

## PLANNING COMMISSION STAFF REPORT

### AMENDMENTS TO CHAPTER 21A.54: CONDITIONAL USE: ISSUES ONLY Case #PLNPCM2009-00174 October 14, 2009



Planning and Zoning Division  
Department of Community and  
Economic Development

**Applicant:**

City Council

**Staff:**

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(801)535-7645

**Current Zone:**

N/A

**Master Plan Designation:**

City Wide

**Council District:**

City Wide

**Review Standards**

21A.50.050 Standards for General  
Amendments

**Affected Text Sections**

Chapter 21A.54.

**Notification**

- Notice mailed on September 28, 2009
- Published in Deseret News September 28, 2009
- Posted on City & State Websites September 28, 2009

**Attachments**

- A. Proposed Text Amendments
- B. Summary Notes from ZAP task force meeting.

### ***REQUEST***

This petition is part of the City Council "Issues for Further Study" request created during the Conditional Use amendment project in 2008. The Council specifically requested that the administration analyze the standards for conditional uses to ensure their appropriateness. Therefore a petition to amend the following sections of the Zoning Ordinance was initiated. As part of that ongoing process staff has modified Chapter 21A.54 Conditional Use, and is requesting that the Planning Commission review and provide direction with regard to the proposed changes.

The purpose of the amendment is to bring the chapter into compliance with state code, to clarify the intent of certain sections, and to revise the standards and factors necessary for conditional use approval.

### ***STAFF RECOMMENDATION***

Staff recommends that the Planning Commission review the proposed modifications to Chapter 21A.54 Conditional Use as an **issues only item**, conduct a public hearing and provide staff with direction.

Staff is not requesting a decision by the Planning Commission at this meeting. The matter will be scheduled for a future Public Hearing with a formal recommendation.

## ***Background***

The rewrite of Chapter 21A.54, Conditional Uses, of the zoning ordinance is another step in the ongoing effort to amend and update the document and bring it into conformance with state regulations, best planning practices and to improve the efficiency of the regulation process.

Chapter 21A.54 was modified most recently by the City Council in July of 2008. The changes were most specifically with regard to the standards and criteria necessary for approval. Staff has applied these criteria for approximately 1 and ½ years and has encountered a number of issues and problems in applying them to specific projects and applications. These amendments are an attempt to clarify and resolve those problems.

## ***Public Participation***

This application was reviewed by the Zoning Amendment Project task force on August 10, 2009, and again on September 28, 2009. Summary notes are attached as exhibit B.

The project was also reviewed at an open house on July 21, 2009. No public comments were received.

## ***Issue Analysis***

There are a number of significant changes proposed in this chapter, as well as general fine tuning designed to clarify language and facilitate understanding and application of the regulations. Below is a summary of the changes proposed, with a brief analysis of the rationale for the amendment. When the Planning Commission provides direction to forward the document to the City Council, staff will provide analysis and findings for the standards in Chapter 21A.50.050 Standards for General Amendments.

## ***Planned Developments***

All substantive references to Planned Developments have been removed from this chapter, as the criteria, and process for a Planned Development will be moved to its own chapter.

## ***Administrative Conditional Use***

Changes to this section feature consolidating language from other areas of the chapter into one section. This will enable better understanding of the process and eliminate mistakes as all language will be located in one specific place.

Although not final, staff has discussed the possibility of removing the requirement that all administrative conditional uses (those heard by an administrative officer only) be reviewed by Community Councils. This would streamline the time necessary to receive approval as well as free up Community Council agendas for other topics. Community Councils would still receive notice of the application, and be free to provide input at the public hearing, but the applicant would not be required to present to the Community Council.

## ***Standards for Review***

Staff has significantly modified the standards of review necessary for approval. Standards have been separated from Factors to Consider, with the idea that the Standards are the findings that the Planning Commission or administrative hearing officer must make in order to approve the use, and the Factors to consider are the apparatus used to make said findings. State Code requires that any Conditional Use shall be approved unless the impact of the use on surrounding properties cannot be mitigated through the application of the standards, factors to consider and conditions of approval. Proposed standards include:

1. The use complies with all applicable provisions of this zoning ordinance, state and federal law;
2. The use is compatible or, with conditions of approval, can be made to be compatible with surrounding uses;
3. The use is consistent with applicable adopted City planning policies, documents and Master Plans; and
4. The anticipated detrimental effects of any differences in use or scale have been reasonably mitigated through careful planning.

If a finding of compliance with these standards cannot be made, then denial of the project would be appropriate. Adversely, if a finding of compliance can be made for each, then the use must be approved.

## ***Factors to Consider***

When reviewing the application for compliance, the Planning Commission or administrative hearing officer will consider 13 factors for approval. These factors though general, are designed to address the general issues and impacts of a use on neighboring properties while providing sufficient leeway to address the unique issues and problems related to each specific location and use.

