

# CUP Amendments - Att. A - Proposed Development Code Amendments

Blue Text indicates revisions from February 6 PC Discussion

## 20.20. – Definitions

*Justification – Ordinance 881 amended Comprehensive Plan Policy LU2 to allow professional offices in the Medium Density Residential Land Use designation, or the R-8 and R-12 zones. Since professional offices will be allowed in the R-8 and R-12 zones, staff analyzed the existing definitions for professional office to ensure that other, more intense uses, could not be considered professional offices. For example, a contractor's office may be compatible in residential zones, but the accessory uses, and equipment associated with a contractor's office may not.*

*Staff is proposing amendments to the definition of professional office that clarify the type of uses that may occur as a part of the office and add a provision that professional offices shall not include outdoor storage or onsite transfer of commodities. Per the definition, a professional office is a place of business for licensed professionals such as attorneys and accountants and not professions that need a simple registration. Additionally, if professional offices are to become allowed in these zones, there must be additional constraints placed on the definition to ensure the business will not cause undue impacts to adjacent residents and the surrounding neighborhood.*

~~*In order to accommodate certain businesses that do not qualify as a Professional Office but operate similarly, staff is proposing new definitions and uses for Construction Services Office/Yard and Contractor Construction Services Office.*~~

~~*A Contractor Construction Services Office is generally an office for the operation of a small contractor and construction services business that may, with certain conditions, be able to locate in residential neighborhoods with little impact. The definition includes provisions for no outdoor storage, no storage of building materials, and provisions for an onsite showroom.*~~

~~*A Construction Services Office/Yard is generally a more intense construction business where building materials, heavy equipment, tools, machinery, and vehicles are stored outdoors.*~~

*Because Outdoor Storage is being introduced into the definition of professional office, staff is proposing a definition for outdoor storage. Outdoor storage includes equipment, materials, machinery, or other goods associated with a business stored outside of a building for business purposes. The definition has been amended to state that materials used for maintenance of the home shall not be considered outdoor storage.*

Construction  
Services  
Office/Yard

~~An office primarily engaged in the provision of general contracting or subcontracting services in the building construction trade.  
Construction yards include administrative offices, workshops, and the indoor or outdoor storage of tools, equipment, machinery, materials, and vehicles.~~

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Contractor Construction Services Office A type of professional office used for the general administrative and accounting functions of a licensed contractor including new construction, additions, and remodels. The office may include a showroom to display sample merchandise connected to their services to view and select for subsequent delivery to the customer's residence, business or project location. Offices may include fully enclosed storage facilities but no outdoor storage is allowed.

Outdoor Storage The storage of any products, materials, equipment, machinery, or scrap outside the confines of a fully enclosed building. Outdoor storage does not include items used for household maintenance such as hoses, ladders, wheelbarrows, and gardening equipment.

Professional Office An office used as a place of business by licensed professionals, or persons in other generally recognized professions, which use training or knowledge of a technical, scientific or other academic discipline as opposed to manual skills, and which does not involve outside storage or fabrication, or on-site sale or transfer of commodity.

An office used as a place of business by licensed professionals, such as attorneys, accountants, architects, and engineers, or persons in other generally recognized professions, which use training or knowledge of a technical, scientific or other academic discipline as opposed to manual skills. Professional offices shall not involve outside storage, fabrication, or on-site transfer of commodity.

### **20.30 – Procedures and Administration**

*Justification – At the December 2, 2019 City Council meeting, Council raised several questions about the administration of existing and proposed Conditional Use Permits. Those questions included:*

- 1. Can a CUP be revoked?*
- 2. If yes, what criteria would be used for revocation?*
- 3. Does a CUP run with the land or is it personal to the permittee?*

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### *4. Can a CUP be abandoned?*

*In addition to addressing Council concerns, staff has also proposed adding a provision for extending an approved CUP.*

*The first amendment to SMC 20.30.300 adds provisions for suspension, revocation or limitation of a CUP. This section allows the Director to revoke a CUP if the permit holder has failed to comply with any terms or conditions of approval, the permit holder has committed a code violation or created a public nuisance in the course of performing activities subject to that permit, the permit was issued in error or on the basis of materially incorrect information supplied to the City, or permit fees or costs were paid to the City by check and returned from a financial institution marked nonsufficient funds (NSF) or cancelled. Revocation is proposed to be carried out through the notice and order provisions of SMC 20.30.760.*

*Second, staff is proposing a transferability section that states a CUP shall run with the permittee unless the Director states in the conditions of approval of the CUP that the CUP is issued to a specific site. This provision allows the Director the flexibility to approve a CUP based on unique attributes of a business that may not be appropriate once a permittee has left the site and the approval of that use is still active. Also, tying the CUP to the applicant allows the Department to review additional CUP applicants to ensure future uses are still appropriate for the neighborhood.*

*Third, the city's CUP provisions did not include a section for expiration. The SMC currently has a two-year expiration for permits when there has been no initial activity to effectuate the permitted use based on the filing of a building permit. There is no SMC provision related to the expiration of a permit once the permitted activity has commenced. Once a CUP is granted, it will last so long as the conditions that were agreed upon continue to be followed. Within the City's nonconforming use provisions in SMC 20.30.280, a legal nonconforming use is considered abandoned when its use has been discontinued for 12 consecutive months. As other cities have done (Lynnwood & Puyallup), this same time period will be used for CUPs.*

*Lastly, the City's CUP provisions do not include a section for extension. Staff is proposing a provision to allow the Director to grant an extension of an approved CUP that has not commenced not to exceed 180 days. Such extension of time shall be based upon findings that the proposed project is in substantial conformance, as to use, size, and site layout, to the issued permit; and there has been no material change of circumstances applicable to the property since the granting of said permit which would be injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare.*

*20.30.300 Conditional use permit-CUP (Type B action).*

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A. Purpose. The purpose of a conditional use permit is to locate a permitted use on a particular property, subject to conditions placed on the permitted use to ensure compatibility with nearby land uses.

B. Decision Criteria. A conditional use permit may be granted by the City, only if the applicant demonstrates that:

1. The conditional use is compatible with the Comprehensive Plan and designed in a manner which is compatible with the character and appearance with the existing or proposed development in the vicinity of the subject property;
2. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
3. The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;
4. Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;
5. The conditional use is not in conflict with the health and safety of the community;
6. The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity;
7. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood; and
8. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities.

### C. Suspension or Revocation of Permit.

1. The Director may suspend or revoke any conditional use permit whenever:
  - a. The permit holder has failed to substantially comply with any terms or conditions of the permit's approval;
  - b. The permit holder has committed a violation of any applicable state or local law in the course of performing activities subject to the permit;
  - c. The use for which the permit was granted is being exercised as to be detrimental to the public health, safety, or general welfare, or so as to constitute a public nuisance;

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- d. The permit was issued in error or on the basis of materially incorrect information supplied to the City; or
    - e. Permit fees or costs were paid to the City by check and returned from a financial institution marked nonsufficient funds (NSF) or cancelled.
  2. The Director shall issue a notice and order in the same manner as provided in SMC 20.30.760.
    - a. The notice and order shall clearly set forth the date that the conditional use permit shall be suspended or revoked.
    - b. The permit holder may appeal the notice and order to the Hearing Examiner as provided in SMC 20.30.790. The filing of such appeal shall stay the suspension or revocation date during the pendency of the appeal.
    - c. The Hearing Examiner shall issue a written decision to affirm, modify, or overrule the suspension or revocation, with or without additional conditions, such as allowing the permit holder a reasonable period to cure the violation(s).
  3. Notwithstanding any other provision of this subchapter, the Director may immediately suspend operations under any permit by issuing a stop work order.
  4. If a conditional use permit has been suspended or revoked, continuation of the use shall be considered an illegal occupancy and subject to every legal remedy available to the City, including civil penalties at provided for in SMC 20.30.770(D).

### D. Transferability

Unless otherwise restricted by the terms and conditions at issuance of the conditional use permit, the conditional use permit shall [be assigned to the applicant and to a specific parcel](#). [A new CUP shall be required in a permit holder desires to relocate the use permitted under a CUP to a new parcel](#). If a CUP is determined to run with the land and the Director finds it in the public interest, the Director may require that it be recorded in the form of a covenant with the King County Recorder's Office. Compliance with the terms and conditions of the conditional use permit are the responsibility of the current property owner, whether the applicant or a successor.

### E. Expiration

1. Any conditional use permit which is issued and not utilized within the time specified in the permit or, if no time is specified, within two (2) years from the date of the City's final decision shall expire and become null and void.
2. A conditional use permit shall be considered utilized for the purpose of this section upon submittal of:

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a. a complete application for all building permits required in the case of a conditional use permit for a use which would require new construction;

b. an application for a certificate of occupancy and business license in the case of a conditional use permit which does not involve new construction;  
or

c. in the case of an outdoor use, evidence that the subject parcel has been and is being utilized in accordance with the terms and conditions of the conditional use permit.

3. If after a conditional use has been established and maintained in accordance with the terms of the conditional use permit, the conditional use is discontinued for a period of 12 consecutive months, the permit shall expire and become null and void.

### F. Extension

Upon written request by a property owner or their authorized representative prior to the date of conditional use permit expiration, the Director may grant an extension of time up to but not exceeding 180 days. Such extension of time shall be based upon findings that the proposed project is in substantial conformance, as to use, size, and site layout, to the issued permit; and there has been no material change of circumstances applicable to the property since the granting of said permit which would be injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare.

### **20.40 – Uses**

*Justification – The following amendments add uses to the nonresidential use table defined in the definitions section in SMC 20.20. The first amendment adds professional offices as a conditional use with indexed criteria in the R-8 and R-12 zones. This amendment implements the policy adopted by Council on December 9, 2019 that added professional offices to the Medium-Density Residential land use category in Policy LU2.*

~~*The second amendment adds Construction Services Office/Yard as a use. Since this use is more intense than a typical office use, staff is proposing to add this use in the Mixed-Business zone.*~~

~~*The third amendment adds Contractor Construction Services Office as a use. The proposed use, like professional offices, is a conditional use with indexed criteria in the R-8 and R-12 zones, a conditional use in the R-18 through TC-4 zones and permitted in the commercial zones.*~~

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NAICS #	SPECIFIC LAND USE	R4-R6	R8-R12	R18-R48	TC-4	NB	CB	MB	TC-1, 2 & 3
RETAIL/SERVICE									
	<u>Construction Services Office/Yard</u>							<u>P</u>	
	<u>Contractor Construction Services Office</u>		<u>C-i</u>	<u>C</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
	Professional Office		<u>C-i</u>	C	C	P	P	P	P

*Justification – The following amendment adds criteria, or conditions, to the use described in the nonresidential use table above. The purpose of adding decision criteria is to ensure the proposed use does not cause a negative effect to surrounding neighbors and cause the least disruption throughout the city’s neighborhoods. ~~The first addition is the indexed criteria for a contractor construction services office. The indexed criteria address location of a potential business, hours and days of operation, no outdoor storage, signs, and outdoor lighting.~~*

### 20.40.295 – Contractor Construction Services Office

A Contractor Construction Services Office is allowed in the R-8 and R-12 zones with the approval of a Conditional Use Permit subject to the following conditions:

1. Located on an arterial street or within 400 feet of an arterial street.
2. Hours of operation are limited to 7am to 6pm Monday through Friday and 10am to 5pm Saturday and Sunday.
3. Subject parcel is abutting a R-18 through R-48 zone or abutting a Neighborhood Business, Community Business, Mixed Business, or TC 1,2, or 3 zone.
4. No outdoor storage.
5. Parking shall be on a paved surface, pervious concrete, or pavers. No commercial parking is allowed in required side or rear setbacks abutting single family residential uses.
6. Compliance with all dimensional requirements set forth in Table SMC 20.50.020(1), except minimum density.

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~~7. One sign complying with Table 20.50.540(G) is allowed but may not be internally illuminated.~~

~~8. Outdoor lighting shall comply with SMC 20.50.240(H).~~

~~9. No onsite transfer of merchandise.~~

~~10. Showrooms shall be limited to 50 percent of the net floor area of the building.~~

~~11. Parking areas shall be screened from adjacent single-family residential uses by either a 6-foot opaque fence or Type-1 landscape buffer.~~

~~The second addition is the indexed criteria for a professional office. Like the indexed criteria for Contractor Construction Services Office, the indexed criteria address location of a potential business, hours and days of operation, no outdoor storage, signs, and outdoor lighting. Since professional offices will most likely mirror the intensity of a Contractor Construction Services Office, the indexed criteria is the same.~~

The following indexed criteria applies to Professional Office when located in the R-8 and R-12 zones. The first criteria require that professional offices either be located on an arterial street or abutting a R-18 through R-48 zone or abutting a Neighborhood Business, Community Business, Mixed Business, or TC 1,2, or 3 zone. Criterion #1 ensures that proposed professional offices are located along busier, more travelled streets and away from more local, residential areas and will also provide transitions between higher intensity commercial uses and denser housing between lower-intensity residential uses in the R-6, R-8, and R-12 zones. By implementing Criterion #1, there may be 92 parcels eligible for a Professional Office. A map depicting the eligible parcels is included as **Attachment B**.

Criteria #2 limits the hours of operation to citywide standards which is Monday-Friday, 7am to 10pm and Saturday and Sunday, 9am to 10pm. These are the same hours of operation for a home occupation.

Criteria #3 limits onsite sales to appointment only. This limits the amount of onsite customer activity since all appointments are made in advance and limits the number of customer trips to and from the site.

Criteria #4 restricts any outdoor storage related to the business. Outdoor storage does not count those items related to the home or residential units onsite. These items may include hoses, wheelbarrows, ladders, gardening equipment, and lawnmowers.

Criteria #5 limits commercial vehicles to those allowed as part of a home-based business. Parking requirements are based on the use of the property. For example, a site with a Professional Office and apartments are required to provide 1 parking space for every 500 square feet of office and parking for the residential units. It's also helpful to note that on property occupied by a single-family detached residence or duplex, the



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*total number of vehicles wholly or partially parked or stored outside of a building or carport shall not exceed six, excluding a maximum combination of any two boats, recreational vehicles, or trailers.*

*Criteria #6 says that parking must be on an approved surface and that no customer parking may be in the side or rear setbacks. The intent behind this requirement is to provide a buffer between customer parking and residential uses adjacent to the Professional Office. The setback is intended to provide a screened and/or landscaped area to protect neighbors from car lights and noise.*

*Criteria #7 restricts onsite transfer of merchandise. This requirement restricts the sales and storing of goods in the Professional Office which limits the amount of delivery trucks and moving activity that occurs within the office.*

*Criteria #8, #9, and #10 requires that the Professional Office comply with the zoning dimensional, sign, and lighting standards of the zone. For example, a Professional Office in a R-8 zone must meet R-8 setbacks, R-8 height, R-8 building coverage, and R-8 Hardscape maximums.*

*Criteria #11 requires that parking areas for Professional Offices must be screened from adjacent single-family residential uses by either a 6-foot opaque fence or Type-1 landscape buffer. This requirement will screen headlights that may shine onto adjacent single-family homes.*

*The following list of indexed criteria are required when any Professional Office locates within an R-8 or R-12 zone. In addition, when an applicant submits a Conditional Use Permit application, the Director has the authority to add additional conditions to mitigate the unique impacts of a specific business or a specific site.*

### **20.40.475 – Professional Offices**

A Professional Office is allowed in the R-8 and R-12 zones with the approval of a Conditional Use Permit and subject to the following conditions:

1. Located on an arterial street or abutting a R-18 through R-48 zone or abutting a Neighborhood Business, Community Business, Mixed Business, or TC 1,2, or 3 zone.

2. Hours of operation are limited to 7am to 10pm Monday through Friday and 9am to 10pm Saturday and Sunday.

3. Services provided shall be scheduled by appointment only.

4. No outdoor storage.

5. The office may use or store a vehicle for pickup of materials used by the office or the distribution of products from the site, provided such vehicles shall not exceed a gross weight of 14,000 pounds, a height of nine feet and a length of 22 feet

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6. Parking shall be on a paved surface, pervious concrete, or pavers. No [customer/client](#) parking is allowed in required side or rear setbacks.
7. No on-site transfer of merchandise.
8. Compliance with all dimensional requirements set forth in Table SMC 20.50.020(1), except density.
9. One sign complying with Table 20.50.540(G) is allowed but may not be internally illuminated.
10. Outdoor lighting shall comply with SMC 20.50.240(H).
11. Parking areas shall be screened from adjacent single-family residential uses by either a 6-foot opaque fence or Type-1 landscape buffer.