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### **TITLE 9**

#### **Land Use Code**

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**TITLE 9**

**Land Use Code**

**Chapter 4**

**Public Notice, Decisions and Appeal<sup>1</sup>**

**9-4-1. Purpose.**

This chapter describes the procedures and criteria for review and approval for development applications.

**9-4-2. Development Review Procedures.**

(a) Development Review Authority: Table 4-1 of this section summarizes the review and decision-making responsibilities for the administration of the administrative and development review procedures described in this chapter. The table is a summary tool and does not describe all types of decisions made under this code. Refer to sections referenced for specific requirements. Form and bulk standards may also be varied by site review. Additional procedures that are required by this code but located in other chapters are:

- (1) "Historic Preservation," chapter 9-11;
- (2) "Inclusionary Housing," chapter 9-13; and
- (3) "Residential Growth Management System," chapter 9-14.

**TABLE 4-1: SUMMARY OF DECISION AUTHORITY BY PROCESS TYPE**

<i>Standard or Application Type</i>	<i>Staff/City Manager</i>	<i>BOZA</i>	<i>Planning Board</i>	<i>City Council</i>
Code Interpretation SECTION 9-2-3	D	CA(14)	CA(30)	CA
Setback variance ≤20% SECTION 9-2-3	D	D	—	—
Setback variance >20% SECTION 9-2-3		D	—	—
Parking access dimensions SECTION 9-2-2	D	—	—	—
Parking deferral SECTION 9-2-2	D	—	—	—
Parking reduction ≤25% SECTION 9-2-2	D	—	—	—
Parking reduction >25% but ≤50% SECTION 9-2-2	D(14)	—	CA, D(30)	CA
Parking reduction >50% SUBSECTION 9-9-6(f)		—	D(30)	CA
Parking height, conditional SECTION 9-7-6	D	—	—	—
Building height, less than principal or nonstandard building height max SECTION 9-2-14	D(14)	—	CD, D(30)	CA
Building height, greater than principal building height max SECTION 9-2-14	—	—	D(30)	CA
Building height SECTION 9-7-5	—	—	D(30)	CA

<sup>1</sup> Adopted by Ordinance No. 7476.

Conditional Use SECTION 9-2-1	D	—	—	—
Use Review SECTION 9-2-15	D(14)	—	D(30)	CA
Site Review SECTION 9-2-14	D(14)	—	CA, D(30)	CA
Rezoning SECTION 9-2-18	—	—	R	D
Annexation SECTION 9-2-16	—	—	R	D
Wetland Permit -Simple SECTION 9-3-9	D	—	—	—
Wetland Permit-Standard SECTION 9-3-9	D(14)	—	D(30)	CA
Extension of Dev't Approval ≤1 yr PARAGRAPH 9-2-12(b)(1)	D	—	—	—
Extension of Dev't Approval >1 yr PARAGRAPH 9-2-12(b)(2)	—	—	D(30)	CA
Rescission of Dev't Approval SUBSECTION 9-2-12(e)	D	—	—	—
Creation of Vested Rights >3 yrs SECTION 9-2-19	—	—	R	D
Floodplain Dev't Permit SECTION 9-3-6	D(14)	—	CA(30)	CA
Wetland Boundary change-Standard SUBSECTION 9-3-9(e)	—	—	R	D
Substitution of Nonconforming Use SECTION 9-10-3	D	—	—	—
Expansion of Nonconforming Use SECTION 9-10-3	D(14)	—	CA(30)	CA
Subdivision, prelim plat SECTION 9-12-7	D	—	D(30)	CA
Subdivision, final plat SECTION 9-12-8	D(14)	—	CA(30)	CA
Subdivision, minor SECTION 9-12-5	D(14)	—	CA(30)	CA
Subdivision, LLA or LLE SECTIONS 9-12-3 and 9-12-4	D	—	—	—
Solar Exception SUBSECTION 9-9-17(f)	D	D	—	—
Solar Access Permit SUBSECTION 9-9-17(h)	D	D	—	—
Growth Mgmt. Allocations, Std. SECTION 9-14-5	D	—	—	—
Growth Mgmt. Allocations, ≤40 per year SUBSECTION 9-14-3(f)	D(14)	—	CA(30)	CA
Accessory Bldg Coverage SUBSECTION 9-7-8(a)	—	D	—	—
Minor Modification of Discretionary Approval SUBSECTION 9-2-14(k)	D	—	—	—
Minor Amendment of Discretionary Approval SUBSECTION 9-2-14(l)	D(14)	—	CA(30)	CA
Amendment of Discretionary Approval not involving height SUBSECTION 9-2-14(m)	D(14)	—	CA, D(30)	CA

