

**ARTICLE XI**  
**CONDITIONAL USE PERMITS**

11.1 Purpose. The City of Hailey recognizes that certain uses possess unique and special characteristics with respect to their location, design, size, method of operation, circulation, and public facilities. In order to protect the public welfare and promote conformance with the Comprehensive Plan, conditional use permits are required for such uses upon review by the Commission.

11.2 Application.

11.2.1 An application for a proposed conditional use permit shall follow the procedures and be subject to the requirements established by Section 3.8 of this Ordinance, shall be made by at least one (1) holder of any interest in the real property for which the conditional use is proposed, and shall be reviewed by the Commission or Hearing Examiner.

11.2.2 The application shall include at least the following information:

- a. Name, address, and phone number of the applicant.
- b. Proof of interest in the subject property by the applicant, such as a deed, contract of sale, option to purchase, or lease agreement.
- c. Legal description of the subject property, including street address.
- d. Description of existing use.
- e. Zoning district of subject property.
- f. Description of proposed conditional use.
- g. A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading areas, traffic access and traffic circulation, open spaces, easements, existing and proposed grade, energy efficiency considerations, landscaping, exterior lighting plan as required by Article VIII B of this Ordinance, refuse and service areas, utilities, signs, property lines, north arrow, and rendering of building exteriors, where applicable.
- h. A narrative statement evaluating the effects on adjoining property, the effect of such elements as noise, glare, odor, fumes, and vibration on adjoining property.
- i. A narrative statement identifying surrounding land uses and discussing the general compatibility of the proposed use with adjacent and other properties in the district.
- j. A narrative discussion of the relationship of the proposed use to the Comprehensive Plan.
- k. A list of the names and addresses of all property owners and residents within three hundred (300) feet of the external boundaries of the land being considered.
- l. Any other information as requested by the Administrator to determine if the proposed conditional use meets the intent and requirements of this Article.
- m. A fee established in a separate ordinance approved by the Council.

11.2.3 Concurrent Submission. A conditional use permit Application may be submitted and reviewed concurrently with other applications affecting the same piece of property with the approval of the Administrator. Additional time for review of concurrent applications may be specified by the Administrator. Concurrent submissions shall be voted on separately.

Upon filing of the application, the Administrator shall submit it for review and comment by the Fire, Police, and Public Works Departments.

11.3 Public Hearing.

- 11.3.1 The Administrator shall mail to each addressee on the list furnished by the applicant pursuant to Section 11.2.2(k) of this Article, a copy of the notice of the time and place of the hearing at least fifteen (15) days before the date set for the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of notice may be provided in lieu of mailed notice. Sufficient notice shall be deemed to have been provided if the City provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the City at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.
- 11.3.2 The Administrator shall have a copy of the notice published at least one (1) time in the official newspaper of the City. The publication of the notice shall be at least fifteen (15) days before the date set for the hearing.
- 11.3.3 The notice of the hearing which is mailed and published shall contain:
- a. The time and place of the hearing.
  - b. A brief description of the land which is the subject of the matter to be heard.
  - c. The purpose of the hearing and the use of the land which is sought.
  - d. Any other information which is necessary or desirable in the public interest.
- 11.3.4 The Commission or Hearing Examiner shall hear all persons interested in the matter. The applicant shall offer competent evidence in support of the application, sufficient to enable the Commission or Hearing Examiner to consider the matter and to make findings on the subject. The applicant has the burden of presenting all necessary and relevant information and evidence in support of his application.
- 11.3.5 In any public hearing on a conditional use permit application, the presiding officer may order the hearing to be continued; in which case no further published notice shall be required.

11.4 Criteria for Review.

11.4.1 The Commission or Hearing Examiner shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and, if approved, shall find adequate evidence showing that such use at the proposed location:

- a. Will, in fact, constitute a conditional use as established for the zoning district involved; and
- b. Will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area; and
- c. Will not be hazardous or disturbing to existing or future neighboring uses; and
- d. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, and drainage structure. Agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service; and
- e. Will not create excessive additional requirements at public cost for public facilities and services; and
- f. Will not involve uses, activities, processes, materials, equipment, or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, dust, odors, vibration, water or air pollution, or safety hazards; and
- g. Will have vehicular approaches to the property which shall be designed so as not to create an interference with traffic on surrounding public thoroughfares; and
- h. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature. (Ord. 1067 §1-3, 2010)

11.4.2 Small Scale Wind Energy Systems (WEC). For Small Scale Wind Energy Systems, the Commission or Hearing Examiner shall review the particular facts and circumstances of each proposed conditional use in terms of the standards below. The applicant for any WEC has the burden of demonstrating compliance with these standards and if required by the Building Official, shall obtain a building permit prior to installing any WEC.

