

CHAPTER 13

CONDITIONAL USES

SECTION:

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9-13-1: **GENERAL:** It is recognized that an increasing number of new kinds of uses are appearing daily, and that many of these and some other conventional uses possess characteristics of such unique and special nature relative to location, design, size, method of operation, circulation and public facilities and impact on surrounding uses that each specific use must be considered individually.

The Planning and Zoning Commission shall hold a public hearing on each conditional use permit application and shall be the decision-making body for all conditional use permit applications except those that are for a CAFO permit. If the conditional use permit application is for a CAFO permit, then the Planning and Zoning Commission shall hold a hearing and make a recommendation to the Board of County Commissioners on such application and the Board of County Commissioners shall be the decision-making body for all conditional use permits for CAFO permits. The Board of County Commissioners shall hold a hearing on the conditional use permit application for a CAFO permit, evaluate the Planning and Zoning Commission's recommendation, and take final action on such conditional use permit applications for CAFO permits. The Board of County Commissioners shall not be bound by the recommendation of the Planning and Zoning Commission on a conditional use permit application for a CAFO permit. The decision-making body may approve, conditionally approve or deny a conditional use permit under the conditions as herein specified and considering such additional safeguards as will uphold the intent of this title. (Ord. 99-1-1, 1-4-1999; amd. Ord. 99-10-2, 10-18-1999, amd. Ord. 2017-11-2)

9-13-2: **CONTENTS OF APPLICATION:** An application for conditional use permit shall be filed with the Zoning and Building Director by owners of property for which such conditional use is proposed. Said Zoning and Building Director shall determine if filing is complete before scheduling any matter for further processing.

In the event that there is more than one property owner for the subject property for which a conditional use permit is being sought, all owners of the subject property shall sign as applicants, in order for application to be complete. If the applicant is a limited liability company, partnership,

corporation, or other such entity, then the applicant shall file the appropriate paperwork from the entity-applicant, proving that the application signatory has authority to bind the entity to the terms of the application and any permit, arising therefrom. Any application that does not contain all appropriate signatures, shall be deemed incomplete and will not proceed to hearing before the Commission until appropriately signed and executed. The application should also contain the following: (amd. Ord. 2019-8-01)

- A. Personal Information: Name, address and phone number of applicant;
- B. Legal Description: Legal description of property;
- C. Use: Description of existing use;
- D. Zoning District: Zoning district of the premises;
- E. Conditional Use: Description of proposed conditional use;
- F. Site Plan: A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading area, traffic access and traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards and such other information as may be required to determine if the proposed conditional use meets the intent and requirements of this title; (amd. Ord. 2017-11-2)
- G. Narrative Statement: A narrative statement discussing the potential effects of the use on adjoining property; the potential for such elements as noise, glare, odor, fumes and vibration on adjoining property; a discussion of the general compatibility of the proposal with adjacent and other properties in the district; the relationship of the proposed use to the comprehensive plan and a discussion of how the project meets the standards as set forth in Section 9-13-3; (amd. Ord. 2011-08-01, 8-25-2011.)
- H. Property Owners: A list of all real property owners owning land located within one (1) mile of the exterior boundaries of the premises upon which the proposed conditional use is to be conducted; (Ord. 99-10-2, 10-18-1999; amd. Ord.2003-04-01, 4-14-2003)
- I. County Weed Plan: A plan developed in conjunction with the Cassia County Weed Department setting forth suitable methods, managements and practices for controlling weeds on and involved with the proposed development herein. Weeds shall be defined by state of Idaho noxious weed statutes, laws and regulations. (Ord. 2011-08-01, 8-25-2011.)
- J. Fee: A fee as set by the county. (Ord. 99-10-2, 10-18-1999; amd. 2003 Code; itemized as letter "J" by Ord. 2011-08-01, 8-25-2011.)
- K. If the application is a conditional use permit application for a CAFO permit, then the application shall also comply with the provisions of Title 9, Chapter 11. (amd. Ord. 2017-11-2)
- L. Until all items listed herein are submitted to the satisfaction of the Zoning Administrator, any application made with the zoning department is deemed only to be lodged, but not to be filed. Applications shall be considered and determined based upon the regulations existing as of the date of filing of the application, unless otherwise provided for by action

of the Board of County Commissioners. (Ord. 2011-08-01, 8-25-2011, amd. Ord. 2017-11-2.)

- 9-13-3: **GENERALLY APPLICABLE STANDARDS:** The decision-making body shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and shall determine if adequate evidence has been presented showing that such use at the proposed location:
- A. Qualify: Will, in fact, constitute a conditional use as established by the official schedule of zoning regulations for the zone involved.
 - B. Meet General Obligations: Will be harmonious with and in accordance with the general objectives or with any specific objective of the zoning ordinance. [Amd. Ord. 2012-07-01, 07-02-2012].
 - C. Maintain Character: Will be designed, constructed, operated and maintained to be reasonably harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use will not change the essential character of the general vicinity.
 - D. Hazards: Will not be unreasonably hazardous or disturbing to existing or future neighboring uses.
 - E. Facilities: Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for any such services.
 - F. Economic Welfare: Will not create excessive additional requirements at public cost for public facilities and services and will not be unreasonably detrimental to the economic welfare of the community.
 - G. Conditions Of Operation: Will not involve uses, activities, processes, materials, equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, pollution or odors.
 - H. Harmful Conditions: Will not be or create conditions that are unreasonably harmful or dangerous to the individual safety or welfare of persons on the premises of the use or living or working in the vicinity of the use; or will not be or create conditions that could be unreasonably harmful to the general safety, health or welfare of the community.
 - I. Vehicular Approaches: Will have vehicular approaches to the property which are so designed as not to create safety hazards or interference with traffic on surrounding public thoroughfares.
 - J. Scenic And Historic Features: Will not result in the destruction of loss or damage to any natural, scenic or historic feature of importance to the public. (Ord. 99-10-2, 10-18-1999)

9-13-4: **SUPPLEMENTARY CONDITIONS AND SAFEGUARDS:** In granting any conditional use, the decision-making body shall prescribe such appropriate conditions, bonds and safeguards necessary to assure conformity with this chapter. The decision-making body shall also determine whether the conditional use permit shall run with the land, or be personal to the applicant, or shall impose appropriate limits on the duration of the permit. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this chapter. (Ord. 99-1-1, 1-4-1999; amd. Ord. 99-10-2, 10-18-1999, amd. Ord. 2017-11-2)

9-13-5: **PROCEDURE FOR HEARING:** Prior to granting a conditional use permit, at least one (1) public hearing, at which interested persons whose substantial rights will be affected by the approval or denial of the permit shall have an opportunity to be heard, shall be held. The Planning and Zoning Commission shall follow the following procedures in holding a hearing on a conditional use permit. However, if a conditional use permit application is for a CAFO permit, then the Planning and Zoning Commission shall hold a hearing and make a recommendation to the Board of County Commissioners, which shall hold a hearing and make the final decision on all conditional use permit applications for CAFO permits. All hearings shall be conducted consistent with the following requirements: (amd. Ord. 2017-11-2)

A. Notice and Hearing Procedures:

1. Prior to the hearing of a new conditional use permit:

- i. A written notice shall be published giving notice of the time, place, a summary of the proposal, and notice that instructions of hearing procedures can be obtained from the Cassia County Planning and Zoning Office. Said notice shall be published by the applicant in the official newspaper or a paper of general circulation within the County, at least 30 days prior to the date of hearing; and
- ii. Notice shall be posted on the premises by the applicant not less than one (1) week prior to hearing. Notice may also be made available by the county to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement; and
- iii. Written notice shall also be sent at least 30 days prior to the date of hearing by the applicant by U.S. Mail, First Class Postage Prepaid, to every person listed by the applicable county tax assessor as owning real property located within one mile of any external boundary of the subject property for which a conditional use permit is sought and as is described in the application, and any additional area that in the determination of the

Planning and Zoning Commission may be substantially impacted by the proposed conditional use. The County has determined that adequate notice cannot be effectively provided only through newspaper publication, except for hereinafter set forth for notice in areas of City Impact, which shall provide written notice as set forth in Paragraph IV, below. Therefore, notice in all

hearings on applications for conditional use permits shall publish, mail and post as set forth hereinbefore. Whether by mail or publication, the written notice shall notify such persons and the public that:

- a. Submittal: A new application for conditional use permit has been received;
- b. Date: The date upon which the application was received by the county;
- c. Name And Address: The names and addresses of all of the applicants;
- d. Legal Description: The legal description of the real property comprising the proposed conditional use; and
- e. Nature of Operation: The nature of the proposed conditional use.

(amd. Ord. 2017-11-2, amd. Ord. 2018-10-1)

- iv. In designated Areas of City Impact only, written notice, in addition to publication and posting as hereinbefore required, shall also be sent at least 30 days prior to the date of hearing by the applicant by U.S. Mail, First Class Postage Prepaid, to every person listed by the applicable county assessor as owning real property located within three hundred feet (300') of any external boundary of the subject property for which a conditional use permit is sought and as is described in the application for such permit. Such written notice shall meet the requirements as set forth in paragraph iii, set forth above. (amd. Ord. 2018-10-1)

2. The notice shall further state that a public hearing will be held prior to the issuance of the permit and give the date, time and place of such hearing. The applicant shall prepare and file, with the planning and zoning secretary, at least two (2) days prior to the hearing, an affidavit of publication, posting and mailing indicating that the notice given is in compliance with section A(1)(i), (ii) and (iii) of this section.

- B. Support Or Objection: All persons to whom notice is mailed shall be advised in that notice that they and others who can establish that their substantial rights would be affected by the approval or denial of the permit may file written objections or supporting statements with the secretary of the body holding the hearing no later than ten (10) days prior to the hearing setting forth in that writing that person's support or objection to the issuance of the new conditional use permit. (amd. Ord. 2017-11-2)

1. Written objections shall set forth each requirement of law (local, state or federal) which the objecting party believes the conditional use permit would violate.
2. Written statements shall also set forth either that the party making the statement owns property within one (1) mile of the external boundaries of the conditional use permit site described in the application and/or otherwise setting forth the substantial rights that would be affected by the approval or denial of the permit.

3. Additionally, any party desiring to file any document(s) exceeding one (1) one-sided, 8 ½ x 11" sized page, shall file such document(s) at least ten (10) days prior to the hearing, with the secretary of the body holding the hearing. The body holding the hearing reserves the right to reject any proffered documentation that violates the intent of this regulation. (amd. Ord. 2017-11-2)
- C. Testimony At Hearing: Any person who files a statement in support or objection to the issuance of a new conditional use permit shall indicate in such statement whether or not such person desires to testify at the hearing.
1. Prior to the hearing the body holding the hearing shall determine which of those persons who desire to testify will be permitted to testify at the hearing. (amd. Ord. 2017-11-2)
 2. All statements of support or objections shall be made a part of the record at the hearing, but no person except the applicant shall be permitted to testify at the hearing unless they have previously filed a written statement of support for or objection to the issuance of the permit.
 3. A transcribable record of all hearings and the deliberation of the Planning and Zoning Commission or the Board of County Commissioners toward a final decision shall be kept for a period of time not less than six (6) months, nor shall they be required to be kept for a period of time not to exceed twelve (12) months, after the final decision on the matter. (amd. Ord. 2017-11-2)
 4. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense.
- D. Rules of Procedure: The body holding the hearing may adopt rules of procedure not inconsistent with the provisions of this title or state law for the conduct of its business and procedures for hearings. [amended Ord. 2006-11-01, 11-07-06, amd. Ord. 2017-11-2]

9-13-6: **ACTION BY DECISION-MAKING BODY:** Within sixty (60) days after the public hearing is closed to the taking of evidence, the decision-making body shall, by motion, make a determination on the application, and then the decision-making body shall, by resolution either approve, conditionally approve or disapprove the application as presented.

