
Chapter 9.63 Conditional Use Permit

Sections:

- 9.63.010 – Purpose and General Plan Consistency
- 9.63.020 – Applicability
- 9.63.030 – Authority
- 9.63.040 – Application Submittal Requirements
- 9.63.050 – Application Fee
- 9.63.060 – Investigation and Report
- 9.63.070 – Action by Review Authority
- 9.63.080 – Required Findings
- 9.63.090 – Minor Modifications of Previously Approved Conditional Use Permit
- 9.63.100 – Lapse of Permits/Permit Expiration
- 9.63.110 – Extension of Time
- 9.63.120 – CUP Amendment
- 9.63.130 – CUP Revocation
- 9.63.140 – Development of Property Before Final Decision
- 9.63.150 – Alteration to Nonconforming Use
- 9.6344.160 – Surface Mining and Reclamation

9.63.010 – Purpose and General Plan Consistency

The Conditional Use Permit Review procedure allows the Town to evaluate proposed development and determine its consistency with the General Plan, the Development Code and applicable Town ordinances. The Conditional Use Permit Review procedure is intended to protect and enhance the visual appeal, environment, economic stability and property values of the Town's residential, commercial, and industrial areas through the application of the provisions of this Code and the General Plan. Review of such uses is necessary and specific conditions of approval may be necessary to ensure that the uses are developed, operated, and located properly with respect to their effects on surrounding properties and so that any and all potentially adverse impacts are mitigated, and to ensure the general health, safety and welfare of the community through implementation of the General Plan through this Chapter.

9.63.020 – Applicability

- A. All new construction which is listed in the use classification charts for the underlying land use districts that require a Conditional Use Permit Review.
- B. Expansions which exceed the thresholds of Table 4.2 and are permitted subject to a Conditional Use Permit Review as specified in the use classification charts for the underlying land use district shall require a Conditional Use Permit.

TABLE 4.2
CONDITIONAL USE PERMIT
EXPANSION THRESHOLDS

SQUARE FOOTAGE OF EXISTING BUILDING	MAXIMUM SQUARE FOOTAGE	MAXIMUM PERCENTAGE
up to 5,000	1250 sq ft	50%
5,001 – 10,000	2000 sq ft	40%
10,001 +	2500 sq ft	25%

C. Change in use of an existing structure

D. Projects which fall within the thresholds of the Conditional Use Permit shall comply with the General Plan, the Development Code and applicable Town Ordinances and regulations, including but not limited to:

1. Half-width (½) street Improvements (curb, gutter, sidewalk, street lights, and pavement) on all streets fronting the project, except as defined by the parameters of the Council policies regarding Street Reconstruction
2. Onsite water retention of incremental increase
3. Dedication of easements for drainage facilities, streets, trails, aviation easements as required by this code and any adopted plans
4. Improvements to drainage facilities except as defined by the parameters of the Council policies regarding drainage facilities
5. Assessment Districts formation (including Landscape and Lighting, Street and Drainage, Community Facility District, and Public Safety)
6. Utility Undergrounding, pursuant to adopted standards
7. Landscaping and Landscaping Plan regulations (greater than 500 square feet of landscape area requires approval by Hi Desert Water District)
8. Commercial Design Guidelines
9. Outdoor Lighting regulations
10. Parking and screening requirements
11. Sign regulations
12. All other Development Code regulations
13. California Environmental Quality Act (CEQA) and any required mitigation measures

E. Expansions which fall within the thresholds specified in Table 4.2 shall be processed as a Land Use Compliance Review, pursuant to Chapter 9.66.

9.63.030 – Authority

A. Level of Review:

TABLE 4.3
CONDITIONAL USE PERMIT
LEVEL OF REVIEW

APPLICABILITY	LEVEL OF REVIEW	NOTICE REQUIREMENTS
New structures, including accessory structures and uses;	Commission	Public Hearing
Expansion of an existing structure in conformance with Table 4.2;	Director	None
Expansion of an existing structure which exceeds the thresholds in Table 4.2;	Commission	Public Hearing
Conversion of an existing structure (i.e. change in use);	Commission	Public Hearing
Construction or conversion of a structure(s) to allow a mixed-use development.	Commission	Public Hearing

Where the review for a Conditional Use Permit is not specified, the Director shall determine the appropriate review authority.

B Referral to Next Higher Review Authority. ; The Commission may refer an application for a Conditional Use Permit to the Council based upon the following criteria:

1. Impact upon public services and facilities greater than typical for the type of project proposed;
2. Impact upon surrounding properties greater than typical for the type of project proposed;
3. Floor or site square footage greater than typically found in the type of project;
4. Intensity of use greater than typically found in the type of projects;
5. Operating characteristics not typical of the type of project proposed.
6. Other factors including but not limited to public opposition to development of the project.
7. The need for Council interpretation of the General Plan and/or Development Code as related to the project.

