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TITLE 9

LAND USE CODE

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Chapter 14 Residential Growth Management System¹

9-14-1 Legislative Intent.

This chapter is intended to accomplish the following purposes:

- (a) Establish a residential building permit management system that provides for a long-term rate of growth in the city no greater than one percent per annum, but recognizes the potential for fluctuations in that rate on an annual basis;
- (b) Provide for a rate of growth in the city that will assure the preservation of its unique environment and its high quality of life;
- (c) Assure that such growth proceeds in an orderly manner and does not exceed the availability of public facilities and urban services;
- (d) Avoid degradation in air and water quality;
- (e) Avoid increases in crime and urban decay associated with unmanaged growth;
- (f) Establish a residential building permit management system that shares available building permits on a prorated basis; and
- (g) Encourage the completion of older developments in order to reduce infrastructure costs and to stabilize residential neighborhoods.

9-14-2 General Provisions.

A system of managing the issuance of residential building permits in the city is established with the following general provisions:

- (a) Building Permits: No building permit for the construction of a new dwelling unit may be issued unless applied for in compliance with this chapter.
- (b) Allocations Needed: One allocation is needed to secure a building permit to construct each dwelling unit, except as set forth below. The living quarters set forth below shall require:
 - (1) One-half allocation for an efficiency living unit; one-third allocation for a group residence; and one-sixth allocation or one-eighth allocation for each occupant for a group care facility or a residential care facility respectively, according to the density and occupancy restrictions of subsection 9-6-3(f), B.R.C. 1981;
 - (2) One-fifth allocation for accommodations without kitchens or one-third allocation for attached allocations for congregate care facilities, according to the density and occupancy restrictions of section 9-8-6, "Occupancy Equivalencies for Group Residences," B.R.C. 1981;
 - (3) One allocation for any other type of dwelling unit;
 - (4) No allocation for an accessory dwelling unit, an owner's accessory unit, a bed and breakfast, a hostel, a hotel, or a motel.
- (c) Maximum Allocations: The planning board shall not grant more than forty allocations to a development in a calendar year except upon a finding after a hearing held upon reasonable notice to the public, pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, that such accumulation of allocations would not prejudice the allocation process; and:
 - (1) That there is an unmet community need for such development; or
 - (2) That constraints of building size or building configuration or infrastructure phasing require a greater amount of allocations and that banking under subsection 9-14-7(h), B.R.C. 1981, is insufficient to remedy hardship; or
 - (3) That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year, in which case, upon application therefor, developments shall be awarded additional allocations in the last allocation period in a calendar year, on a prorated basis, up to a total of seventy-five allocations in any development in a calendar year.

(d) Building Permit Approvals: All building permit applications will be reviewed within twenty working days after submission of a complete application. At the end of the building permit review period, either a building permit will be made available for issuance or reasons will be given to the grantee why the permit cannot be issued, in which case the grantee has twenty working days in which to submit all required corrections. If the corrections are not completed in the time and manner required, the building permit application and related allocation are void unless reinstated by the city manager upon a finding of excusable neglect, after a hearing held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(e) Thirty Days to Obtain a Building Permit: Once a building permit is made available for issuance, the grantee has thirty days to obtain the permit. If the grantee fails to do so, the building permit application and related allocation is void unless reinstated by the city manager upon a finding of excusable neglect, after a hearing held under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(f) Construction and Inspection Schedule for a Building Permit: Once a building permit is issued, the permittee must adhere to the schedule for construction and inspection set forth in the International Building Code, chapter 10-5, "Building Code," B.R.C. 1981, unless compliance with a shorter schedule is required by the planning board under subsection 9-14-7(b), B.R.C. 1981. If a building permit expires or is terminated under the provisions of the International Building Code, the related allocation is void.

(g) Guarantee of One Allocation for Each Development: Each development shall be entitled to receive at least one allocation per allocation period. The first allocation of an allocation period shall be subtracted from the allocations available in the next quarter if such an allocation is not available in the present allocation period. If there is more than one request for such an allocation, it shall be awarded in a manner consistent with the rules for granting allocations for developments with multiple owners set forth in subsection 9-14-6(d), B.R.C. 1981.

9-14-3 Allocations Available.

(a) Total Unadjusted Allocations: The unadjusted number of allocations per year available through 2010 shall be as in table 14-1 of this section.

TABLE 14-1: ALLOCATIONS BY YEAR

Year	Allocations
2006	428
2007	432
2008	436
2009	440
2010	444

(b) Allocations Counted: All building permits issued for the construction of a new dwelling unit shall be counted against the allocations available except for those exemptions granted pursuant to subsection 9-14-8(a), B.R.C. 1981.

(c) Adjustment of Allocations for Next Calendar Year: The number of allocations available for the next calendar year shall be adjusted at the end of each year by the following factors, if applicable:

(1) By subtracting the number of allocations borrowed and reserved during the previous calendar years under subsection (e) of this section and prior growth management systems;

(2) By adding the number of allocations that have been reserved under prior growth management ordinances, but not used, during the prior calendar year; and

(3) By adding the number of allocations available but not granted in prior calendar year, up to a total of twenty-five percent of the current year's unadjusted allocations, and granting such allocations prior to any other grant during the next calendar year. To the extent any excess allocations are granted under the provisions of section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, during the last allocation period, the number of excess allocations so granted shall be subtracted from the total allocations not granted allocations but otherwise available for carry over. All other allocations available but not granted during such prior year shall be void.

(d) Adjustment of Allocations for Next Allocation Period: The number of allocations available pursuant to subsection (a) of this section for the next allocation period shall be adjusted at the end of each allocation period by the following factors, if applicable:

(1) By subtracting the number of exemptions for dwelling units issued pursuant to subsections 9-14-8(b) and (c), B.R.C. 1981, that received building permits during such prior allocation period;

(2) By subtracting the number of allocations reserved from the allocation period under prior growth management ordinances;

(3) By subtracting the number of allocations required to allow all developments to receive one allocation per quarter under subsection 9-14-2(g), B.R.C. 1981, or to add up to one allocation for any development which needs one additional allocation to commence construction, as determined by the planning board under paragraph 9-14-4(b)(2) or (b)(3), B.R.C. 1981;

(4) By subtracting the number of allocations required to round allocations under subsection 9-14-6(a), B.R.C. 1981; and

(5) By adding the number of allocations or building permits surrendered or voided during such prior allocation period.

(e) **Borrowing Allocations:** At any time, for good cause, the planning board may, after a hearing held upon reasonable notice to the public, borrow allocations and subtract this number from subsequent calendar years' allocations set forth in subsection (a) of this section. The planning board shall specify the calendar year from which the allocations are borrowed and shall not borrow from any year beyond those set forth in subsection (a) of this section. Such borrowed allocations shall be subject to all other provisions of this chapter. No allocations may be borrowed to provide excess allocations under the provisions of section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981.

(f) **Maximum Annual Allocations:** Notwithstanding any other provision of this chapter to the contrary, the total number of allocations granted by the planning board during a calendar year shall not exceed twenty percent over the unadjusted allocation number set forth in subsection (a) of this section. The exemptions granted pursuant to subsection 9-14-8(a), B.R.C. 1981, shall not be counted against the total number of allocations granted by the planning board.

9-14-4 Allocation Schedule.

(a) **Review of Application:** Review of applications for allocations shall occur quarterly. Deadlines for applications and allocation shall be set by regulation of the planning board.

(b) **Quarterly Allocations:** One-quarter of the allocations available in each calendar year are available in each allocation period, unless such number is modified subject to the following criteria:

(1) At any time, for good cause, at a hearing held upon reasonable notice to the public by the planning board;
or

(2) At the time of granting allocations, in order to round allocations under subsection 9-14-6(a), B.R.C. 1981, in order to allow all developments to receive one allocation per year under subsection 9-14-2(g), B.R.C. 1981, by an action of the city manager, ministerial in character, and not subject to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981; or

(3) At the time of granting allocations, in order to add up to one allocation to any development which needs one additional allocation to commence construction, after a hearing by the planning board held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof.

(c) **Administrative Procedures:** An applicant for an allocation shall apply in accordance with the administrative procedures established by the city manager and the planning board. No application shall be made unless the land for which the allocation is requested meets all the requirements of this chapter and any other ordinance of the city on or before the last day for submitting applications, including, without limitation, final reading of the annexation and zoning or rezoning ordinance, or approval of a subdivision plat, or a site review or planned unit development that does not require a subdivision, pursuant to this title. In addition, any appeals or call-ups initiated before the planning board, the BOZA, or the city council must be determined at least twenty-one days before the planning board allocation grant. The applicant is responsible for meeting such deadlines.

9-14-5 Applications.

(a) **Application Requirements:** An applicant for an allocation shall apply on a form provided by the city manager and provide, without limitation, the following information:

- (1) The number of allocations requested;
- (2) The total number of dwelling units within the development;
- (3) For uses by right, a site plan suitable for a building permit application; and

(4) Other documentation and information which the planning board may require in order to review the application and apply the standards and obtain compliance with the intent and purposes of this chapter.

(b) Multiple Applications Within a Development: Except as provided in section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, if more than one applicant submits an application for a development, the allocation requests within the development shall be combined and treated as a single application.

(c) Pro Rata Allocations: Except as provided in section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, if the total number of allocations applied for in a development is more than the number which can be applied for under the provisions of subsection (e) of this section or subsection 9-14-2(c), B.R.C. 1981, the applications shall be reduced pro rata so that the total allocations applied for in any such development do not exceed such number.

(d) One Application Per Allocation Period Maximum: Except when applying for excess allocations as provided in section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, an applicant shall not file more than one application for a particular development during any allocation period.

(e) Maximum Allocations: In any allocation period, a development may apply for one allocation for each dwelling unit in the development that has not received an outstanding building permit, allocation, or certificate of occupancy, up to forty allocations. However, if the total number of allocations from all developments in an allocation period exceeds the number of allocations available, the city manager shall recalculate each development's request according to the following formula: one allocation for each dwelling unit in the development that has not received an outstanding building permit, allocation, or certificate of occupancy, up to twenty allocations and one allocation for each additional four such dwelling units, up to an additional twenty allocations.

(f) Allocations for Substantially Completed Developments: Subject to the other provisions of this section, a development with ten or less, but more than one, dwelling units remaining in the development that have not received an outstanding building permit, allocation, or certificate of occupancy, may apply for ten allocations or for allocations equal to the total number of units in the development, whichever is less, regardless of the number of dwelling units which have not yet received an outstanding building permit, allocation, or certificate of occupancy. Allocations shall be granted only up to the number required to complete the development.

(g) City Manager Review of Applications: The city manager will review applications in order to determine whether they meet the requirements of this code and other ordinances of the city, including, without limitation, the Boulder Valley Comprehensive Plan. If an application does not meet such requirements, it will be returned to the applicant with a written notice of the deficiencies. The applicant has five days from the date of receipt of such a notice in which to appeal to the planning board pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof or to revise the application for reconsideration during that allocation period. Acceptance of an application or approval of an allocation does not constitute a finding by the city manager or the planning board that the development meets the requirements of this chapter or other ordinances of the city.

(h) Alterations to Applications Prohibited: An applicant may not alter its submitted application to request a different number of allocations after the application deadline for the quarter in which such application is made.

(i) Modification of Plans: No person shall modify the building permit application that accompanies an application for an allocation, except as follows:

(1) The applicant may modify a building permit application, substitute a plan, or move the building permit application from one lot to another lot within a development during the quarter that the allocation was awarded.

(2) The city manager may request the applicant to correct a building permit application at any time prior to the issuance of a building permit notwithstanding the limitations set forth in paragraph (i)(1) of this section. The applicant shall have twenty days, after the receipt of a written deficiency notice, to revise the application. If the applicant fails to respond within the ten days, the allocation shall expire.

9-14-6 Calculation and Award of Allocations.

(a) Rounding Rule: Allocations will be rounded up if the prorated grant is 0.5 or greater.

(b) Award of Allocations: Unless modified by regulation of the planning board, the procedure for awarding allocations will be as follows for each allocation period:

(1) The planning board will determine whether or not to permit banking under subsection 9-14-7(h), B.R.C. 1981.

(2) A staff recommendation will be made to the planning board proposing grants of allocations, which will be made available to the public at least five calendar days prior to the hearing considering granting such allocations.

(3) The planning board will hear any appeals from applicants concerning compliance with the requirements of subsection 9-14-5(g), B.R.C. 1981. Such appeals shall be held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof.

(4) The planning board will determine whether to borrow under subsection 9-14-3(e), B.R.C. 1981.

(5) The planning board may find that more than one development exists for the purposes of this chapter where contiguous parcels of land have been combined to produce a unified development plan if an improved land use design is achieved by such combination.

(6) The planning board, at a public hearing held upon reasonable notice to the public, pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof, or the city manager, if no hearing is required, will award the available allocations on the basis of the formula set forth in subsection (c) of this section.

(c) Building Permits for Allocations: For each allocation period, the number of building permit allocations to be awarded to each development shall be equal to the number of allocations requested for that development multiplied by the total number of unborrowed and unreserved allocations divided by the total number of allocations requested in that allocation period. Developments applying shall be granted a minimum of one allocation per quarter under the provisions of subsection 9-14-2(g), B.R.C. 1981, prior to any proration, and such proration shall be subject to all other provisions of this chapter affecting grants of allocations, including, without limitation, the provisions of subsection 9-14-2(c), paragraphs 9-14-4(b)(2) and (b)(3), and subsections 9-14-5(c), (e), and (f), B.R.C. 1981. If insufficient allocations are available, a random selection shall be held to determine the order in which allocation requests are granted.

(d) Distribution of Allocation to Developments With Multiple Owners: If a development with multiple owners applying for allocations receives less than all of the requested allocations, unless unanimous agreement is reached, a random selection shall be held to determine the order in which allocation requests are granted. Applicants not receiving an allocation will have the priority established by such agreement or random selection within that development in future allocation periods.

(e) Grant of Allocations If Fewer Than Total Are Requested: In the event that fewer allocations are requested than are available during any allocation period, the city manager will grant all allocations requested within two weeks of the application date without action of the planning board, subject to the restrictions of subsection 9-14-2(c), B.R.C. 1981.

9-14-7 Conditions of Approval.

(a) Length of Allocation Validity: Allocations are valid for a total of two allocation periods. The first allocation period shall be the allocation period in which the allocation is granted. The second allocation period shall be the next allocation period after which the allocation is granted. Once the grantee of an allocation receives a building permit, the grantee shall comply with the construction schedule prescribed by subsection 9-14-2(f), B.R.C. 1981.

(b) Planning Board Conditions: For good cause, the planning board may impose terms and conditions on the grant of any allocation including, without limitation, modification of the time period set forth in subsection (a) of this section.

(c) Allocations Granted for Specific Developments: Each allocation shall be granted for a specific development and shall indicate such development. Any assignee of any allocation is subject to the terms and conditions under which the original allocation was granted.

(d) Planning Board Action: The planning board may take action pursuant to subsection (e) of this section upon a finding that:

(1) The grantee failed to comply with the terms and conditions of an allocation's approval, including, without limitation, all provisions of this code and other ordinances of the city;

(2) The grantee surrendered a banked allocation substantially later than it knew or should have known in good faith that it would not be needed; or

(3) The grantee could not reasonably have anticipated using the number of allocations applied for or banked.

(e) Planning Board Hearing and Sanctions: At any time, after a hearing held pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof, the planning board may impose for violation of subsection (d) of this section any or all of the following sanctions:

(1) Void any allocation;

(2) Revoke the building permit for any dwelling unit as to which the allocation is voided;

(3) Suspend a grantee's and a grantee's assignee's privilege to apply for any allocation or building permit for a period of up to eighteen months.

(f) Allocations Surrendered or Voided: If a grantee of an allocation or allocations in a development surrenders an allocation or a building permit or allows an allocation or a building permit to become void, that number of allocations shall be subtracted from the allocations otherwise awardable to that grantee in that development in the next allocation period after the allocations or building permits are surrendered or become void unless the surrendered or voided allocation was awarded in an allocation period in which excess allocations existed.

(g) Failure to Use Allocations: If, in two out of any four consecutive allocation periods, a grantee of an allocation or allocations in a development surrenders an allocation or a building permit or allows an allocation or a building permit to become void, then the grantee may not reapply for any allocation in that development for two consecutive allocation periods, unless permitted by the planning board upon a finding of extreme hardship at a hearing held upon reasonable notice to the public prior to the relevant application deadline. The provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, shall apply to such hearing, except for the notice provisions thereof. This subsection shall not apply to surrendered or voided allocations or building permits which were not subject to the penalty provision of subsection (f) of this section.

(h) Banking of Allocations: Notwithstanding any other provision of this section, a development which cannot use all allocations granted may bank allocations under the provisions of this subsection:

(1) An applicant desiring to bank allocations may do so:

(A) Without consent, if it is banking to its minimum building size(s); or

(B) With the consent of the planning board, upon a finding that building configuration or infrastructure phasing require that a larger increment of the development be built at one time.

(2) Application for banking shall be made at or before the time of the allocation application, declaring the number of dwelling units in each building in the development, the number of allocations which may be sought to be banked, and the reason therefor.

(3) The planning board shall determine at a hearing held upon reasonable notice to the public, pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except for the notice provisions thereof, prior to the hearing considering granting allocations, whether or not to permit banking and if so, for what maximum period.

(4) An applicant banking allocations must apply in every allocation period until the number of allocations sought to be banked is granted and shall not bank such allocations after such number is granted.

(5) An applicant banking allocations shall notify the city manager in writing within ten days after the allocations are granted of the number of allocations being banked and the reason therefore.

(6) No allocations granted under section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981, may be banked.

9-14-8 Exemptions.

(a) Exempt Dwelling Units Not Counted: The following types of dwelling units will not be counted against the total allocations available set forth in section 9-14-3, "Allocations Available," B.R.C. 1981, and may be issued a building permit without an allocation:

(1) Permanently affordable dwelling units approved by the city manager;

(2) Dwelling units built pursuant to a development right pursuant to the intergovernmental agreement between the city and Boulder County, dated April 4, 1995, that is transferred into the city;

(3) Housing projects built by the University of Colorado for the sole purpose of providing housing for students, staff, and faculty of the university;

(4) Dwelling units that are not permanently affordable units in developments with a minimum of thirty-five percent permanently affordable dwelling units and a phasing plan approved by the city manager that provides for the concurrent construction of the permanently affordable and non-permanently affordable dwelling units; and

(5) Mixed use developments.

(6) Dwelling units built on land that was rezoned from a nonresidential zoning district classification in subparagraphs 9-5-2(c)(2)(D) to (c)(2)(H) and paragraph (c)(3), B.R.C. 1981, to a residential zoning district classification in subparagraphs 9-5-2(c)(1) and (c)(2)(A) to (c)(2)(C), B.R.C. 1982, after August 19, 2004.

(b) Exempt Dwelling Units Counted: No development shall receive more than forty allocations per year pursuant to this subsection. However, such developments may apply for excess allocations under the provisions of section 9-14-10, "Excess Allocations Provisions," B.R.C. 1981. Detached dwelling units on single family lots plotted on or before November 10, 1976, will be counted against the total allocations available set forth in section 9-14-3, "Allocations Available," B.R.C. 1981, and may be issued a building permit outside the quarterly allocation process.

(c) Exempt Allocations Granted by Planning Board: The planning board may allocate up to a total of thirty exemptions per year to developments in the categories set forth below. Such allocations will be counted against the total allocations available set forth in section 9-14-3, "Allocations Available," B.R.C. 1981. The planning board will grant such allocations upon finding good cause, after reasonable notice to the public and a public hearing and upon such conditions as it may prescribe for the following types of dwelling units:

(1) Landmarked buildings; and

(2) Group housing for a special population.

(d) Exemption Applications: An applicant for an exemption under subsection (a) or (b) of this section shall file a request with the city manager on a form furnished by the manager providing information from which the manager can reasonably determine whether the applicant is entitled to an exemption. For exemption applications pursuant to subsections (a) and (b) of this section, the manager will inform the applicant in writing within a reasonable time of denial or approval. Such determination may be appealed to the planning board at a hearing held upon reasonable notice to the public pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

Ordinance No. 7522 (2007)

9-14-9 Regulations.

The planning board is authorized to adopt regulations to implement the provisions of this chapter.

9-14-10 Excess Allocations Provisions.

(a) Award of Excess Allocations: Notwithstanding the provisions of subsections 9-14-4(a), 9-14-6(c), (d), and 9-14-7(a), B.R.C. 1981, the city manager may award excess allocations to developments under the provisions of this section. Excess allocations shall not include those allocations that are not accepted after award pursuant to subparagraph 9-14-6(b)(5), B.R.C. 1981, or are voided or surrendered under section 9-14-2, "General Provisions," 9-14-3, "Allocations Available," or 9-14-7, "Conditions of Approval," B.R.C. 1981.

(b) Conditions for Excess Allocations: In addition to all applicable requirements of this chapter, excess allocations may be awarded subject to the following conditions:

(1) Applications for excess allocations will be processed and completed on a first come, first served basis. If more than one applicant in a development submits a request for excess allocations, the time of filing the application will control, and no apportionment among various applicants in a development will occur.

(2) Notwithstanding the limitations of subsection 9-14-5(e), B.R.C. 1981, the city manager may award no more than twenty-five excess allocations or ten percent of the available excess allocations in an allocation period, whichever is less, to a development.

(3) Excess allocations are valid until the end of the allocation period in which they are granted or thirty days, whichever is less.

9-14-11 Monitoring and Evaluation.

Prior to December 31, 2004, and after the completion of the 2000 Census, city council will review the demographics of the city and the number of buildable or redevelopable lots and shall establish, amend, or adjust, as it deems appropriate, the number of available allocations and exemptions for subsequent years to correspond to a maximum rate of growth in the city's number of total dwelling units to approximately one percent.

¹ Adopted by Ordinance No. 7476.