



CONDITIONAL USE PERMITS

Frequently Asked Questions

What is a conditional use?

A conditional use is a land use designated in a zoning ordinance that is specifically allowed in a zoning district so long as certain standards are met. The zoning ordinance typically detail both general standards that apply to all conditional uses, as well as specific standards that apply to a particular conditional use in a given zoning district.

Why are some uses typically designated as conditional?

A use is typically designated in a zoning ordinance as conditional because of hazards inherent in the use itself or because of special problems that its proposed location may present. For example, uses that generate traffic such as family childcare, service stations, convenience stores, or drive-thrus are often designated as conditional uses.

What is a conditional use permit (CUP)?

A conditional use permit is a document a city issues to grant a conditional use when the general and specific ordinance standards have been met by the applicant. The use is allowed by permit only if the special concerns are addressed as set forth in the zoning ordinance. Conditional use permits are authorized under [Minn. Stat. § 462.3595](#).

For what uses can a CUP be granted?

Generally CUPs are granted only for uses specifically listed in the zoning ordinance as conditional uses in a particular zoning district. If a use is not designated as a conditional use in a zoning district, then arguably the city has no ability to issue a CUP without first amending the zoning ordinance to provide for the conditional use. This would of course allow other applicants to apply for a conditional use permit under the same standards.

What are general CUP standards?

A zoning ordinance will typically detail general standards that apply to all conditional uses. For example, some zoning ordinances provide that all conditional uses must conform to the comprehensive land use plan of the community, be compatible with the adjoining properties, and be served by adequate roads and public utilities.

What are specific CUP standards?

In addition to general CUP standards, many zoning ordinances will detail specific standards that apply to a particular conditional use, such as those made for businesses operating out of the home, known as home occupations. Conditions for such uses may include specific standards regarding

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Consult your attorney for advice concerning specific situations.

things like off-street parking and loading areas, landscaping and site plan, and hours of business operation.

Who grants the CUP?

A CUP is typically approved by the city council. Planning commissions often first consider the CUP application and make recommendations to the city council. State statute allows the city council to designate its CUP approval to another authority, and some cities have designated the planning commission as the approving body. In any event, the city council is generally makes the final decision on CUPs.

When can a CUP be granted?

If a proposed conditional use satisfies both the general and specific standards set forth in the zoning ordinance, the applicant is entitled to the conditional use permit. *Importantly, if the applicant meets the general and specific ordinance standards, the city usually has no legal basis for denying the CUP.*

What kind of authority is the city exercising?

A city exercises so-called “quasi-judicial” authority when considering a CUP application. This means that the city’s role is limited to applying the standards in the ordinance to the facts presented by the application. The city acts like a judge in evaluating the facts against the standards. If the applicant meets the standards, then the CUP should be granted. In contrast, when the city in zoning ordinance designates certain uses as conditional, the city is exercising “legislative” authority and has much broader discretion.

What is the public hearing requirement?

A proposed conditional use is allowed only after a statutorily required public hearing. The city must provide published notice of the time, place, and purpose of the hearing on a proposed CUP at least 10 days prior to the day of the hearing. If the decision affects an area of five acres or less, the city may need to mail notice to property owners within a 350-foot radius of the land in question. The purpose of the public hearing is to help develop a factual record as to whether the applicant meets the relevant ordinance standards such that the CUP should be granted.

What is the role of neighborhood opinion?

Neighborhood opinion alone is not a valid basis for granting or denying a CUP. While city officials may feel their decision should reflect the overall preferences of residents, their task is limited to evaluating how the CUP application meets the ordinance standards. Residents can often provide important facts to help the city address whether the application meets the standards, but unsubstantiated opinions and reactions to an application do not form a legitimate basis for a CUP decision. If neighborhood opinion serves as the sole basis of the decision, it could be overturned by a court if challenged.

When should a CUP decision be made?

A written request for a CUP is subject to Minnesota’s 60-day rule ([state statute section 15.99](#)), and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration

of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered an approval.

How should the CUP decision be documented?

Whatever the decision, a city should create a record that will support it. If a city denies a CUP application, the 60-day rule requires the reasons for the denial be put in writing. Even if a city approves a CUP, a written statement explaining the decision is advisable. The written statement explaining the decision should address the general and specific ordinance standards, and explain the relevant facts and conclusions.

What conditions can a city attach to a CUP?

Reasonable conditions relating to the ordinance standards may be attached to a CUP based upon factual evidence contained in public record. For example, if a zoning ordinance provides that a conditional use should not have adverse visual or noise impacts on any adjacent property, a city might require specific screening and landscaping conditions to address any potential impacts established in the record.

Can a city put an expiration date on a CUP?

State statute provides that a CUP remains in effect as long as the conditions agreed upon are observed. The attorney general has found that time limits such as sunset provisions or automatic annual review are not consistent with state law, explaining that cities may not enact or enforce provisions that allow a city to terminate CUPs without regard to whether or not the conditions agreed upon are observed.

What if the city wants put a time limit on a land use?

If a city wishes to place time constraints on particular uses, then the appropriate zoning tool is an interim use permit, rather than a conditional use permit. Passed in 1989, [Minn. Stat. § 462.3597](#) authorizes interim use permits for a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

What happens to the CUP once granted?

A conditional use permit is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. State statute requires that CUPs be recorded with the county recorders office. When the property is sold, the new landowner will have the continued right to the CUP so long as the conditions are met.

When can a city revoke a CUP?

A city can revoke a conditional use permit if there is not substantial compliance with conditions, so long as the revocation is based upon factual evidence, after appropriate notice and hearing. Because a CUP is a property right, a city should work closely with the city attorney if considering a CUP revocation.