

(Published in the Topeka Metro News January 23, 2012)

ORDINANCE NO. 19691

AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager, concerning conditional use permits, amending City of Topeka Code § 18.215.010 through § 18.215.050 and specifically repealing said original sections as well as creating § 18.215.060 through § 18.215.080.

BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:

Section 1. That section 18.215.010, Purpose – Intent, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Purpose – ~~Intent~~ Procedure.

(a) ~~A~~The purpose of a conditional use permit, as ~~may be provided~~authorized in the individual district use regulations, is ~~for the purpose of protecting~~is to protect the integrity and character of the district, surrounding properties, and neighborhoods from the potentially adverse effects of certain uses. The uses listed as conditional are normally compatible with the other uses listed in the respective zoning district, but have characteristics that may need to be mitigated and may not be appropriate in all locations.

(b) The design, location and character of a conditional use is subject to the review ~~and discretion of~~by the planning commission ~~and governing body as herein set forth.~~ The planning commission shall submit its recommendation to the governing body which will decide in accordance with K.S.A. 12-757(d) and amendments thereto.

(c) The granting of a conditional use permit shall be by resolution and shall be assignable to the subject property by legal description and not a person, firm or corporation.

30 Section 2. That section 18.215.020, Application, of The Code of the City of
31 Topeka, Kansas, is hereby amended to read as follows:

32 **Application.**

33 An application for a conditional use permit shall be submitted and processed in
34 accordance with ~~the procedure for an amendment to the district map, as set forth in~~
35 ~~Chapter 18.245 TMC, Amendments~~ TMC 18.245.020(b). ~~In addition, t~~The applicant shall
36 ~~submit a statement which demonstrates that:~~an application form; site plan, map, or
37 diagram showing the existing property, proposed use, and surrounding area; and a
38 statement indicating the physical and operational characteristics of the proposed use,
39 how the use conforms to the guidelines listed in 18.215.030 of this chapter, and any
40 actions taken to lessen adverse impacts upon the surrounding area. The planning
41 director may waive the site plan component if the planning director determines the
42 following:

43 (1) An applicant has demonstrated the use proposes no physical, site,
44 or building alterations that modify existing building and parking coverage; and

45 (2) Any conditions imposed can be addressed in the resolution.

46 ~~(a) — The density, height, bulk and other characteristics of the proposed use~~
47 ~~conforms to the guidelines for evaluation.~~

48 ~~(b) — The proposed site and building design conforms to the guidelines for~~
49 ~~evaluation.~~

50 ~~(c) — The operating characteristics of the proposed use conform to the~~
51 ~~guidelines for evaluation.~~

~~(d) A statement which describes any actions which are to be taken to lessen any adverse impacts upon the surrounding area.~~

~~(e) Other supporting data such as a map, a plan or diagram or other descriptive data or materials that may depict the proposed use and/or surrounding area.~~

~~(f) The planning director may in his or her discretion also require the submittal of a site plan.~~

Section 3. That section 18.215.030, Guidelines for evaluation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Guidelines for evaluation.

~~The objective is to encourage developments which minimize the adverse effects on surrounding properties and neighborhoods; and the community at large. The planning commission and the governing body shall evaluate all proposed conditional use permit applications with respect to the following~~The following guidelines shall apply when evaluating a conditional use permit application:

Guidelines

(a) Land use compatibility

- | | |
|-------------------------|---|
| (1) Development density | Site area per unit, or intensity of use, should be similar to surrounding uses if not separated by major physical improvements or natural features. |
|-------------------------|---|

~~(b) Height and scale~~

- | | |
|---|--|
| (12) Height and bulk <u>floor area</u> | Development should minimize difference in height and building size from surrounding structures. Substantial differences shall be justified by urban design considerations. |
|---|--|

- | | |
|---------------|--|
| (23) Setbacks | Development should respect preexisting setback lines in surrounding area. Variations shall be justified by significant site features or operating characteristics. |
|---------------|--|

- | | |
|------------------------|---|
| (34) Building coverage | When possible, b Building coverage should be similar to that displayed in surrounding areas. Higher coverage should be mitigated by landscaping, buffering or other site |
|------------------------|---|

amenities.

(eb) Site development

(1) Frontage

~~Generally, a project's frontage along a street or private way should be similar to its lot width.~~

(21) Parking and internal circulation

(i) Parking and circulation should serve all structures with minimal vehicular and pedestrian conflicts.