C. General Authority. The Commission is authorized to approve, approve with conditions, or deny applications for Conditional Use Permits in compliance with the procedures established in this

Section. In approving an application for a Conditional Use Permit, the Commission may impose conditions to ensure compliance with this Code. Conditions may include, but shall not be limited to:

1. Requirements for special structure setbacks;
2. Open spaces;
3. Buffers;
4. Fences;
5. Walls and screening;
6. Requirements for the installation and maintenance of landscaping and erosion control measures;
7. Control of street improvements, other public infrastructure and related dedications;
8. Control of vehicular ingress and egress;
9. Control of traffic circulation;
10. Control of signs;
11. Control of hours of operation;
12. Control of potential nuisances;
13. Establishing standards for maintenance of buildings and grounds;
14. Establishing development schedules and development standards;
15. Control of periodic review;
16. Control of architectural and/or building design;
17. Any other conditions as may be deemed necessary to ensure the compatibility with surrounding uses, to preserve the public health, safety and welfare, and to enable the Commission to make the findings required by Section 9.63.080, *Required Findings*.

D. Performance Guarantee. In order to ensure implementation of conditions attached to a Conditional Use Permit, the applicant may be required to furnish a surety in a form of an instrument of credit, money or surety bond in the amount fixed by the authority granting or modifying the Conditional Use Permit.

E. Providing Required Improvements. Whenever a Conditional Use Permit is approved or modified subject to the condition that specified public improvements shall be installed by the applicant to meet Town standards and be accepted by the Town, the applicant may be required to

execute an agreement approved by the Town to make such improvements prior to the time/construction events specified in the Conditional Use Permit.

- F. **Conditions Declared Void.** Whenever any final judgment of a court of competent jurisdiction declares one or more of the conditions of a Conditional Use Permit to be unconstitutional or invalid, such decision shall not affect the validity of the approval as a whole, or any portion thereof other than the section so declared
- G. **Violation of Condition.** Whenever a Conditional Use Permit is approved or modified by the Commission subject to a condition(s), non-compliance with such condition(s) shall constitute a violation of this Code. Conditions which are not observed or which are violated may be enforced as provided in Chapter 9.82, *Enforcement and Violations* or said Conditional Use Permit may be revoked or modified under Chapter 9.83, *Permit Amendments* and 9.84, *Permit Revocations*.

9.63.040 – Application Submittal Requirements

Applications for Conditional Use Permits shall be filed on a form prescribed by the Planning Division and shall contain such information and reports as may be required by the application submittal package or by other applicable ordinances or by the Town in order for the Commission to make the required findings.

9.63.050 – Application Fee

The application shall be accompanied by a fee established by resolution of the Council to cover the cost of handling and processing the application as prescribed in this Chapter.

9.63.060 – Investigation and Report

The Director shall cause an analysis of each application for a Conditional Use Permit to be made. The level of detail of the analysis shall be appropriate to the type of project proposed and the needs of the Commission. The analysis shall examine the application's consistency with the content, intent and purpose of the General Plan, the Development Code, and any other applicable Town standards or policies. To insure effective implementation of General Plan policies and the provisions of this Code, applications may be reviewed by the Development Review Committee prior to consideration by the Commission. As a result of the analysis, the Director shall cause a report to be completed which shall include a listing of proposed conditions necessary to guarantee the public health, safety and welfare, should the proposed project be approved.

9.63.070 – Action by Review Authority

Commission Action. Pursuant to Section 9.63.030, *Authority*, the Commission shall review each application for a Conditional Use Permit. The applicant shall be provided with a copy of the Director's report regarding the application prior to the Commission's consideration. The Commission shall approve, deny, or conditionally approve applications for a Conditional Use Permit. Decisions by the Commission shall be final unless appealed as provided in Chapter 9.81, *Appeals*.

9.63.080 – Required Findings

Before approving a Conditional Use Permit, the Town and/or Commission shall find that the circumstances established below apply:

- A. That the location, size, design, density and intensity of the proposed development is consistent with the General Plan, the purpose of the land use district in which the site is located, and the development policies and standards of the Town;
- B. That the location, size, design and architectural design features of the proposed structures and improvements are compatible with the site's natural landform, surrounding sites, structures and streetscapes;
- C. That the proposed development produces compatible transitions in the scale, bulk, coverage, density and character of the development between adjacent land uses;
- D. That the building site and architectural design is accomplished in an energy efficient manner;
- E. That the materials, textures and details of the proposed construction, to the extent feasible, are compatible and consistent with the adjacent and neighboring structures;
- F. That the development proposal does not unnecessarily block views from other buildings or from public ways, or visually dominate its surroundings with respect to mass and scale to an extent unnecessary and inappropriate to the use;
- G. That the amount, location, and design of open space and landscaping conforms to the requirements of the Development Code, enhances the visual appeal and is compatible with the design and functions of the structure(s), site and surrounding area;
- H. That quality in architectural design is maintained in order to enhance the visual desert environment of the Town and to protect the economic value of existing structures;
- I. That there are existing public facilities, services, and utilities available at the appropriate levels and/or that new or expanded facilities, services and utilities shall be required to be installed at the appropriate time to serve the project as they are needed;
- J. That access to the site and circulation on and off-site is required to be safe and convenient for pedestrians, bicyclists, equestrians and motorists;
- K. That traffic generated from the proposed project has been sufficiently addressed and mitigated and will not adversely impact the capacity and physical character of surrounding streets;
- L. That traffic improvements and/or mitigation measures have been applied or required in a manner adequate to maintain a Level of Service C or better on arterial roads, where applicable, and are consistent with the Circulation Element of the Town General Plan;
- M. That there will not be significant harmful effects upon environmental quality and natural resources including endangered, threatened, rare species, their habitat, including but not limited to plants, fish, insects, animals, birds or reptiles;

