

ARTICLE 19.00
CONDITIONAL USE REGULATIONS

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19.01 APPLICATION TO THE COUNTY. Any person, firm or corporation desiring a conditional use permit in any zoning district shall file a written application with the Minnehaha County Planning Department requesting a conditional use permit. Such application shall contain the following information:

- (a) Legal description of the land on which such conditional use is requested.
- (b) Name, address, phone number and signature of the owner of the property which is the subject of such application. *(amended by MC30-15-07 07-18-07)*
- (c) Name, address and phone number of the person making the application if made by anyone other than the owner.
- (d) Zoning district classification under which the property is regulated at the time of such application.
- (e) Any other information concerning the property as may be requested by the Minnehaha County Planning Department or the County and City Planning Commissions.

19.02 FEES. Upon the filing of any application for a conditional use permit, the applicant shall pay to Minnehaha County a fee as designated in Article 22.00. This fee is utilized to help defray necessary administrative costs of processing the application as required.

19.03 SITE PLAN. Except when waived by the Planning Director, each application for a conditional use permit shall be accompanied by a site plan showing the following information:

- (a) The legal description of the property.

- (b) The name of the project and/or business.
- (c) The scale and north arrow.
- (d) All existing and proposed buildings and additions.
- (e) Dimensions of all buildings.
- (f) Distance from all building lines to the property lines at the closest points.
- (g) Building height and number of stories.
- (h) Dimensions of all property lines.
- (i) Parking lot or spaces, designating each space, lot dimensions, stalls and aisles.
- (j) Screening; showing the height, location, and type of material to be used.
- (k) Name and location of all adjacent roads, waterways and other public places.

Any conditional use permit which has been approved shall conform in all ways to the site plans submitted. In the event that changes have been stipulated on the plan as part of the approval of the conditional use permit, the conditional use permit shall conform to the plan in all ways except for the stipulated changes.

19.04 HEARING BY PLANNING COMMISSIONS. Upon the filing of an application for a conditional use permit, the Planning Director shall set a date for public hearing, at which time and place the County and City Planning Commissions shall jointly meet to consider the conditional use permit request.

- (a) **NOTIFICATION.** A good faith effort must be made by the applicant to notify all property owners (inclusive of Contract for Deed buyers) of land laying within five hundred (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with “Notice of Hearing” forms for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by first class mail no less than one (1) week prior to the public hearing on the request held by the Planning commission. The applicant shall sign an affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least five (5) working days prior to the Planning Commission meeting. *(amended by MC16-88-06 7/18/06)*
- (b) **SIGNS.** A sign(s) to be provided by the Minnehaha County Planning Department shall be posted on the property at least five days prior to the scheduled hearing. *(amended by MC30-04-03)*

- (c) ACTION. At the joint meeting, the County and City Planning Commissions shall decide whether to grant the conditional use permit with such conditions and safeguards as are appropriate or to deny the conditional use permit when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commissions shall be final unless an appeal is filed in accordance with Section 19.04A. In the event the Planning Commissions are not in agreement on a decision whether to grant a conditional use permit, the following shall apply:
- (1) When one Planning Commission votes to grant a conditional use permit and the other Planning Commission votes to deny, the permit is deemed to be denied and the petitioner may appeal the decision to the governing bodies in accordance with Section 19.04A.
 - (2) When both Planning Commissions vote to grant a conditional use permit but the conditions are not identical, the application shall be presented to a joint meeting of the County Commission and City Council for final action. The requirements of Section 19.05A shall apply.
 - (3) When one or the other Planning Commission votes to defer action on a conditional use permit, the application shall be considered at a future joint meeting of the Planning Commissions.

19.04A APPEAL OF DECISION OF PLANNING COMMISSIONS. The decision rendered by the Planning Commissions on a conditional use permit may be appealed to the Board of County Commissioners and the City Council. To appeal the decision of the Planning Commissions, the applicant or any other person aggrieved by said decision shall file a written appeal with the Minnehaha County Planning Department within five working days of the Planning Commissions' decision.

19.05 HEARING BY BOARD OF COUNTY COMMISSIONERS AND CITY COUNCIL.

When an appeal has been filed in accordance with Section 19.04A or the decision by each Planning Commission is not in agreement, the Board of County Commissioners and the City Council shall jointly conduct a public hearing and take final action on the conditional use application.

- (a) SIGNS. A sign(s) to be provided by the Minnehaha County Planning Department shall be posted on the property at least five days prior to the scheduled hearing.
- (b) HEARING. At the public hearing, the Board of County Commissioners and City Council shall review the decisions of the respective Planning Commissions on the applications coming before them. In making their determination of such applications, they need not be bound by the actions of the Planning Commissions.
- (c) ACTION. The Board of County Commissioners and the City Council shall decide whether to grant the conditional use permit with such conditions and safeguards as are appropriate or to deny the conditional use permit when not in harmony with the purpose and intent of these regulations. The Board and the City Council, in making their

determinations on such applications, may make changes in accordance with or in rejection or modification of the decisions of the respective Planning Commissions. In order for any conditional use permit to be approved, the Board of County Commissioners and the City Council must each vote in favor of the application.

- (d) PROTEST. The conditional use permit shall take effect twenty days after approval unless a written protest is filed with the County Auditor, signed by at least forty percent of the owners of equity in the lots or parcels located within 250 feet of the property granted a conditional use permit. A corporation shall be construed to be a sole owner; and when parcels of land are in the name of more than one person, ownership representation shall be in proportion to the number of signers who join in the petition in relation to the number of owners. If a protest is filed, the conditional use permit shall not become effective unless it is approved by two-thirds of the Board of County Commissioners and two-thirds of the City Council.

19.06 EXPIRATION. A conditional use permit which has been approved shall expire by limitation and become null and void if the building, work or use authorized by such conditional use permit is not commenced within one year from the date of approval. This provision shall not apply to a conditional use permit approved for a residential use in the A-1 or RC zoning districts. Upon written request to the Planning Director and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Planning Director, subject to the following conditions:

- (a) There was no public objection presented during the public hearing process for the original conditional use permit;
- (b) The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit.

19.07 CONDITIONAL USE CRITERIA. The following considerations shall be employed when acting upon requests for conditional uses:

- (a) The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.
- (b) Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.
- (c) The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks and orientation.
- (d) The proposed use shall not adversely affect the public.

19.08 REAPPLICATION. No applicant requesting a conditional use permit whose application includes the same or substantially the same requirements for the same or substantially the same property as that which has been denied by the Planning Commissions or the Board of County Commissioners and City Council shall be again considered by the Planning Commissions before the expiration date of six (6) months from the date of the final action on the application.

19.09 REVOCATION. If the Planning Director finds that at any time that the terms, conditions, or requirements of the conditional use permit have not been complied with, or that any phase thereof has not been completed within the time required under the permit or any amendment thereto, the Planning Director shall report this fact to the permittee, landowner, and/or operator, and the County and City Planning Commissions. The County and City Planning Commissions may, after conducting a public hearing, of which the permittee, landowner and/or operator shall be notified, make a recommendation to the Board of County Commissioners and the City Council for their consideration and action. The Board of County Commissioners and the City Council may, after conducting a public hearing, of which the permittee, landowner and/or operator shall be notified, revoke the conditional use permit for failure to comply with the terms, conditions, or requirements of the permit.

19.10 TELECOMMUNICATIONS TOWERS AND ANTENNA SUPPORT STRUCTURES.
Where a conditional use permit is required for approval of telecommunications towers and antenna support structures, the following will be considered:

(a) Design Character.

- (1) Telecommunications towers, antenna support structures and equipment buildings shall be compatible with the architectural style of the surrounding built environment, considering exterior materials, roof form, scale, mass, color, texture and character. Equipment buildings may be located underground where feasible. To prevent undue concentration of telecommunications towers, consideration should be given to co-location as a first alternative.
- (2) Wireless communications facilities on new telecommunications tower structures, antenna support structures, or co-located on existing telecommunications towers shall minimize visual impact.

(b) Screening.

- (1) A telecommunications tower site and tower base adjacent to residential property, except when located in a farmstead, shall be provided with a fence, wall, berm, or shrubbery of sufficient height and of a character necessary to provide adequate visual screening. Where the adjacent property is across public right-of-way from a telecommunications tower site, screening shall be provided in all cases except when the right-of-way is an arterial street.
- (2) Existing vegetation and grades on the site shall be preserved as much as possible. Natural growth around the property perimeter on large, wooded lots may be considered a sufficient buffer to telecommunications towers. In locations where the visual impact of the telecommunications tower would be minimal, the

screening requirement may be reduced or waived.

- (c) Fencing. Adjacent to a residentially used or zoned property, natural materials shall be used for fence screening. If chain-link fencing is needed for safety and security, additional landscape screening shall be required outside the chain-link fence to screen public view of the telecommunications tower site.

19.11 BROADCAST TOWER. Location of the tower shall be done with consideration for public safety in the event that the tower would fall and to minimize adverse visual impact of broadcast towers through careful design, siting, and screening. Care should be taken to avoid interference with any similar broadcast use and in no event shall such tower be located in any airport approach zone. The tower shall be constructed in a manner that will make it inaccessible for unauthorized persons to climb.