

Article 5.4 Use Permits

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5.401 Purpose and Applicability

Chapter I, Division 2: Land Use Regulations sets forth those uses for which a use permit is required. No use requiring a use permit may be commenced until a use permit is obtained. Generally these uses require special consideration to ensure that they can be designed, located, and operated in a manner that will not interfere with the use and enjoyment of surrounding properties. The process for review of use permit applications is designed to evaluate possible adverse impacts and to minimize them where possible through the imposition of specific conditions or requirements. Approval of a use permit requires review of the location, design, configuration, and special impacts of a proposed use to determine, based on standards set forth in the Zoning Code, the desirability of permitting the use on a particular site.

This article sets forth the requirements for three use permit classifications:

- A. ***Administrative Use Permit.*** A use permit approved by the Zoning Administrator for a use in specified districts based on a determination of compliance with standards set forth in the Base District Regulations and individual review of their location, design, configuration, intensity, and density of use or structures.
- B. ***Conditional Use Permit.*** A use permit approved by the Planning Commission for a use in specified districts based on a determination of compliance with standards set forth in the Base District Regulations and individual review of their location, design, configuration, intensity, and density of use or structures.
- C. ***Special Use Permit.*** A use permit approved by the Planning Commission for a use in any zoning district, based on consideration of the technical requirements of the use, characteristics of the location where the use is proposed to be established, and impacts on adjacent uses. Examples of uses that require Special Use Permits are Agritainment, police and fire stations, wastewater treatment facilities, and water reservoirs.

5.402 Procedures

- A. **Administrative Use Permit.** The following procedures shall apply to applications for Administrative Use Permits (AUP):
1. **Application.** An application for an Administrative Use Permit shall be filed with the Development Services division in accordance with the application procedures set forth in Article 5.2: Common Procedures.
 2. **Neighborhood Notice.** The Zoning Administrator shall prepare a Neighborhood Notification for applications for Administrative Use Permits. The notice shall be subject to the following requirements:
 - a. At least 15 days prior to the date of the Notice of Decision, the applicant shall notify by first-class mail:
 - (1) All property owners of record within 300 feet of the property, unless the General Plan or other policy adopted by the Town Council requires notification within a larger area;
 - (2) All HOAs within 1,000 feet of the property;
 - (3) All neighborhoods within 1,000 feet of the property that are registered with the Town of Gilbert Neighborhood Services Office;
 - (4) The property owner if the application is initiated by a person other than the property owner; and
 - (5) Any person or group who has specifically requested notice regarding the application.
 - b. The Director of Planning may expand the notification area set forth in Section 5.402A.2a.(1), 5.402A.2a.(2), and 5.402A.2a.(3) if he determines the potential impact of the project extends beyond the required notification boundary;
 - c. The applicant shall submit a signed affidavit and copies of the mailing, along with any responses and applicant's action, prior to decision. Failure of applicant to provide evidence of mailing shall result in a deferment of action on the item.
 - d. The neighborhood notification shall describe the proposed use; the date the decision will be rendered by the Zoning Administrator; the time and place where the public may review the entire application; and the procedure and deadline for filing an appeal of the decision.

3. *Validity of Proceedings.* The validity of the proceedings shall not be affected by the failure of any person to receive such mailed notice.
 4. *Option to Require Public Hearing.* The Zoning Administrator may require a public hearing before the Planning Commission for any Administrative Use Permit application that the Zoning Administrator determines to have special neighborhood or community significance. In such cases, the Commission shall review and act upon the Application in the manner described in this article for Conditional and Special Use Permits. The Zoning Administrator shall not schedule such applications for consideration by the Commission until the applicant has paid a fee for a public hearing as set by Council resolution.
 5. *Action.* Except as provided for in Section 5.402A.4: Option to Require Public Hearing, the Zoning Administrator shall review the application for compliance with the Zoning Code. The Zoning Administrator shall approve, approve with modifications and/or conditions, or deny the application and shall set forth any proposed findings and decision on a Notice of Administrative Decision. The Notice of Administrative Decision shall be mailed to the applicant by first class mail within 45 days from the filing of the application.
 6. *Appeal.* Decisions of the Zoning Administrator on Administrative Use Permits may be appealed to the Planning Commission pursuant to the procedures set forth in Section 5.2011: Procedures for Appeals. The Planning Commission's decision shall be final. The Planning Commission shall have the authority to uphold, modify, or overrule the decision of the Zoning Administrator. The Town Council may, however, certify for its review any action of the Commission regarding an AUP as provided for in Article 5.10: Appeals of Dedications, Exactions and Zoning Regulations and Reconsideration of Certain Decisions.
- B. ***Conditional and Special Use Permits.*** The following procedures shall apply to applications for Conditional and Special Use Permits:
1. *Application.* An application for a Conditional or Special Use Permit shall be filed with the Development Services division in accordance with the application procedures set forth in Article 5.2: Common Procedures.
 2. *Public Notice.* Public notice shall be provided in accordance with the public notification procedures set forth in Section 5.205: Notice of Public Hearings.
 3. *Staff Report.* The Director shall prepare and transmit to the Planning Commission a staff report, including an analysis and recommendation, setting forth any proposed findings and conditions upon which the Commission may base its decision.

4. *Public Hearing.* The Planning Commission shall conduct a public hearing in accordance with the procedures set forth in Section 5.206: Public Hearing Procedures.
5. *Action.* The Planning Commission may approve, approve with modifications and/or conditions, or deny special and conditional use permits. If the Planning Commission fails to take action within 90 days after closing the public hearing, the Planning Commission shall be deemed to have denied the application.
6. *Appeal.* Decisions of the Planning Commission may be appealed to the Town Council pursuant to the procedures set forth in Section 5.2011: Procedures for Appeals. The Town Council's decision shall be final. The Town Council shall have the authority to uphold, modify, or overrule the decision of the Planning Commission. The Town Council may, however, certify for its review any action of the Commission regarding a Use Permit as provided for in Article 5.10: Appeals of Dedications, Exactions and Zoning Regulations and Reconsideration of Certain Decisions.

5.403 Required Findings

The Planning Commission or the Zoning Administrator, in the case of Administrative Use Permits, shall approve, approve with modifications and/or conditions, or deny a use permit after making findings of fact set forth in this section.

- A. *Findings Required for Approval of Administrative Use Permit.* The Zoning Administrator may approve an Administrative Use Permit as submitted or modified only upon making the following findings:
1. The proposed use will not be detrimental to the health, safety, or general welfare of persons living or working in the vicinity, to adjacent property, to the neighborhood, or to the public in general;
 2. The proposed use conforms with the purposes, intent, and policies of the General Plan and its policies and any applicable area, neighborhood, or other plan officially adopted by the Town Council;
 3. The proposed use conforms with the conditions, requirements, or standards prescribed by the Zoning Code and any other applicable local, State, or Federal requirements; and
 4. The proposed use, as conditioned, would not unreasonably interfere with the use and enjoyment of nearby properties.

- B. ***Findings Required for Denial of Administrative Use Permit.*** If the Zoning Administrator is unable to make the required findings for approval, he shall deny the application, in which case he shall state in writing the reasons for that determination.
- C. ***Finding Required for Approval of Conditional Use and Special Use Permits.*** The Planning Commission may approve a Conditional Use Permit or Special Use Permit as submitted or modified only upon making the following findings:
1. The proposed use will not be detrimental to health, safety, or general welfare of persons living or working in the vicinity, to adjacent property, to the neighborhood, or to the public in general;
 2. The proposed use conforms with the purposes, intent, and policies of the General Plan and its policies and any applicable area, neighborhood, or other plan adopted by the Town Council;
 3. The proposed use conforms with the conditions, requirements, or standards required by the Zoning Code and any other applicable local, State, or Federal requirements; and
 4. The proposed use, as conditioned, would not unreasonably interfere with the use and enjoyment of nearby properties.
- D. ***Additional Finding Required for Approval of Special Use Permit.*** In addition to the findings required for approval in Section 5.403.C: Finding Required for Approval of Conditional Use and Special Use Permits, in order to approve a Special Use Permit the Planning Commission shall find that the proposed location is reasonably necessary to meet the objectives of the proposed use based on technical requirements.
- E. ***Findings Required for Denial of Conditional Use and Special Use Permits.*** If the Commission is unable to make the required findings for approval, it shall deny the application, in which case the Chair shall state in writing the reasons for that determination.

5.404 Expiration; Modifications; Revocation

- A. ***Expiration.*** A use permit shall automatically expire 3 years from its effective date unless either of the following has occurred:
1. Commencement of the use, or
 2. Commencement of construction pursuant to a valid building permit.

- B. **Modifications.** No change is permitted in the use or structure for which a use permit has been issued except as follows:
1. *Administrative Use Permit.* The Zoning Administrator may approve modifications to any Administrative Use Permit. Modifications are limited to reasonable changes to the Administrative Use Permit that do not substantially alter a Final Design Review approval or any condition of the Administrative Use Permit. The Zoning Administrator shall provide written records of the decision and supportive findings.
 2. *Conditional Use and Special Use Permits.* Modifications to a Conditional or Special Use Permit may be granted by the decision-making body pursuant to the procedures set forth in Article 5.2: Common Procedures.
 3. *Conditional Use Permits for Wireless Communication Facilities.*
 - a. Substantial changes to conditional use permits for wireless communication facilities (WCF), including but not limited to a change in physical location of the structure on which antennas are mounted, shall proceed as set forth above in Section 5.404.B.2.
 - b. Minor changes to conditional use permits for wireless communication facilities (WCF) may be approved by the Zoning Administrator upon a finding that the change does not substantially alter the use permit approval or any condition of approval. The Zoning Administrator shall provide written records of the WCF decision and supportive findings.
- C. **Revocation.** A use permit may be revoked by the decision-making body following a public hearing if the use ceases for a period of 90 consecutive days, or because of failure to comply with the conditions of the use permit.
1. *Initiation of Revocation.* Proceedings for the revocation of a use permit may be initiated by the Zoning Administrator. The Zoning Administrator shall prepare a written report to the decision-making body that contains the following information:
 - a. The use permit to be revoked,
 - b. The property to which the permit applies; and
 - c. The reason or reasons for the proposed revocation.
 2. *Notice of Revocation Hearing.*
 - a. Notice of a revocation hearing shall be given by first class mail at least 15 days prior to the hearing as follows:

- (1) To the property owner of record;
 - (2) To the property address; and
 - (3) To the business address.
- b. Notice of the public hearing shall be published at least 15 days prior to the date of the hearing at least once in a newspaper of general circulation published or circulated within the Town of Gilbert.
- c. Notice shall be posted at least 15 days prior to the date of the hearing at 4 public places within the Town designated by Town Council resolution for posting of public notices.
3. *Hearing.* The revocation hearing shall be held in accordance with the procedures for public hearing set forth in Section 5.206: Public Hearing Procedures.
4. *Required Findings.* In order to revoke the use permit, the decision-making body shall make one or more of the following findings:
- a. One or more of the terms of conditions of the use permit have been violated or there has been a violation of other applicable laws or regulations;
 - b. The use has ceased for at least 90 consecutive days and the applicant has not demonstrated any circumstances justifying the cessation of use.
5. *Action.* Upon revocation of the use permit, the Zoning Administrator shall set forth the decision in a Notice of Decision describing the decision-making body's action, with its findings.
- a. The Notice of Decision shall be mailed to the applicant by first class mail and to:
 - (1) To the property owner of record;
 - (2) To the property address; and
 - (3) To the business address.

5.405 Appeals

- A. *Conditional and Special Use Permits.* Decisions on a Conditional and Special Use Permits may be appealed to the Town Council pursuant to the procedures set forth in Section 5.2011: Procedures for Appeals.

- B. ***Administrative Use Permits.*** Decisions on an Administrative Use Permits may be appealed to the Planning Commission pursuant to the procedures set forth in Section 5.2011: Procedures for Appeals.

5.406 Effective Date of Permit

The effective date of the use permit shall be the 11th day after the approval, unless the action is appealed in accord with Section 5.2011: Procedures for Appeals. No building, grading, or construction permit shall be issued until the use permit becomes effective.