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TITLE 9

Land Use Code

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TITLE 9

Land Use Code

Chapter 1 General Provisions¹

9-1-1. Legislative Intent.

This title is intended to accomplish the following purposes:

- (a) Promote coordinated sound development, effective use of land and high quality site planning considering and complementing the city's unique geographic setting, amenities of view and open space;
- (b) Prevent overcrowding of land, overtaxing of public facilities and services, unregulated growth, poor quality development, waste and inefficient use of land, danger and congestion in travel and transportation, and any other use or development that might be detrimental to the stability of the city;
- (c) Protect and promote public safety, health and general welfare by providing adequate light and air, public transportation, water and sewage control, police and fire protection, educational and recreational opportunities, and floodplain and wetlands protection;
- (d) Encourage innovation in residential development and renewal that meets the growing demand for housing by providing a greater variety in type and design of dwellings and affordability levels;
- (e) Preserve the character and stability of neighborhoods and conserve property values by encouraging the most appropriate uses of land within zoning districts;
- (f) Support and implement the goals of the Boulder Valley Comprehensive Plan and adopted area and sub-area plans;
- (g) Provide equal opportunity in housing to the handicapped;
- (h) Provide a reasonable balance between the right of a business or an individual to identify itself and to convey its message through signage and the right of the public to be protected against the visual discord that results from the unrestricted proliferation of signs; and
- (i) Protect, enhance and perpetuate buildings, sites and areas of the city reminiscent of past eras, events and persons important in local, state or national history or providing significant examples of architectural styles of the past, and to develop and maintain appropriate settings and environments for such buildings, sites and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest and foster knowledge of the city's living heritage.

9-1-2. How to Use This Code.

A general description of these land use regulations follows. This description is intended to provide the reader with some guidance using this code. This section is not intended to be a substitute for the standards, criteria and procedures contained in this code.

- (a) **Organization:** This title is divided into sixteen chapters. Each chapter is further subdivided into sections, subsections, paragraphs and subparagraphs. A consistent numbering and formatting convention is used throughout the title to identify these divisions and to help orient the user to the organization of information. The example below illustrates the formatting and numbering convention:

¹ Adopted by Ordinance No. 7476.

9-1-1. Section Heading.

- (a) Subsection Heading:, with text in the paragraph appearing as hanging indent for the entire Title as shown in this paragraph.
 - (1) Paragraph Heading, with text in the paragraph appearing as hanging indent for the entire Title as shown in this paragraph.
 - (A) Subparagraph Heading, with text in the paragraph appearing as hanging indent for the entire Title as shown in this paragraph.

When necessary, the numbering system continues beyond the subparagraph heading following a similar pattern of numbering and indentation. Each section includes all material between two section headings. For example, section 9-1-1 includes all material beginning with the number 9-1-1 up to number 9-1-2. References to any division of this title include all material located within the referenced section, subsection, paragraph, subparagraph, etc.

- (b) Zoning Map: Zoning districts are the primary tool for regulating land in Boulder. Prior to considering developing land, an applicant should refer to the official zoning map to determine which zoning district his/her property is located within. The official zoning map is available at the planning department.
- (c) Modular Zone System: Zoning districts in Boulder are comprised of standards from three modules: use, form and intensity. Combining elements of the three modules creates a zoning district. The zoning districts are identified in section 9-5-2, "Zoning Districts," B.R.C. 1981.
 - (1) Use Module: The use module establishes the uses that are permitted, conditionally permitted pursuant to section 9-2-2, "Administrative Review Procedures," B.R.C. 1981, prohibited, or that may be permitted through use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981. Conditional uses are reviewed through an administrative (staff) review process to ensure conformance with specific use standards. If the use requires a use review, then the project will be required to complete a discretionary review to ensure that any impacts of the use on the surrounding area are minimized. Finally, if the use is an existing legal use that is no longer allowed in the zoning district, and there is a proposal to change or modify the use, it may also be required to complete a use review.
 - (2) Form Module: The form module establishes the physical parameters for development such as setbacks, building coverage, height and special building design characteristics. Solar access standards, located in section 9-9-17, "Solar Access," B.R.C. 1981, may also impact building form and should be reviewed in conjunction with the form standards.
 - (3) Intensity Module: The intensity module establishes the density at which development may occur and includes: minimum lot sizes, minimum open space per dwelling unit, number of dwelling units per acre, minimum open space per lot or parcel, and floor area ratios when applicable.
- (d) Overlay Districts and Development Standards: In addition to the zoning district standards, there are additional sets of standards that may be applicable to a property, depending on its location. The applicant should check with the planning department to find out if the property is subject to such regulations, based on the official maps available from the department. First, the applicant should determine if the property is located within a floodplain. Standards regulating lands in the floodplain are found in sections 9-3-2 through 9-3-8, B.R.C. 1981. If the property is located near the airport, the applicant should determine if the property is located within the airport influence overlay zone. Those standards are located in section 9-3-10, "Airport Influence Zone," B.R.C. 1981. The applicant should also determine if the property contains any significant wetlands. These regulations are found in section 9-3-9, "Stream, Wetlands and Water Body Protection," B.R.C. 1981. Finally, the applicant should determine if the property is a designated landmark or located in a designated historic district. Standards regulating historic preservation are located in chapter 9-11, "Historic Preservation," B.R.C. 1981. In all cases, these overlay district standards apply in addition to any standards of the underlying zoning district. For example, the floodplain overlay regulations may limit or prohibit expansion of existing structures on portions of lots located in the floodplain, even though the basic zone standards would allow it. Other types of overlays may supplement the basic zone standards. For example, a property within the airport influence zone may limit uses or building heights beyond what the base zone standards allow.

