

## ARTICLE XVIII

### Conditional Uses

#### Article 18: Conditional Uses

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#### **Section 18.1. REQUIREMENTS.**

Regulations set forth in this Article, or elsewhere in this ordinance, that are applicable shall apply to conditional uses. Nonconforming uses with conditional use permits shall remain nonconforming. It is recognized that certain uses possess characteristics of such unique and special form as to make impractical their being included automatically in any class of use as set forth in the various districts established by this ordinance. Allowable conditional uses, as indicated within each zoning district, may be permitted, enlarged, or altered upon application for a conditional use permit in accordance with the rules and procedures of the Board of Adjustment. The Board of Adjustment will grant or deny a conditional use permit in accordance with the standards set forth herein and within the intent and purpose of this ordinance. In granting conditional uses, the board will authorize the issuance of a conditional use permit and may prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of any conditional use.

#### **Section 18.2. JURISDICTION.**

The Zoning Administrator is responsible for administration of the conditional use procedure, the Planning Commission shall make a report to the Board of Adjustment upon review of such conditional use request, and the Board of Adjustment shall be responsible for evaluation and action on all applications for issuance of a conditional use permit.

#### **Section 18.3. APPLICATION FOR CONDITIONAL USE PERMIT.**

An application for a conditional use permit may be initiated by a property owner or authorized agent by filing with the Zoning Administrator forms prescribed for such purposes. A conditional use permit fee, as determined by resolution of the City Council, shall accompany the application. A conditional use permit shall not authorize a use that is in conflict with any ordinance of the City of Okoboji, or law of the State of Iowa regulating nuisances, pollution or hazardous occupation.

Application for a conditional use permit shall include the following:

1. Name and address of the owner and applicant.
2. Address and legal description of the property.
3. If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner of the property.
4. A statement describing the nature and operating characteristics of the proposed conditional use, including any data pertinent to the findings required for approval of the application.

5. An abstractor's certificate showing the names and mailing addresses of the owners of all property within 200 feet of the property for which the conditional use is requested. Said certificate shall be prepared at the expense of the applicant.
6. Site plan as prepared in accordance with Article IX.

**Section 18.4. PROCEDURE FOR ISSUING A CONDITIONAL USE PERMIT.**

The procedure for obtaining a conditional use permit shall be as follows:

1. Written applications on approved forms shall be filed with the Zoning Administrator and shall be accompanied by such plans as required by the provisions of this Article in quadruplicate.
2. The application shall be referred to the Planning and Zoning Commission. The commission shall make a report to the Board of Adjustment regarding the recommended disposition of the application within forty-five (45) days from the date of such public hearing.
3. The Board of Adjustment shall hold a public hearing within thirty (30) days after receiving the certification of said recommended disposition by the commission.
4. Notice of public hearing by Board of Adjustment shall be given to all property owners within 500 feet of the boundary of the property on which the conditional use is to be located at least ten (10) days prior to the public hearing. Furthermore, a public hearing notice shall be published as required by state statute by publication in a newspaper of general circulation in the city. Such public hearing notice shall be at least seven (7) days prior to the hearing and shall contain the time and location of such hearing. In the event that there is more than one property owner for any parcel of property, it shall be sufficient to notify only one owner of each parcel by mail.
5. The conditional permit issued may include time limits, and other conditions or safeguards deemed necessary or appropriate by the board. Violations of such conditions and safeguards shall be deemed a violation of this ordinance and punishable under the provisions of Article XVI of this ordinance.
6. The concurring vote of three (3) members of the whole Board of Adjustment grants a conditional use permit, even in the event of absentee members or in conflicts of interest.
7. No order of the Board of Adjustment granting a conditional use permit shall be valid for a period longer than one (1) year from the date of such order, unless the Board of Adjustment specifically grants a longer period of time or construction has commenced.
8. Whenever an application for conditional permit has been denied by the board, no new application for conditional use permit including the same property or any portion thereof shall be filed or considered by the board until six (6) months shall have elapsed from the date of the official denial of the first application.

**Section 18.5. CONDITIONAL USE STANDARDS AND RESTRICTIONS.**

Authorization for a conditional use permit shall be granted subject to the following conditions:

1. Buildings involving large assemblies of people shall not be located less than 300 feet from any existing dwelling site.

