

## **SECTION 22 CONDITIONAL USE PERMITS**

### **Subdivision 1: PURPOSE.**

The purpose of this Section of the Zoning Ordinance is to provide the City with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare and public safety.

### **Subdivision 2: PROCEDURE.**

1. Application. Prior to the issuance of a permit for any building with a foundation, a site plan for the property must be approved by the City Council after review and recommendation by the Planning Commission. The City Clerk must receive completed applications, including twenty (20) copies 11"x17" and six (6) full size (approx. 22"x34") copies, if applicable, of the site plan/certificate of survey at least ten (10) business days prior to the Planning Commission's next scheduled meeting. The site plan/certificate of survey shall contain at a minimum the following:
  - A. Name, address and phone number of property owner;
  - B. A detailed written narrative describing the scope of the project and details of the application including the current and proposed use of the property;
  - C. Street address of the property;
  - D. Legal description of property (i.e. Lot/Block), including area of parcel in square footage or acreage;

- E. A current Certificate of Survey of the specified parcel, including monumentation within the tract and to a distance of 50 feet beyond the tract;
- F. North direction clearly shown;
- G. Sketch drawn to scale, not more than fifty (50) feet per inch (1"=50'), showing the parcel dimensions, location of all existing and proposed structures, building dimensions with square footage, area, and setbacks clearly marked;
- H. Curb cuts, driveways, access roads, road centerline and right-of-way, public ways, street names, ingress, egress, and sidewalks clearly marked;
- I. Sidewalks, landscaping features, screening and fences, if any, including distances from lot lines and location and dimensions of required green space, if applicable;
- J. Any proposed entrance or driveway showing the percent of grade and direction of flow from building to street or major artery;
- K. Any existing or proposed easements crossing the property;
- L. Parking spaces, if any, including size and location of handicap spaces, off-street loading areas and vehicular circulation;
- M. Accommodations for snow storage, if applicable;
- N. Location of waste facilities including measure used for enclosure and screening, if required (see Section 5, Subd. 3);

- O. Show all utility poles, services lines, sanitary sewer, storm manholes, water mains, hydrants, catch basins, CATV, gas, telephone and electric lines, aerial and buried, culverts, wells or septic systems existing or proposed for the property;
  - P. Lighting locations, types of fixtures and illumination plan, if applicable per Section 5, Subd. 6;
  - Q. Location and size of signs, if any, per Section 8;
  - R. Distances to surrounding buildings and surrounding land uses;
  - S. Proposed drainage and grading plan on parcel showing direction of flow from building, elevations and drainage facilities, including storm sewers and ponding, if applicable;
  - T. Sanitary sewer and water plan with estimated use per day of proposed project, if applicable;
  - U. Any additional written or graphic information deemed necessary by the Zoning Administrator, Planning Commission or City Council.
2. Application Deadline. The City Clerk must receive completed applications at least ten (10) business days prior to the Planning Commission's next scheduled meeting.
  3. Fees. A fee the City Council shall establish by resolution must accompany the application. An additional fee may be charged for atypical projects, which in the opinion of the City Clerk will require additional staff time and/or City Expenditures. The applicant shall pay all costs incurred by the City as regulated by Section 5, Subdivision 13 Costs of Enforcement.

4. Public Hearing & Notice. The City Clerk will set a date for the official public hearing.
  - A. Published Notice. The City will publish notice of the public hearing's time, place and purpose at least once in the City's official newspaper at least ten (10) days before the public hearing.
  - B. Mailed Notice to Property Owners. The City will also mail notice of the public hearing's time, place and purpose not less than ten (10) days and not more than thirty (30) days before the hearing date to all individual property owners within three hundred fifty (350) feet of the parcel included in the request. The City Clerk must attest and make a part of the proceeding's records a copy of the notice and list of the owners and addresses to which the notice was sent. A property owner's failure to receive notice or a defective notice shall not invalidate any proceedings.
5. Referral to Planning Commission. After the City Clerk has reviewed the application and the date has been set for the public hearing, the City Clerk shall refer the application to the Planning Commission, together with the City Clerk's review and recommendations regarding the application.
6. Planning Commission Review. The Planning Commission shall consider the request at their next regularly scheduled meeting and shall make a recommendation and report to the City Council.
  - A. Appearance by Applicant. The applicant or the applicant's representative(s) must appear before the Planning Commission in order to answer questions concerning the Conditional Use Permit application.

