



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: May 16, 2024

AGENDA TITLE

Introduction, first reading and consideration of a motion to order published by title only Ordinance 8622, amending Title 9, “Land Use Code,” B.R.C. 1981, to simplify certain development review processes, and setting forth related details.

REQUESTING DEPARTMENT / PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Brad Mueller, Director of Planning & Development Services
Charles Ferro, Senior Planning Manager
Karl Guiler, Senior Policy Advisor
[Lisa Houde](#), Senior City Planner

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider an ordinance that would amend the Land Use Code to streamline several development review processes to increase efficiency and timeliness of applications.

At the 2023 City Council retreat, council members asked Planning and Development Services (P&DS) to investigate potential policy or code changes that could make development review processes simpler and more predictable for applicants. While this item is in response to the 2023 retreat discussion, this topic was recently reinforced at the 2024 Council retreat, where the priority of “Economic Development Plan & Program Enhancements” was adopted. The changes proposed in Ordinance 8622 impact several different application types and focus on key issues identified by internal and external stakeholders.

A summary of the proposed changes can be found in [Attachment A](#), and an attached annotated ordinance in [Attachment B](#) includes detailed footnotes describing each proposed change. A version of the draft without footnotes is provided in [Attachment C](#).

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only Ordinance 8622, amending Title 9, “Land Use Code,” B.R.C. 1981, to simplify certain development review processes, and setting forth related details.

BOARD AND COMMISSION FEEDBACK

Planning Board – Ordinances changing the Land Use Code require Planning Board recommendation to City Council. Planning Board reviewed the ordinance at their meeting on May 7 and unanimously recommended approval, with one change:

Main Motion: Motion by M. Robles, seconded by K. Nordback, that Planning Board recommends that City Council adopt Ordinance 8622, amending Title 9, “Land Use Code,” B.R.C. 1981, to simplify certain development review processes, and setting forth related details.

*Motion to amend the main motion by J. Boone, seconded by M. McIntyre, to strike from the ordinance the requirement to require 2 Planning Board members to call up an item and continue to allow for call-up by one Planning Board member.
Motion to amend passes 5-1 (M. Roberts opposed, L. Kaplan absent).*

Main motion, as amended by J. Boone’s motion to amend, passes 6-0. (L. Kaplan absent).

Staff has incorporated the Planning Board’s recommended change in Ordinance 8622, which no longer modifies the current number of Planning Board members required to call up an item.

COMMUNITY FEEDBACK

Staff has focused on a “consult” level of engagement for this project, which includes targeted engagement using the existing Planning Board and City Council public hearing process and direct engagement of development review applicants. Staff held two stakeholder discussions in late January to meet with applicants about the potential changes and solicit their input and suggestions for other process improvements. A summary of stakeholder feedback can be found in [Attachment D](#) and specific feedback is briefly summarized within each main topic in the *Analysis* section of this memo.

BACKGROUND

Over the last few years, P&DS staff have been working on a reimagination of the department's business practices and business model. This has included transitioning all development review services online, while also integrating in-person and telephone assistance as the public health concerns of the pandemic have improved. The department has already undertaken many steps to implement the goal of operational excellence in areas of administrative control. Though separate and distinct from the topic of this memo and initiative, these administrative and operational efforts to meet established performance standards remain ongoing, and initial trends in improving customer satisfaction and more consistently achieving performance goals are positive.

At the 2023 City Council retreat, council members asked P&DS to now also investigate potential policy or code changes that could make development review processes simpler and more predictable for applicants. Specifically, council members asked that staff identify any code-related processes that are preventing work from being done efficiently. Council members regularly hear about challenges from community members regarding the duration of land use approvals and permit approvals in the city. Staff hears similar concerns regarding application timing as well. In addition, [recent analysis](#) of the city's appointed boards and commissions highlighted increased workload issues for the appointed groups that could be reduced by making more decisions administrative.

These goals towards simplification and predictability have been reinforced more recently as well. At its recent 2024 retreat, council adopted eleven priorities, including one titled "Economic Development Plan & Program Enhancements." This council priority challenges the city organization to both move quickly to address needs within the local business community, leverage opportunities, and to envision and plan for a greater role in supporting a strong and resilient local economy.

Secondly, the city as an organization adopted a functional Citywide Strategic Plan early this year. Intended primarily as an internal organizing structure for the city's numerous workplans and initiatives, the Strategic Plan is organized around the city's Sustainability, Equity and Resilience Framework, the "Economically Vital" Goal area of the Strategic Plan includes Strategy #15: "Streamline processes for housing, parking, infrastructure, land use, and events that tie directly to priority community outcomes." This agenda item, then, advances the related supporting Priority Action Item to "Identify and implement ways to reduce bureaucracy, improve efficiency, and facilitate quicker approvals for initiatives that align with and enhance the City's priorities related to sustainability, safety, economic vitality, and community well-being," by streamlining processes, improving efficiency, and facilitating quicker reviews.

Of note, several development review procedural improvements that are consequences of code-related requirements were already initiated throughout 2023, including:

- Improvements to the accessory dwelling unit approval process
- Changes to the use table and standards that streamlined review processes for common uses like restaurants (see more detail on page 8)
- Amendments that provided flexibility on when approvals expire

As detailed below, there are several other opportunities for administrative improvements that could be made to further streamline city processes, relative to code requirements and their associated procedures.

ANALYSIS

The following sections provide background and summarize major topics related to the draft ordinance.

Planning Board Call-Ups

- Remove call-up requirement for all floodplain and wetland applications. The opportunity for these applications to be appealed by the applicant or a member of the public (and thus brought to Planning Board for decision) would remain, or for staff to refer a project to Planning Board for decision.
- Remove call-up requirement for nonresidential Use Reviews without site changes through new Minor Use Review process (see more detailed Use Reviews section below).
- Apart from code changes, staff plans to implement additional process improvements that could streamline the amount of time it takes for staff to produce the call-up memos by standardizing mapping processes and memo templates.

Anticipated Result: Based on the previous five years of application data, a reduction of approximately 40% of call-up memos developed by staff and reviewed by the Planning Board, which add several weeks to each development review process for an average of 14 floodplain and wetland projects per year. This would allow staff to reallocate time to other applications and improve overall efficiency.

Use Reviews

- Develop a new “Minor Use Review” process that exempts straightforward Use Reviews for nonresidential uses in nonresidential districts that do not involve site changes from Planning Board call-up. Fees would be lower than a typical Use Review process. Notice of the application would still be provided to property owners within 600 feet of the subject property. Staff decisions could still be appealed within 14 days of the decision and then brought to Planning Board for a hearing. Staff could also refer applications to the board. Limiting this to nonresidential uses in nonresidential districts ensures that existing standards requiring ground floor nonresidential would not be circumvented and ensures that new nonresidential space in residential districts would require the full Use Review process, while uses simply replacing existing nonresidential space are eligible for the simpler process.
- Exempt Minor Use Reviews from the requirement for a Development Agreement to streamline the approval process and timeline for more straightforward proposals.
- Explore process improvements to expedite the final Development Agreement step of the approval for other Use Reviews, such as standardizing templates during the application process or reallocating workloads to expedite the signing steps.

Anticipated Result: Based on 2018-2023 data, about 40% of previous Use Reviews likely would have been eligible to be processed as a Minor Use Review. Absent other recent code changes that impact Use Review requirements for some uses, removing the call-up requirement would reduce the approval process by several weeks, and the Development Agreement exemption can further reduce the process by up to 90 days. This will also reduce time and costs for applicants, support new businesses by reducing barriers, and potentially enable a richer mix of uses in the city.

Nonresidential Uses in Residential Zoning Districts

- Remove the requirement that nonresidential uses in a residential zoning district automatically require a Planning Board public hearing. Opportunity for appeal would remain in place, as well as call-up if site changes are proposed.
- Using the same logic, the requirement for automatic public hearing of dwelling units in the Public zoning district has been removed as well.

Anticipated Result: Based on recent years, these changes would eliminate a few public hearings at Planning Board per year and would reduce overall approval time by at least 60 days for each of these applications.

Development Review Extensions

- Remove requirement for Planning Board approval of extensions.
- Increase staff-level extensions to two one-year extensions rather than two six-month extensions, with a requirement to demonstrate diligence and good cause.
- Replace difficult to apply “substantially complete” language, and instead require building permit and start of construction or use establishment within the three-year period.
- If no permits are obtained and construction has not begun after the three-year period, or five years with the two staff-level extensions, the approval would expire.

Anticipated Result: Public hearings at Planning Board would no longer be necessary, which would reduce required staff and board time, staff would not need to process administrative extensions as frequently, and more approvals would likely be able to meet the three-year time frame, further eliminating need for extensions.

Minor Amendments

- Update both the minor modification and minor amendment criteria, using a more parallel structure of qualitative and quantitative standards.
- The changes to minor modifications are intended to improve the clarity of the language and to better summarize numerical adjustments (related to standards like floor area, open space, and others) in a table, with some flexibility added to language regarding floor area.
- For minor amendments, more substantive changes have been made to the criteria, such as allowing up to 20 percent amendments in setbacks and building location, and requiring basic intent (rather than “substantial”) consistency with the intent of the approval to give more flexibility to smaller projects. Minor amendments remain subject to Planning Board call-up.

Anticipated Result: More applications would be able to be processed as Minor Amendments. This would increase the number of Minor Amendments and reduce the number of Site Review Amendments, reducing cost for applicant and staff time needed on review. Greater clarity on Minor Modification standards is expected to reduce time spent by staff and applicants on interpretation.

Subdivisions

- Update lot line adjustment language to reflect current practice.
- Remove Planning Board notification of lot line elimination application decisions, which are already administrative decisions that Planning Board cannot modify.

Anticipated Result: Several hours of staff time and Planning Board packet review time would be reduced.

Substitution of Use, Transitional Regulations, and Use Review Modifications

- Clarity has been added to the interrelated sections regarding transitional regulations in Section 9-1-4, the use review amendment and minor modification process in Section 9-2-15, and the definition of nonconforming use in Chapter 9-16.

Anticipated Result: A reduction in staff time currently spent interpreting and providing clarity to applicants.

Vacations of Utility and Drainage Easements

- Eliminate the requirement for City Council call-up of utility and drainage easements, which are rarely, if ever, called up. Other easement vacations, like public rights-of-way or access easements would still require council review.

Anticipated Result: Removal of about seven City Council call-ups per year based on recent numbers, reducing several weeks in overall approval time and several hours of staff and council review and processing time.

Other Changes: Parking for Unlisted Uses, Solar Exceptions, Multiple Buildings on RL-2 Lots

- Incorporate new options for staff determination of parking requirement for uses not listed in the Use Table.
- Modify public notice for solar exception to align with other administrative variances.
- Provide greater flexibility for RL-2 zoned properties to incorporate more than one building on a lot.

Anticipated Result: Greater flexibility for some uses with unique circumstances. Several hours of staff time spent on solar exception notices that could be reallocated to other tasks.

Planning Board Call-Ups

Background

Boulder's land use code allows many application types to be decided administratively by the City Manager (delegated to staff), but then the Planning Board has the opportunity to call up the City Manager's decision. The applications that may be called up are summarized in [Table 4-1](#). Only one Planning Board member needs to call up an item. Once called up, the Planning Board holds a public hearing at a future meeting and makes a decision on the application. Similarly, the City Council has the authority to call up any Planning Board decision but may only call up an application on a majority vote. In addition, an applicant or any interested person can appeal any staff decision.

Call-up memos describe the application request and staff provides a full analysis of the request and ultimate staff decision. Call-up memos typically take staff at least two hours to draft, plus additional time for leadership review of each item. Most of the applications brought to the Planning Board are not ultimately called up. However, the call-up procedure provides an opportunity for the Planning Board to discuss and decide on an application directly.

The application types that are currently subject to call-up by the Planning Board are:

- Expansion of Nonconforming Use
- Final Plat
- Floodplain Development Permit
- Form-Based Code Review
- Geophysical Exploration Permit
- Minor Amendment
- Minor Subdivision
- Parking reduction >25% but ≤50%
- Site Review
- Site Review Amendment
- Wetland Permit

Comparable Cities

Call-ups by a Planning Board or similar appointed group are relatively uncommon in other similarly sized Colorado communities. If present, call-up procedures in other communities are usually only established for City Council members to call up a decision. The call-up process does allow Boulder to delegate some decision-making authority to staff that other cities may not provide, with the potential for call-up of those decisions.

Appeal processes are more typically utilized in other cities which allow applicants, or in some cases residents, to appeal a staff or board-level decision. Many cities specifically identify who has standing or eligibility to appeal a decision.

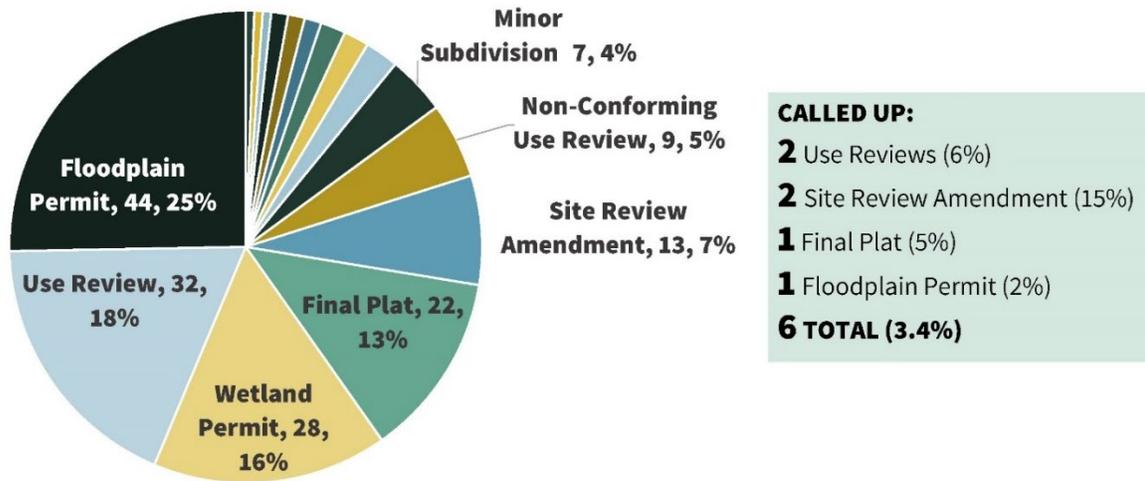
Recent Applications

Staff analyzed the call-ups from recent years. Out of 174 applications brought to the Planning Board, six (3.4%) were called up. Nearly half of the applications brought to the board for potential call-up relate to floodplain or wetland development and are very rarely called up. In the last five years (2018-2023), only one floodplain or wetland permit

was called up by the board, of 72 that could be called up. That application was ultimately approved. The required call-up step adds at least two to four weeks to the overall approval process.

Only one of the six applications had any significant deviation from the original staff approval after going through the call-up process. In that single case, Planning Board denied a Use Review application for the new construction of a drive-thru restaurant where staff had recommended approval with conditions.

Call-Ups (2018-2023)



Analysis

Staff reviewed all application types that are currently subject to call-up and considered the benefits and drawbacks of the call-up procedure noted above, particularly the most common applications such as floodplain and wetland permits, use reviews, final plats, site review amendments, minor subdivisions, minor amendments, or others. Some applications, like final plats ([Sec. 81](#)), are required by city charter to be reviewed by the Planning Board.

Planning Board Input

This topic was discussed as a matters item at the January 23 Planning Board meeting. Board members were supportive of eliminating call-up requirements for floodplain and wetland applications and staff review of other application that may not have much benefit from call-up. Members expressed interest in maintaining call-up for Site Review and some Use Reviews. Board members had differing opinions about the number of Planning Board members that should be required to call an application up – some wanted to maintain the current allowance of only one member and others were comfortable increasing it to three members.

Stakeholder Input

The stakeholders staff met with in January were supportive of changing call-up procedures and shared that the call-up process adds significant ambiguity and length to the process. The stakeholders expressed concern about the requirement that only one

member of Planning Board is required to call an application up. They noted that call-ups rarely, if ever, change the outcome of the project. Some noted that if something is to be called up, the Planning Board member should be required to provide a reason why, so that the applicant can better prepare for the public hearing.

Proposed Code Changes:

- Remove call-up requirement for all floodplain and wetland applications. The opportunity for these applications to be appealed by the applicant or a member of the public (and thus brought to Planning Board for decision) would remain, or for staff to refer a project to Planning Board for decision.
- Remove call-up requirement for nonresidential Use Reviews without site changes through new Minor Use Review process (see more detailed Use Reviews section below).
- Apart from code changes, staff plans to implement additional process improvements that could streamline the amount of time it takes for staff to produce the call-up memos by standardizing mapping processes and memo templates.
- **Anticipated Result:** Based on the previous five years of application data, a reduction of approximately 40% of call-up memos developed by staff and reviewed by the Planning Board, which add several weeks to each development review process for an average of 14 floodplain and wetland projects per year. This would allow staff to reallocate time to other applications and improve overall efficiency.

Use Reviews

Background

In Boulder, many types of businesses and housing require approval through the Use Review process. Use Review is a discretionary review that ensures that a particular use is appropriate in a proposed location. The use must meet certain compatibility criteria identified in [Section 9-2-15\(e\)](#) and the process allows for conditions or standards to be applied to the use to ensure compatibility. Most Use Reviews are decided by staff but are subject to call-up by Planning Board.

Boulder also has a Conditional Use review process, which is an administrative review that is not subject to Planning Board call-up. The use standards in Chapter 6 of the land use code outline the specific use standards that are the objective conditions that the application must meet for approval. Aside from Use Review and Conditional Uses, uses are either allowed by right or prohibited.

Comparable Cities

This type of process is common in almost every community across the country, but the procedure is called by many different names, like conditional use permits, special permits, special exceptions, use by special review, or others. Most communities require a public hearing for these types of applications.

One less typical requirement of Boulder's Use Review compared to other cities is the requirement to record a Development Agreement after approval. Most other cities in Colorado require a much simpler notification document to be recorded with the county, if recording of a decision is required at all:

- In Longmont, applicants record a general Notice of Site Plan Approval with the county clerk and the city maintains a copy of the resolution that contains the conditions of approval, approved site plan, and recorded notice of approval.
- Broomfield does not require Development Agreements for standalone Uses by Special Review; Development Agreements are used only for larger development projects, particularly when there are public improvements involved.
- Louisville has applicants record a site plan set with all conditions of approval, but not a Development Agreement. If there is not site planning involved, Louisville records only the resolution of approval with any conditions listed.
- Golden does not record anything with the county for Special Use Permits. They maintain a record in their internal address files and permitting system.
- Colorado Springs does not require Conditional Use approval documentation to be recorded. They provide the applicant with stamped plans and an approval letter and maintain copies in their permitting system.
- Fort Collins does record Development Agreements associated with Final Development Plan approvals. Their staff noted that they also experience delays with recording because of the degree of coordination that Development Agreements usually require for projects.

Analysis

Use Reviews are a common development review application in Boulder, with an average of 19 applications reviewed per year. The most frequent applications in the last few years have been for the following use types:

- Restaurants, brewpubs, or taverns
- Non-conforming use expansion (no more than 10%)
- Indoor athletic facilities
- Efficiency living units
- Hotels

Use Reviews account for approximately one-quarter of all applications that Planning Board has the opportunity to call up. Only two Use Reviews have been called up in the last five years out of 32 that were brought to the Planning Board.

In the last few years, Use Reviews have been taking about 200 days for approval, or nearly seven months. Often, about 20 percent of this time involves the city waiting for the applicant to resubmit application materials with needed details. When analyzing the efficiency of development review applications, the timeliness of approvals for Use Reviews appears to be a significant potential opportunity to address.

Since Use Reviews are considered through the city's discretionary land use review process, upon application they are also routed to various other city departments for comments, including transportation, engineering, building code, fire, the City Attorney's Office, parks, housing, and landscaping reviewers. These initial reviews are valuable in

that they may identify potential issues that would come up at the time of building permit, but can sometimes contribute to the length of the Use Review process.

Development Agreements also add time to the process. Per [Section 9-2-9](#), after final approval Use Reviews also require the execution of a Development Agreement. This can add up to 90 days to the overall approval process, depending on how expediently this final requirement is met.

Several code amendments in the last few years have addressed requirements for Use Reviews. In the Use Table and Standards project, standards for restaurants, brewpubs, and taverns were modified to increase the size allowance by right and generalize patio standards; this went into effect in December and is expected to significantly reduce the number of Use Review requests for this use type. Only about 15 percent of the restaurants that received Use Review approval in the last few years would still require that approval.

Similarly, the use type of Indoor Athletic Facilities was defined separately and a 5,000 square foot limit was established in the industrial zoning districts to allow these uses by right; this is also expected to reduce Use Review applications and already has allowed several small facilities by right in the last year that would have otherwise needed Use Review approval.

In the Zoning for Affordable Housing code changes, the requirement for properties with a certain percentage of Efficiency Living Units to obtain Use Review approval was eliminated and thus will reduce those applications.

Planning Board Input

In their previous discussion, Planning Board asked staff to look into the impact of the recent Use Table changes on the number of Use Reviews that would be required. As noted above, staff determined that the changes adopted in the Use Table and Standards project, only about 15 percent of the restaurants and 40 percent of indoor athletic facilities that recently went through the Use Review process would still require that approval.

Several members expressed an interest in maintaining Use Reviews as call-ups, while some supported the concept of exempting Use Reviews without site changes from some steps of the process. A concern was raised about allowing residential uses on the ground floor of buildings without a call-up potential, if there were no site changes. Planning Board members also asked about the need for Development Agreements for Use Reviews and one member suggested using that tool for some applications but not for all.

Stakeholder Input

Stakeholders indicated that Use Reviews rarely have unique conditions added and are seldom called up by the Planning Board. They suggested that projects without new construction involved should not have as many application requirements or as high of fee as both pose barriers to new businesses. Many businesses are paying double rent while waiting for approval to move to new locations.

Some said that some landlords encourage tenants not to even seek city approval due to the length of the approval process, and some design firms will tell clients that their tenant finish project is infeasible if a Use Review is required.

Stakeholders mentioned that the scrutiny needed for these applications are often out of sync with the potential issues. The applicant perspective is that Use Reviews tend to get stuck in infinite review cycles.

Stakeholders also noted issues with the Development Agreement process, particularly when a Use Review is required for a simple tenant change. Property owners are hesitant to sign Development Agreements because the language in the agreement is often not applicable to the work proposed – for example, references to financial guarantees and improvements that are not part of the request.

Proposed Code Change:

- Develop a new “Minor Use Review” process that exempts straightforward Use Reviews for nonresidential uses in nonresidential districts that do not involve site changes from Planning Board call-up. Fees would be lower than a typical Use Review process. Notice of the application would still be provided to property owners within 600 feet of the subject property. Staff decisions could still be appealed within 14 days of the decision and then brought to Planning Board for a hearing. Staff could also refer applications to the board. Limiting this to nonresidential uses in nonresidential districts ensures that existing standards requiring ground floor nonresidential would not be circumvented and ensures that new nonresidential space in residential districts would require the full Use Review process, while uses simply replacing existing nonresidential space are eligible for the simpler process.
- Exempt Minor Use Reviews from the requirement for a Development Agreement to streamline the approval process and timeline for more straightforward proposals.
- Explore process improvements to expedite the final Development Agreement step of the approval for other Use Reviews, such as standardizing templates during the application process or reallocating workloads to expedite the signing steps.
- **Anticipated Result:** Based on 2018-2023 data, about 40% of previous Use Reviews likely would have been eligible to be processed as a Minor Use Review. Absent other recent code changes that impact Use Review requirements for some uses, removing the call-up requirement would reduce the approval process by several weeks, and the Development Agreement exemption can further reduce the process by up to 90 days. This will also reduce time and costs for applicants, support new businesses by reducing barriers, and potentially enable a richer mix of uses in the city.

Nonresidential Uses in Residential Zoning Districts

Background

[Section 9-2-15\(d\)\(1\)](#) identifies a few use types for which Planning Board must automatically review and decide on Use Review applications after a public hearing:

- Nonresidential uses in residential zoning districts
- Attached and detached dwelling units or a residential use in a Public (P) district
- Oil and gas operations

The requirement for Planning Board decision of nonresidential uses in residential zoning districts has been in the code since at least the early 1980s, when mixing uses was much less common and planning guidance often strictly separated uses.

Most nonresidential uses are prohibited in residential districts. Only a few even have the option to seek Use Review approval in residential districts: some public and institutional uses like government facilities or specialized instruction facilities, and some commercial uses like art studios, offices, or personal services.

In the last year, Planning Board has reviewed a few Use Review applications for nonresidential uses in a residential zoning district and has questioned the necessity of their review of these types of applications.

Comparable Cities

It is rare for other cities to differentiate a process for nonresidential uses in residential zoning districts; often it is either prohibited or requires the same type of review that any Use Review or similar application would need.

Recent Applications

All recent applications for nonresidential uses in residential zoning districts have been approved by Planning Board. The requirement to attend Planning Board typically adds at least 60 days to the approval process of an application due in part to full board schedules.

Analysis

The automatic requirement for a Planning Board public hearing reflects a dated approach to mixing of uses. In the early 1980s, when Boulder's initial mixed use regulations were put into place, mixing of uses was a new planning and zoning concept and understandably, the potential impacts were relatively unknown and a Planning Board public hearing might have seemed necessary to evaluate impacts. Forty years later, planners have significant experience dealing with mixed uses and the community is much more accustomed to and supportive of mixed uses, so this automatic requirement of a public hearing is no longer necessary.

Planning Board Input

At the January 23 meeting, board members had some clarifying questions but in general several members expressed support for removing this requirement for automatic Planning Board public hearing for nonresidential uses in residential zoning districts.

Stakeholder Input

Applicants often note the added expense and unpredictability of this requirement and were supportive of this potential change.

Proposed Code Change:

- Remove the requirement that nonresidential uses in a residential zoning district automatically require a Planning Board public hearing. Opportunity for appeal would remain in place, as well as call-up if site changes are proposed.
- Using the same logic, the requirement for automatic public hearing of dwelling units in the Public zoning district has been removed as well.

- **Anticipated Result:** Based on recent years, these changes would eliminate a few public hearings at Planning Board per year and would reduce overall approval time by at least 60 days for each of these applications.

Development Review Extensions

Background

Applications for site review, use review, or form-based code review must begin and “substantially complete” the approved work within three years of final approval ([Section 9-2-12](#)). Applicants can request an extension for completion if the project is not substantially complete by that time. City staff can grant up to two six-month extensions, after which an applicant can request further extension for the Planning Board, even if the project did not require board review for initial approval. Applicants must prove that there has been reasonable diligence towards completing the project and that there is good cause for the extension. The Planning Board may impose additional conditions as needed as part of a public hearing to consider the extension.

The code is unclear about when the Planning Board approved extension begins and whether there are any limits on the lengths of extension the board may approved or rounds of extensions. This has caused confusion on some recent extensions and clarity would help streamline the process and make it more predictable for staff, applicants, and the Planning Board. The discussion about what potential new regulations should be imposed on the project that were not required initially also adds significant uncertainty.

In addition, the definition of “substantially complete” is currently detailed as “the time when the construction is sufficiently complete so the owner can occupy the work or portion thereof for the use for which it is intended.” This has been viewed as inflexible, and difficult to interpret on many projects.

Comparable Cities

Most cities do specify a time limit for the validity of approvals. However, it appears to be uncommon to base the validity on the concept of substantial completion, as Boulder does. Most cities simply require that the project obtain necessary building permits or start construction before the expiration of the land use approval.

Analysis

In the last five years, applicants for 14 different projects have requested 20 extensions of a development review approval. Two of these projects requested Planning Board level extensions, which were each approved for three additional years.

The definition of “substantially complete” has been difficult to implement and may be helpful to further clarify. Because of rising development costs and the impacts of the pandemic, this section of the code could benefit from added clarity and flexibility to allow approved projects to move forward.

Planning Board Input

Planning Board expressed support for potential changes to the development review extensions and inquired about whether there has been an increase in requests due to the

COVID-19 pandemic, which appears to have had an impact on construction timing. Extension requests did increase in 2023, three years after the start of the pandemic.

Stakeholder Input

Stakeholders encouraged staff to investigate the flexibility of phasing plan requirements. They noted that changes to the “substantially complete” language would be very helpful as it causes significant stress for applicants. Other communities use the start of construction, which is more straightforward. They noted that when extensions go to the Planning Board, they always seem to be approved, so these should just be staff level reviews.

Proposed Change:

- Remove requirement for Planning Board approval of extensions.
- Increase staff-level extensions to two one-year extensions rather than two six-month extensions, with a requirement to demonstrate diligence and good cause.
- Replace difficult to apply “substantially complete” language, and instead require building permit and start of construction or use establishment within the three-year period.
- If no permits are obtained and construction has not begun after the three-year period, or five years with the two staff-level extensions, the approval would expire.
- **Anticipated Result:** Public hearings at Planning Board would no longer be necessary, which would reduce required staff and board time, staff would not need to process administrative extensions as frequently, and more approvals would likely be able to meet the three-year time frame, further eliminating need for extensions.

