

ORDINANCE NO. 2004-11

AN ORDINANCE AMENDING PORTIONS OF CHAPTER 35 OF THE CITY OF CODY CODE PROVIDING FOR A CONDITIONAL USE PERMIT AND SPECIAL EXEMPTIONS PROCEDURE.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CODY, WYOMING;

[The heading of Section 35-14, Conditional Use Permit, is amended to read as follows:]

Sec. 35-14. Conditional Use Permit and Special Exemptions

[Section 35-14, Conditional Use Permit, is amended to add the following Subsection II, Special Exemptions, as follows:]

II. Special Exemptions.

Pursuant to W.S. §15-1-608, the City of Cody Planning and Zoning Board is authorized to hear and decide special exemptions from the terms of the City of Cody Zoning Ordinance (Chapter 35). It is the intent of these special exemption provisions to provide necessary flexibility in the zoning ordinance without requiring applicants to provide proof of hardship. Certain activities, structures and uses that are essential or desirable for the welfare of the city and not incompatible with other uses in the zoning district or neighborhood are eligible for special exemptions. Special exemptions may be entirely appropriate but not at every location or without conditions being imposed by reason of special problems the use presents. The Planning and Zoning Board may grant those special exemptions that are reasonable and harmless deviations from the zoning ordinance as determined by the following standards and procedures.

(a) Application Procedures.

1. Optional Pre-application Conference with the Planning and Zoning Board:

The pre-application conference is optional and is scheduled at the applicant's request. The conference allows the applicant to obtain information regarding the special exemption process and to identify likely concerns regarding the proposal. No application fee is required and the Planning and Zoning Board takes no formal action or decision concerning the proposal.

2. Filing of Applications.

A. Application Contents: The application for a special exemption shall include the following information:

- (i) The proposed use or project;
- (ii) A plot plan showing the major details of the proposal such as location of buildings and structures, parking areas, means of vehicular access, signs, landscaping, fencing and screening, easements, utilities and pedestrian areas.
- (iii) A time schedule for development, if applicable
- (iv) Such other information as the Board shall by rules of practice require; and
- (v) Any other information the applicant believes will support the request.

B. Filing Period: Applications shall be filed at least 21 days prior to the anticipated date of public hearing.

3. Payment of Application Fees: At the time the application for a special exemption is submitted to the City, the application fee as set by resolution of the City Council shall be paid by the applicant.

4. Notice Requirements.

A. Notice to Neighboring Properties: Upon receipt of a complete application, the Director of Public Works hereinafter referred to as Director shall schedule a public hearing on the application. At least 10 days prior to the hearing, the applicant shall notify by Certified Mail all property owners within 140 feet of the perimeter of the subject property of the hearing. The notice shall be in a standard form prescribed by the Director. The notice shall contain a brief description of the project, the address or a description of the location, applicant's name, and the date, time and place of the hearing. The applicant shall provide the board with Post Office receipts as proof of notification.

B. Published Legal Notice: The applicant shall cause a legal notice to be published in the City's official newspaper at least 10 days prior to the hearing in a standard form prescribed by the director.

(b) Applicability: Applicants may request, and the Planning and Zoning Board may consider, special exemptions from certain numerical specifications and for uses that are similar to permitted uses as specified below:

1. Exemption from Numerical Specifications: The following types of numerical standards may be waived or modified by special exemption:

- A. Hour of business operation limits in D-1 District;
- B. Setbacks and yard requirements;

- C. Height limits;
- D. Parking standards of Chapter 20.1;
- E. Lot area;
- F. Lot coverage;
- G. Sign standards;
- H. Limitations on the number of employees; and
- I. Other numerical specifications not specifically listed above provided approval of the special exemption would not be tantamount to rezoning the subject property.

2. Exemption for Use Similar to Permitted Uses: Special exemptions may be granted to allow uses not listed in the zoning ordinance when the Planning and Zoning Board determines that such use is similar to a permitted use within the zoning district of the subject property. The determination on similarity shall be made in consideration of the size, intensity, noise, traffic, burden on infrastructure, and purposes of the use in question.

3. Relation to Rezoning, Planned Unit Development and Variances: The Planning and Zoning Board shall not approve a special exemption application when the application would be more properly considered as a rezoning, planned unit development, or variance application.

