

# **ARTICLE 28.00**

## **CONDITIONAL LAND USE**

### **Section 28.01 -- INTENT**

The procedures and standards in this Section are intended to provide a consistent and uniform method for review of proposed plans for conditional land uses. Conditional land uses are uses, either public or private, that possess unique characteristics and therefore cannot be classified as a permitted use in a particular zoning district (see Definitions, Section 2.02). This Article contains standards for review of each conditional land use proposal individually on its own merits to determine if it is an appropriate use for the district and specific location where it is proposed.

### **Section 28.02 – PROCEDURES AND REQUIREMENTS**

Conditional land use proposals shall be reviewed in accordance with the procedures in Article 27.00 for site plan review, except as follows:

#### **A. Public Hearing Required**

A public hearing shall be scheduled and held by the Planning Commission before a recommendation is made on a conditional land use request. One notice of the public hearing shall be published in a newspaper which circulates in the City, and sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is within three hundred (300) feet of the boundary of the property in question, and to the occupants of all structures within three hundred (300) feet. The notice shall be given not less than 15 days before the date the application will be considered, in accordance with the provisions in Sec. 502 (2) of the Michigan Zoning Enabling Act, PA 110 of 2006 as amended. The notice shall:

1. Describe the nature of the conditional land use request.
2. Indicate the property which is the subject of the conditional land use request.
3. State when and where the conditional land use request will be considered.
4. Indicate when and where written comments will be received concerning the request.
5. Indicate the date, time, place and purpose of the public hearing.

#### **B. Planning Commission Action**

The Planning Commission shall review the application for conditional land use in accordance with the procedures in this Article, together with the public hearing findings and reports and recommendations from the Planning and Community Development staff, City Engineering Department, Midland County Road Commission, Midland County Health Department, Midland County Drain Commissioner, Fire Department, City of Midland City Police Department and other reviewing agencies. The Planning Commission shall then make a recommendation to the City Council, solely based on the requirements and standards of this Ordinance. The Planning Commission shall submit to the City Council a written recommendation of approval, denial, or approval with conditions within forty-five (45) days of the close of the public hearing required for a conditional land use proposal.

**C. Recording of Planning Commission Action**

Each action taken with respect to a conditional land use shall be duly recorded in the minutes of the Planning Commission. The minutes shall record the findings of fact relative to each conditional land use proposal, the grounds for the action taken, and any conditions imposed in conjunction with approval.

**D. City Council Action**

A public hearing shall be scheduled and held by the City Council before a decision is made on a conditional land use request. One notice of the public hearing shall be published in a newspaper which circulates in the City, and sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is within three hundred (300) feet of the boundary of the property in question, and to the occupants of all structures within three hundred (300) feet. The notice shall be given, in accordance with the provisions of the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended.

The notice shall:

1. Describe the nature of the conditional land use request.
2. Indicate the property which is the subject of the conditional land use request.
3. State when and where the conditional land use request will be considered.
4. Indicate when and where written comments will be received concerning the request.
5. Indicate the date, time, place and purpose of the public hearing.

The City Council is authorized to approve, approve with conditions, or deny a conditional land use proposal as follows:

**1. Approval**

Upon determination that a conditional land use proposal is in compliance with the standards and requirements of this Ordinance and other applicable ordinances and laws, approval shall be granted.

**2. Approval with Conditions**

The City Council may impose reasonable conditions with the approval of a conditional land use. The conditions may include provisions necessary to insure that public services and facilities affected by a proposed conditional land use or activity will be capable of accommodating increased service and facility loads generated by the new development, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- a. Conditions shall be designed to protect natural resources, the health, safety, welfare, and social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
- b. Conditions shall be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- c. Conditions shall be necessary to meet the intent and purpose of the Zoning Ordinance, related to the standards established in the Ordinance for the land use or

activity under consideration, and necessary to insure compliance with those standards.

**3. Denial**

Upon determination by the City Council that a conditional land use proposal does not comply with the standards and regulations set forth in this Ordinance, or otherwise will be injurious to the public health, safety, welfare, or orderly development of the City, a conditional land use proposal shall be denied.

The City Council decision on a conditional land use shall be incorporated in a written statement of findings relative to the conditional land use under consideration. Said findings shall specify the reasons for the decision and any conditions imposed. Upon the recommendation of denial by the Planning Commission, the approval of a conditional land use shall require a four-fifths (4/5) vote of the City Council.

**E. Effect of Approval**

Upon approval, a conditional land use shall be deemed permitted in the district in which it is proposed, subject to any conditions imposed and final approval of the site plan. Such approval shall affect only the lot or portion thereof on which the proposed use is located. Such approval shall remain valid regardless of change of ownership.

**F. Expiration of Conditional Land Use Approval**

If construction has not commenced within twelve (12) months of final approval the approval becomes null and void and a new application for conditional land use approval shall be required. Upon written request from the applicant prior to expiration of the previous approval, a twelve (12) month extension may be granted by the City Council, if it finds that the approved conditional land use application and site plan adequately represent current conditions on and surrounding the site and provided the site plan conforms to current zoning ordinance standards. The written request for extension shall be received by the Planning and Community Development Department or post marked prior to the expiration date or a new application for conditional land use review will be required.

**G. Administrative Review and Site Inspection**

An administrative review and site inspection shall be conducted within one (1) year of the date of City Council approval to ensure compliance with the conditions of the approved conditional land use permit.

**H. Modification to Approved Conditional Land Use**

Conditional Land Uses approved in accordance with provisions of this Section may subsequently be modified, subject to the following requirements:

1. Site modifications that do not change the nature of the use or that do not affect the intensity of use may be reviewed and approved following normal site plan review procedures described in Article 27.00. In evaluating change in intensity of use, the staff shall consider the extent of increase of vehicular or pedestrian traffic, the change in demand for public services, extent to which the total floor area occupied by the proposed use will increase, increased demand for parking, off-site impacts from noise, fumes, drainage, etc., and similar considerations.
2. Modifications that change the nature of the use or that result in an increase in the intensity of the use shall be reviewed in the same manner as a new conditional land use proposal, following the procedures in this Section.

**I. Revocation of Conditional Land Use Approval**

Compliance with the conditions of conditional land use approval shall be a continuing obligation of the applicant and any subsequent owner. Approval of a conditional land use may be revoked by the City Council if construction is not in conformance with the approved plans or if the use is not being operated in compliance with the required conditions. Written notice shall be provided to the applicant at least five (5) days prior to the meeting at which the case will be considered. The applicant shall be given the opportunity to present information and to answer questions. The City Council may revoke approval if it finds that a violation exists and has not been remedied prior to the hearing. After revocation notice has been given the use for which the permit was granted shall cease within thirty (30) days or be subject to the penalties described in Section 31.07.

**J. Performance Guarantee**

The Planning Commission may require that a performance guarantee be deposited with the City to ensure faithful completion of the improvements, in compliance with Section 3.14.

**K. Termination**

Termination of the exercising of the authority granted under a conditional land use approval for a period of more than six (6) months will void any such approval.

## **SECTION 28.03 – STANDARDS FOR GRANTING CONDITIONAL LAND USE APPROVAL**

Approval of a conditional land use proposal shall be based on the determination that the proposed use will be consistent with the intent and purposes of this Ordinance, will comply with all applicable requirements of this Ordinance, including site plan review criteria set forth in Article 27.00, applicable site development standards for specific uses set forth in Article 9.00, and the following standards:

**A. Non-Discretionary Standards**

1. The conditional land use shall be in accord with the provisions of the Zoning Ordinance of the City of Midland.
2. Compliance with all of the standards in Section 27.06.A.
3. Access to the proposed development shall be in accordance with the following:
  - a. Driveway and curb cuts found in Sec. 22-55.1, 22.55-2, and 22-55.3 of the Code of Ordinances of the City of Midland and administrative rules relating thereto.
  - b. Requirements relating to streets, both public and private, as set forth in the Subdivision Control Regulations, Chapter 23, Code of Ordinances of the City of Midland.
4. Adequate provision is made for fire protection within the site in accordance with Chapter 8 of the Code of Ordinances of the City of Midland

**B. Discretionary Standards**

1. **Protection of the Public Health, Safety, and General Welfare**  
The establishment or maintenance of the conditional use shall not be detrimental to the public health, safety, or general welfare.

2. **Compatibility With Surrounding Uses**

The conditional use shall be located, designed, maintained and operated to be compatible with the existing or intended character of that zoning district and adjacent districts. In determining whether this requirement has been met, consideration shall be given to:

- a. The location and screening of vehicular circulation and parking areas in relation to surrounding development.
- b. The location and screening of outdoor storage, outdoor activity or work areas, and mechanical equipment in relation to surrounding development.
- c. The hours of operation of the proposed use. Approval of a conditional land use may be conditioned upon operation within specified hours considered appropriate to ensure minimal impact on surrounding uses.
- d. The bulk, placement, and materials of construction of the proposed use in relation to surrounding uses. Any proposed building shall be compatible with the predominant type of building in the particular district in terms of size, character, location or proposed use.
- e. Proposed landscaping and other site amenities. Additional landscaping over and above the requirements of this Ordinance may be required as a condition of approval of a conditional land use.
- f. Hours of operation shall be compatible with the surrounding neighborhood.

3. **Detrimental Effects**

The proposed conditional land use shall not involve any activities, processes, materials, equipment, or conditions of operation, and shall not be located or designed so as to be detrimental or hazardous to persons or property or to public health, safety, and welfare. In determining whether this requirement has been met, consideration shall be given to the level of traffic, noise, vibration, smoke, fumes, odors, dust, glare, and light.

4. **Impact of Traffic**

The location of the proposed conditional land use within the zoning district shall minimize the impact of the traffic generated by the proposed use. In determining whether this requirement has been met, consideration shall be given to the following:

- a. Proximity and access to major thoroughfares and other public streets.
- b. Estimated traffic generated by the proposed use.
- c. Proximity and relation to intersections,
- d. Adequacy of driver sight distances.
- e. Location of and access to off-street parking.
- f. Required vehicular turning movements.
- g. Provisions for pedestrian traffic.

5. **Adequacy of Public Services**

The proposed conditional land use shall be located so as to be adequately served by essential public facilities and services, such as highways, streets, police and fire protection, drainage systems, water and sewage facilities, and schools, unless the proposal contains an acceptable plan for providing necessary services or evidence that such services will be available by the time the conditional land use is established.

6. **Protection of Site Characteristics**

The conditional use shall preserve and incorporate the site's important architectural, natural and scenic features into the development design.

7. **Compatibility with Natural Environment**

The proposed conditional land use shall be compatible with the natural environment and conserve natural resources and energy, and cause minimal adverse environmental effects.

8. **Compatibility with the Master Plan and Intent of Zoning Ordinance**

The proposed conditional land use shall be consistent with the general principles and objectives of the City's Master Plan and shall promote the intent and purpose of this Ordinance and of the use district.

## **Section 28.04 -- FILING FEES**

All applications shall be accompanied by a filing fee established by the City Council, found in Chapter 21 of the City of Midland Code of Ordinances. The approval process should not begin until the filing fee is paid. Upon notification of deficient payment of fees, administrative officials charged with enforcement of the Ordinance shall suspend further review of the application.

A schedule of the current filing fees and deposit requirements shall be made available in the office of the Planning and Community Development Department.

The assessment and payment of application fees does not affect the requirements for a performance guarantee as specified in Section 3.14.

There shall be no fee in the case of application filed in the public interest by a municipal department or City Official.