

# How to justify approval of a conditional use

The criteria for approval of a conditional use are below. The applicant bears the burden of proof to show that all of the approval criteria are satisfied. The sample applicant statement and responses to the approval criteria are provided to assist you in preparing your own materials.

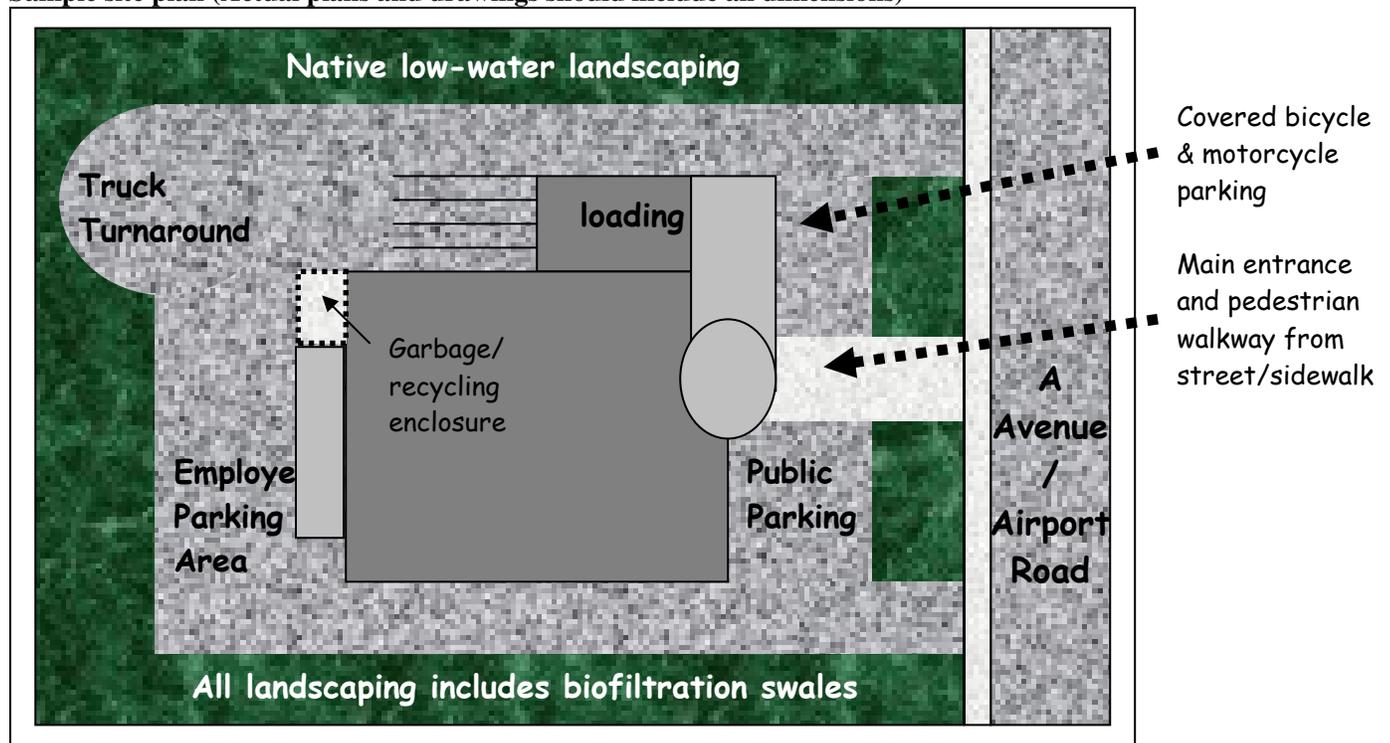
In order to grant any conditional use, the Planning Commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

- (1) The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this ordinance.
- (2) The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
- (3) Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other ordinance standards, or other reasonable conditions of approval.
- (4) In areas designated as requiring preservation of historic, scenic or cultural resources and attributes, proposed structures will be of a design complimentary to the surrounding area.

