

Article 17. Conditional Use Permits

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Sec. 1701. Purpose and Objectives:

- A. In certain districts, conditional uses are permitted subject to the granting of a use permit. Because of their unusual characteristics and potential for causing significant adverse environmental effects, conditional uses require special consideration so that they may be located properly with respect to their effects on surrounding properties and the environment. In order to achieve these purposes and thus give the district use regulations of this Development Code the flexibility necessary to achieve the objectives of this Development Code, the Planning Commission ("Commission") is empowered to grant and to deny applications for use permits and to impose reasonable conditions upon the granting of use permits, subject to review of the Board of Supervisors ("Board").
- B. The purpose of this Article is to provide a process for reviewing Conditional Use Permit applications which are intended to allow the establishment of uses that have special impact, uniqueness, or effect on the neighborhood surrounding the subject site. The permit application process allows for the review of the location and design of the proposed use, configuration of improvements, potential impacts on the surrounding neighborhood, and to ensure that development in each zoning district protects the integrity of that district.

Sec. 1702. Powers of Planning Commission: The Planning Commission is the administrative agency authorized to grant use permits for such conditional uses in such districts as are prescribed in the district regulations of this Development Code, subject to review by the Board of Supervisors, in accordance with the procedure prescribed in this article. If an application for a change of district boundaries has been filed with the Planning Commission, an application for a Conditional Use Permit of property included in the application for change of district boundaries is granted by amendment of the Development Code. The Planning Commission, when considering an application for a conditional use, shall impose such conditions upon the granting of the use permit which are necessary for the protection of the public health, safety and general welfare, the environment, and which are necessary to achieve the objectives of this Development Code. See Section 804 of this Development Code for conditions required by the Planning Commission for projects in the Industrial zoning district.



Sec. 1703. Conditional Use Permit Application and Fee. Land uses listed in particular zoning districts as “Conditional uses – Planning Commission Approval” require the applicant to file an application for a Conditional Use Permit pursuant to this Article. Approval of the application must be granted by the Planning Commission prior to the use commencing.

A. **Application:** The application for a Conditional Use Permit shall be made to the Planning Commission on the “Uniform Application Form” described in Section 1602.A of this Development Code and shall include all applicable information listed in Section 1602 including the site plan drawing as well as the following information specific to conditional uses:

1. The application shall include an “Environmental Information Form”, also available on-line at www.countyofkings.com/planning or from the Community Development Agency, for projects which are subject to environmental review.
2. Applications for new bovine dairies, or dairy calf and heifer raising facilities, and applications for the expansion of existing bovine dairies, or expansion of dairy calf and heifer raising facilities, shall be approved through the Conditional Use Permit process if the application DOES NOT MEET all of the specified criteria in the *Dairy Element* of the *Kings County General Plan*. The applicant shall submit one paper copy of the application and technical report required by Policy DE 3.1a of the Dairy element of the 2035 Kings County General Plan together with 21 copies of the application and technical report submitted on CD, DVD or USB Flash Drive. The paper copy shall have original signatures affixed where signatures are required. Refer to Section 413 of this Development Code for further information.
4. Applications for new permanent freestanding or detached signs or off-site advertising structures and applications with site plans where such signs are included shall include architectural drawings of the freestanding or detached sign structure and include the dimensions of each element of the sign. The architectural drawing shall also include the aggregate structural area and aggregate copy area of the sign as described in Article 14, Section 1404.
5. The Planning Commission and the Zoning Administrator may require submission of reports by technical consultants or other evidence in addition to the data required in Section 1602.

B. **Application Fees:**

1. Fee classifications for proposed projects.
 - a. The application shall be accompanied by a fee set by the Board of Supervisors sufficient to cover the cost of processing the application pursuant to this article. All fees shall be paid at the time the application is filed and no processing shall commence until the fees are paid in full.
2. Fee classifications for projects where work has been started or a use commenced without a permit.
 - a. Prior to the issuance of a Notice of Violation: If the application is submitted after a use that requires a zoning permit has begun operation, but prior to the issuance of a Notice of Violation, the application fee shall be the normal fee that is set by the Board of Supervisors.
 - b. After the issuance of a Notice of Violation: If the application is submitted after a use that requires a zoning permit has begun operation, and a Notice of Violation has been issued, the application fee shall be double the normal fee that is set by the Board.
 - c. 30 days after the issuance of a Notice of Violation: If the application is submitted after a use that requires a zoning permit has begun operation and 30 days or more after a Notice of Violation has been issued, the community development agency may use any lawful means prescribed in Article 24 of this ordinance to gain compliance.
3. If, pursuant to Article 1, Section 112 of this Development Code, the County determines that a project may incur extraordinary costs, the County may require the applicant to indemnify the County for those extraordinary costs associated with processing such project, or from legal challenges to its actions.



Sec. 1704. Investigation and Report: The Zoning Administrator shall make an investigation of the application and shall prepare a report thereon which shall be submitted to the Planning Commission. Such report shall include a recommendation as to the action to be taken by the Commission together with a statement supporting such recommendation.

A. The Zoning Administrator's investigation shall include documentation of the results of consultation with representatives of the following agencies as appropriate:

Kings County Agricultural Commissioner (EAC)

Kings County Public Works Department (EAC)

Kings County Health Officer, Environmental Health Division (EAC)

Kings County Mosquito Abatement District (for projects with basins) (EAC)

U.C. Cooperative Extension Service Farm Advisor (EAC)

Kings County Building Official/Code Compliance Division

Kings County Fire Department

Kings County Economic Development Corporation

Kings County Association of Governments (if project has the potential for causing adverse air quality, transportation, and climate change impacts)

Kings County Museum Advisory Committee (if project involves removal, destruction, or alteration of proposed or designated historic sites or County landmarks)

Kings Area Rural Transit

City of Avenal, Corcoran, Hanford or Lemoore (if the project is within the primary sphere of influence)

Kings River Conservation District (for construction on property that abuts the Kings River or its levees)

Central Valley Flood Protection Board (for construction on property that abuts the Kings River or its levees)

San Joaquin Valley Air Pollution Control District

Caltrans, District 6 (if project is within one mile of a State Highway or Interstate 5)

California Air Resources Board (if project has the potential for causing adverse air quality)

U.S. Fish and Wildlife Service

Any appropriate utility services, Community Service District or Public Utility District

Any other agency as determined by the Zoning Administrator

B. Refer to Article 1, Sections 110.E and 111 for additional information concerning compliance with the California Environmental Quality Act (CEQA).

Sec. 1705. Public Hearing Notice: The Planning Commission shall hold a public hearing on each application for a Conditional Use Permit. Notice of the public hearing shall be given as set forth in Section 1903 of this Development Code.

Sec. 1706. Public Hearing Procedure: At the public hearing, the Planning Commission shall review the application and the statement and drawings submitted therewith and the report of the Zoning Administrator and shall receive pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in Section 1707 below.

Sec. 1707. Action of the Planning Commission:

A. The Planning Commission may grant an application for the Conditional Use Permit as the use permit was applied for or in modified form, if, on the basis of the application and the evidence submitted, the Commission makes the following findings in support of a decision on the Conditional Use Permit application:



1. The proposed use is consistent with the General Plan.
 2. The approval of the conditional use permit for the proposed use is in compliance with the requirements of the California Environmental Quality Act (CEQA).
 3. There will be no potential significant negative effects upon environmental quality and natural resources that could not be eliminated or avoided through mitigation or monitoring or (b) there will not be potential significant negative effects upon environmental quality and natural resources that could not be mitigated to the extent feasible, and a Statement of Overriding Considerations is adopted explaining why the benefits of the project outweigh the impacts that cannot be mitigated to a less than significant level.
 4. The proposed conditional use complies with all applicable standards and provisions of this Development Code and the purposes of the district in which the site is located.
 5. The design, location, size and operating characteristics of the proposed conditional use and the conditions under which it would be operated or maintained will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to the public health, safety, or welfare, or materially injurious to other permitted uses, properties, or improvements in the vicinity.
 6. That no process, equipment or materials shall be used which, are found by the Planning Commission, to be substantially injurious to persons, property, crops, or livestock in the vicinity by reasons of odor, fumes, dust, smoke, cinders, dirt, refuse, water carried wastes, noise, vibration, illumination, glare or unsightliness or to involve any undue risk of fire or explosion.
 7. That no waste material shall be discharged into a public or private sewage disposal system except in compliance with the regulations of the owner of the system.
 8. That all uses shall comply with the emission standards of the San Joaquin Valley Air Pollution Control District.
 9. The site plan includes all applicable information as described in Article 16, Section 1602.A.5.
- B. When an application is being considered for a surface mining operation, the Planning Commission shall ensure that the application for the Conditional Use Permit for the surface mine complies with all of the requirements found in Chapter 17 of the *Kings County Code of Ordinances*, and that all findings included in said Chapter 17 are made by the Commission before granting the Conditional Use Permit.
- C. When an application is being considered for a hazardous waste management facility, the following findings shall be made before granting a Conditional Use Permit:
1. That all requirements of Article 8.7, "Procedures for the Approval of New Facilities" (commencing with Section 25199) of Chapter 6.5 of Division 20 of the *Health and Safety Code* as the requirements pertain to local land use decisions are carried out.
 2. That the Commission find that the proposed facility is consistent with the "Siting Criteria for Hazardous Waste Management Facilities" in the "*Kings County Hazardous Waste Management Plan*", as approved by the California Department of Health Services and adopted by the Kings County Board of Supervisors as parts of the Safety and Land Use Elements of the *2035 Kings County General Plan*.
- D. When an application is submitted for an expansion of a bovine dairy in the AL-10 zoning district, or when any other application is submitted for a dairy project as required by the *Dairy Element* of the *2035 Kings County General Plan*, or this Development Code, the following findings shall be made before granting a Conditional Use Permit:
1. That the Zoning Administrator has included in his or her report to the Planning Commission the results of consultation with representatives of the agencies listed in Section 412 of this Development Code before the Commission may grant the application:



2. The Planning Commission finds that the technical report required by Policy DE 3.1a of the Dairy element of the 2035 Kings County General Plan accompanying the conditional use application, which will include its own additional environmental review, demonstrates that the alternative dairy project design or process will accomplish the same or higher level of performance as required by the *Dairy Element*.
- E. When an application is submitted for a solar photovoltaic electrical facility for commercial sales and distribution of electrical power in an agricultural zoning district, the Planning Commission shall make findings consistent with the standards listed in Section 1112.B.2 of this Development Code before granting a Conditional Use Permit.
 - F. A Conditional Use Permit may be granted for a limited time period, and may be granted subject to such conditions as the Planning Commission may prescribe.
 - G. The Commission shall deny an application for a use permit if the Commission is unable to make the findings necessary for granting the permit.
 - H. The Commission's decision on the application shall become effective eight days following their decision, unless the Board of Supervisors initiates proceedings to review the decision of the Commission.

Sec. 1708. Conditions of Approval:

- A. In approving a Conditional Use Permit, the Planning Commission shall, in its resolution, state that conditions of approval are necessary to protect the public health, safety, and general welfare, and the environment. Such conditions may include:
 1. Special setbacks, spaces and buffers.
 2. Fences and walls.
 3. Surfacing of parking area subject to County specifications.
 4. Requiring street dedications and improvements subject to the provisions of Section 1603, including service roads or alleys when practical.
 5. Regulation of points of vehicular ingress and egress.
 6. Regulation of signs.
 7. Requiring landscaping and maintenance thereof.
 8. Requiring maintenance of the grounds.
 9. Regulation of noise, vibration, odors, and other similar characteristics.
 10. Regulation of time for certain activities to be conducted on the site.
 11. Time period within which the proposed use shall be developed.
 12. A bond to assure faithful performance on the part of the applicant, successor, heirs, or assigns of:
 - (a) The completion of street improvements and other facilities or removal of such facilities within a specified period of time; and
 - (b) The reclamation of mined lands; and/or
 - (c) Compliance with conditions of approval.

13. Mitigation measures, identified in the environmental documentation evaluating the application, determined to be necessary to avoid or lessen significant environmental effects that may result from the construction and operation of the approved use.
14. And such other conditions as will make possible the development of the County in an orderly and efficient manner, in conformance with the intent and purposes set forth in this Development Code.

B. The Commission shall specify minimum setback requirements and district regulations necessary to protect the continued agricultural production of properties surrounding parcels developed subject to Article 4, Section 408 of this Development Code.

Sec. 1709. Action of the Zoning Administrator: Within five days following a decision by the Planning Commission on a Conditional Use Permit application or an application for extension of time for a Conditional Use Permit, or on the revocation of a Conditional Use Permit, the Zoning Administrator shall give written notice by mail of the decision to the applicant and submit to the Clerk of the Board of Supervisors an informational update to be heard at the next available Board of Supervisors meeting.

