

16.01 NATURE OF CONDITIONAL USE PERMITS (CUP)

- A. CONDITIONS TO RUN WITH THE LAND. A CUP with all conditions imposed by the Town run with the land and shall be binding on the applicant as well as their successors.
- B. EXPANSION OF A CONDITIONAL USE. No conditional use may be expanded without the approval of a new CUP.
- C. ALTERATION OR ABANDONMENT OF CONDITIONAL USE. If a use is altered from that which was originally approved or permitted in accordance with this Chapter, or abandoned for one (1) year, or has not been established within one (1) year after the date granted ("Establishment Deadline"), the CUP may be nullified and/or voided after a decision by the Town Council at a public meeting.
1. Any affected party must be notified of the proceedings and of any results determined.
 2. The one (1) year Establishment Deadline may be modified by the ~~Zoning Administrator or~~ Planning & Zoning Commission ~~(as the case may be)~~ if it is determined that the proposed use or uses will commence within one (1) year at a suitable scale recognizing that market forces or other considerations such as property size, utility availability and access might dictate the point in time when the use will occur at full scale on the subject property. In said instances the ~~Zoning Administrator or~~ Planning & Zoning Commission, in its discretion, shall set phased commencement and total completion deadlines.

16.02 PERMIT REQUIRED

A. A Conditional Use Permit (CUP) IS required if:

1. The proposed use or similar type of use is listed as Conditional Use and not a permitted or non-permitted use in the zone that the use is being requested in;
2. The proposed Conditional use would require:
 - a. the be for new construction of a Building, structure or improvements,
 - b. the expansion of a Conditional Use upon real property or an existing Building, Structure or improvements, or
 - c. a substantial change in the type of Conditional Use.
- 2.3. If possible problems or detrimental impacts to the surrounding area could be identified in the Preliminary Review or the Final Review phases application or initial review phase that would require mitigating conditions according to the standards set in this Chapter ordinance.

B. A Conditional Use Permit IS NOT required if:

1. The Business or Structure the Conditional use is being held in has already obtained a

~~conditional use permit~~CUP from the Town; and

2. The ~~proposed Conditional~~ Use is similar or compatible with the current ~~conditional use~~ of use identified in the CUP issued to the property without adding additional ~~use impact to~~ the surrounding area (as determination by ~~the~~ Zoning Administrator ~~required~~).

16.04 CUP APPLICATION AND REVIEW PROCESS

A. APPLICATION. Application for a Conditional Use Permit for new construction, a substantial change of a Conditional ~~Use~~, or the expansion of a Conditional ~~Use~~ shall be filed with the Town Clerk by the property owner/developer or a certified agent on a form authorized by the Town. The Application shall include (but is not limited to):

1. Contact info of the applicant (and owner of the property if different);
2. A Development Plan (see ~~s~~Subsection B below) with any applicable plats, plans, or design drawings necessary for Town Staff review (hard and digital copies will be required and at applicant's expense);
3. A written description or narrative of the proposed project and the use of the land;
4. If applicable, an estimate of the number of employees and a summary of the type of equipment and ~~B~~buildings to be involved with the Conditional ~~Use~~;
5. An estimate of the time required for construction of the project, including the time required for construction of each phase, if construction is to be made in phases.
6. A listing of all utilities which will be in place before, during and after construction of the project.
7. Such other pertinent information, including but not limited to proof of financial responsibility, fiscal impact analysis, professional traffic, geotechnical, utility capacity or other study, ~~construction and excavation plans~~, and detailed site analysis, as may be required by the JUB and Zoning Administrator, in ~~their~~his sole discretion, for evaluation of the CUP application.

B. DEVELOPMENT PLAN. A Development Plan shall include:

1. A map or satellite image of the existing site and surrounding area with key structures, features, and existing utilities marked;
2. A Site Plan of the proposed buildings, fences, screening, landscaping, vehicle circulation patterns, automobile parking and loading areas, setbacks, walkways, open spaces, permanent signs, any amenities, and any other information deemed necessary to evaluate the proposed Conditional Uses;
3. As necessary, any plats, plans, or drawings drawn to scale showing the location and dimensions of all existing buildings and structures, streets, parking, traffic flow, landscape

and open space areas, signs, or other information as appropriate to the application;

C. STAFF APPLICATION COMPLETENESS REVIEW. Upon the filing of the CUP application with the Town Clerk and payment received for CUP application filing fees, the CUP application will be reviewed by the Town Staff (including the Zoning Administrator) for completeness. After the Town Staff has determined the application to comply with filing requirements of Subsection A above, the CUP application will proceed to the CUP review and approval process.

