



# ARTICLE 6

# ADMINISTRATION and PROCEDURES

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# ARTICLE 6

## ADMINISTRATION and PROCEDURES

### DIVISION 6.1 ZONING MAP AND ZONE DISTRICTS

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#### 6.1.1 ESTABLISHMENT OF ZONE DISTRICTS

In order to carry out the purposes of this Code, the City is hereby divided into the following zone districts:

##### Residential

- Rural Lands District (RUL)
- Urban Estate District (UE)
- Residential Foothills District (RF)
- Low Density Residential District (RL)
- Old Town District – A (OT-A)
- Manufactured Housing District (MH)

##### Mixed-Use

- Low Density Mixed-Use Neighborhood District (LMN)
- Medium Density Mixed-Use Neighborhood District (MMN)
- High Density Mixed-Use Neighborhood District (HMN)
- Old Town District – B (OT-B)
- Old Town District – C (OT-C)

##### Commercial

- Community Commercial District (CC)
- Community Commercial - North College District (CCN)
- Community Commercial - Poudre River District (CCR)
- General Commercial District (CG)
- Service Commercial District (CS)
- Neighborhood Commercial District (NC)
- Limited Commercial District (CL)
- Harmony Corridor District (HC)

##### Downtown

- Downtown District (D)

##### Employment, Industrial, and Other

- Employment District (E)
- Industrial District (I)
- Public Open Lands District (POL)
- Transition District (T)

##### Overlay

- Transit-Oriented Development Overlay (TOD)
- South College Gateway Area (SCG)
- Planned Unit Development Overlay (PUD)

### 6.1.2 ESTABLISHMENT OF ZONING MAP

The boundaries of the zone districts are hereby established as shown on a map entitled "Zoning Map of the City of Fort Collins, Colorado," dated March 28, 1997, as amended, which map is hereby made a part of this Code by reference. Where uncertainty exists regarding the boundary of a zone district on the Zoning Map, reference should be made to Division 6.24, Interpretations.

### 6.1.3 ESTABLISHMENT OF ZONE DISTRICT AND DEVELOPMENT STANDARDS

The development standards contained in Articles 3 and 5 include standards applicable to all development unless specifically exempted. The zone district standards and allowed uses in zone districts contained in Articles 2 and 4 are standards that apply to development located within a specified zone district. The district standards are organized on a zone district by zone district basis, and specify the purpose of each applicable zone district, the permitted uses allowed in each zone district, and other standards and criteria that apply in each zone district. The development standards contained in Articles 3 and 5 and the zone district standards and allowed uses in zone districts contained in Articles 2 and 4 are minimum standards and requirements. Applicable rules of measurement and definitions are contained in Article 7.

## DIVISION 6.2 GENERAL PROCEDURAL REQUIREMENTS

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### 6.2.1 OVERVIEW OF DECISION MAKERS AND ADMINISTRATIVE BODIES

The City Council, Planning and Zoning Commission, Land Use Review Commission, the Historic Preservation Commission and 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.

The Director or the Planning and Zoning Commission will consider, review and decide all development applications for permitted uses including:

- Overall Development Plans;
- PUD Overlays 640 acres or less;
- Basic Development Review plans; and
- Project Development Plans and Final Plans

in accordance to the provisions of this Land Use Code. For those development applications subject to basic development review, the Director, or the Director's designee, is the authorized decision maker. For those development applications subject to administrative review (sometimes referred to as "Type 1 review"), the Director is the designated decision maker (see Section 6.3.7(A)(2)). For those development applications subject to Planning and Zoning Commission review (sometimes referred to as "Type 2 review"), the Planning and Zoning Commission is the designated decision maker (see Section 6.3.7(A)(3)). For PUD Overlays greater than 640 acres, the City Council is the designated decision maker after receiving a Planning and Zoning Commission recommendation. 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 basic development review and building permit applications, the Director is the decision maker (see Sections 6.4 and 6.13). (See "Overview of Development Review Procedures," Section 6.2.2, below, for a further description of different levels of review.) City Council is the decision maker regarding the issuance of permits to conduct an activity or develop within an area of state interest pursuant to Article 6 after receiving a Planning and Zoning Commission recommendation.

## 6.2.2 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 2 of this Land Use Code, the applicant will find the zone 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 their proposal;
  - seek the addition of a new permitted use pursuant to Division 6.9;
  - seek a text amendment to this Land Use Code pursuant Division 6.25;
  - seek a rezoning amendment to the Zoning Map pursuant to Division 6.25; or
  - seek approval of a PUD Overlay pursuant to Divisions 2.6.

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 Division 6.9 for a particular development application or permitted as part of an approved PUD Overlay. Applications for permits regarding areas and activities of state interest provisions may be reviewed regardless of whether the zone district or districts in which the proposed project allow such a use or even expressly prohibit such use. 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 as determined pursuant to Article 4:
- a project development plan (Division 6.6) followed by a final plan (Division 6.7); or
  - basic development review (Division 6.4).

If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 6.5) will also be required prior to or concurrently with the project development plan. Overall development plans, PUD Overlays, basic development reviews, project development plans and final plans are the five (5) types of development applications for permitted uses. Each successive development application for a development proposal must build upon the previously approved development application, as needed, by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the development standards of Articles 3 and 5 and the zone district standards and allowed uses in zone districts of Articles 2 and 4). Overall development plans, basic development reviews and project development plans may be consolidated into one (1) application for concurrent processing and review when appropriate under the provisions of Section 6.3.3. The purpose, applicability, and interrelationship of these types of development applications are discussed further in Section 6.2.3. Applications for a permit regarding areas and activities of state interest provisions are addressed in

Divisions 6.27 and 6.28.

- (D) **Who reviews the development application?** Once an applicant has determined the type of development application to be submitted, they 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 basic development review, administrative review (“Type 1 review”), Planning and Zoning Commission review (“Type 2 review”), or City Council review in the case of PUD Overlays greater than 640 acres and permits to conduct a designated activity or develop in a designated area of state interest. Identification of the required level of development review will, in turn, determine which decision maker, the Director in the case of basic development review and administrative review (“Type 1 review”), or the Planning and Zoning Commission in the case of Planning and Zoning Commission review (“Type 2 review”), or the City Council for PUD Overlays greater than 640 acres and permits pursuant to the areas and activities of state interest provisions, 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, PUD Overlays, project development plans and final plans, and permits pursuant to the areas and activities of state interest provisions will each generally follow the same procedural “steps” regardless of the level of review (basic development review, administrative review or Planning and Zoning Commission, or City Council review). The common development review procedures contained in Division 6.3 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 basic development review, administrative review, Planning and Zoning Commission review, or City Council review in the case of PUD Overlays greater than 640 acres and permits pursuant to the areas and activities of state interest provisions 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 or PUD Overlay when required, or project development plan when neither an overall development plan nor a PUD Overlay is required). Basic Development Review and Final Plan 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 Commission and City Council review. Step 2, neighborhood meeting, does not apply to development applications subject to basic development review or administrative review. Step 3, application submittal requirements, applies to all development applications. Applicants shall submit items and documents in accordance with a Comprehensive list of submittal requirements as established by the Director. Overall development plans must comply with only certain identified items on the Comprehensive list, while PUD Overlays, project development plans, and final plans must include different items from the Comprehensive list. This Comprehensive 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 five (5) 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 6.8), an amendment to the text of the Land Use Code and/or the Zoning Map (Division 6.25), a hardship variance (Division 6.14), an appeal of an administrative decision (Division 6.18), a permit to conduct an activity or develop in an area of state interest (Articles 6.27 and 6.28) 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 6.13.
- (H) **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. An applicant may communicate with City staff designated as reviewers of a project.

### 6.2.3 TYPES OF DEVELOPMENT APPLICATIONS

- (A) **Applicability.** All development proposals which include only permitted uses must be processed and approved through the following development applications: a basic development review (Division 6.4); or through a project development plan (Division 6.6), then through a final plan (Division 6.7), then through a development construction permit (Division 6.21) and then through a building permit review (Division 6.13). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 6.5) will also be required prior to or concurrently with the project development plan. A PUD Comprehensive Plan associated with a PUD Overlay may be substituted for an overall development plan (Division 2.6). 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 development standards of Articles 3 and 5 and the zone district standards and allowed uses in zone districts of Articles 2 and 4).

Permitted uses subject to basic development review, administrative review, or permitted uses subject to Planning and Zoning Commission review listed in the applicable zone district set forth in Article 2, zone districts, shall be processed through an overall development plan, a basic development review, 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 6.25, or in accordance with the requirements for the addition of a permitted use under Division 6.9 Development applications for permitted uses which seek to modify any standards contained in the development standards in Articles 3 and 5, and the zone district standards in Article 2 and use standards of Article 4, shall be submitted by the applicant and processed as a modification of standards under Division 6.8. Variances to development standards contained in Articles 3 and 5 and zone district standards of Article 2 and use standards of Article 4, shall be processed as variances by the Land Use Review Commission pursuant to Division 6.14. Appeals of administrative/staff decisions shall be according to Division 6.18. PUD overlays shall be processed pursuant to Division 2.6. Applications to conduct an activity or develop within an area of state interest are addressed in Articles 6.27 and 6.28. This Section is meant to complement and not override or substitute for the requirements of Chapter 14 of the Code of the City of Fort Collins regarding landmarks.

#### (B) Basic Development Review (BDR)

- (1) **Purpose and Effect.** The basic development review is the administrative process for reviewing a site specific development plan that describes and establishes the type and intensity of use for a specific parcel or parcels of property. The basic development review shall include the final subdivision plat (when such plat is required pursuant to Section 5.4.4 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 Director only pursuant to an approved Basic Development Review, subject to the provisions of Division 6.4.
- (2) **Applicability.** A basic development review application may be submitted prior to required public notification. If the project is to be developed over time in two (2) or more separate basic development review submittals, an overall development plan shall also be required. Refer to Division 6.4 for specific requirements for basic development reviews.

#### (C) 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 6.5 for specific requirements for overall development plans.

#### (D) 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 5.4.4 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 6.6 for specific requirements for project development plans.

#### (E) 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 5.4.4 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 Director only pursuant to an approved final plan or other site specific development plan, subject to the provisions of Division 6.7.
- (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 Commission for Type 2 review) of a project development plan, unless the project development and final plans have been consolidated pursuant to Section 6.3.3(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 6.7 for specific requirements for final plans.

#### (F) Site Plan Advisory Review

- (1) **Purpose and Effect.** The Site Plan Advisory Review process requires the submittal and approval of a site development plan that describes the location, character, and extent of improvements to parcels owned or operated by public entities. In addition, with respect to public and charter schools, the review also has as its purpose, as far as is feasible, that the proposed school facility conforms to the City's Comprehensive Plan.
- (2) **Applicability.** A Site Plan Advisory Review shall be applied to any public building or structure. For a public or charter school, the Planning and Zoning Commission shall review a complete Site Plan Advisory Review application within thirty (30) days (or such later time as may be agreed to in writing by the applicant) of receipt of such application under Section 22-32-124, C.R.S. For Site Plan Advisory Review applications under Section 31-23-209, C.R.S., such applications shall be reviewed and approved or disapproved by the Planning and Zoning Commission within sixty (60) days following receipt of a complete application.

Enlargements or expansions of public buildings, structures, schools and charter schools are exempt from the Site Plan Advisory review process if:

- (a) The change results in a size increase of less than twenty-five (25) percent of the existing building, structure or facility being enlarged, whether it be a principal or accessory use; and
- (b) The enlargement or expansion does not change the character of the building or facility.
- (c) Application for a Site Plan Advisory Review is subject to review by the Planning and Zoning Commission under the requirements contained in Division 6.11 of this Code.

#### (G) PUD Overlay

- (1) **Purpose and Effect.**  
The purpose of the PUD Overlay is to provide an avenue for property owners with larger and more complex development projects to achieve flexibility in site design by means of customized uses, densities, and Land Use Code and non-Land Use Code development standards. In return for such flexibility, significant public benefits not available through traditional development procedures must be provided by the development. A PUD Comprehensive Plan is the written document associated with a PUD Overlay and the PUD Comprehensive Plan sets forth the general development plan and the customized uses, densities, and Land Use Code and non-Land Use Code development standards. An approved PUD Overlay overlays the PUD

Comprehensive Plan entitlements and restrictions upon the underlying zone district requirements.

- (2) **Applicability.** A PUD Overlay is available to properties or collections of contiguous properties fifty (50) acres or greater in size. Refer to Division 2.6.3 for specific requirements and review of PUD.

#### (H) Areas and Activities of State Interest

- (1) **Purpose and Effect.** The areas and activities of state interest guidelines and regulations set forth in Article 6 are adopted pursuant to Section 24-65.1-101, et seq., C.R.S., and provide the City with the ability to review and regulate matters of state interest. A permit issued pursuant to Article 6 is required in order for a proposed development plan related to a designated activity or within a designated area of state interest to be constructed and operate.
- (2) **Applicability.** A permit to conduct a designated activity or to develop within a designated area of state interest within the City is required for all proposed development plans meeting the criteria set forth in Division 6.27 unless an exemption exists pursuant to Section 6.27.4.1 or a finding of no significant impact is issued pursuant to Section 6.27.6.5.

### 6.2.4 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 6.16, Nonconforming Uses and Structures or 6.17, 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 6.3, 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 Commission for Type 2 review);
- (2) The owner of the property has obtained the approval, pursuant to subsections 6.3.10(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 6.3, 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 6.3.10 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 the standards and requirements of the most current version of this Code.
  - (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.

### 6.2.5 DEDICATIONS AND VACATIONS

**(A) By the Planning and Zoning Commission.**

As part of its review and approval of a specific planning item, the Planning and Zoning Commission may accept the dedication of streets, easements and other rights-of-way shown on plats and deeds for such item. The Commission 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 Commission. 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 Commission, as well as those that are subject to basic development review, building permit review, and 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 Commission, basic development review, building permit review, or administrative review. Such acceptance and/or vacation may be accomplished either by resolution or by notation on the plat for the item.

### 6.2.6 OPTIONAL PRE-APPLICATION REVIEW

- (A) Optional City Council Pre-Application Review of Complex Development Proposals:** A potential applicant for development other than a PUD Overlay or permit to conduct a designated activity of state interest or develop in a designated area of state interest may request that the City Council conduct a hearing for the purpose of receiving preliminary comments from the City Council regarding the overall proposal in order to assist the proposed applicant in determining whether to file a development application or annexation petition. Only one (1) pre-application hearing pursuant to this Subsection (A) may be requested. The following criteria must be satisfied for such a hearing to be held:
- (1) The proposed development cannot have begun any step of the Common Development Review Procedures for Development Applications set forth in Division 6.3.
  - (2) The proposed application for approval of a development plan must require 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.

- (3) The City Manager must determine in writing that the proposed development will have a community-wide impact.
- (B) **Optional Pre-Application PUD Overlay Proposal Review:** This optional review is available to potential PUD applicants that have not begun any step of the Common Development Review Procedures for Development Applications set forth in Division 6.3. Such review is intended to provide an opportunity for applicants to present conceptual information to the Planning and Zoning Commission for PUD Overlays between 50 and 640 acres in size, or to City Council for PUD Overlays greater than 640 acres in size, regarding the proposed development including how site constraints will be addressed and issues of controversy or opportunities related to the development. Applicants participating in such review procedure should present specific plans showing how, if at all, they intend to address any issues raised during the initial comments received from staff and affected property owners. For a pre-application hearing to be held, the Director must determine in writing that the proposed PUD will have a community-wide impact. Only one (1) pre-application hearing pursuant to this Subsection (B) may be requested.
- (C) **Notice and Hearing Procedure.**  
All preapplication hearings under above Subsections (A) or (B) 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 set forth in Division 6.3, except that the signs required to be posted under Step (6)(B) shall be posted subsequent to the scheduling of the session 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.
- (D) **Input Non-Binding, Record.** The Planning and Zoning Commission or City Council as applicable pursuant to above Subsections (A) or (B) may, but shall not be required to, comment on the proposal. Any comment, suggestion, or recommendation made by any Planning and Zoning Commission or City Council member regarding the proposal does not bind or otherwise obligate any City decision maker to any course of conduct or decision pertaining to the proposal. All information related to an optional review shall be considered part of the record of any subsequent development review related to all or part of the property that was the subject of the optional review.

## DIVISION 6.3 COMMON DEVELOPMENT REVIEW PROCEDURES FOR DEVELOPMENT APPLICATIONS

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### 6.3.1 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 their development proposal. Major problems can be identified and solved during conceptual review before a formal application is made.

Conceptual review may include representatives of the Department, Poudre Fire Authority, Police Services, Water & Wastewater Utilities, Electric Utility, Stormwater Utility, and other departments as appropriate, and special districts where applicable.

- (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 their 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.

Preliminary design review may include representatives of the Department, Poudre Fire Authority, Police Services, Water and Wastewater Utilities, Electric Utility, Stormwater Utility, and other departments as appropriate, and special districts where applicable. 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 Comprehensive 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.

### 6.3.2 STEP 2: NEIGHBORHOOD MEETINGS

- (A) **Purpose.** 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 Planning and Zoning Commission 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 Commission review unless the Director determines as a part of the staff review and recommendation required pursuant to Section 6.3.1(B)(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 6.3.6(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.

### 6.3.3 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 6.3.7 had it been submitted, processed and considered as separate development applications. Decision makers, from highest level to lowest level, are the Planning and Zoning Commission and the Director, respectively.

**(C) Development Application Contents.**

- (1) **Development Application Submittal Requirements Comprehensive List.** A Comprehensive list of development application submittal requirements shall be established by the Director. The Comprehensive 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 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 Comprehensive list that are identified as submittal requirements for that development application. The Director may waive items on the Comprehensive list that are not applicable due to the particular conditions and circumstances of that development proposal. At the time of application submittal, all applicants must agree in writing to pay the costs for third-party consultants the City retains to adequately review the application as described in Land Use Code Section 6.3.3(D)(3).
- (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 the applicant's 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; and
- (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).

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 and Costs for Specialized Consultants.

- (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) **Specialized Consultants.** In the Director's discretion, the City may retain the services of third-party consultants with specialized knowledge that the City requires to adequately evaluate an application, the costs of which must be paid by the applicant with such payment agreed to in writing at the time of application submittal. Prior to retaining any consultant, the Director must inform the applicant of the intent to retain such consultant and the estimated costs. The applicant must pay to the City the estimated costs prior to the City retaining the consultant. Within sixty (60) days of completion of the consultant's work, the



applicant must pay to the City the actual cost of the consultant's services in excess of the estimate, or the City must refund any portion of the estimate in excess of the actual cost.

#### 6.3.4 STEP 4: REVIEW OF APPLICATIONS

- (A) **Determination of Sufficiency.** After receipt of the development application, the Director shall determine whether the application is complete and ready for review. Some development applications may involve complex technical issues that require review and input that is outside the expertise of City staff. If such a situation arises, the Director may procure the services of third-party consultants to review and consult with the City regarding the relevant subject matter and require the applicant to pay the costs for such third-party consultants as described in Section 6.3.3(D)(3). Upon review by the Director and any necessary third-party consultants, the Director will determine whether the application is complete. The determination of sufficiency shall not be based upon the perceived merits of the development proposal.
- (B) ***Specialized Consultants to Assist With Review.*** As described in Section 6.3.3(D)(3), the City may retain the services of third-party consultants with specialized knowledge that the City requires to adequately evaluate whether an application is complete pursuant to above Subsection (A) or to assist in the review of a complete application, the costs of which must be paid by the applicant.
- (C) **Processing of Incomplete Applications.** Except as provided below, 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. Notwithstanding the foregoing, if an application has been determined to be incomplete because the information provided to the Director shows that a portion of the property to be developed under the application is not yet under the ownership and control of the applicant or developer, the Director may nonetheless authorize the review of such application and the presentation of the same to the decision maker, as long as:
- (1) the applicant, at the time of application, has ownership of, or the legal right to use and control, the majority of the property to be developed under the application;
  - (2) the Director determines that it would not be detrimental to the public interest to accept the application for review and consideration by the decision maker; and
  - (3) the applicant and developer enter into an agreement satisfactory in form and substance to the City Manager, upon consultation with the City Attorney, which provides that:
    - (a) until such time as the applicant has acquired full ownership and control of all property to be developed under the application, neither the applicant nor the developer will record, or cause to be recorded, in the office of the Larimer County Clerk and Recorder any document related to the City's review and approval of the application; and
    - (b) the applicant will indemnify and hold harmless the City and its officers, agents and assigns from any and all claims that may be asserted against them by any third party, claiming injury or loss of any kind whatsoever that are in any way related to, or arise from, the City's processing of the application.

The denial of an incomplete application that has been allowed to proceed to the decision maker under the provisions of this Section shall not cause a post denial re-submittal delay under the provisions of Section

6.3.11(E)(9) for property that was not owned by the applicant or within the applicant's legal right to use and control at the time of denial of the application.

### 6.3.5 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 Code. Conditions for approval may also be recommended to eliminate any areas of noncompliance or mitigate any adverse effects of the development proposal.

### 6.3.6 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 6.3.6(D), then the area of notification shall conform to the 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 or in case of a Basic Development Review the Director's decision. 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.
- (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 6.3.6(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.** The following table indicates the required notice radius for a mailed notice and posted sign size for development applications.

<i>Development Project</i>	<i>Minimum Notice Radius</i>	<i>Sign Size</i>
All developments except those described below.	800 feet	12 square feet
Area or activity of state interest.	1,000 feet in all directions of the location of a proposed development plan as determined by the Director, this distance shall apply to mailed notice for FONSI comment periods, neighborhood meetings, appeals of Director FONSI decisions, Planning and Zoning Commission permit recommendations, and City Council permit hearings	12 square feet, however, the Director may require an increased number of signs depending upon the size and configuration of the proposed development plan
Minor Subdivisions containing no more than one (1) new lot.	Abutting Properties	12 square feet
Developments including only an Accessory Dwelling Unit or one (1) additional dwelling unit.	Abutting Properties	12 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	12 square feet
Developments proposing more than twenty-five (25) and less than one hundred (100) multi-family dwelling units.	800 feet	12 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	12 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
Off-site construction staging	500 feet	12 square feet
Oil and gas facilities and oil and gas pipelines	One (1) mile to owners of record and occupants of real property (exclusive of property rights-of-way, public facilities, parks or public open space); 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
Plugging and abandonment of wells and pipelines and decommissioning of oil and gas facilities	One (1) mile to owners of record and occupants of real property (exclusive of property rights-of-way, public facilities, parks or public open space of the oil and gas facility, well, or pipeline.	12 square feet
Zonings and rezonings of forty (40) acres or less.	800 feet	12 square feet
Zonings and rezonings of more than forty (40) acres.	1,000 feet	12 square feet

- (E) The following shall not affect the validity of any hearing, meeting or determination by the decision maker:
- (1) The fact that written notice was not mailed as required under the provision of this Section.
  - (2) The fact that written notice, mailed as required under the provision of this Section, was not actually received by one (1) or more of the intended recipients.
  - (3) The fact that signage, posted in compliance with the provision of this Section, was subsequently damaged, stolen or removed either by natural causes or by persons other than the person responsible for posting such signage or their agents.

