



STANDARDS FOR GRANTING CONDITIONAL USE PERMITS (CUP)

Careful Use Precisely...
Make sure they fit!



2016

UTAH LEAGUE OF CITIES AND TOWNS



Primer on Conditional Uses

Conditional uses can be problems for cities and towns. They are a problem because many cities and towns think that they have more discretion than they actually do in the granting or denying of a conditional use permit application. These cities and towns treat conditional use permit applications like zone change requests. A conditional use permit application is not the same as a request to change a zone.

A conditional use is defined as a use that, because of its unique characteristics for potential impact on the city or town, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.¹

It has been the common practice for Utah cities and towns to include many conditional uses in their land use ordinances. Very often this occurs because the drafters of the ordinances cannot make the hard decisions about whether or not to permit or disallow a particular use. Sometimes conditional uses are used because the city or town thinks that conditional uses give planning commissions or city councils more discretion in whether or not to allow certain uses. This cannot be further from the actual situation.

A conditional use only exists if it is created by the land use ordinance. It is not sufficient to just identify a potential use as a conditional use in a land use ordinance. The state statute requires that standards be set forth in the ordinance for the granting or denying of the conditional use.² A conditional use must be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with standards that are contained in the ordinance. If there are no identifiable standards contained in the ordinance, there will be no basis for denying the permit.

¹ Utah Code 10-9a-103(5).

² Utah Code 10-9a-507.



The granting or denial of the conditional use permit is not a legislative act, it is an administrative act. This is a significant distinction. Because it is an administrative act, it will be reviewed by the courts in a less differential manner than a legislative act. In addition, a city or town must provide an appeal process from any decision on a conditional use permit application. This appeal process must allow anyone who is aggrieved by the decision that either granted or denied a conditional use to appeal that decision. This appeal must be to someone other than the body that initially decided on the conditional use permit. After this internal appeals process has been completed, the aggrieved party can petition the district court to review the city's decision.

A court will review and support the city's decision, as it would any other administrative decision if there is a good record of what the city or town did and if the decision is supported by substantial evidence found in the record. If there is a good record of what occurred in the city and if there is not substantial evidence in that record to support the city's decision, the court will overturn the city's decision. If the record from the city is insufficient, the court will rehear the entire matter, including taking new evidence, and make its own independent determination and ignore the city's previous decision. The city's record consists of the minutes of the various meetings and the decisions made. A good record will be one that has a transcript of the meetings held and written findings and conclusions regarding the permit.

Another significant difference between the granting of a conditional use and a legislative act is the role of the public. While it is appropriate to take public comment and even hold public hearings on the granting or denial of individual conditional use permits, public clamor is not to be considered. The difference between public clamor and public input is one of substance. It is appropriate to seek from the public factual information about whether or not the applicant for the permit can meet the standards of the ordinance. It is not appropriate to seek from the public their emotional feelings about the application. Whether or not to grant a conditional use permit is not a political decision or a popularity contest; it must be based solely on the standards in the ordinance itself. The applicant can either meet the standards in the ordinance for the permit or not meet the standards.



The best practice is to avoid, as much as possible, having conditional uses. If the use is not appropriate, the ordinance should make it a non-permitted use. If the use is appropriate, it should be a permitted use. Conditional uses should be the exception and not the rule. Putting a conditional use in the ordinance is inviting the use to occur. If a city does not want a particular use in a particular area, the best practice is to not allow it. If they want it then make it permitted.

Standards for Granting Conditional Uses

Utah State Code

10-9a-507. Conditional uses.

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

(2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

“Conditional use” means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.”

Amended by Chapter 245, 2005 General Session

The overall purpose of any condition, established as part of the Conditional Use Process, is to protect the integrity of the underlying zoning. For example: If the underlying zoning is residential, the conditions should all be justifiable as protection against the intrusion that a nonresidential use will create. As long as each use can be justified as providing such protection, a court will seldom assume conditions to be arbitrary.

A zoning ordinance may specify standards to be considered in general use permits and can also include specific conditions for specific uses, such as child care or a gravel pit. The league has samples that other cities have adopted that are provided at the end of this document.

Listed below are possible standards as well as examples of more defined conditions that might be made.



Standard: The safety of people and/or property.

