

CITY COUNCIL REPORT  
PUBLIC

DATE: February 11, 2019

TO: Mayor and Council Members

FROM: Daniel Folke, AICP, Interim Community Development Director

CC: Barbara Goodrich, City Manager; Shane Dille, Deputy City Manager; Kevin Treadway, Deputy City Manager; Tiffany Antol, Interim Planning Director

SUBJECT: Conditional Use Permits for Rooming and Boarding Facilities

City Council requested information on Conditional Use Permits (CUP) for Rooming and Boarding Facilities. A previous CCR was prepared on this topic dated April 28, 2015. This CCR includes that information and has been updated.

Background

Rooming and Boarding Facility was created as a use with the adoption of the 2011 zoning code. A Rooming and Boarding Facility is defined as:

City Code 10-80.20.180 Definitions, "R."

Rooming and Boarding Facility: A residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent, or rental agent is in residence. Includes dormitories, single room occupancy, fraternities and sororities.

Rooming and Boarding Facilities are allowed in the Estate Residential (ER), Medium Density Residential (MR), High Density Residential (HR) and Manufactured Housing (MH) residential districts with the approval of a CUP. Rooming and Boarding Facilities are allowed in all the commercial districts with a CUP as part of a mixed-use development. The T3, T4, T5 and T6 transect districts also allow Rooming and Boarding Facilities with a CUP.

Discussion

The provisions for CUPs, including the application procedures, findings for approval, conditions, and time limits are found in Section 10-20.40.050 of the zoning code. The zoning code provides the following purpose statement for CUPs:

#### 10-20.40.050 Conditional Use Permits

- A. Purpose: The purpose of Conditional Use Permits is to provide a process for reviewing uses and activities that are permitted in an applicable zone, but that require more discretionary review and the possible imposition of conditions to mitigate the effects of the proposed use.

Conditional Use permits are heard by the Planning and Zoning Commission who may approve, approve with conditions, or deny a CUP application. Appeals of their decision go to the City Council and can be filed by any aggrieved party. In 2018, City Council amended the zoning code to create a process for City Council to review a CUP decision by the Planning & Zoning Commission. Within 10 calendar days of the Planning & Zoning Commission's decision, any councilmember may request the item be added to a future agenda. A majority vote of a quorum of the City Council is required to schedule the item for review. Adopted ordinance 2018-21 is attached to this report.

CUP approvals run with the land and conditions are binding to successors and assigns. Once a CUP is approved, compliance and the process to consider revocation is found in Section 10-20.40.050 (I):

- I. Compliance/Revocation: The Director, upon inspection and review of any conditional use permit, shall report to the Planning Commission when the permit holder is not in compliance with the conditions of approval. The Planning Commission shall notify the permit holder and shall set the matter of revocation for a public hearing. If the Planning Commission finds, following a public hearing, that the conditions imposed in the issuance of a conditional use permit are not being complied with, the conditional use permit may be revoked and further operation of the use for which the Conditional Use Permit was approved shall constitute a violation of this Zoning Code.

Prior to the adoption of the 2011 Zoning Code, the Land Development Code did not identify Rooming and Boarding as a use within specific zoning districts, although there was a parking standard for "Lodging houses, boarding, and rooming houses, dormitories, and fraternities." These types of dwellings were a permitted use in certain residential zoning districts as "Planned" apartments.

Since the creation of Rooming & Boarding in 2011, we have had 3 applications for the use:

- Fremont Station – approved by Planning & Zoning Commission in 2015
- Milltown – approved by Planning & Zoning Commission in 2018, appeal filed, applicant withdrew CUP for Rooming & Boarding
- Commons at Sawmill – this is an existing apartment complex that changed ownership in the past year. Staff was notified that

they were conducting Rooming & Boarding. Owner was contacted, they have filed an application, which is in review. The applicant has held a neighborhood meeting but no date has been set for public hearing.

Enforcement of Rooming & Boarding under the current definition creates challenges, because the use can only be identified through the leasing arrangement between a landlord and tenant. Unless provided by one of the parties, staff cannot confirm if the unit is “rented to individuals under separate rental agreements or leases, either written or oral.” In 2016, staff recommended eliminating the Rooming & Boarding use and replacing it with dormitories, single room occupancy, fraternities and sororities as new uses allowed by right in specific zoning districts. Due to community concerns with eliminating the requirement of a CUP, Council removed this item from the larger amendment.

This CCR is provided for information purposes only.

ORDINANCE NO. 2018-21

**AN ORDINANCE OF THE FLAGSTAFF COUNCIL AMENDING THE FLAGSTAFF CITY CODE, TITLE 10, FLAGSTAFF ZONING CODE, CHAPTER 10-20, ADMINISTRATION, PROCEDURES, AND ENFORCEMENT, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City Council has determined that amendments to Flagstaff City Code, Title 10, *Flagstaff Zoning Code*, Chapter 10-20, *Administration, Procedures, and Enforcement*, are necessary in order to clarify the roles and responsibilities of the Planning and Zoning Commission and City Council in regards to Conditional Use Permits; and

WHEREAS, the Planning and Zoning Commission at their public meeting on May 9, 2018, provided recommendations to City Council for approval of the proposed amendments; and

WHEREAS, the City Council finds that the City has complied with the statutory notice and meeting requirements.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

Section 1. That Title 10, *Flagstaff Zoning Code*, Chapter 10-20, *Administration, Procedures, and Enforcement*, Division 10-20.30, *Common Procedures*, Section 10-20.30.100, *Final Decisions*, is hereby amended as follows:

**DELETE** existing Section 10-20.30.100.A.2:

A. Time of Decision

~~2. A final decision of the Planning Commission shall be deemed to be made 10 days following the Commission's action on a Conditional Use Permit.~~

**RENUMBER** existing Section 10-20.30.100.A.3:

A. Time of Decision

~~3~~2. A final decision shall be deemed to have been made on the date of issuance of a Notice of Decision by the Zoning Code Administrator or Director.

Section 2. That Title 10, *Flagstaff Zoning Code*, Chapter 10-20, *Administration, Procedures, and Enforcement*, Division 10-20.80, *Procedures for Appeals*, Section 10.20.50.030 *Appeals of Permits and Other Approvals* is hereby amended as follows:

**AMEND** Section 10-20.80.030.F:

F. Appeal of a Decision by the Planning Commission:

- 1. A decision of the Planning Commission on a Conditional Use Permit may be appealed to the Council by any person aggrieved by such decision PURSUANT TO SECTION 10-20.80.030.H.
- 2. THE CITY COUNCIL MAY ELECT TO REVIEW A DECISION OF THE PLANNING COMMISSION ON A CONDITIONAL USE PERMIT PURSUANT TO SECTION 10-20.80.030.G.

-23. A recommendation of the Planning Commission to the Council may not be appealed.

**ADD** Section 10-20.80.030.G:

G. CITY COUNCIL REVIEW OF CONDITIONAL USE PERMIT

- 1. WITHIN TEN (10) CALENDAR DAYS OF THE DATE OF THE PLANNING COMMISSION'S DECISION, ANY COUNCILMEMBER MAY REQUEST OF THE CITY MANAGER THAT AN ACTION ITEM TO CONSIDER REVIEW OF THE DECISION BE BROUGHT BEFORE THE COUNCIL. UPON RECEIPT OF A REQUEST TO CONSIDER REVIEW, THE CITY MANAGER SHALL PLACE THE ITEM ON THE NEXT REGULAR OR SPECIAL COUNCIL MEETING AGENDA FOR CONSIDERATION. IF COUNCIL ELECTS TO REVIEW THE DECISION BY A MAJORITY VOTE OF A QUORUM OF THE CITY COUNCIL, THE PLANNING COMMISSION'S DECISION IS STAYED AND SUCH REVIEW WILL BE TREATED AS AN APPEAL UNDER THIS SECTION AND A HEARING AND DECISION MUST BE RENDERED BY CITY COUNCIL NO LATER THAN 30 CALENDAR DAYS FOLLOWING THE ELECTION TO REVIEW.
- 2. CITY COUNCIL REVIEWS THE DECISION OF THE PLANNING COMMISSION DE NOVO AND HAS THE AUTHORITY, AFTER A HEARING, TO AFFIRM, REVERSE, OR MODIFY CONDITIONS OF THE CONDITIONAL USE PERMIT. ONCE COUNCIL DECIDES TO REVIEW A DECISION OF THE PLANNING COMMISSION, ANY ACTION ON THE ASSOCIATED DEVELOPMENT IS SUSPENDED UNTIL THE APPEAL IS PROCESSED AND A FINAL DECISION IS RENDERED UNLESS OTHERWISE SPECIFIED IN THE ZONING CODE.

**RELETTER** existing Section 10-20.80.030.G, H, I, J and K:

**GH.** Timing and Form of Appeal

**HI.** Report and Scheduling of Hearing

**IJ.** Decision

**JK.** Effective Date of Review Authority's Decision on an Appeal

**KL.** Judicial Review

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

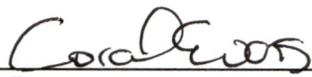
SECTION 4. Severability.

That, if any section, subsection, sentence, clause, phrase or portion of this ordinance or any of the amendments adopted in this ordinance is for any reason held to be invalid, unconstitutional, or unenforceable by a decision of any court of competent jurisdiction, such decision shall not affect any of the remaining portions thereof.

SECTION 5. Effective Date.

This ordinance shall be effective thirty (30) days after adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 19<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY