

ORDINANCES OF THE CITY OF HELENA, MONTANA

ORDINANCE NO. 3279

AN ORDINANCE REVISING THE CONDITIONAL USE PERMIT PROCESS BY
AMENDING CHAPTER 3 OF TITLE 11 OF THE HELENA CITY CODE

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY
OF HELENA, MONTANA:

Title 11, Chapter 3, of the Helena City Code is hereby amended
as follows:

TITLE 11: ZONING

CHAPTER 3

CONDITIONAL USES

~~11-3-1: INTENT~~

11-3-21: CONDITIONAL USE PERMIT LIMITATIONS

11-3-32: CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

11-3-43: ~~APPLICATION~~ REVIEW ADMINISTRATIVE REVIEW FOR
COMPLETENESS AND STAFF RECOMMENDATION

11-3-54: CONDITIONAL USE PERMIT REVIEW REQUIREMENTS CRITERIA

11-3-5: CONDITIONAL APPROVAL

11-3-6: ZONING COMMISSION RECOMMENDATION

11-3-7: CITY COMMISSION DETERMINATION

~~11-3-8: CONDITIONAL APPROVAL~~

~~11-3-9: COMPLETION OF CONDITIONS~~

~~11-3-10: EXTENSION OF TIME TO COMPLETE CONDITIONS~~

11-3-~~11~~8: ~~CESSATION OR CHANGE OF CONDITIONAL USES~~ DISCONTINUATION
OF USE

11-3-9: REVOCATION

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11-3-10: REAPPLICATION REQUIRED IF VOID

11-3-1: ~~INTENT:~~

~~Conditional use permits, for uses other than those permitted by right in a particular zoning district, are intended to provide for individual or community needs where they may be appropriate. Subject to the provisions of this chapter, conditional uses are, in a general sense, considered permitted uses in particular use districts and zones. Conditional uses possess characteristics of such unique and special form that each such use is considered on an individual case and, if permitted, may be subjected to those conditions deemed necessary by the city commission to minimize and mitigate adverse impacts. (Ord. 3097, 4-7-2008)~~

11-3-21: CONDITIONAL USE PERMIT LIMITATIONS:

- A. ~~A structure or land may not be used for any purpose that is not permitted in the zoning district in which the structure or land is located unless that use is shown in section 11-2-3, table 1 of this title as conditionally permitted in the district in which the structure or land is located and a conditional use permit is obtained. Any expansion or enlargement of a conditional use for which a conditional use permit has been granted requires a new conditional use permit to be granted for the entire property.~~
- B. ~~A conditional use for which a permit has been granted may not be expanded or enlarged unless first reviewed and approved pursuant to this chapter. The conditional use for which a permit was granted must be developed in accordance with the plans, specifications, and representations made by the applicant in the application materials and public hearings. A material change to any such plans, specifications, and representations requires a new conditional use permit application. If the conditional use is developed contrary to such plans, specifications, and representations, and the deviation is material, the conditional use permit may be revoked pursuant to provisions in section 11-3-9.~~

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C. For purposes of this chapter, "material change" is defined as any deviation from the plans, specifications, and representations, implicating any of the factors stated in section 11-3-4B, that may result in:

1. A change to the conditions of approval; or

2. A finding of an adverse impact with respect to section 11-3-4A1 and A2 criteria. (Ord. 3097, 4-7-2008; amd. Ord. 3279, 1-13-2020)

11-3-32: CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS:

A. No change.

B. All applications for a conditional use permits must include the following information:

1. Type and extent of the proposed use;

2. Site plan showing the proposed and current location of:

a. Pedestrian, vehicular, and bicycle ingress and egress to the property;

b. Parking and loading areas;

c. Landscaping and screening;

d. Solid waste collection areas;

e. ~~Location of~~ Utilities;

f. Signs; and

g. Lighting;

3. Proposed storm water drainage plan;

4. Traffic impact study for any use that will generate more than two hundred (200) vehicle trips a day;

5. Vicinity map of the area showing the location of the property in relation to surrounding land and zoning in the

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immediate area, water and wastewater mains, other utilities, and city streets;

6. Planned modifications to the existing structure;

7. Preliminary architectural drawings for new construction with elevations that include building heights;

8. ~~Anticipated changes in pedestrian, vehicle, and bicycle traffic, on street parking, noise, glare, and odor;~~ An evaluation of the impacts on the abutting properties and the neighborhood with respect to factors identified in section 11-3-5B. The evaluation must address any potential adverse impacts and how any such adverse impacts will be mitigated.

9. ~~Impacts to other property in the vicinity and the zoning district in which the subject property is located;~~

10. ~~Proposed mitigation and minimization of anticipated adverse impacts;~~

119. Expected time when the permitted conditional use will commence; and

1210. Variances requested. (Ord. 3097, 4-7-2008; amd. Ord. 3279, 1-13-2020)

11-3-43: APPLICATION — REVIEW ADMINISTRATIVE REVIEW FOR COMPLETENESS AND STAFF RECOMMENDATION:

No change.