Conditions:

1. Traffic control:
 - i. minimizing the traffic flow
 - ii. directing the traffic flow
 - iii. limiting the types of vehicles
1. Requiring fencing or other types of protection
2. Requiring additional setbacks or land area

Standard: Health and Sanitation

Conditions:

1. Controlling outdoor storage
2. Requiring sewer connections
3. Demanding proper disposal of waste
4. Controlling dust or other types of air pollution

Standard: Environmental Concerns

Conditions:

1. Enforcing well-head protections standards, when applicable.
2. Requiring planting to control dust, runoff and erosion.
3. Enforcing necessary standards for the protection of water shed.
4. Controlling the disposal of hazardous materials.
5. Requiring no special uses of resources.

Standard: The General Plan and the Permitted Zoning

Conditions:

1. Protecting the quality of the underlying zone.
 - i. traffic
 - ii. lighting
 - iii. esthetics
 - iv. noise
 - v. landscaping
 - vi. general use and design

EXAMPLE

CONDITIONAL USE STANDARDS OF REVIEW. The City shall not issue a conditional use permit unless the Planning and Zoning Administrator, in the case of an administrative conditional use, or the Planning Commission, for all other conditional uses, concludes that the application fully mitigates all identified adverse impacts and complies with the following general standards applicable to all conditional uses, as well as the specific standards for the use. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be mitigated by the proposal or the



imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

1. GENERAL REVIEW CRITERIA: An applicant for a conditional use in the zone must demonstrate:

- a. The application complies with all applicable provisions of this chapter, state and federal law;
- b. The structures associated with the use are compatible with surrounding structures in terms of use, scale, mass and circulation;
- c. The use is not detrimental to the public health, safety and welfare;
- d. The use is consistent with the City General Plan as amended;
- e. Traffic conditions are not adversely effected by the proposed use including the existence or need for dedicated turn lanes, pedestrian access, and capacity of the existing streets;
- f. There is sufficient utility capacity;
- g. There is sufficient emergency vehicle access;
- h. The location and design of off-street parking as well as compliance with off-street parking standards;
- i. A plan for fencing, screening, and landscaping to separate the use from adjoining uses and mitigate the potential for conflict in uses;
- j. Exterior lighting that complies with the lighting standards of the zone.
- k. Within and adjoining the site, impacts on the aquifer, slope retention, and flood potential have been fully mitigated and is appropriate to the topography of the site.

2. SPECIFIC REVIEW CRITERIA FOR CERTAIN CONDITIONAL USES. In addition to the foregoing, the Planning Commission must evaluate the applicant's compliance with each of the following criteria when considering whether to approve, deny or conditionally approve an application for each of the following conditional uses:

Adult Oriented Businesses.

The purpose and objective of this chapter is to establish reasonable and uniform regulations to prevent the concentration of adult-oriented businesses or their location in areas deleterious to the health, safety and welfare of the City, and to prevent inappropriate exposure of such businesses to the community. This chapter regulates the time, place, and manner of the operation of sexually-oriented businesses, consistent with the United States and Utah State Constitutions. See also City Sexually Oriented Business Ordinance #00-104.

- a. No adult-oriented business may be located within five hundred feet (500') of any:
 - (i) School, day care facility, cemetery, public park, library, or religious institution;
 - (ii) Residential zoning boundary;
 - (iii) Liquor store; or
 - (iv) Other adult-oriented business.



b. For the purposes of this section, distance is measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which the adult-oriented business is located and:

(i) The closest exterior wall of another adult-oriented business;

(ii) The closest property line of any school, day care facility, public park, library, cemetery or religious institution; and

(iii) The nearest property line of any residential zone.

Home Occupation. Each application for a business license for a home occupation shall include the applicant's agreement that the proposed use:

- 1) Shall not include outdoor storage, outdoor display of merchandise, nor parking/storage of any vehicle in excess of twelve thousand pounds (12,000 lbs) gross vehicle weight.
- 2) Shall not include identifying signage in excess of a six (6') square foot name plate, attached to the dwelling;
- 3) Is limited to the on-site employment of immediate family members who occupy the dwelling. (This criterion is not intended to limit the number of employees who are engaged in business for the home occupation but work off-premises.);
- 4) Shall not alter the residential character or appearance of the dwelling or neighborhood;
- 5) Shall not occupy more than twenty-five percent (25%) of the main floor of the dwelling nor more than fifty percent (50%) of the floor area of any garage or outbuilding in which the use is conducted;
- 6) Shall not generate business-related vehicular traffic in excess of three (3) vehicles per hour;
- 7) Shall not cause a demand for municipal services in excess of that associated with normal residential use;
- 8) Shall be enclosed within a structure in complete conformity with international building codes as adopted by the City; and
- 9) Is not a mortuary, animal hospital, kennel, clinic, hospital, RV service, junkyard, auto repair service, public stable or adult oriented business.