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16.05 CUP REVIEW AND APPROVAL PROCESS

~~C. ZONING ADMINISTRATOR LEVEL DETERMINATION. Initially, upon receipt of the CUP application, the Zoning Administrator shall review the same and make a determination as to the level of said application. The Zoning Administrator shall designate all CUP applications as either a "Level 1 CUP" or a "Level 2 CUP". If the use applied for in a CUP application is designated as a Level 1 CUP it shall be reviewed, and if approved, a CUP issued by the Zoning Administrator. If the use applied for in a CUP application is designated as a Level 2 CUP the CUP application shall be forwarded to the Planning and Zoning Commission for review, and if approved, a CUP issued by the Town Planning and Zoning Commission.~~

- ~~1. The determination of Conditional Use level is vested solely in the Zoning Administrator who shall look at factors such as: a) the type of proposed use, b) the scope or size of the proposed use, c) possible adverse effects of the proposed use upon the Town, its infrastructure and individuals residing nearby, d) whether the construction of new structures and buildings are involved, e) possible conflicts with the Town's General Plan, and f) the benefits and enhancements to the Town that may occur as a result of said proposed use.~~

~~D. LEVEL 1 CUP REVIEW. The Zoning Administrator will review the application for a Level 1 CUP with the applicant according to the General Review Criteria, the General Standards for Conditional Uses, and any applicable Specific Conditional Use Standards set forth in this Section or elsewhere in VULU.~~

- ~~1. Possible conditions to mitigate any adverse impacts identified may be determined during this review.~~
- ~~2. Upon determination that all applicable criteria have been met in the application and Review of the Level 1 CUP, the Zoning Administrator may:
 - ~~a. Approve the Level 1 CUP;~~
 - ~~b. Require more documentation, studies or information for review purposes; or~~
 - ~~c. Determine that added conditions will not be able to properly mitigate adverse effects of the proposed use and therefor deny the Level 1 CUP. All findings of adverse effect and lack of mitigation options will be submitted in writing by the Zoning Administrator to the Town Clerk to go in the applicants file.~~~~

3. ~~Following the issuance of a Level 1 CUP, the permit holder may apply for a building permit, if applicable. The Applicant, Town or previously identified affected party may appeal any decision to the Town Council within 15 days of the determination. (See VULU 16.08A and VULU Chapter 6 for further clarification of the Appeals process.)~~

A. LEVEL 2 CUP PRELIMINARY REVIEW PROCESS.

1. Upon the CUP application being deemed complete by the Town Staff, the application shall be placed on the agenda for the next Joint Utility Board (“JUB”) meeting. At the JUB meeting, the CUP application will receive a preliminary review and feedback will be given to the applicant by members of the JUB. At the conclusion of the CUP preliminary review, the the Zoning Administrator shall issue a “CUP Preliminary Review Report & Recommendation”. Should the JUB determine that additional information, plans or studies are needed it may require applicant to provide such prior to said Report & Recommendation is issued.
2. The CUP Preliminary Review Report & Recommendation shall contain the following:
 - a. A brief summary of the Conditional Use being proposed in the CUP Application;
 - b. A list of any likely adverse effects to the surrounding area that was identified by the JUB during the CUP Preliminary Review;
 - c. A compliance analysis and discussion of the proposed Conditional Use in relation to EACH General CUP Review Criteria set forth in Section 16.16 below;
 - d. A compliance analysis and discussion of the proposed Conditional Use in relation to EACH applicable set of standards required for specific Conditional Uses set forth in Section 16.22 below;
 - e. A recommendation to the Planning & Zoning Commission on whether to approve, deny or approve with conditions the CUP Application; and
 - f. A list of all conditions that the Zoning Administrator, with input from the JUB, believe are reasonable and necessary to mitigate the likely adverse effects of the proposed Conditional Use.

B. CUP FINAL REVIEW AND DETERMINATION.

~~E.~~ Upon completion of the CUP Preliminary Review the Zoning Administrator’s issuance of the CUP Preliminary Review Report & Recommendation making a Level 2 CUP designation, the following process shall be followed:

1. The Town Clerk will place the ~~Level 2~~ CUP application on the agenda of the next available Planning and Zoning Commission meeting for final review consideration and possible approval.