Minor Amendments

Background

After a Site Review application is approved, there are three options to request approval for any changes: minor modification, minor amendment, or site review amendment. These changes could be to a recent approval or could be to an approval from the 1970s. Boulder replaced the Planned Unit Development (PUD) process with Site Review in the 1990s, but still administers changes to decades of previously approved PUDs through the three amendment types.

Minor modifications are the simplest process and are reviewed administratively, but must meet specific limitations. Changes to approved Site Review applications that exceed the limits of an administrative minor modification are processed as a minor amendment. Minor amendments are also reviewed by staff but as a formal Site Review type application, they are only subject to a limited set of the Site Review criteria and are subject to call-up by the Planning Board. Full Site Review amendments are the most significant changes and require a standard Site Review application subject to all the Site Review criteria.

Minor amendments must meet several standards related to dwelling unit type, open space, building coverage, height, and infrastructure improvements. See [Section 9-2-14\(1\)](#).

Comparable Cities

Processes like minor amendments are common in cities with PUDs. Most cities have only two tiers of applications for changes to these applications – typically a “minor” or a “major” change. Cities that have recently updated their code often integrate tables to clearly indicate the minor numeric adjustments to approved plans that can be approved through a simple administrative process. For example, Denver has an extensive table of administrative adjustments that can be allowed and uses a [template](#) to document all minor modifications in a standardized way.

Analysis

In the last five years, 11 minor amendments have been processed and each typically takes about four months for approval. They are relatively infrequent applications, likely because the criteria do not apply to many situations. Several small-scale changes have been pushed into a full Site Review amendment process because the proposal did not meet the specific standards for minor amendment. In many cases, it is either because the criteria language is strict about meeting the original intent of the Site Review (“substantial consistency”) or because it is limited to changes to “approved building location or additions to existing buildings.” This language in particular often keeps many relatively straightforward proposals with minimal impact on neighboring properties from qualifying for the minor amendment process.

Planning Board Input

The board gave limited input on this issue at the January 23 meeting but did note the need to call up site review amendments.

Stakeholder Input

Stakeholders said that any changes to approved site reviews are difficult. Several felt that some changes, like moving windows or doors by a few feet, should not require even a minor modification process. Stakeholders noted a need to redefine the minor amendment process, and focus on potential for off-site impacts. Some examples were shared that involved full site review amendments for seemingly minor changes, which could be addressed by modifying the minor amendment criteria to ensure more changes can fall under that process.

Proposed Change:

- Update both the minor modification and minor amendment criteria, using a more parallel structure of qualitative and quantitative standards.
- The changes to minor modifications are intended to improve the clarity of the language and to better summarize numerical adjustments (related to standards like floor area, open space, and others) in a table, with some flexibility added to language regarding floor area.
- For minor amendments, more substantive changes have been made to the criteria, such as allowing up to 20 percent amendments in setbacks and building location,

- and requiring basic intent (rather than “substantial”) consistency with the intent of the approval to give more flexibility to smaller projects. Minor amendments remain subject to Planning Board call-up.
- **Anticipated Result:** More applications would be able to be processed as Minor Amendments. This could increase the number of Minor Amendments and reduce the number of Site Review Amendments, reducing cost for applicant and staff time needed on review. Greater clarity on Minor Modification standards is expected to reduce time spent by staff and applicants on interpretation.

Subdivisions

Background

Boulder has several applications that allow land to be subdivided, with all requirements detailed in Chapter 12 of the land use code. A typical subdivision requires approval of both a preliminary plat and final plat. Alternatively, some in residential districts can be processed as a minor subdivision if there are no standard modifications, no new public improvements, no steep slopes, or no existing buildings that would require removal. Some other application types are exempt from the typical subdivision process like lot line adjustments and eliminations. The City Charter ([Sec. 81](#)) addresses Planning Board review of subdivisions, as approved by voters in 1951.

Comparable Cities

Boulder’s subdivision process is generally similar to other Colorado communities. The state has certain subdivision requirements as well, so there is not significant variability among cities in Colorado. For example, Longmont has a preliminary subdivision plat and final subdivision plat process, a minor subdivision plat process which includes a boundary/lot line adjustment process, and a conveyance plat process.

Analysis

There are some limitations on changes to the subdivision process due to state and City Charter limitations. However, some minor changes could improve the timeliness of process and reduce staff time. Currently, notices of decision on lot line eliminations are sent to the board as an informational item, but the board does not have an ability to affect or change the administrative decision. This board notification process could be eliminated to save staff and board review time. Additionally, there is some language in the lot line adjustment section that does not align with current practice and could be updated.

Planning Board and Stakeholder Input

Changes to the subdivision process were not discussed by the Planning Board on January 23. Some stakeholders noted that the final plat can hold up a project and requested that the Subdivision Agreement could be started earlier on in the process. Others asked that preliminary and final plat applications could be run concurrently.

Proposed Change

- Update lot line adjustment language to reflect current practice.

- Remove Planning Board notification of lot line elimination application decisions, which are already administrative decisions that Planning Board cannot modify.
- **Anticipated Result:** Several hours of staff time and Planning Board packet review time would be reduced.

Substitutions of Use, Transitional Regulations, and Use Review Modifications

Background

For the past decade or so, city staff have been processing administrative “substitution of use” applications to review and approve primarily new owners or tenants of restaurant spaces where restaurants had previously been located and where the use had become subject to conditional or use review standards since those restaurants were originally established. This review confirms that operating characteristics were not expanded beyond those previously approved for the restaurant. The process generally works well and has provided a quick approval process for restaurants, a use type that changes over frequently. A substitution of use process allows these businesses to avoid seeking a separate conditional or use review approval. It is based on the transitional regulations in [Section 9-1-4\(e\)](#).

The city also reviews “substitution of nonconforming use” or “change of nonconforming use” applications similarly, to swap one nonconforming use for another if it is determined not to be an expansion. This similarity in process and naming convention has caused confusion and conflation of the two separate processes.

Comparable Cities

Many other cities would require new users to obtain a conditional use approval or Use Review approval; Boulder’s process appears to be more flexible than other cities in that respect. However, as noted in the memo for [Ordinance 8590](#), Boulder has historically had fairly restrictive requirements on restaurants over time, so other cities would be unlikely to require Use Reviews for restaurants.

Analysis

In the last five years, 44 substitutions of use have been approved; 43 of these were for restaurant uses. The majority were for restaurants taking over space previously approved through Use Review that are maintaining the same operating characteristics. These reviews are sometimes required by a Use Review condition of approval or typically staff indicates the requirement when a restaurant comes in for various licensing requirements. 12 substitutions of *nonconforming* use have been approved during the same time.

Planning Board and Stakeholder Input

This topic was identified after the January 23 meeting with Planning Board and the stakeholder meetings, so specific feedback has not yet been received. However, this would not be a significant change to existing practices but would clarify existing confusing language in the code.

Proposed Change:

- Clarity has been added to the interrelated sections regarding transitional regulations in Section 9-1-4, the use review amendment and minor modification process in Section 9-2-15, and the definition of nonconforming use in Chapter 9-16.
- **Anticipated Result:** A reduction in staff time currently spent interpreting and providing clarity to applicants.

Vacations of Utility and Drainage Easements

Background

Per [Section 8-6-10](#), public easements can be vacated through an administrative review if they are not for access or right-of-way, but the vacation is subject to a 30-day City Council call-up period. A total of 31 vacations of utilities have been processed in the last 5 years for various utility or drainage easements that were no longer needed. Vacations often involve removal of an obsolete drainage or utility easement that has been replaced with new easements as part of a development project or may involve something as simple as shaving off a portion of an easement to allow for the placement of a shed or eave.

Comparable Cities

This type of process is not always called a vacation in other cities – some other communities call this “relinquishment” or “release” of easements. Denver and Longmont require all easement vacations to be approved by their City Councils, while Broomfield allows for an administrative release of easements.

Analysis

Staff is not aware of any of the utility vacations in at least the last five years, and maybe in the last few decades, being called up by City Council. The administrative time for the many staff members involved to provide notice, prepare and review a City Council call-up memo, include the memo and materials in council agendas, and then attend City Council meetings, does not likely align with the potential benefit of these call-ups.

Stakeholder Input

This topic was identified after the January 23 meeting with Planning Board and the stakeholder meetings, so specific feedback has not yet been received. However, vacation of utility easements can frequently add time to an overall development review project, so it is expected that stakeholders would be supportive of this change.

Proposed Change:

- Eliminate the requirement for City Council call-up of utility and drainage easements, which are rarely, if ever, called up. Other easement vacations, like public rights-of-way or access easements would still require council review.
- **Anticipated Result:** Removal of about seven City Council call-ups per year based on recent numbers, reducing several weeks in overall approval time and several hours of staff and council review and processing time.

Other Changes: Parking for Unlisted Uses, Solar Exceptions, Multiple Buildings on a RL-2 Lot

Background

Parking for Unlisted Uses: Occasionally, applicants submit permits to the city with uses not listed in or contemplated by the land use code. Currently, parking for uses that are not listed in the Use Table are limited in procedural options for flexibility. For a nonresidential use, several zoning districts require one space per 300 or 400 square feet. However, some uses have unique operating characteristics that do not generate that much parking need. If the property is not large enough to be eligible for site review, there is no application process available to reduce the parking requirement for these unlisted uses beyond 25 percent.

Solar Exceptions: [Section 9-9-17\(f\)](#) describes the current solar exception process, an administrative procedure to vary solar access requirements. For staff to grant a solar exception, the applicant must provide affidavits from each affected property indicating there is no objection to the exception. Currently, applications without these affidavits are referred to the Board of Zoning Adjustment for decision. In addition to this, [Table 4-2](#) requires mailed and posted notice for solar exceptions.

Multiple Buildings on a RL-2 Lot: [Subsection 9-9-2\(b\)](#) prohibits more than one building on a lot in the RL zoning districts, unless approved through Site Review. However, RL-2 zoning districts were largely developed under Planned Unit Development or Site Review approvals that incorporate more than one principal building per lot.

Comparable Cities

Many similar communities include alternative parking standard options for unlisted uses. Other cities around the country have solar access regulations as well, and cities have varying approaches to allowing multiple buildings on a lot.

Analysis

Parking for Unlisted Uses: While relatively uncommon, providing options for alternative ways to determine parking requirements for unlisted uses would provide a procedural option that does not currently exist, while not impacting the significantly more common listed uses.

Solar Exceptions: There have been about 20 solar exception applications in Boulder in the last five years. The solar exception notice could be better aligned with the process for other administrative variances and reduce some administrative steps in the review process.

Multiple Buildings on a RL-2 Lot: *About seven percent of the land area in the city is zoned RL-2. This minor change to the code would provide greater flexibility for those lots to make changes that are aligned with the intent of their original approval without requiring a full site review amendment.*

Stakeholder Input

These topics were identified after the January 23 meeting with Planning Board and the stakeholder meetings, so specific feedback has not yet been received. However, it is

expected that stakeholders would be supportive of these changes as they provide flexibility and would likely improve timeliness of solar exception applications.

Proposed Change:

- Incorporate new options for staff determination of parking requirement for uses not listed in the Use Table.
- Modify public notice for solar exception to align with other administrative variances.
- Provide greater flexibility for RL-2 zoned properties to incorporate more than one building on a lot.
- **Anticipated Result:** Greater flexibility for some uses with unique circumstances. Several hours of staff time spent on solar exception notices that could be reallocated to other tasks.

Other Procedural Improvements Planned

Process improvements also go beyond ordinance changes. Staff is committed to continually assessing the efficiency of internal administrative practices. Based on internal and external stakeholder engagement as part of this project, some additional topics have risen as focus areas for further improvement, in addition to those noted in previous sections:

TEC Docs

Stakeholders shared many helpful comments about ways to improve the Technical Documents or “TEC Doc” process. However, the TEC Doc process is not part of the land use code. TEC Docs are the engineering plan sets and site construction drawings submitted after discretionary land use cases and before building permits. P&DS staff is already scheduled to embark on a separate update to the TEC Doc process in mid-2024.

Pre-Application Meetings

Stakeholders expressed interest in modifying the pre-application meeting process, by allowing more pre-application meetings to take place, where primary staff reviewers are present and can provide conceptual feedback on a proposal before an application is filed. Currently, staff holds about 35 pre-application meetings per year with applicants. Staff will explore whether potential changes to the pre-application meetings may improve the expediency of approvals.

Analysis of Project Objectives

Staff has identified the following key issues for the City Council’s consideration:

1. Does the City Council find that the proposed ordinance implements the adopted policies of the Boulder Valley Comprehensive Plan?
2. Does the City Council suggest any modifications to the proposed ordinance?

Staff finds that the proposed ordinance implements the adopted policies of the comprehensive plan. The following analysis is provided to demonstrate how the project objective is met through the proposed ordinance.

What is the reason for the ordinance and what public purpose will be served?

City Council directed P&DS staff to investigate potential policy or code changes that could make development review processes simpler and more predictable for applicants. Specifically, council members asked that staff identify any processes that are preventing work from being done efficiently and removing tasks that add time but not value to projects. Council members regularly hear about challenges from community members regarding the duration of land use approvals and permit approvals in the city. Staff hears similar concerns regarding application timing as well. In addition, recent analysis of the city's boards and commissions highlighted increased workload issues for the appointed groups that could be reduced by making more decisions administrative.

How is the ordinance consistent with the purpose of the zoning districts or code chapters being amended?

This ordinance is focused on improvements to the development review process which provides uniform and consistent methods for evaluating and reviewing all proposals for and ensuring compliance with the development standards. In many cases as noted above, there are opportunities to make processes clearer and more efficient while still meeting this purpose.

Are there consequences in denying this ordinance?

The consequence of denying this ordinance is that some less efficient processes for development review approvals would be maintained. Frequent issues of interpretation and needed clarification would not be improved in the code.

What adverse effects may result with the adoption of this ordinance?

Staff does not anticipate that adverse effects may result with the adoption of this ordinance. While the changes focus on expediting the timeliness of some approval processes, particularly the use review process, several assurances remain in the code to avoid negative impacts.

For example, the elimination of the call-up requirement for the new Minor Use Review process is limited to only nonresidential uses in nonresidential zoning districts without site changes and retains both public notice and the opportunity for appeal. Changes to the minor amendment criteria will provide some needed flexibility while also keeping the applications subject to call-up.

Changes to the development review extension process and determination of "substantially complete" projects should clear up a frequent area of concern, while still ensuring that any development that has not obtained a building permit or started construction within three years would expire or require staff approval of an extension, who can analyze whether the applicant has proven reasonable diligence and good cause for extension.

What factors are influencing the timing of the proposed ordinance? Why?

City Council directed P&DS staff to complete process improvement work in 2023, in addition to completing a number of other ordinances that, as noted in the background section of this memorandum, also improved processes. This focused ordinance is intended to be complete in quarter two of 2024 to allow staff time to focus on the 2024-2025 work program priorities that were set by City Council at their April retreat.

How does the ordinance compare to practices in other cities?

Analysis of each focus area of change and practices in comparable cities has been provided in the above summary of changes section of this memorandum.

How will this ordinance implement the comprehensive plan?

This project implements several relevant policies noted below. The process improvements will support the efficiency of city decision making, while still ensuring potential impacts of development proposals are adequately mitigated.

Built Environment Policy 2.13: Protection of Residential Neighborhoods Adjacent to Non-Residential Zones

The city and county will take appropriate actions to ensure that the character and livability of established residential neighborhoods will not be undermined by spill-over impacts from adjacent regional or community business zones or by incremental expansion of business activities into residential areas. The city and county will protect residential neighborhoods from intrusion of non-residential uses by protecting edges and regulating the impacts of these uses on neighborhoods.

Built Environment Policy 2.14: Mix of Complementary Land Uses

The city and county will strongly encourage, consistent with other land use policies, a variety of land uses in new developments. In existing neighborhoods, a mix of land use types, housing sizes and lot sizes may be possible if properly mitigated and respectful of neighborhood character. Wherever land uses are mixed, careful design will be required to ensure compatibility, accessibility and appropriate transitions between land uses that vary in intensity and scale.

Economy Policy 5.01: Revitalizing Commercial & Industrial Areas

The city supports strategies unique to specific places for the redevelopment of commercial and industrial areas. Revitalization should support and enhance these areas, conserve their strengths, minimize displacement of users and reflect their unique characteristics and amenities and those of nearby neighborhoods. Examples of commercial and industrial areas for revitalization identified in previous planning efforts are Diagonal Plaza, University Hill commercial district, Gunbarrel and the East Boulder industrial area.

The city will use a variety of tools and strategies in area planning and in the creation of public/private partnerships that lead to successful redevelopment and minimize displacement and loss of service and retail uses. These tools may include, but are not limited to, area planning with community input, infrastructure improvements, shared parking strategies, transit options and hubs and changes to zoning or development standards and incentives (e.g., financial incentives, development).

Economy Policy 5.03: Diverse Mix of Uses & Business Types

The city and county will support a diversified employment base within the Boulder Valley, reflecting labor force capabilities and recognizing the community's quality of life and strengths in a number of industries. The city values its industrial, service and office uses and will

continue to identify and protect them. The city will evaluate areas with non-residential zoning to ensure the existing and future economic vitality of Boulder while responding to the needs of regional trends and a changing global economy.

Economy Policy 5.05: Support for Local Business & Business Retention

The city and county value the diverse mix of existing businesses, including primary and secondary employers of different sizes, in the local economy. Nurturing, supporting and maintaining a positive climate for the retention of existing businesses and jobs is a priority. The city recognizes the vital role of small, local and independent businesses and non-profits that serve the community and will balance needs of redevelopment in certain areas with strategies that minimize displacement of existing businesses and create opportunities for startups and growing businesses. The city will continue to proactively analyze trends in market forces to shape its activities, plans and policies regarding local business and business retention. The city and county will consider the projected needs of businesses and their respective employees, such as commercial and office space, when planning for transportation infrastructure, programs and housing.

Economy Policy 5.06: Affordable Business Space & Diverse Employment Base

The city and county will further explore and identify methods to better support businesses and non-profits that provide direct services to residents and local businesses by addressing rising costs of doing business in the city, including the cost of commercial space. The city will consider strategies, regulations, policies or new programs to maintain a range of options to support a diverse workforce and employment base and take into account innovations and the changing nature of the workplace.

Economy Policy 5.14: Responsive to Changes in the Marketplace

The city recognizes that development regulations and processes have an impact on the ability of businesses to respond to changes in the marketplace. The city will work with the local business community and residents to make sure the city's regulations and development review processes provide a level of flexibility to allow for creative solutions while meeting broader community goals. This could involve modifying regulations to address specific issues and make them more responsive to emerging technologies and evolving industry sectors.

Local Governance & Community Engagement Policy 10.01: High-Performing Government

The city and county strive for continuous improvement in stewardship and sustainability of financial, human, information and physical assets. In all business, the city and county seek to enhance and facilitate transparency, accuracy, efficiency, effectiveness and quality customer service. The city and county support strategic decision-making with timely, reliable and accurate data and analysis.

ATTACHMENTS

Attachment A: Summary of Changes

Attachment B: Annotated Ordinance 8622

Attachment C: Ordinance 8622 Without Footnotes

Attachment D: Summary of Stakeholder Feedback

Attachment E: Project Charter

Summary of Changes

DEVELOPMENT REVIEW PROCESS SIMPLIFICATION

Background

Based on direction from City Council at their 2023 retreat, Planning and Development Services staff investigated potential policy or code changes that could make code-related development review processes simpler and more predictable for applicants. **Ordinance 8622** incorporates several changes to the city's Land Use Code that are intended to streamline development review processes and address common issues.

Planning Board Call-Ups

- ▶ **Remove call-up requirement** for floodplain and wetland applications and Use Review applications for nonresidential uses in nonresidential districts without proposed site changes.

Use Reviews

- ▶ **Develop new Minor Use Review process** that exempts Use Reviews for nonresidential uses in nonresidential districts without site changes from call-ups and Development Agreements.
- ▶ **Remove automatic Planning Board hearing requirement** for nonresidential uses in residential zoning districts and residential uses in public zoning district.

Development Review Extensions

- ▶ **Remove requirement for Planning Board approval** of longer extensions.
- ▶ **Increase length of staff-level extensions** to two one-year extensions.
- ▶ **Replace requirement to substantially complete a project within three years** prior to expiration with a requirement to obtain permits and start construction.

Minor Amendments

- ▶ **Update minor modification and minor amendment criteria** to provide simpler processes for changes with minimal impact.

Subdivisions

- ▶ **Remove Planning Board notification** of lot line elimination applications.

Transitional Regulations

- ▶ **Clarify interrelated language** for nonconforming uses, transitional regulations, and use review minor amendments.

Vacation of Utility and Drainage Easements

- ▶ **Eliminate City Council call-up requirement** for vacation of utility and drainage easement applications.

Other Changes

- ▶ **Provide alternatives** for parking requirements for unlisted uses.
- ▶ **Modify public notice** of solar exceptions to align with other administrative variances.
- ▶ **Provide flexibility in RL-2** district for more than two buildings on a lot.

Annotated Ordinance: City Council Review Draft

NOTE: This version of the ordinance includes footnotes that help to describe all of the proposed changes as well as the redlined tracked changes to existing code language.

Section 1. Section 4-20-43, “Development Application Fees,” B.R.C. 1981, is amended to read as follows:

4-20-43. Development Application Fees.

(a) Subdivision fees:

...

(b) Land use regulation fees:

...

(3) An applicant for approval of a use review shall pay the following fees:

Standard

Initial application\$3,420

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)\$1,710.

Fee includes an initial and two subsequent staff reviews of the application. Each additional staff review of an application is\$1,130.

Nonconforming uses and nonstandard lots and buildings

Initial application\$2,870

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)\$1,435

Fee includes an initial and two subsequent staff reviews of the application. Each additional staff review of an application is\$950.

Minor use review

Initial application\$1,710

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)\$855

Fee includes an initial and two subsequent staff reviews of the application. Each additional staff review of an application is\$560.¹

...

Section 2. Section 8-6-10, "Vacation of Public Easements," B.R.C. 1981, is amended to read as follows:

8-6-10. - Vacation of Public Easements

Vacation of city easements dedicated for any purpose, except public rights of way and access easements, may occur:

- (a) Through the subdivision process; or
- (b) By approval of the city manager upon a determination that no public need exists for such easement. ~~The city manager will review the requested vacation pursuant to Section 9-2-2, "Administrative Review Procedures," B.R.C. 1981. If the city manager approves an easement vacation, it is not effective until thirty days after the date of its approval. Promptly after approving the vacation, the manager will forward to the city council a written report, including a legal description of vacated portion of the easement and the reasons for approval. The manager will publish notice of the proposed vacation once in a newspaper of general circulation in the city within thirty days after the vacation is approved. Upon receiving such report and at any time before the effective date of the vacation, the council may rescind the manager's approval and call up the vacation request for its consideration at a public hearing, which constitutes a revocation of the vacation.²~~

Section 3. Section 9-1-4, "Transitional Regulations," B.R.C. 1981, is amended to read as follows:

9-1-4. Transitional Regulations

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

...

¹ Adds lower fee for new "minor use review" process, described in 9-2-15.

² This change removes the requirement for City Council call-up of utility or drainage easement vacations. These applications are very infrequently, if ever, called up by council. Many of these easement vacations coincide with major development projects and can hold up building permit issuance for an otherwise entirely approved project.

- (e) Existing Uses Subject to Specific Use Standards or That Require a Use Review or Conditional Use Approval:³
- (1) Use Review or Conditional Use Approvals: Any previously approved use that was established prior to the adoption of new regulations that make ~~such the~~ use permitted only pursuant to a conditional use or a use review shall be allowed to continue in operation. Any ~~change or~~ expansion of ~~a the~~ use ~~that was established prior to the adoption of new regulations that make such use permitted pursuant to a conditional use or a use review~~ shall be made in conformance with the applicable ~~standards procedure~~ for use review ~~or~~; conditional uses, ~~or for changes or expansions to nonconforming uses~~.⁴
 - (2) Specific Use Standards: Any previously allowed use that was established prior to the adoption of new regulations that make such use allowed subject to specific use standards shall be allowed to continue in operation. Changes to ~~a the~~ use ~~that was established prior to adoption of the new regulations that imposed specific use standards~~ shall be made in conformance with the applicable ~~specific~~ use standards ~~or in conformance with the applicable standards for changes or expansions to nonconforming uses~~.⁵
 - (3) Discontinued Use: If active and continuous operations of a use subject to the standards of paragraphs (e)(1) or (e)(2) of this section are not carried on for a period of three years, it shall thereafter be occupied and used by a use meeting the requirements of this title, ~~as required by Subsection 9-10-2(a), B.R.C. 1981~~.⁶
- ~~(f) Nonconforming Uses: Nonconforming uses are subject to the standards in Chapter 9-10, "Nonconforming Standards," B.R.C. 1981.~~⁷
- (fg) Violations Continue: Any violation of the previous land development regulations of the city shall continue to be a violation under this title and shall be subject to the penalties and enforcement set forth in Chapter 9-15, "Enforcement," B.R.C. 1981, unless the use, development, construction or other activity is clearly consistent with the express terms of this title.

³ ~~These changes clarify existing processes for uses subject to new review process or use standard requirements.~~

⁴ ~~This simplifies existing complex language.~~

⁵ ~~This subsection was originally added in 2019 when limited uses were added to the land use code. In 2022, this was adjusted to reflect the specific use standards that apply to some allowed uses. If an existing conforming use is not able to meet new specific use standards, any changes must be made in conformance with the specific use standards.~~

⁶ ~~This reference to nonconforming uses has been moved to (f) below.~~

⁷ ~~Separated nonconforming using into different subsection.~~

Section 4. Section 9-2-1, “Types of Reviews,” B.R.C. 1981, is amended to read as

follows:

9-2-1. Types of Reviews

...

(b) Summary Chart:

TABLE 2-1: REVIEW PROCESSES SUMMARY CHART

I. ADMINISTRATIVE REVIEWS	II. DEVELOPMENT REVIEW AND BOARD ACTION
Affordable housing design review pursuant to Section 9-13-4, B.R.C. 1981	Annexation/initial zoning
Building permits	BOZA variances
Change of address	Concept plans
Change of street name	Demolition, moving, and removal of buildings with potential historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981
Conditional uses, as noted in Table 6-1: Use Table	Form-based code review
Demolition, moving, and removal of buildings with no historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981	Geophysical exploration permit
Easement vacation	Landmark alteration certificates other than those that may be approved by staff per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981
Extension of development approval/staff level	Lot line adjustments
Landmark alteration certificates (staff review per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981)	Lot line elimination
Landscape standards variance	Minor Subdivisions
Minor modification to approved site plan	Out of city utility permit
Minor modification to approved form-based code review	Rezoning
Noise barriers along major streets per Paragraph 9-9-15(c)(7), B.R.C. 1981	Site review
Nonconforming use (extension; change of use (incl. parking)) ⁸	Subdivisions
Parking deferral per Subsection 9-9-6(e), B.R.C. 1981	Use review
	Vacations of street, alley, or access easement

⁸ Language throughout the ordinance referencing “change of use” has been replaced with “expansion of nonconforming use”.

<p>Parking reduction of up to 25 percent per Subsection 9-9-6(f), B.R.C. 1981</p> <p>Parking reductions and modifications for bicycle parking per Paragraph 9-9-6(g)(6), B.R.C. 1981</p> <p>Parking stall variances</p> <p>Public utility</p> <p>Rescission of development approval</p> <p>Revocable permit</p> <p>Right-of-way lease</p> <p>Setback variance</p> <p>Site access variance</p> <p><u>Substitution of nonconforming use⁹</u></p> <p>Solar exception</p> <p>Zoning verification</p>	
---	--

Section 5. Section 9-2-2, “Administrative Review Procedures,” B.R.C. 1981, is amended to read as follows:

9-2-2. Administrative Review Procedures

(a) Purpose: Administrative review of projects will occur at various times in project development to ensure compliance with the development standards of the city.

...

(d) Conditional Uses:

...

(5) Expiration: Any conditional use approval that is not established within one year of its approval, is discontinued for at least three years, or is replaced by another use of land shall expire.¹⁰

...

Section 6. Section 9-2-7, “Development Review Action,” B.R.C. 1981, is amended to read as follows:

⁹ Nonconforming uses can be substituted as described in 9-10, but that has not explicitly included in the table.

¹⁰ Clearer language.

9-2-7. Development Review Action

No development review application will be accepted unless and until it is determined to be complete. Such determination will be made within five days after the submission of the application. The city manager will review the application and provide the applicant with a list of any deficiencies.

...

(b) Planning Board Review and Recommendation: Development review applications requiring a decision by the planning board shall be reviewed as follows:

...

(3) Appeal and Call-Ups:

(A) The applicant or any interested person may appeal the city manager's decision pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

(B) A member of the planning board may call-up an application for review pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981, except that minor use review processes are not subject to call-up by planning board.¹¹

...