1. **The proposed use is one of the Conditional Uses specifically listed in this title.**
2. **Master Plan and Zoning Ordinance Compliance:** The use is consistent with policies set forth in the adopted citywide, community, and small area master plan and future land use map where the use is located.
3. **Use Compatibility:** The use is well-suited to the character of the site, and adjacent uses. The analysis shall evaluate the intensity, size, and scale of the use compared to existing uses in the surrounding area.
4. **Building Form and Scale:** The mass, scale, style, design and architectural detailing of the surrounding structures as they relate to the proposed use shall be considered.
5. **Access.** Whether access points and driveways are designed to minimize grading of the natural topography, direct vehicular traffic onto major streets, and not impede traffic flows.
6. **Internal Vehicular and Pedestrian Circulation:** Whether the internal circulation system shall be designed to mitigate adverse impacts on adjacent property from motorized, non-motorized, and pedestrian traffic. Sites shall be designed to enable access and circulation for pedestrian and bicycles.
7. **Traffic:** The proposed means of access to the site shall be carefully considered to determine the impact of the use on the service level to such street or any adjacent street;
8. **Parking:** The location and design of off-street parking complies with applicable standards of this Ordinance;
9. **Utility Access:** Whether there is sufficient utility capacity to support the use at normal service levels;

10. **Buffering and Screening:** Whether appropriate screening, buffering or other means to separate the use from adjoining dissimilar uses and mitigation of the potential for conflict in uses is provided.
11. **Environmental Impact:** Whether the use significantly impacts the quality of the surrounding air and water, encroaches into a river or stream, or introduces any hazards or environmental damage to any adjacent property.
12. **Operation and Delivery:** Whether the hours of operation and delivery of the use are compatible with surrounding uses.
13. **Signs and Lighting:** Whether signs and lighting proposed are compatible with, and do not negatively impact surrounding uses.
14. **Historic Preservation:** Whether the proposed use takes into consideration the preservation of historic resources and structures.

One primary change to this section is the elimination of the “Detrimental Concentration” criteria from the previous section. This provision required a review of all conditional uses and nonconforming uses within a radius of ¼ a mile of the proposed use with the purpose of determining whether or not the use is appropriate. After applying this requirement for approximately one year, staff has determined that this criterion should be eliminated for the following reasons:

1. When the City Council adopts the use table, a determination of the appropriateness of a use in the zone is made, and it is assumed that the use is compatible with surrounding uses provided the standards and factors for consideration are met. Therefore, there should not be a detrimental concentration because each approved conditional use, with associated conditions of approval, has been found to not impact the area.
2. There is no standard to determine what number of a certain type of conditional use would tip the scales to create the detrimental concentration.
3. If policy makers determine that there is too large a concentration of a certain conditional use, then the appropriate action would be for the City Council to eliminate this use from the use table, rezone properties and/or modify the future land use map in the applicable master plan.

This issue was reviewed and commented on by the ZAP task force, who had a number of comments and issues, including:

- If it is discovered that there is a significant concentration of a negative use in an area, then policy makers need to change ordinance and not allow the use.
- Need to ensure that the zoning map mirrors the applicable Master Plan. If the master plan calls for residential but the zoning map does not allow it, then that is a problem.
- The zoning needs to be supported by the uses in the area.
- In some areas, you can't rely on the zone because the zoning doesn't match what's on the ground or in the plan.

### ***Conditional Use Revocation***

Currently, the standard to revoke a conditional use is unclear. Staff has drafted language allowing the Mayor, or the Planning Commission to revoke or modify a conditional use, provided the following findings are met:

1. A material detrimental change in the conditional use approval without authorization or an amendment; or
2. Material noncompliance with the conditions prescribed upon issuance of the conditional use or with representations by the permittee as to the nature of the conditional use to be conducted; or
3. Operation of the conditional use in such a manner as to create an ongoing nuisance for neighboring persons or property.

The language further provides hearing, and appeal information relating to the use.

This language also was of concern to members of the task force, who stated that it is possible that giving the power to initiate a revocation to the Mayor or Mayor's designee may politicize the process. It was suggested that staff look at the way other licenses such as business licenses are revoked. Staff reviewed the processes and modified the language to mirror that of other revocations in the City, and therefore recommends this language.

### ***Alterations or Modifications***

Staff is proposing to clarify language relating to the modification of an existing conditional use or a nonconforming conditional use.

1. Alterations or modifications to an existing legal conditional use that increase the floor area by one thousand (1,000) gross square feet or less may be approved by the Planning Director without a public hearing.
2. Alterations or modifications to an existing legal conditional use that increase the floor area by more than one thousand (1,000) gross square feet shall be reviewed as a new conditional use pursuant to the requirements and standards of the new chapter.

### ***Fine Tuning***

There are a number of additional changes proposed to the document; nonetheless, they are not substantive in nature. These changes are designed to facilitate understanding and clarify, not to change meaning.

***Attachment A***  
Proposed Amendment

# Chapter 21A.54

## CONDITIONAL USES

### 21A.54.010: PURPOSE STATEMENT:

A conditional use is a land use which, because of its unique characteristics or potential impact on the municipality, surrounding neighbors or adjacent land uses, may not be compatible or may be compatible only if certain conditions are required that mitigate or eliminate the negative impacts. Conditional uses are allowed unless appropriate conditions cannot be applied which, in the judgment of the Planning Commission, or administrative hearing officer, would mitigate adverse impacts that may arise by introducing a conditional use on the particular site.

