

ARTICLE 17

SPECIAL CONDITION USES

Section 17.01 Purpose.

Special condition uses include those uses that serve an area, interest or purpose that extends beyond the borders of the City, create particular problems of control in relation to adjoining uses or districts, have detrimental effects upon public health, safety or welfare, or possess other unique characteristics that prevent such uses from being classified as principal permitted uses in a particular zoning district.

This Article sets forth review procedures and standards for Planning Commission review and approval of special condition uses. These procedures are instituted to provide an opportunity to use a lot or structure for an activity that, under usual circumstances, could be detrimental to other permitted land uses. Such uses may be permitted under circumstances particular to the proposed location, subject to specific conditions or limitations that provide protection to adjacent land uses.

These procedures are adopted to provide a consistent and uniform method for review of special condition use applications, ensure full compliance with the standards contained in this Ordinance, achieve efficient use of land, prevent adverse impacts on neighboring properties and districts, preserve the public health, safety, morals, and general welfare, and facilitate development in accordance with the land use objectives of the Master Plan.

Section 17.02 Application Requirements.

Special condition use applications shall be submitted in accordance with the following procedures and requirements, which provide for review and action by the Planning Commission:

1. **Eligibility.** The application shall be submitted by the owner of an interest in land for which special condition use approval is sought, or by the owner’s designated agent. The applicant or agent shall be present at all scheduled review meetings.
2. **Requirements.** Special condition use applications shall be submitted to the City at least 45 calendar days prior to a Planning Commission meeting at which review is sought, and shall include the following information:
 - a. Contact information for the applicant and property owner, and proof of ownership. If the property is leased by the applicant, a copy of the lease shall be provided, along with the owner’s signed authorization for the application.
 - b. Address, location and tax identification number of the property.
 - c. A detailed description of the proposed use.
 - d. A site plan, if requested by the Planning Commission or required by Article 18 (Site Plan Review).

- e. Appropriate review fees, as determined by City Council.
- f. Any other information deemed necessary by the Planning Commission to determine compliance with this Ordinance.

Section 17.03 Special Condition Use Review.

After a complete and accurate application has been received and review fees paid, the application shall be reviewed in accordance with following procedures:

A. Coordination with Site Plan Review.

A site plan associated with a special condition use shall not be approved unless the special condition use has first been approved. The Planning Commission may, at its discretion, consider special condition use and site plan applications at the same meeting, or may require the site plan to be submitted for review following approval of the special condition use.

B. Technical Review.

Prior to Planning Commission consideration, the application materials shall be distributed to appropriate City officials and staff for review and comment. The City Planner may also submit the application materials to applicable outside agencies and designated City consultants for review.

C. Public Hearing.

A public hearing shall be held for all special condition uses consistent with state law and Section 1.12 (Public Hearing Procedures).

D. Planning Commission Consideration.

Subsequent to the hearing, the Planning Commission shall review the application for special condition use approval, together with any reports and recommendations from staff, consultants and other reviewing agencies, and any public comments. The Planning Commission shall make the final determination on the application, based on the requirements and standards of this Ordinance, including Section 17.08 (Standards for Special Condition Use Approval). The Planning Commission is authorized to postpone, approve, approve subject to conditions or deny the special condition use as follows:

- 1. **Postponement.** Upon determination by the Planning Commission that a special condition use application is not sufficiently complete for approval or denial, or upon a request by the applicant, the Planning Commission may postpone consideration until a later meeting. Failure of the applicant, or the applicant’s designated representative, to attend a meeting shall be grounds for the Planning Commission to postpone consideration of the special condition use.
- 2. **Denial.** Upon determination that a special condition use application is not in compliance with the provisions of this Ordinance, including Section 17.08 (Standards for Special Condition Use Approval), or would require extensive modifications to comply with said standards and regulations, the special condition use may be denied. If a special condition use is denied, a written record shall be provided to the applicant listing the reasons for such denial. Failure of the

applicant, or the applicant’s designated representative, to attend two (2) or more meetings shall be grounds for the Planning Commission to deny the special condition use.

3. **Approval.** The special condition use may be approved by the Planning Commission upon determination that it is in compliance with the provisions of this Ordinance, including Section 17.08 (Standards for Special Condition Use Approval). Upon approval, the special condition use shall be deemed a conforming use permitted in the district in which it is proposed, subject to site plan approval, and any conditions imposed on the use. Such approval shall affect only the zoning lot, lot of record or portion thereof upon which the use is located.
4. **Approval subject to conditions.** The Planning Commission may approve a special condition use subject to reasonable conditions:
 - a. Designed to protect natural resources, the health, safety, welfare, and social and economic well-being of users or patrons of the use under consideration, residents and landowners immediately adjacent to the proposed use, or the community as a whole;
 - b. Related to the valid exercise of the police power, and the impacts of the proposed use; or
 - c. Necessary to meet the intent and purpose of this Ordinance, related to the standards established in this Ordinance for the special condition use under consideration, and necessary for compliance with those standards.