Amendment of Discretionary Approval involving height SECTION 9-2-14	—	—	D(30)	CA
KEY: D = Decision Authority      CA = Call-Up and Appeal Authority R = Recommendation only      (n) = Maximum number of days for call-up or appeal				

Ordinance Nos. 7522 (2007); 7699 (2009); 7701 (2010)

**9-4-3. Public Notice Requirements.**

- (a) Process and Options: When a process or procedure identified in this title requires public notice, the city manager shall provide such notice according to table 4-2 of this section. If a code section does not reference a specific method, the city manager shall determine the most appropriate notification method to be used.

**TABLE 4-2: PUBLIC NOTICE OPTIONS**

<i>Public Notice Type</i>	<i>Type of Application, Meeting or Hearing</i>	<i>Mailed Notice</i>	<i>Posted Notice</i>
1	Administrative Reviews (except those identified below)	none	none
2	Subdivisions and Minor Subdivisions	To adjacent property owners and mineral rights owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
3	Good neighbor meetings	To property owners within 600 feet of subject property a minimum of 10 days before meeting	none
4	Solar exceptions, solar access permits, accessory units, cooperative housing	To adjacent property owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
5	Applications requiring BOZA action, wetland permit and boundary determination	To property owners within 300 feet of subject property a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
6	Development Review Applications (site review, use review, annexation, rezoning, concept plans)	To property owners within 600 feet of subject property and any mineral rights owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing

- (b) Mailed Notice: When mailed notice is required, the manager will notify by first class mail the owners of all property located within a radius specified in subsection (a) of this section from all points on the perimeter of the land included in the application. The notice will indicate:

- (1) That a review application has been filed,
- (2) The type of review requested,
- (3) That the application may be reviewed during the planning department's regular business hours,
- (4) A copy of the city manager's recommendation or decision on the application may be requested,
- (5) How comments or objections may be submitted, and
- (6) That public hearings may be held before the BOZA, the planning board, landmarks advisory board and/or the city council for which only published, rather than personal mailing will be provided.

- (c) Posting: Posted notice shall meet the following standards:

- (1) The notice shall be on a sign provided by the City and posted by the applicant.

- (2) The notice shall indicate the type of review requested and where interested persons may obtain more detailed information about the request.
  - (3) All such notice shall be posted no later than ten days after the date the application is filed to ensure that notice is posted early in the review process. Properties shall remain posted until any final action or public hearing.
  - (4) The signs shall be placed along each abutting street, perpendicular to the direction of travel, in a manner that makes them clearly visible to neighboring residents and passers-by. At least one sign shall be posted on each street frontage.
  - (5) The signs shall remain in place during the period leading up to a decision by the approving authority, but not less than ten days.
  - (6) On or before the date that the approving authority is scheduled to make a decision on the application, the city manager will require the applicant to certify in writing that required notice will be posted according to the requirements of this section.
- (d) **Published Notice:** Published notice is required for all public hearings and good neighbor meetings. The city manager shall have the notice published in a newspaper of general circulation in the City within ten days of the receipt of the application and not less than ten days prior to any hearing or meeting. The notice will indicate:
- (1) That a review application has been filed,
  - (2) The type of review requested,
  - (3) That such persons may review the application during the planning department's regular business hours, and
  - (4) In the case of notice for a public hearing, the notice will indicate the time, date and place of the hearing, a summary of the proposed development, its location, and where interested parties may request a copy of the city manager's recommendation or decision on the application.
- (e) **Notice - Mineral Estate:** The purpose of this notice provision is to comply with the notification of surface development requirements in article 24-65.5, C.R.S. The city manager will waive the notice requirements for mineral estate owners under this subsection for use review applications that will not result in the construction of a new building. The applicant shall:
- (1) At least thirty days before a final decision on a development review application, send notice, by first class mail, to the mineral estate owner.
  - (2) Provide in the notice a statement about how the decision will be made, rights of appeal, the location of the property that is the subject of the application, and the name of the applicant, the City of Boulder as the approving authority, and the name and address of the mineral estate owner.
  - (3) Identify the mineral estate holder in a manner consistent with § 24-65.5-103, C.R.S.
  - (4) Certify, in a form acceptable to the city manager, that such notice has been provided to the mineral estate owner.
- (f) **Additional Notice:** The city manager may require the applicant to provide notice in addition to the requirements of this chapter.
- (g) **Omissions or Defects in Notice:** The purpose of public notice provided in this section is to reasonably inform surrounding property owners of a pending review application. No minor omission or defect in the mailed, published or posted notice shall be deemed to impair the validity of the proceedings to consider the application. If at or prior to the public hearing or final approval, an omission or defect in the public notification is brought to the attention of the approving authority, the approving authority shall determine whether the omission or defect impairs or has impaired a surrounding property owner's ability to participate in the public review process. Upon such a finding, the approving authority shall continue the review process or hearing for at least ten days. Any omission or defect in the public

notice that is not brought to the approving authority's attention or that the authority finds did not impair a surrounding property owner's ability to participate in the review process shall not affect the validity of the proceedings.

Ordinance Nos. 6093 (1999); 7117 (2001); 7210 (2002)

#### **9-4-4. Appeals, Call-Ups and Public Hearings.**

When a section of the land use regulations indicates that a decision is subject to appeal or call-up, the following standards shall apply:

- (a) Appeal: If noted in table 4-1, section 9-4-2, "Development Review Procedures," B.R.C. 1981, in a specific section, an applicant or any interested person may appeal the city manager's decision to grant or deny an application to the planning board by delivering a written notice of appeal to the city manager within fourteen days of the decision.
- (b) Board Call-Up: If noted in table 4-1, section 9-4-2, "Development Review Procedures," B.R.C. 1981, a member of the planning board may call up a city manager's decision upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. A member of the BOZA may call up a city manager's decision regarding an interpretation upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. On any application that it calls up, the board will hold a public hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as provided in subsection 9-4-3(d), B.R.C. 1981. Within thirty days of the public hearing or within such other time as the board and the applicant mutually agree, the board will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested.
- (c) City Council Call-Up: The city council may call up any board decision within thirty days of the board's action. The city manager may extend the call-up period until the council's next regular meeting, if the manager finds in writing within the original call-up period that the council will not receive notice of a decision of the board in time to enable it to call up the decision for review. On any application that it calls up, the council will hold a public hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as specified by subsection 9-4-3(d), B.R.C. 1981, summarized in subsection (b) of this section. Together with the evidence presented at such public hearing, the council may consider the record, or any portion thereof, of the hearing before the board. Within thirty days of the public hearing or within such other time as the council and the applicant mutually agree, the council will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested.
- (d) Public Hearing Requirements: Within sixty days after a referral, appeal or call-up under this section, the approving agency will hold a public hearing on the application.
- (e) Public Notice: Public notice for appeals and call-ups shall be provided pursuant to subsection 9-4-3(a), B.R.C. 1981.
- (f) Building Permit Pending Appeal: A building permit may be applied for after the initial approval of a development review application, but no building permit will be issued until after any and all applicable call-up or appeal periods have expired. An applicant for such a permit bears all risks of subsequent disapproval and waives any claims arising from the permit application.
- (g) Judicial Review: Exhaustion of administrative remedies is a prerequisite to judicial review of any decision made under this chapter. Any person aggrieved by the final decision of the city may seek judicial review of the decision by filing a complaint for review within thirty days of the final action under Colorado Rule of Civil Procedure 106.

Ordinance No. 7663 (2009)