11-3-54: CONDITIONAL USE PERMIT REVIEW REQUIREMENTS CRITERIA:

A. A conditional use permit may be granted by the city commission only upon a finding, ~~warranted by the facts, circumstances, and evidence of~~ supported by substantial credible evidence in the record, that the following standards are met:

1. The proposed conditional use, as conditioned, will not ~~significantly increase adversely impact risk to the public health, safety, or general welfare;~~ and

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2. The proposed conditional use, as conditioned, will not ~~significantly reduce or impair~~ adversely impact the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located.

B. In considering whether a ~~proposed conditional use meets the requirements of subsections~~ section 11-3-4A1 and A2 standards are met, the following factors must be considered in determining the impacts of the proposed conditional use on the abutting properties and the neighborhood: ~~of this chapter, the city commission shall weigh and balance the following factors:~~

1. ~~Pedestrian, vehicular, and bicycle traffic;~~ Location, character, and natural features of the subject property as it currently exists;

2. ~~On street parking;~~ Type and size of the proposed structure and improvements and their relative location on the subject property;

3. ~~Noise;~~ Historical uses, established use patterns, and recent changes and trends in the neighborhood;

4. ~~Glare;~~ Conformity of the proposed use with the neighborhood plan, if one has been adopted;

5. ~~Order; and~~ Current and proposed pedestrian, vehicular, and bicycle traffic including ingress and egress, circulation, and parking;

6. ~~Type and size of structures and improvements and their relative locations on the subject property. Whether the use is consistent with the Helena Climate Change Action Plan;~~

7. Whether the proposal meets the zoning dimensional standards requirements for the zoning district without the need for a variance;

8. Hours of operation;

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9. Noise;

10. Glare;

11. Odor; and

12. Expressed public opinion related to factors identified above.

C. The above factors are weighed and evaluated depending on the circumstances of each case. Any one factor may be sufficient to find adverse impacts for purposes of section 11-3-4A1 and A2 justifying denial of the permit or placement of special conditions. (Ord. 3097, 4-7-2019; amd. Ord. 3279, 1-13-2020)

11-3-5: CONDITIONAL APPROVAL:

A. Conditional use permits may be granted subject to either one-time or ongoing conditions.

B. Any conditions imposed must relate to the adverse impacts with respect to section 11-3-4A standards identified during the consideration of section 11-3-4B factors and may include, but are not limited to, requirements for:

1. Special setbacks and buffers;

2. Installation of special fences, solid fences, walls, and landscaping;

3. Improvements to parking areas;

4. Improvements to streets and points of vehicular ingress and egress;

5. Restrictions on signs;

6. Restrictions on lighting;

7. Restrictions on noise, vibrations, and odors;

8. Restrictions on hours of operation;

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9. Time period within which the proposed use must be developed and commenced;

10. Limiting the conditional use to a certain size and location on the property; or

11. Any other conditions necessary to mitigate the identified adverse impacts.

C. Conditional approval must specify:

1. The conditions to be completed;

2. The time frame within which the conditions must be completed;

3. Whether the conditions are one-time or ongoing; and

4. Whether the conditions can be deferred for a reasonable time pursuant to an agreement between the applicant and the city.

D. If the conditions are not completed within the time frame specified, the conditional use permit is deemed denied unless an extension is granted by the city commission by a resolution. (Ord. 3279, 1-13-2020)

11-3-6: ZONING COMMISSION RECOMMENDATION:

A. through B. No change.

C. The zoning commission's recommendation, to either approve, deny, or conditionally approve and any recommended conditions, must be based upon information presented at a public hearing and information contained in the application. (Ord. 3097, 4-7-2019; amd. Ord 3279, 1-13-2020)

11-3-7: CITY COMMISSION DETERMINATION:

A. The city commission ~~shall~~ must hold a public hearing on the application. At least fifteen (15) days' notice of the time and

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place of the hearing must be published in an official paper or a paper of general circulation in the city.

~~B. and the zoning commission's recommendation shall be considered and public testimony received.~~ The city commission's decision must be based on a conditional use must consider the information contained in the application, information presented at the public hearing, and the zoning commission's recommendation.