2. The Town Clerk will schedule a public hearing for the ~~Level 2~~-CUP application according to all applicable notification and posting laws of the State of Utah at least 10 days before a scheduled meeting of the Planning & Zoning Commission.
3. A letter satisfying all notification requirements will be mailed out by the Town Clerk to all current property owners within 300 feet of the outer boundaries of the property where the proposed Conditional Use in the ~~Level 2~~-CUP application will take place.
4. All costs related to this notification will be at the CUP applicant's expense.
5. In an open and public meeting ~~with the applicant~~, the Planning and Zoning Commission will conduct the public hearing and perform the Final Review of the CUP application for a Level 2 CUP for compliance with:
 - a. ~~according to~~ the General CUP Review Criteria as set forth in Section 16.16, below, and the General Standards for conditional uses, and
 - b. any applicable sSpecific Standards for Conditions (By Use) asConditional Use Standards set forth in Section 16.22, belowin this ordinance.
- 5.6. As part of its Final Review, the Planning and Zoning Commission shall closely consider the CUP Preliminary Review Report & Recommendation and especially the Zoning Administrator's recommendation and proposed conditions (if applicable) to be included in a CUP.
- 6.7. At the conclusion of the Final Review the Planning and Zoning Commission may:
 - a. Approve the CUP;
 - b. Approve the CUP with conditions; or Require more documentation, studies or information for review purposes; or
 - c. Determine that added conditions will not be able to properly mitigate adverse effects of the proposed use and therefor deny the Level 2-CUP.
8. All findings of adverse effect and lack of mitigation options will be submitted in writing by the Planning and Zoning Commission to the Town Clerk to go in the applicant's file.
- 6.9. Following the issuance of a ~~Level 2~~-CUP, the permit holderapplicant may apply for a building permit, if applicable.

~~C. The Applicant, Town or a previously identified affected party may appeal any decision to the Town Council within 15 days of the determination. (See VULU 16.08A and VULU Chapter 6 for further clarification of the Appeals process.)~~CONDITIONAL USE STANDARD OF REVIEW. The Town shall not issue a CUP unless the Planning & Zoning Commission concludes that the CUP application, with possible conditions, can fully mitigate all identified adverse impacts and complies with the following general standards for all conditional uses, as

well any of the applicable specific use standards listed.

16.06 APPEAL OF CUP APPLICATION DETERMINATIONS ACTIONS

A. RIGHT OF APPEAL (STANDING). The CUP Applicant, the Town or an Adversely Affected Party may appeal the Planning & Zoning Commission’s decision on a CUP application to the Appeal Authority within fifteen (15) days of the determination. For purposes of this Section, a CUP is considered “determined” when it is issued in written form and signed by the Planning & Zoning Commission Chair.

B. FILING OF APPEAL (CONTENTS). An appeal under this Section shall be accomplished by completing the Town’s then current administrative appeal form, paying the applicable “Appeal Fee” designated in the Town’s Uniform Fee Schedule and submitting those items along with a written explanation of grounds upon which it believes the Planning & Zoning Commission erred in the granting or denying the CUP application along and a copy of all documents and exhibits which the appellant believes constitutes the record upon which their appeal is based (collectively “CUP Appeal Packet”).

~~A.C. APPEAL TO APPEAL AUTHORITY TOWN COUNCIL.~~ Upon receipt of a complete CUP Appeal Packet ~~n appeal of a CUP determination by the Applicant, Town~~ from a person with standing, the Town Clerk shall transmit the same to the Town’s Appeal Authority ~~or affected party, the Town Council, acting in the capacity of the Appeal Authority and in compliance with the procedural requirements of VULU Chapter 6, and work with the Appeal Authority to shall~~ schedule a hearing on ~~the issues appealed~~ within forty-five (45) days following the date the CUP Appeal Packet is accepted by the Town Clerk. ~~it receives an appeal request.~~

1. The ~~Appeal Authority Town Council~~ shall not make its decision without first reviewing the decision of ~~the Zoning Administrator (if a Level 1 CUP) or the Planning and Zoning Commission (if a Level 2 CUP).~~
2. The ~~Appeal Authority Town Council~~ may affirm or reverse the decision of the ~~Zoning Administrator or~~ Planning and Zoning Commission ~~(as the case may be)~~ or may modify any conditions of approval set forth by them during their review.
3. Once a decision has been made, the ~~Appeal Authority Town Council~~ shall present, in writing to the party making the appeal, the reasons for its' action, citing supporting factual evidence in the case for approval, denial, or modification.
4. Upon a determination to sustain the denial of a CUP application, the applicant has the right to continue the appeals process in District Court as found in VULU Chapter 6 (See Section 6.18).

