

REPORT TO CITY COUNCIL

DATE: DECEMBER 13, 2023

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: DENICE THOMAS, COMMUNITY DEVELOPMENT DIRECTOR
ROBBY NESOVIC, PRINCIPAL PLANNER

REQUEST: CONDUCT A PUBLIC HEARING, WAIVE FULL READING AND INTRODUCE ORDINANCE NO. 23-475, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING SECTION 9673.2 OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO REQUIRE ISSUANCE OF A CONDITIONAL USE PERMIT WITHIN A SPECIFIED TIME PERIOD IF DELINEATED FINDINGS CAN BE MADE AND CODIFYING FACTORS TO BE UTILIZED IN CONSIDERING REQUIRED FINDINGS, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The request before the City Council is to adopt Ordinance No. 23-475 (Case No. ZOA-2023-0010), which proposes to amend §9673.2, et. seq. of the Agoura Hills Municipal Code (AHMC) to clarify Planning Commission actions, required findings for approval of conditional use permit (CUP) applications, and time periods associated with CUP applications. The Planning Commission conducted a public hearing on November 2, 2023, and approved Resolution No. 23-1283 (Exhibit A) with a vote of four ayes and one absent, recommending the City Council adopt the Ordinance (Exhibit B).

Upon review of §9673.2 – Hearing procedures, staff found clarification was needed to accurately reflect the policies and procedures the Planning Commission follows when considering requests for CUP's. The proposed amendments are intended to provide explicit guidance to be used during the deliberation and approval process, and to codify existing policies and practices currently used by the Planning Commission. All proposed changes are shown below in legislative format, with underlined text representing words to be added to the adopted text and words with ~~strikethrough~~ text representing words to be deleted from the adopted text.

“9673.2 – Hearing procedures.

The following procedures shall be followed in considering a conditional use permit:

- A. *Investigation and report.* The department of planning and community development shall make an investigation of the application and shall prepare a report thereon which shall be submitted to the planning commission and made available to the applicant prior to the public hearing.
- B. *Hearing responsibility.* All conditional use permit applications required by the regulations of this article shall be heard, and a determination shall be made by the planning commission.
- C. *Hearings.* The planning commission shall hold at least one (1) public hearing on each application for a conditional use permit. The hearing shall be set and notice given as prescribed in section 9804.4 of this article. At the public hearing, the planning commission shall review the application and drawings submitted therewith and shall receive pertinent evidence concerning the proposed use and proposed conditions under which it would be operated or maintained.
- D. *Action of the planning commission.*
1. The planning commission may grant, deny, modify or impose conditions on a conditional use permit. a conditional use permit as the permit was for, in modified form or the application may be denied. A conditional use permit may be granted for a limited time period, or may be granted subject to such conditions as the commission may prescribe. Conditions may include, but shall not be limited to, payment of required fees; requiring special yards, open spaces, buffers, fences, and walls; requiring installation and maintenance of landscaping; requiring street dedications and improvements, or the joining of an assessment district to address specific problems; regulations of points of vehicular ingress and egress; regulation of traffic circulation; regulation of signs; regulation of hours of operation and methods of operation; control of potential nuisances; prescribing standards for maintenance of buildings and grounds; description of development schedules and development standards; and such other conditions as the commission deems necessary to ensure compatibility of the use with surrounding developments and uses and to preserve the public health, safety and welfare.
 2. The planning commission may impose reasonable conditions or restrictions deemed necessary to affirmatively make the findings set forth in subsection E of this section 9673.2. Such conditions may include, without limitation: requirements regarding development of the property, structures, yards, fences, walls, landscape, lighting, and signage; requirements concerning operation of the use, including hours of operation, parking, ingress and egress, noise mitigation, and security; requirements concerning ongoing

maintenance of the property and the use, including any mitigation measures deemed necessary to prevent or deter nuisance conditions or activities; and such other conditions the commission determines will preserve public health, safety, and welfare.

3. VariANCES/modifications should be done by separate action, but can be processed concurrently with the conditional use permit.

