

Sec. 4.11. - Conditional use permit criteria and procedures.

4.11.01. Purpose: The purpose of the conditional use permit process is to identify those land uses which may be appropriate within a zoning district but, due to either their location, function, or operation, could have a potentially harmful impact on adjacent properties or the surrounding area; and to provide for a procedure whereby such uses may be permitted by further restricting or conditioning them so as to mitigate or eliminate such adverse impacts.

4.11.02. Authorization of planning and zoning commission: The planning and zoning commission shall make a report to the city council which shall recommend approval or denial of a conditional use permit for a use in any district in which such use is authorized under the comprehensive land use regulation matrix associated with this ordinance, following proper application, and after notice to all landowners within 500 feet of the proposed conditional use, and public hearings, in accordance with the procedures and criteria herein established.

4.11.03. Issuance limitations and forms required: No certificate of occupancy or building permit for a purpose authorized only as a conditional use within a zoning district shall be issued unless the applicant obtains a conditional use permit from the city council. The application for a conditional use permit shall be submitted on a form provided by the director of administration [city manager] and accompanied by a site plan in a form acceptable to the director of administration [city manager]. The planning and zoning commission may require additional information or plans as necessary and appropriate for review.

4.11.04. Procedures: The procedures associated with the review and approval or denial of a conditional use permit shall be the same as those associated with a rezoning, as described in section 2.04 of this ordinance.

4.11.05. Criteria for approval: The planning and zoning commission shall recommend denial of a conditional use if it finds that the proposed use:

- A. Does not conform with applicable regulations and standards established by this ordinance;
- B. Is not compatible with existing or permitted uses on abutting sites, in terms of use, building height, bulk and scale, setbacks and open spaces, landscaping, drainage, or access and circulation features;
- C. Potentially creates greater unfavorable effects or impacts on other existing or permitted uses on abutting sites than those which reasonably may result from the use of the site by a use permitted by right;
- D. Adversely affects the safety of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area;
- E. Fails to reasonably protect persons and property from erosion, flood or water damage, fire, noise, glare, and similar hazards or impacts;
- F. Adversely affects traffic control or adjacent properties by inappropriate location, lighting, or types of signs;
- G. Fails to provide adequate off-street parking and loading facilities;
- H. Fails to conform with the objectives and the purpose of the zoning district in which the development is located;
- I. Will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, for reasons specifically articulated by the commission; or
- J. The premises or structure(s) are not suitable for the proposed use.

4.11.06. Site plans: Site plans may be required by the planning and zoning commission as a part of the conditional use permit review process. Conditional use site plans considered by the planning and zoning commission shall be approved only after the planning and zoning commission finds that the

proposed development, if completed as proposed, will comply with all applicable provisions of this ordinance and all conditions deemed necessary.

4.11.07. Authorization to establish conditions: The planning and zoning commission may recommend, and the city council may establish such conditions of approval as are necessary to assure that the proposed land use meets the criteria set forth in subsection 2.05.04 [4.11.05], which may include without limitation requirements for special yards, lot sizes, open spaces, buffers, fences, walls or screening; requirements for installation and maintenance of landscaping or erosion control measures; requirements for street improvements, regulation of vehicular ingress and egress, and traffic circulation; regulation of signs; regulation of hours or other characteristics of operation; establishment of development schedules or time limits for performance or completion; and such other reasonable conditions as the city council may deem necessary to insure compatibility with surrounding uses and to preserve the public health, safety, and welfare.

4.11.08. Authority to establish conditions: In granting a conditional use permit, the city council may impose conditions which shall be complied with by the owner or grantee before a certificate of occupancy may be issued.

4.11.09. Agreement to abide by conditions prior to issuance: No conditional use permit shall be granted unless the applicant, owner or grantee of the conditional use permit shall accept and agree to be bound by and comply with the written requirements of the conditional use permit, as attached to the site plan drawing (or drawings) and approved by the city council. The code enforcement officer shall maintain a record of all conditional use permits granted by the city.

4.11.10. Validity of a conditional use permit: A conditional use permit shall remain valid until such time as one of the following actions is taken:

- A. The property is rezoned;
- B. Another conditional use permit is approved for the site;
- C. The use of the premises changes and such a change is authorized by the issuance of a new certificate of occupancy;
- D. The city council terminates the conditional use permit due to noncompliance with its conditions;
- E. The use is discontinued for 90 days or longer.

