must be accompanied by the fee established by Resolution of the City Council. An application for appeal of a home occupation conditional use permit shall not be complete without a paid application fee and shall not be accepted.

(4) Notice of Application. Upon receipt of a complete application for a home occupation conditional use permit, the Zoning Administrator shall issue notice to all property identified under Section 7-5-2(d) herein. The notice shall include at least the following:

(a) Identification of the property where the proposed home occupation conditional use is to be located;

(b) The nature of the proposed home occupation;

(c) Identification of the proposed home occupation conditional use as an administrative review;

(d) Invitation to submit any relevant information and evidence in writing to the Zoning Administrator regarding the application; and,

(e) The date and time deadline, to be not less than 7 calendar days from the date of the notice, for receipt of all submitted relevant information and evidence.

(5) Review of Application.

(a) Standard of Review. Upon receipt of all submitted relevant information and evidence, the Zoning Administrator shall review the application and the submitted relevant information and evidence for compliance with the applicable terms of the Tooele City Code. The Zoning Administrator shall review applications for a home occupation conditional use permit according to Section 7-5-3(4) based on the substantial evidence provided in the application, the applicable provisions of the Tooele City Code, and the submitted relevant information and evidence. In the event the Zoning Administrator finds substantial evidence that the application presents unique or extraordinary challenges or the submitted relevant information and evidence present substantial concern that the Zoning Administrator deems a public hearing to be warranted or necessary, the Zoning Administrator, in their sole discretion, shall have the option to defer the application for a home occupation conditional use permit to the Planning Commission for review. In doing so, the application shall then follow the process described in this Chapter for Planning Commission review including noticing and scheduling of a public hearing.

(b) Findings of Fact. The Zoning Administrator may impose conditions necessary to ensure the application's compliance with the purpose of the Chapter according to the terms of Section 7-5-4 herein.

(6) Notification of Action. Within 7 calendar days of the deadline identified in Subsection (5)(e) herein, the Zoning Administrator shall issue a written notification of determination to the applicant of a home occupation conditional use permit as outlined in section 7-5-5 herein.

(7) Appeal. Any aggrieved party to a written determination for a home occupation conditional use permit may appeal in writing to the Director of the Community Development Department within 7 calendar days of the date of determination being appealed. The Director shall review the appeal according the same standard of review as the determination and issue a determination to uphold or overturn the Zoning Administrator's determination within 7 calendar days of the appeal being filed. An appeal of the Director's determination may be appealed according to Section 7-5-11 herein.

(Ord. 2016-18, 11-02-2016)