

Utah League of Cities & Towns



What you need to
know about...

**CONDITIONAL
USES**

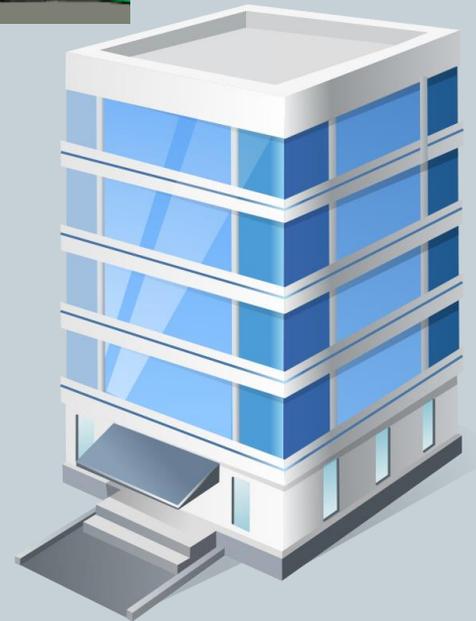
Uses in a Land Use Ordinance Zoning District



- Permitted: Allowed with set standards
- Conditional: **Allowed** with conditions
- Prohibited: Not allowed



Permitted



Conditional



Permitted with
conditions.....



Prohibited



Uses in a Land Use Ordinance Zoning District



- Administrative or Legislative?
 - When writing the Code for what is Permitted or Conditional, and creating standards and conditions?
 - ✦ Legislative
 - When applying the Code for a Conditional use?
 - ✦ Administrative



UTAH STATE CODE

Municipal Land Use, Development, and Management Act (LUDMA)



10-9a-103. Definitions.

- (5) "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.**

UTAH STATE CODE

Municipal Land Use, Development, and Management Act



10-9a-507. Conditional uses.

A land use ordinance may include conditional uses and

(1) 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.

What does that mean?

- There is an assumption that the uses within a zone are already relatively compatible.
 - The word “compatible” is not in the Legislation – but “comply with standards” is
 - They should be able to be compatible with conditions for additional standards
- **DO NOT EVEN THINK ABOUT ALLOWING THE CODE TO HAVE A CONDITIONAL USE IN A ZONE WHERE IT CANNOT EVER BE COMPATIBLE!**

Apples & Oranges

Depending on the neighborhood or zone, similar uses will have different impacts; some will be tolerated in one neighborhood or zone but not in another.



How do we use them?



Purpose:

- The overall purpose of any condition, established as part of the Conditional Use Process, is to protect the integrity of the underlying zoning.
- Items for protection include residential neighborhoods, commercial viability, community character, aesthetics, etc.

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. (*AKA The Right To Quiet Enjoyment*)
- As long as each condition can be justified as providing such protection, a court will seldom assume conditions to be arbitrary.

- (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.



mit·i·gate

To moderate (a quality or condition) in force or intensity; alleviate. See Synonyms at **relieve**.

v. intr.

To become milder.



DOES NOT MEAN ELIMINATE!

Utah State Code

10-9a-507. Conditional uses.



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

Standards
Must be written





GENERIC / GENERAL REVIEW CRITERIA

AND/OR

SPECIFIC REVIEW CRITERIA

What are General Conditional Uses?



- Uses listed as Conditional but without specific conditions identified ahead of time

	NC	MU	RC*	OW	I	MW	BP	IC
Child Care Center	C	C	C			C ^A	C ^A	
Churches	C	C				C		P
Commercial & industrial laundries				C	P			
Commercial Recreation		C	C	C	C	P		
Commuter/Light Rail Station			P	P	P		C	C
Contract construction services establishments				C	P			
Contract Services Office				P	P			
Convenience Store		C	P	C			C ^E	
Convenience Store/Fast Food Combination			C				C ^E	

Potential General Review Standards



- The safety of people and/or property.
- Health and sanitation.
- Environmental concerns.
- Compatibility with proposed location (development or environment)
- Consistency with General Plan intent & purpose of Land Use Zone
- Traffic

Broad,
All encompassing
Can apply to a variety of uses

Standards then Conditions



After you apply the review criteria to the application then you can attach conditions that relate directly to that specific situation

- A standard of review could be “Effects of Lighting”
- An ensuing condition related to that standard could be “No flood lights are allowed”

CONDITIONAL USE PERMITS RUN WITH THE LAND

What are Specific Conditional Uses?



