



PLANNING STAFF REPORT

MEMO DATE: April 7, 2020

MTG. DATE: **APRIL 15, 2020**

TO: Village of Cottage Grove Plan Commission

CC: Village of Cottage Grove Board of Trustees
Matt Giese – Village Administrator
Larry Konopacki – Village Attorney
Lisa Kalata – Village Clerk

FROM: [Erin Ruth, AICP – Village Planning Director](#)

RE: **Conditional Use Permits – Ordinance Review**

BACKGROUND

2017 Wis. Act 67 changed state statutes regarding the issuance of conditional use permits (CUP). The main change is the shifting of the burden of proof regarding the suitability of a use from the applicant to the municipality. Previously, the applicant needed to prove that a proposed conditional use would not be problematic. Now a municipality must approve a conditional use permit application unless it can show the use will be problematic. Furthermore, it states that decisions to approve or deny a request must be based on 'substantial evidence' as defined in the statute and shall not be based on 'personal preferences or speculation.'

At its March meeting the Plan Commission began reviewing land uses requiring a conditional use permit per the current Zoning Ordinance. Staff made initial recommendations about how the various uses could be handled moving forward, including: 1) keeping it as a conditional use and establishing specific criteria, 2) creating an overlay district specific to the use, 3) permitting the use by right in certain districts, and 4) disallowing the use in certain districts.

Commissioners requested additional time to conduct a more thorough review of the list. In the meantime, staff has begun reviewing uses proposed to remain as conditional uses. These uses include:

- Commercial animal boarding
- Bed and breakfasts
- Payday lenders
- Communication towers
- Intermediate daycares
- Migrant labor camps



OVERVIEW

Commercial Animal Boarding

Staff researched whether any state licensing requirements are in place for animal boarding facilities. It appears that while related operations such as animal control facilities, animal shelters, and dog breeding facilities are licensed, animal boarding facilities are not.

Since there are no state mandated requirements, the Village should research best practices for potential CUP criteria including a minimum sq. ft. of indoor and outdoor space per animal and requirements for waste removal and other maintenance factors. Other issues such as parking and drop off requirements, fencing and landscape buffers, noise, and hours of operation should also be considered.

In addition, the Plan Commission should consider differentiating related State licensed uses by creating new land uses for them in the ordinance. These include:

- “Animal control facility” means a facility in this state for the care of animals operated under a contract with a political subdivision, per ATCP 16.01(2).
- “Animal shelter” means a facility or legal entity in this state that is operated for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals that is used to shelter at least 25 dogs in a license year and that is operated by a humane society, animal welfare society, animal rescue group, or other non-profit group, per ATCP 16.01(3).
- “Dog breeding facility” means a place in this state where dogs are bred and raised and from which at least 25 dogs are sold in a license year, per ATCP 16.01(6).

Staff recommends that these should also be conditional uses, as defined by the state and using the criteria established by the above referenced Wisconsin Administrative Codes. The codes regulate numerous aspects of such facilities including state inspections; veterinary inspections; record keeping; care, handling, and transportation of animals; sizes and types of enclosures among others.

Bed and Breakfasts

The State of Wisconsin’s DATCP licenses bed and breakfasts under ATCP 73 of the Administrative Code. Per the state, a bed and breakfast is defined as “any place of lodging that provides eight or fewer rooms for rent to no more than 20 tourists for more than 10 nights in a 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 is breakfast.”

State licensing considers criteria such as water supply and waste removal; toilet, handwashing, and bathing facilities; furnishings, equipment, and utensils; food; building safety; carbon monoxide detectors; and maintenance. Therefore, the zoning ordinance can simply require



that such facilities in the Village hold a valid state license rather than addressing and enforcing those criteria.

The DATCP also licensing tourist rooming houses which are defined by the Administrative Code as “all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists and transients, or bed and breakfast establishments.” Examples would include homes listed on Airbnb or similar sites.

Currently, the Village’s Zoning Ordinance does not address tourist rooming houses. The Plan Commission discussed the issue a year or so ago but decided at the time not to regulate the use. Given the more widespread alterations to the ordinance that proposed, it may be time to include tourist rooming houses as a distinct land use. Similar to a bed and breakfast, the Zoning Ordinance could simply require a valid state license for such facilities in the Village.

Payday Lenders

Payday lenders are businesses that makes payday loans as those are defined by WI Statute 138.14(1)(k).

Per 62.23(7)(hi)(2) no payday lender “may operate in a city without a permit to do so from the city council, and the city council may not issue a permit if any of the following apply: a) the payday lender would be located within 1,500 feet of another payday lender; or b) the payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.”

Per 62.23(7)(hi)(3), a “city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.” Currently the Village Zoning Ordinance is consistent with the regulations above.

Migrant Labor Camps

Migrant labor camps are listed as a land use within the Village’s Zoning Ordinance and are addressed in the WI Statutes under zoning in Ch. 62. For context an historical overview of Wisconsin’s migrant housing laws can be found at the UW-Madison History Department’s ‘Wisconsin 101’ website:

<https://wi101.wisc.edu/2017/09/01/wisconsins-migrant-housing-laws/>

Migrant labor camps are not expected to occur in developed areas in the Village. They can be kept as a conditional use in the RH district.



Communication Tower

The Village's Zoning Ordinance regulates communication towers without specifying the type of tower. Cell towers are subject to different standards under state law which strictly limits regulation on their placement.

Staff recommends separating cell towers from other communication towers within the ordinance and seeking current best practice regarding cell towers.

Intermediate Daycare (9 to 15 Children)

Daycare facilities of this size are licensed by the WI Department of Children & Families (DCF). The use can remain a conditional use and criteria can reference state licensing requirements.