PERMIT REVOCATION:

- A. The City Council may revoke the Conditional Use Permit of any person upon a finding that the holder of the permit has failed to comply with any of the conditions imposed at the time the permit was issued. The City Council shall send notice of the revocation to the holder of the permit and the holder of the permit shall immediately cease any use of the property which was based on the Conditional Use Permit.
- B. If the City Council revokes any permit under this section, the holder of the permit shall have a right to appeal the revocation of the permit. The holder must file the appeal with the City Recorder within fifteen (15) days of the date of the notice that the City has revoked the Conditional Use Permit.
- C. Upon receipt of the appeal, the City Council shall set a hearing on the appeal at its next regularly scheduled meeting which is more than fifteen (15) days after the time the City Recorder received the appeal. The City shall supply the permit holder of the time, date



and place of the hearing at least fifteen (15) days before the hearing. At the hearing, the permit holder shall have the right to be heard on the revocation.

TIME LIMIT:

Action authorized by a Conditional Use Permit must commence within one (1) year of the time the permit is issued. If the permit holder has not commenced action under the permit within this time, the permit shall expire and the holder must apply for a new permit. The Planning Commission may grant an extension for good cause shown. Only one extension may be granted and the maximum extension shall be six (6) months. In order to obtain an extension, the permit holder must apply for an extension in writing before the expiration of the original permit. The application must be submitted to the City Recorder and the application must describe the cause for requesting the extension.

A conditional use runs with the land because it is an objective permit--it doesn't matter who owns it, but only that the conditions are fulfilled. There is nothing about a change in ownership that creates an objective change to the permit issues. That is not to say that a city must be indifferent to ownership. A condition of a permit for an environmentally challenging use, for example, could include a requirement that the permit holder demonstrate adequate financial responsibility to address any accidental hazardous condition that they may create. This might include proof of insurance, experience in the industry, a minimum capitalization ratio, or something along these lines. These conditions would then transfer to the new owner, who would also have to meet the same criteria in order to maintain the CUP.

Alternatively, a city may issue a one year CUP. However, most owners would not invest in anything significant if the CUP lapses in a year.



Summary

What is a CUP?

CUP's are regulated by the Utah State Code Title 10-Chapter 9a

Here is the state definition:

Title 10-Chapter 9a-Section 507.

“Conditional use” means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.”

A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

What does this really mean? I like to say-

Careful Use Precisely

What are the Rules?

Here is my Cliff Notes Summary

1. You don't have to have conditional use permits – you can allow them in one zone and not another
2. CUP's are not for catch all items that you don't know how to deal with
3. If you do you provide for CUP's you are required to have the following in your development code
 - a. You need a detail list of what you will consider in each zone – you cannot consider an application that is not a use listed in your code
 - b. You need general standards of review for how you will consider each permit request
 - c. Any conditions you place on a CUP must be tied to one of these standards
 - They are precise land uses that may or may not fit in your zone districts – you should not have many in each zone.
 - CUP'S are an extra level of review used for small scale uses
4. You have very slim chances of denying a CUP

Title 10-Chapter 9a 2) (a) *A conditional use **shall be approved** if **reasonable** conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.*

5. You need to have Standards of review in your code if you have a CUP process.
Suggested standards of review are: (you can add anything you want as a standard– it just needs to be written down)

- The safety of people and/or property.



- Health and Sanitation
- Environmental Concerns
- The General Plan and the Permitted Zoning and maybe
- traffic
- lighting
- esthetics
- noise
- landscaping
- general use and design

6. After you have your standards of review then you can apply conditions to the CUP – they need to relate to each other. For example if you have traffic as one of your standards of review you could add a condition saying “no entry off of Main Street in order to prevent traffic jams etc...”) So traffic relates to a condition of limited entry.....a relationship just not subjective.

7. Read conditions into the final record and make findings as to why you are attaching the conditions.

8. Record the conditions with any maps or other land use approvals.

9. Keep a clear record so that you can enforce any violations if they occur.

10. The Council may revoke the CUP of any person upon a finding that the holder of the permit has failed to comply with any of the conditions imposed at the time the permit was issued.

