

**CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2015-51**

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING SITKA
GENERAL CODE TITLE 22 ZONING TO ALLOW CONDITIONAL USE PERMITS TO BE
APPROVED BY THE PLANNING COMMISSION WITH APPEAL RIGHTS TO THE
ASSEMBLY ACTING AS THE BOARD OF ADJUSTMENT**

BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska as follows:

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person and circumstances shall not be affected thereby.
3. **PURPOSE.** The purpose of this ordinance is to 1) allow conditional use permits to be approved by the Planning Commission with appeal rights to the Assembly acting as the Board of Adjustment and 2) clarify internally inconsistent provisions in the Chapter 22 Zoning- Special Use Permits 22.24 and Zoning Code Administration 22.30 regulations. The intent is to streamline the conditional use permit process, making it less arduous for citizens and policymakers, while allowing for due public process and appeal rights.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough to revise the following sections of SGC Titles 22 as listed below (new language underlined; deleted language stricken):

**Chapter 22.24
SPECIAL USE PERMITS**

Sections:

- 22.24.005 General.
- 22.24.010 Conditional uses.
- 22.24.020 Variances.
- 22.24.025 Commercial home horticulture permits.
- 22.24.030 Planned unit developments.
- 22.24.040 Binding site plan approval.
- 22.24.050 Nonconforming use permit.

22.24.005 General

Special permits are necessary for conditional uses, variances, planned unit developments, binding site plans and nonconforming uses. This chapter includes provisions for application, review and approval of these permits. Chapter 22.30, Article III, of this code provides procedural requirements associated with permit processing. (Ord. 02-1683 § 4 (part), 2002.)

22.24.010 Conditional uses

A conditional use is a use that may not be appropriate in a particular zoning district according to the character, intensity, or size of the lot or the surrounding uses. This section establishes decision criteria and procedures for special uses, called conditional uses, which possess unique characteristics. The conditional use permit procedure is intended to afford the municipality the flexibility necessary to make determinations appropriate to

individual sites. The commission may attach conditions necessary to mitigate external adverse impacts. If the municipality determines that these impacts cannot be satisfactorily overcome, the permit shall be denied.

A. Submittal Requirements for Conditional Use Applications. Table 22.24.010-1 provides application requirements for all conditional use permits.

Table 22.24.010-1

Conditional Use Permit Application Requirements

Conditional Uses	Bed and Breakfast Conditional Uses	Short-Term Rental Conditional Uses	Island Conditional Uses
<p>The applicant may be required to consult with agencies that are responsible for certain portions of the project review. These agencies may include but not be limited to public works and engineering for sewer/water utilities; state DOT/PF; State Department of Environmental Conservation; Army Corps of Engineers; Sitka fire department; local telephone utility; cable television utility; electric department.</p> <p>Written Documentation</p> <ul style="list-style-type: none"> • Legal description of all properties involved in the project; • Statement of the objectives expected to be achieved by the project; • Detailed description of all aspects of the project, including land use, building types and sizes, population density, parking and traffic circulation, building coverage and other information which the applicant feels would assist in decision making; • All comments received from each of the agencies and utilities reviewing the project and a statement by the applicant on how the applicant will resolve or meet any problems or anticipated adverse conditions noted by the utility or agency, the statement to list any unresolved problems or adverse conditions. <p>Site Plan and Supporting Drawings</p> <ul style="list-style-type: none"> • As determined by the administration, details of the proposed project showing land use layout, building locations, vehicular and pedestrian circulation, open space and recreation areas, parking layout, schematic water and sewer layout, and any other information necessary to adequately describe the project; • Preliminary subdivision plat layout if required; • Site grading and drainage plan 	<p>Written Documentation</p> <ul style="list-style-type: none"> • Legal description of all property involved in the project; • Statement of the objectives expected to be achieved by the project. <p>Site Plan and Supporting Drawings</p> <ul style="list-style-type: none"> • As determined by the administration, details of the proposed project showing building locations, vehicular and pedestrian circulation, parking layout, and any other information necessary to adequately describe the project; conceptual drawings of proposed buildings or renovations, signs, and other features that may be required by the administrator. 	<p>Written Documentation</p> <ul style="list-style-type: none"> • Legal description of all property involved in the project; • Statement of the objectives expected to be achieved by the project. <p>Site Plan and Supporting Drawings</p> <ul style="list-style-type: none"> • As determined by the administration, details of the proposed project showing building locations, vehicular and pedestrian circulation, parking layout, and any other information necessary to adequately describe the project; conceptual drawings of proposed buildings or renovations, signs, and other features that may be required by the administrator. 	<p>Written Documentation</p> <ul style="list-style-type: none"> • Legal description of all properties involved in the project; • Statement of the objectives expected to be achieved by the project; • Detailed description of all aspects of the project, including land use, building types and sizes, population density, building coverage, waterfront use, clearing, changes to existing visual appearance, and other information which the applicant feels would assist in decision making; • All comments received from each of the agencies and utilities reviewing the project and a statement by the applicant on how the applicant will resolve or meet any problems or anticipated adverse conditions noted by the utility or agency, the statement to list any unresolved problems or adverse conditions. <p>Site Plan and Supporting Drawings</p> <ul style="list-style-type: none"> • As determined by the administration, details of the proposed project showing land use layout, building locations, open space and recreation areas, waterfront development, clearing, schematic water and sewer layout, and any other information necessary to adequately describe the project; • Preliminary subdivision plat layout if required; • Site grading and drainage plan including present and proposed topography; conceptual drawings of proposed buildings, and other features that may be required