E. Required Findings. The planning commission shall ~~make the following findings before granting a conditional use permit:~~ grant a conditional use permit if all of the following findings are made:

1. That the proposed use is consistent with the ~~objectives of this article~~ intent and purpose of this Article IX, the goals and objectives of the general plan, and any applicable specific plan, and the purposes of the district in which the use is located;

2. That the proposed use is compatible with the surrounding properties; based on the following land use factors:

a. Whether the proposed use would generate offsite noise louder than ambient noise levels by considering (i) the volume and times of day such noise would be generated; (ii) the proximity of nearby residences, schools, and other sensitive uses; (iii) the topography of the surrounding area likely to affect how noise travels; and (iv) the presence of other nearby uses likely to generate offsite noise at similar times;

b. Whether the proposed use would result in increased vehicular and/or pedestrian traffic;

c. Whether access and off-street parking, including parking for guests, can be adequately provided such that available on-street parking for neighboring properties is not negatively impacted;

d. Whether the proposed building and site design elements, including without limitation, structures, fences, walls, lighting, landscaping, and signage, comport with the City's architectural design standards or otherwise achieve the City's goals in harmonizing development with the natural environment;

3. That the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare; based on the following factors:

a. Whether public and private roads and driveways used to access the property can safely accommodate all vehicular traffic

associated with the proposed use, including emergency vehicles, and meet all applicable requirements of the Los Angeles County Fire Code;

- b. Whether the proposed use could create harmful secondary nuisances that cannot be controlled through reasonable mitigation measures, including, without limitation: (i) littering on adjacent properties or public rights-of-way; (ii) public intoxication on adjacent properties or rights-of-way; or (iii) increased risk of trespass, vandalism, or other unlawful activity on adjacent properties or public rights-of-way;
 - c. Whether the proposed use will involve activities that would increase the likelihood, spread, or intensity of fire or other life-safety emergency;
 - d. Whether the proposed use involves or would result in the alteration or modification of existing drainage patterns, or increased erosion that cannot be controlled through reasonable mitigation measures;
- 4. That the proposed use will comply with all each of the applicable provisions of this Article IX, except for approved variances or modifications;
 - 5. That the proposed use shall not be in violation of applicable provisions of this Code or of federal, state, or local law.
 - 6. ~~That the distance from other similar and like uses is sufficient to maintain the diversity of the community.~~
 - 7. ~~That the proposed use is consistent with the goals, objectives and policies of the general plan.~~
- F. Specific use requirements. In the event the proposed use is subject to specific operation or development standards set forth elsewhere in this Code, such requirements shall be deemed incorporated into the conditions approved by the planning commission. In the event of a conflict between conditions and specific standards, the most restrictive shall apply.
 - G. Adoption of findings. Within sixty (60) days of the planning commission's decision, the planning commission shall adopt a Resolution memorializing its decision, unless this timeline is extended by the Director for good cause. The Resolution shall address each of the required findings identified in subsection E and provide the specific grounds why each finding was or was not made, referencing the

Municipal Code, general plan, specific plan, or other document where appropriate.

- H. Effective date of an approved the-use permit. A conditional use permit granted by the planning commission shall be effective sixteen (16) days from the date of the Resolution, provided that the applicant has accepted in writing all terms and conditions of the permit within that time period. In the event the applicant does not timely accept the conditions, the conditional use permit shall not become effective. The decision of the planning commission shall be final within fifteen (15) days from the date of the decision unless an appeal has been filed with the city council.
- I. Finality of decision. The decision of the planning commission shall be final within sixteen (16) days from the date of the adoption of the Resolution unless an appeal has been timely filed with the city council. If an appeal is timely filed, the decision of the city council shall be final upon the adoption of a Resolution upholding, reversing, or modifying the decision of the planning commission.
- J. Appeals; determination by city council. The planning commission's decision on a conditional use permit application may be appealed in accordance with the procedures set forth in this Article IX at sections 9804 through 9804.9. An appeal of the decision of the planning commission shall be made within fifteen (15) days of the adoption of the Resolution. The appeal shall be de novo. Within sixty (60) days of the city council decision, the council shall adopt a Resolution memorializing its decision, unless this timeline is extended by the City Manager for good cause. The Resolution shall address each of the required findings identified in subsection E and provide the specific grounds why each finding was or was not made, referencing the Municipal Code, general plan, specific plan, or other document where appropriate. The decision of the city council shall be final. A decision of the planning commission may be appealed to the city council.
~~Determination by city council or planning commission. The city council shall hold a public hearing on a conditional use permit if an appeal has been filed within the prescribed fifteen-day period. The decision of the city council shall be final.~~
- K. Lapse of conditional use permit; extension.
1. A conditional use permit shall lapse and shall become void two (2) years following the date on which the use permit became effective, unless prior to the expiration of one (1) year, a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the use permit application, or a certificate of occupancy is issued for the structure

which was the subject of the use permit application, or the site is occupied for such use if no building permit or certificate of occupancy is required. Written notice of the determination by planning staff to void a lapsed conditional use permit shall be given to the applicant/permittee and/or the property owner and the determination may be appealed to the planning commission in accordance with the procedures set forth in this Article IX at sections 9804 through 9804.9.

2. Prior to the expiration of the a conditional use permit, the applicant may request up to two (2) extensions for a period of time not exceeding twelve (12) months. Such request shall be considered by the planning commission after a public hearing.”

Fiscal Impact

The only impact associated with this request is ordinance review by the City Attorney. The cost of this review, as with all other city attorney reviews, is included in the adopted budget for Fiscal Year 2023/2024. No budget adjustments are needed for this item and there are no additional impacts to the adopted budget.

Recommendation

Staff respectfully recommends the City Council adopt Ordinance No. 23-475, an ordinance of the City Council of the City of Agoura Hills, California, amending section 9673.2 of Article IX (zoning) of the Agoura Hills Municipal Code to require issuance of a conditional use permit within a specified time period if delineated findings can be made and codifying factors to be utilized in considering required findings, and making a determination of exemption under the California Environmental Quality Act.

Attachments:

- Exhibit A: Planning Commission Resolution No. 23-1283
- Exhibit B: Ordinance No. 23-475

Exhibit A:
Resolution No. 23-1283

RESOLUTION NO. 23-1283

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF AGOURA HILLS ADOPT AN ORDINANCE AMENDING AGOURA HILLS MUNICIPAL CODE SECTION 9673.2 TO REQUIRE ISSUANCE OF A CONDITIONAL USE PERMIT WITHIN A SPECIFIED TIME PERIOD IF DELINEATED FINDINGS CAN BE MADE AND CODIFYING FACTORS TO BE UTILIZED IN CONSIDERING REQUIRED FINDINGS.

THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

Section I. Division 3 of Part 3 of Chapter 6 of Article IX of the Agoura Hills Municipal Code sets forth the process for obtaining a conditional use permit.

Section II. Section 9673.2 of said Division 3 establishes the procedure for a public hearing before the Planning Commission to consider the granting of an application for a conditional use permit.

Section III. Section 9673.2 further establishes that the Planning Commission must make certain findings in order to grant a conditional use permit.

Section IV. This Ordinance amends Section 9673.2 to include definitive land use factors to consider when making findings related to the proposed use for which a conditional use permit is being sought, including noise, traffic, on-street parking, possible harmful secondary effects, and other factors. These factors will provide additional guidance to the Planning Commission when determining if the necessary findings can be made.

Section V. This Ordinance further amends Section 9673.2 to clarify that the Planning Commission shall adopt a Resolution which addresses each of the required findings, and which provides the specific grounds why each finding was or was not made. This will provide enhanced clarity to applicants and the public about the Planning Commission's decision concerning a conditional use permit.


Section VI. Zoning Code text amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. As a Municipal Code text amendment, there is no possibility that the proposed action may result in a significant effect on the environment, and the proposed revision to the Municipal Code is exempt from further review under CEQA. Consideration of a specific conditional use permit will include CEQA review when necessary.

Section VII. Based on the aforementioned findings, the Planning Commission hereby recommends that the City Council adopt an ordinance amending Article IX (Zoning), Chapter 6 (Regulatory Provisions), Part 3 (Special Permit or Review), Division 3 (Conditional Use Permit) of the Agoura Hills Municipal Code to establish definitive criteria for consideration of a conditional use permit

Section VIII. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and its certification to be entered in the Book of Resolutions of the Planning Commission of the City.

PASSED, APPROVED, AND ADOPTED this 2nd day of November, 2023, by the following vote to wit:

AYES:	(4)	Asuncion, Anderson, Roth, Sharon
NOES:	(0)	
ABSENT:	(1)	Reinhardt
ABSTAIN:	(0)	



John R. Asuncion, Chair

ATTEST:



Robby Nesovic, Acting Secretary

Exhibit B:
Ordinance No. 23-475

ORDINANCE NO. 23-475

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING SECTION 9673.2 OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO REQUIRE ISSUANCE OF A CONDITIONAL USE PERMIT WITHIN A SPECIFIED TIME PERIOD IF DELINEATED FINDINGS CAN BE MADE AND CODIFYING FACTORS TO BE UTILIZED IN CONSIDERING REQUIRED FINDINGS, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, Division 3 of Part 3 of Chapter 6 of Article IX of the Agoura Hills Municipal Code sets forth the process for obtaining a conditional use permit.

WHEREAS, Section 9673.2 of said Division 3 establishes the procedure for a public hearing before the Planning Commission to consider the granting of an application for a conditional use permit.

WHEREAS, Section 9673.2 further establishes that the Planning Commission must make certain findings in order to grant a conditional use permit.

WHEREAS, the City Council finds that this Ordinance establishes specific land use factors that provide additional guidance to the Planning Commission when considering if they can make the findings necessary to grant a conditional use permit.

NOW, THEREFORE, the City Council of the City of Agoura Hills hereby ordains as follows:

Section 1. The facts set forth in the recitals of this Ordinance are true and correct.

Section 2. Section 9673.2 (Hearing Procedures) of Division 3 (Conditional Use Permit) of Part 3 (Special Permit or Review) of Chapter 6 (Regulatory Provisions) of Article IX (Zoning) of the Agoura Hills Municipal Code is amended to read as follows:

9673.2 – Hearing Procedures.

The following procedures shall be followed in considering a conditional use permit:

- A. *Investigation and report.* The department of planning and community development shall make an investigation of the application and shall prepare a report thereon which shall be submitted to the planning commission and made available to the applicant prior to the public hearing.
- B. *Hearing responsibility.* All conditional use permit applications required by the regulations of this article shall be heard and a determination made by the planning commission.

- C. *Hearings.* The planning commission shall hold at least one (1) public hearing on each application for a conditional use permit. The hearing shall be set and notice given as prescribed in section 9804.4 of this article. At the public hearing, the planning commission shall review the application and drawings submitted therewith and shall receive pertinent evidence concerning the proposed use and proposed conditions under which it would be operated or maintained.
- D. *Action of the planning commission.*
1. The planning commission may grant, deny, modify or impose conditions on a conditional use permit.
 2. The planning commission may impose reasonable conditions or restrictions deemed necessary to affirmatively make the findings set forth in subsection E of this section 9673.2. Such conditions may include, without limitation: requirements regarding development of the property, structures, yards, fences, walls, landscape, lighting, and signage; requirements concerning operation of the use, including hours of operation, parking, ingress and egress, noise mitigation, and security; requirements concerning ongoing maintenance of the property and the use, including any mitigation measures deemed necessary to prevent or deter nuisance conditions or activities; and such other conditions the commission determines will preserve public health, safety and welfare.
 3. Variances/modifications should be done by separate action but can be processed concurrently with the conditional use permit.
- E. *Required Findings.* The planning commission shall grant a conditional use permit if all the following findings are made:
1. That the proposed use is consistent with the intent and purpose of this Article IX, the goals and objectives of the general plan and any applicable specific plan, and the purposes of the district in which the use is located;
 2. That the proposed use is compatible with the surrounding properties, based on the following land use factors:
 - a. Whether the proposed use would generate offsite noise louder than ambient noise levels by considering (i) the volume and times of day such noise would be generated; (ii) the proximity to nearby residences, schools and other sensitive uses; (iii) the topography of the surrounding area likely to affect how noise travels; and (iv) the presence of other nearby uses likely to generate offsite noise at similar times;
 - b. Whether the proposed use would result in increased vehicular and/or pedestrian traffic;
 - c. Whether access and off-street parking, including parking for guests, can be adequately provided such that available on-street parking for neighboring properties is not negatively impacted;

- d. Whether the proposed building and site design elements, including without limitation, structures, fences, walls, lighting, landscaping, and signage, comport with the City's architectural design standards or otherwise achieve the City's goals in harmonizing development with the natural environment;
 3. That the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, based on the following land use factors:
 - a. Whether public and private roads and driveways used to access the property can safely accommodate all vehicular traffic associated with the proposed use, including emergency vehicles, and meet all applicable requirements of the Los Angeles County Fire Code;
 - b. Whether the proposed use could create harmful secondary nuisances that cannot be controlled through reasonable mitigation measures, including, without limitation: (i) littering on adjacent properties or public rights-of-way; (ii) public intoxication on adjacent properties or public rights-of-way; or (iii) increased risk of trespass, vandalism or other unlawful activity on adjacent properties or public rights-of-way;
 - c. Whether the proposed use will involve activities that would increase the likelihood, spread, or intensity of fire or other life-safety emergency;
 - d. Whether the proposed use involves or would result in the alteration or modification of existing drainage patterns, or increased erosion that cannot be controlled through reasonable mitigation measures;
 4. That the proposed use will comply with all applicable provisions of this Article IX, except for approved variances or modifications;
 5. That the proposed use shall not be in violation of applicable provisions of this Code or of federal, state or local law.
- F. *Specific use requirements.* In the event the proposed use is subject to specific operation or development standards set forth elsewhere in this Code, such requirements shall be deemed incorporated into the conditions approved by the planning commission. In the event of a conflict between conditions and specific standards, the most restrictive shall apply.
- G. *Adoption of findings.* Within sixty (60) days of the planning commission's decision, the planning commission shall adopt a Resolution memorializing its decision, unless this timeline is extended by the Director for good cause. The Resolution shall address each of the required findings identified in subsection E and provide the specific grounds why each finding was or was not made, referencing the Municipal Code, general plan, specific plan or other document where appropriate.

- H. *Effective date of an approved use permit.* A conditional use permit granted by the planning commission shall be effective sixteen (16) days from the date of the Resolution, provided that the applicant has accepted in writing all terms and conditions of the permit within that time period. In the event the applicant does not timely accept the conditions, the conditional use permit shall not become effective.
- I. *Finality of decision.* The decision of the planning commission shall be final within sixteen (16) days from the date of the adoption of the Resolution unless an appeal has been timely filed with the city council. If an appeal is timely filed, the decision of the city council shall be final upon the adoption of a Resolution upholding, reversing or modifying the decision of the planning commission.
- J. *Appeal; determination by city council.* The planning commission's decision on a conditional use permit application may be appealed in accordance with the procedures set forth in this Article IX at sections 9804 through 9804.9. An appeal of the decision of the planning commission shall be made within fifteen (15) days of the adoption of the Resolution. The appeal shall be de novo. Within sixty (60) days of the city council decision, the council shall adopt a Resolution memorializing its decision, unless this timeline is extended by the City Manager for good cause. The Resolution shall address each of the required findings identified in subsection E and provide the specific grounds why each finding was or was not made, referencing the Municipal Code, general plan, specific plan or other document where appropriate. The decision of the city council shall be final.
- K. *Lapse of conditional use permit; extension.*
 - 1. A conditional use permit shall lapse and shall become void two (2) years following the date on which the use permit became effective, unless prior to the expiration of one (1) year, a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the use permit application, or a certificate of occupancy is issued for the structure which was the subject of the use permit application, or the site is occupied for such use if no building permit or certificate of occupancy is required. Written notice of the determination by planning staff to void a lapsed conditional use permit shall be given to the applicant/permittee and/or the property owner and the determination may be appealed to the planning commission in accordance with the procedures set forth in this Article 9 at sections 9804 through 9804.9.
 - 2. Prior to the expiration of a conditional use permit, the applicant may request up to two (2) extensions for a period of time not exceeding twelve (12) months. Such request shall be considered by the planning commission after a public hearing.

Section 3. CEQA. Zoning Code text amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. As a Municipal Code text amendment,

there is no possibility that the proposed action may result in a significant effect on the environment, and the proposed revision to the Municipal Code is exempt from further review under CEQA. Consideration of a specific conditional use permit will include CEQA review when necessary.

Section 4. Severability Clause. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or circumstances, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsections, subdivision, paragraph, sentence, clause, phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after passage.

Section 6. Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED, AND ADOPTED this ___th day of _____, 2023, by the following vote to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Chris Anstead, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney