

Chapter 5.4: Use Permits

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5.401 Purpose and Applicability

Chapters 2.1-2.7 of this code set forth those uses for which a use permit is required. No use requiring a use permit shall commence until a use permit is obtained. These uses require special consideration to ensure that they can be designed, located, and operated in a manner that will not interfere with the use and enjoyment of surrounding properties. The process for review of use permit applications is designed to evaluate possible adverse impacts and to minimize them where possible through the imposition of specific conditions or requirements. Approval of a use permit requires review of the location, design, configuration, and special impacts of a proposed use to determine, based on standards set forth in the Zoning Code, the desirability of permitting the use on a particular site.

This chapter sets forth the requirements for two use permit types. Administrative Use permits are those uses determined to have less potential to impact on surrounding properties which do not merit public review. Conditional Use permits are those uses that merit public review to insure compatibility with surrounding properties:

- A. ***Administrative Use Permit.*** An Administrative Use Permit may be approved by the Planning and Zoning Officer for a use in specified districts based on a determination of compliance with standards set forth in the base district regulations and individual review of their location, design, configuration, intensity, and density of use or structures.
- B. ***Conditional Use Permit.*** A Conditional Use is a Special Use as defined by Illinois Compiled Statutes (65 ILCS 5/11-13-1.1). A use permit approved by the City Council for a use in specified districts shall be based on a determination of compliance with standards set forth in the base district regulations, and individual review of the location, design, configuration, intensity, and density of use or structures.

5.402 Procedures

- A. ***Administrative Use Permit.*** The following procedures shall apply to applications for Administrative Use Permits (AUP):

1. *Application.* An application for an Administrative Use Permit shall be filed with the Community Development Department in accordance with the application procedures set forth in Chapter 5.2: Common Procedures.
2. *Neighborhood Notice.* No neighborhood notice is required for an Administrative Use Permit, except as otherwise required by this code.
3. *Action.* The Planning and Zoning Officer shall review the application for compliance with the Zoning Code. The Planning and Zoning Officer shall approve, approve with modifications and/or conditions, or deny the application and shall set forth any findings and decision on a Notice of Administrative Decision. The Notice of Administrative Decision shall be mailed to the applicant by first class mail.
4. *Notice of Administrative Decision Posting.* A Notice of Administrative Decision shall be posted in a public place at City Hall. The Notice shall describe the proposed use; the decision, including any conditions of approval; the time and place where the public may review the entire application; and the procedure and deadline for filing an appeal of the decision.
5. *Appeal.* Decisions of the Planning and Zoning Officer on Administrative Use Permits may be appealed to the Plan Commission pursuant to the procedures set forth in Section 5.211: Procedures for Appeals. The Plan Commission shall have the authority to uphold, modify, or overrule the decision of the Planning and Zoning Officer. Decisions of the Plan Commission shall be final.

B. ***Conditional Use Permits.*** The following procedures shall apply to applications for Conditional Use Permits:

1. *Application.* An application for a Conditional Use Permit shall be filed with the Community Development Department in accordance with the application procedures set forth in Chapter 5.2: Common Procedures. The application shall state whether the Conditional Use Permit would apply to the property or the business owner at the specified location.
2. *Public Notice.* Public notice shall be provided in accordance with the public notification procedures set forth in Section 5.205: Notice of Public Hearings.
3. *Staff Report.* The Director shall prepare and transmit to the Plan Commission a staff report, including an analysis and recommendation, setting forth any proposed findings and conditions upon which the Commission may base its decision.

4. *Public Hearing.* The Plan Commission shall conduct a public hearing in accordance with the procedures set forth in Section 5.206: Public Hearing Procedures.
5. *Plan Commission Action.* The Plan Commission shall render its decision in the form of a recommendation to the Community Development Committee of the City Council. The recommendation shall include findings upon which the recommended action is based. The Commission may recommend approval, approval with modification and/or conditions, or denial of the proposed conditional use permit.
6. *Community Development Committee Action.* The Community Development Committee shall consider a draft Conditional Use Permit ordinance and the recommendations of the Plan Commission and City staff, and may recommend approval, approval with modifications and/or conditions, or denial of the ordinance. The ordinance shall state whether the Conditional Use Permit would apply to the property or the business owner at the specified location.
7. *Conditions of Approval.* In approving a Conditional Use Permit ordinance, the City Council may impose conditions for the dedication of rights of way and easements related to the impact of the use, establish a schedule for development, or impose other conditions permitted by law.
8. *City Council Action.* The City Council may approve, approve with modifications and/or conditions, or deny the ordinance. The decision of the City Council shall be final.

5.403 Required Findings

The Plan Commission or the Planning and Zoning Officer (in the case of Administrative Use Permits) shall take action on a use permit or administrative use permit only after making findings of fact set forth in this section.

