

# **Chapter 25**

## **CONDITIONAL USE PERMIT**

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### **10-25-1: DESCRIPTION AND PURPOSE:**

Certain types of uses require special consideration prior to their being permitted in a particular district. The reason for special consideration involves, among other things, the size of the area required for the full development of such uses, the nature of the traffic problems incidental to operation of the use, the effect such uses have on any adjoining land uses and on the growth and development of the community as a whole.

All uses permitted conditionally are declared to typically possess such unique and special characteristics as to make impractical their being included as outright uses in any of the various districts defined within this title. The authority for the location and operation thereof shall be subject to review and the issuance of a conditional use permit (CUP). The purpose of review shall be to determine that the characteristics of any such use shall not be unreasonable or incompatible with the type of uses permitted in surrounding areas, and for stipulating such conditions as may be reasonable so that the basic purposes of the chapter shall be served. Nothing construed herein shall be deemed to require the commission to grant a CUP. (Ord. 2140; amd. Ord. 2929)

### **10-25-2: USE PERMIT PREREQUISITE TO BUILDING:**

No building permit shall be issued when a CUP is required by the terms of this chapter unless a permit has been granted by the planning and zoning commission or council and then only in accordance with the terms and conditions of the CUP. Conditional use permits may be made temporary or permanent for any use or purpose for which such permits are required or permitted by provisions of this title. (Ord. 2140; amd. Ord. 3113)

### **10-25-3: APPLICATIONS:**

Application(s) for a CUP or to otherwise modify a previously approved CUP shall be made with the office of planning and zoning and community development on a form prescribed by the planning director. The application shall be accompanied by such information as may be required by the director to enable the pertinent criteria to be applied to the proposal together with a filing fee that is and shall be established by council resolution. (Ord. 2140; amd. Ord. 3113)

### **10-25-4: GENERAL USE PERMIT CRITERIA:**

- A. A CUP may be granted only if the proposal conforms to all the following general use permit criteria, provisions of the zoning ordinance unless lawfully waived or modified by authorization of the commission, and the Nampa comprehensive plan. The general use permit criteria are as follows: (Ord. 4159, 1-20-2015)
1. The location, size, and design and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density, to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.
  2. The location, design and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.
  3. The proposed development will enhance the successful operation of the surrounding area in its basic community functions or will provide an essential service to the community or region. (Ord. 2140; amd. Ord. 3113; Ord. 4159, 1-20-2015)
- B. A conditional use permit may be issued to authorize emplacement of a permanent sign in accordance with satisfaction of the following standards: (Ord. 4159, 1-20-2015)
1. The proposed sign is one of three (3) types: freestanding pole or monument (not billboard), wall or projecting style; (Ord. 4189, 7-20-2015)
  2. The proposed sign will be compatible with the character (size, architectural styling, height and placement) of other signs in the vicinity of the sign proposed;
  3. The proposed sign will be compatible with the purpose, intent and character of either the zoning district within which the sign is to be emplaced, or, with the character of buildings and/or uses in the area wherein the sign is proposed; (Ord. 4159, 1-20-2015)
  4. The proposed sign may be an electronic message center or contain an electronic message center component; provided it complies with standards applicable to such signs as iterated in subsection 10-23-18F of this title; and
  5. The proposed sign may contain exposed neon lighting, or, neon as a primary lighting source, save within any residential zone (including RP, unless the use upon an RP zoned property is

nonresidential in nature in which case the aforementioned neon lighting types may be allowed). (Ord. 4189, 7-20-2015)

### **10-25-5: INVESTIGATION:**

The commission shall cause to be made an investigation of facts necessary to provide information to ensure a decision consistent with the intent and criteria of this chapter. (Ord. 2140; amd. Ord. 2908)

### **10-25-6: CONDITIONAL USE PUBLIC HEARINGS:**

A. Procedures Followed: Public hearing and legal notification procedures required by chapter 2 of this title shall be followed. The purpose of a conditional use hearing shall be to determine whether the proposal conforms to criteria set forth in section 10-25-4 of this chapter. The commission may grant or deny the application for the proposed CUP or require such changes or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The determination of the commission shall become final fifteen (15) calendar days after the date of decision unless appealed to the council in accordance with the provisions of this chapter. Exception: When a rezone (or annexation and initial zoning designation) application is combined with a conditional use permit application, the commission shall make recommendations on both applications, rather than recommending on the rezone/initial zoning designation and making a (conclusive) decision on the conditional use permit. (Ord. 4282, 9-19-2016)

#### **B. Mobile Home Parks:**

1. Whenever application for a mobile home park is considered, there shall be two (2) public hearings. The first public hearing shall be limited to consideration of permit criteria relative to land use. Ten (10) calendar days prior to the hearing a concept plan shall be submitted to the office of the planning director. The plan shall be drawn at a scale of not less than one-inch equals one hundred feet (1" = 100') and show the following:
  - a. Existing conditions of the proposed site in terms of land use, zoning and circulation systems.
  - b. Proposed location and number of mobile home spaces.
  - c. Proposed locations of accessways.

