

## **Article 41 Use Permits and Variances (City-wide)**

### **Sections:**

- 4101 Purposes
- 4102 Authority of the City Planner, Planning Commission, Harbor Board of Directors, Community Development Commission and City Council
- 4103 Application for Use Permit or Variance
- 4104 Notice, Administrative Decision, and Public Hearing
- 4105 Required Findings
- 4106 Conditions of Approval
- 4107 Effective Date
- 4108 Lapse of Approval; Time Extension; Transferability; Discontinuance; Revocation
- 4109 Changed Plans
- 4110 Appeals

### **4101 Purposes**

This article provides the flexibility in application of land use and development regulations necessary to achieve the purposes of this ordinance by establishing procedures for approval, conditional approval, or disapproval of use-permit and variance applications. Use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.

Variances are intended to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site. Cost to the applicant of strict compliance with a regulation shall not be the sole reason for granting a variance.

Variances may be granted with respect to fences, walls, landscaping, screening, site area, site dimensions, yards, height of structures, courts, distances between structures, open space, signs, off-street parking and off-street loading, frontage, locational requirements and performance standards.

Authorization to grant variances does not extend to use regulations because the flexibility necessary to avoid results inconsistent with the land use objectives of this ordinance is provided by the use permit process for specified uses and by the authority of the Planning Commission, Harbor Board of Directors or Community Development Commission to determine whether a specific use belongs within one or more of the use classifications listed in Article 4.

**4102 Authority of the City Planner, Planning Commission, Harbor Board of Directors, Community Development Commission and City Council**

The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits or variances which are consistent with the General Plan subject to the general purposes of this ordinance, the specific purposes of the base or overlay zoning district in which a development site is located, and the provisions of this article, unless authority for a decision on a use permit is specifically assigned to the City Planner in the individual articles of this ordinance.

Within designated redevelopment areas, the City Planner shall recommend approval, conditional approval, or denial of applications for use permits or variances to the Community Development Commission (acting as the Planning Commission for the designated redevelopment area), which shall have final decision-making authority over such applications under this article.

The City Planner may refer development plans for any project to the Planning Commission for review and approval if he finds that the project may conflict with the purposes and standards of the base district and any overlay districts applicable to the project or with the purposes of this article, or if public services and facilities serving the project may be inadequate. Such projects shall be the subject of a public hearing, as provided by Section 4305.

Within the Oceanside Small Craft Harbor, recommendations shall be made by the Harbor Chief Executive Officer for processing and action by the Harbor Board of Directors, which shall have final decision-making authority, except for projects that are also within a redevelopment area, in which case the Community Development Commission shall have final authority.

For use permits involving condominium conversions of five units or more, mobile home park conversions, and regulated uses not within a redevelopment area or the Harbor, the City Council shall have final decision-making authority (see Articles 32, 34 and 36 respectively)

**4103 Application for Use Permit or Variance**

Applications for use permits and variances shall be initiated by submitting the following materials to the Planning Division:

- A. A completed application form, signed by the property owner or authorized agent, accompanied by the required fee, plans and mapping documentation in the form prescribed by the City Planner;
- B. A map showing the location and street address of the development site and all lots within 300 feet of the boundaries of the site; and

- C. A list, drawn from the last equalized property tax assessment roll, showing the names and addresses of the owners of record of each lot within 300 feet of the boundaries of the site. This list shall be keyed to the map required in subsection (B) above.

**4104 Notice, Administrative Decision, and Public Hearing**

- A. Administrative Decision. For use permit applications that only require the consideration of the City Planner, the City Planner shall administratively approve, conditionally approve, or disapprove the use permit application.
- B. Public Hearing Required. For use permit and variance applications that require the consideration of the Planning Commission, Community Development Commission or Harbor Board of Directors, a public hearing of the Planning Commission, Community Development Commission, or Harbor Board of Directors shall be held to approve, conditionally approve, or disapprove the use permit or variance application.
- C. Time of Administrative Decision or Public Hearing. Within 10 working days after acceptance of a complete application, the City Planner shall set a time and place for an administrative decision or a public hearing to be held within 60 days.
- D. Notice. Notice of the administrative decision or public hearing shall be given in the following manner:
  - 1. Published Notice. Notice shall be published in at least one newspaper of general circulation within the City at least 10 days prior to the administrative decision or public hearing on the project.
  - 2. Mailed or Delivered Notice. At least 10 days prior to the administrative decision or public hearing, notice shall be mailed to the applicant and all owners of property within 300 feet of the boundaries of the site, as shown on the last equalized property tax assessment role.
- E. Contents of Notice. The notice of the administrative decision or public hearing shall contain:
  - 1. A description of the location of the development site and the purpose of the application;
  - 2. A statement of the time, place, and purpose of the administrative decision or public hearing;
  - 3. A reference to application materials on file for detailed information; and
  - 4. A statement that any interested person or an authorized agent may comment or appear and be heard.

- F. Multiple Applications. When applications for multiple use permits or variances on a single site are filed at the same time, the City Planner shall schedule a combined administrative decision or public hearing.

#### **4105 Required Findings**

The Planning Commission, Community Development Commission, Harbor Board of Directors or the City Planner as the case may be, may approve an application for a use permit or variance as it was applied for or in modified form as required by the City Planner, Community Development Commission, Harbor Board of Directors or Planning Commission if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission, Community Development Commission, Harbor Board of Directors or the City Planner finds:

A. For Use Permits.

1. That the proposed location of the use is in accord with the objectives of this ordinance and the purposes of the district in which the site is located.
2. That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city.
3. That the proposed conditional use will comply with the provisions of this ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located.
4. For properties located within the coastal zone: That the proposed conditional use will be consistent with all applicable policies of the certified Land Use Plan.

B. For Variances.

1. That because of special circumstances or conditions applicable to the development site including size, shape, topography, location or surroundings strict application of the requirements of this ordinance deprive such property of privileges enjoyed by other property in the vicinity and under identical zoning classification;
2. That granting the application will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and
3. That granting the application is consistent with the purposes of this ordinance and

will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district; and, if applicable,

4. For properties located within the OS District: That granting the application is consistent with the requirements of Section 65911 of the Government Code and will not conflict with General Plan policies governing orderly growth and development and the preservation and conservation of open-space lands.
5. For properties located within the coastal zone: That granting the application is consistent with all applicable policies of the certified Land Use Plan.

#### **4106 Conditions of Approval**

In approving a use permit or variance, the Planning Commission, Community Development Commission, Harbor Board of Directors or the City Planner as the case may be, may impose reasonable conditions necessary to:

- A. Achieve the general purposes of this ordinance or the specific purposes of the zoning district in which the site is located, or to make it consistent with the General Plan;
- B. Protect the public health, safety, and general welfare; and
- C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

Limits on Conditions of Approval. No conditions of approval of a use permit shall include use, height, bulk, density, open space, parking, loading, or sign requirements that are less restrictive than those prescribed by applicable district regulations.

#### **4107 Effective Date**

Effective Date. Use permits administratively approved by the City Planner shall become effective on the date of the City Planner's administrative decision, unless appealed to the Planning Commission, or Community Development Commission, as provided for in this article. Use permits and variances approved by the Planning Commission Community Development Commission or Harbor Board of Directors shall become effective on the date of adoption of the Planning Commission, Community Development Commission or Harbor Board of Directors resolution, unless appealed, as provided for in Article 46.

#### **4108 Lapse of Approvals; Time Extension; Transferability; Discontinuance; Revocation**

- A. Lapse of Approvals. A use permit or variance shall lapse two years after the effective date of approval or conditional approval or at an alternative time specified as a condition of approval unless:
  1. A grading permit has been issued and grading has been substantially completed

and/or a building permit has been issued, and construction diligently pursued; or

2. A certificate of occupancy has been issued; or
  3. The use is established; or
  4. The use permit or variance is extended.
  5. In cases where a use permit or variance is approved concurrently with a Tentative Map and a Final Map or Parcel Map is recorded, the use permit or variance shall be effective for an additional 24 months from the date of recordation of the Final Map or Parcel Map.
- B. Time Extension. Upon application by the project applicant filed prior to the expiration of an approved or conditionally approved use permit or variance, the time at which the use permit or variance expires may be extended by the City Planner, ~~or~~ the Planning Commission, Community Development Commission, or Harbor Board of Directors, as the case may be, for a period or periods not to exceed a total of three years. Application for renewal shall be made in writing to the City Planner no less than 30 days or more than 90 days prior to expiration. Decisions on Time Extensions may be appealed, as prescribed in Article 46.
- C. Transferability. The validity of a use permit or a variance shall not be affected by changes in ownership.
- D. Discontinuance. A use permit or variance shall lapse if the exercise of rights granted by it is discontinued for six consecutive months.
- E. Revocation. A use permit or variance that is exercised in violation of a condition of approval or a provision of this ordinance may be revoked, as provided in Section 4704.

#### **4109 Changed Plans**

- A. Changed Plans. A request for changes in conditions of approval of a use permit or variance, or a change to the approved plans that would affect a condition of approval, shall be treated as a new application. The City Planner may waive the requirement for a new application if the changes requested are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the project's approval or otherwise found to be in substantial conformance.

#### **4110 Appeals**

- A. Rights of Appeal and Review. Use permit decisions of the City Planner may be

appealed by any interested party to the Planning Commission, or Community Development Commission, as the case may be. Use permit and variance decisions of the Planning Commission may be appealed by any interested party to the City Council.

- B. Procedures; Public Hearings. Procedures for appeals shall be as prescribed by Article 46.

## **Article 41 C Use Permits (Coastal Zone – Exclusive of Downtown)**

### **Sections:**

- 4111 Purpose
- 4112 Uses Requiring Conditional Use Permit
- 4113 Trailers or Equipment Vans
- 4114 High Rise Structures
- 4115 Expandable Homes
- 4116 Residential Uses in Commercial Zones
- 4117 Office and Commercial Uses in Industrial Zones
- 4118 Travel Trailer Parks
- 4119 Churches in Industrial Zones
- 4120 Time Share Resorts

### **4111 Purpose**

The following uses, and all matters directly related to such uses, are declared to be possessing such unique and special characteristics as to make it impractical for them to be automatically included within some or any of the zoning districts defined in this ordinance. The location and operation of any of these uses within the Coastal Zone - exclusive of the Downtown District - shall be subject to the review and issuance of a Conditional Use Permit (CUP), pursuant to Article 41.

### **4112 Uses Requiring Conditional Use permit**

The following uses require conditional use permits within the zones indicated. Such permits shall be issued in accordance with the provisions of this Ordinance.

- (1) Allowed within zone by right.
- (X) Allowed within the zone after granting of CUP.
- (no mark) Not allowed within zone.

	F	O	R1	R3	RT	OP	C1	C2	M1	VC	H
Airports, heliports, landing fields					X	X	X	X	X		
Ambulance services						X		X			
Amusement parks					X		X			X	
Apartments – 20 units +				X	X	X	X	X			
Apartments – less than 20 units (per R-3)				1	1	X	X	X			
Arcades								X			
Automobile service stations							X	X	X	X	
Bars and cocktail lounges (not associated with restaurant)								X		X	
Bathhouses								X			
Boat building, indoor construction only, outside rigging areas permitted									X		
Breweries, Craft											
Tier 1								A			
Tier 2 and/or abutting residential zones, churches, or schools								X			
Campgrounds and recreation vehicle parks		X						X			
Car washes								X			
Card rooms								X			
Cemeteries		1									
Churches and accessory uses			X	X	X	X	X	X	X		
Clubs, lodges etc.											
(a) Nonprofit –neighborhood;			X	X	X	X	X	X			
(b) Nonprofit regional; (c) Profit					X	X	X	X			
Columbariums, crematories, mausoleums, mortuaries		X			X	X	X	X			
Convenience food stores							X	X		X	
Dance halls/ Dance establishments								X			
Day Care Facilities		X	X	X	X	X	X	X	X		
Drive-in facilities					X		X	X		X	
Escort services – include “out-call”					X			X			
Expandable home			X	X	X						
Food and Beverage Kiosk					X		X	X		X	
Miniature golf courses, driving ranges (separate from standard golf course)					X		X	X			
Golf course (public or private)		1	X	X	X	X	X	X			
Greenhouses (no retail sales in R-1)								X			
Gun shops								X			
High-rise structures (subject to provisions of Section 4113)			X	X	X	X	X	X	X	X	
Hospitals			X	X	X	X	X	X			
Hotels and motels					X		X	X		X	
Industrial uses not listed in M1 Zone									X		
Kennels								1	1		

	F	O	R1	R3	RT	OP	C1	C2	M1	VC	H
Light equipment rental yards						X		X	1		
Liquor Stores							X	X		X	
Locker clubs								X			
Massage establishments								X			
Mini storage/ self storage facilities								X	X		
Mobile home parks			X	X							
Motor vehicle rental/sales (automobile, motor bike/cycle rentals, truck, trailer, camper, motorcycle, new or used sales, rentals or swap lots)								X	X		
Natural mineral resources development	X	X	X	X	X	X	X	X	X		
Parking lots or structures (commercial)					X	X	X	X	X	X	
Pawnshops								X			
Poolrooms, billiard rooms, shooting galleries								X			
Private security agency						X	X				
Public buildings or lands owned and/or operated by Federal, State, County or City	X	X	X	X	X	X	X	1	1	X	
Public utility stations, yards, wells and other similar facilities; electrical receiving and/or transforming stations	X	X	X	X	X	X	X	X	X	X	
Race tracks (animal or auto), rodeos, fairground and similar facilities								X	X		
Radio and television transmitters – commercial								X	X		
Recreation facilities (private commercial)		1					X	X	X	X	
Residential Care, General			X	X							
Restaurant Fast Food					X		X	X		X	
Riding and/or boarding stables, riding schools and related uses (min. site area 2 ac)			X								
Sanitary land fills	X	X	X	X	X	X	X	X	X		
Schools and Colleges		1	X	X	X	X	X	X			
Secondhand stores							X	X			
Self-service Laundromats							X	X			
Sewage disposal plants			X	X	X	X	X	X	X	X	
Shooting gallery								X			
Signs over 35 feet			X	X	X	X	X	X	X		
Swap lots								X			
Theaters – open air, drive-ins						X		X			
Theaters								X			
Temporary trailer or equipment vans (See Section 4113)			X	X	X	X	X	X	X		
Time-share resort projects					X					X	X
Trade, specialty schools						X	X	X	X		
Warehouses – self-storage									X		

	F	O	R1	R3	RT	OP	C1	C2	M1	VC	H
Wineries, Craft											
Tier 1								A			
Tier 2 and/or abutting residential zones, churches, or schools								X			
Worm farms			X								

**4113 Trailers or Equipment Vans**

- (1) Temporary trailer or equipment vans will only be allowed for use by financial institutions, industrial plants, public agencies or public utilities.
- (2) Prior to the filing of a conditional use permit application, the applicant shall first obtain on the application the endorsement of the Building Official, that the use would be proper within the requirements of the Building Code of the City of Oceanside.
- (3) Approval of this use shall be given on a one-year basis and a six-month extension may be granted by the Planning Commission if it is necessary to complete arrangements for construction of a permanent structure to house the use.
- (4) All utility services shall be connected in conformity to the City Building Code requirements.
- (5) Sanitation facilities shall be connected to sewer or shall utilize a self-enclosed independent system unless toilet facilities are available to the applicant on the premises or the person by whom the work is performed.
- (6) No living quarters will be allowed in the trailers or vans.

**4114 High Rise Structures**

- (1) The Planning Commission shall determine from the evidence presented at the hearing that all of the following facts exist:
  - (a) The proposed building or structure at the particular location and under the proposed conditions of development has complied with good planning practices, including provisions for height, building bulk, yards, open space, lot coverage, grading and related public health, safety and convenience features, and will provide for the preservation of the general welfare of the community as if developed to the height limits imposed by the provisions of the appropriate zone.

- (b) The proposed building or structure will comply with the regulations and conditions specified in the Building Code for such structures.
- (c) The granting of an exception will not adversely affect any adopted plan of any governmental agency.
- (2) The Planning Commission may modify or further restrict setback requirements, maximum height, off-street parking, and landscaping requirements upon a specified finding being made that it is necessary to provide for a more aesthetically pleasing project or necessary for the preservation of health, safety, peace or general welfare of persons living in or near the project.

#### **4115 Expandable Homes**

Expandable homes may be permitted subject to meeting the following criteria:

- (1) This provision shall apply only to subdivisions of five or more lots.
- (2) All exterior walls shall be completed as part of the initial construction.
- (3) All necessary building and electrical permits will be required prior to the finishing of any unfinished room(s).
- (4) All unfinished rooms shall be sealed off until completed.
- (5) All plumbing shall be capped off.
- (6) All electrical circuits shall be cut off at the panel.
- (7) The Planning Commission may add additional requirements to insure adequate safety and compatibility to the existing neighborhood.

#### **4116 Residential Uses in Commercial Zones**

Residential dwelling units may be permitted in the C-2 and C-1 zones subject to the following criteria:

- (1) The residential use is a secondary use to an office or commercial use.
- (2) The residential unit shall be located above or on the same lot as the primary commercial use.
- (3) The total number of units shall not exceed the formula of one dwelling unit per 1,000 square feet of lot area.
- (4) For new construction off-street parking shall be provided at a ratio of one space for each dwelling unit. Twenty-five percent (25%) of the parking spaces required by the

office or commercial use may be included within the parking spaces provided by the residential units.

- (5) For existing structures no additional parking need be provided when the Planning Commission finds that adequate off-site parking is provided elsewhere in close proximity to the property.

#### **4117 Office and Commercial Uses in Industrial Zones**

Office and commercial uses not specifically listed within any of the industrial zones may be permitted in any industrial zone subject to the approval of a Conditional Use Permit and under the following criteria:

- (1) The amount of square footage to be used for office and commercial uses shall not exceed 25% of the gross floor area of any development as shown on a development plan or 25% of any freestanding building not part of a development plan.
- (2) Off-street parking shall be in accordance with applicable parking ordinance provisions.
- (3) The uses shall not interfere with the primary industrial uses located in the area.
- (4) An applicant may request that the Planning Commission waive the maximum square footage requirement if it can clearly be shown that the proposed use would comply with the spirit and intent of this section.
- (5) As part of the application package the names and addresses of all owners and tenants within 300 feet of the proposed use shall be submitted.
- (6) The above requirement will not be required if, as part of an approved master development plan, office and commercial uses have been clearly delineated as approved uses.

#### **4118 Travel Trailer Parks**

Travel Trailer Parks may be established, after issuance of a Conditional Use Permit, under the following criteria:

- (1) The General Plan designation must be High Density Residential.
- (2) Zoning must be R-3.
- (3) The number of spaces in any one park may not exceed twenty-five (25) trailers. When located within an existing mobile home park, the number of travel trailers shall not exceed twenty-five (25) or twenty-five percent (25%) of the total number of mobile home spaces in the park whichever is less.

- (4) All units must meet applicable health and safety codes.
- (5) Restroom and shower facilities must be provided within a reasonable distance from the travel trailers.
- (6) Off-street parking at a ratio of one space per unit shall be provided.
- (7) Landscaping shall be provided on a ratio of thirty-five percent (35%) of the lot area.
- (8) A six-foot masonry wall surrounding a travel trailer park shall be provided.
- (9) A waiver to the development standards identified above shall be considered if the park is created as a result of the displacement by a governmental agency of low and moderate income units located within the City of Oceanside.

#### **4119 Churches in Industrial Zones**

Churches may be established in the M-1 after issuance of a Conditional Use Permit, under the following criteria:

- (1) The location proposed is not in an area considered “prime” for immediate industrial development.
- (2) Parking must be provided as required by the parking regulations for churches, except that the parking may be shared with other industrial users in the vicinity if it can be shown that the uses will not be occurring simultaneously.
- (3) Buildings shall meet the requirements of the Uniform Building Code for church occupancies.
- (4) The church activities must not interfere with the primary industrial uses in the area.

#### **4120 Time Share Resorts**

Time-share resort projects may be permitted under the zoning standards of the respective zone and other applicable City policies with the issuance of a Conditional Use Permit provided the following requirements are met:

- (1) A time-share resort project shall comply with the adopted plans, goals, objectives, policies and regulations of the City of Oceanside.
- (2) A time-share resort project shall file a Tentative Map and comply with Sections all other relevant sections of the Comprehensive Zoning Ordinance and Subdivision Ordinance.
- (3) Time-share resort projects shall have primary automobile access on a collector or higher rated roadway as identified on the City Master Street Plan. For purposes of this section, The Strand shall be considered a collector roadway.

- (4) Parking for time-share resort projects. Parking spaces shall be provided at a ratio of one space per bedroom. Guest parking for time-share resort projects shall be provided at a ratio of one space for the first one to five time-share units; and thereafter, at a ratio of one space per five time-share resort units.
- (5) A time-share resort project application shall submit the following plans to address and mitigate the unique land use impacts of time-share resort projects.
  - (a) Sales Plan – A Sales Plan shall address the times, areas and methods that will be used to sell the time-share resort estates or uses. Factors to be defined in the plan shall include, but are not limited to: the location, length, and marketing methods that will be utilized to include definitions as to on-site and off-site marketing and signage; and a discussion as to the potential numbers of individuals and automobiles expected during various stages of the sales effort and mitigation measures.
  - (b) Management Plan – A Management Plan shall describe the methods employed by the applicant or his/her assignee to guarantee the future adequacy, stability, and continuity of a satisfactory level of management and maintenance of a time-share resort project. Means by which the City can service the project to protect the public health, safety, and general welfare shall be defined.
  - (c) Contingency Plan – A Contingency Plan shall address the actions to be taken by the applicant or his/her assignee if the time-share resort project is an economic failure, or fails to sell 50% of the time-share resort estates or uses within two (2) years of receiving a permit to occupy the first unit.
  - (d) Conversion Plan – If a time-share resort project application involves conversion of existing residential dwellings, a Conversion Plan shall be required consistent with City Policy.