

14.02.102 Specific Use Permits - CURRENT

1. Standards. No application for a specific use permit shall be granted by the city council unless the council finds all of the following conditions are present:

1. That the establishment, maintenance or operation of the use will not be materially detrimental to or endanger the public health, safety, morals or general welfare;
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the use;
3. That the establishment of the use will not significantly impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided;
5. That adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets; and
6. That the use shall conform to all applicable area, yard, height, lot coverage, building size and exterior requirements and parking space regulations of the district in which it is located.

2. Conditions and guarantees. Prior to the granting of any specific use permit, the city council may stipulate conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to protect the public health, safety and general welfare of the community and to secure compliance with the standards and requirements specified in subsection (a) above. In all cases in which specific use permits are granted, the city council shall require any evidence and written guarantees as it may deem necessary, as proof that the conditions stipulated in connection therewith are being and will be complied with.

3. Effect of denial of application. No application for a specific use permit which has been denied wholly or in part by the city council shall be resubmitted for a period of 90 days from the date of the denial.

REPLACE 14.02.102 – Specific Use Permits

- 1) Standards: The SUP provides a means for developing certain uses in a way the specific use will be compatible with adjacent property and consistent with the character of the neighborhood.

- 2) SUP is granted to the ownership of each real property. Any change in ownership may result in a SUP no longer being valid. See paragraph 12 for exceptions.
- 3) The use regulations for each use in Division 14.02, Appendix A state whether an SUP is required for a use to be permitted in a zoning district. The SUP requirement for use in a zoning district does not constitute authorization or assurance that the use will be permitted. Each SUP application must be evaluated as to its probable effect on the adjacent property and the community welfare and may be approved or denied as the findings indicate appropriately. Each SUP must be granted by the city council by a separate ordinance.
 - A. The city council shall not grant an SUP for use except upon a finding that the use will:
 - i) complement or be compatible with the surrounding uses and community facilities.
 - ii) contribute to, enhance, or promote the welfare of the area of request and adjacent properties.
 - iii) not be detrimental to the public health, safety, or general welfare; and
 - iv) conform in all other respects to all zoning regulations and standards.
 - B. The granting of an SUP has no effect on the uses permitted as of right and does not waive the regulations of the underlying zoning district.
 - C. The city council may impose reasonable conditions upon the granting of an SUP consistent with the purposes stated in this chapter.
 - D. The applicant shall post the SUP ordinance in a conspicuous place on the property, except where a use has no interior building space (for example, a private street or alley use).
- 4) Specific use permit procedure.
 - A. *An applicant for an SUP shall comply with the zoning amendment procedure for a change in zoning district classification. Each SUP ordinance is incorporated by reference into this chapter.*
 - B. *At the time of applying for an SUP, the applicant shall submit:*
 - i). a site plan that includes:
 - (a) the dimensions, bearings, and street frontage of the property;
 - (b) the location of buildings, structures, and uses;
 - (c) the method of ingress and egress;
 - (d) off-street parking and loading arrangements;
 - (e) screening, lighting, and landscaping, if appropriate;
 - (f) the locations, calipers, and names (both common and scientific) of all trees near proposed construction activity (trees in close proximity that all have a caliper of less than eight inches may be designated as a “group of trees” with only the number noted); and

- (g) any other information deemed necessary for a complete review of the proposed development; and
- ii) a traffic impact analysis if the deemed that the analysis is necessary for a complete review of the impacts of the proposed development.

- 5) alter the basic relationship of the proposed development to adjacent property;
- 6) increase the number of dwelling units shown on the original site plan by more than 10 percent;
- 7) increase the floor area shown on the original site plan by more than five percent or 1,000 square feet, whichever is less;
- 8) increase the height shown on the original site plan;
- 9) decrease the number of off-street parking spaces shown on the original site plan so as to create a traffic hazard or traffic congestion or fail to provide adequate parking; or
- 10) reduce setbacks at the boundary of the site as specified by a building or setback line shown on the original site plan.
- 11) For purposes of this paragraph, "original site plan" means the earliest approved site plan that is still in effect, and does not mean a later amended site plan. For example, if a site plan was approved with the specific use permit and then amended through the minor amendment process, the original site plan would be the site plan approved with the specific use permit, not the site plan as amended through the minor amendment process. If, however, the site plan approved with the specific use permit was replaced through the zoning amendment process, then the replacement site plan becomes the original site plan. The purpose of this definition is to prevent the use of several sequential minor amendments to circumvent the zoning amendment process.
- 12) An applicant or owner of real property within the notification area may appeal the decision of the city council to the board of adjustments. An appeal must be requested in writing within 10 days after the decision of the city council. Appeal to the city council is the final administrative remedy available.

A. A time limit may be imposed as a condition upon the granting of an SUP. If a time limit has been imposed, the SUP automatically terminates when the time limit expires. Except as otherwise provided in Subsection (c), the applicant shall go through the procedures outlined above in Paragraphs (1) and (2) to renew an SUP.

12. Automatic Renewals

A. As part of an SUP ordinance or ordinance amendment, the city council may declare that an SUP is eligible for automatic renewal pursuant to this subsection. Automatic renewal is an alternative to the standard method of renewing an SUP by

amending the SUP ordinance. In order for automatic renewal to occur, the property owner or his representative must file a complete application for automatic renewal with the council after the 120th day but before the 180th day before the expiration of the current SUP time period. If a fee is required, the application is not considered "filed" until the fee is paid.

B. Automatic renewal does not result in an amendment to the SUP ordinance. An applicant seeking to change the SUP conditions or to otherwise amend the SUP ordinance must go through the procedures outlined in Subsection 3.

C. An application for automatic renewal must be filed with the council on a form furnished by the city for that purpose. As part of the application, the property owner or his representative shall state that all existing SUP conditions have been complied with, and that no changes to the conditions or other SUP ordinance provisions are being requested.

D. Failure to timely file a complete application required under Paragraph (A) renders the SUP ineligible for automatic renewal. The city council may, however, reinstate an SUP's eligibility for future automatic renewals as part of a new SUP ordinance or ordinance amendment.

E. Upon the filing of a complete application for automatic renewal, the city shall send written notice to all owners of real property lying within 200 feet of the area governed by the SUP. The notice must state that the SUP is eligible for automatic renewal and may be automatically renewed without further notice.

F. If the owners of 20 percent or more of the land within 200 feet of the area governed by the SUP file a written protest against the automatic renewal in accordance with this paragraph, the city shall forward the application to the city planning and zoning commission and city council for further action. Written protests against an automatic renewal must be filed with the city before 5:00

p. m. of the 21st calendar day after the date the notice is mailed. A protest sent through the mail must be received by the city before the deadline. If the deadline falls on a Saturday, Sunday, or official city holiday, then the protests must be filed before noon of the following working day.

G. After the deadline for filing written protests has passed, the director shall review the conditions of the SUP and determine whether the conditions have been met. If the director determines that the conditions have not been met, he shall forward the application to the city plan commission and city council for further action.

H. Any SUP granted in a residential zone (R1, R2, R2M, R3, R4) may apply for automatic renewals with the following exceptions. SUP are granted to the owner of the property, if the property changes ownership, the new owners must apply for an SUP to continue operating the property with the specific use permit.

I. Any SUP granted in a business or industrial district may apply for automatic renewals with the following exceptions, if the real property is sold and the intended use of the real property is to change, the SUP revoked. However if the real property is sold and the intended use of the real property is to remain AS-IS, then the SUP will be extended to the new ownership with a ownership change application that does not require a hearing before city council. (i.e. a property that currently operates as a retail store that sells clothing under store name XYZ, is sold and the new owners continue to operate the store as XYZ, the SUP in place will remain. If the new owners decide to operate a grocery store instead of the clothing store, the SUP will be cancelled.)

J. "Further action" as that term is used in Paragraphs (F) and (G) means that the city shall schedule the application for public hearings before both the city planning and zoning commission and the city council. Notice of the public hearings must be given as would be required by law for a change in zoning district classification. The city planning and zoning commission shall make a recommendation to the city council regarding the proposed renewal based on staff reports, field inspections, and the evidence presented at its public hearing

K. In connection with an application that has been forwarded to it by the director pursuant to Paragraph (F) or (G), the city council may

(a) pass an amending ordinance to repeal the SUP's eligibility for automatic renewal, or to supplement, remove, or amend any of the conditions or other provisions in the SUP ordinance; or

(b) take no action and thereby allow the SUP to automatically renew as a matter of law.

(c) No renewal or expiration of an SUP may occur while the application is pending before the city plan commission or city council. If the application is pending at the end of the current time period stated in the SUP ordinance, the time period shall be extended as a matter of law until:

L. the day following the next succeeding official agenda meeting of the city council after the council makes its final decision on the application; or

M. if the council votes to pass an amending ordinance, until the effective date of the amending ordinance.

(a) The renewal of an SUP eligible for automatic renewal occurs as a matter of law at the end of the current time period as stated in the SUP ordinance, or as extended pursuant to Paragraph (___). Unless otherwise specified in the SUP ordinance, an automatic renewal is for the same time period as the immediately preceding time period [excluding, if applicable, extensions pursuant to Paragraph (___)].

(b) An SUP that is automatically renewed pursuant to this subsection may continue to be automatically renewed in perpetuity so long as the owner or his representative

continues to timely file the applications for automatic renewal required under Paragraph (1). Failure to timely file this application during any renewal period renders the SUP ineligible for further automatic renewal. The city council may, however, reinstate the SUP's eligibility for future automatic renewals as part of a new SUP ordinance or ordinance amendment.

(c) This subsection does not impair the ability of the city plan commission or city council to call a public hearing on its own motion for the purpose of passing an amending ordinance to repeal an SUP's eligibility for automatic renewal, or to supplement, remove, or amend any of the conditions or other provisions in an SUP ordinance.