### 6.3.7 STEP 7: PUBLIC HEARING

(A) **Decision maker**

- (1) **Basic Development Review** no public hearing is conducted as part of a BDR.
- (2) **Administrative Review (Type 1 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 6.2, and the common development review procedures contained in Division 6.3. For those development applications that are subject to administrative review, the Director shall be the designated decision maker.
- (3) **Planning and Zoning Commission Review (Type 2 review)**. A Planning and Zoning Commission 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 Commission pursuant to the general procedural requirements contained in Division 6.2, and the common development review procedures contained in Division 6.3. For those development applications that are subject to Planning and Zoning Commission review, the Planning and Zoning Commission 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 their 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) **Director Overview.** The Director shall provide an overview 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 Report Presented.** The Director shall present a narrative and/or graphic description of the development application, as well as a staff report that includes a written recommendation. This recommendation shall address each standard required to be considered by this Code prior to approval of the development application.
  - (4) **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.
  - (5) **Public Testimony.** Members of the public may comment on the application and present evidence, subject to the determination of the Chair as to relevance.
  - (6) **Applicant Response.** The applicant may respond to any testimony or evidence presented by the public.
  - (7) **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 6.3.8). The written decision shall be mailed to the applicant and any person who provided testimony at the public hearing.
  - (2) **Decision – Planning and Zoning Commission 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 Commission shall close the public hearing and the Commission 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 6.3.8).
  - (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 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:
  - (c) 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;
  - (d) all minutes of the proceedings;
  - (e) if appealed to the City Council, a verbatim transcript of the proceedings before the decision maker, the cost of which transcript shall be borne by the City; and
  - (f) 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 and Development Agreements Recorded with County Clerk and Recorder.** Once the final utility plans, final plat and all other applicable Final Development Plan Documents are approved and the development agreement has been executed, the final plan has been approved, and any applicable conditions of final plan approval have been met, and after the appeal period has expired, the final plat and Development Agreement shall be recorded by the City in the Office of the Larimer County Clerk and Recorder and shall be filed with the City Clerk. The date that the recording with the Larimer County Clerk and Recorder of both the Final Plat and the Development Agreement is accomplished by the City shall establish the date of approval under Section 6.3.11(E)1. of this Land Use Code.

**6.3.8 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 6 and complies with all of the standards required for the applicable development application as modified by any modification of standards approved under Division 6.8.

**6.3.9 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 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.

**6.3.10 STEP 10: AMENDMENTS AND CHANGES OF USE****(A) Minor Amendments and Changes of Use.**

- (1) Minor amendments to any approved development plan, including any Overall Development Plan, Project Development Plan, or PUD Comprehensive Plan, any site specific development plan, or the existing condition of a platted property; and (2) Changes of use, either of which meet the applicable criteria of below subsections 6.3.10(A)(2) or 6.3.10(A)(3), may be approved, approved with conditions, or denied

administratively by the Director and may be authorized without additional public hearings. Except for PUD Comprehensive Plans, such minor amendments and changes of use may be authorized by the Director as long as the development plan, as so amended, continues to comply with the standards of this Code to the extent reasonably feasible. PUD Comprehensive Plan Minor amendments may be authorized by the Director as long as the PUD Comprehensive Plan, as so amended, continues to comply with the standards of this Code, as such standards may have been modified in the existing PUD Comprehensive Plan, and so long as the amendments are consistent with the existing PUD Comprehensive Plan. Minor amendments and changes of use shall only consist of any or all of the following:

- (2) Any change to any approved development plan or any site specific development plan 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 the change or change of use complies with all of the following criteria applicable to the particular request for change or change of use:
  - (a) results in an increase by five (5) 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 use-by-right review under prior law, the number of dwelling units proposed to be added may be four (4) units or less;
  - (b) 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;
  - (c) 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;
  - (d) does not result in a change in the character of the development;
  - (e) 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 Project Development Plan or approved site specific development plan;
  - (f) 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 Code; and
  - (g) in the case of a change of use, the change of use results in the site being brought into compliance, to the extent reasonably feasible as such extent may be modified pursuant to below subsection 6.3.10(A)3., with the applicable development standards contained in Articles 3 and 5 and the applicable zone district standards contained in Articles 2 and 4 of this Code.
- (3) Any change to any approved development plan or any site specific development plan which was originally subject to review by the Planning and Zoning Commission (either as a Type 2 project or as a project reviewed by the Planning and Zoning Commission under prior law) or City Council review of a PUD Overlay, or any change of use of any property that was approved by the Planning and Zoning Commission; provided that the change or change of use complies with all of the following criteria applicable to the particular request for change or change of use:
  - (a) results in an increase or decrease by five (5) percent or less in the approved number of dwelling units;



- (b) 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;
  - (c) 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;
  - (d) does not result in a change in the character of the development; and
  - (e) 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 Project Development Plan or approved site specific development plan.
- (4) **Waiver of Development Standards for Changes of Use.**
- (a) **Applicability.** The procedure and standards contained in this Section shall apply only to changes of use reviewed pursuant to Section 6.3.10(A) of this Code.
  - (b) **Purpose.** In order for a change of use to be granted pursuant to Section 6.3.10(A), the change of use must result in the site being brought into compliance with all applicable development and zone district standards to the extent reasonably feasible. The purpose of this Section is to allow certain changes of use that do not comply with all applicable development standards to the extent reasonably feasible to be granted pursuant to Section 6.3.10(A) in order to:
    - (I) Foster the economic feasibility for the use, maintenance and improvement of certain legally constructed buildings and sites which do not comply with certain Land Use Code development standards provided that:
    - (II) existing blight conditions have been ameliorated; and
    - (III) public and private improvements are made that address essential health and life safety issues that are present on-site.
    - (IV) Encourage the eventual upgrading of nonconforming buildings, uses and sites.
  - (c) **Review by Director.** As part of the review conducted pursuant to Section 6.3.10(A) for a proposed change of use, the Director may waive, or waive with conditions, any of the development standards set forth in subsection (d) below. In order for the Director to waive, or waive with conditions, any such development standard, the Director must find that such waiver or waiver with conditions would not be detrimental to the public good and that each of the following is satisfied:
    - (I) The site for which the waiver or waiver with conditions is granted satisfies the policies of the applicable Council adopted subarea, corridor or neighborhood plan within which the site is located;
    - (II) The proposed use will function without significant adverse impact upon adjacent properties and the district within which it is located in consideration of the waiver or waiver with conditions;

- (III) Existing blight conditions on the site are addressed through site clean-up, maintenance, screening, landscaping or some combination thereof; and
- (IV) The site design addresses essential health and public safety concerns found on the site.

(d) **Eligible Development Standards.** The Director may grant a waiver or waiver with conditions for the following development standards:

- (I) Division 5.9 related to Parking Lot Perimeter and Interior Landscaping, and Landscape Coverage.
- (II) Division 5.12 Site Lighting,
- (III) Division 5.11 Trash and Recycling Enclosure design.
- (IV) Division 5.4.3 Engineering Design standards related to water quality standard, including Low Impact Development.

- (5) **Referral.** In either subsection (1) or (2) above, the Director may refer the amendment or change of use to the decision maker who approved the development plan proposed to be amended. The referral of minor amendments to development plans or changes of use allowed or approved under the laws of the City for the development of land prior to the adoption of this Code shall be processed as required for the land use or uses proposed for the amendment or change of use 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. The referral of minor amendments or changes of use to project development plans or final plans approved under this Code shall be reviewed and processed in the same manner as required for the original development plan for which the amendment or change of use is sought, and, if so referred, the decision maker's decision shall constitute a final decision, subject only to appeal as provided for development plans under Divisions 6.2.3 (B);(C);(D);(E); and (G) as applicable, for the minor amendment or change of use. City Council approval of a minor amendment to a PUD Comprehensive Plan shall be by resolution.
- (6) **Notification.** Written notice must be mailed to the owners of record of all real property abutting the property that is the subject of the minor amendment application at least fourteen (14) calendar days prior to the Director's decision.
- (7) **Appeals.** Applicable pursuant to Section 6.3.12(C).

(B) **Major Amendments and Changes of Use Not Meeting the Criteria of 6.3.10(A).**

- (1) **Procedure/Criteria.** Amendments to any approved development plan, including any Overall Development Plan, Project Development Plan, or PUD Comprehensive Plan, or any site specific development plan, and changes of use that are not determined by the Director to be minor amendments or qualifying changes of use under the criteria set forth in subsection (A) above, shall be deemed major amendments.
- (2) 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 Code shall be processed as required for the land use or uses proposed for the amendment as set forth in Article 4 (i.e., BDR, 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 all applicable Land Use Code standards. Major amendments to development

plans or site specific development plans approved under this 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. City Council approval of a major amendment to a PUD Comprehensive Plan shall be by resolution.

- (3) Any partial or total abandonment of a development plan or site specific development plan approved under this Code, or of any plan approved under the laws of the City for the development of land prior to the adoption of this 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., BDR, Type 1 review or Type 2 review) for the zone district in which the land is located.
- (4) *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 6.3.12 (Step 12).
- (C) **Additional Criteria.** In addition to the criteria established in (A) and (B) above, the criteria established in subsection 6.2.4(C) shall guide the decision maker in determining whether to approve, approve with conditions, or deny the application for partial or total abandonment.
- (D) **Parkway Landscaping Amendments.** Amendments to parkway landscaping in any approved development plan may be approved, approved with conditions or denied administratively by the Director. No public hearing need be held on an application for a parkway landscaping amendment. Such amendments may be authorized by the Director as long as the development plan, as so amended, continues to comply with the Fort Collins Streetscape Standards, Appendix C, Section 6.1 in the Larimer County Urban Area Street Standards. Appeals of the decision of the Director regarding the approval, approval with conditions or denial of parkway landscaping amendments of any approved development plan shall be made in accordance with paragraph (A)(4) of this Section.

### 6.3.11 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 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 Code. On transfer of ownership of any real property that is the subject of a pending application, whether in whole or in part, such transfer shall bar a new owner or transferee from taking further action on such application unless, prior to taking any action, the new owner provides evidence satisfactory to the Director that the transferor of such property intended that all rights of the owner under the pending

application be assigned to the transferee.

- (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) **PUD Comprehensive Plan.** A PUD Comprehensive Plan shall be eligible for a vested property right solely with respect to uses, densities, development standards, and Engineering Standards for which variances have been granted pursuant to Section 2.6.3, as all are set forth in an approved PUD Comprehensive Plan. An approved PUD Comprehensive Plan shall be considered a site specific development plan solely for the purpose of acquiring such vested property rights subject to the provisions set forth in this Subsection (C) and not Subsection (E) below. A PUD Comprehensive Plan shall be deemed approved upon the effective date of the ordinance approving such PUD Comprehensive Plan as a site specific development plan and, upon such approval, a vested property right shall be created pursuant to the provisions of Article 68 Title 24, C.R.S., and this Section 6.3.11.
- (1) **Specification of Uses, Densities, Development Standards, and Engineering Standards.** The application for a PUD Comprehensive Plan shall specify the uses, densities, development standards, and Engineering Standards granted variances pursuant to Section 2.6.3, for which the applicant is requesting a vested property right. Such uses, densities, and development standards may include those granted modifications pursuant to Section 2.6.3 and uses, densities, and development standards set forth in the Land Use Code which are applicable to the PUD Comprehensive Plan.
- (2) **Term of Vested Right.** The term of the vested property right shall not exceed three (3) years unless: (a) an extension is granted pursuant to paragraph (3) 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 if the Director determines that it will likely take more than three (3) years to complete all phases of the development and the associated engineering improvements for the development, and only if warranted in light of all relevant circumstances, including, but not limited to, the overall size of the development and economic cycles and market conditions. Council shall adopt any such development agreement as a legislative act subject to referendum.
- (3) **Extensions.** Extensions for two (2) successive periods of one (1) year each may be granted by the Director, upon a finding that (a) the applicant has been diligently pursuing development pursuant to the PUD Comprehensive Plan, and (b) granting the extension would not be detrimental to the public good. Any additional one-year extensions shall be approved, if at all, only by the original PUD Comprehensive Plan decision maker, upon a finding that (a) the applicant has been diligently pursuing development pursuant to the PUD Comprehensive Plan, and (b) 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 original PUD Comprehensive Plan decision maker.
- (4) **Publication.** A "notice of approval" describing the PUD Comprehensive Plan and stating that a vested property right has been created or extended, shall be published by the City once in a newspaper of general circulation within the City, not later than fourteen (14) days after the approval of a PUD Comprehensive

Plan, an extension of an existing vested right, or the legislative adoption of a development agreement as described in paragraph (2) of this subsection. 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.

- (5) **Minor and Major Amendments.** In the event that a minor or major amendment to a PUD Comprehensive Plan is approved under the provisions of Section 6.3.10, and such amendment alters or adds uses, densities, development standards, or Engineering Standards for which variances have been granted pursuant to Section 2.6.3, a new vested property right may be created upon the applicant's request and pursuant to paragraph 2 of this subsection. If the applicant wants the term of the new vested property right to exceed three (3) years, such extended term must be approved and legislatively adopted pursuant to paragraph 2 of this subsection.
- (D) **Project Development Plan and Plat.** 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 submit a final plan for all or part of the project development plan within three (3) years unless the project development plan is for a large base industry to be constructed in phases, in which case the application for approval of a final plan must be submitted within twenty-five (25) years. 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 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.
- (E) **Final Plan and Plat and Other Site Specific Development Plans.**
- (1) **Approval.** With the exception of site specific development plans subject to Subsection (C) above, a site specific development plan shall be deemed approved upon the recording by the City with the Larimer County Clerk and Recorder of both the Final Plat and the Development Agreement and upon such recording, a vested property right shall be created pursuant to the provisions of Article 68 Title 24, C.R.S., and this Section 6.3.11.
- (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 approval of any final plan or other site specific development plan 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 7, 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 such engineering improvements 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 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 applicable development standards as contained in Articles 3 and 5 and Zone District Standards as contained in Articles 2 and 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 Commission, upon a finding that the plan complies with all applicable development standards as contained in Articles 3 and 5 and zone district standards as contained in Articles 2 and 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 Commission.
- (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 6.3.10(A) (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 6.3.10(B) (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 6.2.4(C) and all other applicable criteria of this 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 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 new plan includes substantial changes in land use, residential density and/or nonresidential intensity.
- (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.

### 6.3.12 STEP 12: APPEALS/ALTERNATE REVIEW

- (A) **Appeals.** Appeals of any final decision of a decision maker under this Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in this Article.
- (B) **Alternate Review.** Despite the foregoing, if the City is the applicant for a development project, there shall be no appeal of any final decision regarding such development project to the City Council. In substitution of an appeal of a development project for which the City is the applicant, the City Council may, by majority vote, as an exercise of its legislative power and in its sole discretion, overturn or modify any final decision regarding such project, by ordinance of the City Council. Any Councilmember may request that the City Council initiate this exercise of legislative power but only if such request is made in writing to the City Clerk within fourteen (14) days of the date of the final decision of the Planning and Zoning Commission. City Council shall conduct a hearing prior to the adoption of the ordinance in order to hear public testimony and receive and consider any other public input received by the City Council (whether at or before the hearing) and shall conduct its hearing in the manner customarily employed by the Council for the consideration of legislative matters. When evaluating City projects under alternate review, the City Council may, in its legislative discretion, consider factors in addition to or in substitution of the standards of this Land Use Code.
- (C) **Appeal of Minor Amendment, Changes of Use, and Basic Development Review Decisions by the Director.** The Director's final decision on a minor amendment or change of use application pursuant to Section 6.3.10(A) or basic development review application pursuant to Division 6.4 may be appealed to the Planning and Zoning Commission as follows:
- (1) **Parties Eligible to File Appeal.** The following parties are eligible to appeal the Director's final decision on a minor amendment, change of use, or basic development review application:
- (a) the applicant that submitted the application subject to the Director's final decision;
  - (b) any party holding an ownership or possessory interest in the real or personal property that was the subject of the final decision;
  - (c) any person to whom or organization to which the City mailed notice of the final decision;

- (d) any person or organization that provided written comments to the appropriate City staff for delivery to the Director prior to the final decision; and
  - (e) any person or organization that provided written comments to the appropriate City staff for delivery to the decision maker prior to the final decision on the project development plan or final plan being amended or provided spoken comments to the decision maker at the public hearing where such final decision was made.
- (2) **Filing Notice of Appeal.** An appeal shall be commenced by filing a notice of appeal with the Director within fourteen (14) calendar days after the date the written final decision is made that is the subject of the appeal. Such notice of appeal shall be on a form provided by the Director, shall be signed by each person joining the appeal ("appellant"), and shall include the following:
- (a) A copy of the Director's final decision being appealed.
  - (b) The name, address, email address, and telephone number of each appellant and a description why each appellant is eligible to appeal the final decision pursuant to Subsection (C)(1) above.
  - (c) The specific Land Use Code provision(s) the Director failed to properly interpret and apply and the specific allegation(s) of error and/or the specific Land Use Code procedure(s) not followed that harmed the appellant(s) and the nature of the harm; and
  - (d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.
- (3) **Scheduling of Appeal.** A public hearing shall be scheduled before the Planning and Zoning Commission within sixty (60) calendar days of a notice of appeal being deemed complete unless the Planning and Zoning Commission adopts a motion granting an extension of such time period.
- (4) **Notice.** Once a hearing date before the Planning and Zoning Commission has been determined, the Director shall mail written notice pursuant to Section 6.3.6(A). Notice requirements set forth in Section 6.3.6(B) through (D) shall not apply. The mailed notice shall inform recipients of:
- (a) the subject of the appeal;
  - (b) the date, time, and place of the appeal hearing;
  - (c) the opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning Commission; and
  - (d) how the notice of appeal can be viewed on the City's website.
- (5) **Planning and Zoning Commission Hearing and Decision.**
- (a) The Planning and Zoning Commission shall hold a public hearing pursuant to Section 6.3.7 to decide the appeal, and City staff shall prepare a staff report for the Planning and Zoning Commission. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Planning and Zoning Commission for its consideration at the hearing.



(b) The hearing shall be considered a new, or de novo, hearing at which the Planning and Zoning Commission shall not be restricted to reviewing only the allegations of error listed in the notice of appeal, the Planning and Zoning Commission shall not give deference to the Director's final decision being appealed, and the applicant shall have the burden of establishing that the application complies with all relevant Land Use Code provisions and should be granted. The applicant, appellant or appellants, members of the public, and City staff may provide information to the Planning and Zoning Commission for its consideration at the appeal hearing that was not provided to the Director for their consideration in making the final decision being appealed.

(c) The Planning and Zoning Commission shall review the application that is the subject of the appeal for compliance with all applicable Land Use Code standards and may uphold, overturn, or modify the decision being appealed at the conclusion of the hearing and may impose conditions in the same manner as the Director pursuant to Section 6.3.10(A) and Division 6.4. The Planning and Zoning Commission decision shall constitute a final decision appealable to City Council pursuant to Section 6.3.12(A).

(D) *Appeal of FONSI Determination.* The Director's determination pursuant to Section 6.5.5 that a proposed development plan would have no significant impact and would not require a permit pursuant to Article 6, or that a proposed development plan would have a significant impact and must obtain a permit pursuant to Article 6, may be appealed to the Planning and Zoning Commission as follows:

(1) *Parties Eligible to File Appeal.* The applicant is the only party eligible to file an appeal of the Director's determination that a proposed development plan would have a significant impact and, therefore, a permit is required pursuant to Division 6.27.

Any person is eligible to file an appeal of the Director's finding that a proposed development plan would not have a significant impact and would not require a permit pursuant to Division 6.27.

(2) *Filing Notice of Appeal.* An appeal shall be commenced by filing a notice of appeal with the Director within fourteen (14) calendar days after the date of the written final determination on a FONSI application. Such notice of appeal shall be on a form provided by the Director, shall be signed by each person joining the appeal ("appellant"), and shall include the following:

- (a) A copy of the Director's determination being appealed;
- (b) The name, address, email address, and telephone number of each person joining the appeal;
- (c) The specific reasons why the appellant believes the Director's determination is incorrect;
- (d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.

The Director shall reject any notice of appeal that is not timely filed, does not contain the information set forth in (a) – (d) above, or is not filed by a party with standing to file an appeal. The decision to reject a notice of appeal is not subject to appeal. Should multiple notices of appeal be filed, a single hearing shall be held.

(3) *Scheduling of Appeal.* A public hearing shall be scheduled before the Planning and Zoning Commission as soon as practicable but not later than within sixty (60) calendar days of a complete notice of appeal being

filed. In the instance that multiple notices of appeal are filed, the sixty days shall be counted from the date the first complete notice of appeal is filed.

(4) *Notice.* Once a hearing date has been determined, the Director shall mail written notice to the appellant and all parties to whom notice of the decision was mailed pursuant to Section 6.6.5(E)(3). The mailed notice shall inform recipients of:

- (a) The subject of the appeal;
- (b) The date, time, and place of the appeal hearing;
- (c) The opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning Commission; and
- (d) How the notice of appeal can be viewed on the City's website.

(5) *Planning and Zoning Commission Hearing and Decision.*

- (a) The Planning and Zoning Commission shall hold a public hearing pursuant to Section 6.3.7 to decide the appeal with appellant being substituted for applicant in Section 6.3.7. In any appeal of a Director finding that a proposed development project would have a significant impact and is not required to obtain a permit, the procedure set forth in Section 6.3.7 shall be modified to provide the FONSI applicant an opportunity equal to that of the appellant to address the Commission and respond to evidence and arguments raised by the appellant and members of the public. City staff shall prepare a staff report for the Commission. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Commission for its consideration at the hearing.
- (b) The hearing shall be considered a new, or *de novo*, hearing at which the Planning and Zoning Commission shall not be restricted to reviewing only the allegations of error listed in the notice of appeal, the Planning and Zoning Commission shall not give deference to the Director's decision being appealed, and the burden shall be on the appellant to establish why the appeal should be granted. The applicant, appellant, members of the public, and City staff may provide information to the Planning and Zoning Commission for its consideration at the appeal hearing that was not provided to the Director for their consideration in making the decision being appealed.
- (c) The Planning and Zoning Commission shall review the application that is the subject of the appeal for compliance with all applicable criteria set forth in Section 6.27.6.5 and shall uphold or overturn the Director's determination. The Planning and Zoning Commission decision shall constitute a final decision appealable to City Council pursuant to Section 6.3.12(A).

## DIVISION 6.4 BASIC DEVELOPMENT REVIEW

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### 6.4.1 PURPOSE AND APPLICABILITY

The purpose of the basic development review ("BDR") is to establish an internal administrative process for approval of a site specific development plan where the decision maker is the Director. There is no public hearing and the basic development review process shall be deemed final upon issuance of a decision by the Director. The basic development review shall be the review process for:

- (A) Those uses listed as such in each of the Article Four use table.
- (B) Existing Limited Permitted Uses (Division 6.17).
- (C) Expansions and Enlargements of Existing Buildings (Sections 6.22 and 6.23.1).
- (D) Building Permit Applications (Division 6.13).
- (E) Minor Subdivisions (Section 6.4.2).
- (F) Plugging and Abandonment and Decommissioning of Wells and Pipelines (Section 4.3.4(F)) provided such Plugging and Abandonment and Decommissioning is not part of a development application subject to a development review process other than BDR.

#### 6.4.2 MINOR SUBDIVISIONS

A minor subdivision is a plat or replat that does not create more than one (1) new lot. A minor subdivision shall not be permitted if the property is within a parcel, any part of which has been subdivided by a minor subdivision plat within the immediately preceding twelve (12) months. For an unplatted metes and bounds lot undergoing the minor subdivision process to create a platted lot with the same boundaries, Step 6 (Notice) of Section 6.4.3 is not applicable.

#### 6.4.3 BASIC DEVELOPMENT REVIEW AND MINOR SUBDIVISION REVIEW PROCEDURES

An application for Basic Development Review or Minor Subdivision shall be processed according to, in compliance with, and subject to the provisions contained in Division 6.2 and Steps (1) through (12) of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive), as follows:

- (A) **Step 1** (Conceptual Review): Not applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3** (Development Application): Applicable.
- (D) **Step 4** (Review of Applications): Applicable.
- (E) **Step 5** (Staff Report): Not applicable and in substitution thereof, a staff report shall be prepared in the case of an appeal of a final decision pursuant to Section 6.3.12 (Step 12).
- (F) **Step 6 (Notice)**: Applicable
  - Step 6(A)** (Mailed Notice): Applicable.
  - Step 6(B)** (Posted Notice): Applicable.
  - Step 6(C)** (Published Notice): Applicable excluding developments of Accessory Dwelling Units.
  - Step 6(D)** (Supplemental Notice): Applicable.
  - Step 6(E)** Applicable.
- (G) **Step 7** (Public Hearing): Not Applicable.
  - Step 7(A)(1 and 2)** (Decisionmaker): Not applicable and in substitution thereof, the Director shall be the decision maker and there shall be no public hearing.
  - Steps 7(B - C)** Not Applicable.
  - Step 7(D)(1 and 2)** (Decision and Findings): Not applicable and in substitution thereof, after consideration of the development application, the Director shall issue a written decision to approve, approve with conditions, or deny the development application based on compliance with the standards referenced in Step 8 of the Common Development Review Procedures (Section 6.3.8). The written decision shall be mailed to the applicant, to any person who provided comments during the comment period and to the abutting property owners, and shall also be posted on the City's website at [www.fcgov.com](http://www.fcgov.com).
  - Step 7(D)(3)** (Findings): Applicable
  - Step 7(E)** (Notification to Applicant): Applicable.
  - Step 7(F)(1)** (Recording of the Public Hearing): Not Applicable.
  - Step 7(F)(2)(a)** (The Record): Not Applicable.
  - Step 7(F)(2)(b)** (Minutes): Not applicable and in substitution thereof, the Director shall issue the decision in writing.

**Step 7(F)(2)(c and d):** (Verbatim Transcript and Videotape Recording): Not Applicable.

**Step 7(G):** (Recording of Decisions and Plats): Applicable for Minor Subdivisions only.

(H) **Step 8** (Standards): Applicable.

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

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

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

**Step 11(A):** (Application Submittals): Applicable.

**Step 11(B and C):** (Lapse): Not Applicable.

**Step 11(D)(1–8):** (Final Plan and Plan and Other Site Specific Development Plan): Applicable.

**Step 11(D)(9):** (Post denial re-submittal delay): Not Applicable.

**Step 11(D)(10):** (Automatic repeal; waiver): Applicable.

(L) **Step 12** (Appeals): Applicable pursuant to Section 6.3.12(C).

## DIVISION 6.5 OVERALL DEVELOPMENT PLAN

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### 6.5.1 PURPOSE AND APPLICABILITY

The purpose and applicability of an overall development plan is contained in Section 6.2.3(C).

### 6.5.2 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 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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 Comprehensive 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** (Review of Applications): 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.

(H) **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.

(I) **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 zone district standards contained in Articles 2 and 4 for all zone districts contained within the boundaries of the overall development plan. The plan shall also be consistent with any development standards (Articles 3 and 5) 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 6.3.11.

(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 of Article 2:

- The Rural Land District (RUL).
  - The Urban Estate District (UE).
  - The Residential Foothills District (RF).
  - The Low Density Mixed-Use Neighborhood District (LMN).
  - The Medium Density Mixed-Use Neighborhood District (MMN).
  - The High Density Mixed-Use Neighborhood District (HMN).
  - The Manufactured Housing District (MH).
  - The Community Commercial - North College District (CCN).
  - The Harmony Corridor District (HC).
  - The Employment District (E).
- (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 5.4.5 and 5.4.7(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 5.4.10 by submittal of a Comprehensive Level Transportation Impact Study.
- (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 5.4.7(F) and Section 5.9.1(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 5.6.1(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.
- (J) **Step 9** (Conditions of Approval): Applicable.
- (K) **Step 10** (Amendments): Applicable.
- (L) **Step 11** (Lapse): Applicable.
- (M) **Step 12** (Appeals): Applicable.

## DIVISION 6.6 PROJECT DEVELOPMENT PLAN

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### 6.6.1 PURPOSE AND APPLICABILITY

The purpose and applicability of a project development plan is contained in Section 6.2.3(D).

## 6.6.2 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 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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 Comprehensive 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** (Review of Applications): 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 7, District Standards) in which it is located.
  - (2) **Planning and Zoning Commission 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 development standards applicable to the development proposal (Articles 3 and 5) and the applicable zone district standards (Articles 2 and 4); and, when a project development plan is within the boundaries of an approved overall development plan or PUD Overlay, the project development plan shall be consistent with the overall development plan or PUD Comprehensive Plan associated with such PUD Overlay. 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 6.3.11.
- (E) **Step 9** (Conditions of Approval): Applicable.
- (F) **Step 10** (Amendments): Applicable.
- (G) **Step 11** (Lapse): Applicable.
- (H) **Step 12** (Appeals): Applicable.

## DIVISION 6.7 FINAL PLAN

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### 6.7.1 PURPOSE AND APPLICABILITY

The purpose and applicability of a final plan is contained in Section 6.2.3(E).

### 6.7.2 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 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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 Comprehensive 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** (Review of Applications): 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 development standards applicable to the development proposal (Articles 3 and 5) and the applicable zone district standards (Articles 2 and 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 Commission 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 Commission, the decision of the Planning and Zoning Commission shall be final and shall not be appealable to the City Council, notwithstanding any provision of the City Code to the contrary.

## DIVISION 6.8 MODIFICATION OF STANDARDS

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### 6.8.1 PURPOSE AND APPLICABILITY

In conjunction with, or prior to, a development application the decision maker is empowered to grant modifications to the:

- zone district standards in Article 2, excluding Section 2.6.3 PUD Overlay;
- building standards in Article 3;
- use standards in Article 4, not including any use listed in the use table; and
- General Development and Site Design Standards of Article 5;

either for:

- overall development plans, project development plans, and/or applications subject to basic development review that are pending approval at the time that the request for proposed modification is filed;
- 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
- development plans approved under the Land Use Code or prior law and which are sought to be amended (either as a minor or major amendment) pursuant to Section 6.3.10.

### 6.8.2 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 6.3 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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 Comprehensive 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** (Review of Applications): Applicable.
- (E) **Step 5** (Staff Report): Applicable.
- (F) **Step 6** (Notice): Section 6.3.6(A), (B) and (C) apply. Section 6.3.6(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 minor amendment or a development plan that is subject to administrative review or basic development 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 Commission; and if an application for a modification of standards pertains to a development plan which is subject to Planning and Zoning Commission review, the Planning and Zoning Commission 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 Commission 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 6.8.1 shall be valid in accordance with the lapse provisions contained in Section 6.3.11. All Modifications of Standards which apply to a development plan which has not been filed in accordance with the provisions of Section 6.8.1 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.

## DIVISION 6.9 ADDITION OF PERMITTED USES

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### 6.9.1 ADDITION OF PERMITTED USES

- (A) **Purpose Statement.** The purpose of the Addition of Permitted Use process is to allow for the approval of a particular land use to be located on a specific parcel within a zone district that otherwise would not permit such a use. Under this process, an applicant may submit a plan that does not conform to the zoning, with the understanding that such plan will be subject to a heightened level of review, with close attention being paid to compatibility and impact mitigation. This process is intended to allow for consideration of unforeseen uses and unique circumstances on specific parcels with evaluation based on the context of the surrounding area. The process allows for consideration of emerging issues, site attributes or changed conditions within the neighborhood surrounding and including the subject property. For residential neighborhoods, land use flexibility shall be balanced with the existing residential character. Projects are expected to continue to meet the objectives of any applicable sub-area plan and City Plan. The process encourages dialogue and collaboration among applicants, affected property owners, neighbors and City Staff.
- (B) **Applicability.** This Section is applicable only under the following circumstances:
- (1) where the proposed use is not listed as a permitted use in any zone district, does not fall within any existing use classification and is proposed as being appropriate to be added to the permitted uses in the zone district. If approved under this Section, such use shall be considered for inclusion into the zone district pursuant to Division 6.25; or
  - (2) where the proposed use is listed as a permitted use in one (1) or more zone district(s) and is proposed based solely on unique circumstances and attributes of the site and development plan.
- (C) **Procedures and Required Findings.** The following procedures and required findings shall apply to addition of permitted use determinations made by the Director, Planning and Zoning Commission, and City Council respectively:
- (1) **Director Approval.** In conjunction with an application for approval of an overall development plan, a project development plan, or any amendment of the foregoing (the "primary application" for purposes of this Section only), for property not located in any zone district listed in subsection (G), the applicant may apply for the approval of an Addition of Permitted Use for uses described in subsection (B)(1) to be determined by the Director. If the applicant does not apply for such an addition of permitted use in conjunction with the primary application, the Director in their sole discretion may initiate the addition of permitted use process. The Director may add to the uses specified in a particular zone district any other use which conforms to all of the following criteria:
    - (a) Such use is appropriate in the zone district to which it is added.
    - (b) Such use conforms to the basic characteristics of the zone district and the other permitted uses in the zone district to which it is added.
    - (c) The location, size and design of such use is compatible with and has minimal negative impact on the use of nearby properties.
    - (d) Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the zone district to which it is added.
    - (e) Such use will not change the predominant character of the surrounding area.

- (f) Such use is compatible with the other listed permitted uses in the zone district to which it is added.
  - (g) Such use, if located within or adjacent to an existing residential neighborhood, shall be subject to two (2) neighborhood meetings, unless the Director determines, from information derived from the conceptual review process, that the development proposal would not have any significant neighborhood impacts. The first neighborhood meeting must take place prior to the submittal of an application. The second neighborhood meeting must take place after the submittal of an application and after the application has completed the first round of staff review.
  - (h) Such use is not a medical marijuana business as defined in Section 15-452 of the City Code or a retail marijuana establishment as defined in Section 15-603 of the City Code.
- (2) **Planning and Zoning Commission Approval.** In conjunction with a primary application for a project not located, in whole or in part, in any zone district listed in subsection (G), the applicant may apply for approval of an addition of permitted use for uses described in subsection (B)(2) to be determined by the Planning and Zoning Commission. The Planning and Zoning Commission may add a proposed use if the Commission specifically finds that such use: (1) conforms to all of the eight (8) criteria listed in subsection (C)(1); (2) would not be detrimental to the public good; (3) would be in compliance with Section 5.15.1 Building and Project Compatibility; and (4) is not specifically listed as a "prohibited use" in the zone district in which the proposed site is located. The addition of a permitted use by the Commission shall be specific to the proposed project and shall not be considered for a text amendment under subsection (D) below.
- (3) **City Council Approval.** In conjunction with a primary application for a project located, in whole or in part, in a zone district listed in subsection (G), any application for the approval of an addition of permitted use shall be determined by the City Council after a Planning and Zoning Commission recommendation on the addition of permitted use. The Planning and Zoning Commission shall remain the decision maker on the primary application.
- (a) The Planning and Zoning Commission may recommend to the City Council that a proposed use described in subsection (B)1. be added if the Commission specifically finds that such use conforms to all of the eight criteria listed in subsection (C)1. The Planning and Zoning Commission may recommend to the City Council that a proposed use described in subsection (B)2. be added if the Commission specifically finds that such use: (1) conforms to all of the eight (8) criteria listed in subsection (C)1.; (2) would not be detrimental to the public good; (3) would be in compliance with Section 5.15.1 Building and Project Compatibility; and (4) is not specifically listed as a "prohibited use" in the zone district in which the proposed site is located. The Planning and Zoning Commission shall consider only the requirements set forth in this subsection in making a recommendation on the addition of permitted use and shall follow the notice and hearing requirements that are established for zonings and rezonings of areas of no more than six hundred forty (640) acres in size as set forth in Section 6.25 of this Land Use Code.
  - (b) In considering the recommendation of the Planning and Zoning Commission and in determining whether a proposed use should be added, 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) day 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 and City Council shall follow the applicable hearing procedures established by the City Council by resolution for such hearings. In determining the addition of permitted use, the City Council shall consider only the requirements set forth in subsection (c) below.
  - (c) In deciding the addition of permitted use application for uses described in subsection (B)(1), the City Council, after considering the Planning and Zoning Commission recommendation, may add a proposed

use if the Council specifically finds that such use conforms to all of the eight (8) criteria listed in subsection (C)(1). In deciding the addition of permitted use application for uses described in subsection (B)(2), the City Council, after considering the Planning and Zoning Commission recommendation, may add a proposed use if the Council specifically finds that such use: (1) conforms to all of the eight (8) criteria listed in subsection (C)(1); (2) would not be detrimental to the public good; (3) would be in compliance with Section 5.15.1 Building and Project Compatibility and (4) is not specifically listed as a "prohibited use" in the zone district in which the proposed site is located. The City Council's action on the addition of permitted use shall be by ordinance. The addition of a permitted use by City Council shall be specific to the proposed project and shall not be considered for a text amendment under subsection (D). The City Council's decision on the addition of permitted use shall not be appealable and, if applicable, shall be subject only to a vested rights and takings determination pursuant to Land Use Code Article 6, Division 6.19.

- (d) If the addition of permitted use is denied, any primary application that has been approved by the Planning and Zoning Commission contingent upon the City Council's approval of an additional permitted use under this Section shall be automatically terminated and made null if such condition is not met; and any pending appeal of such conditional approval shall also be automatically terminated if such condition is not met, whereupon the appellant shall be promptly refunded any appeal fee that was paid to the City.
- (D) **Codification of New Use** When any use described in subsection (B)1. has been added by the Director to the list of permitted uses in any zone district in accordance with subsection (C)1. above, such use shall be promptly considered for an amendment to the text of this Code under Division 6.25. If the text amendment is approved, such use shall be deemed to be permanently listed in the appropriate permitted use list of the appropriate zone district and shall be added to the published text of this Code, at the first convenient opportunity, by ordinance of City Council pursuant to Division 6.25. If the text amendment is not approved, such use shall not be deemed permanently listed in the zone district, except that such use shall continue to be deemed a permitted use in such zone district for only the development proposal for which it was originally approved under subsection (C)1. above.
- (E) **Conditions** When any use has been added to the list of permitted uses in any zone district in accordance with this Section, the Director or the Planning and Zoning Commission with respect to any zone district not listed in subsection (G), or the City Council with respect to any zone district listed in subsection (G), may impose such conditions and requirements, including, but not limited to, conditions related to the location, size and design on such use as are necessary or desirable to: (1) accomplish the purposes and intent of this Code, (2) ensure consistency with the City Plan and its adopted components and associated sub-area plans, or (3) prevent or minimize adverse effects and impacts upon the public and neighborhoods, and to ensure compatibility of uses.
- (F) **Changes to Approved Addition of Permitted Use.** Approvals under this Section are specific to the subject addition of permitted use application. Any changes to the use or to its location, size and design, in a manner that changes the predominant character of or increases the negative impact upon the surrounding area, will require the approval of a new addition of permitted use.
- (G) **Zones Subject to City Council Addition of Permitted Use Review.** The City Council shall make all final determinations regarding any addition of permitted use under subsection (C)(3) with respect to a project located, in whole or in part, in any of the following zone districts:
- Rural Lands District (RUL)

- Urban Estate District (UE)
- Residential Foothills District (RF)
- Low Density Residential District (RL)
- Low Density Mixed-Use Neighborhood District (LMN)
- Old Town Neighborhood (OT) A, B, and C
- Manufactured Housing District (MH).

## DIVISION 6.10 ANNEXATION AND DISCONNECTION OF LAND

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### 6.10.1 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.

### 6.10.2 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.

### 6.10.3 HEARING AND REPORT BY PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission 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.

### 6.10.4 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 and (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 all applicable Land Use Code standards. 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.

If 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.

#### 6.10.5 EFFECTIVE DATE OF ANNEXATION

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

- (A) the tenth (10th) day following passage on second reading of the annexation ordinance (except for emergency ordinances); and
- (B) 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.

#### 6.10.6 APPLICATION FOR DISCONNECTION, ENACTMENT, AND 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.

## DIVISION 6.11 SITE PLAN AND ADVISORY REVIEW

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### 6.11.1 PURPOSE AND APPLICABILITY

The purpose and applicability of a Site Plan Advisory Review is contained in Section 6.2.3(F).

### 6.11.2 SITE PLAN ADVISORY REVIEW PROCEDURES

A Site Plan Advisory Review shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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 Site Plan Advisory Review as described in the development application submittal Comprehensive 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.

Prior to acquisition of land or contracting for the purchase of a facility, a public school or charter school shall advise the Planning and Zoning Commission in writing. The Planning and Zoning Commission shall have ten (10) days in which to request submittal of a site development plan.

Prior to constructing or authorizing any other public building or structure, a site development plan identifying the location, character and extent shall be submitted to the Planning and Zoning Commission.

(M) **Step 4** (Review of Application): Applicable.

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

(O) **Step 6** (Notice): Applicable.

(P) **Step 7(A)** (Decision Maker): Not applicable, and in substitution thereof, the Planning and Zoning Commission shall consider a Site Plan Advisory Review and approve or disapprove the application in a public hearing held within sixty (60) days after receipt of the application under Section 31-23-209, C.R.S. In the case of a public or charter school application under Section 22-32-124, C.R.S., the Planning and Zoning Commission shall provide review comments at a public hearing held within thirty (30) days (or such later time as may be agreed to in writing by the applicant) after receipt of the application.

**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.

(Q) **Step 8** (Standards): Not applicable, and in substitution thereof, an application for a Site Plan Advisory Review shall comply with the following criteria:

- (1) The site location for the proposed use shall be consistent with the land use designation described by the City Structure Plan Map, which is an element of the City's Comprehensive Plan.
- (2) The site development plan shall conform to architectural, landscape and other design standards and guidelines adopted by the applicant's governing body. Absent adopted design standards and guidelines, the design character of the site development plan shall be consistent with the stated purpose of the respective land use designation as set forth in the City's Comprehensive Plan.
- (3) The site development plan shall identify the level of functional and visual impacts to public rights-of-way, facilities and abutting private land caused by the development, including, but not limited to, streets, sidewalks, utilities, lighting, screening and noise, and shall mitigate such impacts to the extent reasonably feasible.

(R) **Step 9** (Conditions of Approval): Not applicable.

(S) **Step 10** (Amendments): Not applicable.

(T) **Step 11** (Lapse): Not applicable.

(U) **Step 12** (Appeals): Not applicable, and in substitution thereof, a disapproved Site Plan Advisory Review made under Section 31-23-209, C.R.S., may be overruled by the governing board of the public entity by a vote of not less than two-thirds ( $\frac{2}{3}$ ) of its entire membership. Further, with respect to a review made under Section 22-32-124, C.R.S., the Planning and Zoning Commission may request a hearing before the applicable board of education.

## DIVISION 6.12 CITY PROJECTS

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Development projects for which the City is the applicant shall be processed in the manner described in this Land Use Code, as applicable, but shall be subject to review by the Planning and Zoning Commission in all instances, except for permits to conduct an activity of state interest or develop in an area of state interest for which City Council is the decision maker, despite the fact that certain uses would otherwise have been subject to Administrative Review with the exception that minor amendments pursuant to Section 6.3.10(A) shall remain subject to administrative review.

## DIVISION 6.13 BUILDING PERMITS

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### 6.13.1 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.

### 6.13.2 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.

### 6.13.3 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 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Section 6.3.1 through 6.3.12, 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 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)** (Development Review Fees): Applicable.
- (D) **Step 4**(Review of Applications): 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 Director 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): 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 regulations related to such permit 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 6.17, such application shall also comply with Division 6.17.
- (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 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 Director.
- (L) **Step 12** (Appeals): Not applicable, and in substitution therefor, appeals of any final decision of the Director on a Building Permit application shall be in accordance with Division 6.18; 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 of the City Code.

## DIVISION 6.14 VARIANCES

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### 6.14.1 PURPOSE AND APPLICABILITY

The purpose of this Division is to authorize, in specific cases, existing or approved development project may receive variances from:

- zone district standards in Article 2, excluding Section 2.6.3 PUD Overlay;
- building standards in Article 3;
- use standards in Article 4, not including any use listed in the use table; and
- General Development and Site Design Standards of Article 5.

Variances 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 Basic Development Review, 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 6.8 (Modification of Standards).

### 6.14.2 VARIANCES BY THE DIRECTOR

- (A) The Director shall be authorized to grant the following types of variances, subject to the variance review procedure in Section 6.14.4 below:
- (1) Setback encroachment of up to ten (10) percent.
  - (2) Fence height increase of up to one (1) foot.
  - (3) In the OT zone district, the allowable floor area in the rear half of the lot increase of up to ten (10) percent, provided the amount of increase does not exceed the allowable floor area for the entire lot.
  - (4) Building height increase of up to one (1) foot.
- (B) The Director may refer any variance described in (A) above to the Land Use Review Commission for review and decision if the Director determines that the application under consideration raises questions as to compliance with the requirements for compatibility with the surrounding neighborhood that are appropriately addressed through a public hearing before the Land Use Review Commission that will allow the applicant or the public, or both, an opportunity to provide relevant information related to the application.

### 6.14.3 VARIANCES BY THE LAND USE REVIEW COMMISSION

The Land Use Review Commission shall be authorized to grant all variances not subject to the Director's review in Section 2.16.2(A) and those referred by the Director. The Land Use Review Commission shall follow the variance review procedure in Section 6.14.4 below.

### 6.14.4 VARIANCE REVIEW PROCEDURES

A variance shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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 Comprehensive 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** (Review of Applications): Applicable.
- (E) **Step 5** (Staff Report): Not applicable.
- (F) **Step 6** (Notice): For variances reviewed by the Director or the Land Use Review Commission subsection 6.3.6(A) only applies, except that a variance reviewed by the Director shall require mailed written notice fourteen (14) days prior to the decision instead of the hearing/meeting date and for variances reviewed by the Director or the Land Use Review Commission, "eight hundred (800) feet" shall be changed to "one hundred fifty (150) feet," and for single-unit houses in the OT-A and OT-B zone districts, eight hundred (800) feet shall be changed to five hundred (500) feet for variance requests for:
  - (1) Construction that results in a two-story house where a one-story house previously existed and where there is at least one (1) lot abutting the side of the subject lot and the house on such abutting lot is one (1) story; or
  - (2) Construction of a new house that is greater than two thousand five hundred (2,500) square feet; or
  - (3) Construction of an addition that results in a total square footage of more than three thousand (3,000) square feet.
- (G) **Step 7(A)** (Decision Maker): Not applicable, and in substitution for Section 6.3.7(A), the Director or Land Use Review Commission, 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)** Land Use Review Commission Review Only (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(B)–(C) and (E)–(G)(1) Director Review Only (Conduct of Public Hearing, Order of Proceedings as Public Hearing):** Not applicable.

**Step 7(D) Director Review Only (Decision and Findings):** Applicable and in substitution thereof, the Director shall issue a written decision to approve, approve with conditions, or deny the variance request. The written decision shall be mailed to the applicant and to the property owners to whom notice was originally mailed and shall also be posted on the City's website at [www.fcgov.com](http://www.fcgov.com).

- (H) **Step 8 (Standards):** Applicable, and the Director or Land Use Review Commission may grant a variance from the standards of Articles 2 – 5 and 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.
  - (4) 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 that 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 applied for; provided, however, that for good cause shown, the Director 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 applying for all necessary permits under a variance exceed twelve (12) months in length. One (1) six-month extension may be granted by the Director.
- (L) **Step 12 (Appeals):**
- (1) Applicable and in substitution thereof, variances decided by the Director are appealable to the Land Use Review Commission. Any such appeal must be initiated by filing a notice of appeal of the final decision of the Director within fourteen (14) days after the decision that is the subject of the appeal. The appeal

hearing before the Land Use Review Commission shall be considered a new, or de novo, hearing. The decision of the Land Use Review Commission on such appeals shall constitute a final decision appealable to City Council pursuant to Section 6.3.12 (Step 12).

- (2) Applicable to variances reviewed by the Land Use Review Commission.

## DIVISION 6.15 REASONABLE ACCOMMODATION PROCESS

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- (A) **Intent.** It is the policy of Fort Collins to provide reasonable accommodation for exemptions in the application of its zoning laws to rules, policies, and practices for the siting, development, and use of housing, as well as other related residential services and facilities, to persons with disabilities seeking fair access to housing. The purpose of this section is to provide a process for making a request for reasonable accommodation to individual persons with disabilities.
- (B) **Application.** Any person who requires reasonable accommodation, because of a disability, in the application of a zoning law that may be acting as a barrier to equal opportunity to housing opportunities, or any person or persons acting on behalf of or for the benefit of such a person, may request such accommodation. For purposes of this section, "disabled," "disability," and other related terms shall be defined as in the federal Americans with Disabilities Act of 1990 ("ADA"), the Fair Housing Act ("FHA"), or their successor laws. Additional for the purpose of this section such laws are referred collectively as the "the Acts". Requests for reasonable accommodation shall be made in the manner prescribed by Division 6.15(C).
- (C) **Required Information.**
- (1) **The applicant shall provide the following information:**
    - (a) Applicant's name, address, and telephone number;
    - (b) Address of the property for which the request is being made;
    - (c) The current actual use of the property;
    - (d) Confirmation that the subject individual or individuals are disabled under the Acts. Any information related to the subject individual or individuals' disability shall be kept confidential;
    - (e) The specific zoning code provision, regulation, or policy from which accommodation is being requested; and
    - (f) Why the reasonable accommodation is necessary for the subject individual or individuals with disabilities to have equal opportunity to use and enjoy the specific property.
  - (2) **Review With Other Land Use Applications.**

If the project for which the request for reasonable accommodation is being made also requires some other development review, then the applicant shall file the information required by Division 6.15(C) together for concurrent review with any other application for development review approval. The application for reasonable accommodation will be decided prior to any concurrent development review application that is affected by the request for reasonable accommodation, including but not limited to applications reviewed by the City Council, Planning and Zoning Commission and Land Use Review Commission.
  - (3) **Timing of Application.** An application for reasonable accommodation may be filed at any time prior to a final decision on a development application, including any applicable time for appeal.
  - (4) **Effect of Application on Appeals.** Notwithstanding any limitation found in Section 2-49 or Section 2-52 of the City Code, filing an application for reasonable accommodation will toll the time for filing an appeal

regarding a development application, or hearing an appeal that has been filed, until a decision on the application for reasonable accommodation is rendered.

**(D) Review Procedure.**

- (1) **Director.** Requests for reasonable accommodation shall be reviewed by the Director, or their designee.
- (2) **Interactive Meeting.** Upon either the request of the Director or the applicant, the Director or their designee shall hold an interactive meeting with the applicant to discuss the reasonable accommodation request in order to obtain additional information or to discuss what may constitute a reasonable accommodation for a particular application.
- (3) **Director Review.** The Director, or their designee, shall make a written determination within forty-five (45) days of receiving an application, or having an interactive meeting, whichever date comes later, and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with Division 6.15(E). Information related to the subject individual or individuals' disability shall be kept confidential and shall not be included in a public file.

**(E) Findings and Decision.**

- (1) **Findings.** The written decision to grant, grant with conditions or deny a request for reasonable accommodation shall be based on consideration of the following factors:
  - (a) Whether the property, which is the subject of the request, will be used by an individual disabled under the Acts;
  - (b) Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
  - (c) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City;
  - (d) Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a Land Use Code provision; and
  - (e) Any other applicable requirements of the FHA and ADA.
- (2) **Conditions of Approval.** In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by Division 6.15(E)(1).
- (3) **Effect of Approval.** An approval, with or without conditions, of an application for reasonable accommodation will be treated as compliance with the Code section being accommodated but will not affect any concurrent review not related to the reasonable accommodation, except that the decision maker shall amend or modify any concurrent decision to incorporate the approved reasonable accommodation.

- (F) **Appeal of Determination.** The applicant may appeal a determination granting or denying a request for reasonable accommodation to the City Manager in accordance with Chapter 2, Article VI of the Code of the City of Fort Collins. No other review of a reasonable accommodation determination shall be allowed except as expressly provided within this Section.

## DIVISION 6.16 NONCONFORMING USES AND STRUCTURES

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### 6.16.1 CONTINUATION OF USE

A nonconforming use may be continued and a nonconforming building or structure may continue to be occupied or used, except as otherwise provided in this Division as long as such use complies with the following limitations:

- (A) The hours of operation of a nonconforming use may not be extended into the hours between 10:00 p.m. and 7:00 a.m.
- (B) The nonconforming use shall not be converted from a seasonal to a multi-seasonal operation.
- (C) Light intensity and hours of illumination shall not be changed except in compliance with the site lighting standards contained in Article 5 of this Code.
- (D) Any proposals for the addition of trash receptacles and/or the relocation of existing trash receptacles shall comply with the location and design standards in Section 5.11.
- (E) Outdoor storage areas shall not be expanded, nor shall they be relocated closer to any adjoining residential use.

### 6.16.2 CHANGE OF USE

A nonconforming use may only be changed to a conforming use.

### 6.16.3 ABANDONMENT OF USE

If active operations are not carried on in a nonconforming use during a period of twenty-four (24) consecutive months, the building, other structure or tract of land where such nonconforming use previously existed shall thereafter be occupied and used only for a conforming use. Intent to resume active operations shall not affect the foregoing. A nonconforming home occupation business activity shall be considered to be abandoned if the occupants of the dwelling who were conducting such nonconforming home occupation business discontinue either their occupancy of the dwelling or the nonconforming home occupation.

### 6.16.4 RECONSTRUCTION

A nonconforming building or structure or a building or structure containing a nonconforming use which has been taken by governmental acquisition or damaged by fire or other accidental cause or natural catastrophe, may be reconstructed, provided such work is started within six (6) months of the date of occurrence of such damage and completed within one (1) year of the time the reconstruction is commenced, and provided that, to the extent reasonably feasible, such restoration complies with the zone district all applicable Land Use Code standards.

### 6.16.5 ENLARGEMENT OF BUILDING AND EXPANSION OF FACILITIES, EQUIPMENT, OR STRUCTURES

- (A) A proposal for the enlargement or expansion of a building containing a nonconforming use, a proposal for an expansion of existing facilities and equipment which are located on the lot and associated with the nonconforming use (such as expanding the number of fuel pumps at a gas station), and a proposal for adding facilities or structures to the lot which are associated with the nonconforming use, (such as a new canopy over a fuel pump island), shall require the approval of the Planning and Zoning Commission. In considering such proposals, the Planning and Zoning Commission shall make a finding as to whether or not the enlargement, expansion or addition would adversely affect the surrounding properties. In making such determination, the Commission and the applicant shall be governed by the following limitations:
  - (1) The nonconforming use shall not be changed (except to a conforming use) as a result of enlargement, expansion or construction.

- (2) The enlargement, expansion or construction shall not result in the conversion of the nonconforming use of a seasonal to a year-round operation.
  - (3) The nonconforming use shall not be expanded beyond the limits of the parcel of property upon which such use existed at the time it became nonconforming.
  - (4) Additional traffic generated by an enlargement, expansion or construction must be incorporated into the neighborhood and community transportation network without creating safety problems or causing or increasing level of service standard deficiencies.
  - (5) The noise and vibration levels that may be generated by the nonconforming use shall not be increased beyond the levels that existed prior to the enlargement, expansion or construction that is under consideration.
  - (6) The outdoor storage areas shall not be expanded or located any closer to an adjoining residential development as a result of the enlargement, expansion or construction.
  - (7) The proposed enlargement, expansion or construction shall not add more than twenty-five (25) percent of new floor area to existing buildings on the site.
  - (8) The enlargement, expansion or construction shall not exceed the building height requirements of the zone district in which the property is located.
  - (9) The enlargement, expansion or construction shall not further encroach upon any nonconforming setback.
  - (10) The enlargement, expansion or construction shall not increase or amplify any inconsistency with the parking standards contained within this Code.
  - (11) The enlargement, expansion or construction shall not hinder the future development of surrounding properties in accordance with this Code.
  - (12) The enlargement, expansion or construction shall not present a threat to the health, safety or welfare of the City or its residents.
- (B) Where a building, facility, equipment or structure is enlarged, expanded or added pursuant to subsection 6.16.5(A), the parcel of ground upon which the building, facility, equipment or structure is located shall be brought into compliance with the applicable building and development standards contained in Articles 3 and 5 and the applicable zone district standards contained in Articles 2 and use standards in Article 4 of this Code. Any new structure that is added to said parcel of ground shall also comply with the applicable development standards and zone district standards referenced above.
- (C) The hours of operation of a nonconforming use may not be extended into the hours between 10:00 p.m. and 7:00 a.m.

#### 6.16.6 ALTERATION OR REPAIR OF BUILDING

A nonconforming building may be structurally altered or repaired in any way permitted by this Code. Any building or other structure containing a nonconforming use or any nonconforming building or portion declared unsafe by the Building Official may be strengthened or restored to a safe condition.

### 6.16.7 ACCESSORY DWELLING UNIT EXEMPTION

The addition of an accessory dwelling unit to a parcel containing an existing nonconforming habitable dwelling use or structure shall not be considered an expansion of the nonconforming use or structure.

## DIVISION 6.17 EXISTING LIMITED PERMITTED USES

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### 6.17.1 PURPOSE AND APPLICABILITY

The provisions contained in this Division shall apply to any use which was lawful under prior law on the day before the effective date of this Code or subsequent amendment thereof.

Such uses are permitted in the various zone districts established in Articles 2 and 4 under the limitation that such uses shall constitute permitted uses only on such parcels of property. Accordingly, hereafter, such uses shall be referred to as "existing limited permitted uses."

### 6.17.2 CONTINUATION OF USE

An existing limited permitted use may be continued except as otherwise provided in this Division as long as such use complies with the following limitations:

- (A) The hours of operation of a nonconforming use may not be extended into the hours between 10:00 p.m. and 7:00 a.m.
- (B) The nonconforming use shall not be converted from a seasonal to a multi-seasonal operation.
- (C) Light intensity and hours of illumination shall not be changed except in compliance with the site lighting standards contained in Section 5.12.
- (D) Any proposals for the addition of trash receptacles and/or the relocation of existing trash receptacles shall comply with the location and design standards Section 5.11.
- (E) Outdoor storage areas shall not be expanded, nor shall they be relocated closer to any adjoining residential use.

### 6.17.3 CHANGE OF USE

An existing limited permitted use may only be changed to a permitted use and when so changed, the prior existing limited permitted use shall be deemed to have been abandoned, and such use may not thereafter be reinstated.

### 6.17.4 RECONSTRUCTION

A building or structure containing an existing limited permitted use which has been taken by governmental acquisition or damaged by fire or other accidental cause or natural catastrophe may be reconstructed, provided that, to the extent reasonably feasible, such reconstruction complies with all applicable Land Use Code standards.

### 6.17.5 ENLARGEMENT OF BUILDING AND EXPANSION OF FACILITIES, EQUIPMENT, OR STRUCTURES

Any proposal for the enlargement or expansion of a building containing an existing limited permitted use, any proposal for an expansion of existing facilities and equipment which are located on the lot and associated with the limited existing permitted use (such as expanding the number of fuel pumps at a gas station), and any proposal for adding facilities or structures to the lot which are associated with the existing limited permitted use (such as a new canopy over a fuel pump island) shall be subject to basic development review in accordance with Division 6.4. In considering such proposals, the decision maker shall make a finding as to whether or not the enlargement, expansion



or addition would adversely affect the surrounding properties. In making such determination, the decision maker and the applicant shall be governed by the following limitations:

- (A) Additional traffic generated by an enlargement, expansion or construction must be incorporated into the neighborhood and community transportation network without creating safety problems, or causing or increasing level of service standard deficiencies.
- (B) The noise and vibration levels that may be generated by the use shall not be increased beyond the levels that existed prior to the enlargement, expansion or construction that is under consideration.
- (C) The outdoor storage areas shall not be expanded or located any closer to an adjoining residential development as a result of the enlargement, expansion or construction.
- (D) The enlargement, expansion or construction shall not further encroach upon any nonconforming setback.
- (E) The enlargement, expansion or construction shall not increase or amplify any inconsistency with the parking standards contained within this Code.
- (F) The enlargement, expansion or construction shall not hinder the future development of surrounding properties in accordance with this Code.
- (G) The enlargement, expansion or construction shall not present a threat to the health, safety or welfare of the City or its residents.
- (H) Where a proposed building addition exceeds five thousand (5,000) square feet or twenty-five (25) percent of the gross floor area of such building as it existed on March 27, 1997, whichever results in the least amount of square footage, the building and the parcel of ground upon which the building is located shall be brought into compliance with the applicable development standards contained in Articles 3 and 5 and the applicable zone district standards contained in Articles 2 and use standards in Article 4 of this Code, to the extent reasonably feasible. Any new structure that is added to said parcel of ground shall also comply with the applicable development standards and zone district standards referenced above.

#### **6.17.6 ALTERATION OR REPAIR OF BUILDING**

A building containing an existing limited permitted use may be structurally altered or repaired in any way permitted by this Code. Any building or other structure containing an existing limited permitted use or any such building or portion declared unsafe by the Building Official may be strengthened or restored to a safe condition.

#### **6.17.7 ABANDONMENT OF USE**

If active operations are not carried on in an existing limited permitted use during a period of twenty-four (24) consecutive months, the building, other structure or tract of land where such existing limited permitted use previously existed shall thereafter be occupied and used only for a permitted use. Intent to resume active operations shall not affect the foregoing.

#### **6.17.8 ACCESSORY DWELLING UNIT EXEMPTION**

The addition of an accessory dwelling unit to a parcel containing an existing limited permitted habitable dwelling use or structure shall not be considered an expansion of the existing limited permitted use or structure.

## DIVISION 6.18 APPEAL FROM ADMINISTRATIVE DECISIONS TO THE LAND USE REVIEW COMMISSION

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### 6.18.1 PURPOSE AND APPLICABILITY

- (A) **Purpose.** The purpose of this Division is to provide for appeals of certain administrative/city staff decisions to the Land Use Review Commission. Appeals to the Planning and Zoning Commission of Minor Amendment and Change of Use and Basic Development Review decisions made by the Director are addressed in Section 6.3.12(C).
- (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 6.6 or 6.7 or of an administrative amendment/ abandonment of any such plan or of any plan approved under prior law, processed pursuant to Section 6.3.10 (Step 10):
- (1) Addition of a Permitted Use by Director (but not by Planning and Zoning Commission) under Division 6.9;
  - (2) Issuance of a written administrative interpretation under Division 6.24;
  - (3) Establishment of the Development Application Submittal Requirements under Section 6.3.3(C);
  - (4) Waiver of Development Application Submittal Requirements under Section 6.3.3(C);
  - (5) Waiver of a neighborhood meeting by the Director under Section 6.3.2;
  - (6) Establishment of Development Review Fees by the City Manager under Section 6.3.3(D), adopted administratively and not by Council resolution;
  - (7) The issuance of a Stockpiling Permit under Section 6.21.3.
  - (8) The issuance of a Development Construction Permit under Section 6.21.3.
  - (9) The issuance of a Building Permit under Section 6.13.3.
  - (10) Decisions of the City Engineer made under the provisions of Section 5.4.2 of this Land Use Code. Appeals from administrative decisions on a project development plan or a final plan shall be governed by Divisions 6.6 or 6.7, 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 6.3.10 (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.
  - (11) The issuance, denial, modification or revocation of an Off-Site Construction Staging License under Section 6.21.4.

### 6.18.2 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 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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 Comprehensive 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**(Review of Applications): Applicable.
- (E) **Step 5**(Staff Report): Applicable.
- (F) **Step 6**(Notice): Only Section 6.3.6(A) applies, except that "14 days" shall be changed to "7 days," everywhere it occurs in Section 6.3.6. Section 6.3.6(B)-(D) shall not apply.
- (G) **Step 7(A)**(Decision Maker): Not applicable, and in substitution for Section 6.3.7(A), the Land Use Review Commission, 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 eight hundred (800) 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.

## DIVISION 6.19 VESTED RIGHTS AND TAKINGS DETERMINATIONS

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### 6.19.1 PURPOSE

The purpose of this Division is to provide a procedure for relief, where appropriate, to persons who claim that the application of this 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 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.

### 6.19.2 ADMINISTRATIVE PROCESS/HEARING OFFICER

- (A) 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 Code.

- (B) An owner or developer of real property in the City who claims such an exemption on the basis of development rights that have vested under the criteria contained in Section 6.19.10 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 they have been deprived of "all economically beneficial use" of their property, that a condition imposed by the City does not have a "reasonable nexus" to the potential impacts of their development, that such a condition is not "roughly proportional" to the potential impacts of their development, or that actions taken by the City under this Code have resulted in a deprivation of due process.
- (C) 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:

### 6.19.3 APPLICATION

An Application for vested rights determination or takings determination shall be submitted to 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 6.19.10.
- (D) for Takings Determination, all factual information and knowledge reasonably available to the owner and applicant to address the criteria established in Section 6.19.11, 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 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;
    - (a) evidence of any investments made by the owner to improve such property, the date the improvements were made, and the costs of the improvements;
    - (b) all appraisals, studies and any other supporting evidence related to such property;
    - (c) any actions taken by the City related to such property;

- (d) 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.

#### **6.19.4 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 they determine 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.

#### **6.19.5 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 6.19.10 or Section 6.19.11, 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 6.19.10 or 6.19.11, 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 6.19.6, 6.19.7, and 6.19.8. 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 6.19.10 or Section 6.19.11, 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 6.19.6 through 6.19.9 below.

#### **6.19.6 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 6.19.10 or Section 6.19.11, 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 6.19.10 or Section 6.19.11, 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.

#### 6.19.7 ISSUANCE OF DETERMINATION BY HEARING OFFICER

Within thirty (30) working days after the completion of the public hearing under Section 6.19.6, 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 6.19.10 or Section 6.19.11, 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 6.19.10 or Section 6.19.11, 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.

#### 6.19.8 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 6.19.10 or Section 6.19.11, whichever is applicable.

#### 6.19.9 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.

#### 6.19.10 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 Code. It is the express intent of the City to require application of the provisions of this Division 6.19 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 their development without regard to the otherwise applicable provisions of this Code by reason of: (A) the provisions of Title 24, Article 68, C.R.S.; (B) Section 6.3.11 of this 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.

#### 6.19.11 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.

## DIVISION 6.20 PREEMPTION USES

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### 6.20.1 PREEMPTION USES

Any use that is not permitted under the provisions of Article 4, but that must be allowed because of preemption by a sovereign jurisdiction or because of a court order, shall be processed as a Planning and Zoning Commission Review (Type 2 review) and shall be approved, with or without conditions, as necessary to ensure that such use complies with all applicable Land Use Code standards as are or may reasonably be interpreted to be applicable to such use, provided that such standards are not preempted or ordered by a court not to be applied.

## DIVISION 6.21 PROJECT STOCKPILING PERMITS, DEVELOPMENT CONSTRUCTION PERMITS AND OFF-SITE CONSTRUCTION STAGING

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### 6.21.1 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.
- (C) The purpose of requiring an off-site construction staging licensed under this Section 6.21.4 is to address the compatibility of off-site construction staging with the zone districts in which they are located, mitigate the impact off-site construction staging on adjacent parcels, the neighborhoods and environment, and ensure the health and safety of off-site construction staging.

### 6.21.2 APPLICABILITY

- (A) A stockpiling permit shall be required for stockpiling soil or similar inorganic material upon property that is not subject to the provisions of a valid development construction permit.

- (B) 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.
- (C) Use of any parcel for off-site construction staging shall be permitted only in accordance with the provisions of an off-site construction staging license issued pursuant to this Section 6.21.4.

### 6.21.3 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 6.3 and Steps (1) through (12) of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, 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** (Review of Applications): 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 Criteria Manual and the dust control measures contained in the Dust Control Manual to the extent required therein.
  - 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, including, without limitation, the erosion control standards as contained in the Stormwater Criteria Manual and the dust control measures contained in the Dust Control Manual to the extent required therein.

- (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 6.18; 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.

#### 6.21.4 OFF-SITE CONSTRUCTION STAGING

- (A) **Location.** Subject to issuance of and compliance with an off-site construction staging license under subsection (D) below, off-site construction staging shall be permitted in specified zone districts as listed in Article 4.
- (B) **Off-site construction staging license.**
- (1) An application for an off-site construction staging license shall be accompanied by a site and grading plan that shows the following for the site on which the off-site construction staging is to occur:
    - (a) Existing grade contours of the site and of adjoining properties;
    - (b) Locations of different activities to be located on the site;

- (c) List of materials and equipment to be stored on the site, including the means and methods to safely store any hazardous material or dangerous equipment;
  - (d) Any proposed grading necessary to stabilize the site;
  - (e) Proposed erosion control measures and storm drainage control measures to prevent wind and water erosion, drainage impacts and tracking mud onto streets;
  - (f) Flood ways and flood plains;
  - (g) Natural habitat and features;
  - (h) Fences;
  - (i) Restrooms;
  - (j) Existing trees;
  - (k) Existing easements and rights-of-way;
  - (l) Existing underground utilities;
  - (m) Other information necessary to describe the site;
  - (n) Traffic control plan reflecting means of ingress and egress to be used;
  - (o) Mitigation plan to address any adverse impacts to the site, or adjacent parcels, caused by the off-site construction staging during and after the staging; and
  - (p) Restoration and final site condition plan.
- (2) An off-site construction staging license shall be issued, with or without conditions, if the Director finds that the off-site construction staging:
- (a) is not detrimental to the public good; and
  - (b) will not cause substantial adverse impacts to the parcel on which it is located or adjacent parcels or the environment, with or without mitigation; and
  - (c) is located within a quarter (.25) of a mile of the construction or development site to be served by the off-site construction staging.
- (3) An off-site construction staging license issued hereunder shall expire eighteen (18) months after the date of issuance unless an extension is granted.
- (a) A six (6) month extension may be granted by the Director upon a finding that the conditions specified in Section 6.21.4(B)(2), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.
  - (b) The Director may further extend the license up to an additional twelve (12) months beyond the first six (6) month extension, for a maximum total of not more than thirty-six (36) months, if a neighborhood meeting for which the neighborhood is notified in compliance with Section 6.3.2 is conducted and the Director determines: the extension is not detrimental to the public good; and that the license conditions specified in Section 6.21.4(B)(2), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.
- (4) After expiration of an off-site construction staging license, at least four (4) consecutive months shall lapse before a new license is issued for the same parcel.
- (5) The Director may modify or revoke any off-site construction staging license issued by the City for any of the following:
- (a) After issuance of the license, the site or activities thereon are found to be out of compliance with the approved application or license, including any conditions to mitigate adverse impacts; or
  - (b) An adverse impact not previously anticipated at the time the license or license extension was issued is identified and such adverse impact cannot be adequately mitigated and/or is detrimental to the public good.

