

§153.070 CONDITIONAL USE PERMITS

1. Purpose. There are certain uses, which, due to the nature of impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified “Conditional Uses.” Conditional uses may be permitted in certain districts, subject to the granting of a Conditional Use Permit. It is the purpose of this section to establish the terms, criteria, and procedures by which Conditional Uses may be permitted, enlarged, or altered. It is a further purpose of this section to supplement the other sections of Code and the Comprehensive Plan. A use is considered conditional if it may require special consideration because of unusual characteristics of the area in which it is to be located. It is important that conditional uses be properly located with respect to the objectives of this Ordinance and the effect to the surrounding properties. A use designated as conditional use may be permitted, enlarged or otherwise altered upon administrative authorization or authorization by the Planning Commission in accordance with the standards and procedures set forth in this section. Nothing in this section guarantees that a Conditional Use permit will be issued.
2. General Provisions.
 - A. Application for approval of a Conditional Use may be processed and authorized under an administrative or a Planning Commission decision making procedure as provided by §153.004, Application Procedures, as well as the provisions of this section.
 - B. A Conditional Use permit shall be issued only for the specific use or uses outlined in the application, together with the limitations or conditions as determined by the approval authority.
 - C. The findings and conclusions made by the approval authority and the conditions, modifications, or restrictions of approval, if any, shall specifically address the relationship between the proposal and the approval criteria listed in this section, in the underlying zoning district, and any applicable overlay zones.
 - D. An application shall be approved if it satisfies the applicable criteria or can be made to meet the criteria through imposition of reasonable conditions of approval. If findings or data or reasonable conditions cannot bring an application into compliance with the criteria, then the application shall be denied.
3. Approval Authority
 - A. Administrative Authority. An administrative review is required for those uses listed in §153.004. Changes in use, expansion or contraction of site area, or alteration of structures or uses classified as conditional are considered modifications, and can be handled administratively.

If an exterior structural addition, extension or relocation of, or to, an existing structure conditionally approved, or the proposed accessory uses and buildings customarily appurtenant to a permitted or approved conditional use, does not equal or exceed 50% of the market value of the structure before the improvement or repair is started, Conditional Use approval is not required
 - B. Planning Commission Authority. The Planning Commission shall have the authority to approve, approve with conditions, disapprove, or revoke Conditional Use Permits subject

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to the provisions of this section.

- C. Changes in use, expansion or contraction of site area, or alteration of structures or uses classified as conditional, except for accessory uses and buildings customarily appurtenant to a conditional use described in “3”, and existing prior to the effective date of this Ordinance shall conform to all regulations pertaining to conditional uses and shall require a new Conditional Use Permit.

- D. In permitting a conditional use or the modification of an existing conditional use, the City may impose, in addition to those standards and requirements expressly specified by this section, any additional conditions which the City considers necessary to protect the best interests of the surrounding property or the City as a whole. These conditions may include, but are not limited to, the following:
 - 1. Increasing the required lot size or yard dimensions, open spaces or buffer areas;
 - 2. Limiting the height of buildings;
 - 3. Controlling the location and number of vehicle access points;
 - 4. Increasing the street width;
 - 5. Increasing the number of off-street parking and loading spaces required, along with the type of surfacing and drainage of parking areas;
 - 6. Limiting the number, size and location of signs;
 - 7. Requiring screening, fencing, and/or landscaping (and maintenance thereof) to protect adjacent property; and
 - 8. Requiring means of pedestrian/bicycle access pathways to serve the property;
 - 9. Limiting the location, coverage or height of buildings because of obstructions to view and reduction of light and air to adjacent property;
 - 10. Limiting or prohibiting openings in sides of buildings or structures;
 - 11. Enclosure of storage areas and limitation of outside display and/or storage of merchandise;
 - 12. Regulation of noise, vibration, odors, etc.;
 - 13. Regulation of time for certain activities;
 - 14. Establishing a time period within which the proposed use shall be developed;

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15. The requirement of a bond for removal of such use within a specified period of time;
 16. Requirements under which any future enlargement or alteration of the use shall be reviewed by the Planning Commission and new conditions imposed;
 17. And such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this ordinance and the City Comprehensive Plan.
4. Application. A property owner or their authorized agent may initiate a request for a conditional use permit or the modification of an existing conditional use by filing an application with the City in accordance with the provisions of §153.004.