7. Recommendation by the Planning Commission. After reviewing the Conditional Use Permit application, the Planning Commission will make a written recommendation to the City Council within forty-five (45) days after the City Clerk receives the application as to whether the City Council should approve or deny the application. If approval is recommended, the Planning Commission may suggest conditions to be attached to the Conditional Use Permit.
8. City Council's Review. Upon receiving the Planning Commission's report and recommendation, the City Council shall hold a public hearing on the matter and the City Council will, by resolution, either grant or deny the Conditional Use Permit.
  - A. Appearance by Applicant. The applicant or the applicant's representative(s) must appear before the City Council in order to answer questions concerning the Conditional Use Permit application.
9. Vote Required. Approval of a Conditional Use Permit will require passage by a majority of the votes cast.
10. Conditions. If the City Council grants the Conditional Use Permit, it may impose conditions it, or the Planning Commission, considers necessary to protect the public health, safety and welfare.
11. Written Findings. The City Council will issue written findings stating the reasons for its decision and any conditions imposed, and will serve a copy of its decision on the applicant by U.S. mail, within ten (10) days after its decision. In any event, the City Council will make a decision on each Conditional Use Permit application within sixty (60) days after the City Clerk receives the application or may extend the time for consideration under state law.
12. Appeal. An applicant may appeal the City Council's decision to the Benton County District Court as provided by law.

13. Amendments. An application for an amendment to a Conditional Use Permit will be administered in the same manner as a Conditional Use Permit.
14. Resubmission. No application, which is substantially the same as an application of a denied Conditional Use Permit, shall be resubmitted for a period of one (1) year from the date of denial. The City Council may permit a new application if, in it's the opinion, new evidence or a change of circumstances warrant reconsideration.

### **Subdivision 3: CRITERIA FOR GRANTING CONDITIONAL USE PERMITS.**

In granting a Conditional Use Permit, the City Council will consider the advice and recommendation of the Planning Commission and the effect of the proposed use upon the health, safety, morals, and general welfare of occupants of surrounding land, including land values. Among other things, the City Council must make the following findings when applicable.

1. Not a Burden on Public Facilities. The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
2. Compatible with Existing and Planned Adjacent Uses. That the establishment of the Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property for existing and planned uses in the area.
3. No Adverse Affect on Adjacent Properties. The structure and site will not have an appearance, traffic, noise odors, fumes, dust, vibration, light or emission levels or other features that will have an adverse effect upon adjacent properties for purposes already in use or permitted.

4. Related to the Needs of the City. The use is reasonably related to the overall needs of the City and to existing land uses.
5. Consistent with the Comprehensive Plan. The proposed use is in compliance with the Land Use Plan and other portion of the Comprehensive Plan adopted by the City.
6. Not a Traffic Hazard. The use will not cause a traffic hazard or congestion.
7. Adequate Parking and Loading. That maximum measures have been or will be taken to provide maximum off-street parking and loading space to serve the proposed use.
8. Not detrimental to Health, Safety and Welfare. The proposed use will not be detrimental to the public health, safety, comfort and general welfare of the City.
9. Floodplain. For property located in Floodplain districts, the criteria set out in the Floodplain Ordinance will be met.

#### **Subdivision 4: ADDITIONAL CONDITIONS.**

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may recommend the imposition of and the City Council may impose conditions considered necessary to protect the best interest of the surrounding area or the City as a whole, in addition to the standards and requirements expressly specified by this Ordinance. These conditions may include, but are not limited to the following:

1. Increasing the required lot size or yard dimensions.
2. Limiting the height, size, number or location of buildings.
3. Controlling the location and number of vehicle access points.