The Director shall inform the license holder in writing of the decision to modify or revoke the license and the reasons for same.

- (6) The license holder may appeal any decision denying, modifying or revoking an off-site construction staging license to the Zoning Board of Appeals pursuant to Section 6.14.
- (C) **Restoration of Site.** Within fifteen (15) days after expiration of the license, the license holder must have completed restoration of the site consistent with the approved restoration or final site condition plan included in the application.

## DIVISION 6.22 EXPANSIONS AND ENLARGEMENTS OF EXISTING BUILDINGS

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### 6.22.1 EXPANSIONS AND ENLARGEMENTS OF EXISTING BUILDINGS

- (A) **Expansions of Large Retail Establishments.** No addition to an existing large retail establishment which would increase the gross square feet of floor area of such establishment by fifty (50) percent or more, and no addition to a building which would create a large retail establishment and which would increase the gross square footage of floor area of such building by fifty (50) percent or more, shall be approved for construction or occupancy unless the entire large retail establishment affected by the new construction has been determined by the Planning and Zoning Commission to be in compliance with the building standards for Section 5.15.3 Large Retail Establishments contained in this code whether the existing large retail establishment or building was approved under prior law or under this Land Use Code.
- (B) **Expansions and Enlargements of Other Nonresidential Buildings and of Multi-unit Dwellings.** Any proposal for the enlargement or expansion of a nonresidential building that was constructed pursuant to a basic development review, or use-by-right review under prior law, and that is not otherwise regulated by the above subparagraph (A) of this Section, and any proposal for the enlargement or expansion of a multi-unit dwelling that was constructed pursuant to a basic development review, or use-by-right review under prior law, must comply with the requirements contained in this code.
- (C) **Expansions and Enlargements of Single-Family Dwellings, Two-Family Dwellings and Accessory Buildings.** Any proposal for the enlargement or expansion of a single-unit dwelling, two-unit dwelling or accessory building shall be subject to Building Permit review in accordance with standards of this code.

## DIVISION 6.23 ABANDONMENT PERIOD/RECONSTRUCTION OF PERMITTED USES

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### 6.23.1 PERMITTED USES: ABANDONMENT PERIOD/RECONSTRUCTION OF PERMITTED USES

- (A) If active operations are not carried on in a permitted use during a period of twenty-four (24) consecutive months, or with respect to seasonal overflow shelters sixty (60) consecutive months, the building, other structure or tract of land where such permitted use previously existed shall thereafter be re-occupied and used only after the building or other structure, as well as the tract of land upon which such building or other structure is located, have, to the extent reasonably feasible, been brought into compliance with the applicable development standards contained in Articles 3 and 5 and the applicable district standards contained Articles 2 and 4 of this Code as determined by the Director. This requirement shall not apply to any permitted use conducted in a building that was less than ten (10) years old at the time that active operations ceased. Intent to resume active

operations shall not affect the foregoing.

- (B) A building or structure containing a permitted use which has been damaged by fire or other accidental cause or natural catastrophe may be reconstructed to its previous condition, provided that such work is started within twelve (12) months of the date of the occurrence of such damage. In the event such work is started later than twelve (12) months from the date of the occurrence, then the building or structure may be reconstructed, provided that, to the extent reasonably feasible, such reconstruction complies with the applicable standards of Articles 3 and 5 and Articles 2 and 4 of this Code as determined by the Director.
- (C) Any determination of the Director under this Section shall constitute a building permit decision and as such shall be appealable as a building permit under Section 6.18.1(B)9.

## DIVISION 6.24 INTERPRETATIONS

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### 6.24.1 AUTHORITY

The Director shall have the authority to make all interpretations of the text of this Land Use Code and the boundaries of zone districts on the zoning map.

### 6.24.2 INITIATION

An interpretation may be requested by any person.

### 6.24.3 PROCEDURES

- (A) **Submission of request for interpretation.** before an interpretation may be provided by the Director, a request for interpretation must be submitted to the Director in a form established by the Director.
- (B) **Determination of Sufficiency.** After receipt of a Request for Interpretation, the Director shall determine whether the request is complete, specific, clear and ready for review. If the Director determines that the request is not complete, they shall serve a written notice on the applicant specifying the deficiencies. The Director shall take no further action on the Request for Interpretation until the deficiencies are remedied.
- (C) **Rendering of Interpretation.** After the Request for Interpretation has been determined to be sufficient, the Director shall review and evaluate the request in light of the terms and provisions of this Land Use Code and/or the Zoning Map, whichever is applicable, and render an interpretation. The Director may consult with the City Attorney and other City departments before rendering an interpretation.
- (D) **Form.** The interpretation shall be in writing and shall be delivered to the applicant. Interpretations that are not in writing shall have no force or effect. Interpretations shall have no precedential value and shall be limited in their application to the property, if any, identified in the interpretation.
- (E) **Official Record.** The Director shall maintain an official record of all interpretations in the Department. Such official record shall be available for public inspection during normal business hours.
- (F) **Appeal.** Appeals of any interpretation under this Section shall be made only in accordance with Division 6.18.

### 6.24.4 RULES FOR INTERPRETATION OF BOUNDARIES

Interpretations regarding boundaries of zone districts on the Zoning Map shall be made in accordance with the provisions of this section.

- (A) **District Regulations Extend to all Portions of Districts Surrounded by Boundaries.** Except as otherwise specifically provided, a district symbol or name shown within district boundaries on the Zoning Map indicates that district standards and other district regulations pertaining to the district extend throughout the whole area surrounded by the boundary line.
- (B) **Boundaries.** Where uncertainty exists as to the boundaries of zone districts as shown on the Zoning Map, the following rules shall apply:
- (1) Boundaries indicated as approximately following the centerlines of dedicated streets, highways, alleys or rights-of-way shall be construed as following such centerlines as they exist on the ground, except where such interpretation would change the zoning status of a lot or parcel, in which case the boundary shall be interpreted in such a manner as to avoid changing the zoning status of any lot or parcel. In case of a street vacation, the boundary shall be construed as remaining in its location except where ownership of the vacated street is divided other than at the center, in which case the boundary shall be construed as moving with the ownership.
  - (2) Boundaries indicated as approximately following lot lines, public property lines and the like shall be construed as following such lines; provided, however, that where such boundaries are abutting a dedicated street, alley, highway or right-of-way and the zoning status of the street, highway, alley or right-of-way is not indicated, the boundaries shall be construed as running to the middle of the street, highway, alley or right-of-way. In the event of street vacation, interpretation shall be as provided in (1) above.
  - (3) Boundaries indicated as approximately following city limits shall be construed as following such city limits.
  - (4) Boundaries indicated as following the centerlines of streams, canals or other bodies of water shall be construed as following such centerlines. In case of a change of the course or extent of bodies of water, the boundaries shall be construed as moving with the change, except where such movement would change the zoning status of a lot or parcel; and in such case the boundary shall be interpreted in such a manner as to avoid changing the zoning status of any lot or parcel.
  - (5) Boundaries indicated as entering any body of water but not continuing to intersect with other zoning boundaries or with the limits of jurisdiction of the city shall be construed as extending in the direction in which they enter the body of water to the point of intersection with other zoning boundaries or with the limits of city jurisdiction.
  - (6) Boundaries indicated as following physical features other than those listed above shall be construed as following such physical features, except where such interpretation from mapped location would change the zoning status of a lot or parcel, in which case the boundary shall be interpreted in such manner as to avoid changing the zoning status of any lot or parcel.
  - (7) Boundaries indicated as parallel to or extensions of features indicated in (1) through (6) above shall be construed as being parallel to or extensions of such features.
  - (8) Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map on the page of the Zoning Map showing the property in question.

#### 6.24.5 CASES NOT COVERED BY SECTION 6.24.4

In cases not covered by Section 6.24.4, or where the property or street layout existing on the ground is at variance with that shown on the Zoning Map, the interpretation of the Zoning Map shall be in accordance with the purpose and intent of this Land Use Code and the City Plan Principles and Policies.

#### 6.24.6 DIVISION OF A LOT OF RECORD BY A BOUNDARY

Where a district boundary divides a lot of record at the time the boundary was established, and where the division makes impractical the reasonable use of the lot, the boundary may be adjusted by the Director in either direction not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

#### 6.24.7 NONREGULATED LAND TRANSFERS

- (A) Abutting portions of lots may be transferred to adjoining property owners without being subject to subdivision requirements; provided, however, that no such transfer shall imply or confer any right to develop, or create a new lot, create a nonconformity of any nature whatsoever, or circumvent the intent or requirements of this Land Use Code. (This type of transfer is commonly known as a "lot line adjustment" even though the legal lot lines are not changed and cannot be changed except through replatting.)
- (B) Notwithstanding any provision of Colorado law to the contrary, any parcel of land, whether larger or smaller than thirty-five (35) acres, may be conveyed by metes and bounds description or by other usual and customary method of land description, without being subject to subdivision requirements; provided, however, that no such conveyance shall imply or confer any right to develop, or create a new lot upon which development can occur unless such development has, prior to the conveyance, been approved in accordance with this Land Use Code or prior law and provided further that such conveyance shall not be made if it creates nonconformities of any nature whatsoever, or circumvents the intent or requirements of this Land Use Code.

#### 6.24.8 CONTINUITY OF ZONING

In the event any unincorporated property within the County shall hereafter become incorporated into the City, to ensure that there shall be no lapse of zoning, then, if the property is not zoned otherwise by the City, it shall be automatically zoned into the T-Transition zone district.

#### 6.24.9 RULES OF CONSTRUCTION FOR TEXT

In construing the language of this Land Use Code, the rules set forth in Section 1-2 of the City Code and this Section shall be observed unless such construction would be inconsistent with the manifest intent of the Council as expressed in this Land Use Code or in City Plan Principles and Policies. The rules of construction and definitions set forth herein shall not be applied to any express provisions excluding such construction, or where the subject matter or context of such section is repugnant thereto. In the event of a conflict between these rules of construction and the rules of construction established in Section 1-2 of the City Code, these rules shall control.

- (A) **Generally.** All provisions, terms, phrases and expressions contained in the Land Use Code shall be so construed in order that the intent and meaning of the Council may be fully carried out. Terms used in the Land Use Code, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of this state for the same terms.

In the interpretation and application of any provision of the Land Use Code, such provision shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the Land Use Code imposes greater restrictions upon the subject matter than another provision of the Land Use Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling. In other words, the more stringent controls over the less stringent.

The definitions are intended to be generally construed within the context of the Land Use Code, except as shall be specified by the term itself within a given context for a select section of the Land Use Code.



- (B) **Text.** In case of any difference of meaning or implication between the text of the Land Use Code and any figure or diagram, the text shall control.
- (C) **Conjunctive/Disjunctive.** Unless the context clearly indicates the contrary, the following words shall be interpreted as follows:
  - (1) "And" indicates that all connected words or provisions apply.
  - (2) "Or" or "and/or" indicates that the connected words or provisions may apply singly or in any combination.
  - (3) "Either...or" indicates that the connected words or provisions apply singly but not in combination.
- (D) **Day.** The word "day" shall mean a calendar day.
- (E) **Delegation of Authority.** Whenever a provision appears requiring the Director or some other City officer or employee to do some act or perform some duty, such provision shall be construed as authorizing the Director or other officer or employee to designate, delegate and authorize another City employee to perform the required act or duty unless the terms of the provision specify otherwise. With respect to the review of development applications eligible for Type 1 review, in addition to or in substitution for delegation to City employees as above authorized, the Director may engage the services of an attorney with experience in land use matters.
- (F) **Exhibits.** Any exhibit to this Code which is taken from another regulation of the City shall be automatically amended upon the making of any amendment to the document of origin, and the Director shall promptly replace such exhibit with the new amended exhibit.
- (G) **Include.** The word "including," "includes," "such as," "additional" or "supplemental" is illustrative and is not intended as an exhaustive listing, unless the context clearly indicates the contrary.
- (H) **Headings.** Article, division, section and subsection headings contained in the Land Use Code are for convenience only and do not govern, limit, modify or in any manner affect the scope, meaning or intent of any portion of the Land Use Code.
- (I) **Shall, May, Should.** The word "shall," "will" or "must" is mandatory; "may" is permissive, "should" is suggestive but not mandatory.
- (J) **Week.** The word "week" shall be construed to mean seven (7) calendar days.
- (K) **Written or In Writing.** The term "written" or "in writing" shall be construed to include any representation of words, letters or figures whether by printing or other form or method of writing.
- (L) **Year.** The word "year" shall mean a calendar year, unless a fiscal year is indicated or three hundred sixty-five (365) calendar days is indicated.

## DIVISION 6.25 AMENDMENT TO TEXT OF CODE AND/OR ZONING MAP

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### 6.25.1 PURPOSE

The purpose of this division is to provide requirements for changing the text of this code or the boundaries of the zone districts shown on the zoning map.

### 6.25.2 APPLICABILITY

Any and all amendments to the text of this code and any and all changes to the zoning map must be processed in accordance with this division. Only the Council may, after recommendation of the Planning and Zoning Commission, adopt an ordinance amending the text of this code or the Zoning Map in accordance with the provisions of this Division.

### 6.25.3 INITIATION

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

### 6.25.4 TEXT AND MAP AMENDMENT REVIEW PROCEDURES

An amendment to the text of this Code or an amendment to the Zoning Map may be approved by the City Council by ordinance after receiving a recommendation from the Planning and Zoning Commission. Any such proposed amendment shall be processed through a public hearing before the Planning and Zoning Commission, which hearing shall be held either prior to City Council consideration of the proposed amendment or between first and second readings of the ordinance approving the amendment which will provide a recommendation to the City Council. (See Steps 1 through 12 below). 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. On a proposal for a text amendment, the Planning and Zoning Commission shall hold a hearing, which hearing shall be held either prior to City Council consideration of the proposed amendment or between first and second readings of the ordinance approving the 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 Commission 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. In the event that a protest is filed under the provisions of Section 31-23-305, C.R.S., any protested zoning change shall not become effective except by the favorable vote of a simple majority of the Councilmembers present and voting as provided in Article II, Section 11 of the City Charter. (See Steps 8 and 9 below).

The Planning and Zoning Commission 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 6.3.1 through 6.3.12, 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 Code and/or the Zoning Map as described in the development application submittal Comprehensive 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** (Review of Applications): 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 Commission hearing shall be given in accordance with Section 2-74 of the City Code. (However, for text amendments proposed pursuant to Division 6.9, subsection 6.3.6(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)*. Subsection 6.3.6(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. Subsections 6.3.6(B), (C) and (D) shall apply, and the published notice given pursuant to subsection 6.3.6(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)*. Subsection 6.3.6(C) shall apply. Subsections 6.3.6(A), (B) and (D) shall not apply.
- (G) **Step 7(A)** (Decision Maker): Planning and Zoning Commission 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 Commission's decision shall be in the form of a recommendation, not a decision, to Council. In making its recommendation, the Planning and Zoning Commission 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*. Amendments to the text of this 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*. 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 Commission 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*. In determining whether to recommend approval of any such proposed amendment, the Planning and Zoning Commission 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.

## DIVISION 6.26 ENFORCEMENT

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### 6.26.1 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.

### 6.26.2 PERMITS AND CERTIFICATES OF OCCUPANCY

- (A) No building shall be erected, moved or structurally altered unless a Building Permit has been issued by the 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 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 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.

### 6.26.3 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.

With regards to inspections of oil and gas facilities, the operator of any oil and gas facility or oil and gas pipeline that has been inspected shall pay to the City the costs for such inspection within sixty (60) days of receiving an invoice for the cost of the inspection. Inspections of oil and gas facilities and oil and gas pipelines may be conducted by City staff or non-City inspectors authorized by the City to conduct such inspections.

### 6.26.4 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

Code, or any agent, lessee, employee, representative, successor or assign thereof) who violates this 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 Section 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 5.14.1 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 Section 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 5.14.1 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.

#### 6.26.5 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.

#### 6.26.6 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.

## DIVISION 6.27 GUIDELINES AND REGULATIONS FOR AREAS AND ACTIVITIES OF STATE INTEREST

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### SECTION 6.27.1 INTRODUCTORY AND GENERAL PROVISIONS

- 6.27.1.1 Title and Citation
- 6.27.1.2 Purpose and Findings; Scope
- 6.27.1.3 Authority
- 6.27.1.4 Applicability
- 6.27.1.5 Permit Required; Allowed Use Not Required; Stay On Issuance of Easements and Other Permits
- 6.27.1.6 Relationship of Regulations to other City, State and Federal Requirements
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### SECTION 6.27.2 PROCEDURE FOR DESIGNATION OF MATTERS OF STATE INTEREST

- 6.27.2.1 City Council to Make Designations
- 6.27.2.2 Public Hearing Required
- 6.27.2.3 Notice of Public Hearing; Publication
- 6.27.2.4 Matters to be Considered at Designation Hearing
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### SECTION 6.27.3 DESIGNATED ACTIVITIES OF STATE INTEREST

- 6.27.3.1 Designated Areas and Activities of State Interest

### SECTION 6.27.4 EXEMPTIONS

- 6.27.4.1 Exemptions

### SECTION 6.27.5 PERMIT AUTHORITY

- 6.27.5.1 Permit Authority Established

### SECTION 6.27.6 PERMIT APPLICATION PROCEDURES

- 6.27.6.1 Preliminary Design Review
- 6.27.6.2 Application Fee; Financial Security Waiver
- 6.27.6.3 Pre-Application Area or Activity Review
- 6.27.6.4 FONSI Public Comment Period
- 6.27.6.5 Determination of Applicability of Regulations- FONSI
- 6.27.6.6 Neighborhood Meeting
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- 6.27.6.10 Simultaneous Processing of Associated Development Applications
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- 6.27.6.12 Permit Decision Making Procedures
- 6.27.6.13 Conduct of Permit Hearings
- 6.27.6.14 Approval or Denial of Permit Application
- 6.27.6.15 Issuance of Permit, Conditions

## **SECTION 6.27.7 COMMON REVIEW STANDARDS**

- 6.27.7.1 Review Standards for All Applications

## **SECTION 6. 27.8 SITE SELECTION AND CONSTRUCTION OF MAJOR NEW DOMESTIC WATER AND SEWAGE TREATMENT SYSTEMS AND MAJOR EXTENSIONS OF SUCH SYSTEMS**

- 6.27.8.1 Applicability
- 6.27.8.2 Purpose and Intent
- 6.27.8.3 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions

## **SECTION 6.27.9 SITE SELECTION OF ARTERIAL HIGHWAYS AND INTERCHANGES AND COLLECTOR HIGHWAYS**

- 6.27.9.1 Applicability
- 6.27.9.2 Purpose and Intent
- 6.27.9.3 Specific Review Standards Specific Review Standards for Arterial Highway, Interchange or Collector Highway Projects

## **SECTION 6.27.10 FINANCIAL SECURITY**

- 6.27.10.1 Financial Security

## **SECTION 6. 27.11 SUSPENSION OR REVOCATION OF PERMITS**

- 6.27.11.1 Suspension or Revocation of Permits

## **SECTION 6.27.12 REVIEW, RENEWAL, AMENDMENT, TRANSFER**

- 6.27.12.1 Annual Review; Progress Reports
- 6.27.12.2 Permit Renewal
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- 6.27.12.4 Minor Revision Not Constituting a Material Change
- 6.27.12.5 Transfer of Permits
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## **SECTION 6.27.13 ENFORCEMENT**

- 6.27.13.1 Enforcement

## SECTION 6.27.1 INTRODUCTORY AND GENERAL PROVISIONS

- 6.27.1.1 Title and Citation
- 6.27.1.2 Purpose and Findings; Scope
- 6.27.1.3 Authority
- 6.27.1.4 Applicability
- 6.27.1.5 Permit Required; Allowed Use Not Required; Stay On Issuance of Easements and Other Permits
- 6.27.1.6 Relationship of Regulations to other City, State and Federal Requirements
- 6.27.1.7 Maps
- 6.27.1.8 Severability
- 6.27.1.9 Definitions

### SECTION 6.27.1.1 TITLE AND CITATION

The various regulations constituting Sections 6.27.1 through 6.27.13 of Division 6.27 of Article 6 are titled and may be cited as the “Guidelines and Regulations for Areas and Activities of State Interest of the City of Fort Collins,” or “Regulations.”

### SECTION 6.27.1.2 PURPOSE AND FINDINGS

- (A) **Purpose.** The general purpose of these Regulations is to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Section 24-65.1-101, et seq., C.R.S. The specific purposes are to:
- (1) Protect public health, safety, welfare, the environment, and historic, cultural, and wildlife resources;
  - (2) Implement the vision and policies of the City’s Comprehensive Plan;
  - (3) Ensure that infrastructure, growth and development in the City occur in a planned and coordinated manner;
  - (4) Protect natural, historic, and cultural resources; protect and enhance natural habitats and features of significant ecological value as defined in Section 5.6.1; protect air and water quality; reduce greenhouse gas emissions and enhance adaptation to climate change;
  - (5) Promote safe, efficient, and economic use of public resources in developing and providing community and regional infrastructure, facilities, and services;
  - (6) Regulate land use on the basis of environmental, social and financial impacts of proposed development on the community and surrounding areas; and
  - (7) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, resources and other assets.
- (B) **Findings.** The City Council of the City of Fort Collins finds that:



- (1) The notice and public hearing requirements of Section 24-65.1-404, C.R.S., have been followed in adopting these Regulations;
- (2) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within the City;
- (3) These Regulations are necessary to protect the public health, safety, welfare, the environment, and historic, cultural and wildlife resources;
- (4) These Regulations apply to the entire area within the incorporated municipal boundaries of the City; and
- (5) These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest which have been or may be designated by the City Council.

### SECTION 6.27.1.3 AUTHORITY

These Regulations are authorized by, inter alia, Fort Collins City Charter Article I, Section 4, Colorado Constitution Article XX, and Section 24-65.1-101, et seq., C.R.S.

### SECTION 6.27.1.4 APPLICABILITY

These Regulations shall apply to all proceedings and decisions concerning identification, designation, and regulation of any development in any area of state interest or of any activity of state interest that has been or may hereafter be designated by the City Council.

- (A) To the extent a development plan could be reviewed under these Regulations and also as a Site Plan Advisory Review, Overall Development Plan, Project Development Plan, Final Plan, Basic Development Review, or Minor or Major Amendment, or other site-specific development plan, such development plan shall only be reviewed under these Regulations unless the Director issues a FONSI pursuant to Section 6.27.6.5 or an exemption as set forth in Section 6.27.4.1 applies, in which case the development plan shall instead be reviewed under the other applicable review process.
- (B) Development plans that have completed Site Plan Advisory Review pursuant to the Land Use Code prior to the effective date of these Regulations and been denied by the Planning and Zoning Commission shall be subject to these Regulations unless a FONSI is issued pursuant to Section 6.27.6.5 or an exemption applies pursuant to Section 6.27.4.1.
- (C) Certain work exempt from the definition of development set forth in Article 7 may be subject to these Regulations as stated in the definition of development and these Regulations.
- (D) City Council has designated as an activity of state interest subject to these Regulations, the Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and the Major Extension of Existing Domestic Water and Sewage Treatment Systems. Definitions for major new domestic water systems and major new sewage treatment systems and major extensions of each are set forth in Section 6.27.1.9.
- (E) City Council has also designated as an activity of state interest subject to these Regulations, the Site Selection of Arterial Highways and Interchanges and Collector Highways. Definitions for arterial highways, interchanges and collector highways are set forth in Section 6.27.1.9.

### SECTION 6.27.1.5 PERMIT REQUIRED; ALLOWED USE NOT REQUIRED; STAY ON ISSUANCE OF EASEMENTS AND OTHER PERMITS

(A) Permit Required.

Other than as stated in Sections 6.27.1.4, 6.27.4.1, and 6.27.6.5, no person may conduct a designated activity of state interest or develop in a designated area of state interest within the City without first obtaining a permit or a permit amendment under these Regulations.

(B) Allowed Use in Zone District Not Required.

(1) Proposed development plans subject to these Regulations shall not be considered as an allowed use in any zone district unless a permit has been issued pursuant to these Regulations. However, as described in Section 6.27.4.1(A), any fully constructed and operating project or facility that was lawfully developed under prior law but would be subject to these Regulations if it were currently proposed may continue to operate pursuant to Division 6.16 as a nonconforming use or structure.

(2) A permit pursuant to these Regulations may be issued for a development plan that is to be located in one or more zone districts regardless of whether the zone district or districts list the use proposed by the development plan as an allowed use or otherwise prohibit such use.

(C) Stay on Issuance of Easements and Other Permits.

No easements on City-owned real property and no permits issued by the City other than under these Regulations, including but not limited to flood plain and right-of-way encroachment permits, shall be granted for any development plan subject to these Regulations without such development plan having first obtained a permit pursuant to these Regulations or as may otherwise allowed under these Regulations.

### SECTION 6.27.1.6 RELATIONSHIP OF REGULATIONS TO OTHER CITY, STATE AND FEDERAL REQUIREMENTS

(A) Whenever these Regulations are found to be inconsistent with any other Land Use Code provision, the more stringent standard or requirement shall control.

(B) In the event these Regulations are found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Section 24-65.1-202, C.R.S., the statutory criteria shall control.

(C) In the event these Regulations are found to be more stringent than the statutory criteria for administration of matter of state interest set forth in Sections 24-65.1-202 and 24-65.1-204, C.R.S., these Regulations shall control pursuant to the authority of Section 24-65.1-402 (3), C.R.S.

(D) Unless otherwise specified in these Regulations, these Regulations are intended to be applied in addition to, and not in lieu of, any other City regulations or policies, including, without limitation, the Land Use Code, Natural Areas Easement Policy, and regulations regarding

flood plain and encroachment permits as set forth in the Code of the City of Fort Collins, all as currently in effect or hereafter amended.

- (E) Permit requirements included in these Regulations shall be in addition to and in conformance with all applicable local, state, and federal water quality and air quality, and environmental laws, rules, and regulations.
- (F) Review or approval of a development plan by a federal or state or local agency does not substitute for a permit under these Regulations. Any applicant for a permit under these Regulations that is also subject to the regulations of other agencies may request in writing that the City application and review process be coordinated with that of the other agency or agencies. If practicable, the Director, in their discretion, may attempt to eliminate redundant application submittal requests and may coordinate City review of the application with that of other agencies as appropriate. To the extent the Director determines that the City's authority is preempted with regards to any requirement under these Regulations, such requirement shall not be applicable to the proposed development plan to the extent of the preemption.
- (G) These Regulations shall not be construed as modifying or amending existing laws or court decrees with respect to the determination and administration of water rights. To the extent the Director determines that any requirement under these Regulations would modify or amend existing laws or court decrees with respect to the determination and administration of water rights, such requirement shall not be applicable to the development plan to the extent of the modification or amendment of existing laws or court decrees.

#### SECTION 6.27.1.7 MAPS

- (A) Each map referred to in designations and regulations for any particular matter of state interest adopted by the City Council is deemed adopted therein as if set out in full.
- (B) Maps referred to in any such designations and regulations shall be available for inspection in the offices of the Community Development and Neighborhood Services Department.

#### SECTION 6.27.1.8 SEVERABILITY

If any division, section, clause, provision, or portion of these Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

#### SECTION 6.27.1.8 DEFINITIONS

The words and terms used in these Regulations shall have the meanings set forth below subject to Section 6.24.9 regarding the rules of construction for text. The definitions set forth below are specifically applicable to this Division 27 and other Land Use Code provisions referencing Division 27, including Division 28, and are not otherwise generally applicable to the Land Use Code.

*Adequate security* shall mean such funds or funding commitments, whether in the form of negotiable securities, letters of credit, bonds or other instruments or guarantees, as are deemed sufficient, in the Director's discretion, and in a form approved by the City Attorney, to guarantee performance of the act, promise, permit condition or obligation to which it pertains.

*Aquifer recharge area* shall mean any area where surface water may infiltrate to a water-bearing stratum of permeable rock, sand or gravel. This definition also applies to wells used for disposal of wastewater or toxic pollutants.

*Arterial highway* shall mean any limited access highway that is part of the federal-aid interstate system, any limited access highway constructed under the supervision of the Colorado Department of Transportation, or any private toll road constructed or operated under the authority of a private toll road company. Arterial highway does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

*Collector highway* shall mean a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers, and constructed under guidelines and standards established by, or under the supervision of, the Colorado Department of Transportation. Collector highway does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

*Collector sewer* shall mean a network of pipes and conduits through which sewage flows to an interceptor main and/or a sewage treatment plant.

*Cumulative impacts* shall mean the impact on the environment and cultural impacts which result from the incremental impact of the development plan when added to other present, and reasonable future actions.

*Designation* shall mean only that legal procedure specified by Section 24-65.1-401, et seq., C.R.S., and carried out by the City Council.

*Disproportionately impacted community or DIC* shall mean a community that is in a census block group where the proportion of households that are low income, that identify as minority, or that are housing cost-burdened is greater than 40% as such terms are defined in Section 24-4-109(2)(b)(II), C.R.S., as amended.

*Domestic water and sewage treatment system* shall mean a wastewater treatment facility, water distribution system, or water treatment facility, as defined in Section 25-9-102(5), (6) and (7), C.R.S., and any system of pipes, structures and facilities through which wastewater is collected for treatment.

*Finding of no significant impact (or FONSI)* shall mean the decision by the Director as to whether a potential impact is not significant based on the scale and context of the proposed development plan as well as the magnitude, duration or likelihood of an impact occurring.

*High priority habitat* shall mean habitat areas identified by City Natural Areas or Colorado Parks and Wildlife where measures to avoid, minimize, and mitigate impacts to wildlife have been identified to protect breeding, nesting, foraging, migrating, or other uses by wildlife. Maps showing, and spatial data identifying, the individual and combined extents of the high priority habitats are provided by Colorado Parks and Wildlife and City Natural Areas.

*Highways* shall mean state and federal highways.

*Historic and cultural resource* shall mean a site, structure, or object, including archeological features, located on a lot, lots, or area of property and is (1) designated as a Fort Collins landmark; (2) a contributing resource to a designated Fort Collins landmark district; (3) designated on the State Register of Historic Properties or National Register of Historic Places; or (4) determined to be eligible for designation as a Fort Collins landmark.

*Impact* shall mean the direct or indirect negative effect or consequence resulting from development that may or may not be avoidable or fully mitigated.

*Impact area* shall mean the geographic areas within the City, including the development site, in which any significant impacts are likely to be caused by the proposed development plan.

*Interceptor main* shall mean a pipeline that receives wastewater flows from collector sewers to a wastewater treatment facility or to another interceptor line or meeting other requirements of the Colorado Department of Public Health and Environment to be classified as an interceptor.

*Interchange* shall mean the intersection of two or more highways, roads or streets, at least one of which is an arterial highway or toll road where there is direct access to and from the arterial highway or toll road.

*Major new sewage system* shall mean:

- (1) A new wastewater treatment plant;
- (2) A new lift station; or
- (3) An interceptor main or collector sewer used for the purposes of transporting wastewater that meets one or more of the following criteria:
  - (a) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or
  - (b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.

*Major new domestic water system* shall mean:

- (1) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses; or
- (2) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained that will be used directly or by trade, substitution, augmentation, or exchange for water that will be used for human consumption or household use;

And all or part of a system described in (1) or (2) above meets one or more of the following criteria:

- (a) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or

- (b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.

In determining whether a proposed development plan is a major new domestic water supply system, the Director may consider water rights decrees, pending water rights applications, intergovernmental agreements, treaties, water supply contracts and any other evidence of the ultimate use of the water for domestic, human consumption or household use. Domestic water supply systems shall not include that portion of a system that serves agricultural customers, irrigation facilities or stormwater infrastructure.

*Major extension of an existing domestic water treatment system* shall mean the expansion of an existing domestic water treatment plant or capacity for storage that will result in a material change, or the extension or upgrade of existing transmission mains, distribution mains, or new pump stations that will result in a material change. Major extension of an existing domestic water treatment system shall exclude the following:

- (1) Any maintenance, repair, adjustment;
- (2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;
- (3) A new pipeline or facility within an existing public right-of-way;
- (4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less; or
- (5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less.

*Major extension of an existing sewage treatment system* shall mean any modification of an existing wastewater treatment plant or lift station that will result in a material change, or any extension or upgrade of existing interceptor main or collector sewer that will result in a material change. Major extension of an existing sewage treatment system shall exclude the following:

- (1) Any maintenance, repair, adjustment;
- (2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;
- (3) A new pipeline or facility within an existing public right-of-way;
- (4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less;
- (5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or

- (6) Any sewage system facility that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

*Material change* shall mean any change in a development plan approved under these Regulations which significantly expands the scale, magnitude, or nature of the approved development plan or the significant impacts considered by the Permit Authority in approval of the original permit.

*Matter of state interest* shall mean an area of state interest or an activity of state interest or both.

*Mitigation* shall mean avoiding a significant impact or minimizing impacts by limiting the degree, magnitude, or location of the action or its implementation.

*Natural features* shall mean land area and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, wildlife, and view corridors which present vistas to mountains and foothills, water bodies, open spaces and other regions of principal environmental importance, provided that such natural features are identified on the City's Natural Habitats and Features Inventory Map.

*Permit* shall mean a permit issued under these Regulations to conduct and develop an activity of state interest or to engage in development in an area of state interest, or both.

*Permit Authority* shall mean the City Council or, with respect to matters delegated by these Regulations, the Director and the Planning and Zoning Commission, as established and further described in Section 6.27.5.1.

*Public right-of-way* shall mean an area dedicated to public use or impressed with an easement for public use which is owned or maintained by the City and is primarily used for pedestrian or vehicular travel for public utilities or other infrastructure. Right-of-way shall include, but not be limited to, the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking area and any other public way.

*Site selection of arterial highways and interchanges and collector highways* shall mean the determination of a specific corridor or facility location which is made at the conclusion of the corridor location studies in which:

- (1) Construction of an arterial highway, interchange, or collector highway is proposed; or
- (2) Expansion or modification of an existing arterial highway, interchange or collector highway is proposed that would result in either (a) or (b), or both as follows:
  - (a) An increase in road capacity by at least one (1) vehicle lane through widening or alternative lane configuration.
  - (b) Expansion or modification of an existing interchange or bridge.

*Transmission main* shall mean a domestic water supply system's line that is designed to transport raw or treated water from a water source to a water treatment plant, storage facility or distribution systems.

*Treatment System* shall mean either, or both, the water distribution system and wastewater collection system.

*Wastewater collection system* means a system of pipes, conduits, and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility. The term is defined in Section 25-9-102(4.9), C.R.S., and as amended.

*Wastewater treatment plant* shall mean a facility or group of units used for treatment of industrial or domestic wastewater or the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units discharges into state waters. Wastewater treatment plant specifically excludes individual wastewater disposal systems such as septic tanks or leach fields.

*Water distribution main* shall mean a domestic water supply system's pipeline that is designed to transport treated water from a transmission main to individual water customers through service laterals.

*Water distribution system* shall mean a network of pipes and conduits through which water is piped for human consumption or a network of pipes and conduits through which water is piped in exchange or trade for human consumption.

*Water diversion* shall mean removing water from its natural course or location or controlling water in its natural course or location by means of a control structure, canal, flume, reservoir, bypass, pipeline, conduit, well, pump or other structure or device or by increasing the volume or timing of water flow above its natural (pre-diversion) levels.

*Water treatment plant* shall mean the facilities within the domestic water supply system that regulate the physical, chemical or bacteriological quality of the water.

## SECTION 6.27.2 PROCEDURE FOR DESIGNATION OF MATTERS OF STATE INTEREST

- 6.27.2.1 City Council to Make Designations
- 6.27.2.2 Public Hearing Required
- 6.27.2.3 Notice of Public Hearing; Publication
- 6.27.2.4 Matters to be Considered at Designation Hearing
- 6.27.2.5 Adoption of Designation and Regulations
- 6.27.2.6 Effect of Notice of Designation – Moratorium until Final Determination
- 6.27.2.7 Mapping Disputes

### SECTION 6.27.2.1 CITY COUNCIL TO MAKE DESIGNATIONS

Designations and amendments of designations may be initiated in three ways:

- (A) The City Council may in its discretion designate and adopt regulations for the administration of any matter of state interest.
- (B) The Planning and Zoning Commission may on its own motion or upon City Council request, recommend the designation of matters of state interest to City Council. The City Council shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.
- (C) City staff may request that City Council designate an area or activity of state interest and adopt regulations for the administration of the matter designated. The City Council shall



decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.

#### SECTION 6.27.2.2 PUBLIC HEARING REQUIRED

The City Council shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof. Said hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing.

#### SECTION 6.27.2.3 NOTICE OF PUBLIC HEARING; PUBLICATION

- (A) The City shall prepare a notice of the designation hearing which shall include:
  - (1) The time and place of the hearing;
  - (2) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
  - (3) The telephone number and e-mail address where inquiries may be answered; and
  - (4) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included.
- (B) At least thirty (30) days, but no more than sixty (60) days before the public hearing, the City shall publish the notice in a newspaper of general circulation in the City and shall mail the notice to each of the following as deemed appropriate in the City's discretion:
  - (1) State and federal agencies; and
  - (2) Any local government jurisdiction that would be directly or indirectly affected by the designation.

#### SECTION 6.27.2.4 MATTERS TO BE CONSIDERED AT DESIGNATION HEARING

At the public hearing, the City Council shall receive into the public record:

- (A) Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including City staff;
- (B) Any documents that may be offered; and
- (C) The recommendation of the Planning and Zoning Commission.

#### SECTION 6.27.2.5 ADOPTION OF DESIGNATIONS AND REGULATIONS

- (A) City Council shall consider the following when determining whether to designate an area or activity to be of state interest:
  - (1) All testimony, evidence and documents taken and admitted at the public hearing;
  - (2) The intensity of current and foreseeable development pressures in the City;
  - (3) The matters and considerations set forth in any applicable guidelines or model regulations issued by the Colorado Land Use Commission and other State agencies; and

- (4) Reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.
- (B) Any City Council order designating an area or activity to be of state interest and the adoption of any regulations for the administration of an area or activity of state interest shall be by ordinance.
- (C) In the event the City Council finally determines that any matter is a matter of state interest within the City, it shall be the City Council's duty to designate such matter and adopt regulations for the administration thereof.
- (D) Each designation order adopted by the City Council shall:
  - (1) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated; and
  - (2) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

#### SECTION 6.27.2.6 EFFECT OF DESIGNATION – MORATORIUM UNTIL FINAL DETERMINATION

After a matter of state interest is designated, no person shall engage in development in such area and no such activity shall be conducted until the designation and regulations for such area or activity are finally determined as required by Section 24-65.1-404 (4), C.R.S.

#### SECTION 6.27.2.7 MAPPING DISPUTES

Where interpretation is needed as to the exact location of the boundary of any designated area and where there appears to be a conflict between a mapped boundary and actual field conditions, the City Council shall make the necessary boundary determination at a public hearing after providing notice pursuant to Section 6.27.2.3.

#### SECTION 6.27.3 DESIGNATED ACTIVITIES OF STATE INTEREST

##### 6.27.3.1 Designated Areas and Activities of State Interest

#### SECTION 6.27.3.1 DESIGNATED ACTIVITIES OF STATE INTEREST

The City Council has designated the following matters of state interest for regulation:

- (A) Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extension of Existing Domestic Water and Sewage Treatment Systems (Ordinance No. 122, 2021)
- (B) Site Selection of Arterial Highways and Interchanges and Collector Highways (Ordinance No. 122, 2021)

## SECTION 6.27.4 EXEMPTIONS

### 6.27.4.1 Exemptions

#### SECTION 6.27.4.1 EXEMPTIONS

These Regulations are not applicable to the following:

- (A) Any fully constructed and operating project or facility that was lawfully developed under prior law in effect before the effective date of these Regulations that would be subject to these Regulations if it were currently proposed, may continue to operate pursuant to Division 6.16, Nonconforming Uses and Structures, with the exception that enlargement or expansion of any such project or facility shall require a permit under these Regulations unless an exemption exists or a FONSI is issued. An enlargement or expansion requiring a permit shall not include the maintenance, repair or replacement of existing buildings or structures associated with an existing facility, including retrofitting or updating technology, provided any changes do not result in a material change as determined by the Director. Enlargements or expansions not requiring a permit may still be subject to Section 6.16.5 or an applicable Land Use Code development review process.
- (B) Any site specific development plan that would be subject to these Regulations but has received final City approval as of the effective date of these Regulations so long as the vested rights for such approved site specific development plan have not expired. This exemption does not apply to any subsequent modifications to the approved site specific development plan or expansion of the development site that was not included within the City approved application and for which a new or revised development application is required.
- (C) Any proposed development plan otherwise subject to these Regulations but such proposed development plan is (1) subject to review and approval as part of the review of a proposed residential, commercial, industrial or mixed-use project under a development review process other than Site Plan Advisory Review under the Land Use Code, including but not limited to a project development plan or basic development review, and (2) which proposed development plan is directly necessitated by a proposed residential, commercial, industrial or mixed-use development.
- (D) Any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process.
- (E) Any proposed development plan issued a FONSI pursuant to Section 6.27.6.5.

## SECTION 6.27.5 PERMIT AUTHORITY

### 6.27.5.1 Established Permit Authority

#### 6.27.5.1 PERMIT AUTHORITY ESTABLISHED

- (A) The Fort Collins Permit Authority is hereby established consisting of the Fort Collins City Council, or with respect to matters delegated by these Regulations, the Director and the Planning and Zoning Commission.

- (B) The Director shall be the decision maker regarding issuing or not issuing a FONSI.
- (C) The Planning and Zoning Commission shall be the decision maker regarding appeals of Director decisions to issue or not issue a FONSI and regarding recommendations to City Council regarding permit applications.
- (D) The City Council shall be the decision maker for approving or not approving a Permit. The City Council shall also be the decision maker regarding appeals of Planning and Zoning Commission decisions regarding the appeal of Director decisions to issue or not issue a FONSI. Permit applications are reviewed by the City Council pursuant to the procedure set forth in these Regulations.

## SECTION 6.27.6 PERMIT APPLICATION PROCEDURES

- 6.27.6.1 Preliminary Design Review
- 6.27.6.2 Application Fee; Financial Security Waiver
- 6.27.6.3 Pre-Application Area or Activity Review
- 6.27.6.4 FONSI Public Comment Period
- 6.27.6.5 Determination of Applicability of Regulations- FONSI
- 6.27.6.6 Neighborhood Meeting
- 6.27.6.7 Application Submission Requirements
- 6.27.6.8 Determination of Completeness
- 6.27.6.9 Referral Agencies
- 6.27.6.10 Simultaneous Processing of Associated Development Applications
- 6.27.6.11 Combined Application for Multiple Activities or Development in More than One Area of State Interest.
- 6.27.6.12 Permit Decision Making Procedures
- 6.27.6.13 Conduct of Permit Hearings
- 6.27.6.14 Approval or Denial of Permit Application
- 6.27.6.15 Issuance of Permit, Conditions

### SECTION 6.27.6.1 APPLICATION PROCEDURES

The application procedures for activities and areas of state interest are described in Land Use Code Division 6.28 and in these Regulations.

### SECTION 6.27.6.2 APPLICATION FEE; FINANCIAL SECURITY WAIVER

- (A) Each pre-application area or activity review application and development application for a permit submitted must be accompanied by the fees established pursuant to Section 6.3.3(D). The Director may determine at any time during the pre-application review and development application review process that it is necessary to retain a third-party consultant to assist in reviewing the application pursuant to Section 6.3.3(D). All costs incurred in the third-party consultant review shall be borne by the applicant in addition to the City's internal application review fees.
- (B) A referral agency may impose a reasonable fee for the review of a development application and the applicant shall pay such fee which shall detail the basis for the fee imposed. No hearings by the Permit Authority will be held if any such referral agency's fee has not been paid.

**SECTION 6.27.6.3 PRE-APPLICATION AREA OR ACTIVITY REVIEW**

- (A) The purpose of the pre-application area or activity review is to determine if a permit is required for the proposed development plan, application submittal requirements, procedural requirements, and relevant agencies to coordinate with as part of any permit review process. Topics of discussion may include, as relevant to the specific application, but are not limited to:
- (1) Characteristics of the activity, including its location, proximity to natural and human-made features; the size and accessibility of the site; surrounding development and land uses; and its potential impact on surrounding areas, including potential environmental effects and planned mitigation strategies.
  - (2) The nature of the development proposed, including land use types and their densities; placement of proposed buildings, pipelines, structures, operations, and maintenance; the protection of natural habitats and features, historic and cultural resources, and City natural areas, parks, or other City property or assets; staging areas during construction; alternatives considered; proposed parking areas and internal circulation system, including trails, the total ground coverage of paved areas and structures; and types of water and wastewater treatment systems proposed.
  - (3) Proposed mitigation of significant impacts.
  - (4) Siting and design alternatives and reasons why such alternatives are not feasible.
  - (5) Community policy considerations, including the review process and likely conformity of the proposed development with the policies and requirements of these Regulations.
  - (6) Applicable regulations, review procedures and submission requirements.
  - (7) Other regulatory reviews or procedures to which the applicant is subject, the applicant's time frame for the proposed development plan, and other applicant concerns.
- (B) To schedule the pre-application area or activity review, the applicant must first provide the Director with the following:

- (1) Names and addresses of all persons proposing the activity or development;
- (2) Name and qualifications of the person(s) responding on behalf of the applicant;
- (3) A written summary of the desired location of the proposed development plan including a vicinity map showing the location of three (3) siting and design alternatives, one of which is the preferred location, drafted at approximately thirty percent (30%) completeness. One (1) of the three (3) alternatives submitted shall avoid natural features and historic and cultural resources and avoid the need for mitigation to the maximum extent feasible;
- (4) A vicinity map of the preferred siting and proposed development plan projected at an easily readable scale showing the outline of the perimeter of the parcel proposed for the project site (for linear facilities, the proposed centerline and width of any corridor to be considered), property parcels, location of all residences and businesses, any abutting subdivision outlines and names, the boundaries of any adjacent municipality or growth management area, roads (clearly labeled) and natural features within a half (1/2) mile radius and identified historic and cultural resources within a two hundred (200) foot radius of the project site boundary; an Ecological Characterization Study as defined by Land Use Code Section 5.6.1 within a half (1/2) mile radius of the impact area; and a cultural and historic resource survey documentation and determinations of Fort Collins landmark eligibility for resources within two hundred (200) feet of the project site boundary for each of the three siting alternatives. All final determinations of eligibility for designation as a Fort Collins landmark shall be made in the reasonable discretion of City Historic Preservation staff after reviewing the cultural and historic resource survey and such determinations are not subject to appeal.
- (5) A written summary of the cumulative impacts on natural features within a half (1/2) mile radius and on historic and cultural features within 200 feet of the preferred location of the proposed development plan;
- (6) A written summary as to whether the proposed development plan has the potential for a significant impact or not. The review of significance must include specifics related to the scale, magnitude, duration, or likelihood of the impact occurring.

- (7) Any required certificate of appropriateness pursuant to Chapter 14 of the Code of the City of Fort Collins allowing proposed alterations to any designated historic or cultural resource that may be affected by the proposed development plan.
- (8) Any conceptual mitigation plans for the preferred location of the proposed development plan;
- (9) The required application fee and applicant agreement to pay the costs of (1) the Director retaining third-party consultants necessary to assist the Director in making a FONSI determination pursuant to Section 6.27.6.5; (2) the Director retaining third-party consultants necessary to assist the Director with the completeness review of any submitted application pursuant to Section 6.27.6.8; and (3) the Director retaining third-party consultants necessary to assist City staff in reviewing a complete permit application or City Council in rendering a decision on a permit; and
- (10) Any additional information requested by the Director as necessary to make a FONSI determination pursuant to Section 6.27.6.5.

#### SECTION 6.27.6.4 FONSI PUBLIC COMMENT PERIOD

- (A) Upon the Director deeming the application for a pre-application area or activity review as complete, written notice shall be mailed pursuant to (B). The Director shall not issue a FONSI determination pursuant to Section 6.27.6.5 for at least fourteen (14) days from the date of mailing to allow for any person to submit written comments for the Director's consideration.
- (B) At the applicant's cost, notifications for the Director's pending FONSI determination shall be mailed to the property owners and occupants within one thousand feet (1,000) in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at [www.fcgov.com](http://www.fcgov.com).

#### SECTION 6.27.6.5 DETERMINATION OF APPLICABILITY OF REGULATIONS - FONSI

The Director shall determine the applicability of these Regulations based upon the pre-application area or activity review meeting described in Section 6.27.6.3, information provided as part of the application or third-party consultants retained by the Director, and any written public comments.

- (A) The Director shall make a finding related to whether the proposed development plan will result in significant impacts. In order for the Director to determine that a proposed development plan will not result in significant impacts and to issue a FONSI, they must determine that the proposed project does not meet any of the below criteria (1) through (8). The decision by the Director of potential significant impacts may or may not include consideration of proposed mitigation depending on factors that may include, but are not limited to, the scale, magnitude, and complexity of mitigation, and the sensitivity of the resource being mitigated. The FONSI shall be evaluated under the following criteria:
  - (1) Is located wholly or partly on, under, over or within an existing or planned future City natural area or park, whether developed or undeveloped;
  - (2) Is located wholly or partly on, under, over or within a City-owned, non-right-of-way, property or current or anticipated City building site, whether developed or undeveloped;

- (3) Is located within a buffer zone of an existing natural habitat or feature, as defined in Land Use Code Section 5.6.1;
  - (4) Is located within a buffer of a high priority habitat as identified by Colorado Parks and Wildlife;
  - (5) Has potential to significantly impact a natural feature as defined by the Land Use Code;
  - (6) Has the potential to significantly impact natural habitat corridors identified by the City's Natural Area Department;
  - (7) Has potential to significantly impact historic or cultural resources within a two hundred (200) foot outer boundary of the proposed development plan; or
  - (8) Has potential to significantly impact disproportionately impacted communities.
- (B) If the Director issues a FONSI, the applicant does not need to submit a permit application under these Regulations. However, issuance of a FONSI does not exempt the proposed development plan from all Land Use Code requirements, and an alternative review process may be required.
- (C) If the Director issues a FONSI and the applicant subsequently makes material changes to the development plan, the applicant is required to schedule another pre-application area or activity review pursuant to Section 6.27.6.3 to discuss the changes. Based on the new information and whether the revised development could result in significant impacts, the Director may rescind the FONSI by issuing a written determination pursuant to below Subsection (F) and require a permit under these Regulations.
- (D) Permit Not Required. If the Director has made a finding of no significant impacts, or FONSI, a permit pursuant to these Regulations is not required. However, the proposed development plan may be subject to a different Land Use Code development review process. If the Director's decision includes consideration of proposed mitigation, the applicant must provide to the City a guarantee in the form of a development bond, performance bond, letter of credit, cash, certificate of deposit or other city-approved means to guarantee the completion of all mitigation to be constructed as shown on the approved development plan.
- (E) Permit Required. If the Director determines a FONSI is not appropriate, the proposed development plan requires a permit and is subject to these Regulations. The Director shall provide the applicant with written comments, to the extent such comments differ from comments provided for any conceptual review, regarding the proposal to inform and assist the applicant in preparing components of the permit application; including a submittal checklist pursuant to Section 6.27.6.7, and additional research questions to address common review standards pursuant to Section 6.27.7.1.
- (F) Notice of Director's Determination.
- (1) The Director's determination to either issue a FONSI and not require a permit or to not issue a FONSI and require a permit shall be in writing and describe in detail the reasons for the determination. Subject to the fourteen (14) day comment period described in Section 6.27.6.4, the Director shall make this determination within twenty-eight (28) days after the date the preapplication review has occurred or any



requested additional information or third-party consultation is received, whichever is later.

- (2) If a permit is required, the Director shall provide additional information needed to deem a permit application complete; including additional scope of analysis needed to review.
  - (3) The Director shall provide the written determination to the applicant by email if an email address has been provided and promptly mail a copy of the written determination, at the applicant's cost, to the applicant and to property owners within one-thousand (1000) feet in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at [www.fcgov.com](http://www.fcgov.com).
- (G) Appeal of the Director's Determination. The Director's determination whether to issue or not issue a FONSI is subject to appeal to the Planning and Zoning Commission pursuant to Land Use Code Section 6.3.12(D). The Planning and Zoning Commission decision on the appeal is further subject to appeal to City Council pursuant to the Code of the City of Fort Collins Ch. 2, Art. 2, Div. 3. After the filing of a timely notice of appeal pursuant to Section 6.3.12(D), the Director shall not accept any application that may be affected by an appeal decision and, if an application has been accepted, shall cease processing such application until the appeal has been decided, which in the case of an appeal to Council shall be the date of adoption of the appeal resolution. The filing of a timely notice of appeal shall reset any time period set forth in 6.27.6.8 and 6.27.6.12 and such time period shall begin from the date the appeal is decided as previously described.

#### SECTION 6.27.6.6 NEIGHBORHOOD MEETING

- (A) Before the Director may determine that a permit application is complete pursuant to Section 6.27.6.8, a neighborhood meeting is required pursuant to Land Use Code Section 6.3.2. The neighborhood meeting may be held no sooner than fifteen (15) days after the date of the Director FONSI determination pursuant to Land Use Code Section 6.27.6.5 that a permit is required pursuant to these Regulations. Should a FONSI determination requiring a permit be appealed, the neighborhood meeting requirement will be paused until the appeal has been decided. Should a FONSI determination that no permit is required be reversed on appeal, a neighborhood meeting is required.
- (B) At the applicant's cost, notifications for the neighborhood meeting shall be mailed to the property owners and occupants within one thousand feet (1,000) in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at [www.fcgov.com](http://www.fcgov.com).

#### SECTION 6.27.6.7 APPLICATION SUBMISSION REQUIREMENTS

In addition to specific submission requirements for the activities addressed in Sections 6.27.8 and 6.27.9, all applications for a permit under these Regulations shall be accompanied by the following materials:

- (A) Completed application form and submittal checklist in the format established by the Director.

- (B) Any plan, study, survey or other information, in addition to the information required by this Section, at the applicant's expense, as in the Director's judgment is necessary to enable the Permit Authority to make a determination on the application. Such additional information may include applicant's written responses to comments by a referral agency.

Additional materials may be required by the Director for a particular type of proposed development plan. To the extent an applicant has prepared or submitted materials for a federal, state, county, or city permit which are substantially the same as required herein, a copy of those materials may be submitted to satisfy the corresponding requirement below.

#### SECTION 6.27.6.8 DETERMINATION OF COMPLETENESS

- (A) No permit application may be processed, nor shall a permit be deemed received pursuant to Section 24-65.1-501(2)(a), C.R.S., until the Director has determined it to be complete. The applicant may submit an application only after at least fifteen (15) days have passed since the FONSI determination. Upon submittal of the application, the Director shall determine whether the application is complete or whether additional information is required, and if so, shall inform the applicant and pause the completeness review until information is received. Any request for waiver of a submission requirement shall be processed prior to the Director making a determination that an application is complete. The Director may retain at the applicant's cost third-party consultants necessary to assist the Director with the completeness review. If the Director retains a third-party consultant for permit review, the scope of work will be available for review by the applicant.
- (B) No determination of completeness may exceed sixty (60) days unless one or more of the following occurs:
  - (1) The Director determines in writing that more than sixty (60) days is necessary to determine completeness in consideration of the size and complexity of the proposed development plan or available City resources. In such case, the Director shall determine how many additional days are needed, which shall not exceed sixty (60) additional days; or
  - (2) The Director and the applicant agree in writing to exceed sixty (60) days.
- (C) When the Director has determined that a submitted application is complete, or the time limit for making the completeness determination has elapsed even though the application may not be complete, the Director shall inform the applicant in writing of the date of its receipt. Only upon the Director's determination that an application is complete, or the time limit for making the completeness determination has elapsed even though the application may not be complete, may the City's formal review process commence pursuant to these Regulations.

#### SECTION 6.27.6.7 REFERRAL AGENCIES

All permit applications under these Regulations shall be referred to internal and external review agencies or City departments as determined by the Director, including for pre-application submittals, completeness reviews and final application submittals. Copies of any such referral agency comments received shall be forwarded to the applicant for its response at the time that comments are provided from City review staff.

#### SECTION 6.27.6.8 SIMULTANEOUS PROCESSING OF ASSOCIATED DEVELOPMENT APPLICATIONS

If a development plan subject to these Regulations contains project components not subject to these Regulations but subject to other requirements in the Land Use Code that result in an additional and separate development application, then both development applications can be processed simultaneously.

#### **SECTION 6.27.6.9 COMBINED APPLICATION FOR MULTIPLE ACTIVITIES OR DEVELOPMENT IN MORE THAN ONE AREA OF STATE INTEREST**

When approval is sought to conduct more than one activity of state interest, engage in development in more than one activity or area of state interest, or a combination of activities and areas, a combined application may be completed for all such activities or developments in areas of state interest and may be reviewed simultaneously and, if appropriate in the discretion of City Council, a single determination made to grant or deny permit approval. The City reserves the right to charge an application fee pursuant to Section 6.27.6.2 of these Regulations for each activity or area that is the subject of a combined application.

#### **SECTION 6.27.6.10 PERMIT DECISION MAKING PROCEDURES**

When an application has been determined complete by the Director pursuant to Section 6.27.6.8 of these Regulations, or the time limit for making the completeness determination has elapsed even though the application may not be complete, then, and only then, shall the permit review process commence. At that time, the following schedule shall apply:

- (A) No later than thirty (30) days after the receipt of a completed application, the Director will schedule a hearing before City Council. The thirty (30) day period to schedule the hearing may be extended if the applicant agrees to an extension in writing. Prior to such hearing, the Planning and Zoning Commission shall forward a recommendation to City Council to approve, approve with conditions, or deny the permit application.
- (B) The Director may retain third-party consultants at the applicant's expense necessary to assist City staff in reviewing a complete permit application or assist City Council in rendering a decision on a permit.
- (C) Upon setting a permit hearing date, the Director shall publish notice once in a newspaper of general circulation in the City of Fort Collins containing:
  - (1) The date, time, and place of the permit hearing not less than thirty (30) nor more than sixty (60) days before the date set for the hearing. The thirty (30) and sixty (60) day periods may be extended if the applicant agrees to an extension in writing.
- (D) The date, time, and place of the Planning and Zoning Commission hearing where a recommendation will be made at least seven (7) days prior to the hearing. At least fourteen (14) days prior to the City Council permit hearing, the Director shall mail notice of the date, time, and place of the hearing to the applicant and to property owners pursuant to Section 6.3.6. Notice of the Planning and Zoning Commission hearing where a recommendation will be made shall also be mailed at least fourteen (14) days prior to such hearing pursuant to Section 6.3.6 and may be combined with the mailed notice for the City Council hearing.

**SECTION 6.27.6.11 CONDUCT OF PERMIT HEARING.**

- (A) Planning and Zoning Commission hearings where a recommendation is made shall follow the requirements and procedures of Section 6.3.7.
- (B) City Council shall adopt into its rules of procedure a procedure for conducting permit hearings. Upon the closing of the portion of a permit hearing to receiving comments and evidence from the public, agencies, and the applicant, no further comments or evidence will be received from the public, agencies or applicant, including at any general public comment period for a City Council meeting or public comment associated with a specific agenda item such as a designation associated with a permit application, unless specifically authorized by City Council by reopening the public hearing.

**SECTION 6.27.6.12 APPROVAL OR DENIAL OF PERMIT APPLICATION**

- (A) The burden of proof shall be upon the applicant to show compliance with all applicable standards of the Regulations. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.
- (B) A permit application to conduct a designated activity of state interest or develop in a designated area of state interest may not be approved unless the applicant satisfactorily demonstrates that the development plan, in consideration of all proposed mitigation measures and any conditions, complies with all applicable standards. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.27.6.15 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.27.6.15 on any permit.
- (C) If City Council finds that there is insufficient information concerning any of the applicable standards to determine that such standards have been met, City Council may deny the permit, may approve with conditions pursuant to Section 6.27.6.15 which if fulfilled would bring the development plan into compliance with all applicable standards, or may continue the public hearing or reopen a previously closed public hearing for additional information to be received. However, no continuance to receive additional evidence may exceed sixty (60) days unless agreed to by City Council and the applicant.
- (D) City Council shall approve a permit application only if the proposed development plan satisfies all applicable standards of these Regulations in consideration of proposed mitigation measures and any conditions necessary to attain compliance with any standards. City Council may also impose additional conditions pursuant to Section 6.27.6.15 on any permit.
- (E) City Council may close the public hearing and make a decision, or it may continue the matter for a decision only. However, City Council shall make a decision by majority vote within ninety (90) days after the closing of the public hearing, or the permit shall be deemed approved. To the extent the public hearing is reopened and closed, the closing date of the public hearing shall be measured from the most recent closing date.
- (F) City Council shall adopt by resolution findings of fact in support of its decision and, if approved, the written permit shall be attached to such resolution. To the extent a permit is deemed approved because City Council has not made a decision, adoption of such a resolution is not required.

**SECTION 6.27.6.13 ISSUANCE OF PERMIT; CONDITIONS**

- (A) City Council may attach conditions to the permit pursuant to Section 6.3.9 and additional conditions to ensure that the purpose, requirements, and standards of these Regulations are continuously met throughout the development, execution, operational life, and any decommissioning period. A development agreement between the City and the permittee may be required as a condition of approval.
- (B) Issuance of a permit signifies only that a development plan has satisfied, or conditionally satisfied, the applicable Regulations, and prior to commencing any development, conditions of the permit, additional Land Use Code, Code of the City of Fort Collins, other City requirements, or other state or federal requirements, may need to be met.
- (C) Subject to (D) below and Section 6.27.11.1, the permit may be issued for an indefinite term or for a specified period of time with such period depending upon the size and complexity of the development plan.
- (D) If the permittee fails to take substantial steps to initiate the permitted development plan within twelve (12) months from the date of the approval of the permit or such other time period specified in the permit, or if such steps have been taken but the applicant has failed to complete the development with reasonable diligence, then the permit may be revoked or suspended in accordance with Section 6.27.11.1. This time may be extended by the Director for only one (1) additional year upon a showing of substantial progress.

**SECTION 6.27.7 COMMON REVIEW STANDARDS**

## 6.27.7.1 Review Standards for All Applications

**SECTION 6.27.7 REVIEW STANDARDS FOR ALL APPLICATIONS**

In addition to the review standards for specific activities listed at Divisions 6.27.8 and 6.27.9, all applications under these Regulations, in consideration of proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in City Council's reasonable judgment. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.

If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.27.6.15 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.27.6.15 on any permit. The common review standards are as follows:

- (A) The applicant has obtained or will obtain all property rights, permits and approvals necessary for the proposal, including surface, mineral and water rights.

- (B) The health, welfare and safety of the community members of the City will be protected and served.
- (C) The proposed activity is in conformance with the Fort Collins Comprehensive Plan and other duly adopted plans of the City, or other applicable regional, state or federal land development or water quality plan.
- (D) The development plan is not subject to risk from natural or human caused environmental hazards. The determination of risk from natural hazards to the development plan may include but is not limited to the following considerations:
  - (1) Unstable slopes including landslides and rock slides.
  - (2) Expansive or evaporative soils and risk of subsidence.
  - (3) Wildfire hazard areas.
  - (4) Floodplains.
- (E) The development plan will not have a significant impact on the capability of local governments affected by the development plan to provide local infrastructure and services or exceed the capacity of service delivery systems. The determination of the effects of the development plan on local government services may include but is not limited to the following considerations:
  - (1) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other local government facilities and services necessary to accommodate development, and the impact of the development plan upon the current and projected capacity.
  - (2) Need for temporary roads or other infrastructure to serve the development plan for construction and maintenance.
- (F) The development plan will not have a significant impact on the quality or quantity of recreational opportunities and experience. The determination of impacts of the development plan on recreational opportunities and experience may include but is not limited to the following considerations:
  - (1) Changes to existing and projected visitor days.
  - (2) Changes in quality and quantity of fisheries.
  - (3) Changes in instream flows or reservoir levels.
  - (4) Changes in access to recreational resources.
  - (5) Changes to quality and quantity of hiking, biking, multi-use or horseback riding trails.
  - (6) Changes to regional open space.
  - (7) Changes to existing conservation easements.
  - (8) Changes to City parks, playgrounds, community gardens, recreation fields or courts, picnic areas, and other City park amenities.

- (G) The development plan when completed will not have a significant impact on existing visual quality. The determination of visual impacts of the development plan may include but is not limited to the following considerations:
- (1) Visual changes to ground cover and vegetation, streams, or other natural features.
  - (2) Interference with viewsheds and scenic vistas.
  - (3) Changes in landscape character of unique land formations.
  - (4) Compatibility of structure size and color with scenic vistas and viewsheds.
  - (5) Changes to the visual character of regional open space.
  - (6) Changes to the visual character of existing conservation easements.
  - (7) Changes to the visual character of City parks, trails, natural areas, or recreation facilities.
  - (8) Changes to the visual character of historic and cultural resources.
- (H) The development plan will not have a significant impact on air quality. The determination of effects of the development plan on air quality may include but is not limited to the following considerations:
- (1) Changes in visibility and microclimates.
  - (2) Applicable air quality standards.
  - (3) Increased emissions of greenhouse gases.
  - (4) Emissions of air toxics.
- (I) The development plan will not have a significant impact on surface water quality. The determination of impacts of the development plan on surface water quality may include but is not limited to the following considerations:
- (1) Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water;
  - (2) Applicable narrative and numeric water quality standards.
  - (3) Changes in point and nonpoint source pollution loads.
  - (4) Increase in erosion.
  - (5) Changes in sediment loading to waterbodies.
  - (6) Changes in stream channel or shoreline stability.
  - (7) Changes in stormwater runoff flows.
  - (8) Changes in trophic status or in eutrophication rates in lakes and reservoirs.

- (9) Changes in the capacity or functioning of streams, lakes or reservoirs.
  - (10) Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.
  - (11) Changes to stream sedimentation, geomorphology, and channel stability.
  - (12) Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.
- (J) The development plan will not have a significant impact on groundwater quality. The determination of impacts of the development plan on groundwater quality may include but is not limited to the following considerations:
- (1) Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
  - (2) Changes in capacity and function of wells within the impact area.
  - (3) Changes in quality of well water within the impacted area.
- (K) The development plan will not have a significant impact on wetlands and riparian areas (including riparian forests) of any size regardless of jurisdictional status. In determining impacts to wetlands and riparian areas, the following considerations shall include but not be limited to:
- (1) Changes in the structure and function of wetlands.
  - (2) Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.
  - (3) Changes to aerial extent of wetlands.
  - (4) Changes in species' characteristics and diversity.
  - (5) Transition from wetland to upland species.
  - (6) Changes in function and aerial extent of floodplains.
- (L) The development plan shall not have a significant impact on the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:
- (1) Changes that result in loss of oxygen for aquatic life.
  - (2) Changes in flushing flows.
  - (3) Changes in species composition or density.
  - (4) Changes in number of threatened or endangered species.
  - (5) Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.



- (6) Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.
- (M) The development plan shall not have a significant impact on the quality of terrestrial and aquatic plant life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:
  - (1) Changes to high priority habitat identified by the Colorado Parks and Wildlife and the Fort Collins Natural Areas Department.
  - (2) Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
  - (3) Changes in advancement or succession of desirable and less desirable species, including noxious weeds.
  - (4) Changes in threatened or endangered species.
- (N) The development plan will not have a significant impact on natural habitats and features as defined in Land Use Code Section 5.6.1.
- (O) The development plan will not have a significant impact on historic or cultural resources as defined in Section 6.27.1.9 of these Regulations.
- (P) The development plan will not have a significant impact on significant trees as defined in Land Use Code Section 5.10.1.
- (Q) The development plan will not have a significant impact on soils and geologic conditions. The determination of impacts of the development plan on soils and geologic conditions may include but is not limited to the following considerations:
  - (1) Loss of topsoil due to wind or water forces.
  - (2) Changes in soil erodibility.
  - (3) Physical or chemical soil deterioration.
  - (4) Compacting, sealing and crusting.
- (R) The development plan will not cause a nuisance. The determination of nuisance impacts of the development plan may include but is not limited to the following considerations: increase in odors, dust, fumes, glare, heat, noise, vibration or artificial light.
- (S) The development plan will not result in risk of releases of, or exposures to, hazardous materials or regulated substances. The determination of the risk of release of, or increased exposures to, hazardous materials or regulated substances caused by the development plan may include but is not limited to the following considerations:

- (1) Plans for compliance with federal and state handling, storage, disposal, and transportation requirements.
  - (2) Use of waste minimization techniques.
  - (3) Adequacy of spill and leak prevention and response plans.
- (T) The development plan will not have disproportionately greater impact on disproportionately impacted communities within the City considering, for example, the distribution of impacts to the following:
- (1) Air quality.
  - (2) Water quality.
  - (3) Soil contamination.
  - (4) Waste management.
  - (5) Hazardous materials.
  - (6) Access to parks, natural areas, trail, community services, cultural activities, and historic and cultural resources, and other recreational or natural amenities.
  - (7) Nuisances.
- (U) The development plan shall include mitigation plans that avoid or minimize significant impacts by limiting the degree or magnitude of the action. Mitigation plans shall include detailed information on how the proposed project will avoid or minimize significant impacts identified and related to all applicable common and specific review standards, including but not limited to the following:
- (1) Detailed information on how the proposed project will avoid or minimize significant impacts on natural features must include an adaptive management plan and established performance criteria based on a local reference site and analogous habitat type. Plans submitted must address success criteria regarding quantity, quality, diversity and structure of vegetative cover or habitat value; and
  - (2) Detailed information on how the proposed project will avoid or minimize significant impacts on historic and cultural features during the full span of ground disturbance and construction activities, to include an archeological monitoring plan that anticipates the possibility of new discoveries related to that activity; and plan(s) of protection that detail mitigation strategies for any identified historic and cultural resources.

## **SECTION 6.27.8 SITE SELECTION AND CONSTRUCTION OF MAJOR NEW DOMESTIC WATER AND SEWAGE TREATMENT SYSTEMS AND MAJOR EXTENSIONS OF SUCH SYSTEMS**

6.27.8.1 Applicability

6.27.8.2 Purpose and Intent

### 6.27.8.3 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions

#### SECTION 6.27.8.1 APPLICABILITY

These Regulations shall apply to the site selection and construction of all major new domestic water and sewage treatment systems, and major extensions of such systems within the municipal boundaries of the City.

#### SECTION 6.27.8.2 PURPOSE AND INTENT

The specific purpose and intent of this Section are:

- (A) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are conducted in such a manner as to avoid or fully mitigate impacts associated with such development;
- (B) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are planned and developed in a manner so as not to impose an undue economic burden on existing or proposed communities within the City;
- (C) To ensure that the off-site significant impacts of new domestic water and sewage treatment systems are avoided or fully mitigated; and
- (D) To ensure that the surface and groundwater resources of the City are protected from any significant impact of the development of major water and sewage treatment systems and major extensions of such systems.

#### SECTION 6.27.8.3 SPECIFIC REVIEW STANDARDS FOR MAJOR NEW DOMESTIC WATER OR SEWAGE TREATMENT SYSTEMS OR MAJOR EXTENSIONS

A permit application for the site selection and construction of a major new domestic water or sewage treatment system or major extension of such system shall be approved with or without conditions only if the development plan complies with the review standards in Section 6.27.7.1 and the below standards, to the extent applicable or relevant. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.27.6.15 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.27.6.15 on any permit. The specific review standards are:

- (A) New domestic water and sewage treatment systems shall only be constructed in areas which will result in the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems within the City; and
- (B) Area and community development and population trends must demonstrate clearly a need for such development.

## SECTION 6.27.9 SITE SELECTION OF ARTERIAL HIGHWAYS AND INTERCHANGES AND COLLECTOR HIGHWAYS

6.27.9.1 Applicability

6.27.9.2 Purpose and Intent

6.27.9.3 Specific Review Standards for Arterial Highway, Interchange or Collector Highway Projects

### SECTION 6.27.9.1 APPLICABILITY

This Division shall apply to the site selection of all arterial highways and interchanges and collector highways within the municipal boundaries of the City.

### SECTION 6.27.9.2 PURPOSE AND INTENT

The specific purpose and intent of this Section are:

- (A) *To ensure that community traffic needs are met;*
- (B) *To provide for the continuation of desirable community traffic circulation patterns by all modes;*
- (C) *To discourage expansion of demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by the City;*
- (D) *To prevent direct conflicts with local, regional and state master plans;*
- (E) *To ensure that highway and interchange development is compatible with surrounding land uses;*
- (F) *To encourage the coordination of highway planning with community and development plans;*
- (G) *To discourage traffic hazards and congestion;*
- (H) *To minimize sources of traffic noise, air and water pollution; and*
- (I) *To protect scenic, natural, historical and cultural resources from destruction.*

### SECTION 6.27.9.3 SPECIFIC REVIEW STANDARDS FOR ARTERIAL HIGHWAY, INTERCHANGE OR COLLECTOR HIGHWAY PROJECTS

A permit for the site selection of an arterial highway, interchange or collector highway shall be approved with or without conditions only if the proposed development plan complies with the review standards in Section 6.27.7.1 and the below standards, to the extent applicable or relevant. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.27.6.15 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.27.6.15 on any permit. The specific review standards are:

- (A) The proposed arterial highway, interchange or collector highway will be located so that natural habitats and features, historic and cultural resources, City natural areas and parks and other local government facilities and resources are protected to the maximum extent feasible;
- (B) The proposed arterial highway or interchange or collector highway will be located only in a corridor for which a clear and reasonable local and regional need has been demonstrated;
- (C) The location and access limitations for the arterial highway, interchange or collector highway will not isolate community neighborhoods from and, where practicable, will enhance access from community neighborhoods to public facilities including schools, hospitals, mass transit, pedestrian walkways and bikeways, recreational facilities and areas, community centers, government and social services provider offices and facilities, natural areas, and open spaces;
- (D) The construction of the arterial highway and interchange or collector highway shall be phased to minimize interference with traffic movement;
- (E) The location and access limitations for the arterial highway, interchange or collector highway will not restrict access to other roadways, mass transit facilities, pedestrian walkways and bikeways, local commercial services, residential developments, business and employment centers, and public facilities including schools, hospitals, recreational facilities and areas, natural areas, and open spaces;
- (F) Alternative modes of transportation will be incorporated into the proposal to the extent feasible;
- (G) If park-and-ride facilities are utilized, they shall be located in areas approved by the City;
- (H) The location of the proposed new or expanded arterial highway, interchange or collector highway will not impede the delivery of essential community services and goods;
- (I) Desirable local and regional community land use patterns will not be disrupted by the location of the proposed new or expanded arterial highway, interchange or collector highway;
- (J) The location and access limitations for the arterial highway, interchange or collector highway will not create safety hazards to motorists, pedestrians or bicyclists by causing or contributing to overuse, improper use or congestion, or cause unnecessary diversion of regional traffic onto other City roadways or inappropriate or inadequate connections to pedestrian and bicycle routes;
- (K) The proposed location of the new or expanded arterial highway, interchange or collector highway will be located so as to complement the efficient extension of planned public services, utilities and development in general, both regionally and within the City;
- (L) The proposed location of the new or expanded arterial highway, interchange or collector highway will adhere to the plan, process, procedure and requirements of the State and the Federal Highway Administration, and such construction, expansion or modification will be included in local and regional transportation plans;

- (M) The proposed location of the new or expanded arterial highway, interchange or collector highway will not result in the destruction, impairment or significant alteration of sensitive, key commercial, tourist or visitor areas or districts within the City;
- (N) The proposed location of the new or expanded arterial highway, interchange or collector highway will not contribute to a negative economic impact to residential, commercial, tourist or visitor areas or districts within the City;
- (O) To the extent tolling is proposed, the use or level of tolling is appropriate in light of existing toll levels, if any, and any prior or projected public infrastructure investment;
- (P) The proposed highways can be integrated into the regional transportation network;
- (Q) The new or expanded arterial highway, or interchange or collector highway will not have a significant impact on prime or unique farmland as defined by the U.S. Department of Agriculture, Natural Resources Conservation Service;
- (R) The proposed location and design of the arterial highway, interchange or collector highway does not cause lighting impacts from headlights or streetlights to nearby residential neighborhoods or other developments or night sky objectives and plans;
- (S) Noise levels caused by the new or expanded arterial highway, interchange or collector highway will follow federal noise regulations;
- (T) Vertical structures will match the character of the City through materials and design; and
- (U) The local air quality impacts of the new or expanded arterial highway, interchange or collector highway shall support attainment of federal and state ambient air quality standards and shall not increase risks to human health and the environment posed by air pollutants.

## SECTION 6.27.10 FINANCIAL SECURITY

### 6.27.10.1 Financial Security

## SECTION 6.27.10.1 FINANCIAL SECURITY

- (A) Before any development occurs pursuant to an approved permit issued pursuant to these Regulations, the applicant shall provide the City with a guarantee of financial security deemed adequate by the Director to accomplish the purposes of this Section, in a form approved by the City Attorney and payable to the City of Fort Collins.
- (B) The purpose of the financial guarantee is to ensure that the permittee shall faithfully perform all requirements of the permit and the Director shall determine the amount of the financial guarantee in consideration of the following standards, to the extent applicable or relevant to the approved development plan:
  - (1) The estimated cost of returning the site of the permitted development plan to its original condition or to a condition acceptable in accordance with standards adopted by the City for the matter of state interest for which the permit is being granted;

- (2) The estimated cost of implementing and successfully maintaining any revegetation required by the permit.
  - (3) The estimated cost of completing the permitted development plan; and
  - (4) The estimated cost of complying with any permit conditions, including mitigation, monitoring, reporting, and City inspections to ensure compliance with the terms of the permit.
- (C) Estimated cost shall be based on the applicant’s submitted cost estimate. The Director shall consider the duration of the development plan and compute a reasonable projection of increases due to inflation over the entire life of the development plan. The Director may require, as a condition of the permit, that the financial security shall be adjusted upon receipt of bids.
- (D) The financial guarantee may be released in whole or in part with the approval of the Director only when:
- (1) The permit has been surrendered to the Director before commencement of any physical activity on the site of the approved development plan;
  - (2) The approved development plan has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Director in accordance with standards adopted by the Permit Authority for the matter of state interest for which the permit is being granted;
  - (3) The approved development plan has been satisfactorily completed; or
  - (4) Applicable guaranteed conditions have been satisfied.
- (E) Any security may be cancelled by a surety only upon receipt of the Director’s written consent which may be granted only when such cancellation will not detract from the purposes of the security.
- (F) If the license to do business in Colorado of any surety upon a security filed pursuant to these Regulations is suspended or revoked by any State authority, then the permittee, within sixty (60) days after receiving notice thereof, shall substitute a good and sufficient surety licensed to do business in the State. Upon failure of the permittee to make substitution of surety within the time allowed, the Director shall suspend the permit until proper substitution has been made.
- (G) No security is acceptable if signed by or drawn on an institution for or in which the permittee is an owner, shareholder, or investor other than simply an account holder.
- (H) The Director may determine at any time that a financial guarantee should be forfeited because of any violation of the permit. The Director shall provide written notice of such determination to the surety and the permittee of their right to written demand of the Director within thirty (30) days of receiving written notice from the Director.
- (1) If no demand is made within said period, then the Director shall order in writing that the financial guarantee be forfeited and provide a copy of such order to the surety and permittee.
  - (2) If a timely demand is received, the Director shall make good faith efforts to meet with the permittee and surety within thirty (30) days after the receipt of such demand. At the meeting the permittee and surety may present any information with

respect to the alleged violation for the Director’s consideration. At the conclusion of any meeting, the Director shall either withdraw the notice of violation or order in writing that the financial guarantee should be forfeited and provide a copy of such order to the surety and permittee.

- (I) If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the City Attorney shall take such steps as deemed proper to recover such costs, including imposing and foreclosing a City lien on real property and/or certifying the same to the County Treasurer for collection in the same manner as real property taxes, pursuant to Sections 31-20-105 and 106, C.R.S.
- (J) The financial security under this Section may be waived, in the Director’s sole discretion, if a proposed development plan is solely financed by state agencies, a political subdivision of the state, or a special or enterprise fund that has established to the Director’s satisfaction the availability of funds required to complete the proposed development plan.

## SECTION 6.27.11 SUSPENSION OR REVOCATION OF PERMITS

### 6.27.11.1 Suspension or Revocation of Permits

## SECTION 6.27.11.1 SUSPENSION OR REVOCATION OF PERMITS

- (A) If the Director has reason to believe that the permittee has violated any provision of the permit or the terms of any regulation for administration of the permit, and such violation poses a danger to public health, safety, welfare, the environment or wildlife resources, the Director has the authority to order the immediate suspension of all operations associated with implementing the approved development plan and suspension of the permit until the danger has been eliminated. At such time as the Director has determined the danger is eliminated and any violations of the permit or the terms of any regulation for administration of the permit, the Director shall withdraw the suspension. Should the danger be eliminated but violations of the permit still exist, the Director shall suspend the permit for up to an additional one-hundred and eighty (180) days pursuant to (B)(3) below.
- (B) If the Director has reason to believe that the permittee has violated any provision of any permit or the terms of any regulation for administration of the permit, and such violation does not pose a danger to public health, safety, welfare, the environment or wildlife resources, the Director may temporarily suspend the permit for an initial period of up to thirty (30) days or until the violation is corrected, whichever occurs first.
  - (1) Before imposing such temporary suspension, the Director shall provide written notice to the permittee of the specific violation and shall allow the permittee a period of at least fifteen (15) days to correct the violation from the date notice was provided.
  - (2) If the permit holder does not agree that there is a violation, the permittee shall, within fifteen (15) days of the date notice was provided, submit a written response to the Director detailing why the temporary suspension should not occur. Upon receiving such response, the Director shall within ten (10) days issue a written response either withdrawing the notice of violation or imposing the temporary permit suspension. The Director’s decision is not subject to appeal.
  - (3) Should a violation remain uncorrected after the initial period of temporary suspension has elapsed, the Director shall extend in writing the period of temporary suspension for up to an additional one-hundred and eighty (180) days or until the violation is corrected, whichever occurs first. Notice of such extension shall be provided to the permittee and the extended suspension may be appealed pursuant



to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending such appeal hearing, the permit suspension shall remain in effect.

- (C) Subsequent to any extended temporary suspension imposed under (B)(3) above, the Director may permanently revoke the permit upon a written determination that the violation for which the temporary suspension was premised remains uncorrected. The determination shall be provided to the permittee and such revocation may be appealed pursuant to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending the decision of such appeal, the revocation shall remain in effect.
- (D) The Director may permanently revoke a permit upon a written determination that the permittee has failed to take substantial steps to initiate the permitted development or activity within twelve (12) months from the date of the issuance of the permit or within the timeframe of any extensions granted, or, if such steps have been taken, the permittee has failed to complete or pursue completion of the development or activity with reasonable diligence. The determination shall be provided to the permittee and such revocation may be appealed pursuant to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending such appeal hearing, the revocation shall remain in effect. The permanent revocation of a permit does not bar the future submittal of a new permit application for the same, or substantially the same, proposed development plan.

## SECTION 6.27.12 PERMIT REVIEW, RENEWAL, AMENDMENT, TRANSFER

- 6.27.12.1 Annual Review; Progress Reports
- 6.27.12.2 Permit Renewal
- 6.27.12.3 Permit Amendment
- 6.27.12.4 Minor Revision Not Constituting a Material Change
- 6.27.12.5 Transfer of Permits
- 6.27.12.6 Inspection

### SECTION 6.27.12.1 ANNUAL REVIEW; PROGRESS REPORTS

- (A) Within thirty (30) days prior to each annual anniversary date of the granting of a permit, the permittee shall submit a report detailing any and all activities conducted by the permittee pursuant to the permit including, but not limited to, a satisfactory showing that the permit has complied with all conditions of the permit and applicable regulations for administration of the permit.
- (B) Director shall review the report within thirty (30) days from the date of submittal thereof. If the Director determines, based upon its review, that the permittee was likely to have violated the provisions of the permit or applicable regulations, or both, the Director shall make a good faith effort to meet with the permittee to discuss the matter. If the Director determines after any meeting that the permittee has violated the provisions of the permit or applicable regulations, or both, the Director may suspend and/or revoke the permit in accordance with Section 6.27.11.1.
- (C) Upon fulfillment of all permit conditions, this annual review requirement may be waived by the Director.
- (D) At any time, the Director may require the permittee to submit an interim progress report.

**SECTION 6.27.12.2 PERMIT RENEWAL**

Permits issued under these Regulations may be renewed following the same procedure for approval of new permits except the renewal process shall not include the Director's FONSI review pursuant to Section 6.27.6.5.

**SECTION 6.27.12.3 PERMIT AMENDMENT**

The Director shall require a permit amendment for any material change, as determined by the Director, in the construction, use, or operation of an approved development plan from the terms and conditions of an approved permit. The amendment shall be processed in accordance with and subject to the same procedures and requirements set forth herein for a permit except that the Director's FONSI review pursuant to Section 6.6.5 shall not occur.

**SECTION 6.27.12.4 MINOR REVISION NOT CONSTITUTING A MATERIAL CHANGE**

The permittee may apply to the Director for minor revisions to an issued permit to correct errors or make other changes to conform the permit to actual conditions to the extent such minor revision is not a material change to the permit as determined by the Director. The Director is granted discretion to approve such minor revisions or to determine that a permit amendment is required pursuant to Section 6.27.12.3. In reviewing a requested minor revision or revisions, the Director shall consider the request in the context of previously approved minor revisions to determine whether in the aggregate, the requested minor revision or revisions constitute a material change.

**SECTION 6.27.12.5 TRANSFER OF PERMITS**

A permit may be transferred only upon the Director's written consent. The Director must ensure in approving any transfer that the proposed transferee can and will comply with all the requirements, terms, and conditions contained in the permit and these regulations; that such requirements, terms, and conditions remain sufficient to protect the health, welfare, and safety of the public; and that an adequate guarantee of financial security can be made.

**SECTION 6.27.12.6 INSPECTION**

The Director in their sole discretion is empowered to cause the inspection of any development, operation, or decommissioning activities related to a permit, including on or off-site mitigation activities, to ensure compliance with such permit and applicable laws and regulations. The permittee shall provide reasonable access to property for which the permittee has the authority to do so and shall make good faith efforts to coordinate access for other property. To the extent such inspection is ongoing or otherwise subject to advance planning, the Director shall consult with the permittee to coordinate inspection to minimize potential disruptions. The Director may retain a third-party consultant to conduct such inspections, including a consultant with specialized knowledge or training, and the cost of all such inspections shall be the responsibility of the permittee. The inspections provided for under this Section are in addition to Section 6.26.3.

**SECTION 6.27.13 ENFORCEMENT****6.27.13.1 Enforcement****SECTION 6.27.13.1 ENFORCEMENT**

Any person engaging in development in a designated area of a state interest or conducting a designated activity of state interest who does not first obtain a permit pursuant to these Regulations,

who does not comply with permit requirements, or who acts outside the authority of the permit, is in violation of this Land Use Code and the City may take enforcement action pursuant to Division 6.26 and may additionally take any other action available under these Regulations and civil or criminal law, including seeking injunctive relief, or revoking or suspending any permit issued pursuant to these Regulations or any permit issued pursuant to the Land Use Code or the Code of the City of Fort Collins. These Regulations are not intended to create third party rights of enforcement.

## DIVISION 6.28 GUIDELINES AND REGULATIONS FOR AREAS AND ACTIVITIES OF STATE INTEREST: PURPOSE, APPLICABILITY, AND APPLICABLE COMMON DEVELOPMENT REVIEW PROCEDURES

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### SECTION 6.28.1 PURPOSE.

Pursuant to Colorado Revised Statutes Section 24-65.1-101, et. seq, the City is empowered to designate certain activities and areas to be matters of state interest and to regulate designated activities and areas through adopted guidelines and regulations. The Land Use Code areas and activities of state interest provisions in Article 6 set forth procedures and requirements for the designation of activities and areas as matters of state interest, procedures for requesting a permit to conduct a designated activity or develop in a designated area, and criteria that must be met in order for a permit to be issued.

### SECTION 6.28.2 APPLICABILITY.

These areas and activities of state interest provisions shall apply to all proceedings and decisions concerning identification, designation, and regulation of any development in any area of state interest or any activity of state interest that has been or may hereafter be designated by the City Council. To the extent a proposed development plan could be reviewed under another Land Use Code process, such plan shall be reviewed under Division 6.27 unless an exemption exists pursuant to Section 6.27.4.1 or the Director issues a finding of no significant impact (“FONSI”) pursuant to Section 6.27.6.5. Proposed development plans for which the Planning and Zoning Commission denied a Site Plan Advisory Review application prior to the effective date of Division 6.27 shall be subject to such regulations unless an exemption exists or a FONSI is issued.

A permit to conduct a designated activity or develop in an area of state interest may be issued for a proposed development plan that is to be located in one or more zone districts regardless of whether the zone district or districts list the use proposed by the proposed development plan as an allowed use or otherwise prohibit such use.

### SECTION 6.28.3 PROCESS.

(A) **Step 1**(Conceptual Review): Applicable.

(Pre-Application Area or Activity Review): The Director shall require an additional pre-application areas and activities review pursuant to Section 6.6.3 for any proposed development plan that the Director determines may require a permit pursuant to Article 6. The purposes of the pre-application area or activity review are described in Section 6.27.6.3(A). The Director may retain the services of third-party consultants pursuant to the terms of Land Use Code Section 6.3.3(D)(3) to assist the Director during the pre-application areas and activities review.

- (B) **Step 2** (Neighborhood Meeting): Pursuant to Section 6.27.6.6, a neighborhood meeting is required before the Director may determine that a permit application is complete pursuant to Section 6.6.8 and no sooner than fifteen (15) days after the date the Director issues a FONSI determination. The ten (10) day period after the neighborhood meeting before an application may be submitted shall not apply.
- (C) **Step 3** (Development Application Submittal): Applicable. The simultaneous processing of development applications submitted in association with an application for a permit to conduct a designated activity or develop in an area of state interest is addressed in Section 6.27.6.10, and combined applications for a permit to conduct multiple activities or develop in multiple areas of state interest is addressed in Section 6.27.6.11.
- (D) **Step 4** (Review of Application): Applicable except that Section 6.27.6.8 shall substitute for Land Use Code Section 6.3.4(A).
- (E) **Step 5** (Staff Report): Applicable.
- (F) **Step 6** (Notice): Applicable with particular timing for published and mailed notice as set forth in Section 6.27.6.12.
- (G) **Step 7** (Public Hearing):
- 7(A)** (Decision Maker): Not applicable and in substitution therefor, City Council is the decision maker on permits pursuant to Division 6.27 after receiving a Planning and Zoning Commission recommendation.
- Steps 7(B)** (Conduct of Public Hearing), **7(C)** (Order of Proceedings at Public Hearing):
- Applicable to Planning and Zoning Commission hearings where a recommendation on a permit application will be made.
- Not applicable to City Council hearings where a decision on a permit application will be made. City Council shall adopt into its rules of procedure a procedure for conducting such hearings.
- Applicable to appeals of Director FONSI determinations to the Planning and Zoning Commission as modified pursuant to Section 6.3.12(D)(5).
- Not applicable to appeals to City Council of Planning and Zoning Commission decisions on appeals of Director FONSI decisions. The procedures set forth in the Code of the City of Fort Collins Chapter 2, Article II, Division 3 shall apply.
- 7(D)** (Decision and Findings): Not applicable and in substitution therefor, see Section 6.27.6.5 regarding Director FONSI determinations, Section 6.3.12(D) regarding appeals of Director FONSI decisions, and Section 6.27.6.12 regarding Planning and Zoning Commission recommendations on permits and City Council permit decisions.
- 7(E)** (Notification to Applicant), **7(F)** (Record of Proceedings), **7(G)** (Recording of Decisions and Plat): *Applicable.*
- (H) **Step 8** (Standards): Applicable except that the applicable standards that must be met are set forth in Division 6.27.
- (I) **Step 9** (Conditions of Approval): Applicable to Planning and Zoning Commission recommendations on permit applications and City Council decisions on permit applications as modified pursuant to Section 6.27.6.15.

- (J) **Step 10** (Amendments): Not applicable and in substitution thereof, the requirements of Sections 6.27.12.3 and 6.27.12.4 shall apply.
- (K) **Step 11** (Lapse): Only 6.3.11(A) is applicable and approved permits for areas and activities of state interest are not eligible for vested rights pursuant to the Land Use Code. Sections 6.27.6.15 and 6.27.11.1 require that the permittee make substantial steps toward initiating and completing the proposed development plan or the permit may be subject to revocation.
- (L) **Step 12** (Appeals): Applicable pursuant to Section 6.3.12(D).