

EXHIBIT A

CONDITIONAL USES¹

§ 154.180 CONDIITONAL USE PERMIT PROCEDURE.

- (A) Purpose. The purpose of conditional use permit review is to allow a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may be suitable only if certain conditions are required that mitigate the detrimental impacts or, if the detrimental impacts or effects cannot be mitigated, to prohibit such use.²
- (B) Applicability.
- (1) Each zone will govern what conditional use will be allowed in that zone. Each zone may have additional conditions listed to fully mitigate adverse impacts.³
 - (2) Any conditional use permit request that requires site plan, building permit, or another review shall also be subject to the applicable review procedures established in this Code for those procedures.
- (C) Land Use Authority.⁴
- (1) A land use authority shall approve a conditional use permit 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 and criteria.
 - (2) Unless stated otherwise in this code, the Town Council is hereby authorized, as the land use authority, to review and render a decision for all conditional use applications in accordance with the requirements of this subchapter.
- (D) Pre-Application Meeting. A pre-application meeting is optional and may be requested by the applicant.
- (1) The pre-application meeting is intended to provide an opportunity for Town staff and referral agencies to discuss details and potential impacts of the proposed

¹ This amendment does not contemplate changes to conditional use procedures and review criteria in current 154.208(K), (L), (M), and (N) related to "Solar Power Plant-Large." **QUESTION:** Does the Town want this Ordinance to include edits to that section to reconcile any **conflicting ideas?** Ideally, rather than repeating the same procedure and standards, the solar power plant section should reference readers to this CUP section of the ordinance. Similarly, current section 154.210(I) related to "Battery Energy Storage Systems," also includes independent conditional use procedures and criteria.

² Replaces current 154.180.

³ From current 154.183.

⁴ From current 154.182. Revised the decision-making body to be the Town Council rather than the Planning Commission.

project and to establish points of contact. Staff may review the zoning classification of the site, the applicable regulatory ordinances and materials, applicable procedures, and examine the proposed use and development of the property. Staff may advise the applicant in preparing the application and supporting documents as necessary.

- (2) Any information or discussions held at the pre-application meeting shall not be binding on the Town, referral agencies, or the person that requested the meeting. Discussions of potential conditions to mitigate impacts do not reflect actions by a decision-making body until and unless a decision-making body takes formal action to attach that condition to an application.
 - (3) A pre-application meeting does not preclude an interested party from meeting with Town staff to discuss concepts, development, zoning, or other items as part of the owner or other party's due diligence or investigatory processes.
- (E) *Application Submittal and Processing.* Except for Town-initiated applications, the conditional use permit application shall be submitted by the property owner or by an authorized agent or lessee. Applications submitted by an agent or lessee shall include an affidavit of authorization from the property owner.⁵
- (F) *Application Content.* The application shall be submitted to the Town. Staff are available to assist as needed at Town Hall during regular business hours. The applicant shall submit:
- (1) The Town's completed conditional use permit application form;
 - (2) A description of existing uses, structures, and development on the property;
 - (3) A written narrative describing:
 - (a) The proposed use and the manner in which it will operate;
 - (b) The days and hours of operation;
 - (c) The anticipated number of employees, customers, residents, visitors, or other users;
 - (d) Anticipated traffic, parking, loading, deliveries, noise, lighting, odor, utility demand, drainage, public-safety needs, and other operational characteristics;
 - (e) Proposed construction, phasing, and the anticipated schedule;
 - (f) Reasonably anticipated detrimental effects of the proposed use; and

⁵ From current 154.184(A)(2). Re-worded for clarity and consistency.