Good conditions make good neighbors



The neighbors of this small restaurant, with its poorly placed dumpster, may not feel very neighborly. Conditional use standards could result in requiring limited hours of operation for the bar, and landscaping and other measures to conceal the dumpster.



Sample Fillmore Utah CUP ORDINANCE



Example of what you should have in your development code
 (Administrative CUP simply means that the Fillmore staff approves those – they decided that those uses did not need to go to the Planning Commission)

Table 6-7-3.2: Uses

Type	Allowed	Administrative Conditional Use	Conditional Use	Business License
Accessory Structure, occupied			✓	
Accessory Structure, unoccupied	✓			
Agriculture	✓			
Apartment House			✓	✓
Child Care for Business <ul style="list-style-type: none"> Center: 8 children or less Facility: 9 children or more 		✓ ✓		✓ ✓
Athletic, Tennis			✓	✓
Church	✓			
Civic Club			✓	
Condominium			✓	
Dwelling - Single	✓			
Dwelling- 2 Family			✓	
Dwelling- 3 Family			✓	✓
Dwelling- 4 Family			✓	✓
Farm Animals/Livestock	✓			
Fence, Electric		✓		
Fence, Wildlife/Large Animal		✓		
Gated Communities			✓	

6-7-3.8 CONDITIONAL USE STANDARDS OF REVIEW. The City shall not issue a conditional use permit unless the Planning and Zoning Administrator,



in the case of an administrative conditional use, or the Planning Commission, for all other conditional uses, concludes that the application fully mitigates all identified adverse impacts and complies with the following general standards applicable to all conditional uses, as well as the specific standards for the use.

1. GENERAL REVIEW CRITERIA An applicant for a conditional use in the zone must demonstrate:

- a. The application complies with all applicable provisions of this chapter, state and federal law;
- b. The structures associated with the use are compatible with surrounding structures in terms of use, scale, mass and circulation;
- c. The use is not detrimental to the public health, safety and welfare;
- d. The use is consistent with the Fillmore City General Plan as amended;
- e. Traffic conditions are not adversely affected by the proposed use including the existence or need for dedicated turn lanes, pedestrian access, and capacity of the existing streets;
- f. There is sufficient utility capacity;
- g. There is sufficient emergency vehicle access;
- h. The location and design of off-street parking as well as compliance with off-street parking standards;
- i. A plan for fencing, screening, and landscaping to separate the use from adjoining uses and mitigate the potential for conflict in uses;
- j. That exterior lighting that complies with the lighting standards of the zone;
- k. That within and adjoining the site, impacts on the aquifer, slope retention, and flood potential have been fully mitigated and is appropriate to the topography of the site.

2. SPECIFIC REVIEW CRITERIA FOR CERTAIN CONDITIONAL USES.

In addition to the foregoing, the Planning Commission must evaluate the applicant's compliance with each of the following criteria when considering



whether to approve, deny or conditionally approve an application for each of the following conditional uses:

A. Accessory Structure (Occupied). New development of an accessory structure intended for human occupancy is a conditional use and shall meet the following development standards:

- 1) Proximity: The accessory structure must be located no less than six feet (6') from the main building.
- 2) Setbacks: The accessory structure must be located in either the rear or side yard, with no less than a ten foot (10') setback from the rear and side lot lines, unless the accessory structure is located at the front yard setback of an adjacent corner lot, in which case, the side yard setback to the nearest side lot line must be at least fifteen feet (15').
- 3) Height: The accessory structure height may not exceed twenty-four feet (24') to the mid point for a sloped roof and twenty feet (20') to the cornice for a flat roof.
- 4) Building Area: The maximum area of an occupied accessory structure is the larger of nine hundred (900) square feet or thirteen percent (13%) of the lot area. No more than six hundred (600) square feet of the accessory structure shall be used for human occupancy.

B. Child Care Facility/Center. Each application for a childcare facility, center or home occupation must include and comply with:

- 1) Proof of application for state child care license;
- 2) Compliance with state, federal and local law;
- 3) A design that does not include a front yard playground;
- 4) A parking and traffic plan that adequately mitigates the adverse impacts of increased traffic in the neighborhood (if a facility or center);
- 5) Childcare providers as a home occupation may not exceed eight (8) children, 12 years of age or younger, including the providers own children at any given time;



- 6) Childcare providers as a home occupation may not provide services for more than 2 infants under the age of two at any given time.

C. Condominiums. Subject to the requirements set forth in Chapter 6-11 of the Fillmore City Municipal Code, condominiums are permitted as a conditional use in the R-2 zone with the following conditions:

- 1) Lot Size. The minimum lot size for any condominium project consisting of up to 4 individual condominium units shall be 15,000 square feet. 2,500 square feet shall be added to the minimum lot size for each additional unit.
- 2) Open Space. For each individual condominium unit, an area of no less than 875 square feet shall be preserved and dedicated as open space.
- 3) Parking. For each individual condominium unit, an area of no less than 875 square feet shall be improved for parking. Property dedicated for parking may not overlap with property dedicated for open space.
- 4) Spacing of Building. Up to 4 condominium units may be located in a single building. Single-story building shall be spaced at least 15 feet apart from one another. Two-story buildings shall be spaced at least 20 feet apart from one another.

D. Multiple Family Dwellings. Three-plex and four-plex dwellings may be allowed as a conditional use in the R-2 Zone with the following conditions.

- 1) Three-plex: 17,125 sq ft lot area which includes parking and open space requirements.
- 2) Four-plex: 20,380 sq ft lot area which includes parking and open space requirements.
- 3) Open Space requirement: 500 sf of open space per unit.

E. Intermittent Commercial Uses. The occasional use of dwellings, community buildings, private clubs, lodges, social or recreational establishments and/or their accessory buildings for commercial purposes may be allowed upon receiving a conditional use permit and provided the



provisions of this section are complied with. The following standards shall apply to all intermittent commercial uses in addition to any conditions the Planning Commission deems necessary and desirable to protect the public health, safety and general welfare.

- 1) The display and sales of merchandise should be contained primarily within a building.
- 2) The building proposed for the intermittent commercial use must comply with setback and clear vision area requirements of this ordinance and with applicable building and fire codes.
- 3) A business license from the City is required to conduct an intermittent commercial use.
- 4) Adequate parking is provided to serve the commercial use that does not create a parking shortage for other existing uses on site.
- 5) The use does not cause noise, light, or glare which adversely impacts surrounding uses.

F. Home Occupation. Each application for a business license for a home occupation shall include the applicants agreement that the proposed use:

- 1) Shall not include outdoor storage, outdoor display of merchandise, nor parking/storage of any vehicle in excess of twelve thousand pounds (12,000 lbs) gross vehicle weight.
- 2) Shall not include identifying signage in excess of a six (6') square foot name plate, attached to the dwelling;
- 3) Is limited to the on-site employment of immediate family members who occupy the dwelling. (This criteria is not intended to limit the number of employees who are engaged in business for the home occupation but work off-premises.);
- 4) Shall not alter the residential character or appearance of the dwelling or neighborhood;



- 5) Shall not occupy more than twenty-five percent (25%) of the main floor of the dwelling nor more than fifty percent (50%) of the floor area of any garage or outbuilding in which the use is conducted;
- 6) Shall not generate business-related vehicular traffic in excess of three (3) vehicles per hour;
- 7) Shall not cause a demand for municipal services in excess of that associated with normal residential use;
- 8) Shall be enclosed within a structure in complete conformity with international building codes as adopted by Fillmore City; and
- 9) Is not a mortuary, animal hospital, kennel, clinic, hospital, RV service, junkyard, auto repair service, public stable or adult oriented business.

G. Gated Communities. Applicants must comply with the following standards:

- 1) The applicants have demonstrated a need for an entry gate to effectively control ongoing negative health, safety and welfare issues; or, in highly unique circumstances, excessive non-neighborhood parking or traffic on a regular basis.
- 2) The private street is not a through street and traffic circulation through the neighborhood to other parts of the community is not impacted.
- 3) The entry gate shall be set back 25 feet.
- 4) A building permit for the gate must be approved.
- 5) The entry gate shall meet the following design standards:
 - a. The clearance distance from the gate bottom to the ground shall be a minimum of 2'.
 - b. The maximum height from the bottom to top rail shall be 3'.
 - c. The gate shall be constructed from visually open materials that will not obstruct more than 50% visibility (i.e. open fencing).
 - d. Fencing adjacent to the gate shall not exceed a height of 4' for solid fencing materials and 6' for open materials.
 - e. Columns added for architectural interest shall not exceed 9'.
 - f. The gate design shall be minimal in height and scale to accomplish the goal of preventing unauthorized access.



- 6) An access plan for emergency services and authorized City representatives shall be provided to and approved by the City.