~~BC.~~ The city commission may, ~~by resolution,~~ approve, deny, or conditionally approve the requested conditional use permit. Approval or conditional approval must be accomplished by resolution. The resolution must contain the statement of findings required by section 11-3-5 of this chapter. (Ord. 3097, 4-7-2008; amd. Ord. 3279, 1-13-2020)

~~11-3-8: CONDITIONAL APPROVAL~~

~~A. The city commission may make the approval of a conditional use permit subject to reasonable conditions necessary to protect public health and safety and to minimize or mitigate adverse impacts that must be met prior to using the property under the conditional use permit.~~

~~B. The city commission may prescribe continuing conditions necessary to protect public health and safety and to minimize or mitigate adverse impacts. Such continuing conditions are to be maintained as part of the permit for a conditional use.~~

~~C. The city commission may define and limit the extent of the permit to a certain size and location on the property. (Ord. 3097, 4-7-2008)~~

~~11-3-9: COMPLETION OF CONDITIONS~~

~~The applicant for a conditional use permit shall complete the conditions prior to using the property under the conditional use permit. The applicant has one year to complete the conditions of~~

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~~approval unless otherwise specifically extended by the city commission. In extenuating circumstances, the city may allow the completion of all or part of the conditions to be deferred for a reasonable period pursuant to an agreement between the applicant and the city. (Ord. 3097, 4-7-2008)~~

~~11-3-10: EXTENSION OF TIME TO COMPLETE CONDITIONS~~

~~A person possessing a conditional use permit issued by the city may apply to the city for an extension of time within which to complete the conditions imposed as part of the approval of the conditional use permit. The issuance of an extension of time is subject to the following conditions:~~

~~A. The application for extension and any required fee must be received by the city prior to the expiration date noted on the original conditional use permit.~~

~~B. The applicant must show that the extension of time is not detrimental to the original finding on the requirements for the conditional use permit.~~

~~C. The zoning commission shall hold a public hearing on the application for extension of time if the site plan has been revised or if other circumstances surrounding the original site plan have changed. If there have been no changes to the originally approved site plan or to any other circumstances surrounding the original approval, the public hearing before the zoning commission is not required.~~

~~D. The city commission shall hold a public hearing on the extension of time. The zoning commission's recommendation, if applicable, shall be considered at that hearing, together with additional information received from interested parties.~~

~~E. The city commission may approve, deny, or conditionally approve the extension of the conditional use permit. Any such resolution~~

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~~approving or conditionally approving the extension must contain findings required by this chapter for the original application. (Ord. 3097, 4-7-2008)~~

11-3-118: CESSATION OR CHANGE OF CONDITIONAL USES DISCONTINUATION OF USE:

A. Once granted, Aa conditional use permit continues until the property is no longer used for the purpose for which the conditional use permit was granted. the granted use is intentionally abandoned. Upon intentional abandonment, the conditional use permit is void. If the property is no longer used for the purpose for which the conditional use permit was granted, the conditional use permit may be declared void by the Community Development director.

B. A property is considered to no longer be used for the purpose for which the conditional use permit was granted if the property is not used for that purpose for at least thirty (30) continuous business days during each calendar year. This presumption may be rebutted by evidence that the lack of use is temporary and the owner does not intend to abandon the use.

~~B. If a property that has been granted a conditional use permit is not used for the purpose stated in the permit for at least thirty (30) continuous business days during each calendar year, or the continuing conditions are not maintained, the conditional use is presumed to be intentionally abandoned. That presumption may be rebutted by evidence that the lack of use is temporary and the owner does not intend to abandon the use.~~

~~C. If a conditional use permit is voided, the owner of the property for which that permit was granted may apply for a new conditional use permit that grants the same use as the voided conditional use permit. However, merely because a property has previously been granted a conditional use permit does not guarantee that the property will be granted a subsequent conditional use permit for the same use. (Ord. 3097, 4-7-2008; amd. Ord. 3279, 1-13-2020)~~

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11-3-9: REVOCATION:

- A. If a conditional use for which a conditional use permit has been granted is not in compliance with the requirements of the conditional use permit, the city may revoke that conditional use permit.
- B. Prior to revocation, the city must send a written notice of revocation by certified mail to the property owner and the leasee of the property. The revocation notice must:
1. Identify which conditions are being violated;
 2. State that the property must be brought into compliance within fifteen (15) business days of the date of the notice of revocation; and
 3. Advise the owner that if the violating condition is not brought into compliance within the time specified:
 - a. The conditional use permit will be considered revoked;
 - b. The owner will have to immediately stop using the property for the use for which the conditional use permit was granted; and
 - c. The city will pursue revocation of the business license associated with the conditional use in accordance with provisions of the Helena City Code.
- C. A conditional use permit revoked pursuant to this section may be reinstated upon a showing that all requirements of the conditional use permit are being met.
- D. If a conditional use permit is not reinstated within one (1) year of the date of the notice of revocation the conditional use permit will be considered void. (Ord. 3279, 1-13-2020)

11-3-10: REAPPLICATION REQUIRED IF VOID: If the conditional use permit for a property is deemed void pursuant to provisions of

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this chapter, the property owner must apply for a new conditional use permit before the conditional use can resume. (Ord. 3279, 1-13-2020)

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA,
THIS 16th DAY OF DECEMBER, 2019.

/S/ WILMOT COLLINS
MAYOR

ATTEST:

/S/ DANNAI CLAYBORN
CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA,
MONTANA, THIS 13th DAY OF JANUARY, 2020.

/S/ WILMOT COLLINS
MAYOR

ATTEST:

/S/ DANNAI CLAYBORN
CLERK OF THE COMMISSION