including present and proposed topography; • Conceptual drawings of proposed buildings, signs, and other features that may be required by the administrator.			by the administrator.
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1. Conditional use permit application initiation periods and termination periods are outlined in Table 22.24.010-2.

Table 22.24.010-2

Initiation and Termination Periods

	Short-Term Rental Conditional Use Permits	Bed and Breakfast Conditional Use Permits	Interim Mobile Homes Conditional Use	All Other Conditional Use Permits
Period in which the permit must be activated following <u>assembly Planning Commission</u> approval or permit becomes void	One year	One year	One year	Two years
If permit is not used during period, permit becomes void after activation	One year	One year	One year	Two years
Mandatory review period ¹	Set by assembly <u>Planning Commission</u> at time of approval	Set by assembly <u>Planning Commission</u> at time of approval	Set by assembly <u>Planning Commission</u> at time of approval	Set by assembly <u>Planning Commission</u> at time of approval
Number of years after approval that permit sunsets	Set by assembly <u>Planning Commission</u> at time of approval	Set by assembly <u>Planning Commission</u> at time of approval	Set by assembly <u>Planning Commission</u> at time of approval	Set by assembly <u>Planning Commission</u> at time of approval
<p>Note (1): It shall be the responsibility of the applicant to submit materials one month prior to the end of any review period. Failure to submit materials within the time specified shall automatically void the approval.</p> <p>Note (2): It is recognized in land use case law that conditional use permits are grants to a property and run with the parcel and not the owner.</p> <p>Note (3): Substantial construction progress must be made on a project approved through the variance process within one year of the date of the variance approval or the approval becomes void. In the event it can be documented that other substantial progress has been made, a one-year extension may be granted by the planning commission if a request is filed within eleven months of the initial approval.</p>				

B. Conditional Use Permit Provisions for Bed and Breakfasts.

1. The information and assurances filed by the applicant for a bed and breakfast conditional use at the time of application shall be binding on all current and future owners of the facility.
2. There shall be no expansion in the number of guest rooms beyond the number approved.