- (g) Measures proposed to avoid or mitigate those effects and to demonstrate compliance with applicable Town standards.
- (4) A dated and scaled map showing the subject property, surrounding streets, parcels, zoning districts, and existing land uses, together with a north arrow;
- (5) A current boundary survey, recorded plat, or other document acceptable to the Planning Director or Mayor's Designee, showing property boundaries and dimensions;
- (6) A scaled site plan showing:
- (a) Parcel boundaries and dimensions;
 - (b) Existing and proposed buildings and structures, including dimensions and setbacks;
 - (c) Access points, driveways, internal circulation, parking, loading areas, curbs, and sidewalks;
 - (d) Landscaping, open space, fencing, and refuse or waste facilities;
 - (e) Grading, drainage facilities, floodplains, slopes, waterways, sensitive lands, and other environmental features;
 - (f) Existing and proposed utilities, easements, lighting, and other site improvements; and
 - (g) Calculations for parking, landscaping, lot coverage, open space, floor area, occupancy, and other applicable land-use or development standards;
- (7) Floor plans, building elevations, landscape plans, lighting plans, grading and drainage plans, utility plans, circulation plans, and other technical plans relevant to evaluating the proposal; and
- (8) Photographs or other visual materials documenting existing site conditions when reasonably required by the Planning Director or the Mayor's Designee.
- (9) Additional studies/analysis may be required to enable the decision-making authority to determine which detrimental impacts or effects may need to be addressed, based on applicable review criteria. Each required study or supporting narrative shall identify reasonably anticipated detrimental effects relevant to the proposed use or site and shall describe measures demonstrating compliance with applicable standards and the avoidance or mitigation of those effects. The following are examples of materials that may be required:
- (a) A traffic or transportation-impact analysis;

- (b) A parking or loading analysis;
 - (c) A drainage, stormwater, or floodplain analysis;
 - (d) A utility-capacity or public-facilities analysis;
 - (e) A geotechnical, geological-hazard, sensitive-lands, or slope-stability report;
 - (f) A noise, vibration, lighting, odor, air-quality, or environmental-resource analysis;
 - (g) A wildfire, emergency-access, fire-protection, public-safety, or security plan;
 - (h) Documentation of required health, environmental, state, county, or other agency approvals; and
 - (i) A construction-management, phasing, or mitigation plan addressing reasonably anticipated construction impacts.
- (10) The Director or Mayor's Designee may require additional information, plans, studies, or documentation reasonably necessary to determine:
- (a) If the proposed use complies with applicable laws, adopted plans, zoning regulations, and conditional use approval standards; or
 - (b) If reasonably anticipated detrimental effects can be avoided or mitigated through reasonable conditions.
- (11) Provide current ownership information and mailing labels, envelopes, postage, or a Town-approved equivalent necessary to address legally required notices to property owners within 300 feet of the subject property.
- (12) Town staff will not begin processing an application until the application materials submitted are determined to be complete and sufficient in accordance with this section.

(G) Determination of Application Completeness.

(1) Applications.

- (a) Upon receiving an application, the Planning Director or Mayor's Designee shall determine whether the application is complete. A complete application is one that contains all information and materials required by this code, and that has sufficient detail and readability to evaluate the

application for compliance with applicable review standards of this code.

- (b) An application shall not be accepted or deemed complete until all required initial application fees, as established in the Town Fee Schedule, have been paid.

(2) Incomplete Applications.

- (a) Upon determining whether the application is incomplete, the Planning Director or Mayor's Designee shall notify the applicant in writing of any submittal deficiencies. The applicant may correct the deficiencies and resubmit the application for a determination of completeness until the Planning Director or Mayor's Designee determines the application is complete.
- (b) An application shall not be reviewed for compliance with this code or scheduled for a public meeting or public hearing by any review or decision-making body until it is determined to be complete according to this section and all outstanding fees have been paid in full.
- (c) Upon determining the application is complete, the Planning Director or Mayor's Designee shall accept the application for review in accordance with the procedures and standards established in this code.

(3) Application Revisions.

