

CHAPTER 1185
Conditional Use Certificates and Similar Uses

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1185.01 PURPOSE.

When a proposed use is permitted in a zoning district as a conditional use, as set forth in the district regulations, a conditional use certificate is required and the application for such conditional use certificate shall be submitted and reviewed according to the guidelines outlined in this Chapter.

1185.02 PREAPPLICATION MEETING ENCOURAGED.

The applicant is encouraged to meet with the Planning Commission or Zoning Administrator, or his/her designee, prior to submitting an application for a conditional use certificate. The purpose of this meeting is to discuss early and informally with the applicant the purpose and effect of these zoning regulations and the criteria and standards contained within. However, no action shall be taken at such a meeting and no discussions, opinion, suggestions, or recommendations of the Planning Commission or Zoning Administrator shall be relied upon by the applicant to indicate subsequent approval or disapproval of the application.

1185.03 SUBMISSION OF APPLICATION.

The owner or agent thereof, of property for which such conditional use is proposed shall file with the Zoning Administrator an application for a conditional use certificate accompanied by payment of the required fee established by Council. The application for a conditional use certificate shall disclose all uses proposed for the development, their location, extent, and characteristics and shall include the following:

- (a) A development plan and associated documentation as required in Sections 1183.05 and 1183.06 unless specific items required in Sections 1183.05 and 1183.06 are determined by the Zoning Administrator to be inapplicable or unnecessary and are waived in writing by the Zoning Administrator.
- (b) A list of all property owners lying within 250 feet of any part of the property on which the conditional use is proposed, including their addresses and permanent parcel number, as shown on the current tax duplicate in the Office of the Williams County Treasurer.

1185.04 CONDITIONAL USE APPLICATION PROCEDURES.

- (a) Review for Completeness. Within 10 days after receiving an application for conditional use certificate, the Zoning Administrator shall review the submitted application for completeness and compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of the

necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Zoning Administrator shall officially accept the application for consideration of the action(s) requested on the date such determination is made and place it on the Planning Commission's agenda.

- (b) Distribution of Plans. When the Zoning Administrator determines that the application is complete, the Zoning Administrator shall forward the application to appropriate City departments and professional consultants for review and comment. Any reports, comments, or expert opinions shall be returned to the Zoning Administrator within 10 days from the date the application is deemed complete.
- (c) Transmission to the Planning Commission. The Zoning Administrator shall distribute the application for conditional use certificate and any reports prepared by the individuals in subsection (b) above to the Planning Commission, prior to the time of the Commission's review at their next regularly scheduled meeting.

1185.05 REVIEW OF CONDITIONAL USE CERTIFICATE APPLICATION.

The Planning Commission shall review the proposed conditional use, as presented on the submitted plans and specifications, to determine whether or not the proposed use is appropriate and in keeping with the purpose and intent of this Planning and Zoning Code.

- (a) The Planning Commission shall review the development plan for the proposed conditional use according to the development plan review procedures and criteria set forth in Chapter 1183, as applicable;
- (b) The Planning Commission shall review the application to determine if the establishment and operation of the proposed use complies with the general criteria established for all conditional uses and the specific requirements established for that particular use, as set forth in Chapter 1161 of this Planning and Zoning Code; and
- (c) The Planning Commission may require the applicant to submit such additional information as deemed necessary including the carrying out of special studies and the provisions of expert advice.

1185.06 PUBLIC HEARING AND NOTICE BY PLANNING COMMISSION.

The Planning Commission shall hold a public hearing on the proposed conditional use. Notice of such public hearing shall be given by first class mail to the applicant and to the property owners within 250 feet of the property on which the use is proposed. Failure of delivery of such notice shall not invalidate action taken on such application. Further notice shall be given in one or more newspapers of general circulation in the city. All notices shall be made at least 10 days before the date of said public hearing. All notices shall set forth the time and place of the public hearing and the nature of the proposed conditional use. The Commission may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required.