Examples of such conditions include limitations on hours of operation or scope of permitted activities, requirements for periodic review or renewal, or automatic expiration of approval if the use ceases.

5. **Recording of special condition use action.** Planning Commission action on the special condition use shall be recorded in the Planning Commission meeting minutes, stating the name, description and location of the proposed use, and the grounds for the Planning Commission’s action. At least one (1) copy of the written record shall be kept on file in the City, and one (1) copy shall be forwarded to the applicant as evidence of special condition use approval.

Section 17.04 Special Condition Use Resubmission.

A special condition use application that has been denied shall not be resubmitted for a period of 365 days from the date of denial, except on grounds of new evidence or proof of changed conditions found by the Planning Commission to be valid.

Section 17.05 Appeals.

The Board of Zoning Appeals shall not have the authority to consider appeals of special condition use determinations by the Planning Commission.

Section 17.06 Special Condition Use Expiration.

Special condition use approval shall expire 365 days after the date of approval, unless the use has been established on the site, or the construction plan associated with the special condition use has been submitted for review. Special condition use approval shall also expire upon expiration of the approved construction plan associated with a special condition use.

Upon written request received by the City prior to the expiration date, the Planning Commission may grant one (1) extension of up to 365 days, provided that the approved special condition use conforms to current Zoning Ordinance standards.

Section 17.07 Rescinding Approval of Special Condition Uses.

Approval of a special condition use may be rescinded by the Planning Commission upon determination that the use has not been improved, constructed or maintained in compliance with this Ordinance, approved permits, site plans, or conditions of site plan or special condition use approval. Such action shall be subject to the following:

1. **Public hearing.** Such action may be taken only after a public hearing has been held in accordance with the procedures set forth in Section 1.12 (Public Hearing Procedures), at which time the owner of an interest in land for which special condition use approval was sought, or the owner’s designated agent, shall be given an opportunity to present evidence in opposition to rescission.
2. **Determination.** Subsequent to the hearing, the decision of the Planning Commission with regard to the rescission shall be made and written notification provided to the owner or designated agent.

Section 17.08 Standards for Special Condition Use Approval.

Approval of a special condition use shall be based upon the determination that the proposed use complies with all applicable requirements of this Ordinance, and all of the following standards as deemed applicable to the use by the Planning Commission:

1. **A documented need exists for the proposed use.** A documented and immediate need exists for the proposed use within the community.
2. **Compatibility with adjacent uses.** The special condition use is compatible with adjacent uses and the existing or intended character of the surrounding neighborhood, and will not have an adverse impact upon or interfere with the development, use or enjoyment of adjacent properties, or the orderly development of the neighborhood.
3. **Compatibility with the Master Plan.** The special condition use location and character is consistent with the general principles, goals, objectives and policies of the adopted Master Plan.
4. **Compliance with applicable regulations.** The proposed special condition use is in compliance with all applicable provisions of this Ordinance and other county, state, and federal requirements.

5. **Impact upon public services.** The special condition use upon public services will be served adequately by essential public facilities and services, and will not exceed the existing or planned capacity of such services. For purposes of this Section, such services shall include, but are not limited to police and fire protection, drainage and stormwater management facilities, municipal water and sanitary sewer facilities, refuse disposal, and educational services.
6. **Traffic impacts.** The special condition use is designed and located in a manner that minimizes any adverse traffic impacts caused or exacerbated by the use.
7. **Environmental and public health, safety, welfare impacts.** The location, design, activities, processes, materials, equipment, and operational conditions of the special condition use will not be detrimental or injurious to the environment or the public health, safety, and welfare by reason of traffic, noise, vibration, smoke, fumes, odors, dust, glare, light, drainage, topographic changes or other adverse impacts.
8. **Isolation of existing uses.** Approval of the special condition use location will not result in a small residential or non-residential area being substantially surrounded by incompatible uses.

Section 17.09 Compliance Required.

It shall be the responsibility of the owner of the property and the operator of the use for which special condition use approval has been granted to develop, improve, operate and maintain the use, including the site, structures and all site elements, in accordance with the provisions of this Ordinance and all conditions of special condition use approval until the use is discontinued. Failure to comply with the provisions of this Article shall be a violation of the use provisions of this Ordinance and shall be subject to the same penalties appropriate for a use violation.

The City Planner may make periodic investigations of developments for which a special condition use has been approved. Noncompliance with Ordinance requirements or conditions of approval shall constitute grounds for the Planning Commission to rescind special condition use approval.