4.11.11. Non-substantial changes: No building, premises, or land used under a conditional use permit may be substantially changed unless a new conditional use permit is granted for the change. In the event a change is determined by both the director of administration [city manager] and the code enforcement officer to be non-substantial, the director of administration [city manager] may approve the change. The director of administration [city manager] shall maintain a record of all such determinations and shall appraise the planning and zoning commission of such determinations.

4.11.12. Penalties: Failure to implement and maintain the conditions as specified by the city council in granting a conditional use permit is a basis for summary termination of said permit and is punishable under the terms of the provisions of this ordinance.

4.11.13. Additional requirements for open air markets:

- A. Each tenant shall be assigned at least one booth.
- B. Booth areas must be clearly defined and identified.
- C. Each designated booth shall be charged with no less than 100 square feet under cover. The square feet of shelter, tent or roofed area devoted to sales, exclusive of pedestrian walkways shall be the area used to determine occupant content under the building code.
- D. Pedestrian areas shall be handicapped accessible.
- E. Utilities and lighting, when provided, shall be permanently installed per the adopted edition of the pertinent building codes and shall be in close proximity to the individual booths.

- F. Publicly accessible restrooms and water fountains shall be available without crossing a public right-of-way and shall be within a distance not greater than 300 feet from any booth in the market. Restroom facilities may be provided by approved portable units. Drinking fountains may be provided by approved bottled water units.
- G. All structures, including temporary structures, shall meet applicable code requirements.

4.11.14. Additional regulations for businesses that derive 75 percent or more of gross revenues from on-premises sale/consumption of alcohol: No bar, as defined by section 1.10, shall be located closer than 500 feet to any property zoned R-1 or R-2. In every zoning district where bars are permitted, prior to such use, the user of the property shall obtain a conditional use permit as provided herein.

4.11.15. Additional regulations for bed and breakfast establishments in R-LD, R-1, R-2 and R-3 residential zoning districts: Bed and breakfast establishments may be permitted as a conditional use in the R-LD, R-1, R-2 and R-3 residential zoning districts under the following conditions, which shall be conditions required for continued operation of use.

- A. The structure must appear to a reasonable person as a single family house or villa.
- B. The minimum area for a bed and breakfast shall be as follows:
 - 1. Waterfront lot—2/3 acre;
 - 2. All other lots—1 acre.
- C. Total lot coverage of all buildings and parking areas shall not exceed 50 percent of the lot.
- D. Ample parking shall be provided off the street to accommodate maximum occupancy and employee parking.
- E. One sign, not exceeding six square feet containing only the name of the business and the address, may be erected. The sign may be hung from a post not in excess of four feet off the ground or mounted on the ground. The sign shall not be lit. The sign must be painted the same background color as the predominant color of the structure with contrasting color for the lettering. Lettering may not exceed 12 inches in height.
- F. No bed and breakfast may be established in violation of any deed restrictions or property owner's association regulations. A certified copy of all relevant deed restrictions, homeowners' or property owners' regulations shall be submitted with the application for conditional use permit. If required, an original letter or permit from the property owners or other controlling regulatory entity showing approval of the use and design shall be submitted with the application for conditional use permit.
- G. Bed and breakfast establishments shall design, construct and maintain at least 20 percent of the lot area as botanical gardens, shaded lawn areas, or formal flower gardens.
- H. The Seabrook board of adjustment shall not be permitted to grant variances to any conditions imposed on the bed and breakfast establishment.
- I. The bed and breakfast shall have no full time employees other than the owners who shall live on the property, unless explicitly authorized otherwise by city council in the granting of the conditional use permit.
- J. The site plan submitted shall show the location of all buildings and parking. Changes to the site plan, such as construction of additional buildings, shall require an amendment to the conditional use permit.

(Ord. No. 94-02, § 3, 2-1-1994; Ord. No. 94-26, § 2, 9-20-1994; Ord. No. 98-20, § 6, 11-3-1998; Ord. No. 2003-02, § 2, 3-4-2003; Ord. No. 2003-06, § 3, 7-1-2003; Ord. No. 2007-11, § 3, 7-17-2007)
