

SECTION 1003 – ADMINISTRATION – AMENDMENTS AND CONDITIONAL USE PERMITS *(Amended 4/14/20)*

1003.01 PROCEDURE.

Subd. 1. Application. Request for amendments or conditional use permits, as provided within this Ordinance, shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a fee as provided for by City Council resolution. This fee shall not be refunded. Such application shall also be accompanied by ten (10) large scale copies and ten (10) reduced scale (8.5” x 11”) copies of detailed written and graphic materials fully explaining the proposed change, development, or use and a list of property owners verified by the City Clerk located within three hundred fifty (350) feet of the subject property. The request shall be considered officially submitted and the application approval time line commences when all the informational requirements are in compliance.

Subd. 2. Proof of Ownership or Authorization. The applicant shall supply proof of title to the property for which the rezoning is requested, consisting of an abstract of title or unregistered property abstract currently certified together with any unrecorded documents whereby the petitioners acquire a legal ownership or equitable ownership interest or supply written authorization from the owner(s) of the property in question to proceed with the request. Prior to approving an application for an amendment or conditional use permit, the City shall receive from the applicant certification that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the amendment or conditional use permit relates.

Subd. 3. Public Hearing. The request for amendments or conditional uses shall be placed on the agenda of the first City Council meeting occurring at least thirty (30) days from the date of official submission unless waived by the Zoning Administrator. Upon receipt of a complete application, the Zoning Administrator shall set a public hearing for a regular meeting of the City Council. Notice of such hearing shall be published in conformance with the State law and individual notices. If it is a district change or conditional use permit request, notice shall be published in the official newspaper at least ten (10) days prior to hearing, and written notice of said hearing shall be mailed not less than ten (10) days nor more than thirty (30) days prior to the hearing to all owners of property, according to the City assessment records, within three hundred fifty (350) feet of the parcel included in the request. The records of the City Assessor shall be deemed sufficient for determining the location and ownership of all such properties. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the records of the proceeding.

Subd. 4. Notice. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Ordinance.

Subd. 5. Staff Reports. After the public hearing has been set, the Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the City Council. Additionally, the Zoning Administrator shall refer the application to other local, state and special unit governments where appropriate and when required.

Subd. 6. Report and Recommendations. A copy of the City staff's report and recommendations shall be given to the City Council at least three (3) days prior to the meeting at which said report and recommendations are to be presented. The final report and recommendations of the City staff are to be entered in and made part of the permanent written record of the City Council meeting.

Subd. 7. Representation. The applicant or a representative thereof shall appear before the City Council in order to answer questions concerning the proposed amendment or conditional use.

Subd. 8. Criteria. The City Council shall consider possible adverse effects of the proposed amendment or conditional use. Its judgement shall be based upon (but not limited to) the following factors:

- a. The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the Comprehensive Plan.
- b. The proposed site is or will be compatible with present and future land uses of the area.
- c. The proposed use conforms with all performance standards contained herein.
- d. The impact on character of the surrounding area.
- e. The demonstrated need for such use.
- f. The proposed use will not tend to or actually depreciate the area in which it is proposed.
- g. The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.

Subd. 9. Additional Information. The City Council and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Ordinance. Failure on the part of the applicant to supply all necessary supportive information may be grounds for denial of the request.

Subd. 10. Finding. The City Council shall make a finding of fact and determine such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of this Ordinance.

Subd. 11. Amendment Vote. Approval of a request for an amendment shall require passage by a majority vote of the City Council. An amendment that changes all or part of

the existing classification of a zoning district from residential to either commercial or industrial shall require passage by a two-thirds majority vote of the City Council.

Subd. 12. Conditional Use Permit Vote. Approval of a request for a conditional use permit shall require passage by a majority vote of the City Council.

Subd. 13. Effective Date. An amendment shall not become effective until such time as the City Council approves a reading of an ordinance reflecting said amendment and after said ordinance is published in the official newspaper.

Subd. 14. Time Limit. Pursuant to Minnesota Statutes 15.99, as may be amended, an application for an amendment or conditional use permit shall be approved or denied within sixty (60) days from the date of its official and complete submission unless notice of extension is provided by the City or a time waiver is granted by the applicant. If applicable, processing of the application through required state or federal agencies shall extend the review and decision-making period an additional sixty (60) days unless this limitation is waived by the applicant.

Subd. 15. If a request for a conditional use permit receives approval of the City Council, the applicant shall record such with the Hennepin County Recorder within thirty (30) days of the City Council approval date. The applicant, immediately upon recording such or as soon as is reasonably possible, shall furnish the City proof of recording. No building permits for the property in question will be granted until such proof of recording is furnished to the City.

1003.02 AMENDMENTS – INITIATION. The City Council may, upon their own motion, initiate a request to amend the text or the district boundaries of this Ordinance. Any person owning real estate within the City may initiate a request to amend the district boundaries or text of this Ordinance so as to affect the said real estate.

1003.03 CONDITIONAL USE PERMIT.

Subd. 1. Purpose. The purpose of a conditional use permit is to provide the City of Tonka Bay with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health and safety. In making this determination, whether or not the conditional use is to be allowed, the City may consider the nature of the adjoining land or buildings, whether or not a similar use is already in existence and located on the same premises or on other lands immediately close by, the effect upon traffic into and from the premises, or on any adjoining roads, and all other or further factors as the City shall deem a prerequisite of consideration in determining the effect of the use on the general welfare, public health and safety.

Subd. 2. Information Requirement. The information required for all conditional use permit applications generally consists of the following items, and shall be submitted when requested by the City:

- a. Site Development Plan:
 - 1. Location of all buildings on lots including both existing and proposed structures.

2. Location of all adjacent buildings located within three hundred fifty (350) feet of the exterior boundaries of the property in question.
 3. Location and number of existing and proposed parking spaces.
 4. Vehicular circulation.
 5. Architectural elevations (type and materials used in all external surfaces).
 6. Location and type of all proposed lighting.
 7. Curb cuts, driveways, number of parking spaces.
 8. Site plan details such as trash receptacles, required screening, etc.
- b. Dimension Plan:
1. Lot dimensions and area.
 2. Dimensions of proposed and existing structures.
 3. "Typical" floor plan and "typical" room plan.
 4. Setbacks of all buildings located on property in question.
 5. Proposed setbacks.
 6. Sanitary sewer and water plans with estimated use per day.
- c. Grading Plan:
1. Existing contours.
 2. Proposed grading elevations.
 3. Drainage configuration.
 4. Storm sewer catch basins and invert elevations.
 5. Spot elevations.
 6. Proposed road profile.
 7. Erosion control measures.
- d. Landscape Plan:
1. Location of all existing trees, type, diameters, and which trees will be removed.
 2. Location, type and diameter of all proposed plantings.

3. Location and material used for all screening devices.

Subd. 3. Lapse of Approval.

- a. Unless the City Council specifically approves a different time when action is officially taken on the request, the conditional use permit shall become null and void twelve (12) months after the date of approval, unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the conditional use. The property owner or applicant shall have the right to submit an application for time extension in accordance with this section.
- b. An application to extend the approval of a conditional use permit shall be submitted to the Zoning Administrator not less than thirty (30) days before the expiration of said approval. Such an application shall state the facts of the request, showing a good faith attempt to utilize the permit, and it shall state the additional time being requested to begin the proposed construction. The application shall be heard and decided by the City Council prior to the lapse of approval of the original request.
- c. In making its determination on whether an applicant has made a good faith attempt to utilize the conditional use permit, the City Council shall consider such factors as the type, design, and size of the proposed construction, any applicable restrictions on financing, or special and/or unique circumstances beyond the control of the applicant which have caused the delay.

Subd. 4. Reconsideration. Whenever a request for an amendment or conditional use permit has been considered and denied by the City Council, a similar application for the amendment or conditional use permit affecting substantially the same property shall not be considered again by the City Council for at least six (6) months from the date of its denial; and a subsequent application affecting substantially the same property shall likewise not be considered again by the City Council for an additional six (6) months from the date of the second denial unless a decision to reconsider such matter is made by not less than four-fifths (4/5) vote of the full City Council.

Subd. 5. Amended Conditional Use Permit. An amended conditional use permit may be applied for and administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include re-applications for permits that have been denied, requests for substantial changes in conditions or expansions of use, and as otherwise described in this ordinance.

Subd. 6. Performance Bond.

- a. Except in the case of non-income producing residential property (excluding relocated structures), upon approval of a conditional use permit the City shall be provided, when deemed necessary by the City Council, with a surety bond, cash escrow, certificate of deposit, securities, or cash deposit prior to the issuing of building permits or initiation of work on the proposed

improvements or development. Said security shall be non-cancelable and shall guarantee conformance and compliance with the conditions of the conditional use permit and the ordinances of the City.

- b. The security shall be in the amount of one hundred ten percent (110%) of the City Engineer's or City Building Official's estimated costs of labor and materials for the proposed improvements. Said project can be handled in stages upon the discretion of the City Engineer and Building Official.
- c. The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the conditional use permit and ordinances of the City has been issued by the City Building Official.
- d. Failure to comply with the conditions of the conditional use permit or the ordinances of the City shall result in forfeiture of the security.
- e. Whenever a performance guarantee is imposed by the City, the applicant shall be required to enter into a performance agreement with the City. This agreement is to provide authorization to the City to utilize the posted security and complete stipulated work should the applicant fail to meet the terms and conditions of the permit. Said agreement shall hold harmless the City for completion of the work and address other matters as may be determined by the City Attorney.