16.08 REVOCATION ~~OR~~ SUSPENSION OR NULLIFICATION OF AN ISSUED CUP

After inspection and determination by the Zoning Administrator for the need to revoke, ~~or~~ suspend or nullify a CUP, a written notice of revocation, ~~or~~ suspension or nullification will be sent ~~out~~ to

the CUP holder via certified mail at the address listed in the CUP application. Upon delivery receipt of the ~~revocation or suspension~~ notice, the CUP holder will have fifteen (15) days to appeal the ~~revocation or~~ suspension or nullification to the Town's Appeal Authority~~Town Council~~.

A. APPEAL PROCESS. The appeal may be accomplished by following the same process prescribed under Section 16.06 above. ~~must be filed with the Town Clerk within fifteen (15) days of the date of the notice by the CUP holder or any other person aggrieved by the decision or action.~~

~~B. Upon receipt of the appeal, the Clerk shall set a hearing on the appeal at the Council's next regularly scheduled meeting, which is more than fifteen (15) days after the time the Town Clerk received the request.~~

~~C. The Town shall supply the permit holder of the time, date and place of the hearing at least fifteen (15) days before the hearing.~~

B. APPELLANT'S DUE PROCESS RIGHTS.

~~D. At the hearing on the revocation, suspension or nullification of a CUP, the CUP holder shall have the right to: (1) be present, (2) be heard, and (3) be represented by legal counsel. heard on the revocation or suspension.~~

E.C. STANDARD OF REVIEW. ~~The Town Council~~Appeal Authority may, after notice and a hearing, may affirm or modify the Zoning Administrator's decision to revoke, suspend or nullify the CUP, ~~before the Council, revoke or suspend a CUP if:~~

1. It ~~is determined~~is determined that the CUP was obtained by misrepresentation or fraud;

2. Substantial evidence in the record exists that ~~The conditions, or any amendments to conditions,~~ imposed upon said CUP have not been met; or

~~2.3.~~Substantial evidence in the record exists that the CUP holder failed to commence the Conditional Use by the Establishment Date or abandoned the Conditional Use for a period of one (1) year or longer.

~~3. The detrimental effects of the use are not substantially mitigated by the conditions that were set and no modification or substitution of said conditions will serve to properly mitigate such detrimental effects.~~

~~F. Once a decision has been made, the Appeal Authority~~ Virgin Town Council shall present, in writing, the reasons for its determination action, citing supporting factual evidence in the case for reinstatement of the CUP or sustainment of the revocation.

~~G. CEASATION OF USE. Upon determination of revocation or suspension of a CUP, the permit~~The CUP holder shall immediately cease the Conditional Use any use of on the property, ~~which was based on the CUP~~ upon receipt of the written determination affirming the revocation, suspension or nullification of the CUP~~notice of revocation or suspension from the Council.~~

H.D. Upon a determination to affirmsustain the revocation, ~~or~~ suspension or nullification of the

CUP, the CUP permit holder has the right to continue the appeals process in District Court as found in VULU Chapter 6 (See VULU 6.18).

16.10 EXPIRATION OF CUP APPROVAL

If construction of Buildings, Structures or Improvements necessary to safely house an approved Conditional Use is not completed, ~~by the applicant~~ or if the approved Conditional Use has not commenced by the Establishment Deadline (one (1) year) ~~or the deadlines prescribed in the CUP pursuant to VULU 16.02 "Conditional Use Permit" C,2,~~ the Zoning Administrator ~~Town Council~~ holds the right to revoke, suspend or nullify, ~~or void~~ a CUP unless, in the Zoning Administrator's ~~their~~ judgment, substantial work has been accomplished toward the implementation of the approved Conditional Use or unless otherwise specified in the action granting the CUP.

16.12 ESTABLISHMENT EXTENSION OF AN ISSUED CUP

The Zoning Administrator may grant an extension of the Establishment Deadline for an issued CUPs if shown good cause and upon the following conditions:

- A. Only one extension may be granted, and the maximum extension must not exceed twelve (12) months.
- B. In order to obtain an extension, the CUP holder must apply in writing before the expiration of the original CUP permit. The Application for an extension shall ~~describing~~ the cause for requesting the extension and must be submitted to the Town Clerk.