If the application is a conditional use permit application for a CAFO permit, then the Planning and Zoning Commission shall adopt a recommendation by motion to approve, conditionally approve or disapprove the application as presented, and shall forward the recommendation to the Board of County Commissioners and the Board of County Commissioners shall hold a hearing on the conditional use permit application for a CAFO permit within forty-five (45) days of the Planning and Zoning Commission's final recommendation. If the application is approved or approved with conditions the decision-making body shall direct the Zoning Administrator to issue a conditional use permit listing the specific conditions specified by the decision-making body for approval. (amd. Ord. 2017-11-2)

- A. Granting Of Conditional Use Permit: Upon the granting of a conditional use permit, conditions may be attached to a conditional use permit including, but not limited to, those:
1. Adverse Impact: Minimizing adverse impact on other developments, or the health and safety of persons or the community in general.
 2. Timing: Controlling the sequence and timing of development.
 3. Duration Of Development: Controlling the duration of development.
 4. Maintenance: Assuring that development is maintained properly.
 5. Location And Nature: Designating the exact location and nature of development.
 6. Public Facilities: Requiring the provision for on site or off site public facilities or services.
 7. Restrictive Standards: Requiring more restrictive standards than those generally required in this title.
 8. Duration Of Permit: Limiting the duration of the permit.
 9. Determine Permit Attachment: Attaching the permit to the land or making it personal to the applicant.
 10. Inspections; Bonds: Requiring the applicant to submit to appropriate inspections or reviews at applicant's expense, or to post bonds to assure compliance with the conditions.
 11. Compliance Reports: Requiring periodic reports of compliance or other methods of establishing ongoing compliance with established conditions on the permit.
 12. Effects On Political Subdivisions: Requiring mitigation of effects of the proposed use upon service delivery by any political subdivision, including school districts, providing services within the county.
- B. Studies Of Experts Prior To Granting Permit: Prior to granting a conditional use permit, the decision-making body may request studies from public agencies or other experts concerning social, economic, fiscal or environmental effects of the proposed conditional use at either county or applicant's expense, as determined by the decision-making body. (amd. Ord. 2017-11-2)
- C. Transferability: A conditional use permit is not transferable from one parcel of land to another.
- D. Granting Or Denying Permit: Upon granting or denying an application the decision-making body shall issue its decision in writing and shall address each of the following: (amd. Ord. 2017-11-2)
1. Standards: The ordinance and standards used in evaluating the application.
 2. Reasons: The reasons for approval or denial.

3. Possible Actions: The actions, if any, that the applicant could take to obtain a permit. (Ord. 99-10-2, 10-18-1999; amd. 2003 Code)
- E. Permit Development: Any person to whom a permit is issued under this chapter shall commence operation pursuant to such permit within three (3) years from final written decision of the decision making body. Any permit that was presented as being phased over a longer period of time shall be considered commenced when construction has started for the first phase of the project. (amd. Ord. 2017-11-2)
- F. Amendments to CAFO Permits. If a CAFO permit has been issued pursuant to this Chapter and Title 9, Chapter 11, or if a modification, extension, or enlargement of a CAFO permit has been approved in compliance with Section 9-5-2E, then either (i) the Zoning Administrator shall have the limited power to review and grant or deny a modification or amendment to a CAFO permit pursuant to Section 9-5-2B or (ii) the Planning and Zoning Commission shall make recommendations as to other modifications or amendments set forth in Section 9-5-2C. All other modification or amendments shall be reviewed and approved in compliance with Section 9-5-2E.

9-13-7: **NOTIFICATION TO APPLICANT:** Within ten (10) days after a resolution has been adopted and executed by the decision-making body, the Zoning Administrator shall provide the applicant with written copy of the resolution. (Ord. 93-6-1, 6-28-1993; amd. Ord. 99-10-2, 10-18-1999, amd. Ord. 2017-11-2).