



City of Tualatin

CONDITIONAL USE PERMIT (CUP) APPLICATION PROCESS SUMMARY

Welcome to the Community Development Department's Citizen Summary of the Conditional Use Permit (CUP) process.

GENERAL INFORMATION

What is a Conditional Use?

The City's zoning regulations designate the uses that can legally occur on each property in the City Limits. The generalized categories of uses are single-family residential, multi-family residential, commercial and industrial uses. Those uses are further classified in each zone as Permitted Outright Uses or Conditional Uses. A Permitted Use is allowed by right and no review of the use itself occurs. A Conditional Use is not allowed by right and before it can occur on a property it must be reviewed. If conflicts are identified with surrounding uses, the decision to allow the Conditional Use can include conditions to reduce or eliminate the conflicts.

Where can I read the City's Code requirements for Conditional Use Permits?

The CUP requirements are in Chapter 32 of the Tualatin Development Code (TDC) which is in the Library and online at www.ci.tualatin.or.us. At the homepage scroll down to Quick Links on the left, click City Codes, click Development Code and then Chapter 32.

Is there a list of the conditional uses that are allowed in each Planning District?

Yes. In the TDC each Planning District Chapter (Chapters 40 – 63) includes a list of uses that are "permitted outright" and "permitted conditionally." Examples in the Residential Low (RL) Density District are, a single family dwelling is a permitted use and a school is a conditional use.

Who makes the decision on Conditional Use Permits?

The City Council. Before a CUP is allowed, the City Council must hold a public hearing, apply the criteria listed in the TDC 32.030 and then approve the CUP, approve it with conditions to mitigate negative affects or deny it. Based on court decisions, a denial is inappropriate unless conditions cannot make the proposed use suitable. Denials are rare. The staff report can recommend, and the Council can require, many types of conditions of approval such as site layout, architecture, landscaping (see TDC 32.040 for more).

What is the focus of a Conditional Use Permit decision?

The focus is the proposed use. For new development on a vacant site, issues such as site layout are not addressed in the decision unless they are in a condition of approval. Typically, such issues are addressed in the Architectural Review Application which follows the Conditional Use Permit decision.

THE APPLICATION PROCESS

Is the applicant required to have a pre-application meeting with City staff?

Yes, per TDC, 32.060. At the pre-application meeting the applicant shows the City staff the plans of the proposed development. They discuss the applicable City requirements and how the proposal meets the requirements. Typically, a lot of contact occurs before the meeting and there are a lot of follow-up discussions after the meeting to resolve issues identified at the meeting.

Is the applicant required to conduct a pre-application neighborhood meeting with the surrounding property owners?

Yes per TDC, 31.063(1). The applicant mails invitations to owners of properties and City approved Neighborhood Associations within 1,000 feet of the subject property. If the 1,000-foot area includes lots within a platted residential subdivision the area shall extend to include the entire subdivision of which the lots are part and the applicant shall identify these subdivisions for staff. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name the notice area need not include the additional phases. At the meeting the applicant should explain the proposal and listen to the neighborhood's concerns. Although the concerns are not required to be mentioned, addressed or incorporated into the application, the approval process may be easier if they are.

How is a Conditional Use Permit Application submitted?

After the Neighborhood Meeting the applicant submits the application and fee to the Community Development Department. The application must explain how the proposed use meets the approval criteria in the TDC, Section 32.030. They are:

- (1) The use is listed as a conditional use in the underlying planning district.
- (2) The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.
- (3) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.
- (4) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.
- (5) The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

What happens once the application is submitted?

A planner in the Community Development Department is assigned the application. When all the materials are included, the planner determines the application is complete and circulates

copies to other City departments and to applicable regional and State agencies for their review and comment. The planner schedules a City Council public hearing about 6 to 8 weeks later. The City Council generally meets at 7:30 p.m. on the 2nd and 4th Mondays of each month at the Council Chambers (18880 SW Martinazzi Avenue).

Is there a deadline when the City Council must make a decision?

Yes. State law requires a decision be made within 120 days of the application being complete, unless the applicant agrees to an extension.

THE PUBLIC HEARING

Who gets notice of the City Council public hearing?

A notice is mailed at least 20 days prior to the public hearing to the owners of properties within 1,000 feet of the subject property and to the City approved Neighborhood Association whose boundary includes the site. If the 1,000-foot area includes lots within a platted residential subdivision the area shall extend to include the entire subdivision of which the lots are part and the applicant shall identify these subdivisions for staff. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name the notice area need not include the additional phases. Parties with questions or written comments should contact the planner as soon as possible so the comments can be addressed in, and attached to, the staff report. Comments must be specific to one or more of the criteria so the planner and Council will know what the concern is and can address it. Conditions of approval are not common, but conditions to reduce or prevent negative effects are possible.

Does the City Council get any information before the hearing?

Yes. The City Councilors receive their meeting packets, including the staff report, at least one week prior to the hearing so they can read the staff report, its recommendation and any written comments. The staff report is available to all parties one week prior to the hearing.

What happens at the City Council public hearing?

At the Council meeting the Mayor opens the public hearing and the planner enters the staff report, the staff recommendation and any written comments into the hearing record and provides an oral summary of the report. Next, the applicant testifies followed by supporters and then opponents testify. The applicant may then rebut. The Mayor and Councilors ask questions of staff and the testifiers. Once all the information is in the record, the hearing is closed and Council deliberates to a decision which is in the form of an oral motion to approve, approve with conditions or deny the application.

Can the City Council's decision be appealed?

Yes. A Resolution, the final written decision, is passed by Council at the next meeting. Once the Resolution is passed, staff mails copies to the parties that appeared at the hearing or entered information into the record. A party can appeal the decision to the Land Use Board of Appeals (LUBA). The "Notice of Intent to Appeal" must be received by LUBA within 21 days of the decision becoming final (the date the Resolution was passed).

How do I contact the Mayor or a Councilor prior to the public hearing?

As the decision maker, Council is a quasi-judicial body and must be impartial. Councilors must make their decision based only on information entered into the hearing record and the approval criteria. To ensure impartiality, they should not have “ex-parte contacts,” i.e., discuss the application outside the hearing with any party, except staff. This is to ensure all parties are aware of all the information each Councilor is relying on to make their decision and giving the parties an opportunity to respond.

If you have questions about the CUP process, please contact the Community Development Department Office Coordinator at (503) 691-3026 and you will be directed to the appropriate planner.