

# Division 23-4B-1: Land Use Approvals

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## 23-4B-1010 Purpose and Applicability

- (A) This Division establishes procedures for land use permits authorized under this Title. Approval of a land use permit allows greater consideration of the overall context for development than other kinds of administrative applications and may include site-specific conditions to ensure compatibility with surrounding uses.
- (B) Uses that may be allowed in compliance with this Division are generally in keeping with the nature and scale of development allowed in a zone and do not require a rezone or other legislative approval.

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## 23-4B-1020 Conditional Use Permit

- (A) **Purpose and Applicability**
  - (1) A Conditional Use Permit approved by the Land Use Commission is required in compliance with this Section to initiate a use classified as conditional in compliance with Article 23-4D (Specific to Zones).
  - (2) The purpose of requiring a Conditional Use Permit is to ensure that approval of uses which may significantly impact surrounding areas takes into account the context of a proposed development in relation to the public realm and allows for site-specific conditions to mitigate impacts on surrounding areas.
- (B) **Application Requirements**
  - (1) **Planning Element**
    - (a) In addition to information required in compliance with Division 23-2B-1 (Application Requirements), an application for a Conditional Use Permit must include a Planning Element submitted on a form approved by the Development Services Director.
    - (b) The Planning Element must include any information required by the Development Services Director to evaluate whether a proposed use meets the standards for approval in compliance with Subsection (E), but need not include construction-level detail required for an Construction Element or Building Permit application.

- (2) **Concurrent Applications.** The following additional applications may be submitted with a Conditional Use Permit application in compliance with Section 23-2A-2020 (Concurrent Applications):
  - (a) Construction Element. An applicant may submit an application for a construction-level approval, including, but not limited to, a Construction Element or Building Permit, to be reviewed concurrent with the Planning Element Site Plan; and
  - (b) Application for Special Exception. An applicant may submit an application for a Special Exception to the Board of Adjustment requesting a reduction in one or more site development standards applicable to the conditional use, as authorized in compliance with Section 23-4B-4030 (Special Exception-Level 1).
- (C) **Administrative Review Process**
  - (1) **Notice of Application.** The Development Services Director shall provide notice of an application for a Conditional Use Permit in compliance with Section 23-2C-5010 (Notice of Application) and allow parties to submit comments on the application within the time frame established by the Director by administrative rule.
  - (2) **Development Services Director's Report.** Following the comment period, the Director shall provide the applicant with a report including:
    - (a) The Director's preliminary recommendation as to whether the Planning Element Site Plan is sufficient to satisfy the approval criteria in Subsection (E); and
    - (b) If applicable, a description of updates required in compliance with Section 23-2B-1040 (Update and Expiration) for any concurrent applications filed in compliance with Subsection (B)(2).
  - (3) **Applicant's Response.** Following receipt of the Development Services Director's report, and before the application expires, in compliance with Section 23-2B-1040 (Update and Expiration), an applicant may:
    - (a) Request that the application be scheduled for public hearing before the Land Use Commission;
    - (b) Provide revisions to the Planning Element Site Plan or other information required to address issues identified in the Director's report; or
    - (c) Withdraw the application.
- (D) **Public Hearing and Notification.** The Development Services Director shall schedule a public hearing before the Land Use Commission on a Conditional Use Permit application at the request of an applicant in compliance with Subsection (C)(3) once all substantive comments have been cleared, and shall provide notice of the public hearing in compliance with Section 23-2C-4020 (Type 1 Public Hearing Notice).
- (E) **Action by Land Use Commission on Application.** After conducting a public hearing on the application, and considering the Development Services Director's recommendation, the Land Use Commission shall approve, conditionally approve, or deny a Conditional Use Permit in accordance with this Subsection.

- (1) **Findings for Approval.** In order to approve or conditionally approve an application for a Conditional Use Permit, the Land Use Commission must find that the proposed use is:
  - (a) Consistent with the applicable goals and policies of the Comprehensive Plan and the purpose of the zone in which the site is located;
  - (b) Not detrimental to public health, safety, and welfare; and
  - (c) Reasonably compatible with existing or approved uses in the surrounding area.
- (2) **Review Criteria.** In determining whether an application meets the findings required for approval in compliance with Subsection (E)(1), the Land Use Commission shall consider the extent to which the proposed use:
  - (a) Is generally compatible in scale, intensity, and character with adjacent developments and neighborhoods;
  - (b) Includes improvements, either onsite or within the public right-of-way, to mitigate adverse impacts related to traffic, noise, odors, visual nuisances, no adverse flooding, and similar adverse effects to adjacent developments and neighborhoods;
  - (c) Can safely accommodate anticipated vehicular and pedestrian traffic consistent with existing and anticipated traffic in surrounding area;
  - (d) Incorporates thoroughfare adjustments, traffic control devices, and access restrictions to control or divert vehicular traffic flow as may be needed to mitigate vehicle traffic on adjacent thoroughfares;
  - (e) Incorporates screening, buffers, and other features to minimize adverse visual or noise impacts of the proposed use on adjacent properties;
  - (f) Adequately mitigates likely impacts of the proposed use on water quality, drainage, and detention; and
  - (g) Meets the site development standards of the zone in which the proposed use is located or, if a Special Exception from one or more standards is requested in compliance with Section 23-4B-4030 (Special Exception-Level 1), the exception will enhance the quality of the use and increase its compatibility with adjoining developments and neighborhoods.

(F) **Conditions of Approval**

- (1) **General Conditions.** In approving a Conditional Use Permit, the Land Use Commission may impose conditions that are reasonably related to the findings required in compliance with Subsection (E). These conditions may include:
  - (a) Limitations on building size, including floor area ratio (FAR), height, or gross floor area;
  - (b) Limitations on impervious cover;
  - (c) Placement or orientation of buildings and entryways;
  - (d) Enhanced setbacks, open space, or buffer standards;
  - (e) A fence, wall, or screen;
  - (f) Additional landscaping or erosion controls;
  - (g) Thoroughfare improvements or dedications;

- (h) Vehicular access and enhanced parking or loading standards;
  - (i) Hours of operation; and
  - (j) Other measures that the Land Use Commission determines are required for compatibility with surrounding uses and for the preservation of public health, safety, and welfare.
- (2) **Late Hours Permit**
- (a) If the Land Use Commission approves a Conditional Use Permit for a bar, nightclub, or restaurant with a late-hours permit, the parking area associated with the use must be a minimum of 200 feet from a Residential House-Scale Zone, unless the use is located within an enclosed shopping center.
  - (b) The Land Use Commission may waive the 200-foot restriction if it finds that the impacts of a parking area are sufficiently mitigated based on the criteria in Subsection (E).
- (G) **Appeal of Decision on Conditional Permit.** The Land Use Commission's decision on a Conditional Use Permit application may be appealed to the Council under Article 23-2I (Appeals).

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## 23-4B-1030 Minor Use Permit

- (A) **Purpose and Applicability**
- (1) A Minor Use Permit may be approved in compliance with this Section for a use classified as a minor use in Article 23-4D (Specific to Zones).
  - (2) The procedures established in this Section authorize the Development Services Director to consider compatibility with surrounding uses and impose appropriate conditions administratively.
- (B) **Application Requirements.** In addition to information required in compliance with Division 23-2B-1 (Application Requirements), an application for a Minor Use Permit must:
- (1) Include a Planning Element Site Plan containing information required by the Development Services Director to determine whether the application meets the criteria established in Subsection (C); and
  - (2) Be filed concurrently with an application for an Construction Element or Building Permit required to construct the use.
- (C) **Administrative Review Process**
- (1) **Notice of Application.** The Development Services Director shall provide notice of an application for a Minor Use Permit in compliance with Section 23-2C-5010 (Notice of Application) and allow parties to submit comments on the application within the time frame established by the Director by administrative rule.

- (2) **Development Services Director's Action on Application.** After the comment period on the application has closed, the Director shall:
  - (a) Approve the application;
  - (b) Approve the application with conditions; or
  - (c) Disapprove the application, in which case the applicant may submit an update in compliance with Section 23-2B-1040 (Update and Expiration).
- (D) **Standard for Approval.** The Development Services Director shall approve or conditionally approve a Minor Use Permit in compliance with this Section if the Director finds that the application satisfies the findings and criteria for approval of a Conditional Use Permit in compliance with Subsection 23-4B-1020(E) (Conditional Use Permit).
- (E) **Conditions of Approval.** The Development Services Director shall impose conditions on the approval of a Minor Use Permit in compliance with the same requirements that apply to the Land Use Commission's approval of a Conditional Use Permit in compliance with Subsection 23-4B-1020(F) (Conditional Use Permit).
- (F) **Appeal.** An interested party may appeal the Development Services Director's decision on a Minor Use Permit to the Planning Commission in compliance with Article 23-2I (Appeals).

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## 23-4B-1040 Effect of Land Use Permit

- (A) **Purpose and Applicability.** This Section establishes the legal effect of Conditional Use Permits and Minor Use Permits approved in compliance with this Article and specifies rules applicable to construction, expiration, and enforcement. For purposes of this Section, the term "land use permit" refers to both Conditional Use Permits and Minor Use Permits.
- (B) **Permit Limited to Approved Use.** Approval of a land use permit:
  - (1) Authorizes development of the property consistent with the approved permit and any conditions imposed on the permit; and
  - (2) Applies only to the specific use and development site for which the permit was issued.
- (C) **Additional Approvals Required.** Initiation or development of a use approved by a land use permit may not occur until an applicant has obtained all administrative approvals required to commence or construct the use.
- (D) **Restrictions on Enlargement of Use.** A use allowed by a land use permit shall not be enlarged, extended, or increased in intensity unless an application for a new Conditional Use Permit or Minor Use Permit is approved in compliance with this Article.
- (E) **Expiration of Land Use Permit.** A land use permit expires in compliance with Chapter 23-6 (Site Plan) unless the applicant obtains all approvals required to construct or commence the use within one year from the date of approval.
- (F) **Suspension or Revocation of Permit.** If construction occurs in violation of a land use permit, or a condition imposed in compliance with a land use permit, the Development Services Director or Building Official may suspend or revoke the permit under Article 23-2J (Enforcement).
- (G) **Prohibition on New Applications.** If a land use permit is denied or revoked, the Development Services Director may not accept a new application for the same or substantially the same use for 365 days from the date of the denial or revocation.

## 23-4B-1050 Temporary Use Permit

- (A) **Purpose and Applicability.** This Section authorizes the Development Services Director to issue a Temporary Use Permit for short-term land uses that are not otherwise allowed within the applicable zone, provided that the use does not interfere with surrounding uses or pose a threat to public health, safety, and welfare.
- (B) **Application Requirements.** An application for a Temporary Use Permit:
- (1) May not be submitted later than 16 days before the date that the temporary use is proposed to begin; and
  - (2) Must include all information required in compliance with Division 23-2B-1 (Application Requirements), in addition other information required by the Development Services Director based on the nature of the proposed temporary use.
- (C) **Temporary Uses Allowed.** The Development Services Director shall approve a Temporary Use Permit for the uses specified in Table 23-4B-1050 (A) (Temporary Uses Allowed), subject to the criteria, conditions, and time limitations established in Subsections (D)-(F).

**Table 23-4B-1050 (A) Temporary Uses Allowed**

**Temporary Uses**

**Recreation Uses and Events**

A circus, carnival, rodeo, fair, or similar activity.

An outdoor art, craft show, or exhibit.

An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a large audience.

**Real Estate Sales and Services**

Model homes or apartments and related real estate services, if the use is located within the residential development to which the use pertains.

An on-site construction field office, if the use is located in a portable structure and conducted for not more than 180 days.

A sales office for a new subdivision may be allowed as a temporary use in compliance with this Division if the sales office is located within the subdivision and at least 200 feet from existing dwellings outside the subdivision.

A single dwelling located in a mobile structure on a construction site.

**Retail and Seasonal Sales**

Christmas tree, pumpkin, or other similar seasonal event sales.

Seasonal retail sale of agricultural or horticultural products, if the use is located at least 200 feet from a dwelling.

An outdoor special sale, including a swap meet, flea market, parking lot sale, or similar activity.

Retail use that does not provide personal services, food preparation or the sale or consumption of alcoholic beverages; a portable toilet serving the retail use, whether located inside or outside of the use; or the storage of hazardous materials as defined by Division 23-11B-7 (Fire Code).

An advertising or promotional event involving the use of a hot air balloon is allowed in all commercial, industrial, and special purpose base zones.

**(D) Permit Duration, Renewal, and Revocation**

- (1) **Permit Duration.** The Development Services Director shall grant a Temporary Use Permit in compliance with this Section for no more than 180 days.
- (2) **Extension.** At the request of an applicant, the Director may renew or extend a Temporary Use Permit by no more than an additional 180 days.
- (3) **Revocation.** The Director may revoke a Temporary Use Permit at any time, if the use no longer satisfies the criteria required in compliance with Subsection (D) or poses a threat to public health, safety, and welfare. The revocation is subject the procedures established in Article 23-2J (Enforcement), except that suspension is not required prior to revocation.

**(E) Restoration and Cleanup.** A person engaging in a temporary use allowed in compliance with this Section must remove all debris, litter, and other evidence of the use from the site upon termination of the use.**(F) Approval Criteria.** The Development Services Director may approve a Temporary Use Permit for a use listed in Table 23-4B-1050 (A) (Temporary Uses Allowed) if the Director determines that the use is compatible with nearby uses and will not:

- (1) Impair the normal, safe, and effective operation of a permanent use on the same site;
- (2) Adversely affect public health, safety, or convenience;
- (3) Create a traffic hazard or congestion; or
- (4) Interfere with the normal conduct of uses and activities in the vicinity.

**(G) Conditions of Approval.** The Development Services Director may issue condition approval of a Temporary Use Permit as needed to make the determinations required in compliance with Subsection (D), and to minimize adverse effects on nearby uses, including standards for hours of operation, frequency of use, parking, traffic circulation, screening, enclosure, site restoration, and clean-up.