

NOTICE OF STUDY SESSION
Conditional Use Permit Requirement (Olive Blvd.)
And Communications Training
VIA VIDEOCONFERENCE
January 25, 2021
5:30 p.m.

AGENDA

Requested by the Councilmembers Bwayne Smotherson and Stacy Clay.

1. MEETING CALLED TO ORDER

At the Study Session of the City Council of University City held via videoconference, on Monday, January 25, 2021, Mayor Terry Crow called the meeting to order at 5:32 p.m.

In addition to the Mayor, the following members of Council were present:

Councilmember Stacy Clay
Councilmember Aleta Klein
Councilmember Steven McMahon
Councilmember Jeffrey Hales
Councilmember Tim Cusick
Councilmember Bwayne Smotherson

Also, in attendance were City Manager, Gregory Rose; City Attorney, John F. Mulligan, Jr.; Director of Planning and Zoning, Clifford Cross, and Communications Specialist, Robyn Frankel.

2. CHANGES TO REGULAR AGENDA

No changes requested.

3. Conditional Use Permit Requirement (Along Olive Blvd.)

Mr. Rose stated Councilmembers Smotherson and Clay requested a discussion to look at methods that could be used to regulate the types of the business allowed to operate on Olive Boulevard. So, he has asked Mr. Cross to present Council with information on the Conditional Use Permit (C.U.P.) process, as one mechanism that can be used to achieve that objective.

Mr. Cross stated one tool that is commonly used in zoning is the C.U.P. This is an overview of the process, which details what can and cannot be done when a C.U.P. is implemented.

What is a Conditional Use Permit (C.U.P.)

Allows for special consideration of certain specified uses that may or not be compatible with an area. (Case-by-Case basis) – Standards and/or Conditions

A. Zoning/Land Use Action

B. Permitted vs. C.U.P.

- Permitted by right is a use that has already been predetermined to be allowed within a specific Zoning District.
- A C.U.P. provides Council with the opportunity to attach special conditions to a specific use.

PERMITTED AND CONDITIONAL USES BY ZONING DISTRICT										
No.	USE DESCRIPTION	Residential			Commercial			Industrial		
		R-1	R-2	R-3	C-1	C-2	C-3	I-1	I-2	
1	Adult Entertainment									C
2	Agricultural & farming equipment sales & service					P	P	P	P	
3	Agricultural & farming facilities & uses - other	C	C	C	C	C	C	C	C	
4	Agricultural & farming operations - including livestock	C			C	C	C	C	C	
5	Aircraft related facilities & uses								C	P
6	Airports and heliports & aircraft related facilities & uses									C
7	Alcohol & drug abuse treatment centers - in-patient				C	C	P	P	P	
8	Alcohol & drug abuse treatment clinics - out-patient				P	P	P	P	P	
9	Amusement and theme parks & related facilities & uses - indoor				C	P	P	P	P	
10	Amusement and theme parks & related facilities & uses - outdoor				C	C	C	C	P	
11	Animal & pet grooming services - domestic				P	P	P	P	P	
12	Animal & pet related services & uses - other				C	C	C	P	P	
13	Animal & pet shops & pet supply sales - domestic					C	C	P	P	
14	Antique sales & reconditioning services				P	P	P	P	P	
15	Appliances - household - parts & supplies sales & repair services				C	P	P	P	P	
16	Appliances - household - rental & leasing services				C	P	P	P	P	
17	Appliances - household - sales & service				C	P	P	P	P	
18	Appliances - household - wholesale & distribution						C	P	P	
19	Archery equipment & supplies sales				C	P	P	P	P	

Standards for Approval - (Most Important Consideration)

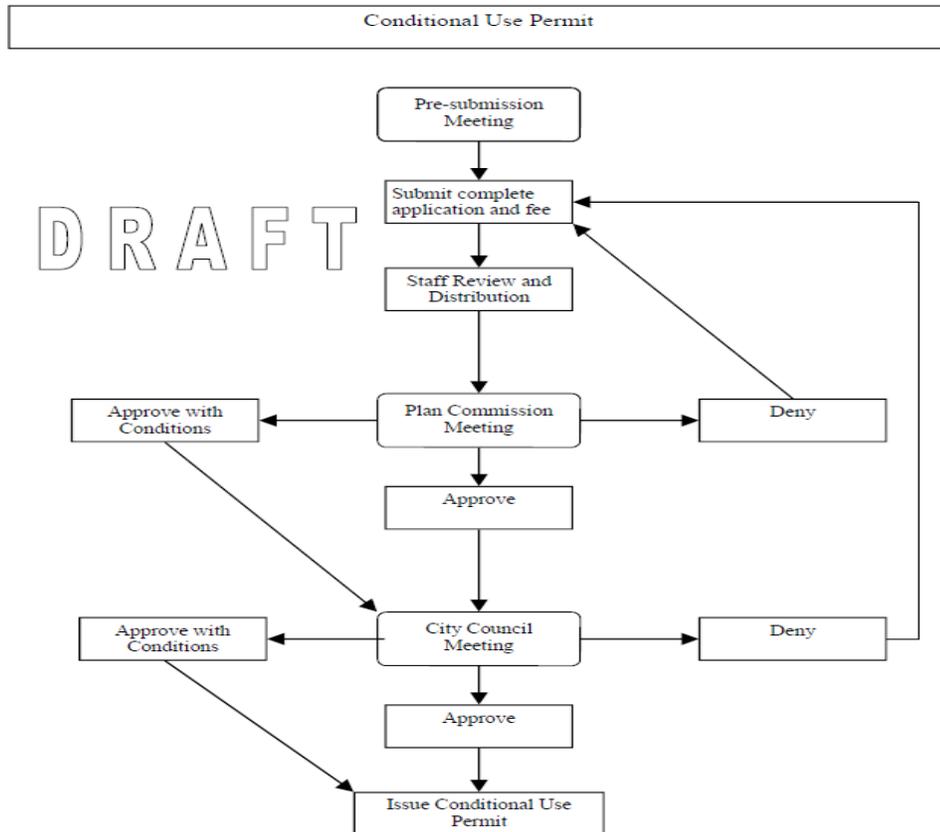
A. Example: Pre-Set Conditions that must be met for a Medical Marijuana Dispensary Facility

A. Standards for Medical Marijuana Dispensary Facility

No building shall be constructed, altered, or used for a Medical Marijuana Dispensary without complying with the following regulations.

- 1. Buffer Requirement.** No Medical Marijuana Dispensary shall be located within Five Hundred (500) feet of an existing elementary or secondary school, licensed child day care center, or church. Measurements shall be made in a straight line, without regard to intervening structures, from the nearest point on the exterior building wall of the school, child care center, or church, to the main public entrance of the medical marijuana business.
- 2. Residential Zoning Buffer Requirement.** No Medical Marijuana Dispensary shall be located within One Hundred Fifty (150) feet of a residentially zoned district. Measurements shall be made in a straight line, without regard to intervening structures, from the main public entrance of the medical marijuana business to the nearest property line of the residentially zoned district.
- 3. Outdoor Operations or Storage Prohibited.** All operations and all storage of materials, products, or equipment shall be within a fully enclosed building. No outdoor operations or storage shall be permitted.
- 4. Hours of Operation.** All Medical Marijuana Dispensaries shall be closed to the public, no persons not employed by the business shall be on the premises, and no sales or distribution of marijuana shall occur upon the premises or by delivery from the premises between the hours of 10:00 P.M. and 8:00 A.M.
- 5. Display of License Required.** The medical marijuana license issued by the State of Missouri shall be displayed in an open and conspicuous place on the premises.
- 6. Residential Dwelling Units Prohibited.** No Medical Marijuana Dispensary shall be located in a building that contains a residence.
- 7. Ventilation Required.** All medical marijuana businesses shall install and operate a ventilation system that will prevent any odor of marijuana from leaving the premises of the business. No odors shall be detectable by a person with a normal sense of smell outside the boundary of the parcel on which the facility is located.