The application shall be accompanied by a site plan (as described in §153.073), drawn to scale, showing the dimensions and arrangement of the proposed development. The Planning Commission may require other drawings or information necessary to understand the proposed use and its relationship to surrounding properties.

5. Public Hearings. Before a conditional use is permitted, the proposed conditional use shall be considered by the Planning Commission at a public hearing, or administratively. Notice of said hearing or administrative action shall be provided as per §153.004 of this Ordinance.
6. Action by the Commission. The Planning Commission may approve, approve with conditions, or disapprove the application for a Conditional Use permit. The Planning Commission may approve the application for a temporary conditional use. Any future enlargement or alteration of a conditional use shall require a new conditional use permit application to be in accordance with the regulations and standards of this Ordinance.
- A. In order to grant any conditional use, the Planning Commission must find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be in violation to the appropriate regulations and standards contained in this Ordinance.
 - B. The Planning Commission shall render a decision within 120 days after the application has been deemed complete. The decision of the Planning Commission shall be final unless appealed to the City Council.
 - C. A Conditional Use permit shall become void one year after approval, unless a different time frame is specified as a condition of approval, or, within that time period the required building construction, alteration or enlargement has commenced and been diligently pursued or, if no such construction, alteration or enlargement is required, the permitted activity is being regularly conducted on the premises. The Planning Commission may extend the permit for an additional period of one year. A conditional use permit shall become void if the use is discontinued for a period of one year.
 - D. Any conditional use authorized according to this section (excepting "F" below) shall be subject to the following criteria, where applicable, and the Planning Commission must find,

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based upon evidence in the record developed before the Planning Commission, both factual and supportive, provided by the applicant, that:

- 1) If the conditional use is listed as a use permitted outright in any other zone district in the City, the conditional use is appropriate with respect to the property in the application taking into consideration such things as the suitability of lands in other zone districts, market or other economic factors, the transportation system, infrastructure available to serve the use, and the impacts of the conditional use relative to the same use in a different zone district.
- 2) The use is consistent with the applicable goals and policies of the City Comprehensive Plan.
- 3) The parcel is adequate for the proposed use. Considering its size, shape, location, topography, existence of proposed improvements and natural features, the parcel will accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by the site plan.
- 4) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.
- 5) Streets and highways, water and sewer service lines, must be adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
- 6) There are no outstanding code violations or conditional requirements on the subject property.

E. Burden of Proof.

- 1) The specific findings made by the Planning Commission in granting a conditional use permit must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the conditional use. If no evidence is produced concerning any of the findings listed in subsection D above, the application must be denied based upon improper or inadequate findings. All evidence must be cited in the findings for approval of any conditional use permit application.
- 2) Where the planning commission is of the opinion that said conditional use permit shall be granted, it shall, in open public meeting, by a majority of its members in attendance, enter a Planning Commission order granting the conditional use permit, which order shall include specific findings of fact, conclusions and supportive evidence and any conditions of approval. Upon the filing of said order with the city recorder, the order shall be in full force and effect. An order denying a conditional use permit shall be entered and filed in a like manner, with the necessary findings of fact, where the Planning Commission, based on the standards specified herein, determines that the conditional use permit should not be granted.

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F. Conditional Uses and Criteria for Certain Transportation Facilities and Improvements

- 1) Construction, reconstruction, or widening of highways, roads, bridges or other transportation facilities that are (1) not designated in the adopted City of Tillamook Transportation System Plan (“TSP”), or (2) not designed and constructed as part of an approved subdivision or partition, are allowed in all Zones subject to a Conditional Use Permit under Transportation Facilities, and satisfaction of all of the following criteria:
 - a. The project and its design are consistent with City of Tillamook adopted TSP, or, if the city has not adopted a TSP, consistent with the State Transportation Planning Rule, OAR 660-012 (“the TPR”).
 - b. The project design is compatible with abutting land uses in regard to noise generation and public safety and is consistent with the applicable zoning and development standards and criteria for the abutting properties.
 - c. The project design minimizes environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities, and a site with fewer environmental impacts is not reasonably available. The applicant shall document all efforts to obtain a site with fewer environmental impacts, and the reasons alternative sites were not chosen.
 - d. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.
 - e. The project includes provisions for bicycle and pedestrian access and circulation consistent with the comprehensive plan, the requirements of this ordinance, and the TSP or TPR.
- 2) State transportation system facility or improvement projects. The State Department of Transportation (“ODOT”) shall provide a narrative statement with the application demonstrating compliance with all of the criteria and standards in 1.b-e. Where applicable, an Environmental Impact Statement or Environmental Assessment may be used to address one or more of these criteria.
- 3) Proposal inconsistent with TSP/TPR. If the City determines that the proposed use or activity or its design is inconsistent with the TSP or TPR, then the applicant shall apply for and obtain a plan and/or zoning amendment prior to or in conjunction with conditional use permit approval. The applicant shall choose one of the following options:
 - a. If the City’s determination of inconsistency is made prior to a final decision on the conditional use permit application, the applicant shall withdraw the conditional use permit application; or
 - b. If the City’s determination of inconsistency is made prior to a final decision on the conditional use permit application, the applicant shall withdraw the conditional permit application, apply for a plan/zone amendment, and re-apply for a conditional use permit if and when the amendment is approved; or
 - c. If the City’s determination of inconsistency is made prior to a final decision on the conditional use permit application, the applicant shall submit a plan/zoning

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amendment application for joint review and decision with the conditional use permit application, along with a written waiver of the ORS 227.178 120-day period within which to complete all local reviews and appeals once the application is deemed complete; or

- d. If the City's determination of inconsistency is part of a final decision on the conditional use permit application, the applicant, after one (1) year, may submit a new conditional use permit application without prior inconsistencies, along with a plan/zoning amendment application for joint review and decision.

F. Expiration. If no improvements are made or actions taken, a Conditional Use Permit for Transportation System Facilities and Improvements shall be null and void after five (5) years.

7. Appeal. The applicant or any interested person of standing may appeal a decision of the Planning Commission to the City Council in the form prescribed by the City. The appeal procedures shall be set forth in §153.076.
8. Effect. No building or other permit shall be issued in any case where a Conditional Use Permit is required by the terms of this Ordinance until fourteen (14) days after the approval of the conditional use by the Planning Commission. An appeal from an action of the Planning Commission shall automatically stay the issuance of a building or other permit until such appeal has been completed.
9. Violation of Condition. The Planning Commission, on its own motion, may revoke as being void any Conditional Use Permit for non-compliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in §153.077. Revoking the Conditional Use Permit shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a Conditional Use Permit.

The Planning Commission, on its own motion, may also revoke any other conditional use permit granted, if the permitted use has been discontinued for a period of one year, and if the property owner, after notification of such proposed action, does not certify his or her intent to resume the use during the following year.

10. Limitation on New Applications. In a case where an application is denied by the Planning Commission, or denied by the City Council on appeal from the Planning Commission, unless specifically stated to be without prejudice, it shall not be eligible for resubmittal for the period of one year from the date of said denial, unless, in the opinion of the Planning Commission, new evidence is submitted or conditions have changed to an extent that further consideration is warranted.
11. Notification of Action. The City Planner shall notify the applicant and all interested parties submitting written or oral testimony into the record for a conditional use in writing of the Planning Commission's action within five (5) days after the entry of the final order. A copy of said order shall be provided to the applicant.
12. Applicability. The approved Conditional Use Permit shall apply to the specific use applied for only, and shall transfer with the ownership of the property. A conditional use permit granted

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pursuant to the provisions of this chapter shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, except as otherwise provided in this section.