- (a) An applicant may revise an application following a determination that the application is complete prior to any formal action taken by a review or decision-making body.
- (b) Revisions shall be limited to changes that directly respond to specific requests or suggestions made by Town staff, review, or decision-making bodies.
- (c) All other application revisions shall be processed as a new application, except those that constitute only minor additions, deletions, or corrections to the request, as determined by the Planning Director or Mayor's Designee.

- (4) Abandoned Applications. If a complete application has been reviewed and comments provided to the applicant for correction, but a resubmittal addressing staff-noted deficiencies has not been received within six months of staff providing the applicant with the comments, such application shall be deemed abandoned and all fees forfeited. The applicant may request, and the Planning Director or Mayor's

Designee may grant one three-month extension to address staff-noted deficiencies. In extenuating circumstances, the Planning Director or Mayor's Designee may grant an additional six-month extension period beyond the three-month extension outlined above. Abandoning an application terminates the review process and closes the application.

(5) Application Withdrawal.

- (a) After an application has been accepted for review, the applicant may withdraw the application by submitting a signed letter of withdrawal to the Planning Director or Mayor's Designee before the Town takes action by a vote of the decision-making body.
- (b) An applicant is not entitled to a refund of application fees for withdrawn applications; however, application fees may be refunded at the Planning Director or Mayor's Designee's discretion if staff and review agencies have not provided the applicant with review comments and a public notice has not been sent.

(6) Concurrent Applications.

- (a) Whenever an application requires review under the provisions of more than one permit, approval, or process, staff may schedule the review procedures and hearings so that review for each different permit, approval, or process can be scheduled on the same agenda, to the extent practicable.
- (b) Review and decision-making bodies considering applications submitted simultaneously shall render separate recommendations and decisions on each application based on the specific standards applicable to each approval.
- (c) Some forms of approval depend on the applicant having previously received another form of approval or require the applicant to take particular action within some time period following the approval to avoid having the approval lapse. Therefore, even though this code intends to accommodate simultaneous processing, applicants should note that each of the permits and approvals set forth in this code has its own timing and review sequence, and so as a result, concurrent filings are not guaranteed to expedite the respective timing and review sequences of any particular permit or approval.

(7) Authorization of Site Inspection. By submitting an application, the applicant is authorizing Town officials to inspect the subject property at any reasonable time to obtain information required for review of compliance with this code.

- (8) Examination of Application and Other Documents. Upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of, or in opposition to, an application on file with the Town.

(H) Application Review.⁶

- (1) Referral to Staff and Review Agencies. Upon acceptance of an application, the Planning Director or Mayor's Designee shall distribute the complete application to appropriate staff and review agencies. The Planning Director or Mayor's Designee shall review the application and prepare comments considering the review criteria in this section.
- (2) Application Review and Revisions. The Planning Director or Mayor's Designee shall review the application and may consult with applicable Town departments and referral agencies with jurisdiction over public health and safety or required public services, as necessary. The Planning Director or Mayor's Designee may submit recommendations and comments to the applicant. The application will not move forward for further review until the Planning Director or Mayor's Designee determines that the applicant has adequately responded to the Town's recommendations and comments, or the applicant requests that the application move forward without responding to the Town's recommendations and comments.

(I) Public Notice and Hearing

- (1) Planning Commission Review. The application shall be scheduled for a public hearing before the Planning Commission and noticed in accordance with Utah Code Ann. §10-20-Part 2.
- (2) Town Council Review. The application shall be scheduled for a public meeting before the Town Council and noticed in accordance with Utah Code Ann. §52-4-202.⁷

(J) Application Decision and Action

(1) The Planning Director or Mayor's Designee Recommendation.

- (a) Staff Report. The Planning Director or Mayor's Designee shall prepare a written staff report that summarizes the proposal, findings, and staff recommendations.
- (b) Distribution and Availability of Application and Staff Report. The Planning Director or Mayor's Designee shall submit a copy of the staff report to the applicant and the review and/or decision-making body and

⁶ Replaces current 154.184(B).