Section 7. Section 9-2-8, "Public Hearing Requirements," B.R.C. 1981, is amended to read as follows:

9-2-8. Public Hearing Requirements

Within sixty days after a referral, or an appeal or call-up pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981, the approving agency, after publishing notice pursuant to Section 9-4-3, "Public Notice Requirements," B.R.C. 1981, will hold a public hearing on the application.¹²

...

Section 8. Section 9-2-9, "Final Approval Requirements," B.R.C. 1981, is amended to read as follows:

9-2-9. Final Approval Requirements

¹¹ Clarifies new minor use review exception.

¹² Clearer language.

- (a) Development Agreement: After the approving agency has finally approved an application for use review, site review, or form-based code review, the owner and the city manager will execute a development agreement that incorporates all conditions of the approval, including, without limitation, time limits for completion of the development, and, if applicable, requirements for appropriate easements or deed restrictions if unique conditions of approval apply. The development agreement shall be binding on all parties thereto, shall run with the land and will be recorded upon execution by the city clerk in the office of the County Clerk and Recorder of Boulder County. Any violation of a development agreement is a violation of this title.

(1) Exceptions: The city manager may waive the requirement for a development agreement for:

(A) A minor amendment to a site review;

(B) A minor use review process; and

(C) If there are no public improvements associated with a form-based code review application, a form-based code review the city manager can waive the requirements for a development agreement.¹³

- (b) Final Approved Plans: The applicant shall file a paper or electronic copy containing the approved site plan, any applicable restrictions or modifications to the underlying zoning district, and any conditions approved by the approving agency. The paper or electronic copy shall be filed with the city manager, who will endorse and date the approved site plan. The location of the approved development will be included on an official map showing development in the City. The paper or electronic copy will remain on file in the planning department.
- (c) Expiration: Unless expressly waived by the city manager for good cause, pursuant to a written request made prior to expiration of the approval, if the applicant fails to file the final approved plans according to the specifications in Subsection (b) above or sign the development agreement within ninety days of final approval, the approval expires.¹⁴

Section 9. Section 9-2-10, "Amendment Procedures," B.R.C. 1981, is amended to

read as follows:

9-2-10. Amendment Procedures

¹³ This change provides flexibility regarding the Development Agreement for Use Review applications without site changes (a new process deemed "minor use review"). This will help to expedite the process for those applications. Minor amendments, per 9-2-14(1)(2)(e), are already allowed to have development agreements waived, so this has been incorporated here as well.

¹⁴ "Written" has been added to clarify this requirement.

An approved use review may be amended pursuant to Subsection 9-2-15(hj),¹⁵ B.R.C. 1981. An approved site review may be amended pursuant to Subsection 9-2-14(l) or (m), B.R.C. 1981. The city manager may approve, without notice, minor modifications to a ~~use review or a~~ site review under the procedures prescribed by Subsection 9-2-14(k), B.R.C. 1981.¹⁶

Section 10. Section 9-2-12, “Development Progress Required,” B.R.C. 1981, is amended to read as follows:

9-2-12. Development Progress Required.¹⁷

- (a) **Three-Year Rule:** The applicant must obtain applicable building permit approvals and start construction within three years of the date of the final approval of the site review, use review, or form-based code review. For a use review without construction requiring a building permit, the use must be established within three years of the date of final approval. ~~begin and substantially complete the approved site review, use review, or form-based code review as specified in the development agreement within three years from the time of the final approval of the site, use, or form-based code review or as modified by a development schedule incorporated in the development agreement. For the purposes of this section, substantially complete means the time when the construction is sufficiently complete so the owner can occupy the work or portion thereof for the use for which it is intended. If the project is to be developed in stages, the applicant must begin and substantially complete the development of each stage within three years of the time provided for the start of construction of each stage in the development agreement. Failure to substantially complete the development or any development stage within three years of the approved development schedule shall cause the unbuilt portion of the development approval to expire.~~
- (1) Phasing: For reviews with phased development established in the development agreement, for each development phase, the applicable building permits must be obtained and construction must be started within three years of the start of the phase, or as modified by the development agreement.
- (2) Expiration: Failure to comply with the three-year rule shall cause the development approval to expire. For phased development, if an approval for one phase expires, then all successive phases not completed or under

¹⁵ This fixes an error from a previous ordinance and updates according to other numbering changes later in this ordinance.

¹⁶ The reference above to 9-2-15(j) is sufficient.

¹⁷ Modifies requirement from “substantially complete” to obtaining a building permit and starting construction, clarifies phasing, removes Planning Board extension approval requirement, and increases time that staff may grant extension of an approval.

construction shall expire. After an approval has expired, any new application for development is subject to all the procedures and standards of this title in effect at the time of such application.

(3) Vested Rights: Nothing in this section is deemed to create a vested property right in any applicant; such vested property right may only be created pursuant to the provisions of Section 9-2-20, "Creation of Vested Rights," B.R.C. 1981.

(b) Extension: If the applicant requests an extension prior to the expiration of a site review, use review, or form-based code review approval, the city manager may grant an extension of the approval pursuant to the following: Prior to the expiration of a form-based code review, use review, or site review approval, the applicant may request an extension of the time allowed for the completion of the development.

(1) The city manager will grant up to two one-year extensions to obtain applicable building permit approvals and start construction or establish the use if the applicant demonstrates that it exercised reasonable diligence and has good cause as to why the extension should be granted. The extension must be requested in writing prior to the expiration of the approval. The first extension extends the approval by one year from the date of final approval. The second extension extends the approval by an additional year and can be requested only after the first extension has been granted and additional progress has been made. City Manager Level Extension: The city manager may grant up to two six-month extensions for each phase of the development if such extension will enable the applicant to substantially complete the phase of development or is necessary to allow the applicant to request an extension from the planning board.

~~(2) Planning Board Level Extension: The planning board may grant an extension of a development approval, pursuant to a hearing conducted under the provisions of Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after the applicant has exhausted any extension granted pursuant to Paragraph (b)(1) of this section. The applicant shall be required to demonstrate that it exercised reasonable diligence in completing the project according to the approved development schedule and good cause as to why the extension should be granted.~~

(A) Criteria for Demonstrating Reasonable Diligence: An applicant may show that it has exercised reasonable diligence by providing evidence that it has done substantial work towards obtaining building permit approval or starting construction~~completing the project~~. Such evidence may include, without limitation, drafting plans for building permit or technical document review, applications for building permits or other permits that are required prior to the issuance of

building permits, ~~or site preparation and grading, or commencement of the construction of a portion of the project.~~

- (B) Criteria for Demonstrating Good Cause: An applicant may show good cause as to why an extension should be granted by providing evidence that includes, without limitation, the following: a demonstration of the applicant's ability to ~~complete the project~~obtain building permit approval and start construction within the extension; the extension is needed because of the size of the project or phasing of the development; or ~~that~~ economic cycles and market conditions ~~prevented~~delayed the building permit approval process and start of construction ~~the construction of the project~~ during the original approval period.

~~(C) Additional Conditions: As part of a hearing to consider an extension, the planning board may impose additional conditions on the applicant in order to ensure compliance with any amendments to this title enacted after the date of the original approval.~~

- (c) Building Permits: Upon issuance of a building permit pursuant to a development review approval, the applicant must adhere to the schedule for construction and inspection as defined in the city building code, Chapter 10-5, "Building Code," B.R.C. 1981. In addition to the provisions of this title, all provisions of the building code regarding expiration and termination of building permits shall apply.
- (d) Annexations/Six-Month Rule: If an owner of property not located within the city, for which a development review application is approved, fails to annex the property to the city within six months of the date of approval, the approval shall expire unless the approving agency extends the time period, upon a finding of good cause predicated upon a written request of the applicant delivered to the city manager before the expiration of the six-month period.
- (e) Rescission of Development Approval: If, after use review, special review, site review, Planned Development (PD), Planned Residential Development (PRD), or Planned Unit Development (PUD) approval is granted pursuant to this chapter, the owner of property desires to develop, instead, under the provisions of Chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, the owner may request rescission of such use review, site review, PD, PRD or PUD approval by filing a written request for rescission with the city manager. The manager will grant a rescission if:¹⁸
- (1) ~~The manager will grant a rescission of such use review, site review, PD, PRD, or PUD approval if no~~No building permit has been issued for the development and neither the city nor the developer has taken any actions in

¹⁸ Numbering added to clarify the circumstances in which rescission may be requested; removes some repetitive language.

detrimental reliance on the terms of the development agreement-; ~~The manager may also rescind a site review, PD, PRD, or PUD approval if~~

~~(2) For a site review, PD, PRD, or PUD approval,~~ the existing or proposed development complies with all the use, form, and intensity requirements of Chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, and there is no substantial public benefit in maintaining the original approval-; ~~or An owner may also request a rescission of a use review or special review approval in order to~~

~~(3) For a use review or special review approval, the rescission will~~ return the property to a use that is allowed by right or as a conditional use if it and the owner is able to meet all applicable standards for such use under this title.

Section 11. Section 9-2-14, "Site Review," B.R.C. 1981, is amended to read as

follows:

9-2-14. Site Review

...

(h) Criteria: No site review application shall be approved unless the approving agency finds that the project is consistent with the following criteria:

...

(6) Land Use Intensity and Height Modifications: Modifications to minimum open space on lots, floor area ratio (FAR), maximum height, and number of dwelling units per acre requirements will be approved pursuant to the standards of this subparagraph:

...

(C) Additional Criteria for a Height Bonus and Land Use Intensity Modifications: A building proposed with a fourth or fifth story or addition thereto that exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, together with any additional floor area or residential density approved under Subparagraph (h)(6)(B), may be approved if it meets the requirements of this Subparagraph (h)(6)(C). For purposes of this Subparagraph(h)(6)(C), bonus floor area shall mean floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area that is the result of an increase in density or floor area described in Subparagraph (h)(6)(B). The approving authority may approve a height up to fifty-five feet if one of the following criteria is met:

...

- (iv) Alternative Community Benefit: Pursuant to the standard in this Subparagraph (iv), the approving authority may approve an alternative method of compliance to provide additional benefits to the community and qualify for a height bonus together with any additional floor area or density that may be approved under Subparagraph (h)(6)(B). The approving authority will approve the alternative method of compliance if the applicant proposes the alternative method of compliance and demonstrates that the proposed method:
 - a. Will improve the facilities or services delivered by the city, including without limitation any police, fire, ~~library~~,¹⁹ human services, parks and recreation, or other municipal facility, land or service, or will provide an arts, cultural, human services, housing, environmental or other benefit that is a community benefit objective in the BVCP, and
 - b. Is of a value that is equivalent to or greater than the benefits required by this Subparagraph (h)(6)(C).

...

- (k) Minor Modifications to Approved Site Plans: The city manager reviews applications for minor modifications pursuant to the procedures in Section 9-2-2, “Administrative Review Procedures,” B.R.C. 1981.
 - (1) Standards: Minor modifications may be approved if the proposed modification complies with the following standards:
 - (A) Scope: The proposed modification is to the approved plans.²⁰
 - (B) Intent: The modification does not alter the basic intent of the site plan approval;²¹
 - (C) Residential Uses: The housing type is not changed;²²
 - (D) Height: No portion of any building is expanded above the height permitted under Sections 9-7-1, “Schedule or Form and Bulk Standards,” or 9-7-6, “Building Height, Conditional,” B.R.C. 1981;²³

¹⁹ This is a cleanup change – it was part of Ordinance 8617 adopted by City Council in January 2024 related to the library district.

²⁰ This new language is intended to better clarify the difference between minor modifications and minor amendments – with a minor amendment, the written statement and conditions of approval may be changed. Modifications are intended to be more for physical changes.

²¹ Current wording of (9), moved towards beginning of list.

²² From current standard (5), with “dwelling unit type” changed to “housing type,” as that is now a defined term in the land use code.

²³ From current standard (6), simplified.

- (E) Parking: Any parking reduction is reviewed and approved through the process and criteria in Subsection 9-9-6(f), B.R.C. 1981;²⁴
- (F) Solar Panels: Any solar panels do not substantially add to the mass or perceived height of the building and comply with all applicable building height, solar access, building coverage, and open space requirements;²⁵
- (G) Other Requirements: The modification complies with all other applicable requirements of this title; and
- (H) Modified Standards: The numeric standards in the site plan are not modified by more than allowed through Table 2-3.

Table 2-3: Minor Modification Standards

Standard modified	Maximum allowed as a minor modification
<u>Setbacks: interior to the site plan area</u>	<u>No limit to setback modifications</u>
<u>Setbacks: along boundary of site plan area</u>	<u>Minimum zoning district requirement</u>
<u>Floor area (cumulative in minor modification processes)</u>	<u>Increase of up to 10 percent of the floor area granted in the site review approval, not to exceed the maximum floor area ratio listed in Chapter 9-8, "Intensity Standards," B.R.C. 1981. These limitations on floor area do not apply to detached dwelling units on individual lots in zoning districts without a maximum floor area ratio.²⁶</u>
<u>Open space</u>	<u>Minimum zoning district requirement²⁷</u>
<u>Building location</u>	<u>Up to 10 percent of the length or width of the building²⁸</u>
<u>Building envelope</u>	<u>Increase of up to 10 percent in area</u>

- (2) Notification: If an applicant requests approval of a minor modification to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The city

²⁴ From current standard (7), simplified language and separated from open space.

²⁵ From current standard (8), simplified language.

²⁶ Simplified version of current standard (2), with 10% or 200 sf changed to a simpler 10% requirement. Limit of 5% for buildings over the permitted height removed (additional height already not permitted by proposed standard (1)(D), previous standard (6)).

²⁷ Past practice has allowed minor reductions in open space for projects that provided open space in excess of their requirement, as long as it did not reduce further than the zoning district minimum requirement, as stated here. Minor amendments may modify by 20%.

²⁸ Consolidated version of current standard (3) and (4), simplified to a 10% allowance.

manager will provide notice pursuant to Subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected.²⁹

Changes to the site plan, building plans, and landscaping plans may be approved by the city manager without an amendment to the site plan if such changes are minor. All minor modifications shall be noted, signed, and dated on the approved site plan. For proposed minor modifications of site review projects that are partially or totally developed, the applicant shall provide notice to any owners of property within the development that might be affected, as determined by the manager. In determining whether a proposed change is a minor modification, the following standards shall apply:

- (1) ~~Setbacks along the boundary of the site plan area cannot be reduced by a minor modification to be less than the minimum setbacks permitted by the underlying zoning district;~~
- (2) ~~Excepting any site plan approval consisting of detached dwelling units on individual lots where no maximum floor area ratio applies, the floor area of the development, including principal and accessory buildings, may be expanded by the cumulative total of no more than the greater of ten percent or two hundred square feet or, in the case of a building that exceeds the permitted height, no more than five percent, except that the portion of any building over thirty-five feet in height may not be expanded under the provisions of this paragraph. However, the floor area or FAR shall not exceed the maximum floor area or FAR of a zoning district or granted in the site review approval, if such amount requires special approval through the site review process;~~
- (3) ~~Approved commercial and industrial building locations may be moved or expanded by no more than the greater of ten feet, or ten percent of the length of the building, measured along the building's axis in the direction that the building is being moved or expanded;~~
- (4) ~~Approved principal and accessory building locations may be moved or expanded by no more than ten feet in any direction within the development in residential districts and lots abutting residential districts. The resulting setbacks shall not be less than the minimum allowed setback of the underlying zone;~~
- (5) ~~Dwelling unit type may not be changed;~~
- (6) ~~The portion of any building over the permitted height under Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, may not be expanded under the provisions of this subsection;~~

²⁹ Current language from the beginning of (k), relocated since it is not an approval standard. Makes staff responsible for providing notification, rather than requiring applicant to provide proof of notification.

- ~~(7) No increase may be granted to an open space reduction or to a parking reduction in excess of that allowed in Subsection 9-9-6(f), B.R.C. 1981;~~
- ~~(8) Solar panels that are proposed to be mounted on a building's roof may not substantially add to the mass or perceived height of the building and shall be consistent with Sections 9-7-7, "Building Height, Conditional," and 9-9-7, "Solar Access," B.R.C. 1981. Solar panels proposed to be ground mounted may not result in a building coverage greater than permitted by the zone and shall not result in open space less than required by Chapter 9-8, "Intensity Standards," B.R.C. 1981; and~~
- ~~(9) No change may alter the basic intent of the site plan approval.~~

(l) **Minor Amendments to Approved Site Plans:** The city manager reviews applications for minor amendments for changes that exceed the limits of a minor modification in Subsection (k) pursuant to the procedures in Section 9-2-7, "Development Review Action," B.R.C. 1981.³⁰

- (1) Standards: Minor amendments may be approved if the proposed amendment complies with the following standards:
 - (A) Scope: The proposed amendment is to the approved plans, conditions of approval, or written statement.³¹
 - (B) Intent: The minor amendment does not alter the basic intent of the site plan approval.³²
 - (C) Site Review Criteria: The minor amendment complies with the site review criteria of Subparagraphs (h)(2) and (h)(3) of this section;³³
 - (D) Residential Uses: The housing type is not changed;³⁴
 - (E) Height: No portion of any building is expanded above the height permitted under Sections 9-7-1, "Schedule or Form and Bulk Standards," or 9-7-6, "Building Height, Conditional," B.R.C. 1981;
 - (F) Parking: Any additional parking that is provided is accommodated in the previously approved on-site parking design;³⁵
 - (G) Other Requirements: The minor amendment complies with all other applicable requirements of this title; and

³⁰ Language from current (l)(1) updated for parallel drafting with minor modification language. Removed reference to "approved building location or additions to existing buildings" to expand applicability of minor amendment process.

³¹ Differentiated from minor modifications, which are changes only to approved plans.

³² The intent statement matches that of the minor modification, rather than the more complex "substantially consistent" language in current (2)(D).

³³ From current (2)(C).

³⁴ From current standard (B).

³⁵ Adapted from current standard (F).

(H) Modified Standards: The numeric standards in the site plan are not amended by more than allowed through Table 2-4.

Table 2-4: Minor Amendment Standards

Standard amended	Maximum allowed as a minor amendment, but not to exceed maximum or minimum zoning district requirements.
<u>Floor area (cumulative in minor amendment processes)</u>	<u>20 percent</u>
<u>Open space (cumulative in minor amendment processes)</u>	<u>Decrease of up to 20 percent³⁶</u>
<u>Building location</u>	<u>Up to 20 percent of the length or width of the building</u>

(1) ~~Standards: Changes to approved building location or additions to existing buildings, which exceed the limits of a minor modification, may be considered through the minor amendment process if the following standards are met:~~

~~(A) In a residential zone as set forth in Section 9-5-2, "Zoning Districts," B.R.C. 1981, all approved dwelling units within the development phase have been completed;³⁷~~

~~(B) In residential zones, dwelling unit type is not changed;~~

~~(C) The required open space per dwelling unit requirement of the zone is met on the lot of the detached dwelling unit to be expanded;³⁸~~

~~(D) The total open space per dwelling unit in the development is not reduced by more than ten percent of the amount specified on the approved site plan and is not reduced to less than the minimum required for the zone;~~

~~(E) If the residential open space provided within the development or an approved phase of a development cannot be determined, the detached dwelling unit is not expanded by more than ten percent and there is no variation to the required setbacks for that lot;~~

³⁶ From current standard (D).

³⁷ This standard was not carried forward so that minor amendments can have wider applicability.

³⁸ This overly prescriptive standard has been removed.

- ~~(F) — For a building in a nonresidential use module, the building coverage is not increased by more than twenty percent, the addition does not cause a reduction in required open space, and any additional required parking that is provided is substantially accommodated within the existing parking arrangement;³⁹~~
- ~~(G) — The portion of any building over the permitted height under Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, is not increased; and~~
- ~~(H) — The proposed minor amendment does not require public infrastructure improvements or other off-site improvements.⁴⁰~~
- (2) ~~Amendments to the Site Review Approval Process:~~ Applications for minor amendment shall be ~~approved reviewed and approved~~ according to the procedures prescribed by this section for site review approval, except:
 - (A) If an applicant requests approval of a minor amendment to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The city manager will provide notice pursuant to Subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected, and to all property owners within a radius of 600 feet of the subject property.
 - (B) Only the owners of the subject property shall be required to sign the application.
 - ~~(C) — The minor amendment shall be found to comply with the review criteria of Subparagraphs (h)(2) and (h)(3) of this section.⁴¹~~
 - ~~(D) — The minor amendment shall be substantially consistent with the intent of the original approval, including conditions of approval, the intended design character, and site arrangement of the development; and specific limitations on additions or total size of the building which were required to keep the building in general proportion to others in the surrounding area or minimize visual impacts.⁴²~~
 - (EC) The city manager may amend, waive, or create a development agreement.

³⁹ This standard has not been carried forward as it does not apply in most circumstances.

⁴⁰ This standard was not carried forward as it is unlikely to apply often to situations that meet the other standards of a minor amendment.

⁴¹ Moved up into minor amendment standards.

⁴² Moved up into minor amendment standards, modified language.

Section 12. Section 9-2-15, "Use Review," B.R.C. 1981, is amended to read as

follows:

9-2-15. Use Review

- (a) Purpose: Each zoning district established in Section 9-5-2, "Zoning Districts," B.R.C. 1981, is intended for a predominant use, but other uses designated in Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, may be allowed by use review if a particular use is demonstrated to be appropriate in the proposed location. Nonconforming uses may be upgraded or expanded under this section if the change would not adversely affect the traffic and the environment of the surrounding area or if the change would reduce the degree of the nonconformity or improve the appearance of the structure or site without increasing the degree of nonconformity. Nonstandard buildings may be changed, expanded or modified consistent with the criteria and standards set forth in this section and Subsection 9-10-3(a), B.R.C. 1981.

...

- (d) Review and Recommendation:

- (1) The city manager will review applications for use review of ~~a nonresidential use in residential zoning districts, attached and detached dwelling units or a residential use in a P district, and~~ oil and gas operations and will submit a recommendation to the planning board for its final action pursuant to Subsection 9-2-7(b), B.R.C. 1981.⁴³
- (2) The city manager shall review and make decisions on all other use review applications pursuant to Subsection 9-2-7(a), B.R.C. 1981.
- (3) Reviews by either the city manager or planning board shall be pursuant to Section 9-2-7, "Development Review Action," B.R.C. 1981, except that minor use review processes are not subject to call-up by planning board.⁴⁴

- (e) Criteria for Review: No use review application will be approved unless the approving agency finds all of the following:

- ~~(1) — Consistency With Zoning and Nonconformity: The use is consistent with the purpose of the zoning district as set forth in Section 9-5-2, "Zoning Districts," B.R.C. 1981, except in the case of a nonconforming use;~~⁴⁵
- ~~(2) Rationale: The use either:~~

⁴³ Removes automatic Planning Board review requirement for these uses. Applications would still be subject to call-up unless they qualify as minor use review.

⁴⁴ Exception added for new "minor use review" applications without site changes.

⁴⁵ This criterion is unnecessary and has been removed; the Use Table determines what uses are allowed by Use Review in each district.

- (A) Provides direct service or convenience to or reduces adverse impacts to the surrounding uses or neighborhood;
 - (B) Provides a compatible transition between higher intensity and lower intensity uses;
 - (C) Is necessary to foster a specific city policy, as expressed in the Boulder Valley Comprehensive Plan, including, without limitation, historic preservation, moderate income housing, residential and nonresidential mixed uses in appropriate locations, and group living arrangements for special populations; or
 - (D) Is an existing legal nonconforming use or ~~a change thereto~~ an expansion that is permitted under Subsection (f) of this section;
- (32) Compatibility: ~~The location, size, design, and operating characteristics of the proposed development or change to an existing development are such that the~~ use will be reasonably compatible with and have minimal negative impact on the use of nearby properties, or, for residential uses or community, cultural, and educational uses in industrial zoning districts, the proposed development reasonably mitigates the potential negative impacts from nearby properties;⁴⁶
- (43) Infrastructure: ~~As compared to development permitted under Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, in the zone, or as compared to the existing level of impact of a nonconforming use, the~~ The proposed development use will not significantly adversely affect the infrastructure of the surrounding area, including, without limitation, water, wastewater and storm drainage utilities and streets, compared to an allowed use in the zoning district, or compared to the existing level of impact of a nonconforming use;⁴⁷
- (54) Character of Area: The use will not change the predominant character of the surrounding area or the character established by adopted design guidelines or plans for the area; and
- (65) Conversion of Dwelling Units to Nonresidential Uses: There shall be a presumption against approving the conversion of dwelling units in the residential zoning districts to nonresidential uses that are allowed pursuant to a use review, or through the change substitution of one nonconforming use ~~with~~ another nonconforming use. The presumption against such a conversion may be overcome by a finding that the use to be approved serves another compelling social, human services, governmental or recreational need in the community, including, without limitation, a use for a daycare

⁴⁶ Rewording for clarity and parallel drafting.

⁴⁷ Rewording for clarity.

center, park, religious assembly, social service use, benevolent organization use, art studio or workshop, museum, or an educational use.

- (f) Additional Criteria for ~~Modifications-Expansion to-of a~~ Nonconforming Uses:⁴⁸ No application for ~~a change to an expansion of~~ a nonconforming use shall be granted unless all of the following criteria are met in addition to the criteria set forth above:
- (1) Reasonable Measures Required: The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding area, including, without limitation, objectionable conditions, glare, adverse visual impacts, noise pollution, air emissions, vehicular traffic, storage of equipment, materials and refuse, and on-street parking, so that the ~~change-expansion~~ will not adversely affect the surrounding area.
 - (2) Reduction in Nonconformity/Improvement of Appearance: The proposed ~~change-or~~ expansion will either reduce the degree of nonconformity of the use or improve the physical appearance of the structure or the site without increasing the degree of nonconformity.
 - (3) Compliance With This Title/~~Exceptions~~: The ~~proposed change in use-expansion~~ complies with all ~~of the other applicable~~ requirements of this title.⁴⁹
 - (A) ~~Except for a change of a nonconforming use to another nonconforming use; and~~
 - (B) ~~Unless a variance to the setback requirements has been granted pursuant to Section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or the setback has been varied through the application of the requirements of Section 9-2-14, "Site Review," B.R.C. 1981.~~
 - (4) Cannot Reasonably Be Made Conforming: The existing building or lot cannot reasonably be utilized or made to conform to the requirements of Chapter 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981. This paragraph (4) shall not apply to reconstruction or restoration permitted pursuant to Paragraph 9-10-3(c)(4), B.R.C. 1981, with respect to density and other pre-existing nonconformities of the use or nonstandard features of the building.
 - (5) No Increase in Floor Area Over Ten Percent: The ~~change-or~~ expansion will not result in a cumulative increase in floor area of more than ten percent of the existing floor area.

⁴⁸ Clarifications. Only expansions of nonconforming use are subject to this review process, so that has been clarified. Substitutions of nonconforming use is the application term used more commonly so that has been updated as well throughout the criteria.

⁴⁹ This language has been in the code since at least the early 1980s. A more general review of compliance with all other standards is sufficient, rather than calling out these two particular items.

- (6) **Approving Authority May Grant Zoning Variances:** The approving authority may grant the variances permitted by Subsection 9-2-3(d), B.R.C. 1981, upon finding that the criteria set forth in Subsection 9-2-3(h), B.R.C. 1981, have been met.
- (g) **Conditions of Approval:** The approving agency may impose modifications or conditions on the use review approval ~~in order to assure~~ ensure compliance with the criteria set forth in Subsections (e) and (f) of this section. In the case of a nonconforming use, conditions may also be imposed to reduce nonconformity and to improve site design.
- (h) **Oil and Gas Operations:** The criteria for review in Subsection (e) shall not apply to an application for oil and gas operations. An oil and gas operations use shall meet the criteria set forth in Section 9-6-7(b), "Oil and Gas Operations," B.R.C. 1981. Any use review approval for an oil and gas operations use shall expire, whether operational or not, in ten years from the date of final approval. Prior to such expiration for an oil and gas operations use, applicants will be responsible for submitting a new use review application for an oil and gas operations use proposed for operation beyond ten years. Following approval of any oil and gas operations use, the applicant shall have two years to obtain the necessary permits to establish the use.
- (i) Minor Use Review Process:⁵⁰ A use review for a nonresidential use that is proposed in a zoning district other than a residential district and proposed to occupy an existing nonresidential space without any site changes may be reviewed pursuant to a minor use review process. For the purposes of this subsection, site changes do not include changes to landscape plantings, pedestrian pathways, installation of bicycle parking, ordinary site maintenance or repair, signs, or site lighting.
- (1) Process: The city manager shall review and make decisions on all minor use review process applications pursuant to Subsection 9-2-7(a), "City Manager Review and Recommendation," B.R.C. 1981. The applicant or any interested person may appeal the city manager's decision pursuant to Paragraph 9-2-15(l)(1), but the city manager's decision is not subject to call-up by the planning board pursuant to Paragraph 9-2-15(l)(2). The city manager may refer the application to the planning board for review or decision.
- (2) Development Agreement: The city manager may waive the requirements for a development agreement for a minor use review.
- (j) **Amendments and Minor Modifications:⁵¹** ~~No person shall expand or modify any approved use review use. However, the approved site plan may be modified as provided in Subsection 9-2-14(k), B.R.C. 1981, if it does not expand the use, any changes conform to Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981; the impact on other uses of the approved use review is not changed; and the~~

⁵⁰ New "minor use review" process has been added to allow for expedited processing of use review applications without site changes.