Approval of a conditional use It requires a careful review of its location, design, configuration and special impact to determine the desirability of allowing it on a particular site. Whether the use is appropriate in a particular location requires a weighing of, in each case, of the public need and benefit against the local impact, taking into account the applicant's proposals for ameliorating any to mitigate adverse impacts through special site planning, development techniques and contributions to the provision of public improvements, rights of way and services. (~~Ord. 2-08 § 3, 2008; Ord. 26-95 § 2(27-1), 1995~~)

### 21A.54.020: AUTHORITY:

The Planning Commission, or in the case of administrative conditional uses, the Planning Director or designee, may, in accordance with the procedures and standards set out in this chapter, and other regulations applicable to the district in which the property is located, approve uses listed as conditional uses in the tables of permitted and conditional uses ~~found at the end of each chapter of part III of this title for each category of zoning district or districts.~~ (~~Ord. 69-06 § 1, 2006; Ord. 26-95 § 2(27-2), 1995~~)

### 21A.54.030: CATEGORIES OF CONDITIONAL USES:

Conditional uses shall consist of the following categories of uses:

- A. Requests considered and decided by the Planning Commission.
- B. Requests considered and decided by the Planning Director or designee.

- A. ~~Uses Impacting Other Property: Uses that may give rise to particular problems with respect to their impact upon neighboring property and the city as a whole, including their impact on public facilities; and~~
- B. ~~Planned Developments: The uses which fall within these categories are listed in the tables of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts.~~
- C. ~~Administrative Consideration Of Conditional Uses: Certain conditional uses may be considered to be low impact due to their particular location and are hereby authorized to be~~

~~reviewed administratively according to the provisions contained in section [21A.54.155](#) of this chapter. Conditional uses that are authorized to be reviewed administratively are:~~

- ~~1. Applications for low power wireless telecommunication facilities that are listed as conditional uses in subsection [21A.40.090E](#) of this title.~~
- ~~2. Alterations or modifications to a conditional use that increase the floor area by one thousand (1,000) gross square feet or more and/or increase the parking requirement.~~
- ~~3. Any conditional use as identified in the tables of permitted and conditional uses for each zoning district, except those that:~~
  - ~~a. Are listed as a "residential" land use in the tables of permitted and conditional uses for each zoning district;~~
  - ~~b. Are located within a residential zoning district;~~
  - ~~c. Abut a residential zoning district or residential use; or~~
  - ~~d. Require planned development approval.~~
  - ~~e. Public/private utility buildings and structures in residential and nonresidential zoning districts. (Ord. 69-06 § 2, 2006; Ord. 13-04 § 34, 2004; Ord. 81-01 § 2, 2001; Ord. 26-95 § 2(27-3), 1995)~~

#### **21A.54.040: SITE PLAN REVIEW REQUIRED:**

~~Site plan review of development proposals is required for all conditional uses in all districts. (Ord. 26-95 § 2(27-4), 1995)~~

#### **21A.54.050: INITIATION:**

An application for a conditional use may be filed with the [Planning Director](#) zoning administrator by the owner of the subject property or by an authorized agent. (Ord. 26-95 § 2(27-5), 1995)

#### **21A.54.060: PROCEDURES:**

- A. Application: A complete application shall contain at least the following information submitted by the applicant, unless certain information is determined by the [Planning Director](#) zoning administrator to be inapplicable or unnecessary to appropriately evaluate the application:
  1. The applicant's name, address, telephone number and interest in the property;
  2. The [property](#) owner's name, address and telephone number, if different than the applicant, and the [property](#) owner's signed consent to the filing of the application;
  3. The street address and legal description of the subject property;
  4. The zoning classification, zoning district boundaries and present use of the subject property;
  5. A complete description of the proposed conditional use;
  6. Site plans, as required pursuant to section [21A.58.060](#) of this title;
  7. Traffic impact analysis, [where required by the City Transportation Division](#);



- ~~8. A signed statement that the applicant has met with and explained the proposed conditional use to the appropriate neighborhood organization entitled to receive notice pursuant to [title 2, chapter 2.62](#) of this code;~~
- ~~9. A statement indicating whether the applicant will require a variance in connection with the proposed conditional use;~~
10. Mailing labels and first-class [a fee to cover](#) postage for all persons required to be notified of the public hearing on the proposed conditional use pursuant to chapter 21A.10 of this title;
- ~~11. Such other and further information or documentation as the [Planning Director](#) zoning administrator may deem [necessary for proper review and analysis of the application](#). to be necessary for a full and proper consideration and disposition of the particular application.~~