⁷ **QUESTION:** This draft proposes a public hearing during the Planning Commission review and a public meeting for Town Council. Do you prefer the public hearing be held at Town Council where the final decision is made?

shall make the staff report and related materials available for public review prior to the public meeting or public hearing at which the application is scheduled to be heard.

(2) Planning Commission. The Planning Commission shall review the application and forward its comments to the Town Council, subject to the following standards.

- (a) The Planning Commission recommendation shall be based on the applicable review criteria listed in this section.
- (b) The Planning Commission shall consider the application, relevant support materials, staff report, and any evidence and public comments from the public hearing.
- (c) The Planning Commission shall forward a positive or negative recommendation to the Town Council based on the review criteria. The Planning Commission may also table or continue the item pursuant to adopted policies and procedures. If a Planning Commission motion fails, the item shall be referred to the Town Council without a formal Planning Commission recommendation.
- (d) The Planning Commission shall clearly state the factors and rationale considered in making its recommendation. The Planning Director or Mayor's Designee shall notify the applicant in writing regarding the Planning Commission recommendation and shall clearly state reasons for a negative recommendation or conditions of approval.

(3) Town Council. The Town Council may approve, approve with conditions, or deny the application, in accordance with the conditional use permit review procedures and criteria in this section.

- (a) In granting a conditional use permit, the decision-making body may impose conditions of approval in accordance with the review criteria established in this section, that shall be satisfied before a certificate of occupancy or business license may be issued for use of the property or building subject to the conditional use review.
- (b) Any cost of mitigating detrimental impacts or effects in excess of those which could be reasonably expected to arise from a permitted use in the same zoning district shall become a charge against the development so as not to constitute a burden on the town, surrounding neighbors, or adjacent land uses.
- (c) If the decision-making body proposes reasonable conditions on a proposed conditional use, the decision-making body shall ensure that the conditions are stated on the record and reasonably relate to mitigating the

anticipated detrimental effects of the proposed use.

- (d) 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 decision-making body may deny the conditional use request.

(4) Conditional Use Review Criteria.⁸

- (a) The decision-making authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use, in accordance with this code and Utah Code.
- (b) The requirement to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.
- (c) Any detrimental impacts or effects from the proposed use on any of the following shall not exceed those that could reasonably be expected to arise from a use that is permitted in the district:
1. The health, safety, and welfare of the city and its present and future inhabitants and businesses;
 2. The prosperity of the city and its present and future inhabitants and businesses;
 3. The morals, peace and good order, comfort, convenience, and aesthetics of the city and its present and future inhabitants and businesses;
 4. The tax base;
 5. Economy in governmental expenditures;
 6. The state's agricultural and other industries;
 7. Access to sunlight for solar energy devices; and
 8. Property values.
- (d) To achieve compliance with the standards of this code, the Town may impose conditions that address:⁹

⁸ Replaces current 154.184(C) and (D) and 154.186.

⁹ Replaces current 154.185.

1. Size, configuration, and location of the site and the proposed site plan layout;
2. Proposed site ingress and egress to existing and proposed roads and streets;
3. The adequacy, provision, relocation, or protection of public facilities and amenities, including roads and streets, culinary water, secondary water, sanitary sewer, storm drainage, public safety and fire protections, and other utilities;
4. Design, location, and amount of off-street parking, loading areas and solid waste disposal, and refuse collection areas;
5. Site circulation patterns for vehicular, pedestrian and other traffic;
6. Massing, size, number, location, design, exterior features, materials, and colors of buildings, structures, and other facilities;
7. The location and design of all site features, including proposed signage, lighting, and site furnishings;
8. The provision of usable open space, public features, and recreational amenities;
9. Fencing, screening and landscape treatments, and other features designed to increase the attractiveness and safety of the site and protect adjoining property owners from noise, visual, and other impacts;
10. Measures directed at minimizing or eliminating possible nuisance factors including, but not limited to, noise, vibrations, smoke, dust, dirt, debris, plant materials, odors, gases, noxious matter, heat, glare, electromagnetic disturbances, and radiation;
11. Measures designed to protect the natural features of the site including wetlands and drainageways, groundwater protection, soils, wildlife, and plant life;
12. The regulation of operating hours for activities affecting normal schedules and functions;
13. Identifying a time for regular review and monitoring, as determined necessary, to ensure the use continues to operate in compliance with all conditions and requirements of approval;
14. Measures to ensure compliance with all conditions and requirements