3. The number of bed and breakfast sleeping rooms per residence shall be limited to three rooms in an R-1 or related zone and five rooms in an R-2 or related zone.
4. In no case shall a bed and breakfast be operated in any residence other than an owner-occupied dwelling.
5. The owner of the residence shall operate the bed and breakfast at all times and shall not contract out the day-to-day management of the operation. In the event the operation or management of the bed and breakfast is conducted by a tenant or party other than the owner who lives in the residence, the conditional use permit shall automatically become void.
6. Bed and breakfast guestrooms are intended to be spare or surplus guestrooms in owner-occupied single-family dwellings or an owner-occupied unit of a two-family dwelling that are not needed by the owner of the structure for household activities.
7. Permits shall lapse and become void if the bed and breakfast ceases operation for twelve consecutive months.
8. There shall be no more than one exterior sign. The sign shall not exceed four square feet.
9. There shall be a minimum of one off-street parking space for every three guestrooms in bed and breakfast establishments located in single-family residential zones.
10. Existing bed and breakfasts which do not conform to these rules shall be considered nonconforming uses and subject to the rules relating to nonconforming uses.
11. It is the intent of the assembly that the provisions of these requirements be strictly followed. However, exceptions may be granted in cases of extreme need or extreme personal or financial hardship. The limitation on the number of the rooms and the use of single-family occupied structures will not be eligible for hardship relief.
12. For establishment of a bed and breakfast establishment in an existing structure in an R-1 zone, only existing bedrooms may be used for guest rooms.
13. Limited cooking facilities shall only be allowed inside guestrooms, or inside other rooms that are used solely by the bed and breakfast, such as small toaster ovens, microwaves, and refrigerators.
14. Timely payment of sales taxes shall be one of the primary indicators of compliance with this section.
15. When the assembly *Planning Commission* approves a permit with the condition referring to the number of children in the facility, the term "children" shall refer to individuals who are fifteen years old or younger.

C. Conditional Use Permit Provisions for Short-Term Rentals.

1. Short-term rental establishments as described in subsection F of this section shall be approved as conditional uses in the R-1, R-1 MH, R-1 LD, R-1 LDMH, R-2, and R-2 MHP zoning districts with the following conditions:
 - a. Existing short-term rentals operating in conformance with all other applicable regulations prior to the effective date of the ordinance codified in this section may continue operating as nonconforming uses so long as payments of bed taxes and any other fees are current.
 - b. The permit application and process will be the same as that required for bed and breakfasts, including submission and review of both interior and exterior site plans.

- c. Increase in density and other impacts on the immediate surrounding neighborhood which would occur as a result of approval of short-term rentals may be a consideration in the granting of the permit.
 - d. Cessation of an approved short-term rental operation for twelve consecutive months shall result in revocation of the permit and require reapplication and approval of a new conditional use permit. Timely payment of sales taxes shall be one of the primary indicators of compliance with this section.
 - e. When the ~~assembly~~ ***Planning Commission*** approves a permit with the condition referring to the number of children in the facility, the term "children" shall refer to individuals who are fifteen years old or younger.
2. Short-term rentals shall be allowed in the other zoning districts subject to the following general rules:
- a. There shall be two parking spaces per dwelling unit.
 - b. The number of persons per sleeping area shall comply with the municipal fire code.
 - c. Upon filing for sales tax and bed tax accounts, an owner shall obtain a life safety inspection by the building department and shall comply with the requirements proposed by the department.
 - d. Legal nonconforming short-term rentals shall comply with these general rules within two years.
 - e. Short-term rentals may only be approved for mobile homes that are located along streets maintained by the city and borough or the state of Alaska.

D. Conditional Use Permit Provisions for Mobile Homes on an Interim Basis in the R-1, R-2 and Related Zones.

1. The city and borough of Sitka, through the conditional use permit process, may issue a permit for a single-family mobile home or travel trailer on a residential lot in an area not otherwise allowing mobile homes on an interim basis for the purposes of facilitating home construction.
2. The maximum term of the permit is twelve months with a possible six-month extension.
3. Full utilities must be installed for the mobile home or travel trailer.
4. Conditions attached to the approval shall include but are not limited to (a) a pledge of the travel trailer, mobile home, or cash of equivalent value as collateral, and (b) in the event a travel trailer or mobile home is pledged as collateral, fund sufficient to cover the cost of removal and disposal of the unit, and (c) the trailer is for the sole occupancy of the lot owner and neither unit shall be occupied by any other party. Other conditions may include requirements of fencing or landscaping.