~~(ii) All structures shall be readily accessible to public safety vehicles.~~

~~(iii) Development shall have access to adjacent public streets or private ways. Internal circulation should distribute traffic to minimize congestion at access points.~~

(32) Landscaped Areas
Stormwater management

~~When possible, building coverage should be similar to that displayed in surrounding areas. Higher coverage should be mitigated by landscaping or other site amenities.~~
Development design shall comply with all required stormwater runoff best management practices, as approved by the public works director or designee.

(d) (3) Building design

(i) Architectural design and building materials should be compatible with surrounding properties if located adjacent to residential districts or in highly visible locations.

(ii) The adaptive reuse and restoration of historically significant structures shall be considered. "Historically significant structures" means structures listed on the National Register of Historic Places, ~~or the State Register of Historic Places,~~ or structures having obtained local landmark status.

(ec) Operating characteristics

(1) Traffic capacity

Projects should not materially reduce the existing level of service on adjacent streets. Projects will be required to make street improvements and/or dedicate right-of-way to mitigate negative effects.

(2) External traffic

Project design should ~~direct~~ minimize nonresidential traffic ~~away from through residential areas~~ neighborhoods.

(3) External effects

Projects with long operating hours, ~~shall minimize effects on surrounding residential areas.~~ Buffering techniques which isolate the conditional use from adjacent lower intensity uses may be required. Noises or visual distractions that impact surrounding properties may be required to mitigate these impacts.

(4) Outside storage

If permitted, outside storage areas ~~shall~~ should be screened from adjacent streets and less intensive zoning districts and uses.

- (f) Public facilities
- (1) Sewage disposal Developments involving sewage effluent shall connect to the public sewer system when available. If permitted, individual systems must not adversely affect public health, safety, or welfare.
 - (2) Sanitary sewer Sanitary sewer shall have adequate capacity to serve the development when connection to a sewer system is required.
 - (3) Stormwater management
 - (i) Development design should handle stormwater runoff without overloading or substantially diminishing capacity of public storm sewer system.
 - (ii) Development should not inhibit development of other properties.
 - (iii) Development should not increase probability of erosion, flooding, landslides, or other endangerment to surrounding properties.
 - (4) Utilities Projects requiring utility service shall provide evidence of such service to the site.
- (gd) Comprehensive plan Projects should be consistent with the policies of the comprehensive metropolitan plan and should minimize adverse economic effects on surrounding properties Topeka Comprehensive Plan and all its elements.
- (he) Additional regulations In addition to the foregoing guidelines, eConditional uses shall be required to conform to the additional any other applicable regulations specifically listed for a use as set forth in Chapter 18.225 TMC or elsewhere in the code.

66

67 Section 4. That section 18.215.040, Restriction – Authority, of The Code of the
 68 City of Topeka, Kansas, is hereby amended to read as follows:

69 **Restriction—AuthorityRecommendation of planning commission.**

70 ~~Upon recommending approval of a conditional use permit, the planning~~
 71 ~~commission may place reasonable restrictions and/or conditions upon the proposed~~
 72 ~~use. The governing body may require any reasonable restrictions or conditions upon the~~
 73 ~~granting of a conditional use permit. The granting of a conditional use permit shall be by~~
 74 ~~resolution and shall be assignable to the subject property by legal description and not to~~

~~a person, firm or corporation.~~The planning commission may recommend approval, approval with conditions/restrictions, or denial of permit. Conditions may require renewal of the permit or an expiration date for the use.

Section 5. That section 18.215.050, Revocation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Revocation**Failure to commence permitted use.**

~~The governing body may revoke any conditional use permit pursuant to this chapter. No conditional use permit issued pursuant to this chapter shall be subject to the revocation procedures herein until such time that a complaint has been filed in the office of the city or county clerk and a hearing held before the governing body. Within 30 days of the receipt of a complaint, the city or county clerk shall set the date for the public hearing giving notice of the time, place and subject of such hearing by publishing the same once in the official city newspaper at least 20 days prior to the date fixed for the hearing. A copy of the notice shall be mailed to the current holder of the conditional use permit in question. Upon hearing, the governing body may take such action as to allow the continuance of the permit, continuance of the permit subject to additional restrictions, or revocation of the permit.~~

(a) This use permitted by a conditional use permit shall commence within three (3) years from the date of the resolution. Failure to commence such use within such time period shall render the permit null and void. "Commence" means that the applicant has begun operation of the authorized use or has secured a building permit on file with the city which has not expired.