of approval, including, but not limited to, bonds, letters of credit, improvement agreements, agreements to conditions, road maintenance funds, and restrictive covenants;

15. Measures to preserve the quiet, aesthetic and peaceful enjoyment of surrounding properties.
 16. Such other conditions determined reasonable and necessary by the Town to allow the operation of the proposed conditional use, at the proposed location in compliance with the requirements of this code.
- (e) The proposed use complies with all applicable standards in this code, unless the standard is lawfully modified or varied through a procedure established in this code or by court order.
 - (f) The proposed use is consistent with the terms and conditions of any prior land use approval, plan, or plat approval for all or part of the property that is in effect and not proposed to be changed. This includes consistency with any approved phasing plan(s) for development and installation of public improvements and amenities.

(K) Post-Decision Actions and Limitations.

(1) Building or Grading Permit Approval.

- (a) A building or land disturbance permit shall not be issued until all permits, reviews, guarantees of improvement (bonds), or approvals required by this code have been secured.
- (b) The securing of one required review or approval shall not exempt the recipient from the necessity of securing any other review or approval required by this code.

(2) Effect of Approval.

- (a) The granting of a conditional use permit has no effect on the uses permitted by-right and does not waive the regulations of the underlying zoning district.
- (b) The granting of a conditional use permit authorizes the use and establishes the terms of use.
- (c) This code shall not be construed to vest a right to any approved conditional use except upon complete and continued compliance with the

¹⁰ QUESTION: Current 154.187 requires re-evaluation of conditional uses at least every 5 years. Does the Town wish to continue this practice?

conditions finally approved.

(d) Conditional uses shall be subject to the standards of this code and applicable development permit review procedures. All required permits and approvals shall be obtained before any grading, construction, or use commences.

(e) A conditional use permit shall continue to be valid upon a change of ownership of the site or structure that was the subject of the conditional use permit application, so long as the use is not modified, amended, or expired.

(3) Expiration.

(a) A conditional use permit shall expire if the use has not commenced within 12 consecutive months of the date of approval or the use ceases for a period longer than 12 consecutive months.

(b) Upon expiration, a new conditional use permit application may be submitted following the procedures and regulations in effect at the time of re-application.

(4) Failure to Comply with Conditions. A conditional use permit shall be suspended automatically upon failure to comply with conditions and may invoke enforcement actions pursuant to the Fairfield Code of Ordinances. A conditional use permit may be suspended and/or revoked subject to the following:

(a) The Town shall notify the applicant in writing of the suspension and the reasons for the suspension and provide 10 days for the applicant to comply with the condition(s).

(b) If the applicant fails to comply within 10 days, the original decision-making body may revoke the conditional use permit or take action necessary to ensure compliance with the approved conditional use permit if the original decision-making body finds that:

1. The actual detrimental effects or impacts are greater than anticipated;
2. The conditional use permit was obtained by misrepresentation or fraud;
3. The use for which the conditional use permit was granted has now ceased for at least 12 consecutive months.¹¹

¹¹ **QUESTION:** Current 154.187(D)(2) and 154.187(E) includes a standard that a conditional use is invalid after the use has ceased for six consecutive months. A 12-month window is more common – does the Town wish to carry forward the 6-month timeframe?

