

## **19.44 - Approval of Special Uses**

### **Chapter 19.44 - APPROVAL OF SPECIAL USES**

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**19.44.010 Intent.** The intent of this chapter is to require a public hearing for special land uses in order to determine if the use has the potential to adversely affect other land uses, transportation systems, public facilities, or the like, in the surrounding neighborhood thereby ensuring that uses by special review will not harm the health, safety, and welfare of the City and its residents. The City Council may disapprove any such request, or may impose such conditions and safeguards as may be required to maintain the intent of this zoning code. (Ord. 349-05: Ord. 331-05: Ord. 015-00: Ord. 1027-96)

#### **19.44.020 Criteria for Use by Special Review.**

A. All special uses are listed within each zoning district. If a use is proposed that is not defined within the Evans Municipal Code and does not reasonably fall within the definition of any defined use in the Municipal Code, the property owner may apply for use by special review approval in accordance with this chapter.

B. Criteria. The following criteria shall be used to evaluate use by special review requests:

1. The proposed use is found to be unlikely to harm the health, safety, or welfare of the City or its residents.
2. The proposed use would benefit the City in terms of employment, tax revenue, or other similar effects, as compared to the absence of the proposed use.
3. The proposed use shall be consistent with the Evans Comprehensive Plan and shall be compatible with the surrounding area.
4. The location, size, design, and operating characteristics of the proposed use shall be compatible with the existing and proposed future land uses within the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity. Reasonable conditions may be placed on uses by special review to protect the public health, safety, and welfare by mitigating impacts.
5. The site shall be physically suitable for the type and intensity of the proposed land use.
6. The proposed land use shall not adversely affect traffic flow and parking in the neighborhood.
7. The location of other approved uses by special review in the neighborhood shall be determined, in order to avoid an over-concentration of such uses.
8. Mini-storage units shall also comply with the following standards:
  - a. Setbacks of buildings from all streets shall be a minimum of 25 feet.
  - b. A 10-foot-wide buffer area of natural growth, including trees and shrubs approved by the City, shall be installed and maintained along the entire length of any boundary of the development that is adjacent to a residentially zoned district, whether or not such boundary is separated by a street, alley, or easement or other right-of-way. Such buffer may, if required by the City, include a six-foot-high screen composed of natural or manmade materials.
  - c. Landscaping plans must be presented with the application and must be approved by City Council at the Use by Special Review hearing. Such plans must show the proposed types and locations of all natural plantings, ground coverings, and screening, including the size and number of trees.
  - d. Architectural design plans and elevations must be presented with the application and must be approved by City Council at the Use by Special Review hearing. Architectural plans and elevations must indicate the size and locations of all structures including the proposed exterior design and wall and roof coverings of the buildings. Architectural plans will be examined to ensure that the proposed development's features such as height, length, facade, color, etc., are compatible with the surrounding area.
  - e. No changes shall be made to an approved plan which would alter the character of the building(s) or use of the

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property without prior approval of the City Council.

f. Special Permit. Special Permits for exceptions to the mini-storage requirements may be granted provided all of the following criteria are met:

- i. Such use is found to be compatible with the surrounding area;
- ii. Such use shall not adversely affect the surrounding area;
- iii. Such use shall not adversely affect the future development of the area;
- iv. Due to the proposed geographical location of such use or other physical situation of the land or building, practical difficulty or unnecessary hardship which has not been self imposed would deprive the owner/tenant of the property of the reasonable use of the site or portion of the site in question; and
- v. The purpose and intent of this code is maintained.

g. Miscellaneous conditions within the "C" and "RC" zone districts:

- i. Within the mini-storage facility premises, uses such as distribution centers, assembly or manufacturing, retail sales, or any use other than storage is prohibited, with the exception of the sale or rental of accessory items typically used for moving, including, but not limited to, boxes, hand-trucks, and moving vans.
- ii. Fully screened, outdoor storage for recreational vehicles, boats, vacant trailers (excluding mobile homes), and similar items that are well maintained and in good condition may be approved as part of the mini-storage unit facility. Plans for such screening must have the approval of the City. The maximum area of such outdoor storage use shall not exceed 25 percent of the total site.

9. Car wash facilities. The Planning Commission and the City Council shall consider the following aspects of the proposed facility when reviewing a petition for a Use by Special Review for a car wash facility:

- a. Character of the area of the site, including proximity of residential property to the site and proximity of existing car wash facilities;
- b. Hours of operation;
- c. Presence or absence of a system for reclaiming and reusing water;
- d. Building height, including whether the facility would have the capability to service commercial vehicles and/or recreational vehicles (RVs);
- e. Site design, including orientation and distance of the wash bays to the nearest street;
- f. Any other factor(s) which could serve to mitigate or aggravate the undesirable aspects of car wash facilities.

10. Oil and gas facilities. Oil and gas facilities shall only be installed, erected, and/or constructed in accordance with Chapter 16.28, Oil and Gas Exploration and Development. Landscaping plans must be presented with the application and must be approved by City Council at the Use by Special Review hearing. Such plans must show the proposed types and locations of all natural plantings, ground coverings, and screening, including the size and number of trees.

(Ord. 446-08: Ord. 349-05: Ord. 331-05: Ord. 253-04: Ord. 015-00)

**19.44.030 Procedure for Special Use Permits.** The following procedure shall be followed by the applicant for a special use permit:

A. Petition. A petition in the form prescribed by the City shall be filed with the City Clerk and shall be accompanied by a letter explaining why the use should be permitted. The petition shall be signed by the owner of the property.

B. Review – Planning Department. The petition shall be reviewed by the Director of Public Works/Planning and the applicant shall be notified promptly of any deficiencies.

C. Administrative Report. Staff will prepare comments for use by the Planning Commission, addressing all aspects concerning the special permit, its conformance with the Evans Comprehensive Plan, sound land use planning practices, the standards contained in this chapter, and other such matters as the planning staff considers material to determination of the application.

D. Planning Commission Review. The Planning Commission shall give such weight as it deems appropriate to the testimony and comments offered by the public. The Planning Commission shall hold a public hearing and make a recommendation to City Council on the application.

E. City Council Review. After the Planning Commission makes a recommendation on the application, the City Council shall hold a public hearing and consider the application at a regular or special meeting within 30 days. The City Council shall approve, approve with conditions, or disapprove the special use request. Approval of the request shall be made by resolution, which shall be recorded at the office of the Weld County Clerk and Recorder. Approval and any conditions of approval shall "run with the land," and shall apply to subsequent owners of the property, and shall not be transferable to any other property.

F. Notice. The public hearings before the Planning Commission and the City Council required by this chapter shall be held only after public notice has been given in accordance with Chapter 19.64 of the Evans Municipal Code.

G. Revocation of Special Permits. If, at any time, the owner or tenant of a property that has received a special use permit fails to comply with any condition of approval, or the application or testimony of an applicant is found to have been false or misleading, or the use differs from that which was approved, or the use causes legitimate complaints

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from others in the area of the use, the City Council may review the special use approval and may revoke such approval by resolution. (Ord. 349-05: Ord. 331-05: Ord. 015-00)

### **19.44.040 Business and Industrial Uses – Oil and Gas Well Locations – City Council Permission Prerequisite to Building Permit Issuance.**

A. Notwithstanding any other provision in this zoning code, the City Council shall have the power to direct the location and regulate the use and construction of breweries, distilleries, livery stables, blacksmith shops, and foundries within the City limits.

B. Notwithstanding any other provision in this zoning code, the City Council shall have the power to direct the location and regulate the use and construction of slaughterhouses and byproducts plants, packing houses, renderies, tallow candleries, bone factories, soap factories, tanneries, dehydrating plants, and dairies within the City limits.

C. Notwithstanding any other provisions in this zoning code, the City Council shall have the power to prohibit any offensive or unwholesome business or establishment, and also to prohibit the carrying on of any business or establishment in any offensive and unwholesome manner, within the City limits.

D. Any business or establishment which can be or is classified as falling within those designated in subsections A through C of this section shall first obtain specific permission from the City Council through the special use process before a building permit may be issued.

E. No building permit shall be issued for any building not in compliance with setbacks from any oil or gas well or ancillary equipment, as established in Chapters 15.48 and 16.28, as amended.

F. No building permit shall be issued for any building not in compliance with setbacks from any abandoned oil or gas wells as established in Chapters 15.48 and 16.28, as amended, until and unless the applicant, by clear and convincing evidence, can demonstrate to the City Council that the well has been abandoned and plugged in accordance with all federal, state, and local laws and regulations and that the issuance of such permit will not endanger any person or property. The Council may require such independent tests and reports as it deems necessary prior to final consideration of such permit. If a permit is approved, the Council may impose such conditions as it deems necessary or advisable for the protection of persons and property. (Ord. 349-05: Ord. 331-05: Ord. 015-00)

### **19.44.050 Expiration.**

A. Unless otherwise stated in the approving resolution, all special permits not exercised within six months from the date of the resolution shall become null and void.

B. Approval of any special use that is discontinued for three or more consecutive months shall become null and void and such use shall not be allowed to recommence without again obtaining special use approval, unless otherwise stated in the approving resolution. (Ord. 349-05: Ord. 331-05: Ord. 015-00)

**19.44.060 Fees.** Each application for a special use permit shall be accompanied at the time of filing by a fee as established by City Council by resolution. The applicant shall also pay the cost of publication and notification of the public hearings in accordance with Chapter 19.64 of the Municipal Code. (Ord. 349-05: Ord. 331-05: Ord. 015-00)

## Code Documents



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