

# Chapter 10-5-37

## CONDITIONAL USES AND ZONES

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### **10-5-37 A: PURPOSE OF CONDITIONAL USE PROVISIONS:**

An application for a conditional use permit may be granted by the Planning Commission, subject to the provisions of this Code. The purpose of a Conditional Use permit is to allow the proper integration into the City of certain uses which may have a detrimental effect within the City. Certain uses which may be harmonious under special conditions and in specific locations within a zone, but may be improper under general conditions and in other locations, are classed as conditional uses within the various zones and require conditional use permits for approval as authorized by the planning commission.

### **10-5-37 B: PERMIT REQUIRED:**

A conditional use permit shall be required for all uses listed as conditional uses in the zoning regulations or elsewhere in this title. A conditional use permit may be revoked upon failure of the original applicant or any successor, owner, or occupant to comply with conditions precedent to the original approval of the permit.

### **10-5-37 C: APPLICATION:**

1. A conditional use permit application shall be made to the planning department as provided in this title. The completed application shall be submitted to the planning commission at one of their regularly scheduled meetings. The planning commission shall review the application with the requirements of this title and take final action.
2. Applications for a conditional use permit shall be accompanied by maps, drawings, statements, reports, studies or other documents, as required by the planning commission and planning staff.

### **10-5-37 D: FEE:**

The application for any conditional use permit shall be accompanied by an applicable fee, and applicants shall pay the cost to post and mail public hearing notices.

### **10-5-37 E: APPROVAL PROCESS:**

The approval process for a Conditional Use permit shall be as follows:

1. Conditional Use Permit for a Use in a new or expanded structure or site or change in primary use of the structure: Upon receipt of a completed application and subsequent review for application completeness by the Planning Department, the Planning Department shall place the Conditional Use application and related Site Plan application on the next available Planning Commission agenda for a public hearing.
  - a. The Planning Commission shall review each application ~~and make a recommendation to the City Council~~ to approve, approve with conditions, or deny the application, or the Planning Commission may defer action if an applicant fails to appear at the public hearing or meeting or there is insufficient application information provided.
  - b. The Planning Commission ~~City Council~~ is the Land Use Authority, and shall review each application at a public meeting and approve, approve with conditions, or deny the application, or may defer action if an applicant fails to appear at the public meeting or there is insufficient application information provided to determine whether City ordinances and regulations are met.
2. Conditional Use Permit for a Use in an Existing Structure or Site:
  - a. Upon receipt of a completed application and subsequent review for application completeness by the Planning Department, the Planning Director shall review the application for compliance with the standards in this Title.
  - b. If the application does not include external changes to the site, the Planning Director shall be the Land Use Authority and shall approve, approve with conditions, or deny the application, or may defer action if there is insufficient application information provided.
  - c. If the application includes external changes to the site, a site plan amendment shall be required, the Conditional Use Permit shall follow the same process as the related site plan, and the Land use authority for the site plan shall become the Land Use Authority for the Conditional Use Permit.

### **10-5-37 F: PUBLIC HEARING:**

No public hearing need be held, however, a public hearing may be held when the planning commission shall deem such a hearing to be necessary in the public interest to gather information on a specific application. The planning commission shall schedule and hold a hearing at the nearest available planning commission meeting date upon submission of a properly completed and filed application form. At all times, including at a public hearing, the applicant has the burden of proof, by a preponderance of the evidence, to convince the Planning Commission that the requirements of this Chapter have been satisfied with respect to the applicant's proposed Conditional Use.

## **10-5-36 G: STANDARDS FOR GRANTING A CONDITIONAL USE:**

1. The planning commission may permit a conditional use to be located within any zone in which the particular conditional use is permitted by the use regulations of this title. In authorizing any conditional use, the planning commission shall impose such requirements and conditions as are necessary for the protection of adjacent properties and the public welfare. The planning commission shall not authorize a conditional use permit unless the evidence establishes:

- a. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity;
- b. That the proposed use will stress quality development with emphasis toward adequate buffering, landscaping, proper parking and traffic circulation, use of appropriate gradation of building height away from single-family zones and density to create privacy and compatibility with surrounding uses, use of building materials which are in harmony with the area, to minimize the impact on schools, utilities and streets;
- c. That the applicant may be required to provide such reports and studies which will provide information relating to adequate utilities, traffic impacts, school impacts, soil and water target studies, engineering reports, financing availability, and any other information which may be needed in order to render a proper decision.
- d. That the proposed use will promote health and sanitation by controlling outdoor storage, disposing of waste properly, controlling dust, gases, dirt, odors, noxious matter, heat, glare, electromagnetic disturbances, radiation, or other types of air pollution.
- e. That the use will be compatible with the General Plan of the City of Cedar Hills and permitted zoning. The use will protect the quality of the underlying zone and all lighting, aesthetics, noise, signs, landscaping, general use, and design will comply with the standards of the zone.
- f. That the applicant has demonstrated that there is sufficient utility capacity and emergency vehicle access.

2. A proposed Conditional Use shall be considered as detrimental or injurious to the health, safety, or general welfare of persons or properties within the vicinity of the proposed Conditional Use if:

- a. The proposed Conditional Use will cause unreasonable risks to the safety of persons or properties because of vehicular traffic, parking, or large gatherings of people;
- b. The proposed Conditional Use will unreasonably interfere with the lawful use of properties within the vicinity of the proposed Conditional Use;
- c. The proposed Conditional Use will create an additional need for essential City or public services (e.g., utilities, law enforcement, fire prevention, etc.) which cannot be met without unreasonable efforts or expenditures of City or public resources;

d. The proposed Conditional Use will otherwise present an unreasonable detriment or injury to the health, safety, or general welfare of persons or properties in the vicinity of the proposed Conditional Use; or

e. The proposed Conditional Use will not be in harmony with the General Plan.