4. One or more of the conditions of the conditional use permit have not been met;
 5. The holder or user of the conditional use permit has failed to comply with any city, state, or federal law governing the conduct of the use;
 6. The holder or user of the conditional use permit has failed to construct or maintain the site as shown on the approved plan; or
 7. The property or use is in violation of one or more of the standards of this code.
- (c) The decision to revoke a conditional use permit shall be in writing and shall clearly state reasons for revocation.
- (d) The decision to revoke a conditional use approval shall be final immediately following the decision, unless an appeal has been filed in accordance with §154.048: Appeal Authorities and Procedures, in which case the Appeal Authority shall render a final decision.
- (5) Modification or Amendment.¹²
- (e) Modification or amendment of a conditional use shall require a new application. An application shall be submitted, accepted, and revised, and may be withdrawn, in accordance with this section.
- (f) The Town Council, following a public hearing, may modify the conditions under which the use approval was originally approved if the Town Council finds that the use or related development constitutes or is creating a nuisance.
- (6) Appeals. A conditional use permit decision may be appealed pursuant to §154.048: Appeal Authorities and Procedures, with the following modifications:
- (a) Except as provided in paragraph (b) below, review of conditional use decisions shall be confined to the record developed by the conditional use permit decision-making body.
- (b) If the Appeal Authority determines there is good cause and that the record is incomplete or deficient, the matter may be reviewed de novo.
- (c) Any decision by the Appeal Authority, except a remand to the original decision-making body, shall be final and subject to the conditions imposed by the original decision-making body. This code shall not be construed to vest a right to any conditional use except upon complete and

¹² Replaces current 154.187.

continued compliance with the conditions finally approved.

§ 154.181 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. The property owner or authorized agent who submits an application for a conditional use permit under this subchapter.

CONDITIONAL USE. A land use that, because of its unique characteristics or potential impacts on the municipality, surrounding neighbors or the community, requires special consideration, evaluation and reasonable conditions to mitigate adverse effects.

CONDITIONAL USE PERMIT (CUP). An official authorization issued by the town allowing a conditional use to be established on a specific property, subject to compliance with conditions imposed by the land use authority to mitigate reasonably anticipated detrimental effects.

DETRIMENTAL EFFECTS. Reasonably anticipated adverse impacts of a proposed use, including, but not limited to, noise, traffic, environmental degradation, incompatible aesthetics, safety risks or disruption to the community character or adjacent properties.

FINDINGS OF FACT. A set of conclusions supported by the factual evidence presented during the CUP review process, used by the land use authority to determine compliance with the applicable standards.

LAND USE AUTHORITY. The designated body or individual responsible for reviewing and making decisions on land use applications, including conditional use permits. For purposes of this subchapter, the ~~Planning Commission~~ Town Council serves as the LAND USE AUTHORITY unless otherwise specified.

MITIGATION. Measures required to eliminate or minimize the negative impacts of a conditional use, such as screening, buffering, site design modifications, hours of operation restrictions or infrastructure improvements.

MONITORING PLAN. A strategy or schedule submitted by the applicant and/or required by the land use authority to ensure ongoing compliance with the conditions of approval for a conditional use over time.

REASONABLE CONDITIONS. Conditions imposed by the land use authority that are proportionate, related to mitigating anticipated detrimental effects and necessary to ensure the use is compatible with the surrounding area.

SITE PLAN. A detailed drawing or set of plans submitted with a conditional use application showing proposed improvements, structures, access, parking, landscaping, utility connections, drainage and other required elements.

SUBMITTALS. Documents and supporting materials required for a complete CUP application, including site plans, narratives, traffic studies, utility plans and other evidence necessary to demonstrate compliance with applicable standards.

USE COMPATIBILITY. The extent to which the proposed use is harmonious with surrounding land uses in terms of scale, intensity, operation, aesthetics and potential impacts.

VICINITY PLAN. A drawing or map showing the subject property and surrounding properties, land uses and infrastructure within a defined radius to help assess potential impacts of the proposed conditional use.

(Prior Code, § 10.17.20)

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