E. In evaluating the inputs of a proposed conditional use permit, the municipality may consider a commercial conditional use to be inappropriate for residential neighbors while the same conditional use may be acceptable when it is located along an arterial or collector street. The additional vehicular traffic generated by conditional uses, such as professional offices, may not be able to be adequately mitigated in residential areas.

1. Criteria to Be Used in Determining Impacts of Conditional Uses.
 - a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses.
 - b. Amount of noise to be generated and its impacts on surrounding land uses.

- c. Odors to be generated by the use and their impacts.
- d. Hours of operation.
- e. Location along a major or collector street.
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario.
- g. Effects on vehicular and pedestrian safety.
- h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site.
- i. Logic of the internal traffic layout.
- j. Effects of signage on nearby uses.
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site.
- l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan.
- m. Other criteria that surface through public comments or planning commission assembly review.

F. Evaluation and Approval or Denial of Conditional Use Applications for Island Properties. It is the intent of this code to recognize the unique qualities of islands within Sitka Sound and the substantial differences that exist between individual islands and island groups.

Specific conditional uses may be fully appropriate in certain circumstances and on specific parcels. Uses that are well designed and/or have low impact may enhance surrounding properties and may not create any impacts. Examples may include structures that are built on larger lots away from exterior property lines, uses that are placed in the middle of parcels, uses that do not materially increase activity on easements or moorage, uses where there is a significant vegetative or terrain buffer between properties, and islands that are separated by substantial distances. In these cases, conditional use requests can and should be handled expeditiously.

Conditional uses on other properties may be totally inappropriate due to the concerns such as impacts on adjacent properties, lack of vegetative or distance buffers, noise generation, unmitigated increased usage of access easements, available moorage, location on parcels, and design.

1. Items to be considered in evaluating island conditional use permits include, but are not limited to, the following:
 - a. Location on the lot or island.
 - b. Generation of noise.
 - c. Numbers of guests and employees.
 - d. Visibility from adjacent uses including waterborne traffic.
 - e. Use of common access easements.
 - f. Availability of necessary moorage.
 - g. Use of natural or manmade screening or buffers.

- h. Availability of municipal power.
- i. Distance from adjacent parcels or islands.
- j. Removal of excessive amounts of vegetation.

It is recognized that many applications may be strongly supported after using the criteria above.

If adequate mitigation cannot be accomplished or items such as necessary infrastructure are not available, applications may be denied.

(Ord. 06-16 § 4, 2006; Ord. 05-16 § 4(O), (P), 2005; Ord. 04-60 § 4(F), (G), (U), 2004; Ord. 02-1683 § 4 (part), 2002.)

Article II. Administration

22.30.020 Roles and responsibilities.

A. The regulation of land development is a cooperative activity involving different elected and appointed boards and city staff. The specific responsibilities of these bodies are set forth below.

B. Applicants are expected to read and understand the city development code and be prepared to fulfill the obligations placed on applications for development approvals defined in Title 21 and this title of the Sitka General Code.

(Ord. 02-1683 § 4 (part), 2002.)

22.30.030 Administrator.

The term "administrator" shall mean the city and borough administrator, or an individual operating with his/her express knowledge on his/her behalf. Said individual may include, but is not limited to, the planning director or planning assistant. The administrator is responsible for the administration of this title and shall review and act on the following:

A. Administrative Interpretation. Upon request or as determined necessary, the administrator shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation. All administrative determinations shall be reported to the planning commission within a reasonable period of time following their issuance.

B. Nonconforming use permits.

C. Administrative approvals as set forth in Section 22.30.150.

D. Permit Procedures. The administrator shall determine the proper procedure for all development applications.

(Ord. 04-60 § 4(D) (part), 2004; Ord. 02-1683 § 4 (part), 2002.)

22.30.040 Assembly.

In addition to its legislative responsibility, the assembly shall review and act on the following subjects:

A. Recommendations of the planning commission.

B. Appeal of planning commission recommendations and decisions.

(Ord. 02-1683 § 4 (part), 2002.)

