

**CHAPTER 3. CONDITIONAL USE APPROVAL**

**SECTION 138-2.300 Intent**

Conditional uses are uses that serve an area, interest or purpose that extends beyond the borders of the City, create particular problems of control in relation to adjoining uses or districts, may have detrimental effects upon public health, safety or welfare, or possess other unique characteristics that prevent such uses from being classified as principal permitted uses in a particular zoning district.

This Chapter is intended to provide a consistent and uniform method for review of conditional use applications, ensure full compliance with the standards contained in this Ordinance and other applicable local ordinances, and state and federal laws, achieve efficient use of the land, minimize or prevent adverse impacts on neighboring properties and districts, protect natural resources and facilitate development in accordance with the land use objectives of the Master Plan and any sub-area or corridor plans.

**SECTION 138-2.301 Procedures and Requirements**

- A. **Planning Commission Recommendation.** Prior to the City Council making a discretionary decision on a conditional use, the Planning Commission, or the Zoning Board of Appeals if specifically indicated, shall hold a public hearing, make a record of the public comment, make a recommendation and forward such record and recommendation to the City Council before the decision is made.
- B. **Public Hearing Notice.** The public hearing provided for in this subsection shall be held to comply with the requirements of the Michigan Zoning Enabling Act, PA 110 of 2006 (as amended), as set forth in Section 138-1.203. The notice of the public hearing provided for in this section shall state a public hearing before the City Council may be requested by those persons indicated in the preceding sentence.
- C. **City Council Decision.** The City Council may deny, approve or approve with conditions a conditional use application. The decision on a conditional use shall be incorporated in a statement containing the conclusions relative to the conditional use specifying the basis for the decision, and any conditions of approval imposed on the application.
  - 1. **Approval.** Upon determination that a conditional 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 use. The conditions may include provisions necessary to insure that public services and facilities affected by a proposed conditional 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.

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3. Denial. A conditional use application shall be denied upon determination by the City Council that a conditional 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.

The City Council decision on a conditional use shall be incorporated in a written statement of findings relative to the conditional use under consideration. Said findings shall specify the reasons for the decision and any conditions imposed.

D. **Coordination with Site Plan Review.**

1. When a two-step site plan review process is used, the Planning Commission shall consider the preliminary site plan and conditional use simultaneously, and shall act upon the preliminary site plan prior to making a conditional use recommendation to the City Council. A final site plan associated with a conditional use may not be approved until the conditional use has first been approved by the City Council.
2. If the applicant chooses a one-step site plan approval process, the Planning Commission shall act upon the final site plan prior to making a conditional use recommendation to the City Council, and any action to grant final site plan approval shall be conditioned upon the City Council granting conditional use approval.

E. **Resubmission.** A conditional use application that has been denied shall not be resubmitted for a period of 365 days from the date of denial, except on grounds of new evidence or proof of changed conditions found by the Planning Commission to be valid.

F. **Appeals.** The Zoning Board of Appeals shall not have the authority to consider appeals of conditional use determinations by the City Council.

G. **Expiration of Conditional Use Approval.** Conditional use approval shall expire 365 days after the date of approval, unless the use has been established on the site, or the final site plan associated with the conditional use has been submitted to the Planning Department for review. Conditional use approval shall also expire upon expiration of the approved final site plan associated with a conditional use. Upon written request received by the City prior to the expiration date, the Planning Commission may grant one (1) extension of up to 180 days, provided that the approved conditional use conforms to current Zoning Ordinance standards.

H. **Rescinding Approval of Conditional Uses.** Approval of a conditional use may be rescinded by the City Council upon determination that the use has not been improved, constructed or maintained in compliance with this Ordinance, approved permits, site plans, or conditions of site plan or conditional use approval. Such action shall be subject to the following:

1. Public hearing. Such action may be taken only after a public hearing has been held by the City Council in accordance with the procedures set forth in the Michigan Zoning Enabling Act, PA 110 of 2006 (as amended) as summarized in Section 138-1.203, at which time the owner of an interest in land for which conditional use approval was sought, or the owner's designated agent, shall be given an opportunity to present evidence in opposition to rescission.
2. Determination. Subsequent to the hearing, the Council's decision regarding to the rescission shall be made and written notification shall be provided to the property owner or the owner's designated agent.

**SECTION 138-2.302 Standards for Conditional Use Approval**

For decisions on conditional uses referred to in subsection (a) of this section and in all other instances in this ordinance where discretionary decisions must be made by a board, commission or official, including decisions on site plans, the requirements and standards as particularly set forth in this ordinance concerning the matter for

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decision shall be followed, and such discretionary decision shall also be based upon the findings that the conditional use will:

- A. Promote the intent and purpose of this ordinance.
- B. Be designed, constructed, operated, maintained and managed so as to be compatible, harmonious and appropriate in appearance with the existing or planned character of the general vicinity, adjacent uses of land, the natural environment, the capacity of public services and facilities affected by the land use, and the community as a whole.
- C. Be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainageways, refuse disposal, or that the persons or agencies responsible for the establishment of the land use or activity shall be able to provide adequately any such service.
- D. Not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare.
- E. Not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.

The City Council shall grant the requested approval only upon determination of compliance with the standards in this subsection. In granting the requested approval, the City Council shall impose such requirements or conditions as it deems necessary to protect the public interest of the City and the surrounding property and to achieve the objectives of this ordinance.

**SECTION 138-2.303      Operation and Maintenance in Accordance with Conditional Use Approval**

It shall be the responsibility of the owner of the property and the operator of the use for which conditional use approval has been granted to develop, improve, operate and maintain the use, including the site, buildings and all site elements, in accordance with the provisions of this Ordinance and all conditions of conditional use approval until the use is discontinued. Failure to comply with the provisions of this Section shall be a violation of the use provisions of this Ordinance and shall be subject to the same penalties appropriate for a use violation.

The Mayor or his or her designee may make periodic investigations of developments for which a conditional use has been approved. Noncompliance with Ordinance requirements or conditions of approval shall constitute grounds for the City Council to rescind conditional use approval.

**SECTION 138-4.412 Golf Courses**

- A. Any such use developed and requiring a structure shall have such structure so located on the site as not to be closer than 200 feet from the lot line of any adjacent residential land.
- B. All ingress and egress from the site shall be directly onto a major thoroughfare having an existing or proposed right-of-way at least 86 feet as shown on the City's master thoroughfare plan.
- C. Parking areas, and ingress and egress, shall be so located so as to not become a nuisance to any adjacent residential area.

**SECTION 138-4.413 Gun Clubs**

Gun clubs may be permitted only after review by the Planning Commission and approval of a conditional use permit by the City Council provided the following conditions are met:

- A. All federal, state, county and City codes and ordinances in regard to firearms shall be strictly adhered to.
- B. In no instance shall a firearm be discharged outdoors closer than 1,250 feet to an existing residence in the City or any adjacent community.
- C. In no instance shall a firearm be discharged on any range in any gun club without the presence of an employee of the gun club for supervision.
- D. A site plan for the range, whether indoor or outdoor, shall be submitted to the Planning Commission for review in compliance with Section 138-2.103, C and clearly indicating all provisions to ensure safety to the surrounding community.
- E. A six-foot vinyl coated chain link fence with conspicuous warning signs attached to the fence every 100 feet shall be provided around the entire gun club site to ensure that individuals will not unknowingly trespass on the property, particularly where firearms are being discharged.
- F. Any other provision which the City Council and Planning Commission deem necessary to ensure the health, safety and general welfare of the inhabitants of the City and adjacent communities.

**SECTION 138-4.414 Home Occupations**

- A. **Required conditions.** Home occupations are permitted in R-1, R-2, R-3, R-4, and RE districts provided that the home occupation:
  - 1. Does not create a nuisance to the surrounding neighborhood.
  - 2. Does not become more than an incidental function of the use of the dwelling for residential purposes.
  - 3. Does not draw truck traffic other than a delivery by a truck no more frequently than an average of once a week or by trucks or vehicles allowed under Section 138-10.308.
  - 4. Does not employ paid assistants or employees other than those living at the premises.
  - 5. Does not cause more than a nominal increase of traffic.
  - 6. Does not cause the erection or maintenance of any signs other than signs allowed on vehicles under Section 138-10.308.
  - 7. Does not take place outside of the dwelling and/or accessory buildings, so as to be a nuisance or not be in keeping with the residential nature of the surrounding residential area.