4. Increasing the street width.
5. Increasing the number of required off-street parking spaces.
6. Limiting the number, size, location or lighting of signs.
7. Requiring diking, berming, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
8. Designating sites for open space.
9. Designating operating hours and noise levels.
10. A time limit on the use.
11. Any other condition the Planning Commission or City Council deems necessary to protect the public interest.
12. Additional Conditions in accord with the Floodplain Ordinance.

**Subdivision 5: CHANGES IN CONDITIONAL USES.**

Any change involving structural alteration, enlargement, intensification of use, or similar change not specifically permitted by the Conditional Use Permit issued shall require an amended Conditional Use Permit and all procedures shall apply as if a new permit were being issued. The Zoning Administrator will maintain a record of all Conditional Use Permits issued including information on the use, location, and conditions imposed by the City Council and time limits, review dates, and such other information as may be appropriate.

**Subdivision 6: RECORDING CONDITIONAL USE PERMITS.**

A certified copy of any Conditional Use Permit shall be filed with the Benton County Recorder. The Conditional Use



Permits shall include the legal description of the property involved.

**Subdivision 7: REVOCATION.**

In the event that the applicant violates any of the conditions set forth in this permit, the City Council shall have the authority to revoke a Conditional Use Permit.

**Subdivision 8: TIME LIMITATION.**

A conditional use permit may include an expiration date and the property owner will be responsible to submit the application for renewal of the permit. The City Council will review and approve all renewal applications, which must be submitted at least sixty (60) days before the expiration date. The criteria for renewal will be the same as for a new permit. The owner of the land will not be required to pay a fee for said review.

**Subdivision 9: LAPSE/EXPIRATION.**

If within one (1) year after granting a Conditional Use Permit the use permitted has not been started, then the permit will become null and void unless the City Council has approved a petition for an extension. Conditional Use Permits expire if the authorized use ceases for any reason for more than six (6) months. Conditional Use Permits expire if the use is abandoned. A use is considered abandoned if the use is replaced by another use or discontinued for more than six (6) months.

**Subdivision 10: COMPLIANCE.**

1. Revocation. The City Council may revoke a conditional use permit if it determines that the permit's terms and conditions are not being complied with.
2. Procedure. The Building Inspector, Zoning Administrator, any Council member or the Mayor may

bring before the City Council notice of a potential violation involving the terms or conditions of a Conditional Use Permit which has been issued in the City. In such event the Building Inspector or Zoning Administrator shall investigate the violation and

report back to the Council. If the Council determines that proceedings to consider revocation of the permit are warranted, the Council shall provide 5 days written notice to the owner of the property, as shown on the property tax records for which the Conditional Use Permit has been issued, of the time and place at which the Council will consider the revocation. The property owner shall have an opportunity to be heard after which time the Council may take all appropriate actions including the revocation and termination of the Conditional Use Permit.

3. Costs of Enforcement. It shall be a term of any Conditional Use Permit issued by the City, whether or not specifically stated, that the property owner(s) shall pay all fees associated with enforcement of the terms of the Conditional Use Permit. A fee the City Council shall establish by resolution must accompany the application. An additional fee may be charged for atypical projects, which in the opinion of the City Administrator/Clerk will require additional staff time and/or City Expenditures. The applicant shall pay all costs incurred by the City, including, but not limited to, administrative staff time, engineering, legal, planning, and inspection expenses, in connection with the application, including approval and acceptance of the application and review of site plans and documents, as well as any other required agreements for the application.

Sections 22 Conditional Use Permit, Subd 2 Procedure was amended by Ordinance Number 399 adopted August 9, 2011 and published May 22, 2012.

Section 22 Conditional Use Permit, Subdivision 2 – Procedure, #3 Fees, and Subdivision 10 Compliance - #3 Costs of Enforcement, was amended by Ordinance Number 414, adopted November 5, 2013, and published November 12, 2013.