⁵¹ Clarifies the process to modify approved use reviews and more clearly outlines the existing criteria for a minor change.

~~change complies with all other provisions of this title and any other ordinance of the city. No person shall modify an approved use review without a new use review approval, except that minor modifications to the approved site plan may be approved pursuant to Section 9-2-2, "Administrative Review Procedures," B.R.C. 1981, provided that the minor modification meets the following standards:~~

- ~~(1) The use is not expanded and the modification is otherwise substantially consistent with the conditions of the original approval;~~
- ~~(2) The modification does not adversely increase impacts to other surrounding properties or adjacent uses; and~~
- ~~(3) The site plan complies with all other provisions of this title and any other ordinance of the city.~~

(jk) Expiration: Any use review approval or previously approved special review ~~which that~~ is discontinued for at least three years shall expire. The city manager, upon a finding of good cause, may grant an extension not to exceed six months from the original date of expiration. In addition, use review approvals for oil and gas operations are subject to expiration pursuant to the standards in Subsection (h) of this section.

(kl) Appeals and Call-Ups:

- (1) The applicant or any interested person may appeal the city manager's decision pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (2) A member of the planning board may call-up the manager's decision pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981, ~~except that decisions in minor use review processes are not subject to call-up by the planning board.~~⁵²
- (3) The city council may call-up any planning board decision pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

Section 13. Section 9-3-6, "Floodplain Development Permits," B.R.C. 1981, is

amended to read as follows:

9-3-6. Floodplain Development Permits.

...

(h) Floodplain development permits that allow for development in the conveyance zone or the high hazard zone, or which will involve a change of watercourse, shall be decided by the city manager. The decision of the city manager ~~shall be subject~~

⁵² Exception added for minor use review.

~~to may be call-up by the planning board, or~~ appealed by any aggrieved party to the planning board, subject to the ~~call-up and~~ appeal procedure of Section 9-4-4, "Appeals, Call-Ups, and Public Hearings," B.R.C. 1981.⁵³

...

Section 14. Section 9-3-7, "Variances," B.R.C. 1981, is amended to read as follows:

9-3-7. Variances

- (a) The city manager may grant a variance from the requirements of Subsection 9-3-2(i) and Sections 9-3-3, 9-3-4, and 9-3-5, B.R.C. 1981, except that no variance shall be granted for expansion or enlargement of any structure constructed after July 12, 1978, unless such expansion or enlargement conforms to the flood protection elevation requirement in effect at the time of the original construction.

...

- (f) Any decision by the city manager to approve a variance ~~may be is subject to call-up by the planning board or~~ appealed by any aggrieved party to the planning board as described by Section 9-4-4, "Appeals, Call-Ups, and Public Hearings," B.R.C. 1981.⁵⁴

...

Section 15. Section 9-3-9, "Stream, Wetlands, and Water Body Protection," B.R.C.

1981, is amended to read as follows:

9-3-9. Stream, Wetlands, and Water Body Protection

...

- (c) Permitted, Allowed and Prohibited Uses within the Regulated Area: The purpose of this subsection is to describe activities that are exempted, conditionally permitted, requiring development review or prohibited:
- (1) Explanation of Table Abbreviations: The abbreviations used in the cells in table 3-1 have the following meanings:
- "E"(Exempted Activities): indicates that the use type is allowed as a matter of right and no stream, wetland or water body permit is required.
- "C"(Conditional Use Review): indicates that the use type will be reviewed in accordance with the requirements in paragraph (e)(~~32~~) of this section.⁵⁵

⁵³ Removed Planning Board call-up requirement for floodplain development permits. Aggrieved parties may still appeal.

⁵⁴ Removed Planning Board call-up requirement for floodplain variances. Aggrieved parties may still appeal.

⁵⁵ Necessary renumbering.

"S"(Standard Permit Review): indicates that the use type will be reviewed in accordance with the requirements in paragraph (e)(43) of this section.⁵⁶

"P"(Prohibited Activities): indicates that the use type is prohibited in the zone.

"N"(Allowed with Notice): indicates that the use type is allowed as a matter of right subject to the application of best management practices as defined in chapter 9-16, "Definitions," B.R.C. 1981, and provision of notice in paragraph (5) of this subsection. Such activity shall not significantly alter the function of the stream, wetland or water body. No person shall conduct any activity that is allowed with notice in violation of the best management practices.

...

(e) Stream, Wetland and Water Body Permit Application Review:

(1) Acceptance of Application: Applicants for stream, wetland or water body permits shall submit an application as set forth in subsection (d) of this section. Upon receipt of an application, the city manager shall review the application for completeness. A permit application will be accepted when the city manager determines that it is complete.

~~(2) Public Notification of Application: Upon acceptance of a complete standard review application, public notice shall be provided according to the requirements shown in section 9-4-3, "Public Notice Requirements," B.R.C. 1981, using Public Notice Type 5 from table 4-2. Public notice of a conditional use review application is not required.⁵⁷~~

(32) Criteria for Review: For an activity requiring conditional use or standard review, the applicant shall demonstrate that the stream, wetland or water body permit application meets the following criteria:

...

(B) Criteria for the Outer Buffer Zone: In the outer buffer zone, the following criteria shall apply:

- (i) The provisions of Subparagraph (e)(32)(A) of this section.⁵⁸
- (ii) Impervious surface coverage: Any new building or attached structure, expansion of an existing building or attached structure, new surfacing or expansion of an existing surface that would result in a cumulative total of twenty percent or more impervious surface in the outer zone on the property

⁵⁶ Necessary renumbering.

⁵⁷ The requirement for call-up for floodplain and wetland applications has been removed, therefore the notice would not be applicable.

⁵⁸ Necessary renumbering.

shall provide mitigation according to the requirements in subsection (f) of this section for the loss of pervious surface.

- (C) Criteria for the Inner Buffer Zone: In the inner buffer zone, the following criteria shall apply:
- (i) The provisions of Subparagraph (e)(~~32~~)(A) of this section.⁵⁹
 - (ii) The provisions of Subparagraph (e)(~~32~~)(B) of this section.⁶⁰
 - (iii) Channel bank protection or stabilization shall utilize, to the extent feasible, techniques that involve landscaping with appropriate native plants rather than rock or artificially hardened structures.
 - (iv) All new plant material adjacent to wetlands or water bodies or along the banks of a stream shall be consistent with all applicable city rules concerning best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981. Mitigation monitoring for restoration projects may be required by the city manager.
 - (v) "Vegetation removal - major" shall only be allowed to prevent noxious weed infestation, provide for native habitat restoration or for other permitted projects. Major removal of vegetation shall be mitigated within the inner buffer according to the requirements in subsection (f) of this section.
 - (vi) New steps, paths or other minor access to or over a stream on private property will be permitted if there is no more than one access on an individual property, the path or steps are designed to have minimal impact to the wetland, stream or water body, and the path and the area of impact does not exceed four feet in width.
- (D) Criteria for the Wetland, Stream or Water Body: In the wetland, stream, or water body, the following criteria shall apply:
- (i) The provisions of Subparagraph (e)(~~32~~)(A) of this section.⁶¹
 - (ii) The provisions of Subparagraph (e)(~~32~~)(B) of this section.⁶²
 - (iii) The provisions of Subparagraph (e)(~~32~~)(C) of this section.⁶³

⁵⁹ Necessary renumbering.

⁶⁰ Necessary renumbering.

⁶¹ Necessary renumbering.

⁶² Necessary renumbering.

⁶³ Necessary renumbering.

- (iv) Replacement or repair of an existing fence shall be generally in the same location and not result in additional impacts to the wetland, stream, or water body.
- (v) Utility line or drop structure maintenance or repair shall not impact the existing functions of the wetland, stream, or water body.
- (vi) Activities conducted solely for the purpose of removing stream sediment shall not alter the flood capacity as shown on the adopted floodplain maps. Vegetated channel bottoms shall be restored and stabilized.

(4) Criteria for Standard Review: In addition to the standards in paragraph (e)(32) of this section, the applicant shall demonstrate that the stream, wetland or water body permit application meets the following criteria:⁶⁴

...

(g) Permit Issuance:

...

(5) Referrals, Call-up or Appeal:

- (A) Conditional Use Permits: For conditional use permits, there shall be no referrals, call-ups or appeals. An applicant may resubmit a standard permit application for a denied conditional use application, pay the balance of the standard permit fee and proceed pursuant to the standard permit review process.
- (B) Standard Review Permits: The decision of the city manager ~~shall be subject to call-up by the planning board may be, or~~ appealed by the applicant to the planning board, subject to the ~~call-up and~~ appeal procedure of ~~section~~Section; 9-4-4 "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.⁶⁵

...

(k) Stream, Wetland and Water Body Boundaries:

...

(3) Map Revisions: At the request of a property owner and after submittal of an application and payment of the fee prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, or at the city manager's initiative, adopted stream, wetland and water body boundaries may be modified by the city manager by means of the

⁶⁴ Necessary renumbering.

⁶⁵ Removed Planning Board call-up requirement for standard wetland permits. Applicants may still appeal.

performance of a boundary determination in accordance with the requirements of this subsection:

...

(B) Review of Map Revision Applications:

- (i) The city manager shall review the application in accordance with subsection (l) of this section, and may approve the proposed boundary change, approve the proposed boundary change with modifications or deny the proposed boundary change.
- (ii) The decision of the city manager ~~shall be subject to call-up by the planning board or may be~~ appealed by the applicant to the planning board, subject to the ~~call-up and~~ appeal procedure of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.⁶⁶

...

(m) Variances:

...

- (7) The decision of the city manager ~~shall be subject to call-up by the planning board, or may be~~ appealed by the applicant to the planning board, subject to the ~~call-up and~~ appeal procedure of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.⁶⁷

...

Section 16. Table 4-1: Summary of Decision Authority by Process Type in Section 9-4-2, "Development Review Procedures," B.R.C. 1981, is amended to read as follows:

9-4-2. Development Review Procedures

- (a) Development Review Authority: Table 4-1 of this section summarizes the review and decision-making responsibilities for the administration of the administrative and development review procedures described in this chapter. The table is a summary tool and does not describe all types of decisions made under this code. Refer to sections referenced for specific requirements. ~~Form and bulk standards may also be modified by site review.~~⁶⁸ Additional procedures that are required by this code but located in other chapters are:

⁶⁶ Removed Planning Board call-up requirement for wetland map revisions. Applicants may still appeal.

⁶⁷ Removed Planning Board call-up requirement for wetland variances. Applicants may still appeal.

⁶⁸ Removed irrelevant language.

- (1) "Historic Preservation," chapter 9-11; and
 (2) "Inclusionary Housing," chapter 9-13.

TABLE 4-1: SUMMARY OF DECISION AUTHORITY BY PROCESS TYPE⁶⁹

Standard or Application Type	Staff/City Manager	BOZA	Planning Board	City Council
Code Interpretation SECTION 9-2-3	D	CA(14)	CA(30)	CA
Setback variance ≤20% SECTION 9-2-3	D	D	—	—
Setback variance >20% SECTION 9-2-3	—	D	—	—
Parking access dimensions SECTION 9-2-29-9-5	D	—	—	—
Parking deferral SUBSECTION 9-2-29-9-6(e)	D	—	—	—
Parking reduction ≤25% SUBSECTION 9-2-29-9-6(f)	D	—	—	—
Parking reduction >25% but ≤50% SUBSECTION 9-2-29-9-6(f)	D(14)	—	CA, D(30)	CA
Parking reduction >50% SUBSECTION 9-9-6(f)	—	—	D(30)	CA
Conditional Building height, conditional SECTION 9-7-6	D	—	—	—
Building height, less than principal or nonstandard building height max SECTION 9-2-14	D(14)	—	CA, D(30)	CA
Building height, greater than principal building height max SECTION 9-2-14	—	—	D(30)	CA
Building height SECTION 9-7-5	—	—	D(30)	CA
Conditional Use SECTION 9-2- 4 2	D	—	—	—
Site Review SECTION 9-2-14	D(14)	—	CA, D(30)	CA
Use Review SECTION 9-2-15	D(14)	—	CA, D(30)	CA
Minor Use Review ⁷⁰ SUBSECTION 9-2-15(i)	D(14)	=	A	CA
Use Review Minor Modification ⁷¹ SUBSECTION 9-2-15(j)	D	=	=	=
Form-Based Code Review SECTION 9-2-16	D(14)	—	CA, D(30)	CA
Administrative Form-Based Code Review; administrative SECTION 9-2-16	D	—	—	—
Form-Based Code Review; minor Minor modification Modification SECTION 9-2-16	D	—	—	—
Annexation SECTION 9-2-17	—	—	R	D
Rezoning SECTION 9-2-19	—	—	R	D

⁶⁹ The final ordinance will reorganize this table by Section and improve formatting for ease of reference. The current organization is shown here to make it easier to review the text changes.

⁷⁰ Added minor use review, with only appeal authority rather than call-up.

⁷¹ Added use review minor modification as described in 9-2-15.

Wetland Permit- Simple Conditional ⁷² SECTION 9-3-9	D	—	—	—
Wetland Permit-Standard SECTION 9-3-9	D(14)	—	D(30) A	CA
Extension of Development Approval ≤1 yr PARAGRAPH 9-2-12(b)(1)	D	—	—	—
Extension of Dev't Approval >1 yr PARAGRAPH 9-2-12(b)(2) ⁷³	—	—	D(30)	CA
Rescission of Development Approval SUBSECTION 9-2-12(e)	D	—	—	—
Creation of Vested Rights >3 years SECTION 9-2-20	—	—	R	D
Floodplain Development Permit SECTION 9-3-6	D(14)	—	CA(30)	CA
Wetland Boundary change- Standard Revision SUBSECTION 9-3-9(e)(k) ⁷⁴	—D(14)	—	R-A	D-CA
Geophysical Exploration Permit SECTION 9-6-7(b)	D(14)	—	CA(30)	CA
Substitution of Nonconforming Use SECTION 9-10-3	D	—	—	—
Expansion of a Nonconforming Use SECTION 9-10-3	D(14)	—	CA(30)	CA
Subdivision, prelim Preliminary plat Plat SECTION 9-12-7	D	—	—	—
Subdivision, final plat Plat SECTION 9-12-8	D(14)	—	CA	—
Minor Subdivision, minor SECTION 9-12-5	D(14)	—	CA(30)	CA ⁷⁵
Subdivision, LLA or LLE Lot Line Adjustment or Lot Line Elimination SECTIONS 9-12-3 and 9-12-4	D	—	—	—
Solar Exception SUBSECTION 9-9-17(f)	D	D	—	—
Solar Access Permit SUBSECTION 9-9-17(h)	D	D	—	—
Owner or Tenant Accessory Building Coverage SUBSECTION 9-7-8(a)	—	D	—	—
Minor Modification of Discretionary Approval SUBSECTION 9-2-14(k)	D	—	—	—
Minor Amendment of Discretionary Approval SUBSECTION 9-2-14(l)	D(14)	—	CA(30)	CA
Amendment of Discretionary Approval not involving height SUBSECTION 9-2-14(m)	D(14)	—	CA, D(30)	CA
Amendment of Discretionary Approval involving height SECTION 9-2-14	—	—	D(30)	CA
KEY:				
D = Decision Authority CA = Call-Up and Appeal Authority (for City Council, call-up only)				
R = Recommendation only (A) = Appeal Authority ⁷⁶ (n) = Maximum number of days for call-up or appeal				

⁷² Inconsistent term fixed.

⁷³ Planning Board extensions have been removed.

⁷⁴ In 9-3-9(k), these are described as boundary revisions. Other columns updated to match text.

⁷⁵ Fixes error in the table. These are not subject to Council call-up.

⁷⁶ This has been added to clarify there are some circumstances that can be appealed, but not called up.

Section 17. Section 9-4-3, “Public Notice Requirements,” B.R.C. 1981, is amended

to read as follows:

9-4-3. Public Notice Requirements

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

TABLE 4-2: PUBLIC NOTICE OPTIONS

<i>Public Notice Type</i>	<i>Type of Application, Meeting or Hearing</i>	<i>Mailed Notice</i>	<i>Posted Notice</i>
1	Administrative Reviews (except those identified below)	none	none
2	Preliminary Plats and Minor Subdivisions	To adjacent property owners a minimum of 10 days before final action and mineral rights owners a minimum of 30 days before initial hearing or decision	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
3	Good neighbor meetings	To property owners within 600 feet of subject property a minimum of 10 days before meeting	none
4	Solar exceptions, solar access permits ⁷⁷	To adjacent property owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
5	Applications requiring BOZA action, wetland permit and boundary determination ⁷⁸	To property owners within 300 feet of subject property a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
6	Development Review Applications (site review, use review, annexation, rezoning, concept plans)	To property owners within 600 feet of subject property a minimum of 10 days before final action and mineral rights owners a minimum of 30 days before initial hearing or decision	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing

⁷⁷ Solar exceptions are processed similarly to other administrative variances, so would instead use public notice type 1 accordingly. Exception approvals already require an affidavit from all affected properties per 9-9-17(f)(4), so other properties affected would be aware and indicate no objection. Like other administrative variances, applications with neighbor objection are referred to BOZA by staff or decisions can be appealed by the applicant per 9-9-17(f)(5).

⁷⁸ Requirements for Planning Board call-ups have been removed, so notice has been removed accordingly to make these reviews administrative.

7	Form-based code review	To property owners and all addresses within 600 feet of the subject property a minimum of 10 days before final action and mineral rights owners a minimum of 30 days before initial hearing or decision	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
8	Use review applications for oil and gas operations	To property owners, all addresses, and the local government designee of any local government within 5,280 feet (one mile) of the subject property upon finding an application complete and a minimum of 10 days before final action and any mineral rights owners at that time and a minimum of 30 days before initial hearing	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing

...

Section 18. Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981, is amended to read as follows:

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

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

- (a) Appeal: ~~If a right to appeal is noted in this title, if noted in Table 4-1, Section 9-4-2, "Development Review Procedures," B.R.C. 1981, in a specific section, an applicant or, if applicable, any interested person may appeal the city manager's decision to grant or deny an application to the planning board by delivering a written notice of appeal to the city manager within fourteen days of the decision.~~
- (b) Board Call-Up: ~~If a planning board call-up of a city manager decision is noted in this title, if noted in Table 4-1, Section 9-4-2, "Development Review Procedures," B.R.C. 1981, a member of the planning board may call up a city manager's decision upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. A member of the BOZA may call up a city manager's decision regarding an interpretation upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. On any application that it calls up, the board will hold a public hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as provided in Subsection 9-4-3(d), B.R.C. 1981. Within thirty days of the public hearing or within such other time as the board and the applicant mutually agree, the board will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by Sections 9-~~

~~2-14, "Site Review," 9-2-15, "Use Review," and 9-2-16, "Form-Based Code Review," B.R.C. 1981, for the type of review requested.⁷⁹~~

- (c) City Council Call-Up: ~~With the exception of minor subdivisions and plats, t~~The city council may call up any board decision within thirty days of the board's action. The city manager may extend the call-up period until the council's next regular meeting, if the manager finds in writing within the original call-up period that the council will not receive notice of a decision of the board in time to enable it to call up the decision for review. ~~On any application that it calls up, the council will hold a public hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as specified by Subsection 9-4-3(d), B.R.C. 1981, summarized in Subsection (b) of this section.~~ Together with the evidence presented at such public hearing, the council may consider the record, or any portion thereof, of the hearing before the board. ~~Within thirty days of the public hearing or within such other time as the council and the applicant mutually agree, the council will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by Sections 9-2-14, "Site Review," 9-2-15, "Use Review," and 9-2-16, "Form-Based Code Review," B.R.C. 1981, for the type of review requested.⁸⁰~~
- (d) Public Hearing Requirements: Within sixty days after ~~a referral,~~ appeal or call-up under this section, the approving agency will hold a public hearing on the application. ~~On any application that it calls up, the board or council will hold a public hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as provided in Subsection 9-4-3(d), B.R.C. 1981. Within thirty days of the public hearing or within such other time as the board or council and the applicant mutually agree, the board or council will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by Sections 9-2-14, "Site Review," 9-2-15, "Use Review," and 9-2-16, "Form-Based Code Review," B.R.C. 1981, for the type of review requested.⁸¹~~

...

Section 19. Section 9-6-3, "Specific Use Standards - Residential Uses," B.R.C.

1981, is amended to read as follows:

⁷⁹ This text is repetitive in both (b) and (c); it has been consolidated together below in (d).

⁸⁰ This text is repetitive in both (b) and (c); it has been consolidated together below in (d), with the unique sentence about council evidence remaining in place. Also clarifies exception for minor subdivision and plats.

⁸¹ This text is repetitive in both (b) and (c); it has been consolidated together here. Removed "referral" from first line as referral process is described in 9-2-8 and is not a call-up or appeal.

9-6-3. Specific Use Standards - Residential Uses

(a) Residential Uses:

- (1) This Subsection (a) sets forth standards for uses in the residential use classification that are subject to specific use standards pursuant to Table 6-1, Use Table.
- (2) Residential Uses in the IG and IM Zoning Districts: The following standards apply in the IG and IM zoning districts to residential uses that may be approved pursuant to a use review:
 - (A) Location: Dwelling units may be constructed only on a lot or parcel that meets one or more of the following requirements (i), (ii), or (iii). If a lot or parcel meets this location standard, the approving authority shall presume that the standard in Paragraph 9-2-15(e)(54), B.R.C. 1981, has been met.⁸²

...

(d) Dwelling Unit, Detached:

...

- (2) In the RH-1, RH-2, RH-3, RH-4, RH-5, RH-7, MU-1, MU-2, and MU-4 Zoning Districts:
 - (A) Review Process: In the RH-1, RH-2, RH-3, RH-4, RH-5, RH-7, MU-1, MU-2, and MU-4 zoning districts, the following review process applies to detached dwelling units:
 - (ii) Use Review: A new detached dwelling unit that is not allowed by right may be approved pursuant to a use review if the approving authority finds that:
 - a. The use meets the use review criteria in Paragraphs 9-2-15(e)(1), (32), (43), and (54), "Use Review," B.R.C. 1981;⁸³

...

...

Section 20. Section 9-6-5, "Specific Use Standards - Commercial Uses," B.R.C.

1981, is amended to read as follows:

9-6-5. Specific Use Standards - Commercial Uses

⁸² Necessary renumbering – criteria (1) was removed.

⁸³ Necessary renumbering – criteria (1) was removed.

...

(b) Brewery, Distillery, and Winery:

...

(2) In the IS-1, IS-2, and IMS Zoning Districts:

...

(A) In the IS-1, IS-2, and IMS zoning districts, breweries, distilleries, and wineries shall meet the following standards:

...

(i) Review Process: In the IS-1, IS-2, and IMS zoning districts, the following review process applies:

...

c. Use Review: If the use is not allowed by right or as a conditional use, the use may be approved only pursuant to a use review subject to the use review criteria in Paragraphs 9-2-15(e)~~(1)~~, ~~(32)~~, ~~(43)~~, and ~~(54)~~ "Use Review," B.R.C. 1981.⁸⁴

...

(3) In the IG and IM Zoning Districts:

(A) In the IG and IM zoning districts, breweries, distilleries, and wineries shall meet the following standards:

...

(i) Review Process: In the IG and IM zoning districts, the following review process applies:

...

c. Use Review: If the use is not allowed by right or as a conditional use, the use may be approved only pursuant to a use review subject to the use review criteria in Paragraphs 9-2-15(e)~~(1)~~, ~~(32)~~, ~~(43)~~, and ~~(54)~~ "Use Review," B.R.C. 1981.⁸⁵

(i) Office Uses:

...

(2) Office Uses in the MU-4 Zoning District:

⁸⁴ Necessary renumbering, criteria (1) was removed.

⁸⁵ Necessary renumbering, criteria (1) was removed.

- (A) Review Process: In the MU-4 zoning district, the following review process applies to office uses:

...

- (ii) Use Review: Office uses that may not be approved by right may be approved pursuant to a use review if the approving authority finds that the use:
- a. Meets the use review criteria in Paragraphs 9-2-15(e)~~(1)~~, ~~(32)~~, ~~(43)~~, and ~~(54)~~, "Use Review," B.R.C. 1981; and

...

- (3) Office Uses in the BT-1, BT-2, BMS, BR-1, and BR-2 Zoning Districts:

- (A) Review Process: In the BT-1, BT-2, BMS, BR-1, and BR-2 zoning districts, the following review process applies to office uses:

- (i) Allowed Use: Office uses are allowed by right if they meet the following standards:
- a. The use is located within the University Hill general improvement district;
 - b. The combined total amount of floor area of any office uses does not exceed 20,000 square feet on the lot or parcel; or
 - c. The use was legally established within the associated floor area prior to August 6, 2019. ~~Uses that exceed the 20,000 square foot limitation of Subparagraph (A)(i)b. shall be considered a nonconforming use.~~ Changes in operations, such as changes in ownership, tenancy, management, number of employees, hours of operation, or changes to other uses also within the office use category within the existing floor area referenced in this subsection, ~~shall do not require city manager review. be considered an expansion of a nonconforming use. Such changes shall not require a request for a change of use pursuant to Section 9-10-3(c)(2), "Standards for Changes to Nonconforming Uses," B.R.C. 1981.~~ Additions or changes to floor plans that result in the combined floor area of these uses exceeding ~~the 20,000 square foot limitation of Subparagraph (A)(i)b. for the nonconforming floor area~~

~~may are not be~~ allowed by right and are subject to the standards of Subparagraphs (A)(ii) and (A)(iii).⁸⁶

- (ii) Conditional Use: The use may be approved as a conditional use if the following standards are met:
 - a. The total amount of floor area of any office uses does not exceed 40,000 square feet on the lot or parcel;
 - b. Dwelling units are constructed on the same lot or parcel or within the area of the same approved site review, planned unit development, or form-based code review and at least thirteen percent of those dwelling units meet the requirements for permanently affordable units set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981; and
 - c. No less than two permanently affordable units are constructed on said lot or parcel or within said area of an approved site review, planned unit development, or form-based code review.
- (iii) Use Review: Any use that is not allowed by right and may not be approved as a conditional use may be approved pursuant to a use review if the approving authority finds that the use:
 - a. Meets the use review criteria in Paragraphs 9-2-15(e)~~(1)~~, ~~(32)~~, ~~(43)~~, and ~~(54)~~, "Use Review," B.R.C. 1981; and⁸⁷
 - b. The proposed use is part of a mixed-use development that includes residential or retail uses.

...

(k) Office:

...

- (4) In the IG and IM Zoning Districts:
 - (A) Review Process: In the IG and IM zoning districts, the following review process applies to offices:

...

- (ii) Use Review: If the office is not allowed by right, the use may be approved only pursuant to a use review. In addition to meeting the use review criteria in Paragraphs 9-2-15(e)~~(1)~~, ~~(32)~~, ~~(43)~~,

⁸⁶ Clarifications related to nonconforming use definition changes and new language for substitutions of owner and tenant processes.
⁸⁷ Necessary renumbering as (1) is removed.

and (54) "Use Review," B.R.C. 1981, the applicant shall demonstrate that.⁸⁸

...

(r) Financial Institution:

...

(2) In the MU-4 Zoning District:

(A) Review Process: In the MU-4 zoning district, the following review process applies to financial institutions:

...

(ii) Use Review: Financial institutions that may not be approved by right may be approved pursuant to a use review if the approving authority finds that the use:

a. Meets the use review criteria in Paragraphs 9-2-15(e)(1), (32), (43), and (54), "Use Review," B.R.C. 1981; and⁸⁹

...

Section 21. Section 9-7-5, "Building Height," B.R.C. 1981, is amended to read as

follows:

9-7-5. Building Height

...

(d) Nonconformity to Permitted Height: For existing buildings that exceed the height permitted in Section 9-7-1, "Schedule of Form and Bulk Standards," or Section 9-7-6, "Building Height, Conditional," B.R.C. 1981, the following changes require approval under Section 9-2-14, "Site Review," B.R.C. 1981:

(1) ~~There shall be no increase in~~ Increasing the building's highest point as established by Subsection 9-7-5(b), "Measurement of Height," B.R.C. 1981;

(2) ~~Adding building elements or massing above the permitted or conditional height unless permitted by Section 9-7-7, "Building Height, Appurtenances," B.R.C. 1981; or~~

⁸⁸ Necessary renumbering as (1) is removed.

⁸⁹ Necessary renumbering as (1) is removed.

(3) ~~or Adding the~~ floor area of buildings ~~greater than the~~ above the permitted ~~or conditional~~ height ~~but less than fifty-five feet in height, unless approved under Section 9-2-14, "Site Review," B.R.C. 1981.~~⁹⁰

...

...

Section 22. Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, is amended to read as follows:

9-8-5. Occupancy of Dwelling Units

...

(d) Nonconforming Uses: A nonconforming residential use that is ~~not permitted~~ prohibited by Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, or is a lot or parcel that does not meet the density requirements of Chapter 9-8, "Intensity Standards," B.R.C. 1981, is subject to the following:⁹¹

...