2. Uses involving nuisances such as noise, vibration, pollution etc., shall not be located less than 500 feet from any residential zoned district or less than 1,000 feet from an existing dwelling.
3. Uses involving large assemblies ages of people shall not be located where the arterial traffic system is inadequate to provide for the increased traffic density.
4. Uses involving the extensive use of exterior lighting shall not be located where such lighting may be hazardous to air or ground traffic ways, and such uses shall not be located less than a distance required to reduce the light intensity to normal residential street lighting intensity at any residential zone district boundary.
5. The following restriction shall be complied with. Uses of a utility or public service located within any residential or commercial zoned districts shall be screened from public view by buffer walls or strip parks.
6. The establishment, maintenance, or operation of a conditional use will not be unreasonably detrimental to or endanger the public health, safety, comfort, or general welfare of the city.
7. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for existing uses permitted, nor substantially diminishes and impairs property values within the neighborhood.
8. That in the case of relocating existing dwellings, buildings or other principal use structures that the proposed use aesthetically blends in with the existing neighboring uses and special attention is given to the architectural style, size and existing condition of the proposed use to be moved.
9. The establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
10. The conditional use shall not include any activity involving the use or storage of flammable or explosive material unless protected by adequate fire fighting and suppression equipment.
11. That such proposed conditional use shall be analyzed in relation to and shall generally follow the city's comprehensive plan and the future goals of the community.
12. The conditional use shall not cause any permanent, irreparable environmental damage to the parcel or neighboring lands.

**Section 18.6. REVOCATION.**

The issuance of a conditional use permit by the Board of Adjustment shall entitle the owner to continue to operate the use so long as the owner remains in compliance with the terms and conditions of this ordinance and the terms, conditions, limitations, requirements and safeguards set forth in the conditional use permit. If such permit is granted, it does expressly grant to the city the power and authority to enter upon the premises at any reasonable time for the purpose of inspection and enforcement of the terms of the conditional use permit. In the event the owner or occupant of the property for which such permit has been issued, shall violate any term, condition, limitation, regulation or safeguards contained in the conditional use permit, the permit shall become null and void and the owner or occupant shall be deemed to be in violation of this ordinance and punishable under the provisions of Article XVI of this ordinance.

**Section 18.7. SUPPLEMENTAL STANDARDS SUBJECT TO CONDITIONAL USE PERMIT**

In addition to the general standards outlined in Section 18.5 above, specified uses shall adhere to the following supplemental standards for specific activities:

1. **Salvage Yards:** All salvage yards, including any area where waste, junk, discarded or wrecked and salvaged materials are bought, sold, stored, exchanged, baled or packed, disassembled or handled, including dismantling or "wrecking" of automobiles or machinery or other vehicles, shall not be encouraged to be located within the City of Okoboji, but if they are must be located within the (C-1) General Commercial district under a conditional use permit. The application for a conditional permit shall be accompanied with a proposed intent of covenants to meet the minimum requirements described herein:
  - a. Any yard shall be at least 1,000 feet distance in all directions from any residential building
  - b. Outdoor yards shall be screened by a solid wall or uniformly painted solid fence not less than eight (8) feet in height, or in lieu thereof, a landscape buffer strip fifty (50) feet wide with deciduous and evergreen trees and large shrubs may be planted to provide a solid and opaque landscape screen at least ten feet (10') high. If a landscape buffer strip is planted, a temporary solid wall or fence of at least eight (8) feet in height must be constructed and left in place until the trees and shrubs are large enough to screen the salvage yard.
  - c. Off-street parking and/or customer service areas in connection with a salvage yard may be located outside the screened-in area.
2. **Open-Air Sales Display and Storage:** All open-air sales display and storage, including new or used auto sales and storage, new or used farm implement sales, new or used truck, machinery, or equipment sales and storage, and recreational vehicle, boat, or trailer sales and/or outdoor storage shall require a conditional use permit. The application shall be accompanied with drawings and other documents describing the intent, layout, and construction or installation in accordance with the following minimum requirements:
  - a. The open-air sales, display, and storage area shall be surfaced, preferably with a hard surfacing material, but at a minimum with granular, aggregate, or crushed stone or rock.
  - b. The side and rear lot lines, when abutting properties are used for residential purposes, shall be required to be screened with a wall or fence with its surface at least fifty (50) percent solid and at least eight feet (8') in height. The fence shall not be required to extend beyond the front yard setback line.
  - c. All property lighting shall be designed and arranged so that they do not focus or glare directly on residential properties or public streets, thereby creating a traffic hazard.
  - d. Open-air storage yards or display areas shall be maintained to be reasonably free of weeds, debris, trash and other objectionable materials.
3. **Boat and Marine Accessory Storage:** Boats, personal watercraft, trailers, boat hoists, or other marine accessories may be stored on the owner's lot for no longer than nine (9) consecutive months in the same location. Multiple boats, personal watercraft, trailers, boat hoists, or other marine accessories stored on a parcel, lot or group of lots for longer than nine

(9) consecutive months for private, commercial or monetary purposes shall conform to the requirements of Section 18.7 Part 2. Open-air Sales Display and Storage.

4. **Communication Towers:** The purpose of this section is to provide for the regulation of contractors engaged in the construction, erection, placement or location of freestanding communications towers in the City of Okoboji.
  - a. Communication towers shall be permitted under a conditional use permit only in the A-1, R-2 and C-1 district.
  - b. “Communication Tower” shall mean a structure, tower, antenna or other facility primarily engaged in the provision of broadcasting and information relay services accomplished through the use of electronic, cellular or other mechanisms but exclude those classified as Major Utility Facilities. Typical uses include but not limited to telecommunication towers, radio, television, cellular and other receiving towers, antennas or structures and amateur radio communications including voluntary and noncommercial communication services.
  - c. Communication towers shall be permitted as a conditional use only upon compliance with all applicable ordinances of the City of Okoboji. The permit shall be of indefinite duration and remain in effect so long as the tower remains in compliance with city ordinances. A conditional use permit for a communication tower may be revoked upon notice to the owner and following opportunity for a public hearing before the Board of Adjustment for violation of any applicable city ordinances, State or Federal statutes or regulations.
  - d. The issuance of a conditional use permit for a communication tower shall not relieve any permittee, applicant or owner from compliance with all legal requirements, including compliance with Federal Communication Commission (FCC), Federal Aviation Administration (FAA) and other state or federal agencies.
  - e. The minimum distance from the base of the tower to the nearest property line of the tower site shall not be less than one hundred (100%) of the tower height, except that no setback shall be less than the required setbacks in the zoning district where such tower is located.
  - f. The communication tower base shall be completely enclosed by a fence or wall no less than six feet (6') in height and designed or constructed to provide a secure environment and unauthorized access to the tower base.
  - g. No communication tower constructed, located or placed within the city shall exceed a height of two hundred feet (200').
  - h. The city shall not restrict or deny the use of amateur radio antennas or towers for the personal enjoyment and use of the owner(s) and shall comply with Title 47 of the Code of Federal Regulations, Part 97 (FCC rules for amateur radio).
  - i. In order to avoid unnecessary duplication of communications towers, businesses engaged in wireless communication requiring the use of communications towers are required to utilize joint or multiple use of all existing and proposed towers.
  - j. Communication towers abandoned or obsolete shall be removed within twelve (12) months of the discontinuance of such use.

### **Section 18.8. PLANNED UNIT DEVELOPMENTS – AS A CONDITIONAL USE**

Planned Unit Developments (PUDs) are intended to accommodate a wide variety of developments in accordance with the city’s comprehensive plan. PUD regulations are designed to encourage flexibility in the design and development of land in order to promote its most appropriate use; to facilitate the adequate and economical provision of streets, utilities and public spaces; and to preserve the natural and scenic qualities of open areas. PUDs are intended to encourage innovative, well-designed projects that achieve a high level of low impact development, environmental sensitivity, energy efficiency, safety, and aesthetics. Each PUD will be applied for and reviewed as a conditional use within the zoning district in which it is located. A planned unit development, to be eligible under this Article, must be:

- In accordance with the city’s comprehensive plan and the regulations of this ordinance
- An effective and unified means of treating developments providing for preservation of scenic features and amenities of the site and the surrounding area
- So designed in its space allocation, orientation, landscaping, circulation system, materials and other features as to produce an environment of stable and desirable character, complimenting the design and values of the neighborhood
- Encourage a more creative and efficient development of land and its improvements
- Allow for a mixture of uses in an integrated and well-planned area
- Ensure concentration of open space into more usable areas and preservation of the natural resources of the site including wetlands, woodlands, steep slopes, and scenic areas
- Facilitate economic provisions of streets and public utilities;
- Low impact development provisions are required in accordance with the Okoboji Low Impact Development (LID) standards.

The overall land use composition of PUDs shall be consistent with the underlying zoning designation and the following standards.

1. Residential PUDs: PUDs to be established on land zoned residential on the city's zoning map shall be considered a residential PUD. The following standards shall apply:
  - a. Residential and Public/Civic Uses: The Board of Adjustment may approve any residential and public/civic uses within residential PUDs. Permitted dwelling units shall include detached, clustered, semi-detached, attached, or multi-storied structures or combinations thereof. Customary accessory uses are also permitted.
  - b. Commercial Uses: In addition to residential and public/civic uses, the Board of Adjustment may approve commercial uses that do not occupy more than 25 percent of the total land area within residential PUDs; provided that a sufficient population within the PUD supports such uses, and the commercial uses are located in such a manner as to protect the character of the project and surrounding land uses and natural assets.
2. Commercial PUDs: PUDs to be established on land zoned commercial on the city’s zoning map shall be considered a commercial PUD. The following standards shall apply:
  - a. Residential & Civic Uses: The Board of Adjustment may approve any residential and public uses within commercial PUDs; provided the density does not exceed 16 units per acre.

- b. Commercial Uses: The Board of Adjustment may approve any commercial uses within commercial PUDs.
  - c. Industrial Uses: No industrial uses shall be permitted as part of a commercial PUD.
3. Mixed-Use PUDs: PUDs to be established on land zoned as both residential and commercial shall be considered a mixed-use PUD. Those portions of a mixed-use PUD that have an underlying residential zoning designation shall be regulated in accordance with the residential PUD standards. Those portions of a mixed-use PUD that have an underlying commercial zoning designation shall be regulated in accordance with the commercial PUD standards.
4. General Regulations. In order for PUDs to be eligible for consideration of a conditional use permit, certain regulations needs to be satisfied to preserve the integrity of the planned development and minimize any potential impact to adjacent properties.
- a. Conformance with the Comprehensive Plan: The proposed planned unit development is in conformance with the Okoboji Comprehensive Plan. At a minimum, the Board of Adjustment shall find that the PUD does not conflict with the comprehensive plan.
  - b. Minimum Site Area: A PUD shall include no less than three (3) acres of contiguous land. Property shall be deemed to be contiguous so long as all parts are under unified control of the applicant, and all parts abut or are separated by only a road, easement or right of way. A minimum of two (2) or more principal structures must be proposed.
  - c. Preservation of Natural Features: Mature trees, vegetative cover, watercourses and other natural site features shall be preserved to the greatest extent possible. Preservation shall be directed toward;
    - i. Protecting the natural environment;
    - ii. Providing buffering between new developments and surrounding properties;
    - iii. Handling of storm water flows in natural channels;
    - iv. Maintaining existing vegetation along stream corridors as water quality filters; and
    - v. Developing and sustaining low impact developments.
  - d. Common Open Space: A minimum of twenty-five (25) percent of every residential PUD shall be developed as common open space for the use and enjoyment of the residents. A minimum of fifteen (15) percent of the gross area of every commercial PUD shall be devoted to common open space. In the case of a mixed-use PUD, the greater requirement of minimum open space shall apply. Parking areas and vehicle access shall not be considered in calculating open space requirements.
  - f. Maintenance of Common Open Space: If the owner, organization or business responsible for maintaining common open spaces fails to maintain the land in reasonable condition, the Zoning Administrator shall serve written notice defining the deficiencies. If the deficiencies are not corrected after 30 days, the Zoning Administrator shall have the common open space maintained. In such cases, the tax assessor shall assess the costs proportionally against all properties within the PUD that have the right of use of the common open space.
  - g. Screening: Additional buffering beyond minimum requirements of this ordinance, both around the parameter and interior of the planned unit development, shall be provided where

appropriate to mitigate against adverse impacts of noise, glare, sound, or other influences on the proposed development or on adjacent land.

- h. Lighting: All lighting from proposed developments shall be arranged to prevent direct glare or hazardous interference to adjoining streets or property.
  - i. Other Conditions: The Zoning Administrator and the Board of Adjustment shall have the authority to impose such other conditions necessary to accomplish the purpose of this ordinance and the city's comprehensive plan.
5. Application and Approval. PUDs shall be subject to the approval of a conditional use permit approved by the Board of Adjustment and follow the application, review and approval process outlined in Sections 19.3, 19.4 and 19.5 of Article. Prior to submitting a PUD plan to the Board of Adjustment, the applicant shall meet with the Zoning Administrator to discuss the proposed project. The applicant may submit a simple sketch plan at this stage for informal review and discussion.
  6. Preliminary Plat. The applicant shall submit a preliminary plat and all the necessary documentation as required under the subdivision regulations of all or that portion of the project to be platted. For purposes of administrative simplification, the public hearings required for the conditional use permit and preliminary plat may be held concurrently.
  7. Final Plat. The applicant shall file with the Zoning Administrator a final plat for that portion to be platted. The final plat shall contain those changes as recommended by the Board of Adjustment during the preliminary review. The final plat shall be submitted to the Dickinson County Recorder's Office by the developer within ninety (90) days. This shall include posting a performance bond or certified check with the City of Okoboji, guaranteeing those required improvements will be constructed according to the approved implementation schedule. This shall be accomplished prior to the issuance of any zoning permit. Once the development plan and final plat are approved, the city may issue the zoning permit for the area. Said area shall then be designated on the official zoning map.
  8. Enforcing Development Schedule. The construction and provision of common open space or public recreation facilities shown on the development plan must proceed at the same rate as construction of dwelling units or commercial developments. If the rate of residential or commercial construction is faster than the rate of open space or public facilities, this information will be forwarded to Board of Adjustment, after which the conditional use permit may be revoked.
  9. Review and Amendments. The Board of Adjustment may make modifications, revisions or amendments to the conditional use permit for the PUD including changes to the location, placement, and heights of buildings or structures if required by engineering or other circumstances not foreseen at the time of approval. The board may also revoke the conditional use permit for a PUD if substantial development has not occurred within one (1) year after the original approval of the permit.