- a. The height of roof-mounted WECs shall not exceed 10 feet beyond the maximum building height requirement for the applicable district. The measured height shall include the entire system, including the blade radius.
- b. Any plan for a roof mounted WEC shall be stamped by a structural engineer.
- c. The rotor diameter shall not exceed 7 feet for a freestanding or roof-mounted system.
- d. The average wind speed shall meet or exceed the minimum required by the Small Scale Wind Energy System manufacture's specification. Wind speed information shall be measured by an anemometer at the height and location of the proposed WEC.
- e. The height of freestanding WECs shall not exceed the maximum building height requirement for the applicable district.
- f. Freestanding WECs are limited to one (1) per lot(s) held in single ownership.
- g. Minimum setback of freestanding WECs is two times the tower height from the property line, measured from the tallest point of WEC. This standard does not apply to roof mounted systems.
- h. Any WEC shall comply with the maximum permissible noise level. Every use shall be operated such that the noise level produced does not inherently and recurrently exceed twenty (20) decibels beyond ambient noise levels, during the hours of 7:00 A.M. to 7:00 P.M., or ten (10) decibels beyond ambient noise level decibels during the hours of 7:00 P.M. to 7:00 A.M. During the hours of 7:00 A.M. to 7:00 P.M., the noise levels permitted may increase a maximum of five (5) decibels for a period not to exceed fifteen (15) minutes in any one (1) hour.
  1. Measurement along Property Boundary. Noise levels shall be measured at any point along any boundary line of the property on which the use is located.
  2. Measurement along the Property Owner's building wall. Where there is more than one (1) property ownership in a building (*e.g.*, a condominium or attached townhome), the noise levels shall be measured along any adjacent wall of a property owner.
- i. Any WEC shall generate no perceptible vibration. Every use shall be operated so that it does not inherently and recurrently generate a ground vibration that is perceptible, without instruments, at any point along any boundary line of the property on which the use is located. Where there is more than one (1) property ownership in a building (*e.g.*, a condominium or attached townhome), this standard shall be measured along any adjacent wall of a property owner.
- j. Alternative locations and placement within the subject property shall be evaluated to ensure that the placement of any WEC is optimal to minimize visual impacts to adjacent properties and view sheds while still maintaining access to the site's wind resource.

(Ord. 1041, §1, 2009)

- 11.5 Action. The Commission or Hearing Examiner shall make a decision to approve, conditionally approve, or deny the application within fifteen (15) days after conclusion of the public hearing and issue its decision together with the reasons therefore. The Commission or Hearing Examiner shall review the application, all supporting documents and plans, and recommendations of City staff in making their decision.
- 11.6 Conditions. The Commission or Hearing Examiner may impose any conditions which it deems necessary to secure the purpose of City regulations and give effect to the Comprehensive Plan. Conditions which may be attached include, but are not limited to those which will:
- 11.6.1 Require conformity to approved plans and specifications.
  - 11.6.2 Require or restrict open spaces, buffer strips, walls, fences, signs, concealing hedges, landscaping and lighting.
  - 11.6.3 Restrict volume of traffic generated, require off-street parking, and restrict vehicular movements within the site and points of vehicular ingress and egress or other conditions related to traffic.
  - 11.6.4 Require performance characteristics related to the emission of noise, vibration and other potentially dangerous or objectionable elements.
  - 11.6.5 Limit time of day for the conduct of specified activities.
  - 11.6.6 Require guarantees such as performance bonds or other security for compliance with the terms of the approval.
  - 11.6.7 Require dedications and public improvements on property frontages.
  - 11.6.8 Require irrigation ditches, laterals, and canals to be covered or fenced.
  - 11.6.9 Minimize adverse impact on other development.
  - 11.6.10 Control the sequence, timing and duration of development.
  - 11.6.11 Assure that development is maintained properly.
  - 11.6.12 Designate the exact location and nature of development.
  - 11.6.13 Require the provision for on-site or off-site public services.
  - 11.6.14 Require more restrictive standards than those generally found in this Ordinance.
  - 11.6.15 Mitigate foreseeable social, economic, fiscal and environmental effects.
  - 11.6.16 Set a limit on the duration of the permit when deemed necessary.
  - 11.6.17 Allow for subsequent periodic review.

- 11.7 Appeal. An affected person may appeal the decision of the Commission or Hearing Examiner following the procedures in accordance with Section 3.6 of this Ordinance.
- 11.8 Expiration.
- 11.8.1 A conditional use permit which is not used within the time specified in the permit, or if no time is specified, within one (1) year after the permit is granted, shall be void.
- 11.8.2 A conditional use permit is void six (6) months after the use for which it is issued is discontinued.
- a. A conditional use permit for a Small Scale Wind Energy Systems that is not maintained in good repair and in working condition shall be considered to be a discontinuation of use. A Small Scale Wind Energy System with a void conditional use permit shall be completely removed and no remnant of the system shall be visible from any public right-of-way or private property.  
(Ord. 1041, §2, 2009)
- 11.9 Revocation.
- 11.9.1 The Commission or Hearing Examiner, upon request by the Council, an individual, or itself, may consider and revoke a conditional use permit for any of the following grounds:
- a. Violation of this Ordinance.  
b. Violation of the conditions of the permit after notice of the violation.  
c. Causing or allowing a nuisance in connection with the premises.
- 11.9.2 If the Commission or Hearing Examiner finds that probable cause exists for revocation of a conditional use permit, the Administrator shall give notice of a hearing to the permittee and the public in the same manner as notice of a hearing for an application for a conditional use permit. The permittee has the burden of establishing that grounds do not exist for revocation of a conditional use permit. The Commission or Hearing Examiner shall hold a hearing on the question of revoking the permit and, if it finds that a substantial basis for revocation exists, it shall revoke the permit. The decision of the Commission or Hearing Examiner may be appealed to the Council or the Commission, as the case may be, by the applicant or the person requesting the revocation. The procedure for the appeal shall be conducted in accordance with Section 3.6 of this Ordinance.
- 11.10 Special Provisions.
- 11.10.1 The issuance of a conditional use permit shall not be considered a precedent for the issuance of other conditional use permits.
- 11.10.2 A conditional use permit is not transferable from one (1) parcel of land to another. The conditional use permit may be transferred from one owner to another for the same use, but if there is a change in use on the property, a new conditional use permit must be obtained.
- 11.10.3 If the City denies an application or request, the applicant or his successor in interest may not file a new application or request for substantially the same conditional use permit for a period of one (1) year from the date the Hearing Examiner or Commission, or Council in the case of an appeal, takes action.