16.14 INSPECTIONS/INVESTIGATIONS

During construction, the building inspector and Zoning Administrator inspects the property on which a CUP is issued to ensure that all Buildings, Structures and improvements comply with the conditions of the CUP and building permit. The Zoning Administrator or delegate, shall also conduct investigations in response to citizen complaints or at the direction of the Planning & Zoning Commission or Town Council to ensure all conditions of a CUP are being met.

16.16 GENERAL CUP REVIEW CRITERIA

An applicant for a CUP (~~both Level 1 CUPs and Level 2 CUPs~~) must demonstrate:

- A. The CUP application ~~can~~ complies with all applicable Town, State and Federal laws;
- B. The Structures, Buildings and Improvements associated with the proposed Conditional Use are generally compatible with surrounding structures of the zone in terms of use, scale, mass, and circulation;
- C. The proposed Conditional Use is not detrimental to the public health, safety, and welfare of the and its residents;
- D. The proposed Conditional Use is consistent with the Town's General Plan as amended;

- E. Traffic conditions are not adversely affected by the proposed Conditional Use, including the existence or need for dedicated turn lanes, pedestrian access, and capacity of the existing streets;
- F. There is sufficient emergency vehicle access;
- G. The location and design of parking and off-street parking complies with Town standards for the zone;
- H. A plan for fencing, screening, and landscaping to separate and mitigate the potential for conflict between the proposed Conditional Use and ~~with~~ adjoining uses;
- I. The site has or is planned to have sufficient utility capacity;
- J. Exterior lighting complies with the lighting standards of the zone;
- K. Possible impacts from the proposed Conditional Use on groundwater have or can be ~~been~~ mitigated;
- L. Slope retention and flood potential, within and adjoining the site, have been fully mitigated and is appropriate to the topography of the site;
- M. Any possible issues regarding noise have been identified and will comply with Town standards;
- N. Times of operation are consistent with underlying zone; ~~and~~;
- O. Adequate ~~g~~General ~~l~~Liability insurance coverage as necessary.

~~16.18 GENERAL STANDARDS FOR CONDITIONAL USES~~

~~As potential concerns are identified during the Review process for a Level 1 CUPs and Level 2 CUPs, the following standards must be used to establish conditions to possibly mitigate those concerns. All conditional use permits should identify and enumerate the conditions to be imposed following the standard of S.M.A.R.T. as found in 2.12 definitions. In order to help the reviewing person(s) during the review process of conditional use permits, the following standards should be considered. These standards are general, and specific standards can be found in the use itself.~~

~~A. STANDARD: THE SAFETY OF PEOPLE AND/OR PROPERTY. Conditions:~~

~~1. Traffic control:~~

~~a. minimizing the traffic flow~~

~~b. directing the traffic flow~~

~~c. limiting the types of vehicles~~

~~2. Requiring fencing or other types of protection~~

~~3. Requiring additional setbacks or land area~~

~~4. lighting for safety~~

~~5. General Liability Insurance coverage~~

~~B. STANDARD: HEALTH AND SANITATION. Conditions:~~

~~1. Controlling outdoor storage~~

~~2. Requiring proper sewer connections or treatments~~

~~3. Demanding proper disposal of solid waste, abandoned or discarded property, and safety hazards~~

~~4. Controlling dust or other types of air pollution~~

~~C. STANDARD: ENVIRONMENTAL CONCERNS. Conditions:~~

~~1. Enforcing well head protections standards, when applicable.~~

~~2. Requiring planting or ground cover to control dust, runoff and erosion.~~

~~3. Enforcing necessary standards for the protection of watershed.~~

~~4. Controlling the disposal of hazardous materials.~~

~~5. Requiring no special uses of resources.~~

~~D. STANDARD: THE GENERAL PLAN. Conditions:~~

~~1. Protecting the quality of the underlying zone.~~

~~a. Traffic~~

~~b. Lighting~~

~~e. Esthetics~~

~~d. Noise~~

~~e. Landscaping~~

~~f. open space areas~~

~~g. general use and design~~

~~2. Encourage diversity of business;~~

~~3. Promote small, locally owned businesses;~~

~~4. Encourage agricultural activities such as ranching and equestrian use.~~