Sec. 1710. Review by the Board of Supervisors:

- A. Within eight days following the date of a decision by the Planning Commission on a Conditional Use Permit application or on an extension of time for a CUP, or on the revocation of a CUP, the Board, on its own motion, may initiate proceedings to review the decision of the Commission. The Board shall specify the reason(s) for its review and the review shall be limited to the issues and evidence raised before the Commission.
- B. The Clerk of the Board shall give notice of the time and place when the decision of the Planning Commission will be reviewed by the Board of Supervisors. Notice will be given in the same manner as provided in Section 1903 of this Development Code for notice of hearing on appeal, except that where the review is of a decision of the Commission concerning the revocation of a use permit, and in that case, notice shall be required to be given only to the permit holder of the use permit.

Sec. 1711. Appeals: The applicant or any other directly affected person or party may appeal the decision of the Planning Commission in writing, setting forth his or her reason for such appeal:

- A. Appeal to the Board of Supervisors. Within eight days following the date of a decision of the Planning Commission on a use application or an application for extension of a Conditional Use Permit, the applicant or any other directly affected person or party person may appeal the Commission's decision in writing, setting forth his or her reason for such appeal to the Board. The appeal shall state specifically in writing wherein it is claimed that there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record.
 1. The appeal shall be filed with the Community Development Agency which will date stamp the appeal form and then forward the original appeal form to the Clerk of the Board of Supervisors. The submittal of the appeal form shall include one original, ten hardcopies, and one electronic copy of the appeal form and supporting documentation unless the Community Development Agency, in its discretion, waives the requirement for good cause.
 2. The appeal shall be accompanied by a fee set by the Board of Supervisors sufficient to cover the cost of processing the appeal and providing notice as prescribed in this article.
 3. The appeal shall be placed on the agenda of a Board of Supervisors regular meeting within 90 days of the appeal being filed with the Community Development Agency.
 4. The appeal of a decision of the Planning Commission is limited to the issues and evidence submitted to the Commission during the original public comment period and public hearing. Only those issues reviewed by the Commission in their decision may be appealed to the Board. New issues raised, and evidence submitted, after the close of the Commission's public hearing shall not be considered by the Board for an appeal.
- B. An appeal may be withdrawn before the time that the review authority issues a decision. The applicant or the applicant's representative shall notify the Community Development Agency in writing that they wish to withdraw the appeal.



C. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Development Code until all appeals to the Commission and Board have been first exhausted in compliance with this this Development Code.

(Ord. No. 668-1-17, §61 and §62, 3/28/17)

Sec. 1712. Action by the Board of Supervisors:

- A. When a decision of the Planning Commission on a conditional use application or an application for extension of time for a Conditional Use Permit, or on the revocation of a conditional use is brought before the Board of Supervisors, either on appeal or on its own motion:
 - 1. The Board may affirm, reverse or modify the decision of the Commission.
 - 2. The Board may not reverse or modify a decision of the Commission granting or denying an application for a conditional use or an application for a extension of a conditional use unless the Board, on the basis of the record transmitted by the Planning Division of the Community Development Agency, is able to make the findings prerequisite to the granting of a Conditional Use Permit as prescribed and set forth in Section 1707 of this Development Code.
- B. If the Board grants and approves a conditional use application or an application for extension of a conditional use which has been the subject of an appeal to the Board of Supervisors or which has been the subject of review by the Board the Conditional Use Permit or extension shall become effective three days after the date of the Board’s approval.
- C. The revocation of a conditional use which has been the subject of an appeal to the Board of Supervisors or which has been the subject of review by the Board shall become effective three days after the decision of the Board to revoke the conditional use.
- D. The decision of the Board shall be final and effective on the day of action, unless otherwise required by state law.
- E. The Clerk of the Board of Supervisors shall within three days after the date of the decision of the Board, give written notice of the decision, by mail, to the applicant and/or appellant (if the applicant is not the appellant) and to the Planning Division of the Community Development Agency.

Sec. 1713. Time Limit for Development: The Planning Commission or the Board of Supervisors may establish a time limit within which the subject property and use or any stage or phase thereof shall be commenced and completed. The time limits set by the Commission or the Board shall be reasonable, based on the size, nature and complexity of the proposed development. Said time limit may be extended by the Board for good cause when the applicant presents proof of an unusual hardship not of his or her own making or if the applicant presents evidence that the extension will not pose any detriment to the health, safety, or welfare of the general public.

Sec. 1714. Zoning Clearance and Building Permit: Before a building permit shall be issued for any building or structure proposed as part of the approved conditional use application, the Zoning Administrator shall certify, through the zoning clearance process in Section 1607 of this Development Code, that the building location is in conformity with the site plan and conditions approved by the Zoning Administrator, the Commission or the Board.

Sec. 1715. Lapse and Extension of Conditional Use Permit:

- A. A Conditional Use Permit shall lapse and shall become void 12 months following the date on which the use permit became effective unless by conditions of the use permit a greater or lesser time as prescribed in Section 1707 of this article, or unless prior to the expiration of the 12 month period or other specified greater or lesser period of time, a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion on the site which was the subject of the conditional use application, or commencement of the activity if a building permit is not required. In the case of a new or expanding dairy, a three year period may be granted if requested by the applicant at the time of

application due to the length of time necessary for the applicant to obtain required permits from the California Regional Water Quality Control Board and the San Joaquin Valley Air Pollution Control District.

- B. A Conditional Use Permit which has been granted may be extended for additional periods of time provided that prior to expiration of the original time period granted or any extension thereof, an application for extension of the Conditional Use Permit is filed with the Planning Commission. An application for extension of a Conditional Use Permit shall be filed and processed as an application for a Conditional Use Permit.
- C. The Planning Commission may grant an extension of a conditional use if it is able to make the findings prerequisite to the granting of a conditional use permit as prescribed and set forth in Section 1707 of this Article. The application for an extension of a conditional use permit shall be denied if such findings cannot be made.
- D. Within eight days following the date of a decision of the Planning Commission on an application for extension of a conditional use, the decision may be appealed to the Board of Supervisors. If no appeal is filed within said eight-day period and if the Board of Supervisors within said eight-day period does not initiate proceedings to review the decision of the Commission as provided herein, the decision of the Commission shall be final and conclusive.

Sec. 1716. Revocation of a Conditional Use Permit: When any applicable provision of this Development Code or when any condition or requirement of a Conditional Use Permit has not been complied with, the Zoning Administrator shall notify the permit holder of the Conditional Use Permit and shall give said person(s) a reasonable period of time within which to comply with said Development Code or condition or requirement. If the permit holder fails to comply with the Development Code or with said condition or requirement within such period of time, the Zoning Administrator shall give written notice to the permit holder that a hearing will be held by the Planning Commission on the matter of the revocation of the Conditional Use Permit.

- A. Notice of said hearing shall be given not less than 10 days prior to the date of the hearing by either personal service of a copy of said notice on permit holder or by sending a copy of the notice by certified or registered mail, return receipt requested, to said permit holder. The notice shall state the reason or reasons why action is being taken for revocation of the permit.
- B. At said hearing, the Planning Commission shall hear all relevant testimony concerning the Conditional Use Permit and the provisions of the Development Code which allegedly have not been complied with and the conditions or requirements which were imposed. If the Commission finds that any of the applicable provisions of the Development Code have not been complied with or that any of the conditions or requirements imposed have not been complied with, then the Conditional Use Permit shall be revoked.
- C. If the Conditional Use Permit is revoked by the Planning Commission, the permit holder may within eight days following the date of the decision of the Commission, appeal the decision to the Board of Supervisors.
- D. Upon the making of the decision by the Planning Commission to revoke the Conditional Use Permit, said use permit shall be automatically suspended. If an appeal is filed or if the Board of Supervisors initiates a review of the decision to revoke the use permit the suspension shall remain in effect during the course of the appeal or review. If, within said eight day period, no appeal is filed, and if the Board within said eight day period does not initiate proceedings to review the decision of the Commission as provided in Section 1709 of this Article, the decision of the Commission shall be final and conclusive.

Sec. 1717. New Application:

- A. Following the denial of a Conditional Use Permit application or the revocation of a Conditional Use Permit, no application for a use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within 12 months from the date of denial or revocation of the use permit.
- B. A new use permit shall be required for the reconstruction of a structure housing a conditional use established prior to enactment of this Development Code if the structure is destroyed by fire or other calamity or by act of God or by public enemy to a greater extent than 50 percent.