- B. Determination of Completeness: Upon receipt of an application for a conditional use, the zoning administrator [Planning Director](#) shall make a determination of completeness of the application pursuant to section [21A.10.010](#) of this title.
- C. Fees: The application for a conditional use shall be accompanied by the fee established on the fee schedule.
- D. Staff Report; ~~Site Plan Review Report~~: Once the [Planning Director](#) zoning administrator has determined that the application is complete a staff report evaluating the conditional use application shall be prepared by the planning division and forwarded to [the applicant and the](#) Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee [in accordance with state law](#). ~~along with a site plan review report prepared by the development review team.~~
- E. Public Hearing: The Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee shall schedule and hold a public hearing on the proposed conditional use in accordance with the standards and procedures for conduct of the public hearing set forth in chapter 21A.10 of this title. (See sections [21A.54.150](#) and [21A.54.155](#) of this chapter for additional procedures for public hearings in connection with ~~planned developments and administrative conditional uses~~).
- F. Notice of Applications for Additional Approvals: Whenever, in connection with the application for a conditional use approval, the applicant is requesting other types of approvals, [as required by this title](#) ~~such as a variance or special exception~~, all required notices shall include reference to the request for [the conditional use as well as for all other applicable](#) ~~required approvals~~.
- G. Planning Commission and Planning Director or Designee Action: At the conclusion of the public hearing, the Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee shall either: 1) approve the conditional use; 2) approve the conditional use subject to specific modifications; or 3) deny the conditional use. (Ord. 69-06 § 3, 2006: Ord. 26-95 § 2(27-6), 1995)

## **21A.54.070: SEQUENCE OF APPROVAL OF APPLICATIONS FOR BOTH A CONDITIONAL USE AND A VARIANCE:**

Whenever the applicant indicates pursuant to subsection [21A.54.060A9](#) of this chapter that a variance will be necessary in connection with the proposed conditional use (~~other than a planned development~~), the applicant shall at the time of filing the application for a conditional use, file an application for a variance with the board of adjustment.

- A. ~~**Combined Review:** Upon the filing of a combined application for a conditional use and a variance, at the initiation of the Planning Commission or the board of adjustment, the Commission and the Board may hold a joint session to consider the conditional use and the variance applications simultaneously.~~
- B. **Actions By Planning Commission And Board of Adjustment:** Regardless of whether the Planning Commission and Board of Adjustment conduct their respective reviews in a combined session or separately, the ~~The~~ Board of Adjustment shall not take any action on the application for a variance until the Planning Commission ~~has acted~~ shall first act to recommend approval or disapproval of the application for ~~on~~ the conditional use. (Ord. 26-95 § 2(27-7), 1995)

## **21A.54.080: STANDARDS FOR CONDITIONAL USES:**

- A. General Standard For Approval: A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards set forth in this section. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use shall be denied.
- B. ~~Specific Standards: A conditional use permit shall be approved unless the evidence presented shows that one or more of the standards set forth in this subsection cannot be met. The Planning Commission, or, in the case of administrative conditional uses, the Planning Director or the director's designee, may request additional information as may be reasonably needed to determine whether the standards of this subsection can be met.~~
1. ~~Master Plan And Zoning Ordinance Compliance: The proposed conditional use shall be:~~
- ~~Consistent with any policy set forth in the citywide, community, and small area master plan and future land use map applicable to the site where the conditional use will be located, and~~
  - ~~Allowed by the zone where the conditional use will be located or by another applicable provision of this title.~~
2. ~~Use Compatibility: The proposed conditional use shall be compatible with the character of the site, adjacent properties, and existing development within the vicinity of the site where the use will be located. In determining compatibility, the Planning Commission shall consider:~~
- ~~Whether the street or other means of access to the site where the proposed conditional use will be located will provide access to the site without materially degrading the service level on such street or any adjacent street;~~

- b. ~~Whether the type of use and its location will create unusual pedestrian or vehicle traffic patterns or volumes that would not be expected with the development of a permitted use, based on:~~
  - ~~(1) Orientation of driveways and whether they direct traffic to major or local streets, and, if directed to local streets, the impact on the safety, purpose, and character of these streets;~~
  - ~~(2) Parking area locations and size, and whether parking plans are likely to encourage street side parking for the proposed use which will adversely impact the reasonable use of adjacent property;~~
  - ~~(3) Hours of peak traffic to the proposed use and whether such traffic will unreasonably impair the use and enjoyment of adjacent property; and~~
  - ~~(4) Hours of operation of the proposed use as compared with the hours of activity/operation of other nearby uses and whether the use, during hours of operation, will be likely to create noise, light, or other nuisances that unreasonably impair the use and enjoyment of adjacent property;~~
- c. ~~Whether the internal circulation system of any development associated with the proposed use will be designed to mitigate adverse impacts on adjacent property from motorized, nonmotorized, and pedestrian traffic;~~
- d. ~~Whether existing or proposed utility and public services will be adequate to support the proposed use at normal service levels and will be designed in a manner to avoid adverse impacts on adjacent land uses, public services, and utility resources;~~
- e. ~~Whether appropriate buffering or other mitigation measures, such as, but not limited to, landscaping, setbacks, building location, sound attenuation, odor control, will be provided to protect adjacent land uses from excessive light, noise, odor and visual impacts and other unusual disturbances from trash collection, deliveries, and mechanical equipment resulting from the proposed use; and~~
- f. ~~Whether detrimental concentration of existing nonconforming or conditional uses substantially similar to the use proposed is likely to occur, based on an inventory of uses within one-fourth ( $\frac{1}{4}$ ) mile of the exterior boundary of the subject property.~~
- 3. ~~Design Compatibility: The proposed conditional use shall be compatible with the character of the area where the use will be located with respect to:~~
  - a. ~~Site design and location of parking lots, accessways, and delivery areas;~~
  - b. ~~Whether the proposed use, or development associated with the use, will result in loss of privacy, objectionable views of large parking or storage areas; or views or sounds of loading and unloading areas; and~~
  - c. ~~Intensity, size, and scale of development associated with the use as compared to development and uses in the surrounding area.~~
  - d. ~~If a proposed conditional use will result in new construction or substantial remodeling of a commercial or mixed used development, the design of the premises where the use will be located shall conform to the conditional building and site design review standards set forth in chapter 21A.59 of this title.~~
- 4. ~~Detriment To Persons Or Property: The proposed conditional use shall not, under the circumstances of the particular case and any conditions imposed, be detrimental to the health, safety, and general welfare of persons, nor be injurious to property and improvements in the community, existing surrounding uses, buildings, and structures. The proposed use shall:~~
  - a. ~~Not emit any known pollutant into the ground or air that will detrimentally affect the subject property or any adjacent property;~~
  - b. ~~Not encroach on any river or stream, or direct runoff into a river or stream;~~
  - c. ~~Not introduce any hazard or potential for damage to an adjacent property that cannot be mitigated;~~
  - d. ~~Be consistent with the type of existing uses surrounding the subject property; and~~

- ~~e. Improve the character of the area by encouraging reinvestment and upgrading of surrounding properties.~~
- ~~5. Compliance With Other Applicable Regulations: The proposed conditional use and any associated development shall comply with any other applicable code or ordinance requirement.~~

## **B. Standards for Review**

A conditional use shall be approved unless the Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee conclude that the following standards of this subsection cannot be met.

1. The use complies with all applicable provisions of this title;
2. The use is compatible or, with conditions of approval, can be made to be compatible with surrounding uses;
3. The use is consistent with applicable adopted City planning policies, documents and Master Plans; and
4. The anticipated detrimental effects of any differences in use or scale have been reasonably mitigated through careful planning.

## **Factors to Consider**

The Planning Commission, or in the case of administrative conditional uses, the Planning Director or designee shall consider each of the following factors when considering whether or not the proposed Conditional Use meets the standards listed in Section 21A.54.080B:

15. **The proposed use is one of the Conditional Uses specifically listed in this title.**
16. **Master Plan and Zoning Ordinance Compliance:** The use is consistent with policies set forth in the adopted citywide, community, and small area master plan and future land use map where the use is located.
17. **Use Compatibility:** The use is well-suited to the character of the site, and adjacent uses. The analysis shall evaluate the intensity, size, and scale of the use compared to existing uses in the surrounding area.
18. **Building Form and Scale:** The mass, scale, style, design and architectural detailing of the surrounding structures as they relate to the proposed use shall be considered.
19. **Access.** Whether access points and driveways are designed to minimize grading of the natural topography, direct vehicular traffic onto major streets, and not impede traffic flows.
20. **Internal Vehicular and Pedestrian Circulation:** Whether the internal circulation system shall be designed to mitigate adverse impacts on adjacent property from motorized, non-motorized, and pedestrian traffic. Sites shall be designed to enable access and circulation for pedestrian and bicycles.
21. **Traffic:** The proposed means of access to the site shall be carefully considered to determine the impact of the use on the service level to such street or any adjacent street;
22. **Parking:** The location and design of off-street parking complies with applicable standards of this Ordinance;
23. **Utility Access:** Whether there is sufficient utility capacity to support the use at normal service levels;

24. **Buffering and Screening:** Whether appropriate screening, buffering or other means to separate the use from adjoining dissimilar uses and mitigation of the potential for conflict in uses is provided.
25. **Environmental Impact:** Whether the use significantly impacts the quality of the surrounding air and water, encroaches into a river or stream, or introduces any hazards or environmental damage to any adjacent property.
26. **Operation and Delivery:** Whether the hours of operation and delivery of the use are compatible with surrounding uses.
27. **Signs and Lighting:** Whether signs and lighting proposed are compatible with, and do not negatively impact surrounding uses.
28. **Historic Preservation:** Whether the proposed use takes into consideration the preservation of historic resources and structures.

### **Decision on Conditional Use Application**

The Planning Commission or in the case of administrative conditional uses, the Planning Director or designee shall provide written notice of the decision, and all conditions imposed to the applicant and local community council within ten (10) days of the final action. This notice shall be recorded against the property by the City Recorder.

**C. Imposition Of Conditions Of Approval:** The Planning Commission, or, in the case of administrative conditional uses, the Planning Director or the director's designee, may impose on a conditional use any conditions necessary to make ~~conform~~ the proposed use compatible with the uses on adjacent properties ~~with the approval standards set forth in this section~~. Such conditions may include, but are not limited to, conditions on the scope of the use; its character or location; architecture; signage; construction; landscaping; access; loading and parking; sanitation; drainage and utilities; fencing and screening; setbacks; natural hazards; public safety; environmental impacts; hours and methods of operation; dust, fumes, smoke and odor; noise, vibrations; chemicals, toxins, pathogens, and gases; and heat, light, and radiation. ~~Such conditions shall:~~