(b) Conditional use permits approved prior to March 1, 2012, shall expire on March 1, 2015, unless the property owner has commenced the permitted use prior to March 1, 2015, or has secured a building permit prior to March 1, 2015, that is on file with the city and has not expired.

Section 6. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 18.215.060, which said section reads as follows:

Revocation.

(a) The planning commission may recommend revocation of a conditional use permit to the governing body provided that the commission has notified in writing the property owner and has given the property owner an opportunity to appear before the planning commission.

(b) Revocation may occur if any of the following applies:

(1) Failure to comply with any of the conditions established in the permit;

(2) The use has expanded or deviated from its original use and purpose; or

(3) The use has been found by a court of law, federal or state agency to be an illegal activity or nuisance.

(c) The planning commission shall submit its recommendation to the governing body which will decide in accordance with K.S.A. 12-757(d) and amendments thereto.

Section 7. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 18.215.070, which said section reads as follows:

Amendments.

(a) Amendments to a conditional use permit may be initiated by the property owner(s), planning commission, or governing body and shall be binding upon the heirs, executors, administrators, trustees, and assignees of said property owner.

(b) Minor amendments. Minor changes to either the conditions of approval in the resolution of a conditional use permit or the conditional use permit site plan may be approved administratively by the planning director as herein provided. Such changes may be authorized without additional public hearings, at the discretion of the planning director. This provision shall not prohibit the planning director from requesting a recommendation from the planning commission if the planning director determines the changes are not consistent with the use or conditions approved by the governing body.

(1) Minor amendment criteria. Amendments shall be deemed minor if the cumulative revisions to the approved conditional use permit on record with the planning department do not include any of the following:

(i) An increase in the conditional use permit boundary area, as shown on the plan or as legally described in the approving resolution.

(ii) An increase by greater than 10 percent of the height, floor area, any development threshold, or building coverage, as approved by the original conditional use permit.

(iii) The possible creation of obstacles, barriers, and service problems to traffic circulation, fire protection, public safety, and public utility services due to the revision(s).

(iv) An increase by greater than 20 percent to any approved signage including, but not limited to, height or sign face area.

(2) Submittal of minor revisions to an approved conditional use permit.

The proposed revised conditional use permit site plan or changes to the conditions within the resolution of the conditional use permit shall be submitted to the planning director for consideration of approval. If the conditional use permit site plan is revised it shall include all data, conditions, and information identical to the most recently approved plan in addition to the proposed revisions. A letter of transmittal from the applicant setting forth in detail all proposed changes shall accompany the submittal of the application. The planning director may approve; approve with the inclusion of additional or revised conditions of approval; or deny the proposed minor amendment.

(3) If the planning director denies the amendment, the applicant may pay the applicable fee and appeal to the planning commission utilizing the procedure in TMC 18.245.020(b).

(c) If the planning director determines that a proposed amendment to a conditional use permit involves changes identified in TMC 18.215.070(b)(1), the applicant shall submit an application for amendment utilizing the procedure in TMC 18.245.020(b).

Section 8. That section 2.45.140, Variances not allowed, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Variances not allowed.

164 In exercising its authority, the board of zoning appeals shall not grant a variance
165 that would create any of the following effects:

166 (a) The effect of the variance on the specific property would adversely affect
167 the land use pattern as outlined by any city land use plan or policy.

168 (b) The variance would be a material detriment to the public welfare or create
169 injury to the use, enjoyment or value of property in the vicinity.

170 (c) The variance is not the minimum variance that will relieve the proven
171 hardship.

172 (d) The variance would allow a use not allowed in the permitted zoning district
173 in which the parcel is located.

174 (e) The variance will relieve the applicant of conditions or circumstances that
175 are caused by the illegal subdivision of land, which subdivision of land caused the
176 property to be unusable for any reasonable development under the existing regulations.

177 (f) The variance is grounded solely upon the opportunity to make the property
178 more profitable or to reduce expense to the owner.

179 (g) The variance will modify anyone or more conditions imposed by the
180 ~~Topeka planning commission or city council~~ governing body as part of a conditional use
181 permit or planned unit development.

182 Section 9. That original § 18.215.010 through § 18.215.050 and § 2.45.140 of
183 The Code of the City of Topeka, Kansas, are hereby specifically repealed.

184 Section 10. This ordinance shall take effect and be in force from and after its
185 passage, approval and publication in the official City newspaper.

Section 11. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 12. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body on January 17, 2012.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk