

## **Article D: Conditional Uses**

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### **Sec. 13-1-60 Statement of Purpose - Conditional Uses**

The development and execution of this Article is based upon the division of the Town of Vinland into districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use of a particular location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses. Such uses are classified as conditional uses.

### **Sec. 13-1-61 Authority of the Town Board; Requirements**

- (a) The Town Board hereby authorizes the Zoning Administrator to issue a conditional use permit after review, public hearing, and approval from the Town Board, provided that such conditional use and involved structure(s) are found to be in accordance with the purpose and intent of this Zoning Code and are further found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or the community. Such Town Board action, and the resulting conditional use permit, when, for limited conditional use, shall specify the period of time for which effective, if specified, the name of the permittee, the location and legal description of the affected premises. Prior to the granting of a conditional use, the Town Board shall make findings based upon the evidence presented that the standards herein prescribed are being complied with.
- (b) Any development within five hundred (500) feet of the existing or proposed rights-of-way of freeways, expressways and within one-half (1/2) mile of their existing or proposed interchange or turning lane rights-of-way shall be specifically reviewed by the highway agency that has jurisdiction over the traffic way. The Town Board shall request such review and await the highway agency's recommendation for a period not to exceed twenty (20) days before taking final action.
- (c) Conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operation control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards or parking requirements may be required by the Town Board upon their findings that these are necessary to fulfill the purpose and intent of this Chapter.

(d) Compliance with all other provisions of this Chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards shall be required of all conditional uses.

#### **Sec. 13-1-62 Initiation of Conditional Use.**

Any person, firm, corporation or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold interest, or an exclusive possessory interest, and which is specifically enforceable in the land for which a conditional use is sought may file an application to use such land for one (1) or more of the conditional uses provided for in this Article in the zoning district in which such land is located.

#### **Sec. 13-1-63 Application for Conditional Use.**

An application for a conditional use shall be filed, along with the fee prescribed in Section 1-3-1, on a form prescribed by the Town. The application shall be accompanied by a plan showing the location, size and shape of the lot(s) involved and of any proposed structures, the existing and proposed use of each structure and lot, and shall include a statement in writing by the applicant and adequate evidence showing that the proposed conditional use shall conform to the standards set forth in Section 13-1-66 hereinafter. The Town Board may require such other information as may be necessary to determine and provide for an enforcement of this Chapter, including a plan showing contours and soil types; highwater mark and groundwater conditions; bedrock, vegetative cover, specifications for areas of proposed filing, grading, and lagooning; location of buildings, parking areas, traffic access, driveways, walkways, open spaces and landscaping; plans of buildings, sewage disposal facilities, water supply systems and arrangements of operations.

#### **Section 13-1-64 Hearing of Application.**

All requests for conditional uses shall be to the Town Board. Upon Receipt of the application and statement referring to in Section 13-1-63 above, the Town Board shall hold a public hearing on each application for a conditional use at such time and place as shall be established by the Town Board. The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Town Board shall, by rule, prescribe from time to time.

**Sec. 13-1-65 Notice of Hearing on Application.**

Notice of the time, place and purpose of such hearing shall be given by publication of a Class 1 Notice under Wisconsin Statutes in the official Town newspaper. Notice of the time place and purpose of such public hearing shall also be sent to the applicant, the Zoning Administrator/Permit Issuer, members of the Town Board, and the owners of record as listed in the office of the Town Assessor who are owners of property in whole or in part situated within three hundred (300) feet of the boundaries of the properties affected, said notice to be sent at least ten (10) days prior to the date of such public hearing. Within sixty (60) days after an application has been filed, after which the Town Board shall take formal action.

**Sec. 13-1-66 Standards - Conditional Uses.**

- (a) **Standards.** No application for a conditional use shall be granted by the Town Board, unless the Town Board shall find all of the following conditions are present:
- (1) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
  - (2) That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use and the proposed use is compatible with the use of adjacent land.
  - (3) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
  - (4) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
  - (5) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
  - (6) That the conditional use shall, except for yard requirements, conform to all applicable regulations of the district in which it is located.
  - (7) That the proposed use does not violate flood plain regulations governing the site.
  - (8) That adequate measures have been or will be taken to prevent and control water pollution, including sedimentation, erosion and runoff.
- (b) **Application of Standards.** When applying the above standards to any new construction of a building or an addition to an existing building, the Town Board shall bear in mind the statement of purpose for the zoning district such that the proposed building or addition at its location does not defeat the purposes and objective of the zoning district.
- (c) **Additional Considerations.** In addition, in passing upon a Conditional Use Permit, the Town Board shall also evaluate the effect of the proposed use upon:

- (1) The maintenance of safe and healthful conditions.
- (2) The prevention and control of water pollution including sedimentation.
- (3) Existing topographic and drainage features and vegetative cover on the site.
- (4) The location of the site with respect to floodplains and floodways of rivers and streams.
- (5) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
- (6) The location of the site with respect to existing or future access roads.
- (7) The need of the proposed use for a shoreland location.
- (8) Its compatibility with uses on adjacent land.
- (9) The amount of liquid wastes to be generated and the adequacy of the proposed disposal systems.

### **Sec. 13-1-67 Denial of Application for Conditional Use Permit.**

Whenever a decision of denial of a conditional use application is made by the Town Board, the Town Board shall furnish the applicant, in writing when so requested, those standards that are not met and enumerate reasons the Town Board has used in determining that each standard was not met.

### **Sec. 13-1-68 Conditions and Guarantees.**

The following conditions shall apply to all conditional uses:

- (a) **Conditions.** Prior to the granting of any conditional use, the Town Board may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with standards and requirements specified in Section 13-1-66 above. In all cases in which conditional uses are granted, the Town shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such conditions may include specifications for, without limitations because of specific enumeration:
  - (1) Landscaping;
  - (2) Type of construction;
  - (3) Construction commencement and completion dates;
  - (4) Sureties;
  - (5) Lighting
  - (6) Fencing;
  - (7) Operational control;
  - (8) Hours of operation;
  - (9) Traffic circulation;
  - (10) Deed restrictions;
  - (11) Access restrictions;
  - (12) Setbacks and yards;

- (13) Type of shore cover;
  - (14) Specified sewage disposal and water supply systems;
  - (15) Planting screens;
  - (16) Piers and docks;
  - (17) Increased parking;
  - (18) Any other requirements necessary to fulfill the purpose and intent of this Chapter.
- (b) **Site Review.** The Town Board shall evaluate each application and may request assistance from any source which can provide technical assistance. The Town Board may review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation/ use.
- (c) **Alteration of Conditional Use.** No alteration of a conditional use shall be permitted unless approved by the Town Board.
- (d) **Architectural Treatment.** Proposed architectural treatment will be in general harmony with surrounding uses and the landscape. To this end, the Town Board may require the use of certain general types of exterior construction materials and/or architectural treatment.

#### **Sec. 13-1-69 Validity of Conditional Use Permit.**

Where a conditional use application has been approved or conditionally approved, such approval shall become null and void within twenty-four (24) months of the date of the approval unless the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six (6) months of the date of issuance and which shall not be renewed unless construction is commenced and is being diligently prosecuted. Approximately forty-five (45) days prior to the automatic revocation of such permit, the Town Clerk shall notify the holder by certified mail of such revocation. The Town Board may extend such permit for a period of ninety (90) days for justifiable cause, if application is made to the Town Board at least thirty (30) days before expiration of said permit.

#### **Sec. 13-1-70 Complaints Regarding Conditional Uses.**

The Town Board shall retain continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses. Such authority shall be in addition to the enforcement authority of the Zoning Administrator/Permit Issuer to order the removal or discontinuance of any unauthorized alterations of an approved conditional use, and the elimination, removal or discontinuance of any violation of a conditional imposed prior to or after approval or violation of any other provision of this Code. Upon written complaint by any citizen or official, the Town Board shall initially determine whether said complaint indicates a reasonable probability that the subject conditional use is in violation of either one (1) or more of the standards set forth in Section 13-1-66 above, a condition of approval or other requirement imposed hereunder. Upon reaching a positive initial determination,

a hearing shall be held upon notice as provided in Section 13-1-65 above. Any person may appear at such hearing and testify in person or represented by an agent or attorney. The Town Board may, in order to bring the subject conditional use into compliance with the standards set forth in Section 13-1-66 or conditions previously imposed by the Town Board, modify existing conditions upon such use and impose additional reasonable conditions upon the subject conditional use. In the event that no reasonable modification of such conditional use can be made in order to assure that Standards (a) and (b) in Section 13-1-66 will be met, the Town Board may revoke the subject conditional approval and direct the Zoning Administrator/Permit Issuer and the Town Attorney to seek elimination of the subject use. Following any such hearing, the decision of the Town Board shall be furnished to the current owner of the conditional use in writing stating the reasons therefor.

### **Sec. 13-1-71 Bed and Breakfast Establishments.**

- (a) **As Conditional Use.** Bed and breakfast establishments shall be considered conditional uses and may be permitted in Residence Districts pursuant to this Article.
- (b) **Definition.** "Bed and Breakfast Establishment" means any place of lodging that provides four (4) or fewer rooms for rent or more than ten (10) nights in a twelve (12) month period, is the owner's personal residence, is occupied by the owner at the time of rental and in which the only meal served to guests is breakfast.
- (c) **State Standards.** Bed and breakfast establishments shall comply with the standards of Chapter HSS 197, Wis. Adm. Code.

### **Sec. 13-1-72 Home Occupations.**

- (a) **Intent.** The intent of this Section is to provide a means to accommodate a small family home-based business or professional home office as a permitted or conditional use without the necessity of a rezone into a commercial district. Approval of an expansion of a limited family business or home occupation at a future time beyond the limitations of this Section is not to be anticipated; relocation of the business to an area that is appropriately zoned may be necessary.
- (b) **Restrictions on Home Occupations.** Except under the limited permitted use exception provided in Subsection (c) below, home occupations and professional home offices are a conditional use in all Residential Districts and are subject to the requirements of the District in which the use is located, in addition to the following:
  - (1) The home occupation shall be conducted only within the enclosed area of the dwelling unit or an attached garage.
  - (2) There shall be no exterior alterations which change the character thereof as a dwelling and/or exterior evidence of the home occupation other than those signs permitted in the district.
  - (3) No storage or display of materials, goods, supplies or equipment related to the operation of the home occupational shall be visible outside any structure located on the premises.

- (4) No use shall create smoke, odor, glare, noise, dust, vibration, fire hazard, small electrical interference or any other nuisance not normally associated with the average residential use in the district.
- (5) Only one (1) sign may be used to indicate the type of occupation or business. Such sign shall not be illuminated and shall comply with district sign regulations.
- (6) The use shall not involve the use of commercial vehicles for more than occupational delivery of materials to or from the premises.
- (7) The Town Board may determine the percentage of the property that may be devoted to the occupation, but shall not exceed thirty percent (30%).
- (8) The home occupation is restricted to a service-oriented business; the manufacturing of items or products or the sale of items or products on the premises is prohibited. Retail sales are not permitted.
- (9) The types and number of equipment or machinery may be restricted by the Town Board.
- (10) Sale or transfer of the property shall cause the Conditional Use Permit to be null and void.
- (11) Under no circumstances shall a vehicle repair or body work business qualify as a home occupation.
- (12) One (1) non-resident employee may be employed on the premises.

**(c) Permitted Use Exception.**

- (1) A home occupation or professional home office under this Section may be maintained in any Residential or Agricultural District as a permitted use, as opposed to a conditional use, if the standards of Subsection (b) above are complied with, and no sign is erected or maintained regarding the home occupation, no more than one (1) person works on the premises, no customers regularly come to the house, and the business is service-oriented and not engaged in retail trade.
- (2) Home-based hair and beauty salons shall require issuance of a conditional use permit.
- (3) Farm produce stands are conditional uses under Section 13-1-42(c) and 13-1-45(d).

**Sec. 13-1-73 Fees for Applications for Landfill Conditional Uses.**

- (a) **Fee Imposed.** In addition to the other provisions for conditional uses under the Town of Vinland Zoning Code, where application is made for a conditional use for landfill purposes, the application shall be accompanied by payment of the fee prescribed by this Section, which shall be used to defray the costs and expenses incurred by the Town in its review and analysis of such application for environmental and technological adequacy.
- (b) **Payment of Fee.** The fee for review of an application for a written conditional use permit for a landfill including modification of a landfill shall be paid to the Town Clerk at the time of filing of the application for a permit to establish or modify the

landfill within the Town. The Clerk shall immediately remit the fee payment to the Town Treasurer who shall receipt therefor. No application shall be processed until the fee is paid.

- (c) **No Transferability, Prorating or Refunding.** Except as provided in Subsection (e) below, the permit application fee established by this Section shall not be transferable, proratable or refundable.
- (d) **Fee Established.** The fee for investigation and review of the permit application of five-tenths percent (0.50%) of the total project costs, but not less than Five Thousand Dollars (\$5,000.00). As used in this Section, the "total project cost" means and includes all engineering fees associated with plan review, initial site report, feasibility report and plan of operation and total estimated construction costs of the entire facility, whether or not intended to be developed in cells or modules and including those portions of the facility or site whereon refuse or solid waste has previously been deposited. The fee shall be paid in cash or by certified check or money order.
- (e) **Use of Fee.** Upon receipt of an application fee for a permit as provided in this Section, the Town Treasurer shall deposit the fee in a separate account in the Town treasury to be used only for purposes of payment of the costs of reviewing the application, including any reasonable and necessary legal fees, fees of technical consultants, including engineering fees, costs of hydrologic tests, costs of well testing, costs of noticing, conducting and recording proceedings of public hearings, costs of site visits and other investigations but not limited by the foregoing enumerations, as the Town Board determines to be necessary to assure that the facility is in or will be operated to prevent damage or injury to the health, safety or welfare of the inhabitants and frequenters of the Town of Vinland. Any interest earned on the funds in the fee account shall be credited to the original payment and usable for same purposes. Any amounts remaining in the application fee account upon final issuance of the written permit or final determination of the Town Board to deny the permit, after expiration of any appeal period or final judgment of any court on any appeal or challenge to the issuance of the permit, shall be refunded to the applicant. In the event that an application is withdrawn, the Town Clerk shall within sixty (60) days after notice of withdrawal make a final accounting of the fee account and refund to the applicant any balance remaining which is not necessary to meet any outstanding obligations incurred by the Town on account of the application.
- (f) **Accountability for Use of Funds.** Other than as provided in Subsection (e), the Town, Town Board or Town Clerk shall not be accountable to the applicant for the use or appropriation of the application fees. It is for the use or appropriation of the application fees. It is the intent of the Town Board by adoption of this ordinance that the Town Board shall have full discretion in determining that the Town Board shall have full discretion in determining the scope of the investigation and review of the application, including the right to select and employ consultants and obtain all necessary information to protect the health, safety and welfare of person within or coming within the Town. The Town Board shall not be required to accept the



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conclusions, determinations or data compiled by any other unit of government or agency thereof or any expert or consultant employed by the applicant without independent investigation.

**Sec. 13-1-74 through Sec. 13-1-79 Reserved for Future Use.**