

**ARTICLE 2
ADMINISTRATION**

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DIVISION 2.1 GENERAL PROCEDURAL REQUIREMENTS

Sections:

- 2.1.1 Decision Maker and Administrative Bodies
- 2.1.2 Overview of Development Review Procedures
- 2.1.3 Types of Development Applications
- 2.1.4 Effect of Development Application Approval

2.1.1 Decision Maker and Administrative Bodies

The City Council, Planning and Zoning Board, Zoning Board of Appeals and Community Planning and Environmental Services Director (the "Director") are frequently referenced in this Land Use Code. Reference should be made to Chapter 2 of the City Code for descriptions of these and other decision makers and administrative bodies, and their powers, duties, membership qualifications and related matters.

Either the Director or the Planning and Zoning Board will consider, review and decide all development applications for permitted uses (overall development plans, project development plans and final plans) according to the provisions of this Land Use Code. For those development applications subject to administrative review (sometimes referred to as "Type 1 review"), the Director is the designated decision maker (see Section 2.2.7(A)(1)). For those development applications subject to P&Z review (sometimes referred to as "Type 2 review"), the Planning and Zoning Board is the designated decision maker (see Section 2.2.7(A)(2)). The permitted use list for a particular zone district and the development review procedure "steps" for a particular development application identifies which review, Type 1 or Type 2, will apply. For building permit applications, the Building and Zoning Director is the decision maker (see Section 2.6.3). (See "Overview of Development Review Procedures," Section 2.1.2, below, for a further description of different levels of review.)

2.1.2 Overview of Development Review Procedures

This article establishes the development review procedures for different types of development applications and building permits within the city.

- (A) ***Where is the project located?*** An applicant must first locate the proposed project on the Zoning Map. Once the proposed project has been located, the applicable zone district must be identified from the Zoning Map and legend. Then, by referring to Article 4, District Standards, of this Land Use Code, the applicant will find the district standards which apply to the zone district in which the proposed project is located. The city's staff is available to assist applicants in this regard.

- (B) ***What uses are proposed?*** Next, an applicant must identify which uses will be included in the proposed project. If *all* of the applicant's proposed uses are listed as permitted uses in the applicable zone district for the project, then the applicant is ready to proceed with a development application for a permitted use. If *any* of the applicant's proposed uses are *not* listed as permitted uses in the applicable zone district for the project, then the applicant must either eliminate the nonpermitted uses from his or her proposal, seek the addition of a new permitted use pursuant to Section 1.3.4, or seek a text amendment to this Land Use Code or a rezoning amendment to the Zoning Map pursuant to Division 2.9. Any use not listed as a permitted use in the applicable zone district is deemed a prohibited use in that zone district, unless it has been permitted pursuant to Section 1.3.4 for a particular development application. Again, the city's staff will be available to assist applicants with their understanding of the zone districts and permitted uses.
- (C) ***Which type of development application should be submitted?*** To proceed with a development proposal for permitted uses, the applicant must determine what type of development application should be selected and submitted. All development proposals which include only permitted uses must be processed and approved through the following development applications: first through a project development plan (Division 2.4), and then through a final plan (Division 2.5). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 2.3) will also be required prior to or concurrently with the project development plan. Overall development plans, project development plans and final plans are the three (3) types of development applications for permitted uses. Each successive development application for a development proposal must build upon the previously approved development application by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the General Development Standards of Article 3 and the District Standards of Article 4). Overall development plans and project development plans may be consolidated into one (1) application for concurrent processing and review when appropriate under the provisions of Section 2.2.3. The purpose, applicability and interrelationship of these types of development applications are discussed further in Section 2.1.3.
- (D) ***Who reviews the development application?*** Once an applicant has determined the type of development application to be submitted, he or she must determine the appropriate level of development review required for the development application. To make this determination, the applicant must refer to the provisions of the applicable zone district in Article 4 and the provisions pertaining to the appropriate development application. These provisions will determine whether the permitted uses and the development application are

subject to administrative review ("Type 1 review") or Planning and Zoning Board review ("Type 2 review"). Identification of the required level of development review will, in turn, determine which decision maker, the Director in the case of administrative review ("Type 1 review"), or the Planning and Zoning Board in the case of Planning and Zoning Board review ("Type 2 review"), will review and make the final decision on the development application. When a development application contains both Type 1 and Type 2 uses, it will be processed as a Type 2 review.

- (E) ***How will the development application be processed?*** The review of overall development plans, project development plans and final plans will each generally follow the same procedural "steps" regardless of the level of review (administrative review or Planning and Zoning Board review). The common development review procedures contained in Division 2.2 establish a twelve-step process equally applicable to all overall development plans, project development plans and final plans.

The twelve (12) steps of the common development review procedures are the same for each type of development application, whether subject to administrative review or Planning and Zoning Board review, unless an exception to the common development review procedures is expressly called for in the particular development application requirements of this Land Use Code. In other words, each overall development plan, each project development plan and each final plan will be subject to the twelve-step common procedure. The twelve (12) steps include: (1) conceptual review; (2) neighborhood meeting; (3) development application submittal; (4) determination of sufficiency; (5) staff report; (6) notice; (7) public hearing; (8) standards; (9) conditions of approval; (10) amendments; (11) lapse; and (12) appeals.

However, Step 1, conceptual review, applies only to the initial development application submittal for a development project (i.e., overall development plan when required, or project development plan when an overall development plan is not required). Subsequent development applications for the same development project are not subject to Step 1, conceptual review.

Moreover, Step 2, neighborhood meeting, applies only to certain development applications subject to Planning and Zoning Board review. Step 2, neighborhood meeting, does not apply to development applications subject to administrative review. Step 3, application submittal requirements, applies to all development applications. Applicants shall submit items and documents in accordance with a master list of submittal requirements as established by the City Manager. Overall development plans must comply with only certain identified items on the master list, while project development plans must

include different items from the master list and final plans must include different items as well. This master list is intended to assure consistency among submittals by using a "building block" approach, with each successive development application building upon the previous one for that project. City staff is available to discuss the common procedures with the applicant.

- (F) ***What if the development proposal doesn't fit into one of the types of development applications discussed above?*** In addition to the three (3) development applications for permitted uses, the applicant may seek approval for other types of development applications, including development applications for a modification of standards (Division 2.8), an amendment to the text of the Land Use Code and/or the Zoning Map (Division 2.9), a hardship variance (Division 2.10), an appeal of an administrative decision (Division 2.11) or other requests. These other types of development applications will be reviewed according to applicable steps in the common development review procedures.
- (G) ***Is a building permit required?*** The next step after approval of a final plan is to apply for a Building Permit. Most construction requires a Building Permit. This is a distinct and separate process from a development application. The twelve (12) steps of the common development review procedures must be followed for the Building Permit process. Procedures and requirements for submitting a Building Permit application are described in Division 2.7.
- (H) ***Is it possible to receive preliminary feedback from the City Council regarding complex development proposals?*** If an application for approval of a development plan also entails City Council approval of an annexation petition, an amendment to the City's Comprehensive Plan, or some other kind of formal action by the City Council, other than a possible appeal under this Land Use Code, and if a land development or renewal project is determined by the City Manager to be of community-wide impact, the applicant for such approval may request that the City Council conduct a hearing for the purpose of receiving preliminary comments from the City Council regarding the applicant's overall proposal in order to assist the developer in determining whether to file a development application or annexation petition. All pre-application hearings scheduled by the City Manager under this provision will be held in accordance with the provisions contained in Steps 6, 7(B) and 7(C) of the Common Development Review Procedures, except that the signs required to be posted under Step 6(B) shall be posted subsequent to the scheduling of the hearing and not less than fourteen (14) days prior to the date of the hearing. At the time of requesting the hearing, the applicant must advance the City's estimated costs of providing notice of the hearing. Any amounts paid that exceed actual costs will be refunded to the applicant. At the conclusion of the hearing, members of the City Council may, but shall not be required to, comment on the proposal. Any

comment, suggestion or recommendation made by any Councilmember with regard to the proposal does not bind or otherwise obligate any City decision maker to any course of conduct or decision pertaining to the proposal. Only one (1) such hearing may be requested.

- (I) ***Is it permissible to talk with decision makers "off the record" about a development plan prior to the decision makers' formal review of the application?*** No. Development plans must be reviewed and approved in accordance with the provisions of this Land Use Code and the City's decision whether to approve or deny an application must be based on the criteria established herein and on the information provided at the hearings held on the application. In order to afford all persons who may be affected by the review and approval of a development plan an opportunity to respond to the information upon which decisions regarding the plan will be made, and in order to preserve the impartiality of the decision makers, decision makers who intend to participate in the decisions should avoid communications with the applicant or other members of the public about the plan prior to the hearings in which they intend to participate.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 165, 1999 §§4–6, 11/16/99; Ord. No. 073, 2008 §2, 7/1/08; Ord. No. 120, 2011 §2, 9/20/2011)

2.1.3 Types of Development Applications

- (A) ***Applicability.*** All development proposals which include only permitted uses must be processed and approved through the following development applications: first through a project development plan (Division 2.4), then through a final plan (Division 2.5), then through a development construction permit (Division 2.6) and then through a building permit review (Division 2.7). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 2.3) will also be required prior to or concurrently with the project development plan. Each successive development application for a development proposal must build upon the previously approved development application by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the General Development Standards of Article 3 and the District Standards of Article 4).

Permitted uses subject to administrative review or permitted uses subject to Planning and Zoning Board review listed in the applicable zone district set forth in Article 4, District Standards, shall be processed through an overall development plan, a project development plan or a final plan. If any use not listed as a permitted use in the applicable zone district is included in a development application, it may also be processed as an overall development plan, project development plan or final plan, if such proposed use has been

approved, or is concurrently submitted for approval, in accordance with the requirements for an amendment to the text of this Land Use Code and/or the Zoning Map, Division 2.9, or in accordance with the requirements for the addition of a permitted use under Section 1.3.4. Development applications for permitted uses which seek to modify any standards contained in the General Development Standards in Article 3, or the District Standards in Article 4, shall be submitted by the applicant and processed as a modification of standards under Division 2.8. Hardship variances to standards contained in Article 3, General Development Standards, or Article 4, District Standards, shall be processed as hardship variances by the Zoning Board of Appeals pursuant to Division 2.10. Appeals of administrative/staff decisions shall be according to Division 2.11.

(B) *Overall Development Plan.*

- (1) *Purpose and Effect.* The purpose of the overall development plan is to establish general planning and development control parameters for projects that will be developed in phases with multiple submittals while allowing sufficient flexibility to permit detailed planning in subsequent submittals. Approval of an overall development plan does not establish any vested right to develop property in accordance with the plan.
- (2) *Applicability.* An overall development plan shall be required for any property which is intended to be developed over time in two (2) or more separate project development plan submittals. Refer to Division 2.3 for specific requirements for overall development plans.

(C) *Project Development Plan and Plat.*

- (1) *Purpose and Effect.* The project development plan shall contain a general description of the uses of land, the layout of landscaping, circulation, architectural elevations and buildings, and it shall include the project development plan and plat (when such plat is required pursuant to Section 3.3.1 of this Code). Approval of a project development plan does not establish any vested right to develop property in accordance with the plan.
- (2) *Applicability.* Upon completion of the conceptual review meeting and after the Director has made written comments and after a neighborhood meeting has been held (if necessary), an application for project development plan review may be filed with the Director. If the project is to be developed over time in two (2) or more separate project development plan submittals, an overall development plan shall also be required. Refer to Division 2.4 for specific requirements for project development plans.

(D) ***Final Plan and Plat.***

- (1) ***Purpose and Effect.*** The final plan is the site specific development plan which describes and establishes the type and intensity of use for a specific parcel or parcels of property. The final plan shall include the final subdivision plat (when such plat is required pursuant to Section 3.3.1 of this Code), and if required by this Code or otherwise determined by the Director to be relevant or necessary, the plan shall also include the development agreement and utility plan and shall require detailed engineering and design review and approval. Building permits may be issued by the Building and Zoning Director only pursuant to an approved final plan or other site specific development plan, subject to the provisions of Division 2.8.
- (2) ***Applicability.*** Application for a final plan may be made only after approval by the appropriate decision maker (Director for Type 1 review, or Planning and Zoning Board for Type 2 review) of a project development plan, unless the project development and final plans have been consolidated pursuant to Section 2.2.3(B). An approved final plan shall be required for any property which is intended to be developed. No development shall be allowed to develop or otherwise be approved or permitted without an approved final plan. Refer to Division 2.5 for specific requirements for final plans.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 177, 1998 §4, 10/20/98; Ord. No. 165, 1999 §§7, 8, 11/16/99; Ord. No. 173, 2003 §§1,2, 12/16/03; Ord. No. 198, 2004 §1, 12/21/04)

2.1.4 Effect of Development Application Approval

- (A) ***Limitation on other development.*** In the event that a property has obtained development approval of a site specific development plan, such property may not thereafter be developed in any other fashion, except in accordance with Division 1.5, Nonconforming Uses and Structures or 1.6, Existing Limited Permitted Uses; or upon the occurrence of one (1) of the following events:
- (1) The right to develop the property in accordance with the approved plan has expired pursuant to Division 2.2, in which event the property may be developed according to such other development application as may be subsequently approved by the appropriate decision maker (the Director for Type 1 review and the Planning and Zoning Board for Type 2 review);
 - (2) The owner of the property has obtained the approval, pursuant to Section 2.2.10(B) and (C), of the appropriate decision maker to abandon the right to develop the property (or any portion thereof) in accordance with the

approved development plan, in which event the right to develop other than as the previously approved development plan shall apply only to the portion of the property which is no longer subject to the development plan;

- (3) The owner of the property has obtained permission from the appropriate decision maker to amend the approved development plan in accordance with Division 2.2, in which event the property shall be developed according to the amended plan;
- (4) The owner of the property has obtained the approval of the appropriate decision maker to redevelop the property (or any portion thereof) in some manner other than in accordance with the approved development plan because of the destruction of improvements constructed pursuant to the approved development plan by reason of fire, flood, tornado or other catastrophe, in which event the property shall be developed according to the plan for redevelopment approved by the appropriate decision maker.

(B) **Process.** Any property owner seeking to obtain the approval of the appropriate decision maker pursuant to this Section shall submit an application complying with the requirements and procedures set forth in Section 2.2.10 pertaining to amendments and abandonment.

(C) **Criteria.** In considering whether to approve any application for abandonment pursuant to this Section, the appropriate decision maker shall be governed by the following criteria:

- (1) The application shall not be approved if, in so approving, any portion of the property remains developed or to be developed in accordance with the previously approved development plan and, because of the abandonment, such remaining parcel of property would no longer qualify for development approval pursuant to either the standards and requirements of the most current version of this Land Use Code or, if such remaining parcel of property was not reviewed and approved under this Land Use Code, then the standards and requirements of the Transitional Land Use Regulations dated August 1997, on file in the office of the City Clerk.
- (2) The application shall not be approved if, in so approving, the city's rights of ownership of, or practical ability to utilize, any previously dedicated street, easement, right-of-way or other public area or public property would be denied or diminished to the detriment of the public good.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 183, 2000 §2, 12/19/00; Ord. No. 107, 2001 §2, 6/19/01)

2.1.5 Dedications and Vacations

- (A) ***By the Planning and Zoning Board.*** As part of its review and approval of a specific planning item, the Planning and Zoning Board may accept the dedication of streets, easements and other rights-of-way shown on plats and deeds for such item. The Board may also vacate easements and rights-of-way, other than streets and alleys, if they pertain to a planning item subject to review by the Board. Such acceptance and/or vacation may be accomplished either by resolution or by notation on the plat for the item.

- (B) ***By the Director.*** The Director may also accept the dedication of streets, easements and other rights-of-way shown on the plats and deeds associated with a specific planning item. Such authority of the Director shall extend to planning items that are subject to review and approval by the Board, as well as those that are subject to administrative review and approval, and shall apply to both on-site and off-site streets, easements and rights-of-way. The Director may also vacate easements and rights-of-way, other than streets and alleys, whether they pertain to a planning item subject to review by the Board or administrative review. Such acceptance and/or vacation may be accomplished either by resolution or by notation on the plat for the item.

(Ord. No. 59, 2000 §3, 6/6/00; Ord. No. 091, 2004 §2, 6/15/04; Ord. No. 081, 2007 §2, 7/17/07)

**DIVISION 2.2 COMMON DEVELOPMENT REVIEW PROCEDURES FOR
DEVELOPMENT APPLICATIONS**

Sections:

- 2.2.1 Step 1: Conceptual Review/Preliminary Design Review
- 2.2.2 Step 2: Neighborhood Meetings
- 2.2.3 Step 3: Development Application Submittal
- 2.2.4 Step 4: Determination of Sufficiency
- 2.2.5 Step 5: Staff Report
- 2.2.6 Step 6: Notice
- 2.2.7 Step 7: Public Hearing
- 2.2.8 Step 8: Standards
- 2.2.9 Step 9: Conditions of Approval
- 2.2.10 Step 10: Amendments
- 2.2.11 Step 11: Lapse
- 2.2.12 Step 12: Appeals

2.2.1 Step 1: Conceptual Review/Preliminary Design Review

(A) *Conceptual Review:*

- (1) *Purpose.* Conceptual review is an opportunity for an applicant to discuss requirements, standards and procedures that apply to his or her development proposal. Major problems can be identified and solved during conceptual review before a formal application is made.

Representatives of the Community Planning and Environmental Services, Community Services, Poudre Fire Authority, Police Services, Water & Wastewater Utility, Electric Utility, Storm Drainage Utility, Building and Zoning Department, and Cultural, Library and Recreation Services regularly attend conceptual review meetings.

- (2) *Applicability.* A conceptual review is mandatory for all overall development plans and for project development plans not subject to an overall development plan. Conceptual review must occur at least one (1) day prior to submittal of any application for an overall development plan or project development plan which is not subject to an overall development plan. The conceptual review may be waived by the Director for those development proposals that, in his or her opinion, would not derive substantial benefit from such review.

- (3) *Concept Plan Submittal.* The applicant shall bring a sketch showing the location of the proposed project, major streets and other significant features in the vicinity to the Conceptual Review meeting.
- (4) *Staff Review and Recommendation.* Upon receipt of a concept plan, and after review of such plan with the applicant, the Director shall furnish the applicant with written comments regarding such plan, including appropriate recommendations to inform and assist the applicant prior to preparing the components of the development application.

(B) ***Preliminary Design Review:***

- (1) *Purpose.* Preliminary design review is an opportunity for an applicant to discuss requirements, standards, procedures, potential modifications of standards or variances that may be necessary for a project and to generally consider in greater detail the development proposal design which has been evaluated as a part of the conceptual review process. While the conceptual review process is a general consideration of the development proposal, preliminary design review is a consideration of the development proposal in greater detail. Problems of both a major and minor nature can be identified and solved during the preliminary design review before a formal application is made.

Representatives of the Community Planning and Environmental Services, Community Services, Poudre Fire Authority, Police Services, Water and Wastewater Utility, Electric Utility, Storm Drainage Utility, Building and Zoning Department, and Cultural, Library and Recreation Services regularly attend preliminary design review meetings. Additionally, other public or quasi-public agencies which may be impacted by the development project are invited and encouraged to attend the preliminary design review. These agencies may include the gas utility, water and/or wastewater utility districts, ditch companies, railroads, cable television service providers and other similar agencies.

- (2) *Applicability.* Although a preliminary design review is not mandatory, it may be requested by the applicant for any development proposal. A request for preliminary design review may be made in an informal manner, either in writing or orally, but must be accompanied by the payment of the application fee as established in the development review fee schedule. Preliminary design review, if requested by the applicant, must occur at least seven (7) days prior to the submittal of any application for overall development plan or project development plan which is not subject to an overall development plan.

- (3) *Preliminary Plan Submittal.* In conjunction with a preliminary design review, the applicant shall submit all documents required for such review as established in the development application submittal requirements master list.
- (4) *Staff Review and Recommendation.* Upon receipt of a preliminary development proposal for review, and after review of such proposal with the applicant, the Director shall furnish the applicant with written comments and recommendations regarding such proposal in order to inform and assist the applicant prior to preparing components of the development application. In conjunction with the foregoing, the Director shall provide the applicant with a "critical issues list" which will identify those critical issues which have surfaced in the preliminary design review as issues which must be resolved during the review process of the formal development application. The critical issues list will provide to applicants the opinion of the Director regarding the development proposal, as that opinion is established based upon the facts presented during conceptual review and preliminary design review. To the extent that there is a misunderstanding or a misrepresentation of facts, the opinion of the Director may change during the course of development review. The positions of the Director that are taken as a part of the critical issues list may be relied upon by applicants, but only insofar as those positions are based upon clear and precise facts presented in writing, either graphically or textually on plans or other submittals, to the Director during the course of preliminary design review.

(Ord. No. 161, 2005 §1, 12/20/05; Ord. No. 005, 2007 §1, 2/6/07)

2.2.2 Step 2: Neighborhood Meetings

- (A) *Purpose.* In order to facilitate citizen participation early in the development review process, the City shall require a neighborhood meeting between citizens of area neighborhoods, applicants and the Director for any development proposal that is subject to P&Z review unless the Director determines that the development proposal would not have significant neighborhood impact. Citizens are urged to attend and actively participate in these meetings. The purpose of the neighborhood meeting is for such development applications to be presented to citizens of area neighborhoods and for the citizens to identify, list and discuss issues related to the development proposal. Working jointly with staff and the applicant, citizens help seek solutions for these issues. Neighborhood meetings are held during the conceptual planning stage of the proposal so that neighborhoods may give input on the proposal before time and effort have been expended by the applicant to submit a formal development application to the City. At least ten (10) calendar days shall have passed

between the date of the neighborhood meeting and the submittal to the City of the application for development approval for the project that was the subject of the neighborhood meeting.

- (B) ***Applicability.*** A neighborhood meeting shall be required on any development proposal that is subject to Planning and Zoning Board review unless the Director determines as a part of the staff review and recommendation required pursuant to Section 2.2.1(A)(4) that the development proposal would not have significant neighborhood impacts.
- (C) ***Notice of Neighborhood Meeting.*** Notice of the neighborhood meeting shall be given in accordance with Section 2.2.6(A), (B) and (D).
- (D) ***Attendance at Neighborhood Meeting.*** If a neighborhood meeting is required, the meeting shall be held prior to submittal of a development application to the Director for approval of an overall development plan and/or project development plan. The applicant or applicant's representative shall attend the neighborhood meeting. The Director shall be responsible for scheduling and coordinating the neighborhood meeting and shall hold the meeting in the vicinity of the proposed development.
- (E) ***Summary of Neighborhood Meeting.*** A written summary of the neighborhood meeting shall be prepared by the Director. The written summary shall be included in the staff report provided to the decision maker at the time of the public hearing to consider the proposed development.

(Ord. No. 091, 2004 §3, 6/15/04; Ord. No. 161, 2005 §2, 12/20/05; Ord. No. 120, 2011 §3, 9/20/2011)

2.2.3 Step 3: Development Application Submittal

- (A) ***Development Application Forms.*** All development applications shall be in a form established by the Director and made available to the public.
- (B) ***Consolidated Development Applications and Review.*** Development applications combining an overall development plan and a project development plan for permitted uses for the same development proposal may be consolidated for submittal and review, in the discretion of the Director, depending upon the complexity of the proposal. For these consolidated applications, the applicant shall follow the project development plan development review procedures. Such consolidated applications shall be reviewed, considered and decided by the highest level decision maker that would have decided the development proposal under Section 2.2.7 had it been submitted, processed and considered as separate development applications. Decision makers, from highest level to lowest level, are the Planning and Zoning Board and the Director, respectively.

(C) *Development Application Contents.*

- (1) *Development Application Submittal Requirements Master List.* A master list of development application submittal requirements shall be established by the City Manager. The master list shall, at a minimum, include a list of all information, data, explanations, analysis, testing, reports, tables, graphics, maps, documents, forms or other items reasonably necessary, desirable or convenient to (1) determine whether or not the applicant, developer and/or owner have the requisite power, authority, clear title, good standing, qualifications and ability to submit and carry out the development and/or activities requested in the development application; and (2) determine whether or not the development activities and development application address and satisfy each and every applicable general development standard, district standard or other requirement or provisions of this Land Use Code.
- (2) *Submittal Requirement.* Each development application shall be submitted to the Director and shall include the items on the master list that are identified as submittal requirements for that development application. The Director may waive items on the master list that are not applicable due to the particular conditions and circumstances of that development proposal.
- (3) *Execution of Plats/Deeds; Signature Requirements.* All final plats and/or deeds (for conveyances of real property either off the site described on the plat or at a time or in a manner separate from the plat), submitted to the City shall:
 - (a) be signed by all current owners of any recorded fee interest in the surface of the land described on the plat (or in the deed), whether full or defeasible and whether solely or partially owned.
 - (b) be signed by all current owners of any equitable interest arising out of a contract to purchase any fee interest in the surface of the land described on the plat (or in the deed), whether full or defeasible and whether solely or partially owned.
 - (c) be signed by all current record owners of any non-freehold interest arising from any recorded lease of the surface of the land described on the plat (or in the deed) if such lease has a remaining term of six (6) years following approval of the final development plan by the decision maker or if such lease contains any right of extension which, if exercised by the tenant, would create a remaining term of six (6) years following approval of the final development plan by the decision maker.

- (d) be signed by all current owners of any recorded mortgage, deed of trust or other lien, financial encumbrance upon or security interest in the lands described on the plat (or deed) which, if foreclosed would take, injure, diminish or weaken the city's interest in any land, easement or right-of-way which is dedicated to the city or to the public on the plat (or in the deed).
- (e) be signed by all current owners of any easement or right-of-way in the lands described on the plat (or in the deed) whether on, above or below the surface, which includes rights which will take, injure, diminish or weaken the city's interest in any land, easement or right-of-way which is dedicated to the city or to the public on the plat (or in the deed).
- (f) be signed by an attorney licensed to practice law in the State of Colorado certifying to the city that all signatures as required pursuant to subparagraphs (a) through (e) above have lawfully and with full authority been placed upon the plat (or in the deed). Said certification may be limited by the attorney so certifying to only those ownership interests that are of record or, if not of record, are either actually known to the certifying attorney to exist, or in the exercise of reasonable diligence, should have been known to the certifying attorney to exist. For purposes of such certification, the terms "record," "recorded" and "of record" shall mean as shown by documents recorded in the real estate records in the Clerk and Recorder's Office of Larimer County, Colorado prior to the date of certification.
- (g) contain a maintenance guarantee, a repair guarantee and a certificate of dedication signed by the developer and the owner (as described in subparagraph (a) above), which provide a two-year maintenance guarantee and five-year repair guarantee covering all errors or omissions in the design and/or construction. The specific provisions of the maintenance guarantee, repair guarantee and certificate of dedication shall be established by the City Engineer.
- (h) contain the legal notarization of all signatures as required pursuant to subparagraphs (a) through (e) above to be placed upon the plat (or deed).
- (i) in substitution of the requirement of subparagraph (f) above, be accompanied by a policy of title insurance insuring the city, in an amount to be determined by the Director as sufficient to fully compensate the City for (a) any and all risk of liability for; and (b) all damages to the City arising from the execution of the plat (or

deed) in any manner not in compliance with the requirements of this Section.

The Director may waive or modify the requirements of subparagraphs (b) through (e), and the requirements of subparagraph (g) above upon a clear and convincing showing by the applicant that such waiver or modification will not result in any detriment to the public good, including without limitation, detriment to the interest of the public in the real property conveyed to it on the plat (or in the deed); and will not result in any harm to the health, safety or general welfare of the City and its citizens.

(D) ***Development Review Fees.***

- (1) *Recovery of Costs.* Development review fees are hereby established for the purpose of recovering the costs incurred by the City in processing, reviewing and recording applications pertaining to development applications or activity within the municipal boundaries of the City, and issuing permits related thereto. The development review fees imposed pursuant to this Section shall be paid at the time of submittal of any development application, or at the time of issuance of the permit, as determined by the City Manager and established in the development review fee schedule.
- (2) *Development Review Fee Schedule.* The amount of the City's various development review fees shall be established by the City Manager, and shall be based on the actual expenses incurred by or on behalf of the City. The schedule of fees shall be reviewed annually and shall be adjusted, if necessary, by the City Manager on the basis of actual expenses incurred by the City to reflect the effects of inflation and other changes in costs. At the discretion of the City Manager, the schedule may be referred to the City Council for adoption by resolution or ordinance.
- (3) *Affordable Housing Exemption.* Notwithstanding the requirement contained in paragraph (2) above that the development review fees shall be based on actual expenses incurred by or on behalf of the City, applications relating to the review of affordable housing projects shall be totally or partially exempt from the fees authorized in this subsection (D) according to the following criteria:
 - (a) The fees authorized under this subsection (D) shall be entirely waived for development projects in which one hundred (100) percent of the dwelling units qualify as affordable housing units for sale or for rent.

- (b) The fees authorized under this subsection (D) shall be reduced in direct proportion to the percentage of affordable housing units for sale or for rent that are provided in the development project (within the authorized waiver range of ten [10] percent to one hundred [100] percent), in accordance with the following formula:

$$\frac{\text{Number of affordable housing units}}{\text{Total number of housing units}} \times \text{Total fees assessed} = \text{Amount of fees waived}$$

- (c) The fees authorized under this subsection (D) shall not be reduced if less than ten (10) percent of the dwelling units within the project qualify as affordable housing units for sale or for rent.
- (d) In order to determine whether a development project is eligible for a waiver or reduction of fees under this subparagraph, any applicant seeking such waiver or reduction must submit documentation evidencing the eligibility of the development project to the Director, who may, upon review of such documentation, defer the payment of said fees to such time, if at all, that a certificate of occupancy is sought for the development project. At that time, prior to the issuance of any certificate of occupancy for the development project, a final determination shall be made by the Director as to whether the development project qualifies for a waiver or reduction of the fees. In the event that the Director determines that the development project does not so qualify, all such fees shall be due and payable prior to the issuance of the first certificate of occupancy.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 178, 1998 §3, 10/20/98; Ord. No. 19, 1999 §4, 2/16/99; Ord. No. 99, 1999 §1, 6/15/99; Ord. No. 165, 1999 §9, 11/16/99; Ord. No. 204, 2001 §3, 12/18/01)

2.2.4 Step 4: Determination of Sufficiency

After receipt of the development application, the Director shall determine whether the application is complete and ready for review. The determination of sufficiency shall not be based upon the perceived merits of the development proposal. If a submittal is found to be insufficient, all review of the submittal will be held in abeyance until the Director receives the necessary material to determine that the submittal is sufficient. The development application shall not be reviewed on its merits by the decision maker until it is determined sufficient by the Director.

2.2.5 Step 5: Staff Report

Within a reasonable time after determining that a development application is sufficient, the Director shall refer the development application to the appropriate review agencies, review the development application, and prepare a Staff Report. The Staff Report shall be made available for inspection and copying by the applicant and the public prior to the scheduled public hearing on the development application. The Staff Report shall indicate whether, in the opinion of the Staff, the development application complies with all applicable standards of this Land Use Code. Conditions for approval may also be recommended to eliminate any areas of noncompliance or mitigate any adverse effects of the development proposal.

2.2.6 Step 6: Notice

- (A) ***Mailed Notice.*** The Director shall mail written notice to the owners of record of all real property within eight hundred (800) feet (exclusive of public rights-of-way, public facilities, parks or public open space) of the property lines of the parcel of land for which the development is planned. Owners of record shall be ascertained according to the records of the Larimer County Assessor's Office, unless more current information is made available in writing to the Director prior to the mailing of the notices. If the development project is of a type described in the Supplemental Notice Requirements of subsection 2.2.6(D), then the area of notification shall conform to the expanded notice requirements of that Section. In addition, the Director may further expand the notification area. Formally designated representatives of bona fide neighborhood groups and organizations and homeowners' associations within the area of notification shall also receive written notice. Such written notices shall be mailed at least fourteen (14) days prior to the public hearing/meeting date. The Director shall provide the applicant with a map delineating the required area of notification, which area may be extended by the Director to the nearest streets or other distinctive physical features which would create a practical and rational boundary for the area of notification. The applicant shall pay postage and handling costs as established in the development review schedule. Failure to mail such notice shall not affect the validity of any hearing, meeting or determination by the decision maker.
- (B) ***Posted Notice.*** The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. For parcels of land exceeding ten (10) acres in size, two (2) signs shall be posted. The size of the sign(s) required to be posted shall be as established in the Supplemental Notice Requirements of subsection 2.2.6(D). Such signs shall be provided by the Director and shall be posted on the subject property in a manner and at a location or locations reasonably calculated by the Director to

afford the best notice to the public, which posting shall occur within fourteen (14) days following submittal of a development application to the Director.

(C) **Published Notice.** Notice of the time, date and place of the public hearing/meeting on the development application and the subject matter of the hearing shall be published in a newspaper of general circulation within the City at least seven (7) days prior to such hearing/meeting.

(D) **Supplemental Notice Requirements.**

	<i>Minimum Notice Radius</i>	<i>Sign Size</i>
All developments except as described below.	800 feet	5.4 square feet
Developments proposing more than fifty (50) and less than one hundred (100) single-family or two-family lots or dwelling units.	800 feet	5.4 square feet
Developments proposing more than twenty-five (25) and less than one hundred (100) multi-family dwelling units.	800 feet	5.4 square feet
Nonresidential developments containing more than twenty-five thousand (25,000) and less than fifty thousand (50,000) square feet of floor area.	800 feet	5.4 square feet
Developments proposing one hundred (100) or more single-family or two-family lots or dwelling units.	1,000 feet	12 square feet
Developments proposing one hundred (100) or more multi-family dwelling units.	1,000 feet	12 square feet
Nonresidential developments containing fifty thousand (50,000) or more square feet of floor area.	1,000 feet	12 square feet
Nonresidential developments which propose land uses or activities which, in the judgment of the Director, create community or regional impacts.	1,000 feet; plus, with respect to neighborhood meetings, publication of a notice not less than seven (7) days prior to the meeting in a newspaper of general circulation in the City.	12 square feet
Zonings and rezonings of forty (40) acres or less.	800 feet	5.4 square feet
Zonings and rezonings of more than forty (40) acres.	1,000 feet	12 square feet

(Ord. No. 204, 2001 §§4, 5, 12/18/01; Ord. No. 104, 2006 §§1, 2, 7/18/06; Ord. No. 068, 2010 §2, 7/6/10)

2.2.7 Step 7: Public Hearing

(A) **Decision maker.**

(1) *Administrative Review (Type I review).* An administrative review process is hereby established wherein certain development applications

shall be processed, reviewed, considered and approved, approved with conditions, or denied by the Director pursuant to the general procedural requirements contained in Division 2.1, and the common development review procedures contained in Division 2.2. For those development applications that are subject to administrative review, the Director shall be the designated decision maker.

- (2) *Planning and Zoning Board Review (Type 2 review).* A Planning and Zoning Board review process is hereby established wherein certain development applications shall be processed, reviewed, considered and approved, approved with conditions, or denied by the Planning and Zoning Board pursuant to the general procedural requirements contained in Division 2.1, and the common development review procedures contained in Division 2.2. For those development applications that are subject to Planning and Zoning Board review, the Planning and Zoning Board shall be the designated decision maker.

(B) ***Conduct of Public Hearing.***

- (1) *Rights of All Persons.* Any person may appear at a public hearing and submit evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall state his or her name, address and, if appearing on behalf of a person or organization, the name and mailing address of the person or organization being represented.
- (2) *Exclusion of Testimony.* The decision maker conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.
- (3) *Continuance of Public Hearing.* The decision maker conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place. All continuances shall be granted at the discretion of the body conducting the public hearing.

(C) ***Order of Proceedings at Public Hearing.*** The order of the proceedings at the public hearing shall be as follows:

- (1) *Staff Report Presented.* The Director shall present a narrative and/or graphic description of the development application. The Director shall present a Staff Report which includes a written recommendation. This recommendation shall address each standard required to be considered by this Land Use Code prior to approval of the development application.

- (2) *Applicant Presentation.* The applicant may present information in support of its application, subject to the determination of the Chair as to relevance. Copies of all writings or other exhibits that the applicant wishes the decision maker to consider must be submitted to the Director no less than five (5) working days before the public hearing.
- (3) *Staff Response to Applicant Presentation.* The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the applicant.
- (4) *Public Testimony.* Members of the public may comment on the application and present evidence, subject to the determination of the Chair as to relevance.
- (5) *Applicant Response.* The applicant may respond to any testimony or evidence presented by the public.
- (6) *Staff Response to Public Testimony or Applicant Response.* The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the public testimony or by the applicant's response to any such public testimony.

(D) ***Decision and Findings.***

- (1) *Decision — Administrative Review (Type 1 review).* After consideration of the development application, the Staff Report and the evidence from the public hearing, the Director shall close the public hearing. Within ten (10) working days following the public hearing, the Director shall issue a written decision to approve, approve with conditions, or deny the development application based on its compliance with the Standards referenced in Step 8 of the Common Development Review Procedures (Section 2.2.8). The written decision shall be mailed to the applicant and any person who provided testimony at the public hearing.
- (2) *Decision — Planning and Zoning Board Review (Type 2 review).* After consideration of the development application, the Staff Report and the evidence from the public hearing, the Chair of the Planning and Zoning Board shall close the public hearing and the Board shall approve, approve with conditions, or deny the development application based on its compliance with the Standards referenced in Step 8 of the Common Development Review Procedures (Section 2.2.8).
- (3) *Findings.* All decisions shall include at least the following elements:

- (a) A clear statement of approval, approval with conditions, or denial, whichever is appropriate.
- (b) A clear statement of the basis upon which the decision was made, including specific findings of fact with specific reference to the relevant standards set forth in this Land Use Code.

(E) ***Notification to Applicant.***

Notification of the decision maker's decision shall be provided by the Director to the applicant by mail within three (3) days after the decision. A copy of the decision shall also be made available to the public at the offices of the Director, during normal business hours, within three (3) days after the decision.

(F) ***Record of Proceedings.***

- (1) ***Recording of Public Hearing.*** The decision maker conducting the public hearing shall record the public hearing by any appropriate means. A copy of the public hearing record may be acquired by any person upon application to the Director, and payment of a fee to cover the cost of duplication of the record.
- (2) ***The Record.*** The record shall consist of the following:
 - (a) all exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the decision maker at the proceedings;
 - (b) all minutes of the proceedings;
 - (c) if appealed to the City Council, a verbatim transcript of the proceedings before the decision maker. The cost of the transcript shall be borne by the City.
 - (d) if available, a videotape recording of the proceedings before the decision maker.

(G) ***Recording of Decisions and Plats.***

- (1) ***Filing with City Clerk.*** Once approved, and after the appeal period has expired (if applicable), the decision of the decision maker shall be filed with the City Clerk.
- (2) ***Final Plats Recorded with County Clerk and Recorder.*** Once the final utility plans and final plat are approved, the development agreement has been executed, the final plan has been approved, any conditions of final

plan approval have been met, and (for projects processed under prior law) after the appeal period has expired, the final plat shall be recorded in the Office of the Larimer County Clerk and Recorder and shall be filed with the City Clerk.

(Ord. No. 59, 2000 §4, 6/6/00; Ord. No. 070, 2005 §1, 7/5/05; Ord. No. 120, 2011 §4, 9/20/2011)

2.2.8 Step 8: Standards

To approve a development application, the decision maker must first determine and find that the development application has satisfied and followed the applicable requirements of this Article 2 and complies with all of the standards required for the applicable development application (see Step 8: "Standards" referenced in Divisions 2.3 through 2.11), as modified by any modification of standards approved under Section 2.8.

(Ord. No. 177, 1998 §4, 10/20/98)

2.2.9 Step 9: Conditions of Approval

The decision maker may impose such conditions on approval of the development application as are necessary to accomplish the purposes and intent of this Land Use Code, or such conditions that have a reasonable nexus to potential impacts of the proposed development, and that are roughly proportional, both in nature and extent, to the impacts of the proposed development.

2.2.10 Step 10: Amendments

(A) **Minor Amendments.** Minor amendments to any approved development plan, including any Overall Development Plan or Project Development Plan, or any site specific development plan (except replats) may be approved, approved with conditions, or denied administratively by the Director and may be authorized without additional public hearings. Such minor amendments may be authorized by the Director as long as the development plan, as so amended, continues to comply with the standards of this Land Use Code, at least to the extent of its original compliance (so as to preclude any greater deviation from the standards of this Land Use Code by reason of such amendments). Minor amendments shall only consist of any or all of the following:

- (1) Any change to any approved development plan or any site specific development plan (except a minor subdivision [no longer authorized in this Land Use Code]) which was originally subject only to administrative review and was approved by the Director, or any change of use of any property that was developed pursuant to a basic development review or a

use-by-right review under prior law; provided that such change would not have disqualified the original plan from administrative review had it been requested at that time; and provided that:

- (a) the minor amendment results in an increase by one (1) percent or less in the approved number of dwelling units, except that in the case of a change of use of any property that was developed pursuant to a basic development review or use-by-right review under prior law, the number of dwelling units proposed to be added may be four (4) units or less; or
 - (b) the minor amendment results in an increase or decrease in the amount of square footage of a nonresidential land use or structure that does not change the character of the project; or
 - (c) the minor amendment results in a change in the housing mix or use mix ratio that complies with the requirements of the zone district and does not change the character of the project; or
 - (d) the minor amendment does not result in a change in the character of the development; or
 - (e) the minor amendment does not result in new buildings, building additions or site improvements, such as parking lots and landscaping, that are proposed to be located outside the boundaries of the approved site specific development plan; or
 - (f) the minor amendment results in a decrease in the number of approved dwelling units and does not change the character of the project, and that the plan as amended continues to comply with the requirements of this Land Use Code.
- (2) Any change to any approved development plan or any site specific development plan which was originally subject to review by the Planning and Zoning Board (either as a Type 2 project or as a project reviewed by the Planning and Zoning Board under prior law) and was approved by the Planning and Zoning Board; provided that:
- (a) the minor amendment results in an increase or decrease by one (1) percent or less in the approved number of dwelling units; or
 - (b) the minor amendment results in an increase or decrease in the amount of square footage of a nonresidential land use or structure that does not change the character of the project; or

- (c) the minor amendment results in a change in the housing mix or use mix ratio that complies with the requirements of the zone district and does not change the character of the project; or
- (d) the minor amendment does not result in a change in the character of the development; or
- (e) the minor amendment does not result in new buildings, building additions or site improvements, such as parking lots and landscaping, that are proposed to be located outside the boundaries of the approved site specific development plan.

(3) *Referral.* In either (1) or (2) above, the Director may refer the amendment to the Planning and Zoning Board and, if so referred, the decision of the Planning and Zoning Board shall constitute a final decision, subject only to appeal as provided for development plans under Division 2.3, 2.4 or 2.5, as applicable, for the minor amendment.

(4) *Appeals.* Appeals of the decision of the Director regarding the approval, approval with conditions or denial of minor amendments of any approved development plan or site specific development plan shall be to the Planning and Zoning Board. Any such appeal shall be taken by filing a notice of appeal of the final decision with the Director within fourteen (14) days after the action that is the subject of the appeal. The decision of the Planning and Zoning Board on such appeals shall constitute a final decision appealable pursuant to Section 2.2.12 (Step 12).

(B) Major Amendments.

(1) *Procedure/Criteria.* Amendments to any approved development plan (including any Overall Development Plan or Project Development Plan) or site specific development plan that are not determined by the Director to be minor amendments under the criteria set forth in subsection (A) above, shall be deemed major amendments. Major amendments to approved development plans or site specific development plans approved under the laws of the City for the development of land prior to the adoption of this Land Use Code shall be processed as required for the land use or uses proposed for the amendment as set forth in Article 4 (i.e., Type 1 review or Type 2 review) for the zone district in which the land is located, and, to the maximum extent feasible, shall comply with the applicable standards contained in Articles 3 and 4. Major amendments to development plans or site specific development plans approved under this Land Use Code shall be reviewed and processed in the same manner as required for the original development plan for which amendment is sought. Any major amendments to an approved project development plan

or site specific development plan shall be recorded as amendments in accordance with the procedures established for the filing and recording of such initially approved plan. Any partial or total abandonment of a development plan or site specific development plan approved under this Land Use Code, or of any plan approved under the laws of the City for the development of land prior to the adoption of this Land Use Code, shall be deemed to be a major amendment, and shall be processed as a Type 2 review; provided, however, that if a new land use is proposed for the property subject to the abandonment, then the abandonment and new use shall be processed as required for the land use or uses proposed as set forth in Article 4 (i.e., Type 1 review or Type 2 review) for the zone district in which the land is located.

(2) *Appeals.* Appeals of decisions for approval, approval with conditions or denial of major amendments, or abandonment, of any approved development plan or site specific development plan shall be filed and processed in accordance with Section 2.2.12 (Step 12).

(C) *Additional Criteria.* In addition to the criteria established in (A) and (B) above, the criteria established in subsection 2.1.4(C) shall guide the decision maker in determining whether to approve, approve with conditions, or deny the application for partial or total abandonment.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 228, 1998 §§3, 4, 12/15/98; Ord. No. 99, 1999 §3, 6/15/99; Ord. No. 59, 2000 §5, 6/6/00; Ord. No. 183, 2000 §§3—6, 12/19/00; Ord. No. 107, 2001 §§3, 4, 6/19/01; Ord. No. 204, 2001 §§1, 6, 12/18/01; Ord. No. 177, 2002 §3, 12/17/02; Ord. No. 104, 2006 §3, 7/18/06)

2.2.11 Step 11: Lapse

(A) *Application Submittals.* An application submitted to the City for the review and approval of a development plan must be diligently pursued and processed by the applicant. Accordingly, the applicant, within one hundred eighty (180) days of receipt of written comments and notice to respond from the City on any submittal (or subsequent revision to a submittal) of an application for approval of a development plan, shall file such additional or revised submittal documents as are necessary to address such comments from the City. If the additional submittal information or revised submittal is not filed within said period of time, the development application shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing one-hundred-eighty-day requirement, which extension may not exceed one hundred twenty (120) days in length, and one (1) additional extension which may not exceed sixty (60) days in length. This subsection (A) shall apply to applications which are, or have been, filed pursuant to this Land Use Code and

to applications which are, or have been, filed pursuant to the laws of the City for the development of land prior to the adoption of this Land Use Code.

- (B) ***Overall Development Plan.*** There is no time limit for action on an overall development plan. Because an overall development plan is only conceptual in nature, no vested rights shall ever attach to an overall development plan. The approval of, or completion of work pursuant to, project development plans or final plans for portions of an overall development plan shall not create vested rights for those portions of the overall development plan which have not received such approvals and have not been completed.

- (C) ***Project Development Plan and Plat.*** Within a maximum of three (3) years following the approval of a project development plan and upon the expiration of any right of appeal, or upon the final decision of the City Council following appeal, if applicable, the applicant must proceed by obtaining the Director's approval of a final plan for all or part of the project development plan. If such approval is not timely obtained, the project development plan (or any portion thereof which has not received final approval) shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing three-year requirement, which extension may not exceed six (6) months in length. No vested rights shall ever attach to a project development plan. The approval of, or completion of work pursuant to, a final plan for portions of a project development plan shall not create vested rights for those portions of the project development plan which have not received such final plan approval and have not been completed.

- (D) ***Final Plan and Plat and Other Site Specific Development Plans.***
 - (1) ***Approval.*** A site specific development plan shall be deemed approved upon the approval by the decision maker relating thereto.

 - (2) ***Publication.*** A "notice of approval" describing generally the type and intensity of use approved and the specific parcel or parcels affected, and stating that a vested property right has been created or extended, shall be published by the City once, not later than fourteen (14) days after the expiration of any right of appeal of the approval of any final plan or other site specific development plan, or, in the event of the filing of an appeal, after final resolution by the City of such appeal, in a newspaper of general circulation within the City. The period of time permitted by law for the exercise of any applicable right of referendum or judicial review shall not begin to run until the date of such publication, whether timely made within said fourteen-day period, or thereafter.

 - (3) ***Term of Vested Right.*** Within a maximum of three (3) years following the approval of a final plan or other site specific development plan, the

applicant must undertake, install and complete all engineering improvements (water, sewer, streets, curb, gutter, street lights, fire hydrants and storm drainage) in accordance with city codes, rules and regulations. The period of time shall constitute the "term of the vested property right." The foregoing term of the vested property right shall not exceed three (3) years unless: (a) an extension is granted pursuant to paragraph (4) of this subsection, or (b) the City and the developer enter into a development agreement which vests the property right for a period exceeding three (3) years. Such agreement may be entered into by the City only if the subject development constitutes a "large base industry" as defined in Article 5, or if the Director determines that it will likely take more than three (3) years to complete all engineering improvements for the development, and only if warranted in light of all relevant circumstances, including but not limited to the size and phasing of the development, economic cycles and market conditions. Any such development agreement shall be adopted as a legislative act subject to referendum. Failure to undertake and complete the development within the term of the vested property right shall cause a forfeiture of the vested property right and shall require resubmission of all materials and reapproval of the same to be processed as required by this Land Use Code. All dedications as contained on the final plat shall remain valid unless vacated in accordance with law.

- (4) *Extensions.* Extensions for two (2) successive periods of one (1) year each may be granted by the Director, upon a finding that the plan complies with all general development standards as contained in Article 3 and Zone District Standards as contained in Article 4 at the time of the application for the extension. Any additional one-year extensions shall be approved, if at all, only by the Planning and Zoning Board, upon a finding that the plan complies with all applicable general development standards as contained in Article 3 and Zone District Standards as contained in Article 4 at the time of the application for the extension, and that (a) the applicant has been diligent in constructing the engineering improvements required pursuant to paragraph (3) above, though such improvements have not been fully constructed, or (b) due to other extraordinary and exceptional situations unique to the property, completing all engineering improvements would result in unusual and exceptional practical difficulties or undue hardship upon the applicant, and granting the extension would not be detrimental to the public good. A request for an extension of the term of vested right under this Section must be submitted to the Director in writing at least thirty (30) days prior to the date of expiration. Time is of the essence. The granting of extensions by the Director under this Section may, at the discretion of the Director, be referred to the Planning and Zoning Board.

- (5) *Minor Amendments.* In the event that minor amendments to a final plan or other site-specific development plan are approved under the provisions of Section 2.2.10 (or under prior law, if permissible), the effective date of such minor amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original final plan or other site-specific development plan.
- (6) *Major Amendments.* The approval of major amendments to a final plan or other site-specific development plan under the provisions of Section 2.2.10 (or under prior law, if permissible), shall create a new vested property right with effective period and term as provided herein, unless expressly stated otherwise in the decision approving such major amendment.
- (7) *Planning over old plans.* In the event that a new final plan is approved for a parcel of property which includes all of a previously approved site-specific development plan, the approval of such new final plan shall cause the automatic expiration of such previously approved site-specific development plan. In the event that a new final plan is approved for a parcel of property which includes only a portion of a previously approved site-specific development plan, the approval of such new final plan shall be deemed to constitute the abandonment of such portion of the previously approved plan as is covered by such new plan, and shall be reviewed according to the abandonment criteria contained in subsection 2.1.4(C) and all other applicable criteria of this Land Use Code.
- (8) *Other provisions unaffected.* Approval of a final plan or other site-specific development plan shall not constitute an exemption from or waiver of any other provisions of this Land Use Code pertaining to the development and use of property.
- (9) *Post denial re-submittal delay.* Property that is the subject of an overall development plan or a project development plan that has been denied by the decision maker or denied by City Council upon appeal, or withdrawn by the applicant, shall be ineligible to serve, in whole or in part, as the subject of another overall development plan or project development plan application for a period of six (6) months from the date of the final decision of denial or the date of withdrawal (as applicable) of the plan unless the Director determines that the granting of an exception to this requirement would not be detrimental to the public good and would: (a) substantially alleviate an existing, defined and described problem of City-wide concern; or (b) result in a substantial benefit to the City by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and

described in the City's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council.

- (10) *Automatic repeal; waiver.* Nothing in this Section is intended to create any vested property right other than such right as is established pursuant to the provisions of Article 68, Title 24, C.R.S. In the event of the repeal of said article or a judicial determination that said article is invalid or *unconstitutional*, this Section shall be deemed to be repealed and the provisions hereof no longer effective. Nothing herein shall be construed to prohibit the waiver of a vested property right pursuant to mutual agreement between the City and the affected landowner. Upon the recording of any such agreement with the Larimer County Clerk and Recorder, any property right which might otherwise have been vested shall be deemed to be not vested.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 99, 1999 §4, 6/15/99; Ord. No. 59, 2000 §6, 6/6/00; Ord. No. 107, 2001 §5, 6/19/01; Ord. No. 173, 2003 §3, 12/16/03; Ord. No. 161, 2005 §3, 12/20/05; Ord. No. 081, 2007 §3, 7/17/07; Ord. No. 066, 2009 §2, 7/7/09; Ord. No. 068, 2010 §3, 7/6/10; Ord. No. 120, 2011 §§5, 6, 9/20/2011)

2.2.12 Step 12: Appeals

Appeals of any final decision of a decision maker under this Land Use Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in Divisions 2.3 through 2.11 of this Land Use Code.

(Ord. No. 165, 1999 §10, 11/16/99)

DIVISION 2.3 OVERALL DEVELOPMENT PLAN

Sections:

- 2.3.1 Purpose and Applicability
- 2.3.2 Overall Development Plan Review Procedures

2.3.1 Purpose and Applicability

The purpose and applicability of an overall development plan is contained in Section 2.1.3(B).

2.3.2 Overall Development Plan Review Procedures

An overall development plan shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Applicable.
- (B) **Step 2** (Neighborhood Meeting): Applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for overall development plans as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Determination of Sufficiency): Applicable.
- (E) **Step 5** (Staff Report): Applicable.
- (F) **Step 6** (Notice): Applicable.
- (G) **Step 7(A)** (Decision Maker): All overall development plans will be processed as Type 2 reviews.

Step 7(B)-(G) (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats): Applicable.

- (H) **Step 8** (Standards): Applicable. An overall development plan shall comply with the following criteria:
- (1) The overall development plan shall be consistent with the permitted uses and applicable zone district standards (Article 4) of all zone districts contained within the boundaries of the overall development plan. The plan shall also be consistent with any zone district standards (Article 4) and general development standards (Article 3) that can be applied at the level of detail required for an overall development plan submittal. Only one (1) application for an overall development plan for any specific parcel or portion thereof may be pending for approval at any given time. Such application shall also be subject to the provisions for delay set out in Section 2.2.11.
 - (2) The overall development plan shall be consistent with the required density range of residential uses (including lot sizes and housing types) with regard to any land which is part of the overall development plan and which is included in the following districts:
 - (a) The Rural Land District (R-U-L). Section 4.1(D)(1).
 - (b) The Urban Estate District (U-E). See Section 4.2(D)(1).
 - (c) The Residential Foothills District (R-F). See Section 4.3(D)(1).
 - (d) The Low Density Mixed-Use Neighborhood District (L-M-N). See Section 4.5(D)(1).
 - (e) The Medium Density Mixed-Use Neighborhood District (M-M-N). See Section 4.6(D)(1).
 - (f) The High Density Mixed-Use Neighborhood District (H-M-N). See Section 4.10(D)(1).
 - (g) The Community Commercial - North College District (C-C-N). See Section 4.19(D)(1).
 - (h) The Harmony Corridor District (H-C). See Section 4.26(D)(4).
 - (i) The Employment District (E). See Section 4.27(D)(5).
 - (3) The overall development plan shall conform to the Master Street Plan requirements and the street pattern/connectivity standards both within and adjacent to the boundaries of the plan as required pursuant to Sections 3.6.1 and 3.6.3(A) through (F). The overall development plan shall

identify appropriate transportation improvements to be constructed and shall demonstrate how the development, when fully constructed, will conform to the Transportation Level of Service Requirements as contained in Section 3.6.4.

- (4) The overall development plan shall provide for the location of transportation connections to adjoining properties in such manner as to ensure connectivity into and through the overall development plan site from neighboring properties for vehicular, pedestrian and bicycle movement, as required pursuant to Section 3.6.3(F) and Section 3.2.2(C)(6).
- (5) The overall development plan shall show the general location and approximate size of all natural areas, habitats and features within its boundaries and shall indicate the applicant's proposed rough estimate of the natural area buffer zones as required pursuant to Section 3.4.1(E).
- (6) The overall development plan shall be consistent with the appropriate Drainage Basin Master Plan.
- (7) Any standards relating to housing density and mix of uses will be applied over the entire overall development plan, not on each individual project development plan review.

(I) **Step 9** (Conditions of Approval): Applicable.

(J) **Step 10** (Amendments): Applicable.

(K) **Step 11** (Lapse): Applicable.

(L) **Step 12** (Appeals): Applicable.

(Ord. No. 228, 1998 §§5, 6, 12/15/98; Ord. No. 41, 1999 §1, 3/16/99; Ord. No. 99, 1999 §5, 6/15/99; Ord. No. 107, 2001 §§6, 7, 6/19/01; Ord. No. 173, 2003 §§4, 5, 12/16/03; Ord. No. 131, 2006 §§3—5, 9/19/06; Ord. No. 120, 2011 §7, 9/20/2011)

DIVISION 2.4 PROJECT DEVELOPMENT PLAN

Sections:

- 2.4.1 Purpose and Applicability
- 2.4.2 Project Development Plan Review Procedures

2.4.1 Purpose and Applicability

The purpose and applicability of a project development plan is contained in Section 2.1.3(C).

2.4.2 Project Development Plan Review Procedures

A project development plan shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Applicable, only if the project development plan is not subject to an overall development plan.
- (B) **Step 2** (Neighborhood Meeting): Applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for project development plans as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Determination of Sufficiency): Applicable.
- (E) **Step 5** (Staff Report): Applicable.
- (F) **Step 6** (Notice): Applicable.
- (G) **Step 7(A)** (Decision Maker): Applicable as follows:
 - (1) Administrative review (Type 1 review) applies to a project development plan that satisfies all of the following conditions:
 - (a) it was submitted after the effective date of this Land Use Code and is subject to the provisions of this Land Use Code; and

(b) it contains only permitted uses subject to administrative review as listed in the zone district (set forth in Article 4, District Standards) in which it is located.

(2) Planning and Zoning Board review (Type 2 review) applies to a project development plan that does not satisfy all of the conditions in (1), above.

Step 7(B)-(G) (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats): Applicable.

(H) **Step 8** (Standards): Applicable. A project development plan shall comply with all General Development Standards applicable to the development proposal (Article 3) and the applicable District Standards (Article 4); and, when a project development plan is within the boundaries of an approved overall development plan, the project development plan shall be consistent with the overall development plan. Only one (1) application for a project development plan for any specific parcel or portion thereof may be pending for approval at any given time. Such application shall also be subject to the provisions for delay set out in Section 2.2.11.

(I) **Step 9** (Conditions of Approval): Applicable.

(J) **Step 10** (Amendments): Applicable.

(K) **Step 11** (Lapse): Applicable.

(L) **Step 12** (Appeals): Applicable.

(Ord. No. 192, 2006 §1, 12/19/06; Ord. No. 120, 2011 §8, 9/20/2011)

DIVISION 2.5 FINAL PLAN

Sections:

- 2.5.1 Purpose and Applicability
- 2.5.2 Final Plan Review Procedures

2.5.1 Purpose and Applicability

The purpose and applicability of a final plan is contained in Section 2.1.3(D).

2.5.2 Final Plan Review Procedures

A final plan may only be submitted after approval of a project development plan for the subject property or concurrently with a project development plan for the subject property. For consolidated applications for a project development plan and a final plan, the applicant shall follow both the project development plan and final development plan review procedures.

A final plan shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Not applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for final plans as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Determination of Sufficiency): Applicable.
- (E) **Step 5** (Staff Report): Not applicable.
- (F) **Step 6** (Notice): Not applicable.
- (G) **Step 7(A)-(C)** (Decision Maker, Conduct of Public Hearing, Order of Proceeding at Public Hearing): Not applicable, and in substitution therefor, the Director is hereby authorized to, and shall, review, consider and approve, approve with conditions or deny the development application for a final plan

based on its consistency with a valid project development plan for the subject property and its compliance with all of the standards established in Step 8 of this Section. The Director may, but is not obligated to, confer or meet with the applicant or other city staff to obtain clarification or explanation, gain understanding, suggest revision, or otherwise discuss or learn about the development proposal and final plan, all for the purpose of ensuring a fully consistent and compliant final plan.

Step 7(D) (Decision and Findings): Not applicable, except that Step 7(D)(3) shall apply.

Step 7(E) (Notification to Applicant): Applicable.

Step 7(F) (Record of Proceedings): Not applicable, except that Step 7(F)(2) shall apply.

Step 7(G) (Recording of Decisions and Plats): Applicable.

(H) **Step 8** (Standards): Applicable. A final plan shall comply with the General Development Standards applicable to the development proposal (Article 3) and the applicable District Standards (Article 4); and a final plan shall be consistent with the project development plan.

(I) **Step 9** (Conditions of Approval): Applicable.

(J) **Step 10** (Amendments): Applicable.

(K) **Step 11** (Lapse): Applicable.

(L) **Step 12** (Appeals): Not applicable. The Director's decision shall be final and no appeals of the Director's decision will be allowed; however, the Director may refer the decision to the Planning and Zoning Board when the Director is in doubt as to the compliance and consistency of the final plan with the approved project development plan. If the Director refers the decision to the Planning and Zoning Board, the decision of the Planning and Zoning Board shall be final and shall not be appealable to the City Council, notwithstanding any provision of the City Code to the contrary.

DIVISION 2.6 STOCKPILING PERMITS AND DEVELOPMENT CONSTRUCTION PERMITS

Sections:

- 2.6.1 Purpose
- 2.6.2 Applicability
- 2.6.3 Stockpiling Permit and Development Construction Permit Review Procedures

2.6.1 Purpose

- (A) A Stockpiling Permit is required in order to regulate the placement of fill dirt on properties not covered by a site specific development plan, to protect against adverse impacts to floodplains, drainage systems, natural areas, wildlife habitat, wetlands or other areas of public interest, and to assure that public nuisances will not be created by the stockpiling activities.
- (B) A Development Construction Permit is required in order to coordinate the transition from completion of the development review process to the construction process.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 59, 2000 §7, 6/6/00)

2.6.2 Applicability

- (A) A Stockpiling Permit shall be required for temporarily or permanently placing soils or similar inorganic materials upon property that is not subject to the provisions of a valid Development Construction Permit.
- (B) A Development Construction Permit shall be required for all development that is required to construct public infrastructure improvements that, upon completion, will be owned or maintained by the city.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 59, 2000 §7, 6/6/00; Ord. No. 183, 2000 §7, 12/19/00)

2.6.3 Stockpiling Permit and Development Construction Permit Review Procedures

An application for a Stockpiling Permit or a Development Construction Permit shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps (1) through (12) of the Common Development Review Procedures (Section 2.2.1 through 2.2.12, inclusive), as follows:

- (A) *Step 1* (Conceptual Review): Not applicable.

- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3(A)** (Development Application Forms): Not applicable, and in substitution therefor, all applications for Stockpiling Permits or Development Construction Permits shall be in a form established by the City Engineer and made available to the public.
- Step 3(B)** (Consolidated Development Applications and Review): Not applicable.
- Step 3(C)** (Development Application Contents): Applicable.
- Step 3(D)** (Submittal Hearing Date Schedule): Not applicable.
- Step 3(E)** (Development Review Fees – Stockpiling Permit): Applicable.
- Step 3(E)** (Development Review Fees – Development Construction Permit): Not applicable, and in substitution therefor, the applicant for a Development Construction Permit shall remit to the city an application fee and a construction inspection fee in the amounts as are authorized to be established pursuant to Chapter 7.5, Article I of the City Code.
- (D) **Step 4** (Determination of Sufficiency): Applicable except that the term "City Engineer" shall be substituted for the term "Director."
- (E) **Step 5** (Staff Report): Not applicable.
- (F) **Step 6** (Notice): Not applicable.
- (G) **Step 7** (Public Hearing – Stockpiling Permit): Not applicable, and in substitution therefor, an application for a Stockpiling Permit shall be processed, reviewed, considered and approved, approved with modifications or denied by the City Engineer based on its compliance with the City Code and all regulations related to such permit adopted by the city by reference or otherwise, as amended, including, without limitation, the erosion control standards as contained in the Stormwater Design Criteria and Construction Standards Manual.
- Step 7** (Public Hearing – Development Construction Permit): Not applicable, and in substitution therefor, an application for a Development Construction Permit shall be processed, reviewed, considered and approved, approved with modifications or denied by the City Engineer based on its compliance with the Site Specific Development Plan, the City Code and all regulations related to such permit adopted by the city by reference or otherwise, as amended.

(H) **Step 8** (Standards – Stockpiling Permit): Not applicable, and in substitution therefor, an application for a Stockpiling Permit shall be reviewed for compliance with the City Code and all regulations related to such permit adopted by the city by reference or otherwise, as amended, including, without limitation, the erosion control standards as contained in the Stormwater Design Criteria and Construction Standards Manual.

Step 8 (Standards – Development Construction Permit): Not applicable, and in substitution therefor, an application for a Development Construction Permit shall be reviewed for compliance with the Site Specific Development Plan, the City Code and all regulations related to such permit adopted by the city by reference or otherwise as amended.

(I) **Step 9** (Conditions of Approval): Applicable.

(J) **Step 10** (Amendments): Not applicable, and in substitution therefor, amendments to Stockpiling Permits or Development Construction Permits may be authorized by the City Engineer only as allowed under the Stockpiling Permit or Development Construction Permit regulations adopted by the city by reference or otherwise, as amended, provided that the amended Stockpiling Permit or Development Construction Permit remains in compliance with the applicable standards.

(K) **Step 11** (Lapse – Stockpiling Permits): Not applicable, and in substitution therefor, a Stockpiling Permit shall be subject to the following lapse and extension provisions:

(1) *Term of permit.* All Stockpiling Permit activity shall be commenced and completed within thirty (30) days of issuance of the Stockpiling Permit unless a longer term of permit is established by the City Engineer upon issuance of the permit.

(2) *Extensions.* The applicant for a Stockpiling Permit may apply for an extension of the term of such permit if such application is filed with the City Engineer at least two (2) working days prior to the permit expiration date. Such application shall contain good and sufficient reasons as to why an extension is necessary. For good cause shown, the City Engineer may approve an extension application that has been timely filed; provided, however, that no extension shall be granted for a term in excess of thirty (30) days, and no extension shall be granted which, in the judgment of the City Engineer, would be detrimental to the public health, safety or welfare.

Step 11 (Lapse – Development Construction Permit): Not applicable, and in substitution therefor, a Development Construction Permit shall be subject to the following lapse and extension provisions:

- (1) *Prior to commencement of construction.* If construction has not commenced within sixty (60) days from the date of issuance of the Development Construction Permit, such permit shall expire, and all fees paid therefor shall be forfeited.
- (2) *Following commencement of construction.* If construction has timely commenced, the Development Construction Permit shall expire upon the passage of one (1) year from the date of issuance thereof.
- (3) *Extensions.* The applicant for a Development Construction Permit may apply for an extension of the term of such permit if such application is filed with the City Engineer at least two (2) weeks prior to the permit expiration date. Such application shall contain good and sufficient reasons as to why an extension is necessary; and, for good cause shown, the City Engineer may grant extensions; provided, however, that no extension shall be granted for a term in excess of six (6) months, and no extension shall be granted which, in the judgment of the City Engineer, would be detrimental to the public health, safety or welfare.

- (L) **Step 12** (Appeals): Not applicable, and in substitution therefor, appeals of any final decision of the City Engineer on a Stockpiling Permit or a Development Construction Permit application shall be in accordance with Division 2.11; provided, however, that such appeals may be filed only by persons who possess a legal or equitable interest in the specific real property which is the subject of the decision.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 59, 2000 §7, 6/6/00)

DIVISION 2.7 BUILDING PERMITS

Sections:

- 2.7.1 Purpose
- 2.7.2 Applicability
- 2.7.3 Building Permit Review Procedures

2.7.1 Purpose

A Building Permit Application is required in order to review, consider, approve, approve with modifications or deny a request for permission to erect, move, place, alter or demolish a building or structure based on the standards referenced in Step 8 of this Section.

(Ord. No. 177, 1998 §1, 10/20/98)

2.7.2 Applicability

Application for a Building Permit may be made at any time. A Building Permit may be issued only after a site specific development plan has been approved for the property upon which the proposed principal building or structure is to be erected. The Building Permit is the only authorization under which a building or structure may be constructed, moved, placed, altered or demolished, with some exceptions, such as fences and certain types of storage sheds.

(Ord. No. 177, 1998 §1, 10/20/98)

2.7.3 Building Permit Review Procedures

An application for a Building Permit shall be processed according to, in compliance with, and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Section 2.2.1 through 2.2.12, inclusive), as follows:

- (A) **Step 1** (Conceptual Review): Not applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3(A)** (Development Application Forms): Applicable.

Step 3(B) (Consolidated Development Applications and Review): Not applicable.

Step 3(C) (Development Application Contents): Not Applicable, and in substitution therefor, an application for a Building Permit shall be submitted to the Building and Zoning Director for review and determination. An application for a Building Permit shall include all items, materials and documents that are required by the adopted International Building Code.

Step 3(D) (Submittal and Hearing Date Schedule): Not applicable.

Step 3(E) (Development Review Fees): Step 3(E)(1) shall apply. Step 3(E)(2) and (3) shall not apply.

- (D) **Step 4** (Determination of Sufficiency): Not applicable.
- (E) **Step 5** (Staff Report): Not applicable.
- (F) **Step 6** (Notice): Not applicable.
- (G) **Step 7** (Public Hearing): Not applicable, and in substitution therefor, an application for a Building Permit shall be processed, reviewed, considered and approved, approved with modifications, or denied by the Building and Zoning Director based on its compliance with the site specific development plan, the City Code and all building regulations adopted by the city by reference or otherwise, as amended.
- (H) **Step 8** (Standards): Not applicable, and in substitution therefor, an application for a Building Permit shall be reviewed for compliance with the site specific development plan, the City Code and all building regulations adopted by the city by reference or otherwise, as amended; and if the Building Permit is for the enlargement of a building and/or for the expansion of facilities, equipment or structures regulated under the provisions of Division 1.6, such application shall also comply with Division 1.6.
- (I) **Step 9** (Conditions of Approval): Applicable.
- (J) **Step 10** (Amendments): Not applicable, and in substitution therefor, amendments to Building Permits may be authorized by the Building and Zoning Director only as allowed under the building regulations adopted by the city by reference or otherwise, as amended, provided that the amended Building Permit remains in compliance with the applicable standards.
- (K) **Step 11** (Lapse): Not applicable, and in substitution therefor, a Building Permit shall expire six (6) months after the date that such Building Permit was issued unless properly acted upon in accordance with the provisions of the Uniform Building Code, as amended. One (1) six-month extension may be granted by the Building and Zoning Director.

- (L) **Step 12** (Appeals): Not applicable, and in substitution therefor, appeals of any final decision of the Building and Zoning Director on a Building Permit application shall be in accordance with Division 2.11; provided, however, that such appeals may be filed only by persons who possess a legal or equitable interest in the specific real property which is the subject of the decision, or who own or reside on real property any part of which is located within five hundred (500) feet of the specific real property which is the subject of the decision. Notwithstanding the foregoing, appeals pertaining to the application and enforcement of the International Building Code (as adopted and amended by the city) shall be processed in accordance with Section 5-27(1) of the City Code.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 228, 1998 §§7—9, 12/15/98; Ord. No. 049, 2008 §2, 5/20/08)

DIVISION 2.8 MODIFICATION OF STANDARDS

Sections:

- 2.8.1 Purpose and Applicability
- 2.8.2 Modification Review Procedures

2.8.1 Purpose and Applicability

The decision maker is empowered to grant modifications to the General Development Standards contained in Article 3 and the Land Use Standards and Development Standards contained in Article 4 and any separation or proximity standards that are established as a specific measurement of distance in the District Permitted Uses contained in Article 4, either for: (1) overall development plans and/or project development plans which are pending approval at the time that the request for proposed modification is filed; (2) overall development plans and/or project development plans which the applicant intends to file, provided that such plans are in fact filed with the Director as development applications within one (1) year following the determination of the decision maker on the request for the proposed modification; or (3) development plans approved under prior law and which are sought to be amended (either as a minor or major amendment) pursuant to Section 2.2.10.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 41, 1999 §2, 3/16/99; Ord. No. 165, 1999 §11, 11/16/99; Ord. No. 173, 2003 §6, 12/16/03)

2.8.2 Modification Review Procedures

A request for modification to the standards shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as set forth below. Once a modification is approved, it shall be controlling for the successive, timely filed, development applications for that particular development proposal only to the extent that it modifies the standards pertaining to such plan.

- (A) **Step 1** (Conceptual Review): Applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for a Modification of Standards as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant,

immaterial, redundant or otherwise unnecessary for the full and complete review of the application.

- (D) **Step 4** (Determination of Sufficiency): Applicable.
- (E) **Step 5** (Staff Report): Applicable.
- (F) **Step 6** (Notice): Section 2.2.6(A), (B) and (C) apply. Section 2.2.6(D) shall not apply.
- (G) **Step 7(A)** (Decision Maker): Applicable, and in explanation thereof and in addition thereto, if an application for a modification of standards pertains to a development plan which is subject to administrative review, the Director shall be the designated decision maker, except that, at the option of the applicant, the application may be considered by the Planning and Zoning Board; and if an application for a modification of standards pertains to a development plan which is subject to Planning and Zoning Board review, the Planning and Zoning Board shall be the designated decision maker. If the application is for a modification of standards pertaining to a development plan previously approved under prior law or not yet filed, the Director shall determine whether such development plan would have been, or will be, subject to administrative review or Planning and Zoning Board review and shall identify the decision maker accordingly. In all cases, the decision maker shall review, consider and approve, approve with conditions or deny an application for a modification of standards based on its compliance with all of the standards contained in Step 8.

Step 7(B)-(G)(1) (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats, Filing with City Clerk): Applicable.

Step 7(G)(2) (Final Plats Recorded with County Clerk and Recorder): Not applicable.
- (H) **Step 8** (Standards): Applicable, and the decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:
 - (1) the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or
 - (2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code,

substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

- (3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or
- (4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Any finding made under subparagraph (1), (2), (3) or (4) above shall be supported by specific findings showing how the plan, as submitted, meets the requirements and criteria of said subparagraph (1), (2), (3) or (4).

- (I) **Step 9** (Conditions of Approval): Applicable.
- (J) **Step 10** (Amendments): Not Applicable.
- (K) **Step 11** (Lapse): All Modifications of Standards which apply to a pending development plan or a development plan which is timely filed in accordance with the provisions of Section 2.8.1 shall be valid in accordance with the lapse provisions contained in Section 2.2.11. All Modifications of Standards which apply to a development plan which has not been filed in accordance with the provisions of Section 2.8.1 shall be valid for a period of time not to exceed one (1) year following the determination of the decision maker on the request for the proposed modification.
- (L) **Step 12** (Appeal): Applicable.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 41, 1999 §2, 3/16/99; Ord. No. 37, 2000, 4/18/00; Ord. No. 59, 2000 §8, 6/6/00; Ord. No. 107, 2001 §8, 6/19/01; Ord. No. 173, 2003 §6, 12/16/03; Ord. No. 091, 2004 §4, 6/15/04; Ord. No. 070, 2005 §§2, 3, 7/5/05)

DIVISION 2.9 AMENDMENT TO TEXT OF CODE AND/OR ZONING MAP

Sections:

- 2.9.1 Purpose
- 2.9.2 Applicability
- 2.9.3 Initiation
- 2.9.4 Text and Map Amendment Review Procedures

2.9.1 Purpose

The purpose of this Division is to provide requirements for changing the text of this Land Use Code or the boundaries of the zone districts shown on the Zoning Map.

(Ord. No. 177, 1998 §1, 10/20/98)

2.9.2. Applicability

Any and all amendments to the text of this Land Use Code and any and all changes to the Zoning Map must be processed in accordance with this Division. Commencing one (1) year after the effective date of this Land Use Code, amendments to the Zoning Map shall be processed only twice per calendar year and shall be considered by the Planning and Zoning Board in March or April and in September or October of such year; provided, however, that this limitation shall not apply to petitions for amendments to the Zoning Map initiated by the owners of properties in the Transition District, which petitions shall be governed by the provisions of Section 4.12(B)(2), for properties located within the Infill Area or that are considered redevelopment, or to initial Zoning Map amendments following annexation, or to Zoning Map amendments which are founded upon the adoption and implementation of a subarea plan. Only the Council may, after recommendation of the Planning and Zoning Board, adopt an ordinance amending the text of this Land Use Code or the Zoning Map in accordance with the provisions of this Division.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 99, 1999 §2, 6/15/99; Ord. No. 107, 2001 §9, 6/19/01; Ord. No. 204, 2001 §7, 12/18/01; Ord. No. 161 §4, 12/20/05; Ord. No. 131, 2006 §5, 9/19/06)

2.9.3 Initiation

- (A) ***Amendment to Zoning Map.*** An amendment to the Zoning Map may be proposed by the Council, the Planning and Zoning Board, the Director or the owners of the property to be rezoned.
- (B) ***Text Amendment.*** An amendment to the text of this Land Use Code may be proposed by the Planning and Zoning Board or the Director.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 120, 2008, 10/21/08)

2.9.4. Text and Map Amendment Review Procedures

An amendment to the text of this Land Use Code or an amendment to the Zoning Map may be approved by the City Council by ordinance. Any such proposed amendment shall be processed through a public hearing before the Planning and Zoning Board, which will provide a recommendation to the City Council. (See Steps 1 through 12 below). Upon completion of any hearing by the Planning and Zoning Board on an application or proposal to rezone any parcel of land or upon consideration of initial zoning in the case of lands being annexed to the city, the City Clerk shall cause the hearing by the City Council to be placed on the agenda for a future City Council meeting; and the public hearing before the City Council shall be held after at least fifteen (15) days' notice of the time, date and place of such hearing and the subject matter of the hearing and the nature of the proposed zoning change has been given by publication in a newspaper of general circulation within the city. Upon completion of any hearing by the Planning and Zoning Board on a proposal for a text amendment, notice shall be given as required for ordinances pursuant to the City Charter. The City Council shall then approve, approve with conditions, or deny the amendment based on its consideration of the Staff Report, the Planning and Zoning Board recommendation and findings, and the evidence from the public hearings, and based on the amendment's compliance with the standards and conditions established in this section. (See Steps 8 and 9 below).

The Planning and Zoning Board processing of the proposed amendment shall be according to, in compliance with and subject to the provisions contained in Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Not applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable, except that, with respect to a quasi-judicial map amendments only, the Director may convene a neighborhood meeting to present and discuss a proposal of known controversy and/or significant neighborhood impacts.
- (C) **Step 3** (Development Application Submittal): All items or documents required for amendments to the text of this Land Use Code and/or the Zoning Map as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Determination of Sufficiency): Applicable.

(E) **Step 5** (Staff Report): Applicable.

(F) **Step 6** (Notice):

(1) *Text Amendments*. Not applicable, and in substitution therefor, notice of the Planning and Zoning Board hearing shall be given in accordance with Section 2-72 of the City Code. (However, for text amendments proposed pursuant to Section 1.3.4(C), Section 2.2.6(C) shall apply, and in addition the notice shall name the specific proposed new use [or uses] to be added to the zone district list of permitted uses.)

(2) *Zonings or Rezoning of No More Than Six Hundred Forty (640) Acres (Quasi-judicial)*. Section 2.2.6(A) shall apply and such notices shall identify the proposed new zone district(s), as well as the uses permitted therein, shall indicate whether a neighborhood meeting will be held with regard to the proposed zoning or rezoning, and shall inform the recipient of the notice of the name, address and telephone number of the Director to whom questions may be referred with regard to such zoning change. Section 2.2.6(B), (C) and (D) shall apply, and the published notice given pursuant to Section 2.2.6(C) shall provide the time, date and place of the hearing, the subject matter of the hearing and the nature of the proposed zoning change.

(3) *Zonings or Rezoning of More Than Six Hundred Forty (640) Acres (Legislative)*. Section 2.2.6(C) shall apply. Sections 2.2.6(A), (B) and (D) shall not apply.

(G) **Step 7(A)** (Decision Maker): P&Z Review applies.

Step 7(B) (Conduct of Public Hearing): Applicable.

Step 7(C) (Order of Proceedings at Public Hearing): Applicable.

Step 7(D) (Decision and Findings): Applicable, except that the Planning and Zoning Board's decision shall be in the form of a recommendation, not a decision, to Council. In making its recommendation, the Planning and Zoning Board shall consider whether the application or proposal complies with the standards contained in Step 8 of this Section.

Step 7(E) (Notification to Applicant): Not applicable.

Step 7(F) (Record of Proceedings): Applicable.

Step 7(G) (Recording of Decisions and Plats): Not applicable.

- (H) **Step 8** (Standards): Applicable, as follows:
- (1) *Text Amendments and Legislative Zonings or Rezoning*s. Amendments to the text of this Land Use Code, and amendments to the Zoning Map involving the zoning or rezoning of more than six hundred forty (640) acres of land (legislative rezoning), are matters committed to the legislative discretion of the City Council, and decisions regarding the same are not controlled by any one (1) factor.
 - (2) *Mandatory Requirements for Quasi-judicial Zonings or Rezoning*s. Any amendment to the Zoning Map involving the zoning or rezoning of six hundred forty (640) acres of land or less (a quasi-judicial rezoning) shall be recommended for approval by the Planning and Zoning Board or approved by the City Council only if the proposed amendment is:
 - (a) consistent with the City's Comprehensive Plan; and/or
 - (b) warranted by changed conditions within the neighborhood surrounding and including the subject property.
 - (3) *Additional Considerations for Quasi-Judicial Zonings or Rezoning*s. In determining whether to recommend approval of any such proposed amendment, the Planning and Zoning Board and City Council may consider the following additional factors:
 - (a) whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
 - (b) whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment;
 - (c) whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.
- (I) **Step 9** (Conditions of Approval): Applicable.
- (J) **Step 10** (Amendments): Not applicable.
- (K) **Step 11** (Lapse): Not applicable.
- (L) **Step 12** (Appeals): Not applicable.

(Ord. No. 153, 1997 §1, 10/21/97; Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 228, 1998 §10, 12/15/98; Ord. No. 165, 1999 §12, 11/16/99; Ord. No. 204, 2001 §§8, 9, 12/18/01; Ord No. 104, 2006 §§4, 5, 7/18/06; Ord. 081, 2007 §4, 7/17/07)

DIVISION 2.10 VARIANCES (BY THE ZONING BOARD OF APPEALS)

Sections:

- 2.10.1 Purpose and Applicability
- 2.10.2 Variance Review Procedures

2.10.1 Purpose and Applicability

The purpose of this Division is to authorize, in specific cases, variances from the terms of Articles 3 and 4 or, if applicable, Articles I through IV of the Transitional Land Use Regulations. However, this variance procedure shall apply only to approved site specific development plans or to properties that were developed pursuant to a basic development review or use-by-right under prior law and shall only authorize a variance from the terms of Articles 3 and 4 as provided in this Division. It shall not authorize a change in use other than to a use that is allowed subject to basic development review. Also, the variance shall not be used for overall development plans, project development plans or final plans which are **pending** approval at the time that the request for the variance is filed. The process to be used for such pending development applications is the procedure established in Division 2.8 (Modification of Standards).

(Ord. No. 90, 1998, 5/19/98; Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 107, 2001 §11, 6/19/01; Ord. No. 204, 2001 §1, 12/18/01)

2.10.2 Variance Review Procedures

A variance shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Not applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for variances as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Determination of Sufficiency): Applicable.

- (E) **Step 5** (Staff Report): Not applicable.
- (F) **Step 6** (Notice): Section 2.2.6(A) only applies, except that "500 feet" shall be changed to "150 feet," and "14 days" shall be changed to "7 days," everywhere they occur in Section 2.2.6(A). Section 2.2.6(B)-(D) shall not apply.
- (G) **Step 7(A)** (Decision Maker): Not applicable, and in substitution for Section 2.2.7(A), the Zoning Board of Appeals, pursuant to Chapter 2 of the City Code, shall review, consider and approve, approve with conditions, or deny applications for variance based on its compliance with all of the standards contained in Step 8.

Step 7(B)-(G)(1) (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats, Filing with City Clerk): Applicable.

Step 7(G)(2) (Final Plats Recorded with County Clerk and Recorder): Not applicable.

- (H) **Step 8** (Standards): Applicable, and the Zoning Board of Appeals may grant a variance from the standards of Articles 3 and 4 only if it finds that the granting of the variance would neither be detrimental to the public good nor authorize any change in use other than to a use that is allowed subject to basic development review; and that:
 - (1) by reason of exceptional physical conditions or other extraordinary and exceptional situations unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be varied would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the occupant of such property, or upon the applicant, provided that such difficulties or hardship are not caused by the act or omission of the occupant or applicant;
 - (2) the proposal as submitted will promote the general purpose of the standard for which the variance is requested equally well or better than would a proposal which complies with the standard for which the variance is requested; or
 - (3) the proposal as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be varied except in a nominal, inconsequential way when considered in the context of the

neighborhood, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Any finding made under subparagraph (1), (2) or (3) above shall be supported by specific findings showing how the proposal, as submitted, meets the requirements and criteria of said subparagraph (1), (2) or (3).

- (I) **Step 9** (Conditions of Approval): Applicable.
- (J) **Step 10** (Amendments): Not Applicable.
- (K) **Step 11** (Lapse): Any variance which applies to the issuance of a Building Permit shall expire six (6) months after the date that such variance was granted, unless all necessary permits have been obtained; provided, however, that for good cause shown, the Zoning Board of Appeals may authorize a longer term if such longer term is reasonable and necessary under the facts and circumstances of the case, but in no event shall the period of time for obtaining all necessary permits under a variance exceed twelve (12) months in length. One (1) six-month extension may be granted by the Zoning Board of Appeals.
- (L) **Step 12** (Appeals): Applicable.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 228, 1998 §11, 12/15/98; Ord. No. 165, 1999 §13, 11/16/99; Ord. No. 59, 2000 §9, 6/6/00; Ord. No. 183, 2000 §8, 12/19/00; Ord. No. 107, 2001 §§12—16, 6/19/01; Ord. No. 204, 2001 §1, 12/18/01; Ord. No. 087, 2002 §1, 6/4/02; Ord. No. 198, 2004 §2, 12/21/04)

DIVISION 2.11 APPEAL FROM ADMINISTRATIVE DECISIONS

Sections:

- 2.11.1 Purpose and Applicability
- 2.11.2 Administrative Appeal Review Procedures

2.11.1 Purpose and Applicability

- (A) **Purpose.** The purpose of this Division is to provide for appeals of certain administrative/city staff decisions to the Zoning Board of Appeals.
- (B) **Applicability.** This Division shall apply to appeals from an administrative decision regarding the interpretation and/or application of the land use regulations which preceded this Land Use Code, and to appeals from the following administrative decisions made under this Land Use Code, provided such administrative decision is not for approval, approval with conditions, or denial either of a project development plan or a final plan pursuant to Divisions 2.4 or 2.5 or of an administrative amendment/abandonment of any such plan or of any plan approved under prior law, processed pursuant to Section 2.2.10 (Step 10):
 - (1) Addition of a Permitted Use by Director (but not by Planning and Zoning Board) under Section 1.3.4;
 - (2) Issuance of a written administrative interpretation under Section 1.4.3;
 - (3) Establishment of the Development Application Submittal Requirements under Section 2.2.3(C);
 - (4) Waiver of Development Application Submittal Requirements under Section 2.2.3(C);
 - (5) Waiver of a neighborhood meeting by the Director under Section 2.2.2;
 - (6) Establishment of Development Review Fees by the City Manager under Section 2.2.3(D), adopted administratively and not by Council resolution;
 - (7) The issuance of a Stockpiling Permit under Section 2.6.3.
 - (8) The issuance of a Development Construction Permit under Section 2.6.3.
 - (9) The issuance of a Building Permit under Section 2.7.3.

- (10) Decisions of the City Engineer made under the provisions of Section 3.3.2(C) of this Land Use Code, or Section 29-14 of the Transitional Land Use Regulations.
- (11) Decisions of the administrative staff to approve, approve with conditions or deny a development application for a use subject to Basic Development Review based on its compliance with the applicable standards of Article 3 and Article 4 of this Land Use Code.

Appeals from administrative decisions on a project development plan or a final plan shall be governed by Division 2.4 or 2.5, respectively. Appeals from an administrative decision on an amendment/ abandonment of an approved development plan or site specific development plan shall be governed by Section 2.2.10 (Step 10). Any action taken in reliance upon an appealed administrative decision during the pendency of the appeal shall be totally at the risk of the person(s) taking such action and the city shall not be liable for any damages arising from any such action.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 177, 1998 §§1, 2, 10/20/98; Ord. No. 178, 1998 §7, 10/20/98; Ord. No. 59, 2000 §10, 6/6/00; Ord. No. 204, 2001 §3, 12/18/01; Ord. No. 173, 2003 §7, 12/16/03; Ord. No. 073, 2008 §3, 7/1/08)

2.11.2 Administrative Appeal Review Procedures

An appeal from an administrative decision shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Not applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for an appeal from an administrative decision as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Determination of Sufficiency): Applicable.
- (E) **Step 5** (Staff Report): Not applicable.

- (F) **Step 6** (Notice): Only Section 2.2.6(A) applies, except that "15 days" shall be changed to "7 days," everywhere it occurs in Section 2.2.6. Section 2.2.6(B)-(D) shall not apply.
- (G) **Step 7(A)** (Decision Maker): Not applicable, and in substitution for Section 2.2.7(A), the Zoning Board of Appeals, pursuant to Chapter 2 of the City Code, shall review, consider and uphold, modify or overturn the administrative decision which is the subject of the appeal based on its compliance with all of the standards contained in Step 8 of this Section.

Step 7(B)-(G) (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats): Applicable.

- (H) **Step 8** (Standards): Applicable, and an appeal from an administrative decision shall be determined based upon the same standards which applied to the underlying administrative decision. Any appeal that is taken pursuant to this Division must be taken not later than fourteen (14) days from the date that the administrative decision was made; and, except for administrative decisions which are not focused upon a specific parcel of real property (are general in nature), may be filed only by persons who possess a legal or equitable interest in the specific real property which is the subject of the decision, or who own or reside within real property any part of which is located within five hundred (500) feet of the specific real property which is the subject of the decision.
- (I) **Step 9** (Conditions of Approval): Applicable.
- (J) **Step 10** (Amendments): Not applicable.
- (K) **Step 11** (Lapse): Not applicable.
- (L) **Step 12** (Appeals): Applicable.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 177, 2002 §4, 12/17/02)

DIVISION 2.12 ANNEXATION AND DISCONNECTION OF LAND

Sections:

- 2.12.1 Compliance with State Law
- 2.12.2 Petitions for Annexation and Annexation Plats
- 2.12.3 Hearing and Report by Planning and Zoning Board
- 2.12.4 Annexation of Uses Not Legally Permitted
- 2.12.5 Effective Date of Annexation
- 2.12.6 Application for Disconnection, Enactment, Filing

2.12.1 Compliance with State Law

Annexation of lands to the City shall be in accordance with the laws of the state in effect from time to time.

(Ord. No. 177, 1998 §1, 10/20/98)

2.12.2 Petitions for Annexation and Annexation Plats

In addition to all state statutory filing and procedural requirements, all petitions for annexation and annexation plats shall be submitted to the City Clerk, with a copy, and application fee, to the Director. The City Clerk shall schedule the petitions for a meeting of the City Council held at least fifteen (15) days after the date the City Clerk receives the petition and plat.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 204, 2001 §10, 12/18/01; Ord. No. 087, 2002 §2, 6/4/02)

2.12.3 Hearing and Report by Planning and Zoning Board

The Planning and Zoning Board shall hold a hearing on the matter of such annexation and shall make a report and recommendation to the City Council. Such report shall include a recommendation on the proper zoning for the lands if the City Council annexes such lands into the City.

(Ord. No. 177, 1998 §1, 10/20/98)

2.12.4 Annexation of Uses Not Legally Permitted

Except as provided below, any use that exists on a separately owned parcel outside the City and that is not legally permitted by the county must cease and be discontinued before the City Council adopts, on second reading, an annexation ordinance annexing any such property except as provided herein. In the event that a property containing a use that is not legal pursuant to county regulations is proposed

to be annexed into the City and placed into a zone district wherein such use is a permitted use, said use must be reviewed and processed as set forth in Article 4 (i.e., Type 1 review or Type 2 review) for the zone district in which the land is proposed to be located, and shall comply with the applicable standards contained in Articles 3 and 4. A development application for such review must be filed with the City within sixty (60) days following the effective date of annexation. Such use shall be temporarily permitted for a period not to exceed six (6) months following the date of second reading of the annexation ordinance. In the event that the development application is not approved within said six-month period, then the use shall be discontinued within thirty (30) days following the date of the decision of denial or expiration of said six-month period, whichever first occurs, except that the Director may grant one (1) extension of the foregoing six-month requirement, which extension may not exceed three (3) months in length. In the event that the development application is approved, then such use shall be brought into full compliance with this Land Use Code and the decision made thereunder by the decision maker within sixty (60) days following the date of final plan approval.

In the event that a use which is not permitted by the county exists on any property that is included in an enclave annexation consisting of more than one (1) separately owned parcel, the above-described development process shall apply only if such property is placed in a zone district wherein such use is a permitted use. If a property which contains a use that is not permitted by the county is included in such multi-parcel enclave annexation, and such property is placed in a zone district that does not allow the use within the City, such illegal use must be discontinued within: (A) two (2) years from the effective date of annexation; (B) if such illegal use is the subject of a county-initiated zoning or nuisance enforcement action, then within the time established by the court as a result of such enforcement action; or (C) if such illegal use is the subject of a zoning or nuisance complaint filed with the county and determined by the Director to be bona fide (but which has not become the subject of an enforcement action under (B) above or, if it has become the subject of an enforcement action, such action has been dismissed by the court for lack of county jurisdiction because the property has been annexed into the City), then ninety (90) days from the effective date of annexation, whichever comes first. With respect to the time limit established in (C) above, the Director may extend said time for an additional duration not to exceed one hundred eighty (180) days if necessary to prevent or mitigate undue hardship or manifest injustice.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 228, 1998 §12, 12/15/98; Ord. No. 091, 2004 §5, 6/15/04; Ord. No. 070, 2005 §4, 7/5/05; Ord. No. 108, 2005 10/4/05; Ord. No. 066, 2009 §3, 7/7/09; Ord. No. 068, 2010 §4, 7/6/10)

2.12.5 Effective Date of Annexation

An annexation shall take effect upon the last to occur of the following events:

- (1) the tenth (10th) day following passage on second reading of the annexation ordinance (except for emergency ordinances); and
- (2) the filing for recording of three (3) certified copies of the annexation ordinance and map of the area annexed, containing a legal description of such area, with the Larimer County Clerk and Recorder.

(Ord. No. 177, 2002 §5, 12/17/02)

2.12.6 Application for Disconnection, Enactment, Filing

When the owner of a tract of land within and adjacent to the boundary of the City desires to have said tract disconnected from the City, such owner may apply to the City Council for the enactment of an ordinance disconnecting such tract of land from the City. On receipt of such application, it is the duty of the City Council to give due consideration to such application, and, if the City Council is of the opinion that the best interests of the City will not be prejudiced by the disconnection of such tract, it shall enact an ordinance effecting such disconnection. If such an ordinance is enacted, it shall be immediately effective upon filing with the county Clerk and Recorder to accomplish the disconnection, and two (2) certified copies thereof shall also be filed with the county Clerk and Recorder. The county Clerk and Recorder shall file one (1) certified copy with the Division of Local Government in the Department of Local Affairs, as provided by Section 24-32-109, C.R.S., and the other copy shall be filed with the Department of Revenue, as provided by Section 31-12-113(2)(a.5), C.R.S.

(Ord. No. 129, 2008 §1, 10/14/08)

DIVISION 2.13 VESTED RIGHTS AND TAKINGS DETERMINATIONS

Sections:

- 2.13.1 Purpose
- 2.13.2 Administrative Process/Hearing Officer
- 2.13.3 Application
- 2.13.4 Determination of Completeness
- 2.13.5 Review and Determination or Recommendation by Director and City Attorney
- 2.13.6 Review and Determination by Hearing Officer
- 2.13.7 Issuance of Determination by Hearing Officer
- 2.13.8 Appeal to the City Council
- 2.13.9 Waiver of Time Limits
- 2.13.10 Criteria for Vested Rights
- 2.13.11 Criteria for Takings

2.13.1 Purpose

The purpose of this Division is to provide a procedure for relief, where appropriate, to persons who claim that the adoption of this Land Use Code has interfered with their vested rights to develop, or who claim that their property has been taken by reason of the application of this Land Use Code.

The provisions and procedures of this Division shall be followed to conclusion prior to seeking relief from the courts based upon any claim of vested rights, or any alleged denial of economically beneficial use of land, any alleged lack of reasonable nexus of a condition imposed by the city to potential impacts of development, any lack of rough proportionality of a condition imposed by the city to potential impacts of development, any deprivation of due process which causes a taking, or any other taking of real property.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.2 Administrative Process/Hearing Officer

There is hereby established the following Vested Rights Determination and Takings Determination Procedures for the purpose of identifying certain parcels of real property in the city that should be made exempt, or partially exempt, from the application of any portion of this Land Use Code. An owner or developer of real property in the city who claims that certain development rights have vested with regard to such property prior to the effective date of this Land Use Code may seek a Vested Rights Determination in accordance with the procedures described in this Division. Furthermore, an owner or developer of real property in the city who claims

that such property has been taken without just compensation or who claims a deprivation of due process may seek a Takings Determination in accordance with the procedures described in this Division. With regard to a Takings Determination, the owner or developer may assert any legally recognized takings claim, including, but not limited to, a claim that he or she has been deprived of "all economically beneficial use" of his or her property, that a condition imposed by the city does not have a "reasonable nexus" to the potential impacts of his or her development, that such a condition is not "roughly proportional" to the potential impacts of his or her development, or that actions taken by the city under this Land Use Code have resulted in a deprivation of due process. Such persons will be provided an opportunity for a public hearing, the right to present and rebut evidence, a formal record and an impartial Hearing Officer in accordance with the following procedures. Such Hearing Officer shall be selected and appointed by the City Manager and shall be an attorney licensed to practice law in the State of Colorado with experience in land use matters. Subject to the procedures hereinafter provided, the Hearing Officer shall issue formal findings of fact, conclusions of law and a Vested Rights Determination and/or Takings Determination, depending on the nature of the claim asserted by the applicant. The claims shall be reviewed according to the following procedure:

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.3 Application

An Application for Vested Rights Determination or Takings Determination shall be submitted to the Director of Community Planning and Environmental Services (the "Director") in the form established by the Director. An application fee in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) per application (i.e., \$2,500.00 for vested rights, \$2,500.00 for takings, whichever is applied for) shall accompany and be part of the application. The application shall, at a minimum, include:

- (A) the name, address and telephone number of the property owner and authorized applicant if other than the owner;
- (B) the street address, legal description and acreage of the property; and
- (C) for Vested Rights Determinations, all factual information and knowledge reasonably available to the owner and applicant to address the criteria established in Section 2.13.10.
- (D) for Takings Determination, all factual information and knowledge reasonably available to the owner and applicant to address the criteria established in Section 2.13.11, including, without limitation, the following:

- (1) documentation of the date of purchase and the purchase price of such property, and any and all offers to purchase such property made by any person within the last three (3) years;
- (2) a description of the physical features present on such property, the present use of such property, the use of such property at the time it was purchased, the use of such property on the day prior to the time of the adoption of this Land Use Code, the uses permitted on such property at the time of application pursuant to this section, and a detailed description of the regulations which are alleged to result in an elimination of economically beneficial use of the land;
- (3) evidence of any investments made by the owner to improve such property, the date the improvements were made, and the costs of the improvements;
- (4) all appraisals, studies and any other supporting evidence related to such property;
- (5) any actions taken by the city related to such property;
- (6) a description of the use which the owner believes represents the minimum legally required economically beneficial use of such property, and all documentation, studies and other supporting evidence thereof.

The application fee shall be applied to all out-of-pocket expenses actually incurred by the city in connection with the hearing process, including without limitation fees for, and expenses incurred by, the Hearing Officer; costs of reporting and transcribing the proceedings before the Hearing Officer; and costs of producing of exhibits. The application fee shall not be applied to any in-house costs incurred by the city, such as compensation for city staff time. Any portion of the application fee not used by the city to pay the costs referred to above shall forthwith be returned to the applicant upon completion of the hearing and appeal process.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.4 Determination of Completeness

Within five (5) working days after receipt of an Application for Vested Rights or Takings Determination, the Director shall determine whether the application submitted is complete. If he or she determines that the application is not complete, the Director shall notify the applicant in writing of the deficiencies. The Director shall take no further steps to process the application until the deficiencies have been remedied.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.5 Review and Determination or Recommendation by Director and City Attorney

After receipt of a completed Application for Vested Rights Determination or Takings Determination, the Director and the City Attorney shall review and evaluate the application in light of all of the criteria in Section 2.13.10 or Section 2.13.11, whichever is applicable. Within twenty (20) days of such receipt and based on the review and evaluation, the Director and the City Attorney shall prepare a written recommendation to the Hearing Officer that the application should be denied, granted or granted with conditions by the Hearing Officer. Such recommendations shall include findings of fact for each of the criteria established in Section 2.13.10 or 2.13.11, whichever is applicable, to the extent that the information is presented or obtained or inclusion is feasible or applicable.

If the Director and the City Attorney agree, based on the review and evaluation, that the Application for Determination clearly should be granted or granted with conditions, then they may enter into a written Stipulated Determination with the applicant, in lieu of the written recommendation to the Hearing Officer and the provisions in Sections 2.13.6, 2.13.7, and 2.13.8. Any such Stipulated Determination shall be in writing, signed by the City Manager, the City Attorney and the applicant, and shall be approved by the City Council by resolution at its next regularly-scheduled meeting which is at least fourteen (14) days from the date such Stipulated Determination is signed. Said Stipulated Determination shall include findings of fact and conclusions of law based on the criteria established in Section 2.13.10 or Section 2.13.11, whichever is applicable, and the determination granting or granting with conditions, in whole or in part, the application. In the event that a proposed Stipulated Determination is rejected by the City Council, it shall be referred to the Hearing Officer for a hearing and Determination in accordance with the procedures described in Sections 2.13.6 through 2.13.9 below.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.6 Review and Determination by Hearing Officer

No later than thirty (30) days after receipt by the Hearing Officer of the Application for Determination and the written recommendation of the Director and the City Attorney, the Hearing Officer shall hold a public hearing on the application. Written notice of the hearing shall be mailed by the city to the applicant at least fourteen (14) days prior to the scheduled hearing. At the hearing, the Hearing Officer shall take evidence and sworn testimony in regard to the criteria set forth in Section 2.13.10 or Section 2.13.11, whichever is applicable, and shall follow such rules of procedure as may be established by the Director. The parties before the Hearing Officer shall include the city and the applicant. Testimony shall be limited to the matters directly relating to the standards set forth in Section 2.13.10 or Section 2.13.11, whichever is

applicable. The City Attorney shall represent the city, shall attend the public hearing and shall offer such evidence as is relevant to the proceedings. The other parties to the proceedings, or their authorized agents, may offer such evidence at the public hearing as is relevant to the proceedings and criteria. The order of presentation before the Hearing Officer at the public hearing shall be as follows: (1) the city's summary of the application, written recommendation, witnesses and other evidence; (2) the applicant's witnesses and evidence; and (3) city rebuttal, if any.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.7 Issuance of Determination By Hearing Officer

Within thirty (30) working days after the completion of the public hearing under Section 2.13.6, the Hearing Officer shall consider the Application for Determination, the recommendation of the Director and the City Attorney, and the evidence and testimony presented at the public hearing, in light of all of the criteria set forth in Section 2.13.10 or Section 2.13.11, whichever is applicable, and shall deny, grant, grant with conditions, or grant in part and deny in part, the Application for Determination for the property or properties at issue. The Determination shall be in writing and shall include findings of fact for each of the applicable criteria established in Section 2.13.10 or Section 2.13.11, whichever is applicable, conclusions of law for each of such criteria, and a determination denying, granting, or granting with conditions, in whole or in part, the vested rights.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.8 Appeal to the City Council

Within twenty (20) days after issuance of the Hearing Officer's written Determination, the City Attorney, the Director, the applicant, its authorized attorney or agent, or any resident of the city who appeared at the public hearing before the Hearing Officer may appeal the Determination of the Hearing Officer to the City Council by filing a written notice of appeal with the City Clerk. A fee of One Hundred Dollars (\$100.00) shall be paid for the application and processing of any such appeal except an appeal filed by the City Attorney or the Director. The appeal shall be determined by the City Council at a hearing based solely upon the record of the proceedings before the Hearing Officer. The City Council shall adopt the Hearing Officer's Determination, with or without modifications or conditions, or reject the Hearing Officer's Determination. Such appeal shall be based upon the criteria established in Section 2.13.10 or Section 2.13.11, whichever is applicable.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.9 Waiver of Time Limits

Any time limit specified in the Determination Procedure may be waived upon receipt by the City Clerk of a written stipulation requesting such waiver and signed by the applicant and the Director.

(Ord. No. 177, 1998 §1, 10/20/98)

2.13.10 Criteria for Vested Rights

- (A) This section is intended to strictly adhere to and implement existing case law and statutory law controlling in the State of Colorado as they relate to the doctrine of vested rights and equitable estoppel as applied to a home rule municipality exercising its authority and powers in land use planning, zoning, the provisions of adequate public facilities concurrent with development (APF), subdivision, site development, land development regulations, and related matters addressed in this Land Use Code. It is the express intent of the city to require application of the provisions of this Division 2.13 to as much development and property in the city as is legally possible without violating the legally vested rights of an owner developer under case law or statutory law. The criteria herein provided shall be considered in rendering a Vested Rights Determination hereunder. It is intended that each case be decided on a case-by-case factual analysis. An applicant shall be entitled to a positive Vested Rights Determination only if such applicant demonstrates, by clear and convincing evidence, entitlement to complete his or her development without regard to the otherwise applicable provisions of this Land Use Code by reason of: (A) the provisions of Title 24, Article 68, C.R.S.; (B) Section 2.2.11 (Lapse) of this Land Use Code; or (C) the existence of all three (3) of the following requirements:
- (1) some authorized act of the city;
 - (2) reasonable good faith reliance upon such act by the applicant; and
 - (3) such a substantial change in position or expenditure by the applicant that it would be highly inequitable or unjust to destroy the rights acquired.
- (B) In evaluating whether an applicant (property owner, developer or the successor in interest of either) has met the requirements as set forth in Paragraph (A)(3) above, the Hearing Officer shall consider and give weight to the following factual matters:
- (1) the total investment made in the project, including all costs incurred subsequent to the act of the city relied upon by the applicant, which costs may include, without limitation, the costs of land acquisition,

architectural and engineering fees and the costs of on-site and off-site infrastructure improvements to service the project;

- (2) any dedication of property made to public entities in accordance with the approved overall development plan for the project or the approved project development plan or plat for the project;
- (3) whether infrastructure improvements which have been installed have been sized to accommodate uses approved in the approved overall development plan or the approved project development plan or plat for the project;
- (4) the acreage of the approved overall development plan or the approved project development plan or plat for the project and the number of phases within the overall development plan or the approved project development plan or plat and their respective acreages which have received final approval;
- (5) whether the completion of the project has been timely and diligently pursued; and
- (6) the effect of the applicant's existing development loans on the application of this Land Use Code to the project.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 173, 2003 §8, 12/16/03; Ord. No. 066, 2009 §4, 7/7/09)

2.13.11 Criteria for Takings

This Section is intended to strictly adhere to and implement existing case law and statutory law controlling in the State of Colorado as they relate to the takings doctrine as applied to a home rule municipality exercising its authority and powers in land use planning, zoning, the provision of adequate public facilities concurrent with development (APF), subdivision, site development, land development regulations and related matters addressed in this Land Use Code. It is the express intent of the City to require application of the provisions of this Land Use Code to as much development and property in the City as is legally possible without violating takings law.

The criteria herein provided shall be considered in rendering a Takings Determination hereunder. It is intended that each case be decided on a case-by-case factual analysis. While the criteria for takings established in this Section are intended to provide fair standards in a pre-litigation forum and to reflect the current state of the law for Colorado, the City's adoption or use of these criteria for takings shall not in any way be deemed an admission, concession or statement by the City that such criteria apply or are controlling in a court of law, and the City hereby unconditionally reserves all

defenses and claims which would otherwise be available to it under the law. For example, but without limitation, the City does not concede for litigation purposes that the "reasonable nexus/rough proportionality" doctrines apply to monetary exactions or to legislative acts, although the City chooses to apply such criteria to the Takings Determination process described herein.

- (A) ***Economically Beneficial Use.*** With regard to the takings doctrine of "economically beneficial use," an applicant shall be entitled to the minimum increase in use, density, intensity or other possible concessions from this Land Use Code necessary to permit an economically beneficial use of the land or a use that is determined to be required by law. The highest use, or even an average or generally reasonable expectation, is not required or intended as the appropriate remedy.

The following factors shall be used to determine whether an economically beneficial use of such property is available:

- (1) ***Actual Condition of Land.*** The actual condition of the land shall be considered. The reality of limited development potential, given the natural condition of the land, shall not be attributed to the regulations applied to the land. If the land is such that it cannot safely or properly accommodate development with normal grading and clearing practices, this fact shall lower the intensity of use that is considered a minimum economically beneficial use.
- (2) ***Common Land Use.*** A land use commonly found in the City, although it may not involve further development of the land, is considered an economically beneficial use. Furthermore, a land use that is considered to be the lowest intensity in the City, but which use still provides for residence within the City, is considered an economically beneficial use.
- (3) ***No Government Subsidy.*** A minimum economically beneficial use of the land is one that does not have any governmental subsidy attached to the long-term safe occupation or use of the land. If such a subsidy is needed, then that must be reflected by lowering the use intensity that is considered a minimum economically beneficial use on a market valuation basis, or by deducting the cost of such a subsidy from the otherwise established minimum economically beneficial use.
- (4) ***Potential for Damages.*** The potential for damages to either residents or property shall be assessed in determining economically beneficial use. Such damage potential shall be calculated and must be reflected by deducting the damage potential from the otherwise established minimum economically beneficial use, or otherwise taking account of such damage.

- (5) *No Investment-Backed Expectations.* Speculative expectations of land value and development potential shall not be considered. Reasonable development expectations backed by investments shall not be considered, unless required by the current state of the law.
 - (6) *Conservative Financial Investment.* The opportunity to make a return on the use of the land equivalent to that which would have been received from a conservative financial investment shall be indicative of an economically beneficial use. However, general downturns in the real estate market or the economy shall not be attributed to the regulations applied to the land.
 - (7) *No Diminution in Value.* The market value of the land, as established by the comparable sales approach, one (1) day prior to the adoption of this Land Use Code, shall be compared to the market value of the land, as established by the comparable sales approach, with the regulations as applied. Market value of the land one (1) day prior to the adoption of this Land Use Code shall constitute its highest and best use on the day prior to the adoption of this Land Use Code or the date of the purchase of the land by the applicant, whichever is later. All appraisals or other land value information, if any, shall be proposed by qualified licensed appraisers, and shall follow the best professional practices established by the profession. Mere diminution in market value shall not be sufficient to support a determination of denial of economically beneficial use.
 - (8) *Current State of Law.* The current state of law established by the United States Supreme Court, the Federal Circuit Court of Appeals, the Colorado Supreme Court and other controlling Colorado courts, and controlling statutory law, shall be considered.
- (B) ***Reasonable Nexus/Rough Proportionality.*** With regard to the takings doctrines of "reasonable nexus" and "rough proportionality," an applicant shall be entitled to the minimum revision of any required dedication or reduction of its property, or the minimum revision of any payment of money to ensure "rough proportionality," or the reevaluation of the offending condition or action, including invalidation if necessary, to ensure that the "reasonable nexus" and "rough proportionality" doctrines are satisfied.
- (1) In evaluating an applicant's "reasonable nexus/rough proportionality" takings claim, a determination shall first be made as to whether a "reasonable nexus" exists between a "legitimate state interest" and the condition imposed by the City.
 - (2) The second part of the "reasonable nexus/rough proportionality" takings analysis requires that a determination then be made as to whether the

exaction or condition is reasonably related to the needs created by the development or the impacts of such development.

- (3) Finally, a determination shall be made as to whether the degree of the exaction demanded by the City's condition is reasonably related to the projected impacts of the applicant's proposed development. No precise mathematical calculation is required, but the City must make some sort of individualized determination that the required exaction or condition is related both in nature and extent to the impact of the proposed development.
- (4) The current state of law established by the United States Supreme Court, the Federal Circuit Court of Appeals, the Colorado Supreme Court and other controlling Colorado courts, and controlling statutory law, shall be considered in making each of these determinations.

(Ord. No. 177, 1998 §1, 10/20/98)

DIVISION 2.14 ENFORCEMENT

Sections:

- 2.14.1 Methods of Enforcement
- 2.14.2 Permits and Certificates of Occupancy
- 2.14.3 Inspection
- 2.14.4 Criminal and Civil Liability; Penalties
- 2.14.5 Liability of City and Injunction
- 2.14.6 Enforcement of the Requirements and Conditions of Development Approval

2.14.1 Methods of Enforcement

The provisions of this Land Use Code shall be enforced by the following methods:

- (A) requirement of a Building Permit;
- (B) requirement of a certificate of occupancy;
- (C) inspection and ordering removal of violations;
- (D) criminal or civil proceedings; and
- (E) injunction or abatement proceedings.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 123, 2005 §1, 11/15/05)

2.14.2 Permits and Certificates of Occupancy

- (A) No building shall be erected, moved or structurally altered unless a Building Permit has been issued by the Building and Zoning Director. All permits shall be issued in conformance with the provisions of this Land Use Code and shall expire six (6) months after the date that such Building Permit was issued unless properly acted upon in accordance with the provisions of the International Building Code, as amended. One (1) six-month extension may be granted by the Building and Zoning Director.
- (B) No land or building shall be changed in use, nor shall any new structure, building or land be occupied or used, unless the owner (or the owner's contractor, if any) shall have obtained a certificate of occupancy from the Building and Zoning Director. If the use is in conformance with the provisions of this Land Use Code, a certificate of occupancy shall be issued within three (3) days of the time of notification that the building is completed and ready for occupancy. A copy of all certificates of occupancy shall be filed by the

Director and shall be available for examination by any person with either proprietary or tenancy interest in the property or building.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 177, 2002 §6, 12/17/02; Ord. No. 049, 2008 §2, 5/20/08)

2.14.3 Inspection

The City Manager is hereby empowered to cause any building, other structure or tract of land to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this Land Use Code. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct such violation or comply with the order.

(Ord. No. 177, 1998 §1, 10/20/98)

2.14.4 Criminal and Civil Liability; Penalties

- (A) Except as otherwise specified in this Land Use Code, any person (including, without limitation, the developer of, owner of, or any person possessing, occupying or trespassing upon, any property which is subject to this Land Use Code, or any agent, lessee, employee, representative, successor or assign thereof) who violates this Land Use Code or who fails to comply with any of its requirements or who fails to comply with any orders made thereunder, shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided in § 1-15 of the City Code. Each day that such a violation occurs shall constitute a separate offense. Nothing contained herein shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violations of this Land Use Code.
- (B) An owner, property manager or occupant commits a civil infraction by violating any provision of Section 3.8.16 of this Land Use Code. Each day during which the limitation on the number of occupants is exceeded shall constitute a separate violation. A finding that such civil infraction has occurred shall subject the offender(s) to the penalty provisions of § 1-15(f) of the Code of the City of Fort Collins and any or all of the following actions:
 - (1) the imposition of a civil penalty of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) for each violation;
 - (2) an order to comply with any conditions reasonably calculated to ensure compliance with the provisions of Section 3.8.16 of this Land Use Code

or with the terms and conditions of any permit or certificate granted by the city;

- (3) an injunction or abatement order; and/or
- (4) denial, suspension or revocation of any city permit or certificate relating to the dwelling unit.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. 123, 2005 §2, 11/15/05; Ord. No. 085, 2008 §9, 7/15/08)

2.14.5 Liability of City and Injunction

- (A) In addition to any of the foregoing remedies, the City Attorney acting on behalf of the City Council may maintain an action for an injunction to restrain any violation of this Land Use Code.
- (B) This Land Use Code shall not be construed to hold the city responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or by reason of issuing a Building Permit as herein provided, or by reason of pursuing or failing to pursue an action for injunctive relief as authorized in (A), above.

(Ord. No. 177, 1998 §1, 10/20/98)

2.14.6 Enforcement of the Requirements and Conditions of Development Approval

The occurrence of either of the following events may subject the developer of, owner of, or any person possessing, occupying or trespassing upon, any property which is subject to this Land Use Code, or any agent, lessee, employee, representative, successor or assign thereof to the enforcement remedies contained in this Division:

- (A) failure to comply with any terms, conditions or limitations contained on the site plan, landscape plan, building elevations or other approved documents pertaining to a development which has received final approval from the city, whether under the provisions of this Land Use Code or under the provisions of prior law.
- (B) failure to comply with any conditions of record imposed by the appropriate decision maker upon its review of the site specific development plan for the development, whether under the provisions of this Land Use Code or under the provisions of prior law.

(Ord. No. 177, 1998 §1, 10/20/98)