



# Council Agenda Correspondence

**DATE:** October 15, 2024

**TO:** Mayor and Council

**FROM:** Timmi Tway, Community Development Director  
Hannah Hanh, Associate Planner

**VIA:** Whitney McDonald, City Manager

**SUBJECT:** ITEM # 6b – REVIEW OF AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE A CONDITIONAL USE PERMIT TO ESTABLISH A FRATERNITY (USE-0331-2023, APPL-0365-2024)

This memorandum provides City staff's responses, shown in *italics*, to questions and issue areas raised from the City Council and members of the public related to Item #6b.

**1) What is a Conditional Use Permit? Are fraternities and sororities required to obtain Conditional Use Permit approval?**

*A Conditional Use Permit is required for reviewing land uses that may be appropriate in the applicable zone, but whose effects on a site and its surroundings cannot be determined without discretionary review and consideration of the site context. A Conditional Use Permit allows flexibility in providing for, regulating, or preventing particular uses so they will be compatible with existing or desired conditions in their neighborhoods or zones. Approval of a Conditional Use Permit is required for certain uses so that their potentially detrimental effects can be reduced or avoided and potential conflicts in land use can be prevented.*

*Fraternities and sororities are only allowed in the Medium-High Density (R-3) and High Density (R-4) residential zones with approval of a Conditional Use Permit.*

**2) How is the maximum number of people determined for routine gatherings and meetings for fraternities/sororities?**

*[Section 17.86.130\(A\)](#) of the Zoning Regulations states that the maximum number of persons allowed onsite for routine meetings and gatherings shall not exceed the limit established by the applicable Conditional Use Permit. Prior approvals of Conditional Use Permits to establish fraternities/sororities have limited the number of people onsite for routine meetings and gatherings to 1.5 times the number of average population density. This calculation takes into consideration the number of residents, areas inside buildings, and number of parking spaces available in the vicinity.*

*Per Table 4 (Residential Population Assumptions) of the Land Use Element (LUE), the High Density Residential (HDR) land use designation, which corresponds to the R-4 zone where fraternities may be permitted, has an average population density of 55 people per acre. The project site at E. Foothill Blvd. and Monte Vista Pl. is approximately 0.58-acre in size, which results in an average of 32 people (rounded up from 31.9) for the property. Based on this past practice, the maximum number of people for routine meetings and gatherings for this fraternity would be 48 people (32 people x 1.5) (Condition No. 5).*

- 3) **The following statement is requested as an additional condition for all Conditional Use Permit approvals for fraternities/sororities:**

***“Failure to comply with any of the above conditions or code requirements, or the conduct of the use so as to constitute a violation of Federal, State, or local law, or so as to constitute a public nuisance or so as to cause adverse impacts on the health, safety, or welfare of persons in the vicinity of this use is prohibited and may constitute grounds for the revocation of this permit.”***

**Would any conflict be introduced if this statement is added as a condition?**

*Condition No. 3 states the Conditional Use Permit shall be re-reviewed by the Planning Commission if a complaint containing information and/or evidence to support a conclusion that a violation of the conditions or City Ordinances or regulations, which are intended to protect the health, safety, and welfare of the general public, has occurred. [Section 17.02.050](#) (General Relationship to Other Regulations) also states that any uses authorized by Title 17 (Zoning Regulations) must comply with all other applicable regulations and requirements imposed by the State and relevant Federal agencies, including application of the more restrictive provision if a conflict occurs between different provisions from different agencies.*

*While incorporation of Condition No. 3 and implementation of requirements in [Section 17.02.050](#) (General Relationship to Other Regulations) would address this request, it is within the City Council’s purview to add this statement as a condition to provide additional clarity on the grounds for re-review of a Conditional Use Permit.*

- 4) **Are special events allowed to exceed exterior noise limits established in Chapter 9.12 (Noise Control)?**

*[Section 9.12.100](#) (Exceptions) of [Chapter 9.12](#) (Noise Control) provides an application process that allows applicants to request exceptions from the exterior limits in the Noise Ordinance. Any requested exceptions would be reviewed as part of a special event permit in accordance with [Section 17.86.260\(B\)\(5\)](#) (Other Temporary or Intermittent Uses and Special Events) and [Chapter 17.108](#) (Director’s Action). Please note that this is a separate application from the Conditional Use Permit that allows staff to review special event requests and any associated exceptions on a case-by-case basis.*

*The noise control officer (e.g., Community Development Director) would review the request and may only grant exceptions from the provisions of Chapter 9.12 (Noise Control), if deemed appropriate. Approval of a special event permit with requested noise exceptions is subject to requirements, outlined in [Section 17.108.040](#) (Director's Action – Required Findings) and [Section 9.12.100\(A\)](#) (Noise Control – Special Exceptions), in order to provide for adequate consideration of, and measures to address, any adverse impact on the public health, safety, and welfare of those in the vicinity. If the Community Development Director determines that the strict findings outlined in [Section 9.12.100\(A\)\(3\)](#) cannot be made, then the application would be denied. It should be noted that staff cannot recall an instance where an exception to the Noise Ordinance was granted by the Community Development Director through a special event permit.*