3. Conditions. In granting a Conditional Use permit, the Commission may impose such requirements and conditions which the Commission, based on the standards set forth, deems necessary for the protection of persons and properties in the vicinity of the proposed Conditional Use, as well as the preservation of the integrity of the General Plan. Said requirements and conditions may include (but are not limited to) location, construction, size, maintenance, operation, site planning, traffic control and parking, relocations, dedications, installation and upgrading of public services and roads, hours of operation and time limits for the proposed Conditional Use.

The Commission may require guarantees, bonds, or other assurances that such requirements and conditions are being met.

### **10-5-36 G H: APPEALS OF DECISIONS:**

Any person for which any application for approval of a conditional use permit has been filed or any person who may be affected by the proposed use shall have the right to appeal the decision of the Land Use authority to the appeal authority. An appeal must be presented in writing within thirty (30) days after the date of the final decision of the planning commission.

### **10-5-36 I: INSPECTION:**

Following the issuance of a conditional use permit, the planning office shall approve an application for a building permit upon compliance of construction plans meeting such conditions and requirements as established by the planning commission. Representatives of the code enforcement/planning department shall inspect the project to ensure that all required improvements meet the conditions of the conditional use permit and this title before a certificate of occupancy is issued by the building inspection division.

### **10-5-36 J: REVOCATION:**

1. Written Complaint: Upon receiving a written complaint alleging a violation or failure to comply with any condition prescribed in a conditional use permit, the planning department shall investigate the complaint. If the complaint has merit, and attempts to remedy the complaint fail, the planning department may place the complaint on the agenda of the regular meeting of the planning commission, provided, that the permittee shall have at least fourteen (14) days' notice of the meeting.
2. Hearing Procedure: Permittee shall be given written notice of the exact nature of the complaint and the date and time of the hearing before the planning commission. The hearing shall be held in accordance with customary administrative hearings procedures.
3. Action; Complaint Dismissal: The planning commission, after hearing the evidence presented regarding the complaint, may continue the hearing from time to time, modify or rescind any condition or requirement of the conditional use permit as it deems necessary, revoke the conditional use permit, or take no action and dismiss the complaint.

4. Notices: All notices required herein shall be provided by personal service or by certified mail.
5. Effective Date And Scope: This section shall apply to all conditional use permits issued after the effective date hereof, regardless of change in ownership or occupancy.
6. Revocation: A Conditional Use permit may be revoked if the Commission finds, by a preponderance of the evidence, that one or more of the following exist:
  - a. The Conditional Use permit was obtained in a fraudulent manner.
  - b. The use for which the Conditional Use permit was granted has now ceased for at least six (6) consecutive calendar months.
  - c. One or more of the conditions of the Conditional Use permit have not been substantially met.

#### **10-5-36 K: TIME LIMIT:**

1. A temporary conditional use permit may be issued by the planning commission for a period of six (6) months. This permit may be renewed by the planning staff for a total of three (3) successive six (6) month time periods, allowing a total of two (2) years for the temporary conditional use permit. Where hardship or unusual circumstances exist, the planning commission may extend the temporary permit for one additional year. These extensions shall be granted in two (2) separate six (6) month increments. A temporary conditional use permit shall not be issued for a use which is not incidental to or directly related to an intended permanent use on the property.

Mobile offices, homes or trailers which are used for business purposes shall only be allowed for a six (6) month time period as authorized by the planning commission. The planning commission may extend the time period for the temporary structure up to one additional year providing that plans for a permanent structure have received commission approval.

Temporary structures shall be removed from the property upon occupancy of the permanent structure. Premanufactured structures which meet all building code regulations and construction trailers shall be exempt from this regulation.

2. A temporary conditional use occupancy permit shall not be issued nor shall the building structure or other facility be occupied until all water, sewer, and electrical permits have been issued and all appropriate inspections performed.
3. Unless there is substantial action under a conditional use permit within a maximum period of two (2) years of its issuance, the conditional use permit shall expire. The planning commission may grant a yearly extension, when deemed in the public interest.

#### **10-5-36 L: REAPPLICATION AFTER DENIAL:**

Denial of an application for a conditional use permit regarding any parcel of property shall prohibit the filing of another application for a conditional use permit for the same parcel of property or any portion thereof, within one year of the date of the final denial of the previous application unless the planning commission finds that there has been a substantial change in the circumstances or sufficient new evidence as submitted by the applicant in writing since the denial of the previous application to merit consideration of a second application within the one year time period.

**10-5-36 M: CONTINUING EFFECT:**

A conditional use permit, once approved, affects real property regardless of change in ownership and all subsequent owners are subject to those conditions so long as that conditional use is being conducted on the property. The conditional use may be conducted either intermittently or continuously, provided, however, that if the conditional use becomes a legal nonconforming use due to a later amendment to this title, the provisions of chapter 10-1-8 of this title relating to nonconforming buildings and uses shall apply.

**10-5-36 N: REPORTING REQUIREMENTS:**

Before February 1 of every year, the owner or occupant of a property which has been approved for the following land use under a conditional use permit shall provide written evidence to the planning department that the property use complies with this title:

1200 - Group Quarters (e.g. assisted living, congregate care, supervised youth group home)