- ~~1. Be expressly set forth in the approval authorizing the conditional use;~~
- ~~2. Not be used as a means to authorize as a conditional use any use intended to be temporary only;~~
- ~~3. Be within the police powers of Salt Lake City;~~
- ~~4. Substantially further a legitimate public purpose;~~
- ~~5. Further the same public purpose for which the condition is imposed;~~
- ~~6. Not require the applicant/owner to carry a disproportionate burden in furthering the public purpose of the condition; and~~
- ~~7. In the case of land dedications and other contributions of property, be reasonably related and roughly proportionate to the use of the property for which the conditional use is authorized.~~

**~~D. Denial of Conditional Use Application:~~** ~~The following findings shall be cause for denial of a conditional use application:~~

- ~~1. The proposed use is unlawful; and~~
- ~~2. The reasonably anticipated detrimental effects of the proposed conditional use cannot be substantially mitigated as proposed in the conditional use application~~

~~or by the imposition of reasonable conditions to achieve compliance with applicable standards set forth in this section. (Ord. 61-08 § 1 (Exh. A), 2008; Ord. 2-08 § 4, 2008; Ord. 35-99 § 95, 1999; Ord. 26-95 § 2(27-8), 1995)~~

#### **21A.54.090: ~~VIOLETION OF CONDITIONS~~ CONDITIONAL USE REVOCATION:**

~~Violation of any condition of an approved conditional use shall constitute grounds for revocation of the conditional use approval. (Ord. 61-08 § 1 (Exh. A), 2008; Ord. 69-06 § 4, 2006; Ord. 26-95 § 2(27-9), 1995)~~

Conditions of Revocation: The holder of the conditional use shall be responsible for the operation of the use in conformance with the ordinances of the city. Any conditional use issued by the city may be suspended or revoked by the Mayor or the Planning Commission, upon a finding by the Mayor or the Planning Commission of a violation of any of the following with respect to the holder of the use or its operator or agent:

4. A material detrimental change in the conditional use approval without authorization or an amendment; or
5. Material noncompliance with the conditions prescribed upon issuance of the conditional use or with representations by the permittee as to the nature of the conditional use to be conducted; or
6. Operation of the conditional use in such a manner as to create an ongoing nuisance for neighboring persons or property.

Upon making a decision to suspend or revoke the conditional use, the Mayor or Planning Commission shall send written notice of the suspension or revocation to the holder of the conditional use and post it on the Planning Department web site unless an appeal is filed. If there is an existing business license associated with the use, said license will be suspended along with the use.

#### **21A.54.100: NO PRESUMPTION OF APPROVAL:**

The listing of a conditional use in any table of permitted and conditional uses ~~found at the end of each chapter of part III of this title for each category of zoning district or districts~~ found in this title does not constitute an assurance or presumption that such conditional use will be approved. Rather, each proposed conditional use shall be evaluated on an individual basis, in relation to its compliance with the standards and factors ~~conditions~~ set forth in this chapter and with the standards for the district in which it is located, in order to determine whether the conditional use is appropriate at the particular location. (Ord. 26-95 § 2(27-10), 1995)

#### **21A.54.110: EFFECT OF APPROVAL OF CONDITIONAL USE:**

The approval of a proposed conditional use by the Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee, shall not authorize the establishment or extension of any use nor the development, construction, reconstruction,

alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals that may be required by the regulations of the city, including, but not limited to, a building permit, certificate of occupancy and subdivision approval. (Ord. 69-06 § 5, 2006: Ord. 26-95 § 2(27-11), 1995)

#### **21A.54.120: LIMITATIONS ON CONDITIONAL USE APPROVAL:**

Subject to an extension of time granted by the Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee, no conditional use shall be valid for a period longer than one (1) year unless a building permit has been issued or complete building plans have been submitted to the Division of Building Services and Licensing within that period and is thereafter diligently pursued to completion, or unless a certificate of occupancy is issued and a use commenced within that period, or unless a longer time is requested and granted by the Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee. Any request for a time extension shall be required not less than thirty (30) days prior to the twelve (12) month time period. The approval of a proposed conditional use by the Planning Commission, or, in the case of administrative conditional uses, the Planning Director or designee, shall authorize only the particular use for which it was issued.

#### **21A.54.130: CONDITIONAL USE RELATED TO THE LAND:**

~~An approved conditional use relates only to, and is only for the benefit of the use and lot rather than the owner or operator of such use or lot. (Ord. 26-95 § 2(27-13), 1995)~~

A Conditional Use is transferable with the title to the underlying property so that an applicant may convey or assign an approved use without losing the approval. The applicant may not transfer the use from the site on which the approval was granted. If the applicant changes the use on the property, the existing conditional use becomes null and void.

#### **21A.54.135: ALTERATIONS OR MODIFICATIONS TO A CONDITIONAL USE:**

Any modification to a legally non conforming land use currently listed as a conditional use under existing current zoning regulations is first required to ~~shall be required to~~ obtain conditional use approval subject to the provisions of this chapter if the floor area increases by more than one thousand (1,000) gross square feet ~~or more~~ and/or the parking requirement increases.

~~Administrative Consideration of Conditional Use: Applications for alterations and/or modifications to a conditional use may be reviewed according to the procedures set forth in section 21A.54.155 of this chapter. (Ord. 13-04 § 35, 2004)~~

Alterations or modifications to an existing legal conditional use that increase the floor area by one thousand (1,000) gross square feet or less may be approved by the Planning Director without a public hearing.



Alterations or modifications to an existing legal conditional use that increase the floor area by more than one thousand (1,000) gross square feet shall be reviewed as a new conditional use pursuant to the requirements and standards of this chapter.

## **21A.54.140: CONDITIONAL USE APPROVALS AND PLANNED DEVELOPMENTS:**

When a development is proposed as a planned development pursuant to the procedures in section [21A.54.150](#) [21A.55](#) of this ~~title~~ chapter and also includes an application for conditional use approval, the Planning Commission shall decide the planned development application and the conditional use application together. In the event that a new conditional use is proposed after a planned development has been approved pursuant to section [21A.54.150](#) [21A.55](#) of this ~~title~~ chapter, the proposed conditional use shall be reviewed and approved, approved with conditions, approved with modifications, or denied under the standards set forth in section [21A.54.080](#) of this chapter. (Ord. 26-95 § 2(27-14), 1995)

## **21A.54.150: PLANNED DEVELOPMENTS:**

## **21A.54.155: ADMINISTRATIVELY APPROVED CONSIDERATION OF CONDITIONAL USES:**

The purpose of this section is to establish an administrative hearing process for certain categories of low impact conditional uses as authorized by subsection [21A.54.030B](#) of this chapter. Conditional uses that are authorized to be reviewed administratively are:

1. Applications for low power wireless telecommunication facilities that are listed as conditional uses in subsection 21A.40.090E of this title.
2. Public/private utility buildings and structures in residential and nonresidential zoning districts that are listed as conditional uses.
3. Any conditional use as identified in the tables of permitted and conditional uses for each zoning district, except those that:
  - a. Are located within a residential zoning district;
  - b. Abut a residential zoning district or residential use; or
  - c. Require planned development approval.

### **A. ~~Preapplication~~ and Application Requirements:**

Administrative conditional use applications shall be subject to the standards found in section 21A.54.080 of this chapter.

1. ~~Preapplication Conference: The applicant shall first meet with a member of the Salt Lake City planning division to discuss the application and alternatives.~~
2. ~~Community Council Review: The applicant shall meet with the respective community council(s) pursuant to subsection [21A.10.010B](#) of this title.~~
3. ~~Application: The applicant shall file an application and associated application fees with the planning office on a form prescribed by the city and consistent with this chapter. After considering information received, the Planning Director or designee may choose to~~



~~schedule an administrative hearing or to forward the application to the Planning Commission.~~

**B. Administrative Hearing:**

1. **Noticing and Posting Requirements:** Notice of the proposed conditional use shall be ~~conducted~~ mailed all applicable property owners and the property shall be posted pursuant to subsection [21A.10.020B](#) of this title.
2. **Administrative Hearing:** After consideration of the information received from the applicant and concerned residents, the Planning Director or designee may approve, approve with conditions, or deny the conditional use request.

At the administrative hearing, the Planning Director or designee may decline to hear or decide the request and forward the application for Planning Commission consideration, if it is determined that there is neighborhood opposition, if the applicant has failed to adequately address the conditional use standards, or for any other reason at the discretion of the Planning Director or designee.

The Planning Director or designee may grant the conditional use request only if the proposed development is consistent with the standards for conditional uses listed in section [21A.54.080](#) of this chapter and any specific standards listed in this title that regulate the particular use.

**C. Appeal ~~Objection to Administrative Consideration:~~**

~~The petitioner or any person who objects to the Planning Director or designee administratively considering the conditional use request may request a hearing before the Planning Commission by filing a written notice at any time prior to the Planning Director's scheduled administrative hearing on the conditional use request. If no such objections are received by the city prior to the Planning Director's administrative hearing, any objections to such administrative consideration will be deemed waived. The notice shall specify all reasons for the objection to the administrative hearing. Upon receipt of such an objection, the matter will be forwarded to the Salt Lake City Planning Commission for consideration and decision.~~

1. **Appeal Of Administrative Consideration:** Any person aggrieved by the decision made by the Planning Director or designee at an administrative hearing may appeal that decision to the Salt Lake City Planning Commission by filing notice of an appeal within fourteen (14) days after the Planning Director's administrative hearing. The notice of appeal shall specify, in detail, the reason(s) for the appeal. Reasons for the appeal shall be based upon procedural error or compliance with the standards for conditional uses listed in section [21A.54.080](#) of this chapter or any specific standards listed in this title that regulate the particular use. (Ord. 69-06 § 7, 2006; Ord. 81-01 § 3, 2001)

**21A.54.156: APPEAL OF ADMINISTRATIVE DECISION:**

Any person aggrieved by the decision made by the Planning Director or designee at an administrative hearing may appeal that decision to the Salt Lake City Planning Commission by filing notice of an appeal within ten (10) days after the date of the written administrative decision. The notice of appeal shall specify, in detail, the reason(s) for the appeal. Reasons for

the appeal shall be based upon procedural error or compliance with the standards for conditional uses listed in section 21A.54.080 of this chapter or any specific standards listed in this title that regulate the particular use. (Ord. 69-06 § 7, 2006: Ord. 81-01 § 3, 2001)