- (e) Development Standards: Chapter 9-9, "Development Standards," B.R.C. 1981, includes development standards that apply in addition to the zoning and overlay district standards. These include standards for parking, landscaping, signs, open space, site access, lighting, solar access and other elements of development.
- (f) Variances of Standards/Site Review Process:
 - (1) If the applicant cannot meet the standards described in subsections (b), (c) and (d) of this section, the applicant should determine whether there are alternative development options or any exceptions to the general rules in the code that may accommodate the project. If the project does not meet standards and other development alternatives are not possible, then there are two basic methods available to attempt to vary the standards: the variance process and the site review process.
 - (2) The variance process is generally used for existing development. Bulk and form requirements may be varied if the applicant can demonstrate an unusual physical circumstance or other hardship. The variance requirements are found in section 9-2-3, "Variances and Interpretations," B.R.C. 1981.
 - (3) The requirements for the site review process are found in section 9-2-14, "Site Review," B.R.C. 1981. If the project is large enough to meet the minimum thresholds set forth in the code, then the bulk and form requirements and other specified development standards may be varied as part of a unified development proposal through a site review. If the project is smaller than the minimum thresholds standards, it is not eligible for site review. All projects that exceed the maximum site review threshold will be required to complete a site review.
- (g) Nonconformance Standards: Adoption of land use controls and changes in zoning have created nonconforming uses, nonstandard buildings and nonstandard lots. Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, describes the treatment of these nonconformities. In general, the policy of the city is to allow these nonconforming uses and nonstandard buildings to be changed and upgraded without requiring their elimination if the change would not substantially adversely affect the surrounding area and if the change would not increase the degree of nonconformity of the use.
- (h) Subdivision of Land: If the applicant would like to subdivide a piece of property or merge a number of different parcels into one parcel, the applicant may need to go through the subdivision process. The purpose of the subdivision process is to ensure that proposed building sites are appropriate for development; to obtain an accurate and permanent record of the separate interests of land that are created by subdivision of land; to apportion the costs of public services and facilities serving the subdivision; to provide assurances to future buyers of land that the subdivider owns the land to be sold; to provide legal and physical access to each lot; and to provide for maintenance of improvements, utilities and amenities. There are a number of divisions of land to which the subdivision regulations do not apply. The applicant should review these exceptions to determine if the project will be required to complete the subdivision process. There is also an abbreviated process for projects that only require elimination of a lot line between two lots within an existing subdivision. The subdivision process is found in chapter 9-12, "Subdivision," B.R.C. 1981. The exceptions are found in section 9-12-2, "Application of Chapter," B.R.C. 1981. The minor subdivision process is found in section 9-12-5, "Minor Subdivision," B.R.C. 1981. The abbreviated process for lot line eliminations, lot line adjustments and minor subdivisions is found in section 9-12-4, "Elimination of Lot Lines," B.R.C. 1981.
- (i) Inclusionary Zoning: The city has adopted regulations to assist in providing a diverse housing stock affordable to people of varying incomes. chapter 9-13, "Inclusionary Zoning," B.R.C. 1981, sets forth the standards for the city's inclusionary zoning and moderate income housing programs. Inclusionary zoning requires that most new residential development contribute toward permanent affordable housing in the city. Generally speaking, twenty percent of the total number of units are required to be permanently affordable to low income households.
- (j) Growth Management: The growth management system sets the maximum rate of residential growth at approximately one percent per year. This is achieved by allocating the number of dwelling units for which a building permit can be granted in any given year. Provided that there are enough allocations, each development is entitled to up to forty allocations per year. The allocations are distributed on a quarterly basis. During the last quarter of the year, the applicant may receive up to thirty-five more allocations (to a total of seventy-five) if there are enough allocations available in the system. If the applicant has a project that requires more allocations than are allowed because of the

size of the building, building configuration or infrastructure phasing, the applicant may bank allocations over time to build out the project. New residential development that meets the requirements of the city's affordable housing programs and residential development located in commercial, industrial and mixed-use zoning districts are not required to meet the allocation requirements of the growth management system regulations. Those regulations are found in chapter 9-14, "Residential Growth Management System," B.R.C. 1981.

- (k) Enforcement of The Land Use Regulations: Violations of the land use regulation are investigated by the Development and Inspection Services division of the Public Works Department and are prosecuted in municipal court, by district court actions or through administrative hearings. A hearing also is available before the Planning Board to protest a violation of a development review approval. The enforcement provisions are found in chapter 9-15, "Enforcement," B.R.C. 1981.

Ordinance No. 7658 (2009)

9-1-3. Application of Regulations.

- (a) General Applicability: The regulations, requirements, limitations and provisions of this title shall extend and apply only to land and the use of land within the corporate limits of the City of Boulder, Colorado, except as may otherwise be specified in this title.
- (b) General Compliance Requirements:
 - (1) No building, structure or land may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, moved or altered except in conformity with all of the regulations of this title.
 - (2) No part of a lot area, open space, off-street parking area or yard required about or in connection with any building for the purposes of complying with this title, may be included as part of a lot area, an open space, off-street parking area or yard similarly required for any other building or use, except as otherwise specifically permitted by the provisions of this title.
 - (3) Any building or occupancy permit issued in conflict with the provisions of this title shall be null and void and may not be construed as waiving any provision of this title.
- (c) Private Covenants: Nothing in this title abrogates or is affected by any private covenant affecting uses of land or buildings or affects the right of any person to enforce such a covenant.

Ordinance No. 7535 (2007)

9-1-4. Transitional Regulations.

This section addresses the applicability of new substantive standards enacted by this title to activities, actions and other matters that are pending or occurring as of the effective date of this title.

- (a) Building Permits: This title will be amended from time to time. Any building permit in effect prior to the effective date of a specific amendment to this title will not be subject to the requirements of the subsequent amendment.
- (b) Expiration of Development Approvals:
 - (1) Any approval previously granted, including, without limitation, site reviews, use reviews, planned unit developments, special reviews, height reviews, nonconforming reviews and variances, becomes subject to the provisions of any amendment to this title, unless application for a building permit has been made, or a certificate of completion has been issued pursuant to such approval by the date falling one year after the effective date of such respective amendment.
 - (2) If a building permit has been issued on any such development approval by September 15, 2006, it may be continued under the conditions of its approval, but it may only be amended or modified in accordance with the minor modification and amendment provisions of sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981.

- (c) Expiration of Exceptions, Planned Developments and Planned Residential Developments: Any exception, PD (planned development) or PRD (planned residential development) is subject to the provisions of this title, unless construction of such exception, PD or PRD commenced by February 8, 1984. If, by February 8, 1984, a building permit had been issued for any use or occupation of land previously approved as an exception, a PD or a PRD, such use or occupation may be continued under the conditions of its approval. Any change in the use or occupation of such land shall be made in accordance with the amendment provisions of section 9-2-14, "Site Review," B.R.C. 1981.
- (d) Additional Development Regulations: Notwithstanding the provisions of subsections (b) and (c) above, additional development regulations may be imposed as part of a building permit approval upon properties in a previously granted and otherwise valid development approval, including, without limitation, site reviews, use reviews, planned unit developments, planned developments, planned residential developments, exceptions, special reviews, height reviews, nonconforming reviews and variances, that are inconsistent with the terms and conditions of the development approval, if:
 - (1) The standard is expressly stated in the land use regulations as applicable to such development request; and
 - (2) The standard will not violate the terms of an annexation agreement or a vested right that was granted pursuant to section 9-2-19, "Vested Rights," B.R.C. 1981.
- (e) Existing Uses That Require a Use Review or Conditional Use Approval: Any previously approved use that was established prior to the adoption of new regulations that make such use permitted only pursuant to a conditional use or a use review shall be allowed to continue in operation. Any change or expansion of a use that was established prior to the adoption of new regulations that make such use permitted pursuant to a conditional use or a use review shall be made in conformance with the applicable standards for use review, conditional uses or for changes or expansions to nonconforming uses. If active and continuous operations of such a use are not carried on for a period of one year, it shall thereafter be occupied and used by a use meeting the requirements of this title, as required by subsection 9-10-2(a), B.R.C. 1981.
- (f) Violations Continue: Any violation of the previous land development regulations of the city shall continue to be a violation under this title and shall be subject to the penalties and enforcement set forth in chapter 9-15, "Enforcement," B.R.C. 1981, unless the use, development, construction or other activity is clearly consistent with the express terms of this title.

Ordinance Nos. 7522 (2007); 7568 (2007); 7684 (2009)

9-1-5. Amendments and Effect of Pending Amendments.

- (a) The city council may amend the chapters of this title only after receiving the advice and recommendations of the planning board except for sections 9-3-1, "Purpose of Overlay and How to Use the Overlays," B.R.C. 1981, to 9-3-8, "Development Violating Chapter is Nuisance," B.R.C. 1981, and amendments to chapter 9-11, "Historic Preservation," B.R.C. 1981, the recommendations of the landmarks board. The planning board or landmarks board recommendation shall be determined after a public hearing held by the board at least ten days after notice published in a newspaper of general circulation in the city.
- (b) The city manager shall not issue a building permit, for a period not to exceed one hundred twenty days, that conflicts with a proposed amendment to this title, between the earlier of the date of the planning board's recommendation to the city council or the city council's first reading on such amendment and the city council's final action thereon.

Ordinance No. 7535 (2007)