

17.54.030 Procedures for authorization of conditional use permits.

The following procedures are established to integrate properly conditional use permits with other land uses located in the district. These uses shall be reviewed by the Planning Commission, and authorized, rejected, or, revoked under the following procedures:

A. *Approval procedures.* The procedures of this section shall be followed in making application for approval of a conditional use permit or for an amendment to a conditional use permit.

1. *Application.* An application shall be filed with the Planning Department. The application shall show the location and intended use of the site. Specifics on site development shall include, but not be limited to parking, loading and unloading dock areas with truck turning radii, landscaping, fencing, retaining walls, signage, lighting, dumpster location and screening, exterior mechanical equipment and screening, building elevations with building heights, building colors and materials, and roof top design and membrane color. A dimensioned site plan drawn to scale which reflects the specifics of the proposed project, with building setbacks, approach locations and internal traffic circulation, shall be submitted.

2. *Fees.* A fee of \$250 shall be paid at the time of filing any application for a conditional use permit; however, if a permit for a limited time period has previously been issued, and all conditions for the permit have been met throughout the term thereof, the renewal fee may be waived at the discretion of the Planning Director. If the application is for the amendment of a conditional use permit the fee shall be \$250 for a major amendment. There is no charge for a minimal amendment.

3. *Notification.* Notification of surrounding property owners, tenants and interested parties shall be accomplished by posting a sign on the property and by mailing notices of public hearing to neighboring property owners.

a. *Posting of sign.* A sign noting the fact that a conditional use permit approval, on-sale liquor establishment approval or major amendment is pending shall be posted on the site not less than 7 days before the public hearing before the Planning Commission. The sign shall be maintained on the site until the Common Council has taken action on the request or the petition is withdrawn. Approved signs shall be secured from the Planning Department who shall require a reasonable deposit sufficient to cover the cost of replacement of the sign or signs and who shall determine the number and location of the sign or signs to be posted on the site addressed in the petition for conditional use permit.

b. *Mailing of certified notice.* The petitioner shall submit postal receipts to demonstrate a good faith attempt to notify by certified letter with return receipt all property owners within 250 feet, inclusive of public right-of-way, of the site measured from the perimeter of the lot, lots or portions thereof which contain the buildings and area dedicated to the proposed use. If the intended use of the occupied site is to be an on-sale liquor establishment, the petitioner shall submit postal registration data that substantiates the good faith attempt to mail certified letters with return receipts to all property owners within 250 feet of the perimeter of the

occupied site inclusive of public right-of-way. The certified mailings shall include the date set for the hearing before the Planning Commission and contemplated uses, and shall be on a form provided by the Planning Department. The property owners listing shall be prepared by the Pennington County director of equalization office and based on their records of ownership and addresses.

B. *Fees.* A fee of \$250 shall be paid at the time of filing any petition for a conditional use permit; provided, however, that, if a permit has previously been issued, and all conditions for the permit have been met throughout the term thereof, the renewal fee may be waived at the discretion of the Planning Director. If the application is for the amendment of a planned development plan or a conditional use permit, the fee shall be \$250 for a major amendment.

C. *Planning Commission to review and act at public hearing.* The city's Planning Commission at a public hearing shall review and act upon all conditional use permit applications. The action of the Planning Commission shall occur only after having given a 7-day prior notification in a daily newspaper of general circulation. The city's Planning Commission shall act on all applications within 60 days of submission of the application, or the application shall automatically be approved; provided, however, that, the applicant for approval may waive this requirement in writing and consent to the extension of the period. The action of the city's Planning Commission shall be final except in the event of an appeal being filed in which case the procedures outlined in § 17.54.030F. shall be followed.

D. *Restrictions.* In the exercise of its approval, the Planning Commission may impose such conditions regarding the location, character or other features of the proposed use or buildings as it may deem advisable in the furtherance of the general purposes of this title.

E. *Criteria for review.* In reviewing applications for a conditional use permit, due consideration shall be given to the following:

1. The location, character and natural features of the property;
2. The location, character and design of adjacent buildings;
3. Proposed fencing, screening and landscaping;
4. Proposed vegetation, topography and natural drainage;
5. Proposed pedestrian and vehicular access, circulation and parking, including that related to bicycles and other unpowered vehicles and provisions for handicapped persons;
6. Existing traffic and traffic to be generated by the proposed use;
7. Proposed signs and lighting;
8. The availability of public utilities and services;

9. The objectives of the adopted comprehensive plan and the purpose of the ordinance codified herein;

10. The overall density, yard, height and other requirements of the zone in which it is located;

11. The effects of noise, odor, smoke, dust, air and water pollution and the degree of control through the use of clarifiers, screening, setbacks and orientation; and

12. The degree to which conditions imposed will mitigate any probable adverse impacts of the proposed use on existing adjacent uses.

F. *Appeal procedures.* Any person or party has the right to appeal the decision of the Planning Commission regarding any conditional use permit application. Appeals must be made in writing and submitted to the Planning Department by close of business on the seventh full calendar day following action by the Planning Commission. Appeals shall be reviewed and acted upon by the Common Council in accordance with the requirements of this section. The action of the Common Council shall occur only after having given a 7-day prior notification in a daily newspaper of general circulation.

G. *Issuance of permit.* Upon completion of the necessary application, hearing and approval of the Planning Commission and after the expiration of the appeals time period, the Building Inspector shall issue the building permit subject to all applicable rules, regulations and conditions.

H. *Validity of plans.* All approved plans, conditions, restrictions and rules made a part of the approval of the Planning Commission shall constitute certification on the part of the applicant that the proposed use shall conform to the regulations at all times.

I. *Amendments.* The conditions of approval of a conditional use permit may be amended. Amendments are considered major or minimal and are addressed in the following manner.

1. Major amendments must be reviewed by the Planning Commission, under the provisions of subsection A. through E. of this section. A major amendment is required when:

a. A change to another conditional use is proposed;

b. A change to specific stipulations addressed in the initial approval or a subsequent amendment;

c. The structure and/or occupied site is substantially enlarged. A structure is considered to be substantially enlarged when the gross square footage increases by 20% or 2,000 square feet, whichever is less. The land or site which supports the use is considered to be substantially enlarged when the gross square footage of the occupied site increases by 10% or 10,000 square feet, whichever is less; and

d. The Planning Director determines that the proposed change is major and requires public hearing review.

2. Minimal amendments must be reviewed and approved by the Planning Director. A minimal amendment involves a change to the site plan affecting any or all of the following: parking, circulation, landscaping, lot coverage by buildings or building setbacks. The Planning Director shall determine that the proposed modification to the site will not have a significant adverse impact on neighboring properties, the street network or the appearance of the property in approving a minimal amendment. The Planning Director shall consider the criteria outlined in subsection E. of this section to determine if the proposed modifications still meet the requirements of a conditional use permit.

J. *Revocation of conditional use permit.* A conditional use permit may be revoked only for cause, consisting of failure to maintain the standards required for the initial conditional use permit. A notice of intent to revoke a conditional use permit shall be given in writing 30 days prior to actual revocation and shall specify the area or areas of continued failure to meet requirements and maintain conditions the city may have imposed. If, during that period, proof of compliance is made by the holder of the conditional use permit, the conditional use permit shall be continued in force. If a hearing has been requested following receipt of notice of intent to revoke, the Planning Commission shall hold a public hearing on the matter and make a final determination on the revocation.

K. *Expiration and extension of time period.*

1. *Expiration.* A conditional use permit shall automatically expire if:

a. The primary use for which it was granted has ceased for a period of 2 years or more; or

b. The primary use proposed under the conditional use permit has not been undertaken and completed according to the terms and conditions of the conditional use permit within 2 years of the approval of the conditional use permit. A conditional use permit is considered approved upon the effective date of the Planning Commission or Common Council's action, resolution or ordinance relating thereto.

2. *Extension of period.* Notwithstanding the provisions of subsection J.1. of this section, the Planning Commission, may as part of the original conditional use permit or as a major amendment to the conditional use permit extend the period of the conditional use permit where it is warranted in light of the relevant circumstances, including, but not limited to the size and phasing of the development, economic cycles and market conditions. All conditional use permits approved prior the effective date of the ordinance codified in this subsection shall be exempt from the provisions of this section.

(Ord. 5502, 2009; Ord. 3833 (part), 2002; Ord. 3827, 2002; Ord. 3771, 2002; Ord. 3760 (part), 2001; Ord. 3690 (part), 2001; Ord. 3371, 1997; Ord. 3013, 1993; Ord. 2931 (part), 1992; Ord. 2860, 1991; prior code Appendix A, Art. VII (§ 4))