



THE PLANNER'S TRAINING SERIES:

The Conditional Use Permit

Governor's Office of Planning and Research
1400 Tenth Street • Sacramento, CA 95814 • 916-445-0613

August 1997

This document is one in a series prepared by the Office of Planning and Research (OPR) on topics of general interest to planners. As with the rest of this series, its primary purpose is to provide both a reference for experienced planners and training materials for new planners, planning commissioners, and zoning board members. Citations are made to pertinent sections of the California statutes and to court decisions in order to provide the reader the opportunity to do additional research on their own. Unless otherwise noted, all statutory references are to the California Government Code.

- [What is a Conditional Use Permit?](#)
- [Enabling Legislation](#)
 - Constitutional Authority
 - Statutory Authority
 - Case Law
- [Procedure](#)
 - Public Hearing
 - California Environmental Quality Act
 - Permit Streamlining Act
- [Limitations on Conditional Use Permits](#)
 - General Welfare Standard
 - Nuisance Standard
 - General Plan Consistency Standard
 - Zoning Consistency Standard
- [Other Types of Conditional Use Permits](#)
 - "Granny" Units
 - Second Dwelling Units
 - Mobilehome Parks
- [Findings](#)
- [Conditions of Approval](#)
- [Conditional Use Permit Checklist](#)
- [Examples](#)
 - Cases Upholding Conditional Use Permit Approvals
 - Cases Overturning Conditional Use Permit Approvals
- Bibliography

WHAT IS A CONDITIONAL USE PERMIT?

A CONDITIONAL USE PERMIT (CUP) allows a city or county to consider special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district, through a public hearing process. A conditional use permit can provide flexibility within a zoning ordinance. Another traditional purpose of the conditional use permit is to enable a municipality to control certain uses which could have detrimental effects on the community (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176).

Consideration of a CUP is a discretionary act. A CUP application tendered by a project proponent is considered at a public hearing and, if approved, is generally subject to a number of pertinent conditions of approval. Depending on local ordinance requirements, hearings are typically held by a board of zoning, the planning commission, or a zoning administrator. The owners of property near the site are sent advance notice of the date, time, and place of the hearing.

Examples of common uses allowed with a conditional use permit can be found in any city or county zoning ordinance. For example, Santa Rosa's zoning ordinance lists uses which may be permitted within single-family residential districts with a conditional use permit. These uses include churches, public or private schools, public building or utility structures, parking lots, temporary subdivision sales offices, and community care and health care facilities. Chico's zoning ordinance lists various uses permitted with a use permit issued by either a planning director or planning commission. These uses include temporary amusement attractions, the placement of a building or structure on a lot or parcel which has been moved from another lot or parcel, public buildings and facilities, parking or access located off-site from the site being served, private recreation centers, and planned developments. Each city or county may include in their zoning ordinance a wide variety of uses which they will permit with a conditional use permit.

[TOP](#)

ENABLING LEGISLATION

The rules under which counties and general law cities may issue a conditional use permit are provided by state and case law. Charter cities are not subject to state zoning law, except in special circumstances, but may still use its provisions (Section 65803). The following is a brief examination of the authority and rules under which local governments act in issuing use permits.

Constitutional Authority:

Local governments have the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The "police power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws. The police power is the basis for charter city zoning powers.

(California Constitution, Article XI, Section 7)

Statutory Authority:

California code reiterates the Constitutional police powers of cities and counties to enact zoning regulations, but has little to say about CUPs in particular.

"The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

"Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes...."

(Section 65850(a))

"The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters...."

"The board of zoning adjustment or zoning administrator may also exercise any other powers granted by local ordinance and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business."

(Section 65901(a))

Case Law:

California case law has established a number of fundamental principles relating to conditional use permits. In addition to the basic uses permitted within a zoning district, a city or county zoning ordinance can provide other specified uses which may be permitted after consideration and resolution by an administrative agency that the proposed use is in the best interest of public convenience and necessity and will not be contrary to the public health, morals, or welfare (*Upton v. Gray* (1969) 269 Cal.App.2d 352).

Local governments must have a complete and valid general plan before they can issue conditional use permits (*Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800 and *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176).

The authority to consider conditional use permits, delegated to planning commissions or other administrative bodies by elected officials, must include standards of guidance. These standards of guidance are provided to insure that the delegation of discretion to an administrative agency is not unbridled and, thus, not invalid. The doctrine of the need of an ascertainable standard to guide an administrative body applies where the legislative body of a city attempts to delegate its law-making functions (*Stoddard v. Edelman* (1970) 4 Cal.App.3d 544).

[TOP](#)

It is often the case that local agencies follow a general set of standards in considering a conditional use permit. These standards are generally acceptable since it is a near impossibility to devise standards to cover all possible situations in which a use permit can be issued (*Tustin Heights Association v. Board of Supervisors* (1959) 170 Cal.App.2d 619). There are several cases in which these standards have been upheld.

General Welfare Standard:

"The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood" (*Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586).

Nuisance Standard:

"Any use found to be objectionable or incompatible with the character of the city and its environs due to noise, dust, odors or other undesirable characteristics may be prohibited" (*Snow v. City of Garden Grove* (1961) Cal.App.2d 496).

General Plan Consistency Standard:

"Although use permits are not explicitly made subject to a general plan meeting the requirement of state law, that condition is necessarily to be implied from the hierarchical relationship of land use laws. Thus, use permits are struck from the mold of the zoning law, the zoning law must comply with the adopted general plan, and the adopted general plan must conform with state law; the validity of the permit process derives from compliance with this hierarchy of planning laws (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176).

Zoning Consistency Standard:

"To obtain a use permit, the applicant must generally show that the contemplated use is compatible with the policies in terms of the zoning ordinances, and that such use would be essential or desirable to the public convenience or welfare, and will not impair the integrity and character of the zoned district or be detrimental to the public health, safety, morals or welfare" (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151).

In addition to the general standards discussed, there also exist other limitations on conditional use permits. Conditional use permits run with the land not the applicant (*Cohn v. County Board of Supervisors* (1955) 135 Cal.App.2d 180). That is, where conditional use permits are concerned, all related property and personal rights are freely transferable, unless expressly prohibited by law (*Anza Parking Corporation v. City of Burlingame* (1988) 195 Cal.App.3d 855). Inversely, a conditional use permit may not lawfully limit the permittee from transferring it with the land since such a condition is beyond the power of the zoning authority (*Anza*, supra).

The conditions which are imposed on a conditional use permit must be expressly attached to the permit and cannot be implied. For example, if a conditional use permit contains language that restricts a building's height to five stories and requires the developer to submit and obtain planning commission approval of a landscaping plan, among other things, the permit itself does not imply a height limitation on trees within the development (*Pacifica Homeowners' Association v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147).

[TOP](#)

CONDITIONS OF APPROVAL

Section 65901 empowers local decision-making bodies to take action on use permit proposals when zoning ordinances make provisions and set criteria for them. The hearing body may also modify a conditional use permit's terms by imposing new or revised conditions, if the ordinance, interim ordinance, or original conditional use permit so provides (*Garavatti v. Fairfax Planning Commission* (1971) 22 Cal.App.3d 145).

Just as there are limitations in approving a conditional use permit, there are also limitations in establishing conditions of approval. Four general rules of thumb in applying conditions of approval include: (1) the jurisdiction must be acting within its police powers; (2) the condition must substantially further a legitimate public purpose; (3) the condition must further the same public purpose for which it was imposed; and (4) the property owner may not be required to carry a disproportionate load in furthering the public purpose (*California Land-Use and Planning Law*, 9th edition).

Section 65909 provides that dedications of land, as conditions of approval, must be "reasonably related" to the use of the property for which the conditional use permit is requested. There must also be a "rough proportionality" between the extent of the condition and the particular demand or impact of the project (*Dolan v. City of Tigard* (1994) 129 L.Ed2nd 304). In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use. Limitations on impact fees are described in the Mitigation Fee Act (Section 66000, et seq.).

If a condition applied to a conditional use permit is not linked to some legitimate public need or burden the project creates, the condition imposed could be deemed a taking of property in violation of the U.S. Constitution's Fifth and Fourteenth Amendments (*Nollan v. California Coastal Commission* (1987) 97 L.Ed2nd 677). Where a regulatory taking has been found to occur, the courts will overturn the agency's action and may require the agency to pay the applicant compensation for the taking (*Dolan*, supra).

[TOP](#)

CONDITIONAL USE PERMIT CHECKLIST

If a conditional use permit is to be approved, all of the following questions must be answered affirmatively.

1. Is the public hearing notice complete in its description of the project?
2. Has the public hearing notice been issued in accordance with all procedures?