

#### D. SPECIAL USE PERMITS

##### 1. Purpose and Applicability

A Special Use Permit (SUP) allows for certain uses that are not permitted in a particular base zoning category by right, but which may be permitted under certain circumstances and application of certain conditions. SUPs require individual, discretionary review of location, design, configuration and operation in order to demonstrate compatibility with neighboring uses, adequate mitigation or resolution of negative impact, consistency with the Comprehensive Master Plan, and adequate offsets of any disproportionate burden upon the public infrastructure systems of the City.

##### 2. Special Use Permits

An owner of real property, or that owner's authorized representative, may initiate a SUP for that property by filing an application with the Planning Department. The SUP request may, upon owner's discretion, be included as a part of an overall zoning or rezoning application, provided that all of the requirements of this Chapter are met. SUPs will be processed and considered in accordance with the procedures described in Section 2.6.

### 3. Pre-Application Meeting

The owner or owner's authorized representative shall meet with the Planning Director or designated staff prior to submittal of the SUP application. At this pre-submittal meeting, the owner will present a preliminary, non-binding plan (conceptual or sketch plan) to the Planning Director, for discussion purposes only. The official will provide the owner or owner's authorized representative with a checklist of submittal requirements for the SUP application, including impact mitigation factors that should be addressed. The particular requirements for impact mitigation will depend on the special use being proposed, the scale of the project, and the location of the property in question. Staff may make recommendations for the presented plan based on similar projects submitted for consideration by the Commission.

#### a. Application Contents

- i. General Content Required for All Zoning Applications
- ii. The SUP application shall be organized into the sections defined for all zoning applications. Project Checklist, provided at the pre-application meeting, shall be included
- iii. Letter of Justification  
The applicant shall include in the SUP Application, in accordance with the SUP Application Checklist, a Letter of Justification that describes the proposed project. The letter should be a summary of application content, and should include, at a minimum:
  - (a) Project owner and/or developer
  - (b) Project description
  - (c) Benefits of the proposed project to neighboring properties and to the community at large
  - (d) Description of consistency with the Comprehensive Master Plan
  - (e) Description of consistency with the other Comprehensive Master Plans of the City, including thoroughfares, utilities, parks and economic development
  - (f) Measures taken to ensure compatibility of the proposed project with surrounding (existing) uses

#### b. Development Impact

- i. Each SUP application shall also include information indicating how potential impacts of the requested special use will be addressed, according to the particular land use district in which the property is located, in order to promote the character, intent and right of use of neighboring properties. These potential impacts will be identified during the pre-submittal meeting and provided as a part of the checklist of application requirements and will be included in the application. For more information, see the SUP Application Checklist.
- ii. The potential impacts of special use projects on neighboring properties will be selected from the list of factors below and identified on the submittal checklist that the applicant receives from the City at the pre-submittal conference. It is the property owner's responsibility to demonstrate adequate treatment of these issues either through design or operation of the proposed special use. Council reserves the right to accept, reject, or require modification to any measures proposed in the application.
  - (a) Community safety;
  - (b) Traffic;
  - (c) Parking;
  - (d) Loading;

- (e) Driveways;
- (f) Building setbacks;
- (g) Access and curb cuts;
- (h) Development density (may include footprint, height, people dwelling onsite, or other factors);
- (i) Hours of operation;
- (j) Property values;
- (k) Viewshed protection;
- (l) Impervious cover;
- (m) Noise;
- (n) Light;
- (o) Vibration;
- (p) Hazardous or flammable materials;
- (q) Special solid waste disposal requirements;
- (r) Discharge/water contamination; and
- (s) Other

c. Application copies

The application package shall be submitted digitally. A paper copy of the document will also be required when certified documents are included. The application check list will indicate the number of paper copies required.

4. Criteria for Approval

- a. Planning and Zoning Commission may recommend, and City Council may approve the application for a Special Use Permit if:
  - i. the proposed special use is determined to comply with the intent of all applicable requirements of the Code and with adopted plans and policies of the City;
  - ii. the application demonstrates mitigation of potential impacts; and
  - iii. the following general criteria are met:
    - (a) The use complies with the purpose and intent of the zoning classification of the property, as well as any applicable supplemental regulations as required by Council.
    - (b) The use is consistent with the Comprehensive Master Plan.
    - (c) The establishment, maintenance, or operation of the proposed use shall not endanger or be detrimental to the public health, safety, morals, comfort, or general welfare of the community.
    - (d) The use shall have no more adverse effects on health, safety, or comfort of persons living or working in neighboring properties or shall be no more injurious to neighboring properties than would any other use generally permitted under the same categorical zoning designation.
    - (e) The use will not result in traffic volumes or circulation patterns that negatively affect streets and intersections likely to be used by traffic to and from the proposed development without approved mitigation of impact;
    - (f) The proposed use shall not injure the use and enjoyment of the property in the immediate vicinity for the purposes already permitted nor substantially diminish or impair the property values within the neighborhood.
    - (g) The proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted therein.
    - (h) The use will not create detrimental operational impacts, through hours of operation, management of traffic, servicing and loading operations, and any on-site operations associated with the ongoing functions of the use on the site, on neighboring properties.
    - (i) The use will not create detrimental health and safety impacts, such as noise, emissions, or vibrations, through functions within the proposed site.
    - (j) The use will not create detrimental impacts on the potential for future development of neighboring properties; and
    - (k) The public interest and welfare supporting the use shall be sufficient to outweigh the individual interests that are adversely affected by the establishment of the proposed use.

5. Public Hearings and Decisions

a. The Planning and Zoning Commission and the City Council shall hear applications for Special Use Permits.

b. Public hearings shall be held for applications for Special Use Permits.

c. Notice of Public Hearings  
Notice required for a public hearing before the Planning and Zoning Commission or the City Council shall be in accordance with the requirements for public notice established by this Chapter.

d. Hearing and Recommendation by the Planning and Zoning Commission  
The Planning and Zoning Commission shall hold a public hearing on the Special Use Permit application at the next meeting following notification requirements as stated in this Code. After the public hearing, the Commission shall recommend to approve, approve with conditions, approve in part, deny or deny in part the application. Where the Commission fails to render its decision at the required public hearing, the decision shall be deemed to have been rendered as a recommendation for denial of the applicant, unless the applicant has agreed in writing or on the record to an extension of time.

e. Negative Recommendation of Planning and Zoning Commission

If the Planning and Zoning Commission recommends denial of a Special Use Permit application, the permit application shall require approval by a super majority vote by City Council.

f. Hearing and Action by City Council

City Council shall hold a public hearing on the Special Use Permit application within forty-five (45) days of the Planning and Zoning Commission's action on the application. After the public hearing, Council shall act to approve, approve with conditions, approve in part, deny or deny in part the application, within forty-five (45) days of the council hearing, or the next scheduled meeting in which public notice can be made. In taking action, the City Council shall consider the criteria for approving a Special Use Permit. Where Council fails to render its decision within the period specified by this subsection, or fails to hold the required public hearing within forty-five (45) days from the date of the decision of the Planning and Zoning Commission, the decision shall be deemed to have been rendered in denial of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. When a decision is rendered in denial of the applicant because of the failure of Council to meet or render a decision as hereinabove provided, the Planning Director shall give public notice of said decision within ten (10) days of expiration of the forty-five (45) days following the council hearing.

g. Requirements for Approval by Three-fourths Vote

The affirmative vote of three-fourths of the members of the City Council is required for approval of a proposed Special Use Permit if:

- i. The proposed Special Use is protested in writing by the owners of at least 20% of the area of land that is either included in the proposed zoning classification or at least twenty percent (20%) of the area of land immediately adjoining the area included in the proposed zoning classification and extending 200 feet from that area. In computing the percentage of land area, the area of streets and alleys shall not be included in the computation.
- ii. Written protests must be received by the City Manager no later than 12:00 p.m. of the previous business day prior to the posted date and time for the zoning hearing on the city council's agenda.

- iii. If the written protests appear to be at least twenty percent (20%) of either the area of the lots or land covered by the proposed change or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred (200) feet there from, the applicant shall be entitled to, but is not required to, request a continuance if all members of the City Council are not present.

## 6. Subsequent Applications

### a. When an application has been withdrawn

An application for a SUP may be withdrawn at any time. If the application has been advertised in compliance with State Law, an application requesting substantially the same use on all or part of the same described land shall not be reconsidered within three months of withdrawal.

### b. When an application has been denied

In the event that the City Council denies an application for a Special Use Permit, a similar application shall not be refiled within one year from the date of the denial, unless the Planning and Zoning Commission, upon petition by the applicant, determines that significant physical, economic or land use changes have taken place within the immediate vicinity, or a significant zoning regulation text change has been adopted, or when the reapplication is for a different use than the original request. The applicant shall submit a statement in detail setting out those changes which he or she deems significant and upon which he or she relies for refiled the application.

## 7. Scope of Approval

- a. Once a SUP has been granted, the approved use may only be enlarged, extended, increased in intensity or relocated under the conditions of a major or minor amendment, unless, in approving the initial application for a SUP the City specifically established an alternative procedure for future expansion or enlargement. The provisions for nonconforming uses and vested rights do not supersede this requirement, unless the specially permitted use is no longer a use permitted by right or as a special use in the assigned zoning category.
- b. The terms of approval shall be set by City Council. Special Use Permits are granted to the property, and not to the landowner. Therefore, the Permit shall be transferable upon sale.

## 8. Expiration of Approval of Special Use Permits

- a. A Special Use Permit shall automatically lapse and become null and void if:
  - i. the applicant fails to satisfy any condition that was imposed as part of the approval of the SUP or that was made under the terms of any development agreement, within the time limits established for satisfaction of such condition or term;
  - ii. the applicant fails to submit a subsequent development application required by the Code within the time so required. If no time limit for satisfaction of conditions is specified in the decision on the development application, the time shall be presumed to be one year from the date the decision was made;
  - iii. the Special Use involves physical improvements that have not been substantially initiated within one (1) year of the date of approval or authorization approval of the SUP;
  - iv. after starting construction, the construction is discontinued for a period of one (1) year or more; or
  - v. No physical improvements are made, and a Certificate of Occupancy is not issued for the Special Use within two (2) years of the date of approval or authorization.
- b. Effect of Expiration

- i. No Certificate of Occupancy shall be issued after approval lapses unless the approval or authorization is renewed.
  - ii. No physical improvements shall be made after approval lapses unless the approval or authorization is renewed.
  - iii. Upon the expiration of a SUP, all previously approved permits for the same land also shall expire on the expiration date if (1) the expired permit is subordinate to such previously approved permits and (2) the filing of an application for or approval of the expired permit was required to avoid expiration for the previously approved permit or permits. Thereafter, a new application for each permit deemed expired under this Section must be approved subject to regulations in effect at the time the new application is accepted for filing.
- c. Renewal after lapse

The City Council may renew its approval of a SUP for which approval has lapsed, provided that no more than one (1) year has elapsed since the date of expiration of the original approval or, in the case of discontinuance of work, since the date of discontinuance. Renewal shall require formal action, but it shall not require public notice or hearings. Renewal shall have the same effect as the original approval. If no renewal is granted with the one-year period allowed for renewals, the original approval shall be void and no further effect. Occupancy Permits shall be automatically renewed coincidentally with and for the same time periods and limitations as prescribed for SUP renewals.

#### 9. Minor SUP Amendments

A SUP amendment is a request for any enlargement, expansion, increases in intensity, relocation, or modification of any condition of a previously approved and currently valid SUP. Amendments shall be processed as follows: shifts in on-site location and changes in size, shape, intensity, or configuration of less than 5 percent, or a 5 percent or less increase in either impervious surface or floor area over what was originally approved, may be authorized by the Planning Director, provided that such minor changes comply with the following criteria:

- i. No previous minor modification has been granted pursuant to this section;
- ii. There will be no detrimental impact on any adjacent property caused by significant change in the appearance or use of the property or any other contributing factor;
- iii. Nothing in the currently valid SUP precludes or otherwise limits such expansion or enlargement; and
- iv. The proposal conforms to all applicable requirements of Title XV and is in keeping with the spirit and intent of the Comprehensive Master Plan.

#### 10. Major SUP Amendments

All amendments, other than those amendments provided for in this Section, shall be considered major SUP amendments and shall require approval in the same manner and under the same procedures as are applicable to the issuance of the original SUP approval.