- A. *Findings Required for Approval of Administrative Use Permit.* The Planning and Zoning Officer may approve an Administrative Use Permit as submitted or modified only upon making all of the following findings:
 1. The proposed use will not be detrimental to the health, safety, or general welfare of persons living or working in the vicinity, to adjacent property, to the neighborhood, or to the public in general;
 2. The proposed use, as conditioned, conforms with the purposes, intent, and policies of the Comprehensive Plan and any applicable area, neighborhood, redevelopment or other plan adopted by the City Council;

3. The proposed use conforms with the conditions, requirements, or standards prescribed by the Zoning Code and any other applicable local, State, or Federal requirements; and
 4. The proposed use, as conditioned, would not unreasonably interfere with the use and enjoyment of nearby properties.
- B. ***Findings Required for Denial of Administrative Use Permit.*** If the Planning and Zoning Officer is unable to make all the required findings for approval, he shall deny the application, in which case he shall state in writing the reasons for that determination.
- C. ***Findings Required for Approval of Conditional Use Permits.*** The Plan Commission may approve a Conditional Use Permit as submitted or modified only upon making all of the following findings:
1. The proposed use will not be detrimental to health, safety, or general welfare of persons living or working in the vicinity, to adjacent property, to the neighborhood, or to the public in general;
 2. The proposed use, as conditioned, conforms with the purposes, intent, and policies of the Comprehensive Plan and any applicable area, neighborhood, or other plan adopted by the City Council;
 3. The proposed use conforms with the conditions, requirements, or standards required by the Zoning Code and any other applicable local, State, or Federal requirements; and
 4. The proposed use, as conditioned, would not unreasonably interfere with the use and enjoyment of nearby properties.
- D. ***Findings Required for Denial of Conditional Use Permits.*** If the Plan Commission is unable to make all the required findings to recommend approval, it shall recommend denial of the application, in which case the Commission shall state in the minutes the reasons for that determination, and the reasons shall be transmitted in the staff report to the Community Development Committee and City Council.

5.404 Expiration; Modifications; Revocation

- A. ***Expiration.*** A use permit shall automatically expire 2 years from its effective date unless either of the following has occurred:
1. Commencement of the use, or
 2. Commencement of construction related to the use pursuant to a valid building permit.

- B. **Modifications.** No change is permitted in the use or structure for which a use permit has been issued except as follows:
1. *Administrative Use Permit.* The Planning and Zoning Officer may approve modifications to any Administrative Use Permit. Modifications are limited to reasonable changes to the Administrative Use Permit that do not substantially alter a Final Design Review approval or any condition of the Administrative Use Permit. The Planning and Zoning Officer shall provide a written record of the decision and supportive findings.
 2. *Conditional Use Permits.* Minor modifications to a Conditional Use Permit that do not substantially alter a Final Design Review approval or any condition of the Conditional Use Permit may be granted by the Planning and Zoning Officer. Significant modifications to a Conditional Use Permit may be granted by the City Council pursuant to the procedures set forth in Chapter 5.2: Common Procedures.
- C. **Revocation.** A use permit may be revoked by the decision-making body following a public hearing if the use ceases for a period of 365 consecutive days, for a Use Permit and 180 days for an Administrative Use Permit, or at any time because of failure to comply with the conditions of the use permit.
1. *Initiation of Revocation.* Proceedings for the revocation of a use permit may be initiated by the Planning and Zoning Officer. The Planning and Zoning Officer shall prepare a written report to the decision-making body that contains the following information:
 - a. The use permit to be revoked.
 - b. The property to which the permit applies.
 - c. The reason or reasons for the proposed revocation.
 2. *Notice of Revocation Hearing.*
 - a. Notice of a revocation hearing shall be given by certified mail or personal service at least 15 days prior to the hearing as follows:
 - (1) To the property owner of record.
 - (2) To the property address.
 - (3) To the business address.
 - b. Notice of the public hearing shall be published at least 15 days prior to the date of the hearing at least once in a newspaper of general circulation in the City of Batavia.

- c. Notice shall be posted at least 15 days prior to the date of the hearing at a public place designated by the City Council for posting of public notices.
- 3. *Hearing.* The revocation hearing shall be held in accordance with the procedures for public hearing set forth in Section 5.206: Public Hearing Procedures.
- 4. *Required Findings.* In order to revoke the use permit, the decision-making body shall make one or more of the following findings:
 - a. One or more of the conditions of the use permit have been violated; or
 - b. The use has ceased for at least 365 consecutive days for a Use Permit and 180 consecutive days for an AUP, and the applicant has not demonstrated any evidence justifying continuation of the use.
- 5. *Action.* Upon revocation of the use permit, the Planning and Zoning Officer shall set forth the decision in a Notice of Decision describing the decision-making body's action, with its findings. The Notice of Decision shall be mailed to the applicant by first class mail and to the:
 - a. Property owner of record.
 - b. Property address.
 - c. Business address.

5.405 Appeals

- A. *Conditional Use Permits.* Decisions on Conditional Use Permits by the City Council are final.
- B. *Administrative Use Permits.* Decisions on Administrative Use Permits may be appealed to the Plan Commission pursuant to the procedures set forth in Section 5.210: Procedures for Appeals. The decision of the Plan Commission on such appeals is final.

5.406 Effective Date of Permit

- A. *Administrative Use Permits.* The effective date of Administrative Use Permits shall be the 11th day after the approval, unless the action is appealed in accordance with Section 5.210: Procedures for Appeals. No building, grading, or construction permit shall be issued until the use permit becomes effective.
- B. *Conditional Use Permits.* The Conditional Use Permit Ordinance shall be effective upon its presentation, passage and publication according to the law.