

**Division 9. Conditional Uses****Section IV-901. Purpose and Applicability**

A. Purpose. Certain uses are conditional uses instead of being allowed by right, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

B. Authority. The Building, Zoning and Code Enforcement Department may, in accordance with the procedures, standards and limitations of this Section and subject to such rights of appeal as are provided, approve applications for temporary uses. The Planning Board may, in accordance with the procedures, standards and limitations of this Section and subject to such rights of appeal as are provided, approve applications for minor conditional uses. The City Commission may, in accordance with the procedures, standards and limitations of this Section, approve applications for major conditional uses.

1. The Planning Board or the City Commission, whichever is appropriate may approve a conditional use that modifies the setback requirements, height requirements, landscaping requirements, parking requirements, or buffering requirements by no more than ten (10%) percent, provided that the Board or City Commission expressly finds that the modification will enhance the ability of the proposed conditional use to meet the general standards for all conditional uses. Additionally, the City Manager may approve technical deviations from the regulations contained in the EDCM, based upon a detailed study prepared by the applicant which demonstrates why the technical deviations will result in preferable environmental or design impacts.

C. Authorized Conditional Uses. Only those uses which are authorized in each zoning district in Article VI, may be approved as conditional uses. The designation of a use in a zoning district as a conditional use does not constitute an authorization or an assurance that such use will be approved; rather, each proposed conditional use shall be evaluated by the DRC, the Planning Board, and the City Commission for compliance with the standards and conditions set forth in this Section and for each district. Wherever a use existing on the effective date of these regulations is terminated or demolished, subsequent use of the property upon which the use was located, by a use which these regulations classifies as a conditional use, shall be permitted only in conjunction with an approved conditional use.

**Section IV-902. Application Requirements**

In addition to the general application requirements set forth in administrative regulations, an application for a major or minor conditional use shall be accompanied by a Site Plan Application as provided by Section IV-502, and any further information necessary to

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demonstrate that the proposed development meets the criteria of Section IV-906. All applications for conditional uses shall be submitted to the City Auditor and Clerk's Office.

Any site plan application filed in conjunction with a conditional use request shall be processed concurrently with the conditional use application, pursuant to Division 5 of this Article.

**Section IV-903. Staff Review and Report**

A. Temporary Commercial Activity Permits. An application for a temporary commercial activity permit shall be reviewed by the Director of Building, Zoning and Code Enforcement. The Director of Building, Zoning and Code Enforcement shall grant, grant with conditions, or deny the application for a temporary commercial activity permit in accordance with Article VII, Division 15, subject to appeal under Section IV-904 to the Planning Board.

B. Minor and Major Conditional Uses. The Planning Department shall review the application for the conditional use approval and the comments of all members of the DRC, and shall prepare a written staff analysis of the issues raised by the application.

C. Technical Deviations. Prior to the final consideration of a conditional use application, the City Manager may issue written technical deviations from the EDCM. Such deviations must be based upon review of a detailed study prepared by a Professional Engineer which demonstrates why the technical deviations will result in preferable environmental or design impacts.

(Ord. No. 04-4514; Sec. 3, 1-20-04)

**Section IV-904. Planning Board Review****A. Minor Conditional Uses**

1. The Planning Board shall hold a public hearing and grant, grant with conditions, or deny the application for a Minor Conditional Use, subject to appeal under Section IV-905 to the City Commission. Action taken by the Planning Board to grant a conditional use or to grant a conditional use with conditions shall be documented in the form of a resolution containing a legal description of the real property to which the conditional use applies, together with the terms of the conditional use and any additional conditions imposed. Such resolution shall be recorded in the Public Records of Sarasota County by the City Auditor and Clerk.
2. If the Planning Board shall deny a minor conditional use, it shall state in its record its reasons for doing so. Such reasons shall take into account the factors stated in Section IV-906 or such of them as may be applicable to the action of denial and the particular regulations relating to the specific minor conditional use requested, if any.

**B. Major Conditional Uses**

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1. The Planning Board shall hold a public hearing on an application for a major conditional use and recommend to the City Commission the approval, approval with conditions or denial of the application for a major conditional use. Action taken by the Planning Board to recommend the approval of a major conditional use or to recommend approval of a major conditional use with conditions shall be documented in the form of a resolution containing a legal description of the real property to which the major conditional use applies, together with the terms of the major conditional use and any additional conditions imposed. Such resolution shall be recorded in the Public Records of Sarasota County by the City Auditor and Clerk.
2. If the Planning Board shall recommend to the City Commission the denial of a major conditional use, it shall state in its record its reasons for doing so. Such reasons shall take into account the factors stated in Section IV-906 or such of them as may be applicable to the action of denial and the particular regulations relating to the specific major conditional use requested, if any.

