

## ARTICLE 6: CONDITIONAL USE PERMITS

### **Section 6.01 General Provisions**

The City Council may, by conditional use permit after a Public Hearing and referral to and recommendation from the Planning Commission, authorize and permit conditional uses as designated in the district use regulations. Approval shall be based on findings that the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area.

Allowable uses may be permitted, enlarged, or altered upon application for a conditional use permit in accordance with the rules and procedures of this ordinance. The Council may grant or deny a conditional use permit in accordance with the intent and purpose of this ordinance. In granting a conditional use permit, the Council will authorize the issuance of a conditional use permit and shall prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of the conditional use permit.

### **Section 6.02 Application for Conditional Use Permits**

A request for a conditional use permit or modification of a conditional use permit may be initiated by a property owner or his or her authorized agent by filing an application with the City upon forms prescribed for the purpose. The application shall be accompanied by a drawing or site plan and other such plans and data showing the dimensions, arrangements, descriptions data, and other materials constituting a record essential to an understanding of the proposed use and proposed modifications in relation to the provisions set forth herein. A plan as to the operation and maintenance of the proposed use shall also be submitted. The application shall be accompanied with a non-refundable fee.

### **Section 6.03 Planning Commission Public Hearing**

Before any proposal for a conditional use permit is considered by the City Council, the Planning Commission shall conduct a public hearing after prior notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in the City of Lexington, one time at least 10 days prior to such hearing and either notice posted on the property or mailed to property owners within 300 feet at least 10 days prior to such hearing.

### **Section 6.04 City Council Public Hearing**

Before issuance of any conditional use permit, the Council will consider the application for the conditional use permit together with the recommendations of the Planning Commission at a public hearing after prior notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in the City of Lexington, one time at least 10 days prior to such hearing and either notice posted on the property or mailed to property owners within 300 feet at least 10 days prior to such hearing.

### **Section 6.05 Decisions**

A majority vote of the Council shall be necessary to grant a conditional use permit. Approved conditional use permits shall be in the form of a conditional use agreement signed by owner and City outlining the specific conditions placed upon the use by the City Council. The applicant shall have 12 months from the approval of the conditional use permit to commence the use, unless an extension is granted according to Section 6.05.01. If the use stated within the conditional use permit has not been commenced within 12 months, or approved time period, said permit shall become invalid and any activity shall be required to apply for a new conditional use permit. All decisions by the City Council and the recommendations of the Planning Commission shall be required to provide findings of fact for their decision for either approval or denial.

6.05.01 The Building Official has granted an additional six month administrative extension provided:

1. The character (including uses, parking conditions, traffic, and others) of the area in which the use(s) were approved has not changed significantly;
2. The applicant has made some effort to follow through with said permit or there were circumstances that slowed the applicants' progress; and
3. If the administrative extension of the second six month period has lapsed without establishment of said conditionally permitted use; or, if staff deems the character of the area has changed within the initial six month period, the applicant shall be required to reapply to both the Planning Commission and City Council for further approval(s).

**Section 6.06 Transferability**

Any approved conditional use permit is automatically transferable upon sale of the property from the original applicant to another party. However, the new owner shall assume the responsibility for complying with:

- 6.06.01 The conditions of the permit;
- 6.06.02 The use shall not change or be expanded unless a new conditional use permit is approved; and
- 6.06.03 Failure to comply with the conditions of the permit shall subject the new owner to the revocation process of this Article.

**Section 6.07 Revocation**

Any approved conditional use permit may be revoked for failure to comply with the conditions approved by the City Council. Revocation shall require that the City notify the applicant of any noncompliance, in writing, and provide the applicant 30 days to correct the issue(s).

Failure to comply with the notice shall cause a public hearing to be scheduled by the City Council, to review the permit and the approved conditions and the failure to act by the applicant. If the applicant is found to be noncompliant with the issued permit and conditions, the City Council shall revoke the permit and order the use to cease and desist.

Failure to follow a cease and desist order shall cause action to be filed the City Attorney in District Court.

Revocation may also occur, if the City documents that the use has ceased operations for 12 consecutive months. The City shall notify the applicant of the revocation in writing. The permit shall be invalid within 30 days.

**Section 6.08 Standards**

No conditional use permit shall be granted unless that Planning Commission or City Council has found:

- 6.08.01 That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, moral, comfort or general welfare of the community.
- 6.08.02 That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
- 6.08.03 That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
- 6.08.04 Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- 6.08.05 Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- 6.08.06 The use shall not include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- 6.08.07 The use shall not involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.
- 6.08.08 The use shall not involve any malodorous gas or matter which is discernible on any adjoining lot or property.
- 6.08.09 The use shall not involve any direct or reflected glare which is visible from any adjoining property or from any public street, road, or highway.
- 6.08.10 The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- 6.08.11 The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.