(c) Planning and Zoning Board Decision.

1. Public Hearing Procedures: The Chairman of the Planning and Zoning Board shall conduct the public hearing in accordance with the board's hearing rules, if any have been adopted. In addition, city staff shall have any opportunity to present the application and any staff reports and recommendations to the board. The applicant and those favoring the application shall follow and be allowed to speak and present any information to the board. Opponents shall then be allowed to speak and present information to the board. The board shall have the opportunity to question any speaker or ask any speaker to answer or respond to questions posed by other speakers.

2. Approval Standards: No special exemption shall be approved unless the Planning and Zoning Board finds:

A. The special exemption will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties;

B. The special exemption is designed to be compatible with adjacent land uses and the area or neighborhood;

C. The special exemption is the minimum deviation from the specifications of the Zoning Ordinance necessary and adequate for the proposed activity, structure or use;

D. The benefit sought by the applicant can not be achieved by some other method, feasible for the applicant to pursue, other than a special exemption;

E. Adequate services and infrastructure are or will be available to serve the proposed activity, structure or use; and

F. The special exemption is consistent with the goals, policies and future land use map of the Master Plan.

3. Conditions: In approving a special exemption, the Planning and Zoning Board may impose any reasonable conditions or modifications pertaining to operational or physical features of the proposal to ensure conformance with the Approval Standards of subparagraph (2), above. The board is further authorized to set time limits for renewal or expiration of special exemptions and to require financial guarantees, such as performance bond or irrevocable letter of credit, to ensure completion of required improvements.

4. Time Limit for Decision: The Planning and Zoning Board shall make a decision within 30 days of the public hearing. This time limit may be extended with the consent of the applicant.

5. Record of Decision: The Planning and Zoning Board's decision shall be set forth in the board's minutes, specifying the name of the applicant, the property address and legal description, the exact nature of the special exemption, and any added conditions, modifications, requirements or limitations.

6. Terms of Approval or Conditional Approval.

A. Limits on Modification of Use or Structure: No activity, use or structure allowed by a special exemption may be modified, increased in intensity or extent, structurally enlarged, or expanded in land area, unless:

(i) Such is specifically allowed by terms of the approval; or

(ii) The Planning and Zoning Board so amends the exemption following the procedures applicable to new applications for special exemptions.

7. Duration: Duration shall be one of the following:

A. In the event the Planning and Zoning Board limits the duration of the special exemption, the exemption shall not run with the land and renewal shall be required at the time specified in the Board's decision.

B. In the event the Planning and Zoning Board does not limit the duration of special exemption, the exemption shall run with the land and the current property owner shall be responsible for compliance with the terms of approval. Said exemption shall be recorded in the Office of the Park County Clerk at the expense of the applicant within 10 days of the granting of the special exemption.

8. Expiration: If activities allowed by special exemption have not been established within one year of the approval or have ceased to occur for at least one year after having been established, the exemption shall expire and not resume unless an application is filed and approved in accordance with the procedures for review of new special exemptions.

9. Revocation for Non-compliance: The Planning and Zoning Commission shall have continuing jurisdiction over all special exemptions and may revoke, modify or suspend the approval of the special exemption, after a public hearing and notice given in the same manner as for new applications, under the following conditions:

A. The exemption was obtained by fraud or misrepresentation;

B. The exemption has been exercised contrary to the conditions of approval; or

C. The activity, structure or use permitted by the exemption has been exercised so as to be detrimental to the public health, safety, or welfare, or as to constitute a nuisance.

10. Other Legal Remedies: In cases of non-compliance with the conditions of approval for special exemptions, the City may elect any other remedy provided by law for violations of this Chapter. In cases warranting immediate abatement, the City may pursue such other legal remedies without delay and it shall not be necessary for the Planning and Zoning Board to have first revoked the exemption.

Sec. 35-17. Interpretation of chapter and variances.

In interpreting and applying the provisions in this chapter, they shall be held to be the minimum requirements for the protection of health, safety, morals, comfort, convenience, or the general welfare. In case of conflict between this chapter and any other laws and covenants that exercise control over the same feature, the more stringent regulation shall apply.

[The remaining language in Sec. 35-17 is repealed.]

This Ordinance shall become effective after final passage and publication in the Cody Enterprise.

December 7, 2004