

CHAPTER 5
CONDITIONAL USES

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10-5-1: **DEFINITION:** The term "conditional use", as used in this chapter, means a nonprincipal use within a district, allowed only after public hearing and after issuance of a permit approved by the city council. (Ord. 383, 9-10-2002)

10-5-2: **GENERAL PROVISIONS:**

- A. It is recognized that an increasing number of new kinds of uses are appearing daily, and that many of these and some other more conventional uses possess characteristics of such unique and special nature relative to location, design, size, method of operation, circulation and public facilities that each specific use must be considered individually.
- B. Since it is impossible to foresee and enumerate all future or potential and appropriate conditional uses, conditional uses which may not be listed as permitted in a specific zone may be approved by the city

council. A conditional use permit is personal in nature and can be transferred with title to the property. (Ord. 383, 9-10-2002)

10-5-3: **APPLICATION FOR PERMIT:** An application for a conditional use permit shall be filed with the city clerk-treasurer. At a minimum, the application shall contain the following information: (Ord. 383, 9-10-2002; amd. 2015 Code)

- A. Name, address and phone number of the applicant;
- B. Legal description of the property;
- C. Description of the existing use;
- D. Zone classification;
- E. Description of the proposed conditional use;
- F. Names and addresses of adjoining property owners within three hundred feet (300') of the land being considered;
- G. A plan of the proposed site for the conditional use showing the location of all the building, parking and loading areas, traffic access, traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards and other such information as the commission may require to determine if the proposed conditional use meets the intent and requirements of this chapter;
- H. A description of surrounding uses and a narrative statement evaluating the effects on adjoining property of such elements as noise, glare, odor, fumes and vibration; a discussion of the general compatibility with adjacent and other properties in the zone; and the relationship of the proposed use to the comprehensive plan; and
- I. A filing fee shall accompany the application. (See section 10-5-4 of this chapter.) (Ord. 383, 9-10-2002)

10-5-4: **PERMIT FEES:** A fee as established by resolution of the city council shall accompany a business application for a permit, and a fee as established by resolution of the city council shall accompany an application for a residential permit, which fee will not be refunded if the application is denied. (Ord. 383, 9-10-2002; amd. 2015 Code)

10-5-5: **GENERAL STANDARDS APPLICABLE TO ALL CONDITIONAL USES:** The planning and zoning commission and the city council shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Will not be in conflict with the general objectives or with any specific objectives of the comprehensive plan or this title;
- B. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same areas;
- C. Will not be hazardous or disturbing to existing or neighboring uses;
- D. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools;
- E. That persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, 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 odor;
- H. Will have vehicular approaches to the property which shall be so designed as not to create any interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance. (Ord. 383, 9-10-2002)

10-5-6: **PUBLIC SITES AND OPEN SPACES:** Public sites and open spaces shall conform to the following:

- A. **Public Uses:** Where it is determined that a proposed park, playground, school or other public use is located in whole or in part within a proposed development, the commission shall notify the appropriate public agency concerning the land proposed to be acquired. Within thirty (30) days of the date of notice, the public agency may request the governing body to suspend consideration on the permit for sixty (60) days from the date of the request; however, if an agreement is not reached within sixty (60) days, the commission shall resume consideration of the conditional use application.
- B. **Natural Features:** Existing natural features which add value to residential development and enhance the attractiveness of the community such as trees, watercourses, historic spots and similar irreplaceable assets shall be preserved in the design of the development. (Ord. 383, 9-10-2002)

10-5-7: **SUPPLEMENTARY CONDITIONS AND SAFEGUARDS:** In granting any conditional use, the city council may prescribe appropriate conditions, bonds and safeguards which are in conformity with this chapter. Violation of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this chapter. (Ord. 383, 9-10-2002)

10-5-8: **HEARING AND NOTICE REQUIREMENTS:** Prior to granting a special use permit, the planning and zoning commission shall hold at least one public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper of the city. Notice shall be posted on the premises not less than one week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred feet (300') of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission; provided, that in all cases, notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred feet (300') of the external boundaries of the land being considered; and provided further, that where a special use permit is requested by reason of height allowance, that notice shall be provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred feet (100') and within no less than one mile when the peak

height of a structure in an unincorporated area is four hundred feet (400') or more, and when four hundred feet (400') or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this section shall have a right to participate in public hearings before the planning and zoning commission. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by Idaho Code section 67-8003, consistent with requirements established thereby. (Ord. 383, 9-10-2002; amd. 2015 Code)

10-5-9: PROCEDURE FOR APPROVAL OR DENIAL OF PERMIT:

- A. **Planning And Zoning Commission Recommendation; Council Action:** Within sixty (60) days after holding its public hearing, or at the next regular meeting of the commission, whichever occurs later, the commission shall make its recommendation to the city council. The recommendation shall be in writing and shall recommend either approval or denial of the application as presented or conditional approval subject to such conditions as the commission may deem appropriate. That recommendation shall be forwarded to the city council. After receiving a recommendation and the record from the commission, the city council may approve, conditionally approve or deny a conditional use permit under the conditions as herein specified and considering such additional safeguards as will make the use consistent with the objectives of this title and not in conflict with the comprehensive plan. If the application is approved or approved subject to conditions, the council shall direct the city clerk-treasurer to issue a conditional use permit listing the specific conditions specified by the council as prerequisites for approval. (Ord. 383, 9-10-2002; amd. 2015 Code)
- B. **Conditions Of Permit:** Upon the granting of a conditional use permit, conditions may be attached to the permit including, but not limited to, the following:
1. Minimizing adverse impact on other developments;
 2. Controlling the sequence and timing of the development;
 3. Controlling the duration of the development;
 4. Assuring that the development is maintained properly;

5. Designating the exact location and nature of the development;
 6. Requiring the provision for on site or off site public facilities or services;
 7. Requiring more restrictive standards than those generally required in this chapter; and
 8. Minimizing the impact on schools, irrigation districts or water delivery systems.
- C. Additional Information: Prior to making a recommendation or granting a conditional use permit, either the commission or the city council may require additional information concerning social, economic, fiscal and environmental effects of the proposed conditional use.
- D. Statement Of Standards: Upon granting or denying an application, the council shall specify:
1. The provisions and standards used in evaluating the application;
 2. The reasons for approval or denial; and
 3. The actions, if any, the applicant could take to obtain a permit. (Ord. 383, 9-10-2002)
- E. Takings: Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by Idaho Code section 67-8003 consistent with requirements established thereby. (2015 Code)

10-5-10: **NOTICE TO APPLICANT; RIGHT TO APPEAL:** Within thirty (30) days after a decision by the city council has been rendered, the city clerk-treasurer shall provide the applicant with written notice of the action on the request. The applicant or any adversely affected person who appears in person or in writing before the city council may appeal the decision of the city council. (Ord. 383, 9-10-2002; amd. 2015 Code)

10-5-11: **AUTOMATIC TERMINATION FOR NONUSE:** In the event the use which is permitted pursuant to a conditional use permit as granted by the city council is not commenced within one year

from the date of issuance, the conditional use permit shall terminate automatically, without notice of any kind, and shall become null and void and without any force or effect one year from the date of issuance. In addition, in the event that the use which is permitted pursuant to the conditional use permit is abandoned for a period of one year, the conditional use permit shall be rendered null and void and without any force or effect, without notice, and in order to reestablish the use or a similar use, the grantee must again make application to the commission. Nonuse for a period of one year shall be deemed conclusive evidence of abandonment. (Ord. 383, 9-10-2002)

10-5-12: **VIOLATION; PENALTIES:** Any person who violates any term of a conditional use permit shall be guilty of a misdemeanor and may be punishable in accordance with the general misdemeanor statutes of the state of Idaho. In addition, any work done in violation of a conditional use permit shall be subject to abatement. (Ord. 383, 9-10-2002)