



Conditional Use Permit (CUP) Application Procedures and Instructions

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STEP 1: PRE-APPLICATION MEETING

Prior to filing an application, the applicant is requested to schedule a pre-application meeting with Planning staff. The meeting is intended for the exchange of information by which the owner or developer can explain the general development concept and site conditions, and Planning staff can explain the requirements of the zoning regulations, constraints applicable to the proposal, and Comprehensive Plan policies.

A pre-application meeting should be held no later than three days prior to the application deadline. Applications submitted without a pre-application meeting will be processed as staff resources allow and cannot be guaranteed for the next scheduled agenda of the Planning Commission.

At the time of the pre-application meeting, staff will fill out and sign the **Rezoning & CUP Application Checklist** which should be turned in at the time of application. At the pre-application meeting, staff will review the citizen participation process requirements with the applicant, including sending notices to affected property owners and holding a neighborhood information meeting. Staff will hand out specific guidelines for this procedure at this meeting. The applicant should submit the date, time, and place of the meeting at the same time as the application.

In lieu of a pre-application meeting, the applicant may submit a **Zoning Inquiry** form at least two weeks prior to the application deadline. Staff will send a written response to the applicant within one week indicating issues, level of support, and direction for proceeding with an official application.

STEP 2: FILING AN APPLICATION

All elements of the application shall be filed together at one time before 12:00 noon on the filing deadline day at the Planning Department office (see attached Schedule of Processing). Upon a finding that an application is incomplete or otherwise not in compliance with code requirements, further processing shall be at the discretion of the Planning Director. Elements of this application packet are more fully described as follows:

1. **Application Form**

Each item must be completely answered, with the original signature of the owner(s) of record and authorized agent(s), if any, or the application will be considered incomplete and not processed for public hearing. The authority to determine the completeness of an application rests with the Planning Director.

- a. **Legal Description** – Staff relies on this legal description to prepare property owner notices, legal notices, advertisements, and the resolution. If an error is found in the submitted legal description after application, it may invalidate the process and cause substantial delay.
- b. **Ownership** - The application shall be endorsed by the owner(s) of record. Owner(s) of record shall mean the owner(s) as contained on the last deed of record filed with the Shawnee

County Register of Deeds or, submission of a recorded Certificate of Power of Attorney, duly notarized, and containing the legal description of the subject property.

2. Property Owner Notification

The law requires a published notice of the application in the official city newspaper as well as mailed notices to surrounding property owners at least 20 days prior to the Planning Commission public hearing. The Planning Department is responsible for all publishing and mailing of notices. A portion of the filing fee covers this cost. **The applicant is responsible for presenting the correct legal description of the subject property** to the Planning Department at time of application so that Planning Staff can prepare a vicinity map of the official notification area. The notification area of adjacent property owners is as follows:

- When in the City of Topeka: 200 foot radius around subject property
- When in unincorporated Shawnee County: 1,000 foot radius around subject property

3. Filing fee

Applications for proposals must be accompanied by the appropriate filing fee (see attached Application Fee List). Checks should be made payable to the "City of Topeka".

4. Real Property Tax Status

All real property taxes including special assessments due must be current for the subject property or it will not be scheduled for public hearing until they are current.

5. Statement of Operations

A written description of the proposed use, its size, and its operating characteristics shall be provided at the time of application. Essentially, it should provide the information described on pages 4 and 5 unless the CUP Site plan (see page 6) shows that information.

STEP 3: STAFF REVIEW & COURTESY COMMENTS

Once a complete application has been submitted, Planning staff will distribute it to other reviewing agencies for comments. If an application is deemed to be incomplete because of missing information, the case will likely be continued to the following month. The applicant will be notified within two weeks, if there are any incomplete items to be addressed. Conditional Use Permit (CUP) applicants will be afforded the opportunity to respond to courtesy comments midway through the staff review process. A typical review schedule looks like this:

Week 1 – Application is assigned to a case planner, distributed to review agencies for comment, and reviewed by staff.

Week 2 – Case planner completes research and sends courtesy comments back to the applicant by the end of Week 2 or at the beginning of Week 3.

Week 3 – Notices to surrounding property owners are mailed from Planning Department, no later than 20 days before public hearing.

Week 4 – Applicant submits revised CUP site plan typically by Monday of Week 4, to ensure those revisions will be included in the staff report and packet to the Planning Commission. Applicant submits Citizen Participation Report to Planning Department documenting results of neighborhood information meeting and citizen notices. Planning staff prepares recommendation on proposal.

Week 5 – Staff report recommendations are finalized and sent to Planning Commission by Friday of this week or 10 days prior to the public hearing. The applicant will be sent a copy of the staff report at least 7 days prior to the public hearing.

Failure to adequately address a comment may result in a recommendation of disapproval, conditional approval, or continuance. Planning staff will formulate a recommendation based upon planning principles,

adopted policies of the Comprehensive Plan, and CUP review guidelines as described in Section 18.215.030 of the Topeka Municipal Code, which can be reviewed on the City's website at www.topeka.org

STEP 4: PLANNING COMMISSION PUBLIC HEARING

The Topeka Planning Commission meets on the third Monday of each month in the City Council Chambers at 6:00 p.m. to consider public hearing applications (see attached Schedule of Processing). The Planning Commission holds the official **public hearing** at which time the public is able to offer testimony for or against the Conditional Use Permit. After hearing from the public, the Planning Commission will then make a recommendation, which typically include conditions of approval, on the proposal which is forwarded to the Governing Body (City Council/Mayor).

A \$50.00 re-notification fee will be assessed to the applicant if an application scheduled for public hearing is requested for a **continuance**, unless, the request is received by the Planning Department prior to publication of the legal notification and mailing of notices to property owners.

The Kansas Supreme Court has held that CUP applications are quasi-judicial proceedings subject to due process and fairness standards. Applicants are cautioned that personal contacts with members of Topeka Planning Commission with respect to your application could complicate the proceedings and result in delays. Planning Commissioners must declare their "ex-parte" contacts at the public hearing.

STEP 5: GOVERNING BODY DETERMINATION

Final determination of the application rests with the Governing Body, which is comprised of the Mayor and City Council. The Governing Body may approve the Planning Commission's recommendation with a simple majority vote (minimum of 6 votes), override it with a super-majority vote (minimum of 7 votes), or return the item to the Planning Commission for further consideration (minimum of 6 votes).

Governing Body rules state that public hearings for planning items shall be conducted by the Planning Commission. An additional hearing will normally not be conducted by the Governing Body. Governing Body consideration usually can take place approximately three weeks after the Planning Commission's public hearing. Please refer to the City's web-site (topeka.org) for the most recent City Council agenda.

An item may be returned back to the Planning Commission by simple majority vote of the Governing Body with a written statement specifying the basis for its return, if: 1) a person alleges there was an unfair hearing by the Planning Commission, 2) new facts or evidence has been filed with the City Clerk by 5:00 p.m. on the Wednesday preceding the Governing Body meeting, or 3) the Governing Body determines that further deliberation is needed by the Planning Commission. Once the case is reviewed and recommended back by the Planning Commission to the Governing Body, the Governing Body may approve, amend, or disapprove it with a simple majority vote (6 votes).

Whenever the Governing Body has **denied** a CUP, or whenever the Planning Commission has conducted a public hearing and made a recommendation on a requested CUP and the request is subsequently withdrawn by the applicant prior to Governing Body consideration, a one-year re-filing limitation from the date of the original application filing shall apply *unless* the Planning Commission grants an exception.

means structures listed on the National Register of Historic Places or the State Register of Historic Places.

(E) 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 nonresidential traffic away from residential areas.
- (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.
- (4) Outside storage If permitted, outside storage areas shall 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.

(G) Comprehensive Plan

Projects should be consistent with the policies of the comprehensive metropolitan plan and should minimize adverse economic effects on surrounding properties.

(H) Additional Regulations

In addition to the foregoing guidelines, conditional uses shall be required to conform to the additional regulations specifically listed for a use as set forth in Chapter [18.225](#) TMC.

SITE PLANS FOR CONDITIONAL USE PERMITS

- a. Legal description of the property
- b. Location map.
- c. Dimension and bearing of all property lines.
- d. Name and address of property owner.
- e. Name, address and phone number of plan preparer.
- f. Date, scale, including bar scale, and north arrow.
- g. Names and dimensions of all adjacent and proposed streets and alleys.
- h. Location and dimensions of existing/proposed buildings, including setbacks to property lines
- i. Dimension of parking area including stalls and aisles.
- j. Location and dimensions of existing and proposed curb openings.
- k. Identify location, type and height of landscaping, fencing, and lighting
- l. Location and dimension of existing and proposed utilities, utility easements, fire hydrants.
- m. Location, height, area and setback of existing/proposed signage.
- n. Indicate existing zoning and provide a brief statement of use.

Sample Site Plan