Conditional Use Permit Flow Chart



PC Recommendation & City Council Actions

Plan Commission - Section 400.2700.C of the Zoning Code requires that C.U.P. applications be reviewed by the Plan Commission. The Plan Commission shall make a recommendation to the City Council for their consideration. A public hearing is required at the Plan Commission meeting.

City Council - Section 400.2700.D of the Zoning Code requires that C.U.P. applications be reviewed by City Council for the final decision, subsequent to the public hearing and recommendation from the Plan Commission. In conducting its review, City Council shall consider the staff report, Plan Commission's recommendation, and application to determine if the proposed C.U.P. application meets the requirements of the Zoning Code.

Review Criteria

When evaluating a Conditional Use Permit the applicant is required to ensure that the following criteria is being met in accordance with the provisions outlined in Section 400.2710 of the Zoning Code. The Criteria is as follows:

1. The proposed use complies with the standards of this Chapter, including performance standards, and the standards for motor vehicle oriented businesses, if applicable, as contained in **Section 400.2730** of this Article;
2. The impact of projected vehicular traffic volumes and site access is not detrimental with regard to the surrounding traffic flow, pedestrian safety, and accessibility of emergency vehicles and equipment; *(this criteria often results in an application being submitted to the Traffic Commission for review);*
3. The proposed use will not cause undue impacts on the provision of public services such as police and fire protection, schools, and parks;

4. Adequate utility, drainage, and other such necessary facilities have been or will be provided;
5. The proposed use is compatible with the surrounding area;
6. The proposed use will not adversely impact designated historic landmarks or districts; and,

Findings of Fact (Section 400.2720)

The Plan Commission shall not recommend approval of a conditional use permit unless it shall, in each specific case, make specific written findings of fact based directly upon the particular evidence presented to it supporting the conclusion that the proposed conditional use:

1. Complies with all applicable provisions of this Chapter;
2. At the specific location will contribute to and promote the community welfare or convenience;
3. Will not cause substantial injury to the value of neighboring property;
4. Is consistent with the Comprehensive Plan, Neighborhood Development Plan (if applicable), the Olive Boulevard Design Guidelines (if applicable), and any other official planning and development policies of the City; and
5. Will provide off-street parking and loading areas per the standards contained in **Article VII** of this Chapter.

Notice of Public Hearing (Section 400.3220)

Public Hearings for a C.U.P. takes place at the Plan Commission level. Public hearings for text amendments, map amendments or zoning, takes place at the Council level.

- A. A notice of every public hearing to be held under this Chapter shall be given as follows:
 1. The notice of a public hearing shall be published, at least once, in an official paper or a paper of general circulation within the City;
 2. Publication shall commence not more than thirty (30) days nor less than fifteen (15) days before the hearing date; and
 3. The notice shall provide the time and place of the hearing and include the following:
 - a. A street address of the subject property or other description of the location of such property;
 - b. The name of the applicant or appellant; and
 - c. A description of the specific action being requested by the applicant or appellant.

C.U.P. Utilization

- Determination of Uses
- Parking Regulations
- Home Occupations; i.e. a bed and breakfast
- Dimensional Regulations
- Accessory Outdoor Operations
- Prevent Clustering; i.e., pawnshops, adult entertainment venues
- Non-Local Regulations; i.e., state regulations utilized for medical marijuana dispensary

Mr. Cross stated the question for tonight's discussion is how Council wants to approach the determination of uses;

1. Identify uses whether or not they are permitted in a Zoning District, with the ability to add special conditions, or

2. Address the determination of uses as part of the CUP process?

He stated if Council elects to address the determination of uses as a part of the CUP process then consideration must be given to the addition of supplemental regulations to the Ordinance.

Councilmember Clay stated his thoughts in terms of mitigating certain types of businesses are to some extent encapsulated in the Ordinance related to pawn shops. Section 605.1300(K), which talks about the issuance of pawnshop licenses being prohibited within 500 feet of a church, et cetera, and similar or identical businesses being located in a specific geographic area, is the type of language he would like to see enacted with respect to the clustering of businesses. He stated if one more Dollar Store is allowed to open on Olive Boulevard, it would represent the sixth store of this nature, and the same holds true for beauty supply shops. So, his concerns are really about the ability to put some distance between them in a way that limits their growth and expansion in a specific area. And since the Ordinance already seems to have the components needed to address this issue, making adjustments to the CUP process could be another tool.

Mr. Rose stated although he believes the City can regulate specific uses like pawn shops or adult entertainment, there are some limitations as it relates to identifying and regulating a specific type of business. Dollars Stores are considered discount stores, so he's uncertain how you would clearly distinguish a Dollar Store from other discount stores that sell similar goods? But perhaps, Mr. Mulligan should provide his expertise on this matter.

Councilmember Clay stated however you want to categorize them the bottom line is that his community has been inundated with discount stores on Olive.

Mayor Crow stated Target could be considered a discount store but if they wanted to open a store on Olive, he thinks most of his colleagues would be pretty excited. So, while he thinks everyone understands the concern associated with the proliferation of certain businesses along Olive, he also appreciates Mr. Rose's stance regarding the need to hone down the phraseology in order to figure out the correct way to address this issue.

Mr. Mulligan stated the section of the Ordinance referred to by Councilmember Clay pertains to the licensing of pawnshops. Although there are other examples of distance requirements for specific businesses defined in the Code. So, while there is some discretion to regulate specific businesses, Council's objective must be clearly defined by first identifying what it is they are trying to accomplish, and second, taking into account that any distinction must be reasonable.

Mr. Cross stated staff will need to do a lot of legwork to come up with a definition because from a zoning perspective stores like Target and the Dollar Store are all classified under the general category of retail sales.

Councilmember Smotherson stated he was able to find an Ordinance from another municipality that makes that distinction; *"Small box, discount store, retail sales use, with a floor area less than 12,000 square feet that offers for sale a combination and variety of convenience shopping goods and consumer shopping goods that continuously offer a majority of the items in their inventory for sale at a price less than ten (10) dollars per item"*.

Mayor Crow stated he thinks when things are done through the CUP process it's more like the tail wagging the dog, instead of the other way around. However, should this process be revised it would place the burden of approving or denying an application on members of staff. And based on the current economic downturn, as well as the challenges along Olive Boulevard, one must be cautious about denying any business access.

He stated he can recall when tattoo parlors were frowned upon but today, lots of folks are talking about the shops located in The Loop, so they appear to have become somewhat advantageous.

Of course, while this is no comparison to the issue at hand, it does reinforce his concerns about the need to be cautious when undertaking this process. Mayor Crow stated although he does not have an issue with reviewing this legislation, he strongly believes that such an examination should encompass looking at every angle.

Councilmember Cusick posed the following questions to Mr. Cross:

Q. Could you clarify what the differences are between the permitted and conditional uses in the Residential R1, R2, R3; Commercial C1, C2, C3, and Industrial I1 and I2, Zoning Districts?

A. This is an example of an Ordinance from another community illustrating how he would like to revise the City's Ordinance because it clearly defines multiple uses, where they are allowed, whether it is permitted by right, requires a CUP, or is not permitted at all. The City's Ordinance simply states the Zoning District along with a list of permitted uses.

Q. Is there an actual document entitled "The Olive Boulevard Design Guidelines"?

A. While no official design guidelines have been established, there are guidelines in terms of streetscape standards that help staff determine negative uses or perceived negativities based on architectural standards.

Q. How subjective are the descriptions associated with stores like Schnucks, World Market, Pete's Shur Sav, et cetera?

A. Even though there is a little flexibility, definitions should be pretty specific. The City's definition of a convenience store as defined in the Ordinance, allows staff to distinguish a convenience store from Wal-Mart or other businesses of that nature. So, what you would have to do is define the stores you've mentioned, incorporate that definition into the Ordinance and put grouping in a format similar to the nineteen examples I've provided of permitted uses.

Councilmember Hales stated while there is little disagreement over the issue being presented, coming up with a precise definition may be a lot more complicated. How do you define a discount store? Mayor Crow mentioned Target, and he would take it a little further by saying Amazon, which is now expanding its operation into brick and mortar retail stores. So here again, you have an entity that could be defined as a discount store that probably would not receive a tremendous amount of objections if they decided to build one here in U City. It's a valid concern but how do you narrow the definition down to address it?

Mr. Cross stated redefining these uses is a very complex issue. That's why he has focused on the process rather than just assigning specific uses as a CUP requirement. He stated there are so many factors and amendments that would have to be considered in order to determine what category they go into, which ones require a CUP, are permitted uses, should include clustering restrictions, buffer requirements, or may have a negative impact on residential property.

Councilmember Clay noted that the sample legislation Councilmember Smotherson referred to is from Tulsa and New Orleans.

He stated while he certainly respects the fact that staff already has a lot on their plate if the wheel has already been created then the City can easily attach itself to it. So perhaps, the next step should be to contact these communities and determine how their definition of what a discount store works in their zoning process. Councilmember Clay stated it seems as though the key component in this sample legislation is the designation of a specific dollar amount. And since the marketing strategy of the stores he and Councilmember Smotherson have identified is to distinguish themselves through the utilization of a certain price point, it may have given staff the definition they need.

Mr. Rose stated if there is consensus, he will have Cliff and John conduct some research to draft an ordinance that looks at price points, reasonable distance requirements, and square footage. He stated another aspect of that research will include determining whether either of these ordinances has been challenged and if so, the results of those disputes.

Councilmember McMahon stated it sounds like everyone is moving towards something that could require a small fix now and a bigger fix later. Because a definition that includes square footage and a specific dollar amount could potentially impact a business like Rocket Fizz in The Loop.

Referencing the Flow-Chart, Councilmember McMahon questioned whether a recommendation to deny an application is still forwarded to Council for review? Mr. Cross stated since the Plan Commission can only issue a recommendation all applications must be submitted to Council unless it is withdrawn by the applicant.

Mayor Crow stated he had two thoughts he would like to express as the City attempts to work through this issue. First, the need to ensure that whatever actions are taken does no harm to others. And second, as staff reviews the Zoning Codes, he would ask that they also examine the 185-foot limit notice for public hearings. He stated he has received countless complaints from engaged residents who live slightly beyond this limit that are not being notified. In his opinion, the limitation is out-dated and the City is only shooting itself in the foot every time it is adhered to.

Mr. Cross informed Mayor Crow that while staff sends the 185-foot mailings out certified with a return receipt, they also send courtesy copies out to residents who live within a 500-foot radius. Mr. Cross stated he is glad this issue came up because it is a limitation that staff was going to propose be eliminated. One of the problems with map and zoning amendments is that the public hearings take place after the Plan Commission meeting. So, one suggestion is to amend the Ordinance and require that notices of any public hearings be held before Council are provided at the Plan Commission level to make certain the public is informed early on in the process.

Councilmember Smotherson stated to address Councilmember McMahon's concern, his Proposed Ordinance regarding discount stores prohibits them from being located within a mile and a half of each other. So, the fact that Rocket Fizz is already an established business would simply mean that no other discount store would be allowed to locate within a mile and a half of their store.

Mr. Cross stated another consideration is the dispersal Ordinance which requires that a certain percentage of available land be allowed for specific uses. So, staff will have to evaluate how much land the City has and if the type of separations being requested satisfies the illegal taking doctrine; illegally taking the opportunity for the highest and best use of certain land throughout the City.

Councilmember Smotherson stated there are five discount stores on Olive within a 3-mile radius, so he can't imagine that being a problem.

4. COMMUNICATIONS TRAINING

Mr. Rose stated Ms. Frankel was asked to provide the City's department directors with training on how to effectively deal with the media, and he has asked her to share some of that information with Council.

Ms. Frankel stated that she wanted to address five areas:

1. Messaging

- Employees/Elected Officials should have a consistent message that defines, clarifies, and focuses on U City's benefits and values, that also allows them to link the specific topic they are discussing onto.
- Messaging should not include information about the services U City offers.

2. The Message Map

- The creation of a core or ancillary message that establishes values tailored to address a specific situation, i.e., U City is committed to being the best possible community for residents, families, businesses, visitors, and neighboring cities.
- Never deviate from the Message Map by stating, "In my opinion". When speaking on behalf of an organization your opinion is not relevant and has no validity.

- Always keep in mind that everything you say is a reflection of the organization you are talking about.

3. Types of Situations Requiring Communication

- The three modes of communication employees/elected officials get involved in are proactive, reactive, and crisis.
- When in a crisis mode, it is always good, to begin with a positive statement before addressing the situation at hand. I.e., U City is committed to being the best possible community for residents, families, businesses, visitors, and neighboring cities. That's why this situation is of particular concern to us. We are going to be looking further into this issue and plan to examine every detail.
- Remember, what the audience will hear is your first statement; the acknowledgment that you understand the situation, and what you are doing about it.

4. Talking to Reporters

- Develop a coordinated response plan.
- Never talk to a reporter without being totally prepared in advance to make sure the City is advancing its agenda rather than simply answering a question.
- Try to anticipate not only the question on the surface but how that conversation could go off the rails. What other questions could they ask? What questions should you not answer?
- Brief responses are always the most effective.
- Never let a reporter back you into a corner.
- Never repeat a negative.
- Avoid saying, "*No comment*". Instead, say "*That's proprietary information, so I can't answer that question,*" or "*I need more information*".
- Remember that a reporter is not your friend, they do not care about your personal feelings, and that they simply have a job to do. So, never make jokes, even if it's just about the weather because they can take anything you say out of context.
- Should you receive a surprise call from a reporter, tell them you are in a meeting and will have to get back to them at a later time. Ask who they are, what they are interested in if they have a deadline for receiving the information, and how they can be contacted. Contact Ms. Frankel or Mr. Rose so they can vet the situation and discuss the best way to handle it.
- Take all of these tips into consideration when drafting a coordinated response plan. Because if you're prepared; be it a proactive, reactive, or crisis situation, there isn't anything a reporter could ask that you won't be able to answer, even if it means not answering at all.

5. Social Media

- The different forms of communication tools available to the City are; the news media, ROARS, social media, the City website, virtual meetings, live streaming, video updates, and the Annual City Calendar.
- Anything related to social media, i.e., Facebook, Twitter, Instagram, et cetera, that reflects the City, should be posted on the City's website, NextDoor, or Facebook pages, as opposed to individual sites. Posting on personal pages limits the size of your audience.
- Employees/Elected Officials can repost information found on the City's Facebook or NextDoor pages since it has already been published in the public domain.
- Should you ever see something posted on social media you believe to be erroneous, immediately contact Ms. Frankel or Mr. Rose and allow them to draft a response to the article or comment.

Mr. Rose stated the City has the responsibility of making sure its residents have complete and accurate information and to accomplish that everyone must be in sync with the concepts and advice presented by Ms. Frankel. He stated his goal is to continue these mini trainings throughout the year. Unfortunately, due to the lateness of the hour, Council did not have an opportunity to address any comments, questions, or concerns they might have. Therefore, he will ask Ms. Frankel to come back at a later date to allow for a more in-depth conversation.

Ms. Frankel reminded Council that they should all feel free to contact her at any time if they ever have a question.

5. ADJOURNMENT

Mayor Crow thanked everyone for their participation and adjourned the meeting at 6:25 p.m.

LaRette Reese
City Clerk