- 5) Can special event permits allow more than 48 people after 10:00 p.m.? As proposed, does the Conditional Use Permit allow more than 48 people after 10:00 p.m.?**

*Condition No. 5 limits the number of people for routine meetings and gatherings to 48 people at all times. If the fraternity is requesting to host a special event involving more than 48 people, then a separate special event permit is required to be submitted for review and approval by the Community Development Director prior to the event occurring.*

- 6) Should code requirements in the Municipal Code be included as conditions of approval in Conditional Use Permits for fraternities and sororities? Several older permits have code requirements listed as conditions of approval.**

*There are several reasons why including Municipal Code regulations as conditions of approval is not considered best practice. First, Municipal Code regulations change over time, and Conditional Use Permits can be in effect for decades. In the interest of not creating a Conditional Use Permit that is in direct conflict with current Municipal Code regulations, it is generally not best practice to reiterate code standards in the Conditional Use Permit. Additionally, it can be confusing to future parties if some, but not all, relevant code sections are reiterated in the Conditional Use Permit. In general, conditions in Conditional Use Permits are meant to be more restrictive than the existing Municipal Code regulations, and are generally not used for reiteration of otherwise already applicable codes. If the City Council wishes to incorporate existing Municipal Code regulations into the Conditional Use Permit, staff recommends referencing the regulations/code sections in a separate section, but not reiterating them as conditions in the permit.*

- 7) The Appellant is requesting a threshold be established to require re-review by the Planning Commission, if a certain number of violations is received within the specified timeframe. Please confirm whether Condition No. 3, as proposed, allows staff to refer the Use Permit for re-review upon receipt of one violation.**

*Yes – Condition No. 3 states the Conditional Use Permit shall be reviewed by the Planning Commission if the City receives substantiated written complaints supporting a conclusion that a violation of the Conditional Use Permit, City ordinances and/or regulations, and/or Police resources has occurred.*

- 8) Does the Conditional Use Permit run with the land or the applicant? What happens to the Use Permit if property ownership changes over time?**

*Per [Section 17.110.090](#) (Permit to Run with the Land), approval of a Conditional Use Permit runs with the land (not the applicant). If there is a change in property ownership, the Use Permit would only continue to be valid if the use is operated in the same area, configuration, and manner as it was previously approved and has not ceased operation for a continuous period of one year. In addition, Condition No. 2 states the Community Development Director would determine whether the use is in compliance with the conditions, as approved, or if a modification to the Use Permit is required upon the change in ownership.*

*If a modification is determined to be required, then the Conditional Use Permit would be brought back to the Planning Commission for re-review. At that time, conditions of approval may be added, modified, and/or removed to accommodate the updated project description of the use.*

- 9) Comments were received expressing concern about the Director of Community Development allowing exceptions to the noise ordinance through the special event process.**

*The Municipal Code does allow the noise control officer to approve exceptions to the Noise Ordinance (see staff's response to question 4 above). The City Council could amend the Conditional Use Permit, including Conditions No. 14 and 16, to state that no exceptions to the Noise Ordinance shall be granted to this property operating under the Conditional Use Permit.*

- 10) Several comments were received regarding the inclusion of a condition that would establish an automatic threshold to trigger Planning Commission review for multiple violations. Comments were received noting that staff has not acted on a written complaint received for a fraternity that has violated their Conditional Use Permit.**

*The Planning Commission approved Conditional Use Permit, as currently written, addresses this concern. However, the City Council could amend Condition No. 3 to include a specific trigger for review. The current language attempts to balance responsiveness to written complaints about verified violations with the available resources to address all code enforcement issues that impact the community.*

*The assertions that no action has been taken on the Conditional Use Permit for which a written complaint has been received is not true. Upon receipt of this written complaint, staff worked to verify the complaints and began the code enforcement process to gain compliance. In addition, staff reached out to the property owner, manager, and fraternity in question to discuss the written complaint and explain the process involved in taking the Conditional Use Permit to Planning Commission for review. It is true that this process took several months to make contact with the fraternity in question as members of the fraternity were out of town and not available during the summer months. Staff required a meeting with the fraternity leadership once they returned in September and the item will be heard by the Planning Commission in November or early December of this year.*

- 11) Several comments and questions were received related to the request to change or amend various conditions of approval.**

*The City Council can add, remove, or amend any of the conditions of approval to address concerns that the Council does not find to be adequately addressed in the currently approved Conditional Use Permit or to strengthen the language of the Conditional Use Permit for clarity. Staff continues to recommend against any conditions that would restrict the type of persons (e.g., residents vs. non-residents) on the site.*