- 7. A permit for a portable roadside stand or market or Christmas tree sales shall not be issued unless adequate sanitary facilities are available for persons tending the roadside stand or market or Christmas tree sales.
- 8. One sign located on the premises where the roadside stand or market or Christmas tree sale is located shall be permitted. The sign shall be located on private property outside of the public right-of-way and shall be limited to six feet in height and 12 square feet in area. The sign shall be removed from the premises when the activity ceases or when the permit expires.
- 9. An adequate trash receptacle for the disposal of refuse generated on site shall be required for any roadside stand or market, and refuse shall not be allowed to accumulate on site for more than 24-hour periods.
- 10. A bond in an amount set by resolution of the City Council shall be filed and maintained in order to obtain a permit to ensure compliance with the City ordinances and that the property is cleaned up at the expiration of the permit period. Any inspection fees or other enforcement costs may be deducted from the bond, in which case the permit holder shall forthwith pay an amount equal to any deduction in order to maintain the bond at the proper level.

**SECTION 138-4.440 State Licensed Residential Facilities**

In addition to meeting all of the requirements of Section 138-4.414.A, the following regulations apply to all state licensed residential facilities, as defined by this Ordinance and as licensed by the State of Michigan; and to all other managed or state licensed residential facilities.

State licensed residential facilities with fewer than 7 residents include family day care homes, foster family homes, foster family group homes, and adult foster care family homes.

State licensed residential facilities with more than 6 but not more than 12 residents include group child day care homes, and adult foster care small group homes.

- 1. Licensing. In accordance with applicable state laws, all state licensed residential facilities shall be registered with or licensed by the State of Michigan, and shall comply with applicable standards for such facilities.
- 2. Separation Requirements. New state licensed residential facilities with 7 or more residents shall be located a minimum of 1,500 feet from any other state licensed residential facility with 7 or more residents, as measured between the nearest points on the property lines of the lots in question. The Planning Commission may permit a smaller separation between such facilities upon determining that such action will not result in an excessive concentration of such facilities in a single neighborhood or in the City overall.
- 3. Compatibility with Neighborhood. Any state licensed residential facility and the property included therewith shall be maintained in a manner consistent with the visible characteristics of the neighborhood in which it is located.
- 4. Group Child Day Care Homes. In addition to the preceding subsection, the following regulations shall apply to all group child day care homes (with more than 6 but fewer than 12 residents), as defined in this Ordinance.
  - a. Outdoor Play Area. A minimum of 150 square feet of outdoor play area shall be provided and maintained per child at the licensed capacity of the day care home, provided that the overall play area shall not be less than 1,500 square feet. The play area shall be located in the rear yard area of the group day care home premises and shall be suitably fenced and screened.
  - b. Pick-Up and Drop-Off. Adequate areas shall be provided for employee and resident parking, and pick-up and drop-off of children or adults, in a manner that minimizes pedestrian-vehicle conflicts and allows maneuvers without affecting traffic flow on the public street.

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DEFINITIONS

Family day care home includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year.

- C: **Foster family home** means a private home in which one but not more than four minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian.
- D. **Foster family group home** means a private home in which more than four but fewer than seven minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian.
- E. **Group child day care home** means a private home in which more than 6 but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group child day care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.
- F. **Private home** means a private residence in which the licensee or registrant permanently resides as a member of the household, which residency is not contingent upon caring for children or employment by a licensed or approved child placing agency.

	Number of Persons	Private Home?	Supplemental Use Standards
<b>Less Than 24-Hour Care</b>			
<i>Persons under age 18</i>			
Family Day Care Home	1-6	Yes	Section 138-4.440
Group Child Day Care Home	7-12	Yes	Section 138-4.440
Child Care Center or Day Care Center	1 or more	No	Section 138-4.422
<b>24-Hour Care</b>			
<i>Persons under age 18</i>			
Foster Family Home	1-4	Yes	Section 138-4.440
Foster Family Group Home	4-6	Yes	Section 138-4.440
<i>Persons age 18 and Over</i>			
Adult Foster Care Family Home	1-6	Yes	Section 138-4.414
Adult Foster Care Small Group Home	1-12	Yes	Section 138-4.440
Adult Foster Care Large Group Home	13-20	No	Section 138-4.440
Adult Foster Care Congregate Facility	20 or more	No	Section 138-4.440
Nursing Home	2 or more	No	Section 138-4.423

**STEEP SLOPE.** Refer to Section 138-9.210 on page 159 for definitions pertaining to steep slopes and their regulation.

**STORY.** That part of a building, other than a mezzanine, included between the surface of one floor and the surface of the floor next above, or if there be no floor above, that part of the building which is above the surface of the highest floor thereof. Specifically:

- A. **Top Story Attic.** A half story when the main line of the eaves is not above the middle of the interior height of said story.
- B. **First Story.** The highest story having its interior floor surface not more than four feet above the curb level, or the average elevation of the finished grade along the front of the building were it set back from the street.

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