- N. That there are no other relevant or anticipated negative impacts of the proposed use that cannot be mitigated and reduced to a level of non-significance in conformance with CEQA, the California Environmental Quality Act;
- O. That the impacts which could result from the proposed development, and the proposed location, size, design and operating characteristics of the proposed development, and the conditions under which it would be operated or maintained will not be considered to be detrimental to the public health, safety and welfare of the community or be materially injurious to properties and/or improvements within the immediate vicinity or be contrary to the General Plan; and
- P. That the proposed development will comply with each of the applicable provisions of the Development Code and applicable Town policies, except approved variances.

9.63.090 – Minor Modifications of Previously Approved Conditional Use Permit

An approved Conditional Use Permit may be modified upon the request of the property owner, or by the Town. Minor Modifications may be approved by the Director if it is determined that the changes would not affect the findings prescribed in Section 9.63.080, *Required Findings*, and that the subject of the proposed changes were not items of public controversy during the review and approval of the original permit; including modifications to phasing schedules for the project.

9.63.100 – Lapse of Permits/Permit Expiration

- A. **Expiration.** A Conditional Use Permit approval shall expire three (3) years from the date the permit is approved unless it is otherwise conditioned or unless prior to the expiration of the three (3) years the following have occurred:
 - 1. A building permit is issued and substantial construction is diligently pursued towards completion of the project which was the subject of the Conditional Use Permit application. After construction is commenced, if work is discontinued for a period of two (2) years, the Conditional Use Permit shall require review and reauthorization by the Commission; or
 - 2. A certificate of occupancy is issued for the structure which was the subject of the Conditional Use Permit application.
- B. **Phased Projects.** Projects may be built in phases if so approved by the Commission or Director pursuant to Section 9.63.090, *Minor Modifications of Previously Approved CUP*.

9.63.110 – Extension of Time

The Commission may grant a time extension not to exceed three (3) years. Applications shall be made on a form to be provided by the Planning Division. Prior to the granting of an extension, the Planning Division shall review the previously approved project to ensure it is consistent with all current provisions of the General Plan, Development Code and other Town Ordinances and that the findings for approval of a Conditional Use Permit in compliance with Section 9.63.080, *Required Findings*, can be made. Based upon this review, additional Conditions of Approval may be imposed upon the project by the review authority when the Extension of Time is approved.

The Commission may grant additional extensions of time provided that the project is consistent with the General Plan, Development Code, Master Plans and Specific Plans.

9.63.120 – CUP Amendment

Refer to Article 5, Chapter 9.83 Permit Amendments.

9.63.130 – CUP Revocation

Refer to Article 5, Chapter 9.84 Permit Revocations.

9.63.140 – Development of Property Before Final Decision

A building permit shall not be issued for, and no person shall commence to use, any structure until that structure and its accompanying development has received a Conditional Use Permit in compliance with the provisions of this Chapter. In addition, no other permits shall be issued for any use or structure requiring a Conditional Use Permit unless and until the Conditional Use Permit has been approved.

9.63.150 – Alteration to Nonconforming Use

A. Procedure:	Administrative Review
Reviewing Authority:	Director

The Director shall review and act upon requests to alter nonconforming uses.

- B.** An existing nonconforming use may be altered to accommodate a new structure or accessory use, except where it is an existing nonconforming use of land with no structure thereon.
- C. Findings.** Before any modification in a nonconforming use may be granted, it shall be found that all of the following conditions shall exist in reference to the alteration being considered:
1. The remaining normal life of the existing nonconforming use shall be determined pursuant to provisions specified in this Code prior to consideration of the proposed alteration if in a residential district.
 2. The proposed alteration shall not prolong the normal life of the existing nonconforming use.

3. The alteration of the existing nonconforming use shall not be detrimental to nor prevent the attainment of objectives, policies, general land use and programs specified in the Town General Plan.
4. The granting of permission to alter the nonconforming use shall not be substantially detrimental to the public health, safety or welfare, or injurious to the property or improvements in the vicinity and district in which the use is located.
5. The alteration shall not change the primary use of the land nor increase the intensity of that use.
6. The existing nonconforming use shall comply with all other existing regulations.
7. Any alteration required by governmental or court action shall be exempt from these conditions.

9.63.160 – Surface Mining and Reclamation

State law requires a public hearing review for the Surface Mining and Reclamation process. The Mining and Land Reclamation Plan Application combine a Conditional Use Permit and Reclamation Plan into one application.