C. Temporary Commercial Activity Permits – Appeal. If an appeal by an aggrieved person of a decision of the Building, Zoning and Code Enforcement Department relating to a temporary commercial activity permit is filed with the City Auditor and Clerk's office within ten (10) days of the Department's decision, the Planning Board shall consider the appeal at a public hearing. The Planning Board shall grant, grant with conditions, or deny the application. The decision of the Planning Board is final.

**Section IV-905. City Commission Review**

A. Minor Conditional Uses – Appeals. If an appeal by an aggrieved person of a decision of the Planning Board relating to a Minor Conditional Use is filed with the City Auditor and Clerk's Office within ten (10) days of the Board's decision, the City Commission shall consider the record before the Planning Board and the argument of aggrieved persons, and may grant, grant with conditions or deny the application.

B. Major Conditional Uses. Upon receipt of the recommendation of the Planning Board, and the written staff analysis, the City Commission at its option, may either affirm the Planning Board's recommendation without a public hearing or may hold a public hearing to consider the application for a Major Conditional Use and grant, grant with conditions or deny the application.

(Ord. No. 00-4193, Sec. 7, 2-22-00)

**Section IV-906. Standards for Review**

A. Standards Applicable to All Conditional Uses

When considering an application for approval of a conditional use, the Building, Zoning and Code Enforcement Department, the Planning Board and the City Commission, shall review such an application with consideration for the following factors:

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1. Whether the conditional use is consistent with the area's future land use designation and the goals, objectives, action strategies and standards of the *Sarasota City Plan*, any adopted special area plan and these regulations;
2. The character of the existing area, including existing structures and structures under construction, existing public facilities and public facilities under construction, and private, commercial and/or service facilities available within the existing area. More specifically:
  - a. Whether, if applicable, the overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of non-residential uses in the residential area. Consideration includes the application itself and in combination with other non-residential uses in the area and is to be based on the number, size, and location of the non-residential uses and the intensity and scale of the proposed and existing non-residential uses in the area;
  - b. Whether the application will preserve any City, State or Federally designated historic, scenic, archaeological, or cultural resources;
  - c. Whether the application will be compatible with adjacent residential development, if any, based on characteristics such as size, building style and scale; or whether such incompatibilities are mitigated through such means as screening, landscaping, setbacks, and other design features; and
  - d. Whether the application will not have significant adverse impacts on the livability and usability of nearby land due to: noise, dust, fumes, smoke, glare from lights, late-night operations, odors, truck and other delivery trips, the amount, location, and nature of any outside displays, storage, or activities, potential for increased litter, and privacy and safety issues.
3. Whether the transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, access to arterials, transit availability, on-street parking impacts, if any, zoning lot access requirements, neighborhood impacts, and pedestrian safety.
4. Whether the minimum off-street parking area required and the amount of space needed for the loading and unloading of trucks, if applicable, has been provided and will function properly and safely.
5. Whether generally, the public health, safety and welfare will be preserved, and any reasonable conditions necessary for such preservation have been made.
6. Whether the applicant has demonstrated the financial and technical capacity to complete any improvements and mitigation necessitated by the development as proposed and has made adequate legal provision to guarantee the provision such improvements and mitigation; and

7. Whether the proposed use complies with all additional standards imposed on it by the particular provision of these regulations authorizing such use and by all other applicable requirements of the regulations of the City of Sarasota, including, but not limited to, Section IV-506, Site Plan Standards for Review.

**Section IV-907. Effect of Decision**

A. Approval of a conditional use shall be deemed to authorize only the particular use for which it is issued. Approval of a site plan shall authorize the applicant to apply for the issuance of a building permit.

B. Development of the conditional use shall not be carried out until the applicant has secured all other permits and approvals required by these regulations, the City, or regional, state and federal agencies.

**Section IV-908. Conditions**

Due to unique circumstances which are not addressed in Section IV-906, the City Commission may attach and the Director of Planning or the Planning Board may recommend the attachment of such conditions to a major conditional use and the Planning Board may attach such conditions to a minor conditional use as are necessary to carry out the purposes of the *Sarasota City Plan* and to prevent or minimize adverse effects upon other property in the neighborhood, including, but not limited to: limitations on size, bulk and location; requirements for landscaping and lighting; provision of adequate ingress and egress and off-site but project-related improvements; and other conditions such as the duration of the permit, hours of operation, and mitigation of environmental impacts.

**Section IV-909. Changes to Conditional Uses**

A. Approval of Minor Revisions. The Director of Building, Zoning and Code Enforcement is authorized to allow minor revisions to an approved conditional use after receipt of comments from the DRC and to authorize the issuance of a building permit for construction in accordance with the revised conditional use. A minor revision is one which:

1. Does not substantially alter the location of any points of access to the site; or
2. Does not change the use of the property; or
3. Does not increase the density or intensity of the development to occur on the property; or
4. Does not result in a reduction or change of previously approved open space, setback, building location, or landscaping by more than ten percent (10%); or
5. Is consistent with the general intent and purpose of these regulations and does not have any effect whatsoever on the initial determination of consistency of the site plan

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- with the *Sarasota City Plan*, and will not affect or alter any finding or conclusion of compatibility; or
6. Does not result in a material modification or the cancellation of any condition placed upon the site plan as originally approved; or
  7. Does not substantially change the internal or external traffic pattern; or
  8. Does not add additional property to the site; or
  9. Does not increase the impervious area of the site by more than ten percent (10%); or
  10. Does not increase the height of the building(s) including approved roof-top appurtenances allowed by VI-102P.

B. Other Revisions. Any other adjustments or changes not specified in the subsection above shall be granted only in accordance with procedures for original approval of a conditional use, as set forth in this Section and Section IV-201 and 202. The application shall also address the necessity for the amendment and shall demonstrate the amendment is warranted under the circumstances.

**Section IV-910. Expiration or Revocation of Approval****A. Expiration**

1. Reserved.
2. Major and minor conditional use approval shall automatically expire two (2) years after the date of the action granting such approval if the use has not commenced. The original approving authority may grant one extension not to exceed 2 years. The application for extension shall address the necessity for the extension and shall demonstrate that the extension is warranted under the circumstances. Said extension shall be requested and granted prior to the expiration of the original period of validity. Permitted time frames do not change with successive owners.
3. If an approved conditional use (minor and major) ceases for any reason for a period of at least six (6) months, a new conditional use application shall be submitted for consideration, by the appropriate approving authority, prior to the reestablishment of the use.

**B. Revocation**

1. If construction of a conditional use has not been completed in accordance with the conditions of the approval, or if the use is not conducted consistent with any condition of approval, the City Manager may terminate the approval. Notice of such termination shall be sent by certified mail to the owner of the property and any lessee of the property as indicated in the records of the City (i.e., transmission tower owners) and shall become effective ten (10) days after the date of such notice, unless an appeal is filed with the City Auditor and Clerk's Office. Within sixty (60) days of receipt of an appeal, the original decision making body shall hold a public hearing to

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- consider the appeal. At the conclusion of the public hearing, the termination may be upheld, reversed or modified. In making such a decision, the Planning Board or the City Commission shall consider whether there are substantial and legitimate reasons why construction of the conditional use was either not timely or in compliance with the original approval, whether there are substantial and legitimate reasons why the use was not conducted consistent with the conditions of approval and whether the termination of such approval will advance the goals and objectives of the Comprehensive Plan and the standards applicable to the original approval. It shall be the petitioner's burden of proof at the public hearing to show that the conditional use has been constructed and operated within the provisions of the original approval.
2. Grounds for revocation may include, but are not limited to, the following:
    - a. A change in intensity (character) beyond what was initially intended which affects the public health, safety and welfare since adoption of the conditional use; or
    - b. Any violations of this Code, including any conditions attached to the conditional use, by the owner/operator of the use.
  3. Any applicant for a conditional use shall submit an affidavit with the application stating they understand and agree that the conditional use may be terminated at any time if they fail to construct or operate the conditional use within the provisions of the original approval, regardless of the amount of the investment they have committed to the conditional use. The affidavit shall also state that the applicant shall notify any future purchasers, or anyone having any legal interest in the conditional use, of these termination provisions. No future (subsequent) purchaser, owner, or operator of the conditional use shall utilize the conditional use until they have provided the Director of Building, Zoning and Code Enforcement the required affidavit. The affidavit shall be recorded in the public records of Sarasota County along with the resolution approving the conditional use. The execution of such affidavit by an applicant for a conditional use does not waive the applicant's rights of appeal as provided in Section IV-910(B).