Following the first public hearing if land use approval is given, the developer may proceed with preparation of the preliminary site plan of the park which is to be prepared in accordance with chapter 28 of this title.

Following receipt of the preliminary site plan, within thirty (30) days it shall be reviewed by the commission to determine if it is consistent with the purpose and intent of chapter 28 of this title.

Upon approval or conditional approval of the preliminary site plan the developer may proceed with preparation of the final site plan.

Following receipt of the final site plan, a second public hearing shall be scheduled before the commission for the purpose of review of the final site plan. Action by the commission shall be to approve, disapprove or approve with conditions.

2. Individual approval at one of the two (2) required public hearings does not constitute final approval.
3. Final approval for mobile home parks CUPs shall require approval at both public hearings.
4. The CUP shall be issued with all conditions listed thereon, following the second required public hearing at which approval has been given.
5. Appeal to action by the commission at either public hearing may be made to the council. (Ord. 2140; amd. Ord. 2929)

### **10-25-7: ACTION BY COMMISSION:**

The action by the commission upon the application for a CUP shall be by the majority of the members of the commission present at the meeting where the application is considered. If a CUP is denied, the minutes of the commission shall clearly state the reasons for denial. In order to grant a CUP, the findings of the commission shall be that the establishment, maintenance and operation of such use or structure shall expectedly satisfy the conclusions of law affiliated with CUPs as listed in section 10-25-4 of this chapter. Any CUP shall comply with approval conditions imposed by the commission or by the council, whichever body makes the final decision on the CUP. (When a rezone [or annexation and initial zoning designation] application is combined with a conditional use permit application, the commission shall make recommendations on both applications, rather than recommending on the rezone/initial zoning designation and making a [conclusive] decision on the conditional use permit.) (Ord. 4282, 9-19-2016)

### **10-25-8: CONDITIONS:**

- A. The commission or council shall condition its approval of a CUP as it deems necessary to secure the purpose of this chapter and may require the guarantees and evidence that such conditions will be complied with. Such conditions may include:
  1. Regulations of uses;
  2. Special yards, spaces;
  3. Fences and walls;
  4. Surfacing or parking areas to city specifications;
  5. Street dedications and improvements (or bonds);
  6. Regulation of points of vehicular ingress and egress;
  7. Regulation of signage;
  8. Landscaping and maintenance;
  9. Maintenance of the grounds;
  10. Regulation of noise, vibration, odors or other similar nuisances;

11. Regulation of time for certain activities;
12. Duration of use;
13. Regulation of building design and appearance;
14. Master site signage in the case of multistructure commercial or industrial park subdivisions or business/shopping center or plazas;
15. Such other conditions as will make possible the development of the city in an orderly and efficient manner in conformity with the intent and purposes set forth in this chapter. (Ord. 2140; amd. Ord. 3113; Ord. 4282, 9-19-2016)

### **10-25-9: EFFECTIVE DATE:**

No CUP shall become effective until after an elapsed period of fifteen (15) calendar days from the date of the action of the commission or council. (Ord. 2140; amd. Ord. 3113; Ord. 4282, 9-19-2016)

### **10-25-10: APPEALS AND FEE:**

During the fifteen (15) day period from the date of the action by the commission, written appeals from action of the commission may be taken to the council by the applicant or other interested party. The use permit shall not become effective until the determination of any appeal pending against it. Appeals accompanied by the appropriate fee as established by resolution of the City Council shall be filed with the Planning and Zoning Division of the Office of Public Works. Said office shall transmit a notice of appeal to the City Clerk. (Ord. 2140; amd. Ord. 2929)

### **10-25-11: ADHERENCE TO APPROVED PLAN:**

A CUP shall be subject to the plans (e.g., site plan, elevation, landscape plan, etc.) and other conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the permit shall terminate six (6) months from the effective date of its approval, unless actual construction or alteration, or actual commencement of the authorized activities has commenced. However, such period of time may be extended by the commission, upon application filed at any time before said period has expired, but in no event shall the order be extended for more than twelve (12) months from the date the original CUP was first granted. (Ord. 2140; amd. Ord. 3113)