#### **21A.54.160: APPEAL OF PLANNING COMMISSION DECISION:**

Any party aggrieved by a decision of the Planning Commission on an application for a conditional use, ~~including a planned development~~, may file an appeal to the land use appeals board within ten (10) ~~thirty (30)~~ days of the date of the written decision. The filing of the appeal shall not stay the decision of the Planning Commission pending the outcome of the appeal, unless the Planning Commission takes specific action to stay a decision. (Ord. 77-03 § 9, 2003: Ord. 83-96 § 6, 1996: Ord. 26-95 § 2(27-16), 1995)

#### **~~21A.54.170: APPEAL OF LAND USE APPEALS BOARD DECISION:~~**

~~Any party adversely affected by the decision of the land use appeals board on appeal from a decision of the Planning Commission may appeal to the district court within thirty (30) days of the date of the land use appeals board decision. (Ord. 83-96 § 7, 1996)~~

#### **21A.54.170: APPEAL OF REVOCATION OF CONDITIONAL USE:**

If the Planning Commission suspends or revokes any conditional use under section 21A.54.090, the holder of the use shall have a right to appeal the suspension or revocation decision to the Land Use Appeal Board. The holder must file the appeal with the Planning Director within ten (10) days of the record of decision that the City has revoked the Conditional Use.

***Attachment B***  
Summary Notes from ZAP Task Force Meeting

# 2009 Zoning Text Amendment Project

August 10, 2009

## Task Force Meeting

### **Members Present**

Alene Bentley; Cindy Cromer; Sydney Fannesbeck; Barbara Green; Jerry Green; Esther Hunter; Bruce Jensen; Jeremy King; Bill Nighswonger; Helen Peters; Vasilios Priskos; Dave Richards; Lon Richardson; Steven Rosenberg; Judi Short; Grace Sperry; Ray Whitchurch

### **Staff Present**

Wilf Sommerkorn, Planning Director; Cheri Coffey, Planning Manager; Ray Milliner, Principal Planner; Mike Akerlow, Economic Development Division

### **Discussion relating to proposed amendments to Conditional Use Regulations**

#### Administrative Conditional Uses

- Don't need to go to community council but do require notice to abutting property owners

Results of using criteria over the last year

#### Concentration issues

- Although the new use is mitigated, the uses that were approved before weren't mitigated so there is an impact when they are concentrated in an area.
- What does mitigated mean? Does it mean that 75% of the impacts are mitigated? 100% of the impacts are mitigated?

Clarify the criteria. An example would be to have a specific measurement of the noise that cannot be violated. That way it is easier to determine if it will really mitigate the impact and it can be enforced more easily. *The below underlined text is clarification language by Esther Hunter relating to this issue.*

*If possible the range of mitigations and the options of how these items can be mitigated be listed rather than just that something needs to be mitigated. Not sure this is possible but it would be extremely helpful. Frank did something similar to this idea for the definition of prisons.*

*My feeling is that it is a benefit to get at as much on the table in advance as possible so that business owners know the cost to consider going into a property and residential owners feel a certain level of confidence that mitigation issues will be addressed.*

It was suggested that staff take the last several controversial areas and by contacting the people involved in order to help identify a potential list of issues to define in advance of many of the problem areas. (Eggs in the City for example had standard issues such as parking but also hours of preparation/smell which could be addressed by the direction of the fans used, etc.)

My feeling is the more listed ahead of the time the better off everyone will be in building in less conflict and better system of trust in the ordinance.

Also suggested was that each departments criteria and process be identified and documented (that is used in their evaluation process in giving a green light such as transportation, etc.).

Housing is a conditional use in commercial zones. Relook at the use tables and determine what should be permitted, conditional use or not allowed.

Hard to work through issues (to mitigate impacts when applicant already did the work)  
Retroactive approval (boarding house issue).

When department sign-off on project they should note what standards they are using. What do they base their criteria on? (Best professional practices or adopted regulations for City. )

The concentration of use is in a specific geographic area.

Need to change ordinance and not allow the use if there are too many and they have a negative impact as a whole.

Have to be able to say something specific relating to concentration such as the roads can't handle more traffic in the area.

Need to ensure zoning implements the plan if the master plan calls for residential but not enough housing, then that is a problem.

The zoning needs to be supported by the uses in the area.

In some areas, you can't rely on the zone because the zoning doesn't match what's on the ground or in the plan.

What is revocation process for a Conditional Use?

- It is a very difficult process, hard to revoke.
- Having it go to the mayor to initiate revocation is political. Put the authority in a less political agency such as the attorney's office.
- Why not have the process be similar to other revocations? Where else in the City does there need to be a reliance on mayor to do something like this? Look at business license revocation process and possibly mimic it

Not requiring a process for expansions of less than 1,000 square feet is not consistent with nonconforming regulations.

Changing from one conditional use to a different type of conditional use needs public input process.

The whole nature of business is changing.

In some cases it may be ok to allow without process. In other cases it is not appropriate to not have a process.

The underlying zoning can help provide density and intensity, but where allow incremental change of use, it intensifies the use without input.

Impacts of smoking outdoors is an issue. Need to have indoor accommodations and separate ventilation.  
*This would violate State Law.*