- Uses listed as Conditional that DO have specific conditions identified ahead of time
- Better ahead of time than on the spot...
 - Lighting
 - Aesthetics
 - Noise
 - Landscaping
 - Hours of operation
 - Etc...
- Gravel pit:
 - required distance to nearest residential
- Daycare:
 - Specific standards for drop-off and pickup to mitigate traffic in a neighborhood
- Home Occupation:
 - Limitation on number of patrons, commercial vehicles, to protect neighbors
- Vehicle Storage:
 - Requirement for opaque fencing around storage area

So how do you come up with Conditions?



Assigning conditions is not an exact science...

...but planners can:

- consider past experience with specific uses, and identify the impacts that occurred and evaluate the success of the standards imposed to address those impacts, and
- reach out to other planners who deal with similar uses, and
- use state and national planning organizations & publications & other resources.

Does the condition relate to a problem that the local government entity is authorized to solve?

Findings of Fact

Saratoga Springs City
Planning Commission

Report of Action

Findings of fact (aka just “findings”) are the reasons why a motion is being made or a decision is being made in such a way. They are unique to each permit.

1. Findings should be part of a motion and recorded carefully in the minutes of the meeting. They cannot legally be added at a later date.
2. When action is taken to the court, the judge will read the minutes of your meeting, looking specifically at your process and your findings. If both are in order and relevant, the case usually goes no further. Seldom does the judge consider the merits.

A written record also helps with compliance and future owners as conditional use permits run with the land.

Applying your Code to a CUP



- **Code standard:**
 - **Traffic circulation and parking, and in particular:**
 - the type of street serving the proposed use in relation to the amount of traffic expected to be generated;
 - the adequacy, convenience, and safety of provisions for vehicular access and parking, including the location of driveway entrance and exits; and
 - the amount, timing, and nature of traffic generated by the proposed conditional use.

 - **Example:**
 - **Analysis:** The proposed dance studio is located on a dead-end local (neighborhood) street, and as proposed ten classes per day with 10 students per class will generate significant traffic on this street.
 - **Finding:** A condition to stagger the start time of classes by fifteen minutes will minimize traffic congestion on the street, by ensuring that departing vehicles can leave before vehicles for the next class arrive.
 - **Condition:** Class end and start times shall be separated by a minimum of fifteen minutes.

Good conditions make good neighbors.



The neighbors of this small bar, 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.

TIME LIMIT



Example:

19.15.09. Time Limit.

The Conditional Use Permit shall expire by operation of law without any action by the City unless construction or the use itself begins within one year of issuance and continues so as not to result in an expired building permit under applicable building codes. Construction must be complete within two years after issuance of the permit; otherwise, the permit shall expire by operation of law without any action by the City.

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

PERMIT REVOCATION



Example:

The City may revoke a 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.

- Notice to correct
- Appeal
- Hearing
- Process in your Code

Public Input



1. No public hearing required by State law
2. Public input may be warranted to gather information on site
3. Notice provisions up to each jurisdiction
4. Don't require a public hearing if you don't have to!

Yeah...good luck with that!

Summary



- Remember, **ALLOWED** with conditions
- Make sure the use is appropriate in the zone
- Write standards in Code ahead of time
- Be as specific as possible ahead of time
- Remember, **MITIGATE** not **ELIMINATE** impacts
- Don't require hearings if you don't have to 😊
- Articulate clear findings and get them on the record





Questions?

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