### **10-25-12: REVOCATION:**

In the event of a violation of any of the provisions of zoning regulations, general use permit criteria, or in the event of a failure to comply with any prescribed condition of approval, the commission may, after notice and hearing, revoke any CUP. The determination of the commission shall become final fifteen (15) calendar days after the date of the decision, unless appealed to the Council. (Ord. 2140; amd. Ord. 3113)

### **10-25-13: ACTION ON APPEALS BY COUNCIL:**

The Council, at the next duly held meeting, shall set a date and time for a public hearing on any appeal of the Planning and Zoning Commission's grant of a CUP and notify affected parties and property owners within three hundred feet (300') of the property made the subject of the appeal. The

commission or planning staff shall submit to the Council a report setting forth reasons for the commission's action. Alternatively, members of the commission shall be present at the Council's public hearing to represent the commission's position on the matter. The Council, after said public hearing, shall render its decision within fifteen (15) calendar days after the filing of such appeal. The Council may by resolution affirm, reserve or modify any decision, determination or requirements of the commission, but before granting any item which was denied by the commission or before changing any of the conditions imposed by the conditions in the use permit, the Council shall make written findings of facts setting forth wherein the commission findings were in error. (Ord. 4282, 9-19-2016)

### **10-25-14: HEARING PROCEDURES FOR CUPs AFFILIATED WITH APPLICATION FOR PUDs:**

Prior to granting a CUP or PUD permit, at least one public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) calendar days prior to the hearing, notice of the time and place, and summary of the proposal shall be published in the City's official newspaper. Notice shall be posted on the premises not less than one week prior to the hearing. Notice shall also be provided 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 any additional area that may be substantially impacted by the proposed conditional use or PUD as determined by the commission. When notice is required to be given to two hundred (200) or more property owners, or purchasers of record, an alternative form of procedure of official notice shall be published in the official newspaper two (2) consecutive days. (Ord. 2140; amd. Ord. 2929)

### **10-25-15: CONDITIONAL USE EXPANSIONS AND MODIFICATIONS:**

Holders of valid conditional use permits may apply to expand or modify the nature or conditions of their CUPs.

- A. Expansions to CUP Authorized Uses And/or Structures: Expansions to uses and/or structures that were originally approved via a conditional use permit may be allowed in accordance with the following provisions:
  - 1. Scope Of Increase To Facility Or Use Less Than Ten Percent: Proposed physical expansions that do not exceed ten percent (10%) of the square footage (whether related to 1 or more structure's size(s) and/or a use's area coverage on a property) of an approved conditional use shall be allowed without formal Planning Commission approval via hearing provided that they: a) conform to all zoning regulations of this title, b) any needed permits (e.g., building, right-of-way, variances, etc.) for such change are obtained from the City as appropriate, c) will not adversely impact the surrounding neighbors, and d) will not increase residential dwelling unit density.
  - 2. Scope Of Increase To Facility Or Use Greater Than Ten Percent: Proposed physical expansions to uses and/or structures exceeding ten percent (10%) of the square footage (whether related to 1 or more structure's size(s) and/or a use's area coverage/footprint on a property) of a use previously approved via a conditional use permit shall require commission approval via the public hearing process before any such expansion may occur.
- B. Modifications to Conditions of CUP Authorized Uses And/or Structures: The commission may revoke or modify CUP conditions if acting upon a request as applied for by a true representative of the CUP holder. Modifications to approval conditions imposed by the City Council shall only be

modified/changed by order of the Council.

Modifications to approval conditions may be allowed provided that: 1) the modification will not result in unjustifiable negative impacts on surrounding properties, 2) the modification will comply with all zoning regulations, and 3) the modification will not unjustifiably burden adjacent roadways.

Changes that meet any of the following criteria shall require commission approval via the public hearing process (or Council approval if they approved the original CUP request):

1. A modification to a specifically approved or required open space area or amount (excepting those made a part of a subdivision plat or PUD); and/or,
2. A change in elevation(s) of one or more structures where the elevation was once specifically required to be in a certain form or was proposed and accepted to be in a particular style or of a specified height; and/or,
3. A change in the site layout of a project including relocation of pads, streets, structures, or parking areas when such were specifically approved or required as part of an earlier CUP approval; and/or,
4. A request to delete one or more conditions of approval originally imposed on a CUP project; and/or,
5. A request to change the nature of the use(s) the original CUP sanctioned provided that the new use(s) proposed are at least allowed via a new CUP issuance. (Ord. 4428, 4-15-2019)