22.30.050 Planning commission.

The planning commission shall be constituted in accordance with Chapter 2.18 of this code and the Sitka Home Rule Charter and shall have the responsibility of reviewing and acting on the following:

- A. Recommendations to the assembly on approvals of subdivisions, planned unit developments, and binding site plans.
- B. Recommendations to the assembly on amendments to the comprehensive plan.
- C. Recommendations to the assembly on amendments to the subdivision code, Title 21 of this code.
- D. Recommendations to the assembly on amendments to the zoning code, this Title 22, or the official map.
- E. Approve variances with appeals possible to the assembly.
- F. Recommendations Approve conditional use permit applications with appeals possible to the assembly.
- G. Other actions requested or remanded by the assembly.

(Ord. 04-60 § 4(R), (S), 2004.)

22.30.060 Board of Adjustment

The assembly of the city and borough shall function as the board of adjustment with the authority to:

- ~~A. Approve or deny conditional use permits.~~
- B A.** Consider appeals of variances or conditional use permits.
- ~~C B.~~ Hear appeals of administrative approvals or denials.

(Ord. 04-60 § 4(R), 2004.)

22.30.160 Planning commission review and recommendation decision.

Planning commission decision and action authority is defined in Section 22.30.050.

- A. Staff Report. The administrator shall prepare a staff report on the proposed development or action summarizing any comments, analysis, and recommendations of city departments, affected agencies and special districts, evaluating the development's consistency with the comprehensive plan, code, and other adopted plans and regulations. The staff report may include findings, conclusions or proposed recommendations for disposition of the development application.
- B. Hearing. The planning commission shall conduct a public hearing on development proposals for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's comprehensive plan, code, and other adopted plans and regulations. Notice of the planning commission hearing shall be in accordance with Article IV of this chapter.
- C. Required Findings for Conditional Use Permits. The planning commission shall not ~~recommend approval~~ of approve a proposed development unless it first makes the following findings and conclusions:

1. The city may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:

- a. Be detrimental to the public health, safety, and general welfare;
 - b. Adversely affect the established character of the surrounding vicinity; nor
 - c. Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.
2. The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives and policies of the comprehensive plan and any implementing regulation.
 3. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.
 4. The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.
 5. The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.
 6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.

The city may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The general approval criteria are as follows:

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

D. Required Findings for Variances.

1. Required Findings for Variances Involving Major Structures or Expansions. Before any variance is granted, it shall be shown:

- a. That there are special circumstances to the intended use that do not apply generally to the other properties. Special circumstances may include the shape of the parcel, the topography of the lot, the size or dimensions of the parcels, the orientation or placement of existing structures, or other circumstances that are outside the control of the property owner;
- b. The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties but are denied to this parcel; such uses may include the placement of garages or the expansion of structures that are commonly constructed on other parcels in the vicinity;
- c. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property, nearby parcels or public infrastructure;
- d. That the granting of such a variance will not adversely affect the comprehensive plan.

2. Required Findings for Minor Expansions, Small Structures, Fences, and Signs.

- a. The municipality finds that the necessary threshold for granting this variance should be lower than thresholds for variances involving major structures or major expansions;
- b. The granting of the variance is not injurious to nearby properties or improvements;
- c. The granting of the variance furthers an appropriate use of the property.

E. Required Findings for Appeals. Appeals of any decisions regulated by this title shall only be granted when the designated appeal body determines that the subject permit approval or denial was in error. The appeal body shall base its decision on new evidence or proof of procedural error in the prior action. The appellant shall bear the burden of proof of proving that the decision was in error.

F. Required Findings for Code Amendments. Article VIII of this chapter contains standards for amendments to administrative permits, special use permits, the development standards, and the official map.

(Ord. 04-60 § 4(J), (K), (L), 2004; Ord. 02-1683 § 4 (part), 2002.)

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 27th day of October 2015.



Mim McConnell, Mayor

ATTEST:



Sara Peterson, CMC
Municipal Clerk

1st reading 10/13/15
2nd reading 10/27/15