1185.07 BURDEN OF PRESENTING EVIDENCE.

The burden of presenting evidence to the Planning Commission that is sufficient to lead the Commission to conclude that the application should be denied shall be upon the party or parties urging this position, unless the information presented by the applicant in the submitted application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

1185.08 ACTION BY PLANNING COMMISSION.

- (a) The Planning Commission shall take one of the following actions:
 - (1) If the proposed conditional use is determined by the Planning Commission to be appropriate and in conformance with the review criteria outlined in Sections 1183.08 and 1183.09, the Planning Commission shall approve the conditional use certificate. As part of the approval, the Planning Commission may prescribe reasonable requirements on the proposed use to ensure that the development conforms with the intent and purposes of Section 1161.02. The Planning Commission may approve the application for a conditional use without approving the submitted development plan.
 - (2) The Planning Commission shall deny the application if the Planning Commission concludes that, if completed as proposed, the development will not be in compliance with the requirements of this Planning and Zoning Code. Such action shall be stated in writing and include specific findings, based upon the evidence submitted, justifying such a conclusion.
- (b) If the Planning Commission fails to act within 60 days from the date the application was deemed complete, or an extended period as may be agreed upon, then the applicant may deem the development denied.

1185.09 CONFIRMATION BY CITY COUNCIL.

When the Planning Commission recommends approval of a conditional use, the recommendation, along with the application, shall be submitted within 10 days to Council for confirmation.

- (a) The purpose of Council's review shall be to confirm or deny the recommendation of the Planning Commission. In doing so, Council shall rely on the record of the Planning Commission. A public hearing shall not be required.
- (b) Council shall act on the application according to the following:
 - (1) Council, by a majority vote, may confirm the recommendation of the Planning Commission or modification thereof; or
 - (2) Council, by a majority vote, may refer the conditional use application back to the Planning Commission for further study and review. Any additional review shall comply with the time frame allotted in Section 1185.08; or

- (3) Council, by a 4/5 vote of its membership, may approve a modification of the recommendation of the Planning Commission; or
 - (4) Council, by a 4/5 vote of its membership, may reject the recommendation of the Planning Commission.
- (c) Failure of Council to act within 60 days from the date Planning Commission makes a recommendation shall be deemed a confirmation of the Planning Commission's recommendation.

1185.10 TERMS AND DURATION OF CONDITIONAL USE CERTIFICATE.

Following Council's approval of an application for conditional use certificate, the Zoning Administrator shall issue a conditional use certificate.

- (a) A conditional use certificate shall authorize a particular conditional use on a specific parcel for which it was approved. A conditional use certificate issued pursuant to this Chapter shall be valid only for the use and the operation of such use as specified on the certificate. The breach of any condition, safeguard or requirement shall constitute a violation of this Planning and Zoning Code.
- (b) The conditional use certificate shall expire one year from the date of enactment, unless:
 - (1) The final development plan is approved for uses that require a final development plan;
 - (2) Substantial progress in the establishment of the use is accomplished; or
 - (3) As otherwise specifically approved by the Planning Commission.

1185.11 REAPPLICATION.

No re-application for a conditional use certificate shall be accepted by the Zoning Administrator unless the re-application is based on a revised application that addresses the justification for the denial of the initial application. A re-application shall comply with all the requirements of this Chapter, including payment of the required fee.

1185.12 SIMILAR USES.

Within each zoning district established by the Planning and Zoning Code and amendments thereto, uses of land or structures, which are compatible with each other, are permitted in the district. To the extent that new types of uses are created and are not addressed by this Planning and Zoning Code, this section provides the procedure by which the Planning Commission may make a determination that a new use is similar to a use permitted in a district.

- (a) Determination. A proposed use may be permitted as a similar use when the Planning Commission determines that such proposed use is in compliance with the following provisions:
 - (1) The proposed use is not prohibited in any other district;
 - (2) The proposed use is not listed as a permitted building or use in any other district;
 - (3) The proposed use conforms to and is consistent with the purpose statement of the proposed district more appropriately than in any other district;
 - (4) The proposed use is of the same general character as the permitted uses in the district to which it is proposed or is similar to a specific use permitted in that district.
- (b) Procedure. The Planning Commission shall review the proposed use according to the conditional use procedures set forth in Sections 1185.02 through 1185.08, including the requirement for a public hearing.
- (c) Action by Planning Commission. Within 10 days a recommendation for approval is made by the Planning Commission, the application shall be submitted to Council for confirmation. The Planning Commission shall recommend that Council approve, approve with modifications or deny the application for a similar use determination and provide the reasons for their decision.
- (d) Assignment to Districts. If Council, by a majority vote of its members, concurs with the recommendations of the Planning Commission and approves the proposed similar use, then the similar use shall be added to those districts that allow the principal or conditional use that is most similar, as identified in the recommendation.