## Hypothetical situation:

The applicant is a manufacturer of motorcycles and bicycles. The applicant wishes to relocate all operations to Pendleton, and has found property in the M-1 Light Industrial zone. Transportation Equipment is listed as a conditional use in the M-1 zone. Applicant proposes to acquire the property and build a new manufacturing facility if the application is approved. Applicant also proposes to operate a factory-direct showroom and sales area for its products in the front of the building, which is an allowed use in the zone. According to the applicant, the proposed site is the only location in Pendleton that is readily available and appropriate in size to accommodate the proposed use. Does the argument presented below justify approval?

## Sample site plan (Actual plans and drawings should include all dimensions)



## Applicant's statement:

ReCharge Cycles is a manufacturer of gas-electric hybrid and rechargeable electric motorcycles and motor scooters. We also manufacture electric assist, as well as traditional bicycles and other human-powered vehicles. Our company has experienced record growth in the past five years, and we have outgrown our current facility in Bend, Oregon. We are interested in relocating to a facility that will accommodate present and future needs, and also provide our employees with a family-friendly location that allows for a good standard of living. We are also looking for a relatively rural location that will allow us to road-test our products away from big-city media and traffic.

The property we would like to purchase is an undeveloped lot located in the M-1 Light Industrial zone. **We understand that Transportation Equipment (specifically SIC Group 375 – motorcycles, bicycles and parts) is listed as a conditional use in the M-1 zone. We are specifically requesting approval of a Conditional Use Permit to allow the manufacture of motorcycles and bicycles in the M-1 zone.**

Our operations produce a minimum amount of “negative impacts” including noise and vibration. The majority of the impacts from our operations will be confined to the inside of our facility. Although we anticipate operations to be conducted between the hours of 7 a.m. and 6 p.m. on weekdays only, we may expand the hours and days of operation if demand warrants it. Our motorcycles are not “choppers,” and are in fact very quiet. None of our motorcycles make any more noise than a small car, and most make significantly less. When operating under electric power, they are virtually silent. We have not had a single complaint regarding noise at our existing location in Bend. We intend to operate a full retail showroom for all our products and related accessories in the front of the building. The retail store will be open on weekdays and weekends.

Our products, and our facility, are very “green.” We make every effort to ensure that the impacts from both the manufacture and use of our products are minimized. This includes the design of our building and grounds. Although we will be constructing a new building and installing hard-surface parking and maneuvering areas, we anticipate all stormwater runoff will be treated on-site through porous paving and biofiltration swales. We anticipate that our landscaping will more than exceed the minimum 40sf per parking space.

We have chosen the site on A Avenue due to its proximity to the Airport and the new Airport Road extension. We are also very interested in the potential the site offers for wind and solar power. We plan to construct several wind turbines of our own design on the roof to provide a portion of our power. The turbines will not interfere with airport operations.

If this application is approved, we anticipate that we will start construction in the spring of next year. We hope to be operational within six months of that time.

#### **Note to applicants:**

The approval criteria for a conditional use allow for a significant amount of discretion. This means you must provide enough information to give the Planning Commission some background on your request. You should also provide details to answer any questions that City staff may have when preparing the staff report. If any questions do arise, your application materials should answer them; not staff’s interpretation of them.

#### **Criterion 1.**

The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this ordinance.

*Hint – Is the site big enough to accommodate not just the use, but the parking and landscaping requirements as well? Do the site plans provide for efficient internal circulation, including conflicting needs for vehicles and pedestrians? If there are any special requirements for the use or facility, will the site accommodate those needs?*

#### **Applicant’s Response**

The property is currently undeveloped, and is large enough to accommodate present and future needs, including significant growth. We anticipate an initial staff of 20, but could accommodate twice that number. We will have enough space for 40 parked vehicles, plus additional bicycle/motorcycle space and loading areas. Our preliminary plans show more than 3,000 square feet of landscaping, which exceeds the minimum of 40sf per parking space. We do not anticipate any freestanding signage beyond a small ground-mounted sign including our company logo and address. We prefer to place signage directly on the face of the building for aesthetic reasons.

#### **Criterion 2.**

The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.

*Hint – Will the proposed use bring a lot of new traffic? Is getting traffic in and out of the site, as well as through it, going to cause potential safety problems? Are the roads in the area able to accommodate the anticipated traffic load? If not, how do you propose to address this?*

#### **Applicant’s Response**

The property is ideally located for our operations. A Avenue/Airport Road in front of the property is not improved to City standards, lacking sidewalks and curb/gutter. We are prepared to either construct half-street improvements or sign a waiver of remonstrance to delay construction of those improvements until the entire street is done. We anticipate between five and ten large truck deliveries per week, in addition to smaller package deliveries. Product is generally

shipped out via freight once or twice a week, although some customers prefer to visit the factory to pick up their vehicle directly and chat with staff. Many of our staff commute on the products we manufacture, including bicycles, and place a minimal load on the local transportation system. Our retail operations generally draw a very specific clientele; it is unusual to have more than two or three customer cars at our location at any one time.

### **Criterion 3.**

Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other ordinance standards, or other reasonable conditions of approval.

*Hint – Would approval of your request have negative impacts on property in the vicinity or the same zone? If so, what are they, and can those impacts be mitigated?*

### **Applicant’s Response**

Negative impacts from our operations are minimal. Aside from delivery traffic, there are virtually no noise, odor or vibration impacts that can be sensed outside our building. Our landscaping will “soften” the industrial nature of the building, and will also ensure that 100% of storm water runoff is treated on site. The property is located in an industrial zone; we do not anticipate any significant off-site impacts to adjacent industrial or airport operations.

### **Criterion 4.**

In areas designated as requiring preservation of historic, scenic or cultural resources and attributes, proposed structures will be of a design complimentary to the surrounding area.

*Hint – Check with staff before you submit your application to confirm that you are (or are not) in a historic, scenic, cultural, airport overlay, natural area (flood plain), or other resource area.*

### **Applicant’s Response**

To our knowledge, the property is not located within an area designated for preservation of historic, scenic or cultural resources and attributes. We are aware of height restrictions within the airport area. Our building will not exceed 35 feet in height, which should not conflict with airport/aircraft operations.

### **General hints:**

Imagine your request as if it was presented by one of your neighbors, but you are unfamiliar with it. What would your concerns be? If you can address those concerns in your application, it might help to answer questions and concerns your neighbors may have regarding your proposal.

Talk to your neighbors before you submit an application for a conditional use. Tell them what you want to do. If they have any concerns, you may be able to address them directly. Your neighbors are the most likely people to oppose your request. They may submit testimony or come to the hearing opposing the application.

The Planning Commission will weigh your testimony against the approval criteria and any opposing testimony. The Planning Commission is under no obligation to approve the request. If you have not provided enough information to justify approval, and/or opponents raise issues that show you have not met the approval criteria, the application may be denied.

Be prepared to rebut any negative testimony. Your testimony should be based on facts, and supported by evidence that you meet the approval criteria. You bear the burden of proof to show that the application should be approved. Arguments based on emotion (either yours or that of any opponents) do not carry much weight. Any testimony in opposition must also be based on the approval criteria. You may think your proposal is the greatest thing since sliced bread, and your neighbors may think it’s the worst thing since disco, but those arguments don’t justify approval or denial.

The Planning Commission may approve or deny your request. If the Commission receives testimony with specific concerns regarding negative impacts of the proposal, they may approve the request including certain conditions of approval. These conditions may include limits to noise, hours of operation, or other mitigation to ensure that your proposal is compatible with the neighborhood and/or other City goals or policies. Failure to abide by these conditions can result in revocation of a conditional use approval.

### **For more information see these related documents:**

- Planning Commission Opening Statement
- How to testify at a land use hearing