Section 23. Section 9-9-6, "Parking Standards," B.R.C. 1981, is amended to read as follows:

9-9-6. Parking Standards

(a) Rationale: The intent of this section is to provide adequate off-street parking for all uses, to prevent undue congestion and interference with the traffic carrying capacity of city streets, and to minimize the visual and environmental impacts of excessive parking lot paving.

...

(c) General Parking Requirements:

(1) Rounding Rule: For all motor vehicle and bicycle parking space requirements resulting in a fraction, the fraction shall be:

(A) Rounded to the next higher whole number when the required number of spaces is five or less; or

(B) Rounded to the next lower whole number when the required number of spaces is more than five.

⁹⁰ Clarifies changes allowed to buildings that do not conform to height requirements and that additional floor area below the maximum height is permitted.

⁹¹ Aligns language with changes proposed in definition of "nonconforming use."

- (2) Parking Requirements for Lots in Two or More Zoning Districts: For lots that have more than one zoning designation, the required motor vehicle and bicycle parking for the use(s) on the lot may be provided on any portion of the lot, subject to the provisions of this title.
- (3) Off-Street Parking Requirement for Unlisted Nonresidential Uses: If the city manager determines that the use type is not specifically listed in Table 6-1, Use Table, or Table 9-4, Use Specific Motor Vehicle Parking Requirements for Nonresidential Uses in All Zones, the city manager may apply one of the following standards that adequately meets the parking needs of the use:⁹²
- (A) The applicable off-street parking requirement under Table 9-3, Nonresidential Motor Vehicle Parking Requirements by Zoning District;
- (B) The off-street parking requirement under Table 9-4 for the listed use type most similar to the proposed use type based on public parking demand, nature of the use, number of employees, or any other factors deemed appropriate by the city manager;
- (C) An off-street parking requirement established based on local or national best practices or by reference to standards or resources such as the Institute of Traffic Engineers, Urban Land Institute, International Council of Shopping Centers, American Association of State Highway and Transportation Officials, or American Planning Association; or
- (D) An off-street parking requirement demonstrated by a parking demand study prepared by the applicant according to Paragraph 9-9-6(d)(6).

...

Section 24. Section 9-9-17, "Solar Access," B.R.C. 1981, is amended to read as

follows:

9-9-17. Solar Access

...

- (d) Basic Solar Access Protection:
- (1) Solar Fence: A solar fence is hereby hypothesized for each lot located in SA Area I and SA Area II. Each solar fence completely encloses the lot in

⁹² This provides additional flexibility for unlisted uses to determine unique parking requirements and is common in other communities. Some properties are not eligible to apply for Site Review to further modify parking requirements, so this provides a path for determining appropriate standards.

question, and its foundation is contiguous with the lot lines. Such fence is vertical, is opaque and lacks any thickness.

- (A) SA Area I: No person shall erect an object or structure on any other lot that would shade a protected lot in SA Area I to a greater degree than the lot would be shaded by a solar fence twelve feet in height, between two hours before and two hours after local solar noon on a clear winter solstice day.
- (B) SA Area II: No person shall erect an object or structure on any other lot that would shade a protected lot in SA Area II to a greater degree than the lot would be shaded by a solar fence twenty-five feet in height, between two hours before and two hours after local solar noon on a clear winter solstice day.
- (C) SA Area III: Solar fences are not hypothesized for lots located in SA Area III. Solar access protection in SA Area III is available under this section only through permits, as hereinafter provided.
- (D) Adjoining Duplex or Townhouse Lots in All Solar Areas: On duplex or townhouse lots, solar fences are not hypothesized on interior lot lines between adjoining units of a duplex or adjoining townhouses. Other lot lines are subject to the solar fence restrictions of subsection (A), (B), or (C), as applicable.⁹³

...

(f) Exceptions

- (5) Referral or Appeal of City Manager's Decision: The city manager may refer the application or the city manager's decision may be appealed by the applicant to the BOZA pursuant to the procedures of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. If an affidavit from each owner of each affected lot per subparagraph (f)(4)(A) cannot be obtained, the applicant may apply for consideration of the exception before the BOZA. Public notification of the hearing shall be provided pursuant to Section 9-4-3, "Public Notice Requirements," B.R.C. 1981. The sign posted shall remain posted until the conclusion of the hearing.⁹⁴

(g) Solar Siting:

...

- (2) Waivers: Upon request of any applicant for a building permit or a subdivision or planned unit development approval, the approving authority may waive

⁹³ This clarifies that solar fences are not considered for adjoining duplex or townhouse lots, but still considered at the exterior of a development.

⁹⁴ Changes made to mirror changes in Table 4-4 to better align solar exceptions with other administrative variances.

such of the requirements of this paragraph as it deems appropriate if it finds that any of the following criteria are met:

...

~~(D) — The applicant's proposal incorporates the following additional energy resource and conservation option points in excess of the requirements of Subsection 10-5.5-2(y), "Resource Conservation - Green Points," B.R.C. 1981:~~

~~(i) — 2 points - to qualify for a waiver of the requirement of Subparagraph (g)(1)(A) of this section;~~

~~(ii) — 3 points - to qualify for a waiver of the requirement of Subparagraph (g)(1)(B) of this section; and~~

~~(iii) — The city manager finds that adequate protection for any solar energy systems to be installed is provided either under the provisions of this section, or through covenants, easements, or other agreements among affected landowners.⁹⁵~~

...

Section 25. Section 9-10-2, "Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures, and Lots," B.R.C. 1981, is amended to read as follows:

9-10-2. Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures, and Lots

Nonconforming uses and nonstandard buildings and lots in existence on the effective date of the ordinance which first made them nonconforming may continue to exist subject to the following:

- (a) One-Year Expiration for Nonconforming Uses: A nonconforming use, except for a use that is nonconforming only because it fails to meet the required off street parking standards ~~in of~~ Sections 9-9-6, "Parking Standards," ~~and or residential density requirements of Section 9-78-1,~~ "Schedule of Intensity Standards ~~Schedule of Form and Bulk Standards,~~" B.R.C. 1981, that has been discontinued for at least one year shall not be resumed or replaced by another nonconforming use as allowed under Subsection 9-2-15(f), B.R.C. 1981, unless an extension of time is requested in writing prior to the expiration of the one-year period.⁹⁶ The approving

⁹⁵ The green points system was removed several years ago and this language unintentionally remains in the code.

⁹⁶ Fixes incorrect cross-reference.

authority will grant such a request for an extension upon finding that an undue hardship would result if such extension were not granted.

...

Section 26. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, is amended to read as follows:

9-10-3. Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses

...

(c) Nonconforming Uses:

- (1) Nonconforming Changes to Conforming Use Prohibited: No conforming use may be changed to a nonconforming use, notwithstanding the fact that some of the features of the lot or building are nonstandard or the parking is nonconforming.
- (2) Standards for ~~Changes-Substitutions of~~ Nonconforming Uses: The city manager will grant a request for a ~~change-substitution~~ of ~~nonconforming~~ use, which is the replacement of one nonconforming use with another, if the ~~modified or~~ new use does not constitute an expansion of a nonconforming use. Any ~~other change of use that constitutes~~ expansion of a nonconforming use must be reviewed under procedures of Section 9-2-15, "Use Review," B.R.C. 1981.⁹⁷
- (3) Nonconforming Only as to Parking: The city manager will grant a request to change a use that is nonconforming only because of an inadequate amount of parking to any conforming use allowed in the underlying zoning district upon a finding that the new ~~or modified~~ use will have an equivalent or less parking requirement than the use being replaced.⁹⁸

...

Section 27. Section 9-12-3, "Adjustment of Lot Lines," B.R.C. 1981, is amended to read as follows:

9-12-3. Adjustment of Lot Lines

...

⁹⁷ This process, which is specific to swapping one nonconforming use for another, has been called a substitution of nonconforming use for many years, so the language has been updated accordingly.

⁹⁸ Uses that are nonconforming to parking only may be modified using this section; it does not necessarily need to be a new use.

- (d) City Manager Approval: No person shall transfer land under this section until after the city manager reviews the map and legal description of the property and all other information required under this section to verify that the transfer is exempt under this chapter. ~~The city manager shall sign the documents of transfer before they are recorded and will record the approved replat map after the applicant has recorded the documents of transfer. The city manager shall sign the approved replat map and the city clerk shall record the replat map in the office of the Boulder County Clerk and Recorder. Any such approved replat not recorded within six months after the date it was approved shall automatically expire.~~⁹⁹

Section 28. Section 9-12-4, “Elimination of Lot Lines,” B.R.C. 1981, is amended to read as follows:

9-12-4. Elimination of Lot Lines

...

- ~~(e) City Manager Decision: The city manager shall notify the planning board in writing within seven days of the disposition of the replat application.~~¹⁰⁰
- ~~(f)~~ (e) City Manager Approval: The city manager shall sign all approved replats and, ~~upon the payment of the recording fees prescribed by subsection 4-20-43(a), B.R.C. 1981,~~ the city clerk shall record all such replats in the office of the Boulder County Clerk and Recorder. Any such approved replat not recorded within six months after the date it was approved shall automatically expire.¹⁰¹

Section 29. Section 9-12-5, “Minor Subdivision,” B.R.C. 1981, is amended to read as follows:

9-12-5. Minor Subdivision

- (a) Scope: A minor subdivision is a division of land that is already served by city services, will not require the extension of streets or public improvements and will not result in more than one additional lot.
- ...
- (f) Existing Streets or Alleys. Dedication and Vacation of Easements: Right-of-way necessary to bring an existing street or alley up to a current city standard, or public

⁹⁹ Staff does not sign documents of transfer, so this language has been removed to align with current practice. Similar language from 9-12-4 has been included to align the process of city manager signature and recording with that of lot line eliminations.

¹⁰⁰ Lot line eliminations currently require an informational item to be sent to the Planning Board, even though lot line adjustments are not required to do so. Additionally, they are not subject to call-up so it is purely informational.

¹⁰¹ Recording fees are no longer described in this subsection so this has been removed.

easements for utilities or sidewalks may be dedicated on a minor subdivision plat. The City may approve the vacation of city utility easements on the replat.¹⁰²

...

Section 30. Section 9-12-10, "Final Plat Procedure," B.R.C. 1981, is amended to read as follows:

9-12-10. Final Plat Procedure

...

- (ed) Any person aggrieved by a decision of the city manager to approve or deny an application for a subdivision may appeal such decision to the planning board ~~by filing an appeal with the city manager within fourteen days of the decision pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. A member of the planning board may call-up the city manager decision pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. The board shall hear the appeal or call-up of the subdivision application, after giving notice to all interested parties, within thirty days of the notice of appeal or call-up, under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.~~ The board shall determine whether the subdivision application meets the requirements of this code and other ordinances of the City or those determined by the city manager to be necessary to protect the public health, safety and welfare and shall grant or deny the application.¹⁰³
- (fe) The city manager shall sign the city manager certification on all plats of the subdivision following planning board approval, or the expiration of the call-up period, as applicable. Within one week after any conditions of the subdivision agreement required to occur prior to recording have been met, the city clerk shall record all such plats and agreements in the office of the Boulder County Clerk and Recorder in a form acceptable to the office and consistent with state law.
- (gf) A plat expires if not recorded within twenty-four months after the date it was submitted, unless the city manager extends final plat approval for not more than twelve months upon a showing of good cause.

Section 31. Section 9-16-1, "General Definitions," B.R.C. 1981, is amended to read as follows:

9-16-1. General Definitions

¹⁰² Additional language to subsection leader for clarity.

¹⁰³ Specific language related to Planning Board call-ups added to align with charter requirements.

...

- (c) The following terms as used in this title have the following meanings unless the context clearly indicates otherwise:

...

Conforming Use means any use of a building or use of a lot that is permitted by Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981 and meets any applicable specific use standards. A conforming use also includes:¹⁰⁴

(1) A legal existing use that is not prohibited but was not approved as a conditional use or use review use;

(2) A use approved pursuant to a valid use review or special review, except where the review was a nonconforming use review;

Expansion of a nonconforming use means any change or modification to a nonconforming use that constitutes:

(1) An increase in the occupancy, floor area, required parking, traffic generation, outdoor storage, or visual, noise, or air pollution;

(2) Any change in the operational characteristics which may increase the impacts or create adverse impacts to the surrounding area including, without limitation, the hours of operation, noise, or the number of employees;

(3) The addition of bedrooms to a dwelling unit, except a single-family detached dwelling unit; or

(4) The addition of one or more dwelling units.

...

Nonconforming use means any use of a building or use of a lot that is ~~not permitted~~prohibited by Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981,~~but excludes a conforming use in a nonstandard building or on a nonstandard lot; a legal existing use that has not been approved as a conditional use or a use review use, or a use approved pursuant to a valid special review or use review approval.~~ A nonconforming use also includes an otherwise conforming use, except a single dwelling unit on a lot, that does not meet the following parking ~~and or~~ residential density requirements, including, without limitation, the requirements for minimum lot area per dwelling unit,~~;~~ useable open space

¹⁰⁴ The definition of "nonconforming use" currently includes many examples of situations that are not nonconforming. This pulls those situations into a new definition of "conforming use" to simplify the nonconforming use definition.

per dwelling unit, or required off-street parking requirements of Sections 9-8-1, "Schedule of Intensity Standards," ~~and or~~ 9-9-6, "Parking Standards," B.R.C. 1981.¹⁰⁵

...

Nonstandard building or structure means any building or structure that does not conform to the setback, height, side yard bulk plane, side yard wall length articulation, or building coverage requirements of Section 9-7-1, "Schedule of Form and Bulk Standards," or the floor area ratio requirements of Section 9-8-1, "Schedule of Intensity Standards," and Section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, unless the nonstandard features of the building or structure were approved as part of a planned unit development or a site review, or as a variance. A nonstandard building or structure does not render a conforming use a nonconforming use.¹⁰⁶

Nonstandard lot means any lot that does not conform to the minimum lot area requirement of Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, or frontage upon a public street required by Section 9-12-12, "Standards for Lots and Public Improvements," B.R.C. 1981, unless the nonstandard nature of the lot was approved as part of a planned unit development or a site review. A nonstandard lot does not render a conforming use a nonconforming use.¹⁰⁷

¹⁰⁵ The exclusions have been relocated to a new definition of "conforming use" to make this easier to read.

¹⁰⁶ Clarification added to align with changes to nonconforming use definition.

¹⁰⁷ Clarification added to align with changes to nonconforming use definition.

ORDINANCE 8622

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, TO SIMPLIFY CERTAIN DEVELOPMENT REVIEW PROCESSES, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 4-20-43, "Development Application Fees," B.R.C. 1981, is amended to read as follows:

4-20-43. Development Application Fees.

(a) Subdivision fees:

...

(b) Land use regulation fees:

...

(3) An applicant for approval of a use review shall pay the following fees:

Standard

Initial application\$3,420

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)\$1,710.

Fee includes an initial and two subsequent staff reviews of the application. Each additional staff review of an application is\$1,130.

Nonconforming uses and nonstandard lots and buildings

Initial application\$2,870

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)\$1,435

Fee includes an initial and two subsequent staff reviews of the application. Each additional staff review of an application is\$950.

Minor use review

Initial application\$1,710

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied)\$855

Fee includes an initial and two subsequent staff reviews of the application. Each additional staff review of an application is\$560.

...

Section 2. Section 8-6-10, "Vacation of Public Easements," B.R.C. 1981, is amended to read as follows:

8-6-10. - Vacation of Public Easements

Vacation of city easements dedicated for any purpose, except public rights of way and access easements, may occur:

- (a) Through the subdivision process; or
- (b) By approval of the city manager upon a determination that no public need exists for such easement. ~~The city manager will review the requested vacation pursuant to Section 9-2-2, "Administrative Review Procedures," B.R.C. 1981. If the city manager approves an easement vacation, it is not effective until thirty days after the date of its approval. Promptly after approving the vacation, the manager will forward to the city council a written report, including a legal description of vacated portion of the easement and the reasons for approval. The manager will publish notice of the proposed vacation once in a newspaper of general circulation in the city within thirty days after the vacation is approved. Upon receiving such report and at any time before the effective date of the vacation, the council may rescind the manager's approval and call up the vacation request for its consideration at a public hearing, which constitutes a revocation of the vacation.~~

Section 3. Section 9-1-4, "Transitional Regulations," B.R.C. 1981, is amended to read as follows:

9-1-4. Transitional Regulations

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

...

- (e) Existing Uses Subject to Specific Use Standards or That Require a Use Review or Conditional Use Approval:
 - (1) Use Review or Conditional Use Approvals: Any previously approved use that was established prior to the adoption of new regulations that make ~~such the~~ use permitted only pursuant to a conditional use or a use review shall be allowed to continue in operation. Any ~~change or~~ expansion of a

~~the use that was established prior to the adoption of new regulations that make such use permitted pursuant to a conditional use or a use review shall be made in conformance with the applicable standards procedure for use review or, conditional uses, or for changes or expansions to nonconforming uses.~~

(2) Specific Use Standards: Any previously allowed use that was established prior to the adoption of new regulations that make such use allowed subject to specific use standards shall be allowed to continue in operation. Changes to ~~a the use that was established prior to adoption of the new regulations that imposed specific use standards~~ shall be made in conformance with the applicable specific use standards ~~or in conformance with the applicable standards for changes or expansions to nonconforming uses.~~

(3) Discontinued Use: If active and continuous operations of a use subject to the standards of paragraphs (e)(1) or (e)(2) of this section are not carried on for a period of three years, it shall thereafter be occupied and used by a use meeting the requirements of this title, ~~as required by Subsection 9-10-2(a), B.R.C. 1981.~~

(f) Nonconforming Uses: Nonconforming uses are subject to the standards in Chapter 9-10, "Nonconforming Standards," B.R.C. 1981.

~~(fg) Violations Continue: Any violation of the previous land development regulations of the city shall continue to be a violation under this title and shall be subject to the penalties and enforcement set forth in Chapter 9-15, "Enforcement," B.R.C. 1981, unless the use, development, construction or other activity is clearly consistent with the express terms of this title.~~

Section 4. Section 9-2-1, "Types of Reviews," B.R.C. 1981, is amended to read as

follows:

9-2-1. Types of Reviews

(a) Purpose: This section identifies the numerous types of administrative and development review processes and procedures. The review process for each of the major review types is summarized in Table 2-1 of this section.

(b) Summary Chart:

TABLE 2-1: REVIEW PROCESSES SUMMARY CHART

<i>I. ADMINISTRATIVE REVIEWS</i>	<i>II. DEVELOPMENT REVIEW AND BOARD ACTION</i>
Affordable housing design review pursuant to Section 9-13-4, B.R.C. 1981	Annexation/initial zoning
Building permits	BOZA variances

1	Change of address	Concept plans
2	Change of street name	Demolition, moving, and removal of buildings with potential historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981
3	Conditional uses, as noted in Table 6-1: Use Table	Form-based code review
4	Demolition, moving, and removal of buildings with no historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981	Geophysical exploration permit
5	Easement vacation	Landmark alteration certificates other than those that may be approved by staff per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981
6	Extension of development approval/staff level	Lot line adjustments
7	Landmark alteration certificates (staff review per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981)	Lot line elimination
8	Landscape standards variance	Minor Subdivisions
9	Minor modification to approved site plan	Out of city utility permit
10	Minor modification to approved form-based code review	Rezoning
11	Noise barriers along major streets per Paragraph 9-9-15(c)(7), B.R.C. 1981	Site review
12	Nonconforming use (extension, change of use (incl. parking))	Subdivisions
13	Parking deferral per Subsection 9-9-6(e), B.R.C. 1981	Use review
14	Parking reduction of up to 25 percent per Subsection 9-9-6(f), B.R.C. 1981	Vacations of street, alley, or access easement
15	Parking reductions and modifications for bicycle parking per Paragraph 9-9-6(g)(6), B.R.C. 1981	
16	Parking stall variances	
17	Public utility	
18	Rescission of development approval	
19	Revocable permit	
20	Right-of-way lease	
21	Setback variance	
22	Site access variance	
23	<u>Substitution of a nonconforming use</u>	
24	Solar exception	
25	Zoning verification	

Section 5. Section 9-2-2, "Administrative Review Procedures," B.R.C. 1981, is amended to read as follows:

1 **9-2-2. Administrative Review Procedures**

2 (a) Purpose: Administrative review of projects will occur at various times in project
3 development to ensure compliance with the development standards of the city.

4 ...

4 (d) Conditional Uses:

5 ...

6 (5) Expiration: Any conditional use approval that is not established within one year of
7 its approval, is discontinued for at least three years, or is replaced by another use
of land shall expire.

8 ...

9 Section 6. Section 9-2-7, "Development Review Action," B.R.C. 1981, is amended to
10 read as follows:

11 **9-2-7. Development Review Action**

12 No development review application will be accepted unless and until it is determined to be
13 complete. Such determination will be made within five days after the submission of the
14 application. The city manager will review the application and provide the applicant with a list of
any deficiencies.

15 ...

16 (b) Planning Board Review and Recommendation: Development review applications
requiring a decision by the planning board shall be reviewed as follows:

17 ...

18 (3) Appeal and Call-Ups:

19 (A) The applicant or any interested person may appeal the city manager's
decision pursuant to Section 9-4-4, "Appeals, Call-Ups and Public
Hearings," B.R.C. 1981.

20 (B) A member of the planning board may call-up an application for review
21 pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings,"
22 B.R.C. 1981, except that minor use review processes are not subject to
call-up by planning board.

23 (c) City Council Call-Up: The city council may call-up any planning board decision pursuant
to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

24 (d) Building Permit Pending Appeal: A building permit may be applied for after the initial
25 approval of a development review application, but no building permit will be issued until

1 after any and all applicable call-up or appeal periods have expired. An applicant for such
2 a permit bears all risks of subsequent disapproval and waives any claims arising from the
3 permit application.

- 3 (e) Judicial Review: Any person aggrieved by the final decision of the city manager may
4 seek judicial review pursuant to Subsection 9-4-4(g), B.R.C. 1981.

5 Section 7. Section 9-2-8, "Public Hearing Requirements," B.R.C. 1981, is amended to
6 read as follows:

7 **9-2-8. Public Hearing Requirements**

8 Within sixty days after a referral, or an appeal or call-up pursuant to Section 9-4-4, "Appeals,
9 Call-Ups and Public Hearings," B.R.C. 1981, the approving agency, after publishing notice
10 pursuant to Section 9-4-3, "Public Notice Requirements," B.R.C. 1981, will hold a public
11 hearing on the application.

12 Section 8. Section 9-2-9, "Final Approval Requirements," B.R.C. 1981, is amended to
13 read as follows:

14 **9-2-9. Final Approval Requirements**

- 15 (a) Development Agreement: After the approving agency has finally approved an application
16 for use review, site review, or form-based code review, the owner and the city manager
17 will execute a development agreement that incorporates all conditions of the approval,
18 including, without limitation, time limits for completion of the development, and, if
19 applicable, requirements for appropriate easements or deed restrictions if unique
20 conditions of approval apply. The development agreement shall be binding on all parties
21 thereto, shall run with the land and will be recorded upon execution by the city clerk in
22 the office of the County Clerk and Recorder of Boulder County. Any violation of a
23 development agreement is a violation of this title.

24 (1) Exceptions: The city manager may waive the requirement for a development
25 agreement for:

26 (A) A minor amendment to a site review;

27 (B) A minor use review process; and

28 (C) If there are no public improvements associated with a form-based code review
29 application, a form-based code review the city manager can waive the
30 requirements for a development agreement.

- 31 (b) Final Approved Plans: The applicant shall file a paper or electronic copy containing the
32 approved site plan, any applicable restrictions or modifications to the underlying zoning
33 district, and any conditions approved by the approving agency. The paper or electronic

1 copy shall be filed with the city manager, who will endorse and date the approved site
2 plan. The location of the approved development will be included on an official map
3 showing development in the City. The paper or electronic copy will remain on file in the
4 planning department.

- 5 (c) Expiration: Unless expressly waived by the city manager for good cause, pursuant to a
6 written request made prior to expiration of the approval, if the applicant fails to file the
7 final approved plans according to the specifications in Subsection (b) above or sign the
8 development agreement within ninety days of final approval, the approval expires.

9 Section 9. Section 9-2-10, "Amendment Procedures," B.R.C. 1981, is amended to read
10 as follows:

11 **9-2-10. Amendment Procedures**

12 An approved use review may be amended pursuant to Subsection 9-2-15(hj), B.R.C. 1981. An
13 approved site review may be amended pursuant to Subsection 9-2-14(l) or (m), B.R.C. 1981. The
14 city manager may approve, without notice, minor modifications to a ~~use review or a site review~~
15 under the procedures prescribed by Subsection 9-2-14(k), B.R.C. 1981.

16 Section 10. Section 9-2-12, "Development Progress Required," B.R.C. 1981, is amended
17 to read as follows:

18 **9-2-12. Development Progress Required.**

- 19 (a) Three-Year Rule: The applicant must obtain applicable building permit approvals and
20 start construction within three years of the date of the final approval of the site review,
21 use review, or form-based code review. For a use review without construction requiring a
22 building permit, the use must be established within three years of the date of final
23 approval. ~~begin and substantially complete the approved site review, use review, or form-~~
24 based code review as specified in the development agreement within three years from the
25 time of the final approval of the site, use, or form-based code review or as modified by a
development schedule incorporated in the development agreement. For the purposes of
this section, substantially complete means the time when the construction is sufficiently
complete so the owner can occupy the work or portion thereof for the use for which it is
intended. If the project is to be developed in stages, the applicant must begin and
substantially complete the development of each stage within three years of the time
provided for the start of construction of each stage in the development agreement. Failure
to substantially complete the development or any development stage within three years of
the approved development schedule shall cause the unbuilt portion of the development
approval to expire.

(1) Phasing: For reviews with phased development established in the development
agreement, for each development phase, the applicable building permits must be

1 obtained and construction must be started within three years of the start of the
2 phase, or as modified by the development agreement.

3 (2) Expiration: Failure to comply with the three-year rule shall cause the development
4 approval to expire. For phased development, if an approval for one phase expires,
5 then all successive phases not completed or under construction shall expire. After
6 an approval has expired, any new application for development is subject to all the
7 procedures and standards of this title in effect at the time of such application.

8 (3) Vested Rights: Nothing in this section is deemed to create a vested property right
9 in any applicant; such vested property right may only be created pursuant to the
10 provisions of Section 9-2-20, "Creation of Vested Rights," B.R.C. 1981.

11 (b) Extension: If the applicant requests an extension prior to the expiration of a site review,
12 use review, or form-based code review approval, the city manager may grant an
13 extension of the approval pursuant to the following: Prior to the expiration of a form-
14 based code review, use review, or site review approval, the applicant may request an
15 extension of the time allowed for the completion of the development.

16 (1) The city manager will grant up to two one-year extensions to obtain applicable
17 building permit approvals and start construction or establish the use if the
18 applicant demonstrates that it exercised reasonable diligence and has good cause
19 as to why the extension should be granted. The extension must be requested in
20 writing prior to the expiration of the approval. The first extension extends the
21 approval by one year from the date of final approval. The second extension
22 extends the approval by an additional year and can be requested only after the first
23 extension has been granted and additional progress has been made. City Manager
24 Level Extension: The city manager may grant up to two six-month extensions for
25 each phase of the development if such extension will enable the applicant to
substantially complete the phase of development or is necessary to allow the
applicant to request an extension from the planning board.

~~(2) Planning Board Level Extension: The planning board may grant an extension of a~~
~~development approval, pursuant to a hearing conducted under the provisions of~~
~~Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after the applicant has~~
~~exhausted any extension granted pursuant to Paragraph (b)(1) of this section. The~~
~~applicant shall be required to demonstrate that it exercised reasonable diligence in~~
~~completing the project according to the approved development schedule and good~~
~~cause as to why the extension should be granted.~~

(A) Criteria for Demonstrating Reasonable Diligence: An applicant may show
that it has exercised reasonable diligence by providing evidence that it has
done substantial work towards obtaining building permit approval or
starting construction completing the project. Such evidence may include,
without limitation, drafting plans for building permit or technical
document review, applications for building permits or other permits that

1 are required prior to the issuance of building permits, ~~or site preparation~~
 2 and grading, ~~or commencement of the construction of a portion of the~~
 3 project.

4 (B) Criteria for Demonstrating Good Cause: An applicant may show good
 5 cause as to why an extension should be granted by providing evidence that
 6 includes, without limitation, the following: a demonstration of the
 7 applicant's ability to ~~complete the project~~ obtain building permit approval
 8 and start construction within the extension; the extension is needed
 9 because of the size of the project or phasing of the development; or that
 10 economic cycles and market conditions ~~prevented~~ delayed the building
 11 permit approval process and start of construction ~~the construction of the~~
 12 project during the original approval period.

13 (C) ~~Additional Conditions: As part of a hearing to consider an extension, the~~
 14 ~~planning board may impose additional conditions on the applicant in order~~
 15 ~~to ensure compliance with any amendments to this title enacted after the~~
 16 ~~date of the original approval.~~

17 (c) Building Permits: Upon issuance of a building permit pursuant to a development review
 18 approval, the applicant must adhere to the schedule for construction and inspection as
 19 defined in the city building code, Chapter 10-5, "Building Code," B.R.C. 1981. In
 20 addition to the provisions of this title, all provisions of the building code regarding
 21 expiration and termination of building permits shall apply.

22 (d) Annexations/Six-Month Rule: If an owner of property not located within the city, for
 23 which a development review application is approved, fails to annex the property to the
 24 city within six months of the date of approval, the approval shall expire unless the
 25 approving agency extends the time period, upon a finding of good cause predicated upon
 a written request of the applicant delivered to the city manager before the expiration of
 the six-month period.

(e) Rescission of Development Approval: If, after use review, special review, site review,
 Planned Development (PD), Planned Residential Development (PRD), or Planned Unit
 Development (PUD) approval is granted pursuant to this chapter, the owner of property
 desires to develop, instead, under the provisions of Chapters 9-6, "Use Standards," 9-7,
 "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, the owner may
 request rescission of such use review, site review, PD, PRD or PUD approval by filing a
 written request for rescission with the city manager. The manager will grant a rescission
if:

(1) ~~The manager will grant a rescission of such use review, site review, PD, PRD, or~~
~~PUD approval if no~~ No building permit has been issued for the development and
 neither the city nor the developer has taken any actions in detrimental reliance on
 the terms of the development agreement. ~~The manager may also rescind a site~~
~~review, PD, PRD, or PUD approval if~~

(2) For a site review, PD, PRD, or PUD approval, the existing or proposed

development complies with all the use, form, and intensity requirements of Chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, and there is no substantial public benefit in maintaining the original approval-; ~~or An owner may also request a rescission of a use review or special review approval in order to~~

(3) For a use review or special review approval, the rescission will return the property to a use that is allowed by right or as a conditional use if it and the owner is able to meet all applicable standards for such use under this title.

Section 11. Section 9-2-14, "Site Review," B.R.C. 1981, is amended to read as follows:

9-2-14. Site Review

...

(h) Criteria: No site review application shall be approved unless the approving agency finds that the project is consistent with the following criteria:

...

(6) Land Use Intensity and Height Modifications: Modifications to minimum open space on lots, floor area ratio (FAR), maximum height, and number of dwelling units per acre requirements will be approved pursuant to the standards of this subparagraph:

...

(C) Additional Criteria for a Height Bonus and Land Use Intensity Modifications: A building proposed with a fourth or fifth story or addition thereto that exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, together with any additional floor area or residential density approved under Subparagraph (h)(6)(B), may be approved if it meets the requirements of this Subparagraph (h)(6)(C). For purposes of this Subparagraph(h)(6)(C), bonus floor area shall mean floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area that is the result of an increase in density or floor area described in Subparagraph (h)(6)(B). The approving authority may approve a height up to fifty-five feet if one of the following criteria is met:

...

(iv) Alternative Community Benefit: Pursuant to the standard in this Subparagraph (iv), the approving authority may approve an alternative method of compliance to provide additional benefits to the community and qualify for a height bonus together with any additional floor area or density that may be approved under Subparagraph (h)(6)(B). The approving authority will approve the alternative method of compliance if the applicant proposes the

alternative method of compliance and demonstrates that the proposed method:

- a. Will improve the facilities or services delivered by the city, including without limitation any police, fire, ~~library~~, human services, parks and recreation, or other municipal facility, land or service, or will provide an arts, cultural, human services, housing, environmental or other benefit that is a community benefit objective in the BVCP, and
- b. Is of a value that is equivalent to or greater than the benefits required by this Subparagraph (h)(6)(C).

(k) Minor Modifications to Approved Site Plans: The city manager reviews applications for minor modifications pursuant to the procedures in Section 9-2-2, “Administrative Review Procedures,” B.R.C. 1981.

(1) Standards: Minor modifications may be approved if the proposed modification complies with the following standards:

- (A) Scope: The proposed modification is to the approved plans.
- (B) Intent: The modification does not alter the basic intent of the site plan approval;
- (C) Residential Uses: The housing type is not changed;
- (D) Height: No portion of any building is expanded above the height permitted under Sections 9-7-1, “Schedule or Form and Bulk Standards,” or 9-7-6, “Building Height, Conditional,” B.R.C. 1981;
- (E) Parking: Any parking reduction is reviewed and approved through the process and criteria in Subsection 9-9-6(f), B.R.C. 1981;
- (F) Solar Panels: Any solar panels do not substantially add to the mass or perceived height of the building and comply with all applicable building height, solar access, building coverage, and open space requirements;
- (G) Other Requirements: The modification complies with all other applicable requirements of this title; and
- (H) Modified Standards: The numeric standards in the site plan are not modified by more than allowed through Table 2-3.

Table 2-3: Minor Modification Standards

<u>Standard modified</u>	<u>Maximum allowed as a minor modification</u>
<u>Setbacks: interior to the site plan area</u>	<u>No limit to setback modifications</u>
<u>Setbacks: along boundary of site plan area</u>	<u>Minimum zoning district requirement</u>

<u>Floor area (cumulative in minor modification processes)</u>	<u>Increase of up to 10 percent of the floor area granted in the site review approval, not to exceed the floor area ratio listed in Chapter 9-8, "Intensity Standards," B.R.C. 1981. These limitations on floor area do not apply to detached dwelling units on individual lots in zoning districts without a maximum floor area ratio.</u>
<u>Open space</u>	<u>Minimum zoning district requirement</u>
<u>Building location</u>	<u>Up to 10 percent of the length or width of the building</u>
<u>Building envelope</u>	<u>Increase of up to 10 percent in area</u>

(2) Notification: If an applicant requests approval of a minor modification to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The city manager will provide notice pursuant to Subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected.

Changes to the site plan, building plans, and landscaping plans may be approved by the city manager without an amendment to the site plan if such changes are minor. All minor modifications shall be noted, signed, and dated on the approved site plan. For proposed minor modifications of site review projects that are partially or totally developed, the applicant shall provide notice to any owners of property within the development that might be affected, as determined by the manager. In determining whether a proposed change is a minor modification, the following standards shall apply:

- (1) — Setbacks along the boundary of the site plan area cannot be reduced by a minor modification to be less than the minimum setbacks permitted by the underlying zoning district;
- (2) — Excepting any site plan approval consisting of detached dwelling units on individual lots where no maximum floor area ratio applies, the floor area of the development, including principal and accessory buildings, may be expanded by the cumulative total of no more than the greater of ten percent or two hundred square feet or, in the case of a building that exceeds the permitted height, no more than five percent, except that the portion of any building over thirty five feet in height may not be expanded under the provisions of this paragraph. However, the floor area or FAR shall not exceed the maximum floor area or FAR of a zoning district or granted in the site review approval, if such amount requires special approval through the site review process;
- (3) — Approved commercial and industrial building locations may be moved or expanded by no more than the greater of ten feet, or ten percent of the length of the building, measured along the building's axis in the direction that the building is being moved or expanded;
- (4) — Approved principal and accessory building locations may be moved or expanded by no more than ten feet in any direction within the development in residential

1 ~~districts and lots abutting residential districts. The resulting setbacks shall not be~~
 2 ~~less than the minimum allowed setback of the underlying zone;~~

3 (5) ~~Dwelling unit type may not be changed;~~

4 (6) ~~The portion of any building over the permitted height under Section 9-7-1,~~
 5 ~~"Schedule of Form and Bulk Standards," B.R.C. 1981, may not be expanded~~
 6 ~~under the provisions of this subsection;~~

7 (7) ~~No increase may be granted to an open space reduction or to a parking reduction~~
 8 ~~in excess of that allowed in Subsection 9-9-6(f), B.R.C. 1981;~~

9 (8) ~~Solar panels that are proposed to be mounted on a building's roof may not~~
 10 ~~substantially add to the mass or perceived height of the building and shall be~~
 11 ~~consistent with Sections 9-7-7, "Building Height, Conditional," and 9-9-7, "Solar~~
 12 ~~Access," B.R.C. 1981. Solar panels proposed to be ground mounted may not~~
 13 ~~result in a building coverage greater than permitted by the zone and shall not~~
 14 ~~result in open space less than required by Chapter 9-8, "Intensity Standards,"~~
 15 ~~B.R.C. 1981; and~~

16 (9) ~~No change may alter the basic intent of the site plan approval.~~

17 (l) Minor Amendments to Approved Site Plans: The city manager reviews applications for
 18 minor amendments for changes that exceed the limits of a minor modification in
 19 Subsection (k) pursuant to the procedures in Section 9-2-7, "Development Review
 20 Action," B.R.C. 1981.

21 (1) Standards: Minor amendments may be approved if the proposed amendment
 22 complies with the following standards:

23 (A) Scope: The proposed amendment is to the approved plans, conditions of
 24 approval, or written statement.

25 (B) Intent: The minor amendment does not alter the basic intent of the site
plan approval.

(C) Site Review Criteria: The minor amendment complies with the site review
criteria of Subparagraphs (h)(2) and (h)(3) of this section;

(D) Residential Uses: The housing type is not changed;

(E) Height: No portion of any building is expanded above the height permitted
under Sections 9-7-1, "Schedule of Form and Bulk Standards," or 9-7-6,
"Building Height, Conditional," B.R.C. 1981;

(F) Parking: Any additional parking that is provided is accommodated in the
previously approved on-site parking design;

(G) Other Requirements: The minor amendment complies with all other
applicable requirements of this title; and

(H) Modified Standards: The numeric standards in the site plan are not
amended by more than allowed through Table 2-4.

Table 2-4: Minor Amendment Standards

<u>Standard amended</u>	<u>Maximum allowed as a minor amendment, but not to exceed maximum or minimum zoning district requirements.</u>
<u>Floor area (cumulative in minor amendment processes)</u>	<u>20 percent</u>
<u>Open space (cumulative in minor amendment processes)</u>	<u>Decrease of up to 20 percent</u>
<u>Building location</u>	<u>Up to 20 percent of the length or width of the building</u>

- (1) ~~Standards: Changes to approved building location or additions to existing buildings, which exceed the limits of a minor modification, may be considered through the minor amendment process if the following standards are met:~~
- ~~(A) In a residential zone as set forth in Section 9-5-2, "Zoning Districts," B.R.C. 1981, all approved dwelling units within the development phase have been completed;~~
 - ~~(B) In residential zones, dwelling unit type is not changed;~~
 - ~~(C) The required open space per dwelling unit requirement of the zone is met on the lot of the detached dwelling unit to be expanded;~~
 - ~~(D) The total open space per dwelling unit in the development is not reduced by more than ten percent of the amount specified on the approved site plan and is not reduced to less than the minimum required for the zone;~~
 - ~~(E) If the residential open space provided within the development or an approved phase of a development cannot be determined, the detached dwelling unit is not expanded by more than ten percent and there is no variation to the required setbacks for that lot;~~
 - ~~(F) For a building in a nonresidential use module, the building coverage is not increased by more than twenty percent, the addition does not cause a reduction in required open space, and any additional required parking that is provided is substantially accommodated within the existing parking arrangement;~~
 - ~~(G) The portion of any building over the permitted height under Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, is not increased; and~~
 - ~~(H) The proposed minor amendment does not require public infrastructure improvements or other off-site improvements.~~
- (2) ~~Amendments to the Site Review Approval Process: Applications for minor amendment shall be approved~~ reviewed and approved according to the procedures

prescribed by this section for site review approval, except:

- (A) If an applicant requests approval of a minor amendment to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The city manager will provide notice pursuant to Subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected, and to all property owners within a radius of 600 feet of the subject property.
- (B) Only the owners of the subject property shall be required to sign the application.
- ~~(C) The minor amendment shall be found to comply with the review criteria of Subparagraphs (h)(2) and (h)(3) of this section.~~
- ~~(D) The minor amendment shall be substantially consistent with the intent of the original approval, including conditions of approval, the intended design character, and site arrangement of the development, and specific limitations on additions or total size of the building which were required to keep the building in general proportion to others in the surrounding area or minimize visual impacts.~~
- (EC) The city manager may amend, waive, or create a development agreement.

...

Section 12. Section 9-2-15, "Use Review," B.R.C. 1981, is amended to read as follows:

9-2-15. Use Review

(a) Purpose: Each zoning district established in Section 9-5-2, "Zoning Districts," B.R.C. 1981, is intended for a predominant use, but other uses designated in Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, may be allowed by use review if a particular use is demonstrated to be appropriate in the proposed location. Nonconforming uses may be upgraded or expanded under this section if the change would not adversely affect the traffic and the environment of the surrounding area or if the change would reduce the degree of the nonconformity or improve the appearance of the structure or site without increasing the degree of nonconformity. Nonstandard buildings may be changed, expanded or modified consistent with the criteria and standards set forth in this section and Subsection 9-10-3(a), B.R.C. 1981.

...

(d) Review and Recommendation:

(1) The city manager will review applications for use review of ~~a nonresidential use in residential zoning districts, attached and detached dwelling units or a residential use in a P district,~~ and oil and gas operations and will submit a recommendation to the planning board for its final action pursuant to Subsection 9-2-7(b), B.R.C. 1981.

(2) The city manager shall review and make decisions on all other use review

1 applications pursuant to Subsection 9-2-7(a), B.R.C. 1981.

2 (3) Reviews by either the city manager or planning board shall be pursuant to Section
3 9-2-7, "Development Review Action," B.R.C. 1981, except that minor use review
4 processes are not subject to call-up by planning board.

5 (e) Criteria for Review: No use review application will be approved unless the approving
6 agency finds all of the following:

7 (1) ~~Consistency With Zoning and Nonconformity: The use is consistent with the~~
8 ~~purpose of the zoning district as set forth in Section 9-5-2, "Zoning Districts,"~~
9 ~~B.R.C. 1981, except in the case of a nonconforming use;~~

10 (2) Rationale: The use either:

11 (A) Provides direct service or convenience to or reduces adverse impacts to
12 the surrounding uses or neighborhood;

13 (B) Provides a compatible transition between higher intensity and lower
14 intensity uses;

15 (C) Is necessary to foster a specific city policy, as expressed in the Boulder
16 Valley Comprehensive Plan, including, without limitation, historic
17 preservation, moderate income housing, residential and nonresidential
18 mixed uses in appropriate locations, and group living arrangements for
19 special populations; or

20 (D) Is an existing legal nonconforming use or ~~a change thereto~~ an expansion
21 that is permitted under Subsection (f) of this section;

22 (3) Compatibility: The location, size, design, and operating characteristics of the
23 ~~proposed development or change to an existing development are such that the use~~
24 ~~will be reasonably compatible with and have minimal negative impact on the use~~
25 ~~of nearby properties, or, for residential uses or community, cultural, and~~
26 ~~educational uses in industrial zoning districts, the proposed development~~
27 ~~reasonably mitigates the potential negative impacts from nearby properties;~~

28 (4) Infrastructure: ~~As compared to development permitted under Section 9-6-1,~~
29 ~~"Schedule of Permitted Land Uses," B.R.C. 1981, in the zone, or as compared to~~
30 ~~the existing level of impact of a nonconforming use, the~~ The proposed
31 development will not significantly adversely affect the infrastructure of the
32 surrounding area, including, without limitation, water, wastewater and storm
33 drainage utilities and streets, compared to an allowed use in the zoning district, or
34 compared to the existing level of impact of a nonconforming use;

35 (5) Character of Area: The use will not change the predominant character of the
36 surrounding area or the character established by adopted design guidelines or
37 plans for the area; and

38 (6) Conversion of Dwelling Units to Nonresidential Uses: There shall be a
39 presumption against approving the conversion of dwelling units in the residential
40 zoning districts to nonresidential uses that are allowed pursuant to a use review, or
41 through the ~~change~~ substitution of one nonconforming use ~~with~~ another

1 nonconforming use. The presumption against such a conversion may be overcome
 2 by a finding that the use to be approved serves another compelling social, human
 3 services, governmental or recreational need in the community, including, without
 4 limitation, a use for a daycare center, park, religious assembly, social service use,
 benevolent organization use, art studio or workshop, museum, or an educational
 use.

- (f) Additional Criteria for ~~Modifications~~ Expansion to of a Nonconforming Uses: No
 application for a ~~change to an expansion of~~ a nonconforming use shall be granted unless
 all of the following criteria are met in addition to the criteria set forth above:
- (1) Reasonable Measures Required: The applicant has undertaken all reasonable
 measures to reduce or alleviate the effects of the nonconformity upon the
 surrounding area, including, without limitation, objectionable conditions, glare,
 adverse visual impacts, noise pollution, air emissions, vehicular traffic, storage of
 equipment, materials and refuse, and on-street parking, so that the ~~change~~
expansion will not adversely affect the surrounding area.
 - (2) Reduction in Nonconformity/Improvement of Appearance: The proposed ~~change~~
~~or expansion~~ will either reduce the degree of nonconformity of the use or improve
 the physical appearance of the structure or the site without increasing the degree
 of nonconformity.
 - (3) Compliance With This Title/~~Exceptions~~: The ~~proposed change in use~~ expansion
 complies with all ~~of the other applicable~~ requirements of this title.
 - (A) ~~Except for a change of a nonconforming use to another nonconforming~~
~~use; and~~
 - (B) ~~Unless a variance to the setback requirements has been granted pursuant to~~
~~Section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or the~~
~~setback has been varied through the application of the requirements of~~
~~Section 9-2-14, "Site Review," B.R.C. 1981.~~
 - (4) Cannot Reasonably Be Made Conforming: The existing building or lot cannot
 reasonably be utilized or made to conform to the requirements of Chapter 9-6,
 "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or
 9-9, "Development Standards," B.R.C. 1981. This paragraph (4) shall not apply to
 reconstruction or restoration permitted pursuant to Paragraph 9-10-3(c)(4), B.R.C.
 1981, with respect to density and other pre-existing nonconformities of the use or
 nonstandard features of the building.
 - (5) No Increase in Floor Area Over Ten Percent: The ~~change or expansion~~ will not
 result in a cumulative increase in floor area of more than ten percent of the
 existing floor area.
 - (6) Approving Authority May Grant Zoning Variances: The approving authority may
 grant the variances permitted by Subsection 9-2-3(d), B.R.C. 1981, upon finding
 that the criteria set forth in Subsection 9-2-3(h), B.R.C. 1981, have been met.
- (g) Conditions of Approval: The approving agency may impose modifications or conditions

1 on the use review approval ~~in order to assure~~ ensure compliance with the criteria set forth
2 in Subsections (e) and (f) of this section. In the case of a nonconforming use, conditions
3 may also be imposed to reduce nonconformity and to improve site design.

4 (h) Oil and Gas Operations: The criteria for review in Subsection (e) shall not apply to an
5 application for oil and gas operations. An oil and gas operations use shall meet the
6 criteria set forth in Section 9-6-7(b), "Oil and Gas Operations," B.R.C. 1981. Any use
7 review approval for an oil and gas operations use shall expire, whether operational or not,
8 in ten years from the date of final approval. Prior to such expiration for an oil and gas
9 operations use, applicants will be responsible for submitting a new use review application
10 for an oil and gas operations use proposed for operation beyond ten years. Following
11 approval of any oil and gas operations use, the applicant shall have two years to obtain
12 the necessary permits to establish the use.

13 (i) Minor Use Review Process: A use review for a nonresidential use that is proposed in a
14 zoning district other than a residential district and proposed to occupy an existing
15 nonresidential space without any site changes may be reviewed pursuant to a minor use
16 review process. For the purposes of this subsection, site changes do not include changes
17 to landscape plantings, pedestrian pathways, installation of bicycle parking, ordinary site
18 maintenance or repair, signs, or site lighting.

19 (1) Process: The city manager shall review and make decisions on all minor use
20 review process applications pursuant to Subsection 9-2-7(a), "City Manager
21 Review and Recommendation," B.R.C. 1981. The applicant or any interested
22 person may appeal the city manager's decision pursuant to Paragraph 9-2-
23 15(l)(1), but the city manager's decision is not subject to call-up by the planning
24 board pursuant to Paragraph 9-2-15(l)(2). The city manager may refer the
25 application to the planning board for review or decision.

(2) Development Agreement: The city manager may waive the requirements for a
development agreement for a minor use review.

(j) ~~Amendments and Minor Modifications: No person shall expand or modify any approved
use review use. However, the approved site plan may be modified as provided in
Subsection 9-2-14(k), B.R.C. 1981, if it does not expand the use, any changes conform to
Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981; the impact on other
uses of the approved use review is not changed; and the change complies with all other
provisions of this title and any other ordinance of the city. No person shall modify an
approved use review without a new use review approval, except that minor modifications
may be approved pursuant to Section 9-2-2, "Administrative Review Procedures," B.R.C.,
1981, provided that the minor modification meets the following standards:~~

(1) The use is not expanded and the modification is otherwise substantially consistent
with the conditions of the original approval;

(2) The modification does not adversely increase impacts to other surrounding
properties or adjacent uses; and

(3) The site plan complies with all other provisions of this title and any other
ordinance of the city.

1 (j) Expiration: Any use review approval or previously approved special review ~~which that~~ is
2 discontinued for at least three years shall expire. The city manager, upon a finding of
3 good cause, may grant an extension not to exceed six months from the original date of
4 expiration. In addition, use review approvals for oil and gas operations are subject to
5 expiration pursuant to the standards in Subsection (h) of this section.

6 (k) Appeals and Call-Ups:

7 (1) The applicant or any interested person may appeal the city manager's decision
8 pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

9 (2) A member of the planning board may call-up the manager's decision pursuant to
10 Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981, except that
11 decisions in minor use review processes are not subject to call-up by the planning
12 board.

13 (3) The city council may call-up any planning board decision pursuant to Section 9-4-
14 4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

15 Section 13. Section 9-3-6, "Floodplain Development Permits," B.R.C. 1981, is amended
16 to read as follows:

17 **9-3-6. Floodplain Development Permits.**

18 ...

19 (h) Floodplain development permits that allow for development in the conveyance zone or
20 the high hazard zone, or which will involve a change of watercourse, shall be decided by
21 the city manager. The decision of the city manager ~~shall be subject to~~ may be call-up by
22 ~~the planning board, or appealed~~ by any aggrieved party to the planning board, subject to
23 the ~~call-up and~~ appeal procedure of Section 9-4-4, "Appeals, Call-Ups, and Public
24 Hearings," B.R.C. 1981.

25 ...

Section 14. Section 9-3-7, "Variances," B.R.C. 1981, is amended to read as follows:

9-3-7. Variances

(a) The city manager may grant a variance from the requirements of Subsection 9-3-2(i) and
Sections 9-3-3, 9-3-4, and 9-3-5, B.R.C. 1981, except that no variance shall be granted
for expansion or enlargement of any structure constructed after July 12, 1978, unless such
expansion or enlargement conforms to the flood protection elevation requirement in
effect at the time of the original construction.

...

(f) Any decision by the city manager to approve a variance ~~may be is subject to call-up by~~
~~the planning board or appealed~~ by any aggrieved party to the planning board as described
by Section 9-4-4, "Appeals, Call-Ups, and Public Hearings," B.R.C. 1981.

1 ...

2 Section 15. Section 9-3-9, "Stream, Wetlands, and Water Body Protection," B.R.C.

3 1981, is amended to read as follows:

4 **9-3-9. Stream, Wetlands, and Water Body Protection**

5 ...

6 (c) Permitted, Allowed and Prohibited Uses within the Regulated Area: The purpose of this
7 subsection is to describe activities that are exempted, conditionally permitted, requiring
8 development review or prohibited:

9 (1) Explanation of Table Abbreviations: The abbreviations used in the cells in table
10 3-1 have the following meanings:

11 "E"(Exempted Activities): indicates that the use type is allowed as a matter of
12 right and no stream, wetland or water body permit is required.

13 "C"(Conditional Use Review): indicates that the use type will be reviewed in
14 accordance with the requirements in paragraph (e)(32) of this section.

15 "S"(Standard Permit Review): indicates that the use type will be reviewed in
16 accordance with the requirements in paragraph (e)(43) of this section.

17 "P"(Prohibited Activities): indicates that the use type is prohibited in the zone.

18 "N"(Allowed with Notice): indicates that the use type is allowed as a matter of
19 right subject to the application of best management practices as defined in chapter
20 9-16, "Definitions," B.R.C. 1981, and provision of notice in paragraph (5) of this
21 subsection. Such activity shall not significantly alter the function of the stream,
22 wetland or water body. No person shall conduct any activity that is allowed with
23 notice in violation of the best management practices.

24 ...

25 (e) Stream, Wetland and Water Body Permit Application Review:

(1) Acceptance of Application: Applicants for stream, wetland or water body permits
shall submit an application as set forth in subsection (d) of this section. Upon
receipt of an application, the city manager shall review the application for
completeness. A permit application will be accepted when the city manager
determines that it is complete.

~~(2) Public Notification of Application: Upon acceptance of a complete standard
review application, public notice shall be provided according to the requirements
shown in section 9-4-3, "Public Notice Requirements," B.R.C. 1981, using Public
Notice Type 5 from table 4-2. Public notice of a conditional use review
application is not required.~~

(32) Criteria for Review: For an activity requiring conditional use or standard review,
the applicant shall demonstrate that the stream, wetland or water body permit
application meets the following criteria:

- 1 ...
- 2 (B) Criteria for the Outer Buffer Zone: In the outer buffer zone, the following
- 3 criteria shall apply:
- 4 (i) The provisions of Subparagraph (e)(32)(A) of this section.
- 5 (ii) Impervious surface coverage: Any new building or attached
- 6 structure, expansion of an existing building or attached structure,
- 7 new surfacing or expansion of an existing surface that would result
- 8 in a cumulative total of twenty percent or more impervious surface
- 9 in the outer zone on the property shall provide mitigation
- 10 according to the requirements in subsection (f) of this section for
- 11 the loss of pervious surface.
- 12 (C) Criteria for the Inner Buffer Zone: In the inner buffer zone, the following
- 13 criteria shall apply:
- 14 (i) The provisions of Subparagraph (e)(32)(A) of this section.
- 15 (ii) The provisions of Subparagraph (e)(32)(B) of this section.
- 16 (iii) Channel bank protection or stabilization shall utilize, to the extent
- 17 feasible, techniques that involve landscaping with appropriate
- 18 native plants rather than rock or artificially hardened structures.
- 19 (iv) All new plant material adjacent to wetlands or water bodies or
- 20 along the banks of a stream shall be consistent with all applicable
- 21 city rules concerning best management practices as described in
- 22 chapter 9-16, "Definitions," B.R.C. 1981. Mitigation monitoring
- 23 for restoration projects may be required by the city manager.
- 24 (v) "Vegetation removal - major" shall only be allowed to prevent
- 25 noxious weed infestation, provide for native habitat restoration or
- for other permitted projects. Major removal of vegetation shall be
- mitigated within the inner buffer according to the requirements in
- subsection (f) of this section.
- (vi) New steps, paths or other minor access to or over a stream on
- private property will be permitted if there is no more than one
- access on an individual property, the path or steps are designed to
- have minimal impact to the wetland, stream or water body, and the
- path and the area of impact does not exceed four feet in width.
- (D) Criteria for the Wetland, Stream or Water Body: In the wetland, stream, or
- water body, the following criteria shall apply:
- (i) The provisions of Subparagraph (e)(32)(A) of this section.
- (ii) The provisions of Subparagraph (e)(32)(B) of this section.
- (iii) The provisions of Subparagraph (e)(32)(C) of this section.

- 1 (iv) Replacement or repair of an existing fence shall be generally in the
- 2 same location and not result in additional impacts to the wetland,
- 3 (v) Utility line or drop structure maintenance or repair shall not impact
- 4 the existing functions of the wetland, stream, or water body.
- 5 (vi) Activities conducted solely for the purpose of removing stream
- 6 sediment shall not alter the flood capacity as shown on the adopted
- 7 floodplain maps. Vegetated channel bottoms shall be restored and
- 8 stabilized.

(4) Criteria for Standard Review: In addition to the standards in paragraph (e)(32) of this section, the applicant shall demonstrate that the stream, wetland or water body permit application meets the following criteria:

9 (g) Permit Issuance:

10 ...
 11 (5) Referrals, Call-up or Appeal:

12 (A) Conditional Use Permits: For conditional use permits, there shall be no

13 referrals, call-ups or appeals. An applicant may resubmit a standard permit

14 application for a denied conditional use application, pay the balance of the

15 standard permit fee and proceed pursuant to the standard permit review

16 process.

17 (B) Standard Review Permits: The decision of the city manager shall be

18 subject to call-up by the planning board may be, or appealed by the

19 applicant to the planning board, subject to the call-up and appeal

20 procedure of ~~section~~Section, 9-4-4 "Appeals, Call-Ups and Public

21 Hearings," B.R.C. 1981.

22 ...
 23 (k) Stream, Wetland and Water Body Boundaries:

24 (3) Map Revisions: At the request of a property owner and after submittal of an

25 application and payment of the fee prescribed in section 4-20-53, "Stream,

26 Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, or at the

27 city manager's initiative, adopted stream, wetland and water body boundaries may

28 be modified by the city manager by means of the performance of a boundary

29 determination in accordance with the requirements of this subsection:

30 (B) Review of Map Revision Applications:

31 (i) The city manager shall review the application in accordance with

subsection (l) of this section, and may approve the proposed boundary change, approve the proposed boundary change with modifications or deny the proposed boundary change.

(ii) The decision of the city manager ~~shall be subject to call-up by the planning board or may be appealed~~ by the applicant to the planning board, subject to the ~~call-up and~~ appeal procedure of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

(m) Variances:

(7) The decision of the city manager ~~shall be subject to call-up by the planning board, or may be appealed~~ by the applicant to the planning board, subject to the ~~call-up and~~ appeal procedure of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

Section 16. Table 4-1: Summary of Decision Authority by Process Type in Section 9-4-2, "Development Review Procedures," B.R.C. 1981, is amended to read as follows:

9-4-2. Development Review Procedures

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

- (1) "Historic Preservation," chapter 9-11; and
- (2) "Inclusionary Housing," chapter 9-13.

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

<i>Standard or Application Type</i>	<i>Staff/City Manager</i>	<i>BOZA</i>	<i>Planning Board</i>	<i>City Council</i>
Code Interpretation SECTION 9 2 3	ⓓ	CA(14)	CA(30)	CA
Setback variance ≤20% SECTION 9 2 3	ⓓ	ⓓ	—	—
Setback variance >20% SECTION 9 2 3	—	ⓓ	—	—
Parking access dimensions SECTION 9 2 2	ⓓ	—	—	—
Parking deferral SECTION 9 2 2	ⓓ	—	—	—
Parking reduction ≤25% SECTION 9 2 2	ⓓ	—	—	—

1	Parking reduction >25% but ≤50% SECTION 9 2 2	D(14)	—	CA, D(30)	CA
2	Parking reduction >50% SUBSECTION 9 9 6(f)	—	—	D(30)	CA
3	Building height, conditional SECTION 9 7 6	D	—	—	—
4	Building height, less than principal or nonstandard building height max SECTION 9 2 14	D(14)	—	CA, D(30)	CA
5	Building height, greater than principal building height max SECTION 9 2 14	—	—	D(30)	CA
6	Building height SECTION 9 7 5	—	—	D(30)	CA
7	Conditional Use SECTION 9 2 1	D	—	—	—
8	Site Review SECTION 9 2 14	D(14)	—	CA, D(30)	CA
9	Use Review SECTION 9 2 15	D(14)	—	CA, D(30)	CA
10	Form Based Code Review SECTION 9 2 16	D(14)	—	CA, D(30)	CA
11	Form Based Code Review, administrative SECTION 9 2 16	D	—	—	—
12	Form Based Code Review, minor modification SECTION 9 2 16	D	—	—	—
13	Annexation SECTION 9 2 17	—	—	R	D
14	Rezoning SECTION 9 2 19	—	—	R	D
15	Wetland Permit Simple SECTION 9 3 9	D	—	—	—
16	Wetland Permit Standard SECTION 9 3 9	D(14)	—	D(30)	CA
17	Extension of Dev't Approval ≤1 yr PARAGRAPH 9 2 12(b)(1)	D	—	—	—
18	Extension of Dev't Approval >1 yr PARAGRAPH 9 2 12(b)(2)	—	—	D(30)	CA
19	Rescission of Dev't Approval SUBSECTION 9 2 12(e)	D	—	—	—
20	Creation of Vested Rights >3 yrs SECTION 9 2 20	—	—	R	D
21	Floodplain Dev't Permit SECTION 9 3 6	D(14)	—	CA(30)	CA
22	Wetland Boundary change Standard SUBSECTION 9 3 9(e)	—	—	R	D
23	Geophysical Exploration Permit SECTION 9 6 7(b)	D(14)	—	CA(30)	CA
24	Substitution of Nonconforming Use SECTION 9 10 3	D	—	—	—
25	Expansion of Nonconforming Use SECTION 9 10 3	D(14)	—	CA(30)	CA
	Subdivision, prelim plat SECTION 9 12 7	D	—	—	—
	Subdivision, final plat SECTION 9 12 8	D(14)	—	CA	—
	Subdivision, minor SECTION 9 12 5	D(14)	—	CA(30)	CA
	Subdivision, LLA or LLE SECTIONS 9 12 3 and 9 12 4	D	—	—	—
	Solar Exception SUBSECTION 9 9 17(f)	D	D	—	—
	Solar Access Permit SUBSECTION 9 9 17(h)	D	D	—	—
	Accessory Bldg Coverage SUBSECTION 9 7 8(a)	—	D	—	—

1	Minor Modification of Discretionary Approval SUBSECTION 9-2-14(k)	D	—	—	—
2	Minor Amendment of Discretionary Approval SUBSECTION 9-2-14(l)	D(14)	—	CA(30)	CA
3	Amendment of Discretionary Approval not involving height SUBSECTION 9-2-14(m)	D(14)	—	CA, D(30)	CA
4	Amendment of Discretionary Approval involving height SECTION 9-2-14	—	—	D(30)	CA
5	KEY:				
6	D – Decision Authority CA – Call Up and Appeal Authority				
7	R – Recommendation only (n) – Maximum number of days for call up or appeal				

<i>Standard or Application Type</i>	<i>Staff/City Manager</i>	<i>BOZA</i>	<i>Planning Board</i>	<i>City Council</i>
Section 9-2-2: Administrative Review Procedures				
<u>Conditional Use</u> Section 9-2-2	D	≡	≡	≡
Section 9-2-3: Variances and Interpretations				
<u>Code Interpretation</u> Section 9-2-3	D	CA(14)	CA(30)	CA
<u>Setback Variance <20%</u> Section 9-2-3	D	D	≡	≡
<u>Setback Variance >20%</u> Section 9-2-3	≡	D	≡	≡
Section 9-2-12: Development Progress Required				
<u>Extension of Development Approval</u> Paragraph 9-2-12(b)	D	≡	≡	≡
<u>Rescission of Development Approval</u> Subsection 9-2-12(e)	D	≡	≡	≡
Section 9-2-14: Site Review				
<u>Amendment of Discretionary Approval - not involving height</u> Subsection 9-2-14(m)	D(14)	≡	CA, D(30)	CA
<u>Amendment of Discretionary Approval - involving height</u> Section 9-2-14	≡	≡	D(30)	CA
<u>Building Height - less than principal or nonstandard building height maximum</u> Section 9-2-14	D(14)	≡	CA, D(30)	CA
<u>Building Height - greater than principal building height maximum</u> Section 9-2-14	≡	≡	D(30)	CA
<u>Minor Amendment of Discretionary Approval</u> Subsection 9-2-14(l)	D(14)	≡	CA(30)	CA
<u>Minor Modification of Discretionary Approval</u> Subsection 9-2-14(k)	D	≡	≡	≡
<u>Site Review</u> Section 9-2-14	D(14)	≡	CA, D(30)	CA
Section 9-2-15: Use Review				
<u>Minor Use Review</u> Subsection 9-2-15(i)	D(14)	≡	A	CA
<u>Use Review</u> Section 9-2-15	D(14)	≡	CA, D(30)	CA
<u>Use Review Minor Modification</u> Subsection 9-2-15(j)	D	≡	≡	≡
Section 9-2-16: Form-Based Code Review				

1	<u>Administrative Form-Based Code Review</u> Section 9-2-16	<u>D</u>	≡	≡	≡
2	<u>Form-Based Code Review Minor Modification</u> Section 9-2-16	<u>D</u>	≡	≡	≡
3	<u>Form-Based Code Review</u> Section 9-2-16	<u>D(14)</u>	≡	<u>CA, D(30)</u>	<u>CA</u>
Section 9-2-17: Annexation Requirements					
4	<u>Annexation</u> Section 9-2-17	≡	≡	<u>R</u>	<u>D</u>
Section 9-2-19: Rezoning					
5	<u>Rezoning</u> Section 9-2-19	≡	≡	<u>R</u>	<u>D</u>
Section 9-2-20: Creation of Vested Rights					
6	<u>Creation of Vested Rights ≥3 years</u> Section 9-2-20	≡	≡	<u>R</u>	<u>D</u>
Section 9-3-6: Floodplain Development Permits					
8	<u>Floodplain Development Permit</u> Section 9-3-6	<u>D(14)</u>	≡	<u>A</u>	<u>CA</u>
Section 9-3-9: Stream, Wetlands, and Water Body Protection					
9	<u>Wetland Permit Conditional</u> Section 9-3-9	<u>D</u>	≡	≡	≡
10	<u>Wetland Permit Standard</u> Section 9-3-9	<u>D(14)</u>	≡	<u>A</u>	<u>CA</u>
11	<u>Wetland Boundary Revision</u> Subsection 9-3-9(k)	<u>D(14)</u>	≡	<u>A</u>	<u>CA</u>
Section 9-6-7: Specific Use Standards - Agriculture and Natural Resource Uses					
12	<u>Geophysical Exploration Permit</u> Section 9-6-7(h)	<u>D(14)</u>	≡	<u>CA(30)</u>	<u>CA</u>
Chapter 9-7: Form and Bulk Standards					
13	<u>Accessory Building Coverage</u> Subsection 9-7-8(a)	≡	<u>D</u>	≡	≡
14	<u>Building Height</u> Section 9-7-5	≡	≡	<u>D(30)</u>	<u>CA</u>
15	<u>Conditional Building Height</u> Section 9-7-6	<u>D</u>	≡	≡	≡
Section 9-9-6: Parking Standards					
16	<u>Parking Access Dimensions</u> Section 9-9-5	<u>D</u>	≡	≡	≡
17	<u>Parking Deferral</u> Subsection 9-9-6(e)	<u>D</u>	≡	≡	≡
18	<u>Parking Reduction <25%</u> Subsection 9-9-6(f)	<u>D</u>	≡	≡	≡
18	<u>Parking Reduction >25% but <50%</u> Section 9-9-6(f)	<u>D(14)</u>	≡	<u>CA, D(30)</u>	<u>CA</u>
19	<u>Parking Reduction ≥50%</u> Subsection 9-9-6(f)	≡	≡	<u>D(30)</u>	<u>CA</u>
Section 9-9-17: Solar Access					
20	<u>Solar Access Permit</u> Subsection 9-9-17(h)	<u>D</u>	<u>D</u>	≡	≡
21	<u>Solar Exception</u> Subsection 9-9-17(f)	<u>D</u>	<u>D</u>	≡	≡
Section 9-10-3: Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses					
22	<u>Expansion of a Nonconforming Use</u> Section 9-10-3	<u>D(14)</u>	≡	<u>CA(30)</u>	<u>CA</u>
23	<u>Substitution of a Nonconforming Use</u> Section 9-10-3	<u>D</u>	≡	≡	≡
Chapter 9-12: Subdivision					
24	<u>Final Plat</u> Section 9-12-8	<u>D(14)</u>	≡	<u>CA</u>	≡
24	<u>Lot Line Adjustment or Lot Line Elimination</u> Sections 9-12-3 and 9-12-4	<u>D</u>	≡	≡	≡
25	<u>Minor Subdivision</u> Section 9-12-5	<u>D(14)</u>	≡	<u>CA(30)</u>	≡

<u>Preliminary Plat</u> Section 9-12-7	<u>D</u>	<u>≡</u>	<u>≡</u>	<u>≡</u>
<u>KEY: D = Decision Authority CA = Call-Up and Appeal Authority (for City Council, call-up only)</u>				
<u>R = Recommendation only (A) = Appeal Authority only (n) = Maximum number of days for call-up or appeal</u>				

Section 17. Section 9-4-3, “Public Notice Requirements,” B.R.C. 1981, is amended to read as follows:

9-4-3. Public Notice Requirements

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

TABLE 4-2: PUBLIC NOTICE OPTIONS

<i>Public Notice Type</i>	<i>Type of Application, Meeting or Hearing</i>	<i>Mailed Notice</i>	<i>Posted Notice</i>
1	Administrative Reviews (except those identified below)	none	none
2	Preliminary Plats and Minor Subdivisions	To adjacent property owners a minimum of 10 days before final action and mineral rights owners a minimum of 30 days before initial hearing or decision	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
3	Good neighbor meetings	To property owners within 600 feet of subject property a minimum of 10 days before meeting	none
4	Solar exceptions, solar access permits	To adjacent property owners a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
5	Applications requiring BOZA action, wetland permit and boundary determination	To property owners within 300 feet of subject property a minimum of 10 days before final action	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
6	Development Review Applications (site review, use review, annexation, rezoning, concept plans)	To property owners within 600 feet of subject property a minimum of 10 days before final action and mineral rights owners a minimum of 30 days before initial hearing or decision	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
7	Form-based code review	To property owners and all addresses within 600 feet of the subject property a minimum of 10 days before final action and mineral rights owners a minimum of 30 days before initial hearing or decision	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing
8	Use review applications for oil and gas operations	To property owners, all addresses, and the local government designee of any local government within 5,280 feet (one mile) of the subject property upon finding an application complete	Post property a minimum of 10 days from receipt of application and prior to final action or any hearing

		and a minimum of 10 days before final action and any mineral rights owners at that time and a minimum of 30 days before initial hearing	
--	--	---	--

...

Section 18. Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981, is amended to read as follows:

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

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

- (a) Appeal: If a right to appeal is noted in this title, If noted in Table 4-1, Section 9-4-2, "Development Review Procedures," B.R.C. 1981, in a specific section, an applicant or, if applicable, any interested person may appeal the city manager's decision to grant or deny an application to the planning board by delivering a written notice of appeal to the city manager within fourteen days of the decision.
- (b) Board Call-Up: If a planning board call-up of a city manager decision is noted in this title, If noted in Table 4-1, Section 9-4-2, "Development Review Procedures," B.R.C. 1981, a member of the planning board may call up a city manager's decision upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. A member of the BOZA may call up a city manager's decision regarding an interpretation upon written notification to staff or by making a verbal request, on the record, at a regularly scheduled board meeting within fourteen days of the manager's decision. On any application that it calls up, the board will hold a public hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as provided in Subsection 9-4-3(d), B.R.C. 1981. Within thirty days of the public hearing or within such other time as the board and the applicant mutually agree, the board will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The decision will specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by Sections 9-2-14, "Site Review," 9-2-15, "Use Review," and 9-2-16, "Form Based Code Review," B.R.C. 1981, for the type of review requested.
- (c) City Council Call-Up: With the exception of minor subdivisions and plats, tThe city council may call up any board decision within thirty days of the board's action. The city manager may extend the call-up period until the council's next regular meeting, if the manager finds in writing within the original call-up period that the council will not receive notice of a decision of the board in time to enable it to call up the decision for review. On any application that it calls up, the council will hold a public hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after publishing notice as specified by Subsection 9-4-3(d), B.R.C. 1981, summarized in Subsection (b) of this section. Together with the evidence presented at such public

1 hearing, the council may consider the record, or any portion thereof, of the hearing before
2 the board. ~~Within thirty days of the public hearing or within such other time as the~~
3 ~~council and the applicant mutually agree, the council will either grant the application in~~
4 ~~whole or in part, with or without modifications and conditions, or deny it. The decision~~
5 ~~will specifically set forth in what respects the development review application meets or~~
6 ~~fails to meet the standards and criteria required by Sections 9-2-14, "Site Review," 9-2-~~
7 ~~15, "Use Review," and 9-2-16, "Form-Based Code Review," B.R.C. 1981, for the type of~~
8 ~~review requested.~~

- 9 (d) Public Hearing Requirements: Within sixty days after a ~~referral~~, appeal or call-up under
10 this section, the approving agency will hold a public hearing on the application. On any
11 application that it calls up, the board or council will hold a public hearing under the
12 procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after
13 publishing notice as provided in Subsection 9-4-3(d), B.R.C. 1981. Within thirty days of
14 the public hearing or within such other time as the board or council and the applicant
15 mutually agree, the board or council will either grant the application in whole or in part,
16 with or without modifications and conditions, or deny it. The decision will specifically
17 set forth in what respects the development review application meets or fails to meet the
18 standards and criteria required by Sections 9-2-14, "Site Review," 9-2-15, "Use Review,"
19 and 9-2-16, "Form-Based Code Review," B.R.C. 1981, for the type of review requested.

20 ...
21 Section 19. Section 9-6-3, "Specific Use Standards - Residential Uses," B.R.C. 1981, is
22 amended to read as follows:

23 **9-6-3. Specific Use Standards - Residential Uses**

24 (a) **Residential Uses:**

- 25 (1) This Subsection (a) sets forth standards for uses in the residential use
classification that are subject to specific use standards pursuant to Table 6-1, Use
Table.
(2) Residential Uses in the IG and IM Zoning Districts: The following standards
apply in the IG and IM zoning districts to residential uses that may be approved
pursuant to a use review:
(A) Location: Dwelling units may be constructed only on a lot or parcel that
meets one or more of the following requirements (i), (ii), or (iii). If a lot or
parcel meets this location standard, the approving authority shall presume
that the standard in Paragraph 9-2-15(e)(54), B.R.C. 1981, has been met.

26 ...
27 (e) **Dwelling Unit, Detached:**

- 28 ...
29 (2) In the RH-1, RH-2, RH-3, RH-4, RH-5, RH-7, MU-1, MU-2, and MU-4 Zoning
Districts:

1 (A) Review Process: In the RH-1, RH-2, RH-3, RH-4, RH-5, RH-7, MU-1,
2 MU-2, and MU-4 zoning districts, the following review process applies to
detached dwelling units:

3 ...
4 (ii) Use Review: A new detached dwelling unit that is not allowed by
right may be approved pursuant to a use review if the approving
5 authority finds that:

6 a. The use meets the use review criteria in Paragraphs 9-2-
15(e)(1), (32), (43), and (54), "Use Review," B.R.C. 1981;

7 ...
8 Section 20. Section 9-6-5, "Specific Use Standards - Commercial Uses," B.R.C. 1981, is

9 amended to read as follows:

10 **9-6-5. Specific Use Standards - Commercial Uses**

11 ...
12 **(b) Brewery, Distillery, and Winery:**

13 (2) In the IS-1, IS-2, and IMS Zoning Districts:

14 ...
15 (A) In the IS-1, IS-2, and IMS zoning districts, breweries, distilleries, and
wineries shall meet the following standards:

16 (i) Review Process: In the IS-1, IS-2, and IMS zoning districts, the
17 following review process applies:

18 c. Use Review: If the use is not allowed by right or as a
19 conditional use, the use may be approved only pursuant to a
use review subject to the use review criteria in Paragraphs
20 9-2-15(e)(1), (32), (43), and (54) "Use Review," B.R.C.
1981.

21 (ii) General Standard: No brewery, distillery, or winery shall exceed
22 15,000 square feet in floor area.

23 (3) In the IG and IM Zoning Districts:

24 (A) In the IG and IM zoning districts, breweries, distilleries, and wineries shall
meet the following standards:

25 (i) Review Process: In the IG and IM zoning districts, the following
review process applies:

1 ...

- c. Use Review: If the use is not allowed by right or as a conditional use, the use may be approved only pursuant to a use review subject to the use review criteria in Paragraphs 9-2-15(e)(1), (32), (43), and (54) "Use Review," B.R.C. 1981.

5 ...

6 **(i) Office Uses:**

7 ...

(2) Office Uses in the MU-4 Zoning District:

- (A) Review Process: In the MU-4 zoning district, the following review process applies to office uses:

9 ...

- (ii) Use Review: Office uses that may not be approved by right may be approved pursuant to a use review if the approving authority finds that the use:

- a. Meets the use review criteria in Paragraphs 9-2-15(e)(1), (32), (43), and (54), "Use Review," B.R.C. 1981; and

13 ...

(3) Office Uses in the BT-1, BT-2, BMS, BR-1, and BR-2 Zoning Districts:

- (A) Review Process: In the BT-1, BT-2, BMS, BR-1, and BR-2 zoning districts, the following review process applies to office uses:

- (i) Allowed Use: Office uses are allowed by right if they meet the following standards:

- a. The use is located within the University Hill general improvement district;
- b. The combined total amount of floor area of any office uses does not exceed 20,000 square feet on the lot or parcel; or
- c. The use was legally established within the associated floor area prior to August 6, 2019. ~~Uses that exceed the 20,000 square feet limitation of Subparagraph (A)(i)b. shall be considered a nonconforming use. Changes in operations, such as changes in ownership, tenancy, management, number of employees, hours of operation, or changes to other uses also within the office use category within the existing floor area referenced in this subsection, shall do not require city manager review. be considered an expansion of a nonconforming use. Such changes shall not require a request for a change of use pursuant to Section 9-~~

~~10-3(e)(2), "Standards for Changes to Nonconforming Uses," B.R.C. 1981. Additions or changes to floor plans that result in the combined floor area of these uses exceeding the 20,000 square foot feet limitation of Subparagraph (A)(i)b. for the nonconforming floor area may are not be allowed by right and are subject to the standards of Subparagraphs (A)(ii) and (A)(iii).~~

(ii) Conditional Use: The use may be approved as a conditional use if the following standards are met:

- a. The total amount of floor area of any office uses does not exceed 40,000 square feet on the lot or parcel;
- b. Dwelling units are constructed on the same lot or parcel or within the area of the same approved site review, planned unit development, or form-based code review and at least thirteen percent of those dwelling units meet the requirements for permanently affordable units set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981; and
- c. No less than two permanently affordable units are constructed on said lot or parcel or within said area of an approved site review, planned unit development, or form-based code review.

(iii) Use Review: Any use that is not allowed by right and may not be approved as a conditional use may be approved pursuant to a use review if the approving authority finds that the use:

- a. Meets the use review criteria in Paragraphs 9-2-15(e)(1), (32), (43), and (54), "Use Review," B.R.C. 1981; and
- b. The proposed use is part of a mixed-use development that includes residential or retail uses.

...

(k) Office:

...

(4) In the IG and IM Zoning Districts:

(A) Review Process: In the IG and IM zoning districts, the following review process applies to offices:

...

(ii) Use Review: If the office is not allowed by right, the use may be approved only pursuant to a use review. In addition to meeting the use review criteria in Paragraphs 9-2-15(e)(1), (32), (43), and (54) "Use Review," B.R.C. 1981, the applicant shall demonstrate that:

...

1 (r) **Financial Institution:**

2 ...

(2) In the MU-4 Zoning District:

3 (A) Review Process: In the MU-4 zoning district, the following review process
4 applies to financial institutions:

5 ...

(ii) Use Review: Financial institutions that may not be approved by
6 right may be approved pursuant to a use review if the approving
7 authority finds that the use:

8 a. Meets the use review criteria in Paragraphs 9-2-15(e)(1),
(32), (43), and (54), "Use Review," B.R.C. 1981; and

9 ...

Section 21. Section 9-7-5, "Building Height," B.R.C. 1981, is amended to read as

10 follows:

11 **9-7-5. Building Height**

12
13 (a) Permitted Height: The height permitted without review within the City is set forth in
14 Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, except as provided
15 in Paragraph (b)(2) of this section. Buildings greater than the permitted height may be
16 approved under Section 9-2-14, "Site Review," B.R.C. 1981.

17 (d) Nonconformity to Permitted Height: For existing buildings that exceed the height
18 permitted in Section 9-7-1, "Schedule of Form and Bulk Standards," or Section 9-7-6,
19 "Building Height, Conditional," B.R.C. 1981, the following changes require approval
20 under Section 9-2-14, "Site Review," B.R.C. 1981:

21 (1) There shall be no increase in ~~Increasing~~ the building's highest point as established
22 by Subsection 9-7-5(b), "Measurement of Height," B.R.C. 1981;

23 (2) Adding building elements or massing above the permitted or conditional height
24 unless permitted by Section 9-7-7, "Building Height, Appurtenances," B.R.C.
25 1981; or

(3) ~~or Adding the floor area of buildings greater than the above the permitted or~~
conditional height but less than fifty-five feet in height, unless approved under
Section 9-2-14, "Site Review," B.R.C. 1981.

...
24

Section 22. Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, is amended to

1 read as follows:

2 **9-8-5. Occupancy of Dwelling Units**

3 ...

4 (d) Nonconforming Uses: A nonconforming residential use that is ~~not permitted~~prohibited by
5 Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, or is a lot or parcel that
6 does not meet the density requirements of Chapter 9-8, "Intensity Standards," B.R.C.
7 1981, is subject to the following:

8 ...

9 Section 23. Section 9-9-2, "General Provisions," B.R.C. 1981, is amended to read as
10 follows:

11 **9-9-2. - General Provisions**

12 No person shall use or develop any land within the city except according to the following
13 standards, unless modified through a use review under Section 9-2-15, "Use Review," B.R.C.
14 1981, or a site review, Section 9-2-14, "Site Review," B.R.C. 1981, or a variance granted under
15 Section 9-2-3, "Variances and Interpretations," B.R.C., 1981.

16 (a) Fire and Life Safety: All development shall meet the applicable requirements of Chapter
17 10-8, "Fire Code," B.R.C. 1981.

18 (b) Maximum Permitted Buildings on a Lot: No more than one principal building shall be
19 placed on a lot in the RR, RE, RL-1, and RM zoning districts unless approved under the
20 provisions of Section 9-2-14, "Site Review," or 9-7-12, "Two Detached Dwellings on a
21 Single Lot," B.R.C. 1981.

22 ...

23 Section 24. Section 9-9-6, "Parking Standards," B.R.C. 1981, is amended to read as
24 follows:

25 **9-9-6. Parking Standards**

(a) Rationale: The intent of this section is to provide adequate off-street parking for all uses,
to prevent undue congestion and interference with the traffic carrying capacity of city
streets, and to minimize the visual and environmental impacts of excessive parking lot
paving.

...

(c) General Parking Requirements:

(1) Rounding Rule: For all motor vehicle and bicycle parking space requirements
resulting in a fraction, the fraction shall be:

(A) Rounded to the next higher whole number when the required number of
spaces is five or less; or

(B) Rounded to the next lower whole number when the required number of spaces is more than five.

(2) Parking Requirements for Lots in Two or More Zoning Districts: For lots that have more than one zoning designation, the required motor vehicle and bicycle parking for the use(s) on the lot may be provided on any portion of the lot, subject to the provisions of this title.

(3) Off-Street Parking Requirement for Unlisted Nonresidential Uses: If the city manager determines that the use type is not specifically listed in Table 6-1, Use Table, or Table 9-4, Use Specific Motor Vehicle Parking Requirements for Nonresidential Uses in All Zones, the city manager may apply one of the following standards that adequately meets the parking needs of the use:

(A) The applicable off-street parking requirement under Table 9-3, Nonresidential Motor Vehicle Parking Requirements by Zoning District;

(B) The off-street parking requirement under Table 9-4 for the listed use type most similar to the proposed use based on public parking demand, nature of the use type, number of employees, or any other factors deemed appropriate by the city manager;

(C) An off-street parking requirement established based on local or national best practices or by reference to standards or resources such as the Institute of Traffic Engineers, Urban Land Institute, International Council of Shopping Centers, American Association of State Highway and Transportation Officials, or American Planning Association; or

(D) An off-street parking requirement demonstrated by a parking demand study prepared by the applicant according to Paragraph 9-9-6(d)(6).

...

Section 25. Section 9-9-17, "Solar Access," B.R.C. 1981, is amended to read as follows:

9-9-17. Solar Access

...

(d) Basic Solar Access Protection:

(1) Solar Fence: A solar fence is hereby hypothesized for each lot located in SA Area I and SA Area II. Each solar fence completely encloses the lot in question, and its foundation is contiguous with the lot lines. Such fence is vertical, is opaque and lacks any thickness.

(A) SA Area I: No person shall erect an object or structure on any other lot that would shade a protected lot in SA Area I to a greater degree than the lot would be shaded by a solar fence twelve feet in height, between two hours before and two hours after local solar noon on a clear winter solstice day.

1 (B) SA Area II: No person shall erect an object or structure on any other lot
2 that would shade a protected lot in SA Area II to a greater degree than the
3 lot would be shaded by a solar fence twenty-five feet in height, between
4 two hours before and two hours after local solar noon on a clear winter
5 solstice day.

6 (C) SA Area III: Solar fences are not hypothesized for lots located in SA Area
7 III. Solar access protection in SA Area III is available under this section
8 only through permits, as hereinafter provided.

9 (D) Adjoining Duplex or Townhouse Lots in All Solar Areas: On duplex or
10 townhouse lots, solar fences are not hypothesized on interior lot lines
11 between adjoining units of a duplex or adjoining townhouses. Other lot
12 lines are subject to the solar fence restrictions of subsection (A), (B), or
13 (C), as applicable.

14 ...
15 (f) Exceptions:

16 ...
17 (5) Referral or Appeal of City Manager's Decision: The city manager may refer the
18 application or the city manager's decision may be appealed by the applicant to the
19 BOZA pursuant to the procedures of Section 9-4-4, "Appeals, Call-Ups and
20 Public Hearings," B.R.C. 1981. If an affidavit from each owner of each affected
21 lot per subparagraph (f)(4)(A) cannot be obtained, the applicant may apply for
22 consideration of the exception before the BOZA. Public notification of the
23 hearing shall be provided pursuant to Section 9-4-3, "Public Notice
24 Requirements," B.R.C. 1981. The sign posted shall remain posted until the
25 conclusion of the hearing.

26 ...
27 (g) Solar Siting:

28 ...
29 (2) Waivers: Upon request of any applicant for a building permit or a subdivision or
30 planned unit development approval, the approving authority may waive such of
31 the requirements of this paragraph as it deems appropriate if it finds that any of
32 the following criteria are met:

33 (D) ~~The applicant's proposal incorporates the following additional energy
34 resource and conservation option points in excess of the requirements of
35 Subsection 10-5.5-2(y), "Resource Conservation - Green Points," B.R.C.
36 1981:~~

37 (i) ~~2 points to qualify for a waiver of the requirement of
38 Subparagraph (g)(1)(A) of this section;~~

(ii) ~~3 points to qualify for a waiver of the requirement of Subparagraph (g)(1)(B) of this section; and~~

(iii) ~~The city manager finds that adequate protection for any solar energy systems to be installed is provided either under the provisions of this section, or through covenants, easements, or other agreements among affected landowners.~~

...

Section 26. Section 9-10-2, "Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures, and Lots," B.R.C. 1981, is amended to read as follows:

9-10-2. Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures, and Lots

Nonconforming uses and nonstandard buildings and lots in existence on the effective date of the ordinance which first made them nonconforming may continue to exist subject to the following:

- (a) One-Year Expiration for Nonconforming Uses: A nonconforming use, except for a use that is nonconforming only because it fails to meet the required off street parking standards ~~in of~~ Sections 9-9-6, "Parking Standards," ~~and or residential density requirements of Section 9-78-1, "Schedule of Intensity Standards~~ Schedule of Form and Bulk Standards," B.R.C. 1981, that has been discontinued for at least one year shall not be resumed or replaced by another nonconforming use as allowed under Subsection 9-2-15(f), B.R.C. 1981, unless an extension of time is requested in writing prior to the expiration of the one-year period. The approving authority will grant such a request for an extension upon finding that an undue hardship would result if such extension were not granted.

...

Section 27. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, is amended to read as follows:

9-10-3. Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses

Changes to nonstandard buildings, structures, or nonstandard lots and nonconforming uses shall comply with the following requirements:

...

- (c) Nonconforming Uses:

- (1) Nonconforming Changes to Conforming Use Prohibited: No conforming use may be changed to a nonconforming use, notwithstanding the fact that some of the features of the lot or building are nonstandard or the parking is nonconforming.

- (2) Standards for ~~Changes~~ Substitutions of Nonconforming Uses: The city manager will grant a request for a ~~change~~ substitution of a nonconforming use, which is the

1 replacement of one nonconforming use with another, if the ~~modified or~~ new use
2 does not constitute an expansion of a nonconforming use. Any ~~other change of~~
3 ~~use that constitutes~~ expansion of a nonconforming use must be reviewed under
4 procedures of Section 9-2-15, "Use Review," B.R.C. 1981.

- 5 (3) Nonconforming Only as to Parking: The city manager will grant a request to
6 change a use that is nonconforming only because of an inadequate amount of
7 parking to any conforming use allowed in the underlying zoning district upon a
8 finding that the new or modified use will have an equivalent or less parking
9 requirement than the use being replaced.

10 ...

11 Section 28. Section 9-12-3, "Adjustment of Lot Lines," B.R.C. 1981, is amended to read
12 as follows:

13 **9-12-3. Adjustment of Lot Lines**

- 14 (a) Scope: The city manager is authorized to grant exemptions from the subdivision process
15 for the transfer of part of one lot or parcel for the purpose of enlarging an existing
16 adjacent lot or parcel if such transfer meets the requirements of this section. If an
17 applicant cannot meet the standards of this section, then an adjustment may be approved,
18 if it meets the applicable standards, as part of a minor subdivision or a subdivision.

19 ...

- 20 (d) City Manager Approval: No person shall transfer land under this section until after the
21 city manager reviews the map and legal description of the property and all other
22 information required under this section to verify that the transfer is exempt under this
23 chapter. ~~The city manager shall sign the documents of transfer before they are recorded~~
24 ~~and will record the approved replat map after the applicant has recorded the documents of~~
25 ~~transfer. The city manager shall sign the approved replat map and the city clerk shall~~
record the replat map in the office of the Boulder County Clerk and Recorder. Any such
approved replat not recorded within six months after the date it was approved shall
automatically expire.

26 Section 29. Section 9-12-4, "Elimination of Lot Lines," B.R.C. 1981, is amended to read
27 as follows:

28 **9-12-4. Elimination of Lot Lines**

- 29 (a) Scope: Notwithstanding any other provisions of this chapter, existing lot lines forming
30 the boundary between two or more conforming platted lots located within the same
31 subdivision or lot lines between lots or parcels that have merged to form one building lot
32 pursuant to subsection 9-9-2(c), B.R.C. 1981, may be removed or eliminated through a
33 replatting process which conforms to the requirements of this section.

1 ...

2 ~~(e) City Manager Decision: The city manager shall notify the planning board in writing within seven days of the disposition of the replat application.~~

3 (fe) City Manager Approval: The city manager shall sign all approved replats and, upon the
4 payment of the recording fees prescribed by subsection 4-20-43(a), B.R.C. 1981, the city
5 clerk shall record all such replats in the office of the Boulder County Clerk and Recorder.
Any such approved replat not recorded within six months after the date it was approved
shall automatically expire.

6 Section 30. Section 9-12-5, "Minor Subdivision," B.R.C. 1981, is amended to read as
7 follows:

8 **9-12-5. Minor Subdivision**

9 (a) Scope: A minor subdivision is a division of land that is already served by city services,
10 will not require the extension of streets or public improvements and will not result in
more than one additional lot.

11 ...

12 (f) Existing Streets or Alleys, Dedication and Vacation of Easements: Right-of-way
13 necessary to bring an existing street or alley up to a current city standard, or public
easements for utilities or sidewalks may be dedicated on a minor subdivision plat. The
City may approve the vacation of city utility easements on the replat.

14 ...

15 Section 31. Section 9-12-10, "Final Plat Procedure," B.R.C. 1981, is amended to read as
16 follows:

17 **9-12-10. Final Plat Procedure**

18 (a) If the final plat and the required plans, specifications, agreements, guarantees and other
19 documents meet the requirements of this code, the City of Boulder Design and
20 Construction Standards and other ordinances of the City or requirements determined by
the city manager to be necessary to protect the public health, safety or welfare, the
21 manager shall approve the final plat (subject to the provisions of subsection (d) of this
section) within ninety days of the date of submitting the required documents. The
22 manager shall then execute a subdivision agreement that incorporates the final plat, the
undertaking to provide public improvements prescribed by Section 9-12-12, "Standards
for Lots and Public Improvements," B.R.C. 1981, the undertaking of financial guarantees
23 prescribed by Section 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981, the
public improvement warranty prescribed by Section 9-12-14, "Public Improvement
24 Warranty," B.R.C. 1981, the subdivider's commitment to provide an update of the
preliminary title report or attorney memorandum current as of the date of recording the
25 plat and any other terms and conditions to which the parties agree.

1 ...

2 (e) Any person aggrieved by a decision of the city manager to approve or deny an

3 application for a subdivision may appeal such decision to the planning board ~~by filing an~~

4 ~~appeal with the city manager within fourteen days of the decision~~ pursuant to Section 9-4-

5 4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. A member of the planning

6 board may call-up the city manager decision pursuant to Section 9-4-4, "Appeals, Call-

7 Ups and Public Hearings," B.R.C. 1981. The board shall hear the appeal or call-up of the

8 subdivision application, after giving notice to all interested parties, within thirty days of

9 the notice of appeal or call-up, under the procedures prescribed by Chapter 1-3, "Quasi-

10 Judicial Hearings," B.R.C. 1981. The board shall determine whether the subdivision

11 application meets the requirements of this code and other ordinances of the City or those

12 determined by the city manager to be necessary to protect the public health, safety and

13 welfare and shall grant or deny the application.

8 ...

9 Section 32. Section 9-16-1, "General Definitions," B.R.C. 1981, is amended to read as

10 follows:

11 **9-16-1. General Definitions**

- 12 (a) The definitions contained in Chapter 1-2, "Definitions," B.R.C. 1981, apply to this title
- 13 unless a term is defined differently in this chapter.
- 14 (b) Terms identified with the references shown below after the definition are limited to
- 15 those specific sections or chapters of this title:
- 16 (1) Airport influence zone (AIZ).
- 17 (2) Floodplain regulations (Floodplain).
- 18 (3) Historic preservation (Historic).
- 19 (4) Inclusionary housing (Inclusionary Housing).
- 20 (5) Solar access (Solar).
- 21 (6) Wetlands Protection (Wetlands).
- 22 (7) Signs (Signs).
- 23 (c) The following terms as used in this title have the following meanings unless the context
- 24 clearly indicates otherwise:

21 A—E

22 ...

23 Conforming Use means any use of a building or use of a lot that is permitted by Section 9-6-1,

24 "Schedule of Permitted Land Uses," B.R.C. 1981 and meets any applicable specific use

25 standards. A conforming use also includes:

1 (1) A legal existing use that is not prohibited but was not approved as a conditional use or
2 use review use;

3 (2) A use approved pursuant to a valid use review or special review, except where the
4 review was a nonconforming use review;

5 *Expansion of a nonconforming use* means any change or modification to a nonconforming use
6 that constitutes:

7 (1) An increase in the occupancy, floor area, required parking, traffic generation, outdoor
8 storage, or visual, noise, or air pollution;

9 (2) Any change in the operational characteristics which may increase the impacts or
10 create adverse impacts to the surrounding area including, without limitation, the hours of
11 operation, noise, or the number of employees;

12 (3) The addition of bedrooms to a dwelling unit, except a single-family detached dwelling
13 unit; or

14 (4) The addition of one or more dwelling units.

15 **K—O**

16 ...

17 *Nonconforming use* means any use of a building or use of a lot that is ~~not permitted~~prohibited by
18 Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, ~~but excludes a conforming use~~
19 ~~in a nonstandard building or on a nonstandard lot; a legal existing use that has not been approved~~
20 ~~as a conditional use or a use review use, or a use approved pursuant to a valid special review or~~
21 ~~use review approval.~~ A nonconforming use also includes an otherwise conforming use, except a
22 single dwelling unit on a lot, that does not meet the following parking ~~and or~~ residential density
23 requirements, including, without limitation, the requirements for minimum lot area per dwelling
24 unit, ~~useable open space per dwelling unit, or required off-street parking requirements of~~
25 Sections 9-8-1, "Schedule of Intensity Standards," ~~and or~~ 9-9-6, "Parking Standards," B.R.C.
1981.

...

Nonstandard building or structure means any building or structure that does not conform to the
setback, height, side yard bulk plane, side yard wall length articulation, or building coverage
requirements of Section 9-7-1, "Schedule of Form and Bulk Standards," or the floor area ratio
requirements of Section 9-8-1, "Schedule of Intensity Standards," and Section 9-8-2, "Floor Area
Ratio Requirements," B.R.C. 1981, unless the nonstandard features of the building or structure
were approved as part of a planned unit development or a site review, or as a variance. A
nonstandard building or structure does not render a conforming use a nonconforming use.

Nonstandard lot means any lot that does not conform to the minimum lot area requirement of
Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, or frontage upon a public street

1 required by Section 9-12-12, "Standards for Lots and Public Improvements," B.R.C. 1981, unless
2 the nonstandard nature of the lot was approved as part of a planned unit development or a site
review. A nonstandard lot does not render a conforming use a nonconforming use.

3 ...

4 Section 33. This ordinance shall apply to any application under Title 9, "Land Use Code,"
5 B.R.C. 1981, (hereafter referred as "Application") applied for on or after the effective date of this
6 ordinance. Any project for which a complete Application has been submitted to the city or which
7 has received an approval prior to the effective date of this ordinance shall be subject to the
8 standards in effect at the time such Application was submitted to the city.

9 Section 34. If any section, paragraph, clause, or provision of this ordinance shall for any
10 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
11 provisions of this ordinance.

12 Section 35. This ordinance is necessary to protect the public health, safety, and welfare
13 of the residents of the city and covers matters of local concern.

14 Section 36. The city council deems it appropriate that this ordinance be published by title
15 only and orders that copies of this ordinance be made available in the office of the city clerk for
16 public inspection and acquisition.
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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 16th day of May 2024.

Aaron Brockett,
Mayor

Attest:

Elesha Johnson,
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 6th day of June 2024.

Aaron Brockett,
Mayor

Attest:

Elesha Johnson,
City Clerk

Process Simplification Stakeholder Meeting Notes

Attendees: Don “Dash” Ash, Erin Bagnall, Bryan Bowen, Jim Bray, Mike Cooper, Stephen Eckert, Andrew Fairbairn, Liz Hanson, Ross Holbrook, Bill Holicky, Joe Keresey, Kim Lord, Charlotte Roth, Danica Powell, Laura Sheinbaum, Jonathan Singer, Pete Weber

Meeting 1: Tuesday, January 30, Hybrid, 3:30-5 pm

Meeting 2: Wednesday, January 31, Hybrid, 10:30 – noon

Use Review

- Many examples of restaurants where the criteria doesn't necessitate any site changes, especially those that are just required because of their patio. Never had any public comment – why are we still doing this? (*staff clarified that the patio requirement for use review has already been removed*)
- Usually only change is bike racks or management plan
- Idea for “minor use review” if not new construction. The list of use review requirements is very long for just tenant improvements versus a new building. Should not be a barrier to new businesses. Even cost is a barrier for application fee.
- Over the counter approval would be great – what are we worried about with these uses? Businesses are paying double rent while they are waiting. Zoe Ma Ma for example.
- The requirement for survey and plans is challenging. Especially for existing buildings – nonresidential example in residential districts. Have to look for plans from 30 years ago, difficult to work with landlords. Commercial leases say it is on the tenant to confirm the use is allowed. Planning Board has even asked “Why is the board reviewing this?”
- Landlords just encourage the tenants not to seek city approval (but then get caught by business license)
- New Local example, will need Use Review – retail sales and teaching gallery.
- Planning Board doesn't need to see this kind of stuff. It should be staff level.
- These could just be conditional uses.
- Agree with recommendations in the Planning Board memo, especially for nonresidential uses in residential zoning districts. More conditional uses than Use Reviews.
- Tenants are stuck – fine to meet the criteria and potential Planning Board.
- The level of scrutiny required for no consequence shows that it is out of sync.
- Often waiting 90 days for an answer. Use Reviews often require a second or third round of reviews, stuck in this indefinite review cycle. There should be a shot clock.
- The ban on nonconforming uses is a little much. The level of scrutiny is out of sync.
- Increase opportunities for art uses like studio space, art selling out of homes, live/work. Martial Arts studios also a problem with Use Review.
- What takes most time – paying rent. We would pay for an expedited process. Think about what is the impediment, does this affect small businesses. 7 months will deter most applicants

- If we're doing a tenant finish and they need a use review, we tell clients it is infeasible. Use Review is an artifact of segregated uses, predates an understanding of mix of uses and 15 minute neighborhoods. Good changes with use table but we're still 20 years behind for good 15 minute neighborhoods. Every use should be by right unless there is an actual real conflict like a slaughterhouse. Unless problem. Silly thing to have it to change from a restaurant to a restaurant. I did a Use Review to park in a parking lot. I don't think staff wants to do these either if there are no problems. There could be a voluntary level of Use Review to go to Planning Board – but most things should be by right and appeal option to Planning Board.

Development Agreements

- Very difficult to get the development agreement after Planning Board – should be a clear process, maybe part of EnerGov submittal. Should get process started earlier with handouts describing what is needed and progress made during the review. It is like pulling teeth to get the Development Agreement uploaded. Could it be more boilerplate? It usually takes the full 90 days.
- Used to be a staff person focused on Development Agreements.
- It is really strange to do Development Agreements for Use Review. The property owner has to sign – the agreement states the owner is making public improvements and financial guarantees when they don't always apply. CAO would not strike this language for us which increases risk, just got an email saying it was not applicable. This is perpetuating incorrect information in our real property record. We can't get it terminated and bonds. Should not have Development Agreement for Use Review, and if we have it, we should be able to revise it. Often the property owner and tenant then have to create sub-agreements – creates a legal mess.
- Indemnify with attorney – can't it just be enforced as a zoning violation?
- It puts case managers in an awkward position between the applicant and the CAO. Not efficient use of time. Development agreements often force private agreements to be developed between tenants and property owners, which increases time.
- Erie has 2 example templates, one with improvements one without.
- Subdivision agreements should also be simplified. Agrees that a guide or handout on process for agreements would help.
- Requirement for Development Agreement in Use Review is a problem.
- Issue is that Development Agreement can't be changed. Mentions personal guaranty and public improvements. This will still run with the title. Development Agreement should be able to be revised and actually match what the Use Review was for. If there is not applicable wording, people don't want to sign it.
- We have conditions of approval, if they are not in compliance with their zoning approval use that enforcement. This is a clumsy tool to use.

Planning Board Call-Ups

- The threat of Planning Board call up deters many businesses and applicants because it only takes one Planning Board member to call something up. It should be a majority vote. It

should work more like the Landmarks process where there needs to be a majority to call something up.

- Floodplain applications- eliminate call-ups. Would also like to remove call-up for plats, minor subdivisions (may be charter issues). Definitely get rid of wetland permit call up. Had one minor subdivision get called up by neighbors.
- Should require a majority vote, not just one Planning Board member.
- Scheduling a call-up with the memo and finding time on agenda we think this adds 6 weeks.
- If the Board is calling something up, they need to give a reason why – put that in ordinance or board’s procedural rules. Hard to know what to address without reason why.
- I only saw one call-up the whole time I was on Planning Board and the board member wouldn’t even explain why they wanted to call it up.
- Ambiguity of call-up keeps every project at risk. Affects project in many ways, we want to lower our risk. Asked which ones of that 6 total had the staff decision reversed.
- City of Boulder staff writes great memos – hate that they spend all that time for no outcome.
- Do final plat and floodplain need to be subject to call-up?

Concept Plan

- Love concept plan – get feedback from staff, board, and council.
- Agree to look at when renderings are required, they are expensive. Are they needed for concept review?
- Call up – Actually really like City Council can call up of Concept Review. We get Planning Board, staff, and Council feedback all at the same time at the beginning stages of the project.
- I like concept review if it is favorable.

Minor Amendments/Minor Mods

- It is brain damage to change anything in Site Reviews moving forward.
- Minor mod has crept too (become required more often even for really minor changes) – if move a door by 1 ft. Solana might be reason for it. But it is over the top now. Need to redefine what the minor amendment is. Relook at intent criterion and consider language that relates to potential for off-site impacts.
- Shining Mountain kicked into Site Review Amendment just to reconfigure lots because of condition of approval wording.
- Moving of doors, shifting windows, moving plantings – can this be documented without a minor mod. Why so much review of these internal site changes?
- Timing of minor mod request issues, can slow things down. Timing, when submitted, what they can and cannot halt.
- Minor mods at Millenium, need to know the approval for engineering will happen. Goodwill example – condense an as-built.
- Could there be language that only do a minor mod for “substantial” changes?
- Hear a lot about “design intent”

- Agree with minor amendment issue. We had to do a Site Review Amendment for a fence from 4 to 6 feet, even though it is otherwise allowed by-right. Phasing Plan restrictions need to be more flexible.
- Denver has an SDP process that is similar. They made changes to distinguish between a SDP minor mod and major, it has really helped. Look at code example.
- Have to do minor mods for silly changes, like changing single-hung to casement windows, not even worth a minor mod. Why can't it just be documented in Tec Doc?
- What if there was a threshold of "substantive" change – paper trail not for minor mods.
- We need faster approval of minor mods – often ordering windows on site, minor mod can add 4 weeks.
- Used to be able to get a minor mod over the counter for a site review, adding square footage. Worth looking at, thinking through what is practical, suggesting thinking about who needs to see what. Should non-planning items like changes to sidewalk and landscape require a minor mod?
- Minor mod has been efficient for us, not going into abyss. But if goes all the way to a site review amendment, different story.

Tec Docs

- Can be weeks between TEC doc approval and permit – why? While everything is being stamped. It is a time suck. TEC for Site Reviews should be eliminated.
- TEC was created because engineering was holding up permits – maybe set thresholds with engineers for when TEC is really necessary.
- There is value in TEC for by-right projects.
- Annexations take time to get through but TEC docs usually stick to the 3-week review track.
- Could there be a combination of Site Review and TEC Docs? Often not many changes to TEC doc.
- Could get rid of Tec and just increase requirements for Site Review.

Site Review

- The last 10% of the Site Review process is challenging with dealing with corrections and getting call ups or hearings scheduled on the calendar is frustrating. Can take like 6 weeks.
- There's too much detail required for Site Review like "Why do we have to argue about curb heights at that point?". However, more detail at Site Review would be ok if we got rid of TEC Docs.
- Agrees with increasing requirements in Site Review if no TEC Docs.
- In Erie, for Site Plan Review of a commercial structure, you have to have full engineering plans and landscape.
- Denver also requires more at earlier stage.
- Why do we need to know the tree species at site review? Those should be construction level.
- Look at thresholds for Site Review – are they at the right place – something to look at.

Subdivision / Plats

- Similar to Development Agreement, can the Subdivision Agreement start earlier? It takes a while and also has to get recorded.
- Supports consistency in reviewing Prelim Plat at the same time as Site Review and run Final Plat and Tec Doc at the same time. This did not work with the Ralley Sport project.
- Can we do Prelim and Final plat together?
- Final plat can often hold up project.

Development Review Extensions

- Look into phasing plan requirements and how they can be more flexible.
- Change to “substantially complete” language would be very helpful. Current language causes a lot of stress for applicants.
- No one is going to leave a big gaping hole. Change extension to 7 years.
- Erie just uses the start of construction, which is more straightforward.
- Conditions should be written with more flexibility to allow extensions.
- I saw some development review extensions while on the board, always approved. Not much harm in approving, but these approvals should be more staff level, easier to get. We have used this to simulate phasing for projects – double the duration would be an easy and non-controversial change. Maybe do a fee for longer vesting period (Denver does this).

Staffing and Review

- Staff is in this nanny state, there seems to be a culture or political environment causing it. Culture of fear of things going wrong.
- Many reviews take 3 rounds, department is chronically understaffed. Hard to get answers in a timely fashion. Could be much more efficient.
- I have seen improvements with the 3 week track lately
- The growing level of sophistication and scrutiny of review is an issue.
- Corrections should be scheduled on ADR track so it is more predictable.
- Loves the 3-week tracks. Other cities take much longer to get review comments.
- Most of the issues are right at the beginning or at the end of the process. Used to have delays on tracks but things have gotten better. Some issues with applications not being routed (cost \$70k for applicant and two months). I check dashboard a lot. Could make improvements to EnerGov.
- Used to be able to get answers over the counter, more collaborative. Bring back more in person opportunities to meet.
- Staff turnover has been an issue, I’ve been pleased with our new case manager who has experience in Boulder from before. We need to have certainty and trust in our case manager when we get feedback. It can be frustrating when you’re not getting a clear answer.
- Have to hedge my bets when talking to staff, it seems like they feel like they will get chewed out for making any mistake.

Pre-Application Meetings

- Site Review submittals would benefit from pre-apps

- Pre-apps are very helpful. Can we have them and the city charges for them? We would pay. Having initial conversation is so helpful.
- Would be nice to have a pre-app that is just a discussion, not necessarily recorded discussion. Sometimes owners can't share project publicly yet.
- Having a comprehensive pre-application meeting would be so helpful. We would pay for that meeting. It would be helpful to meet with relevant planner, then we are co-collaborating. In Longmont, we get a two-hour meeting, brainstorming together, very helpful. It would save time down the road.
- One caution is to not get too comprehensive with pre-apps – that is key. Important to have the key players but maybe not every single department if they're not needed. Want to check that it is a viable land use, look for fatal flaws. Formalized process.
- What is the standard duration of a pre-app meeting? I concur that pre-apps would be helpful.
- I've done lots of pre-apps in other jurisdictions, really valuable, can get concrete answers. Boulder's convoluted rules lead to convoluted answers from staff. In Wheat Ridge, just had a pre-app with all the directors, helped give the project some certainty.

Application Materials

- Reduce materials for what is required for applications. There has been creep over time. Example- renderings have to be picture perfect. Look at Site Review submittal and talk through what has actually been needed.
- The forms to fill out are very time-consuming. The forms are very redundant – why do you have to say in several places the sq ft of the project.
- Redundant to fill out the Land Use Review form and the Concept Review form. Lots of things on the forms that don't apply. Should build some web thing that asks questions to see what is applicable and then you only fill that out. Could really slim it down. Any submittal I expect 6 hours of time for just filling out the form – this money could go towards something more important like more affordable housing.

Other Comments

- Memos are too long, have gotten longer. Could save staff hours on memos. Planning Board and Council may not even be reading them.
- Approvals have gone from about 6 months to 1.5 years.
- Can we have a CSP – Cool Shit Permit? Often come to city with creative ideas – no way, door is closed. It would be great to get staff feedback for these creative ideas, more flexibility. Could be linked to Use Review.
- Look at fees for rezonings when in line with the comp plan but out of cycle – why so expensive if BVCP supports it?
- Building permit timelines are frustrating. Would pay more for expedited reviews.
- Would be great to have a “suggestion box” or location where issues that applicants or staff identify could be kept to fix later. Could coauthor these changes. Good to have a formal place for this.

- Would be great to have a meeting with case manager when you get the first round of comments to explain everything. In person/zoom/phone call, just run through it all. It would save so much time and back and forth.
- Concern about getting so complicated that we need permit expeditors.
- It seems like in the past there was not a concern about the convoluted rules. Staff has a fear of getting in trouble, get hung up to dry, only get negative feedback from leadership.

Process Streamlining Improvements

Land Use Code Amendment
Project Charter – *Working Draft*

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Project Purpose & Goals

Background

Over the last few years, Planning and Development Services (P&DS) staff have been working on a reimagining of the department's business practices and business model. This has included transitioning all development review services online, while also integrating in-person and telephone assistance as the public health concerns of the pandemic have improved. The department has already undertaken many steps to implement the goal of operational excellence.

At the 2023 City Council retreat, council members asked P&DS to also investigate potential policy or code changes that could make development review processes simpler and more predictable for applicants. Specifically, council members asked that staff identify any processes that are preventing work from being done efficiently. Council members regularly hear about challenges from community members regarding the duration of land use approvals and permit approvals in the city. Staff hears similar concerns regarding application timing as well. In addition, recent analysis of the city's boards and commissions highlighted increased workload issues for the appointed groups that could be reduced by making more decisions administrative.

Many development review procedural improvements were made throughout 2023, including improvements to the accessory dwelling unit approval process, changes to the use table and standards that streamlined review processes for common uses, amendments that provided flexibility on when approvals expire, as well as other general procedural improvements. There remain several other improvements that could be made to further streamline city processes.

Problem/Issue Statement

Like most cities, Boulder has a complex regulatory system that determines the current development review process. Some procedures and standards outlined in the Land Use Code add unnecessary time or complexity to the application process. While many of the procedures in place help to support important city values and principles, there are opportunities to further improve processes and increase efficiency.

Project Purpose Statement

Identify process improvements that could be made through amendments to the Land Use Code to streamline development review processes and increase predictability and efficiency.

Guiding BVCP Policies

The project is guided by several key BVCP policies:

5.01 Revitalizing Commercial & Industrial Areas

The city supports strategies unique to specific places for the redevelopment of commercial and industrial areas. Revitalization should support and enhance these areas, conserve their strengths, minimize displacement of users and reflect their unique characteristics and amenities and those of nearby neighborhoods. Examples of commercial and industrial areas for revitalization identified in

previous planning efforts are Diagonal Plaza, University Hill commercial district, Gunbarrel and the East Boulder industrial area. The city will use a variety of tools and strategies in area planning and in the creation of public/private partnerships that lead to successful redevelopment and minimize displacement and loss of service and retail uses. These tools may include, but are not limited to, area planning with community input, infrastructure improvements, shared parking strategies, transit options and hubs and changes to zoning or development standards and incentives (e.g., financial incentives, development potential or urban renewal authority).

5.05 Support for Local Business & Business Retention

The city and county value the diverse mix of existing businesses, including primary and secondary employers of different sizes, in the local economy. Nurturing, supporting and maintaining a positive climate for the retention of existing businesses and jobs is a priority. The city recognizes the vital role of small, local and independent businesses and non-profits that serve the community and will balance needs of redevelopment in certain areas with strategies that minimize displacement of existing businesses and create opportunities for startups and growing businesses. The city will continue to proactively analyze trends in market forces to shape its activities, plans and policies regarding local business and business retention. The city and county will consider the projected needs of businesses and their respective employees, such as commercial and office space, when planning for transportation infrastructure, programs and housing.

5.06 Affordable Business Space & Diverse Employment Base

The city and county will further explore and identify methods to better support businesses and non-profits that provide direct services to residents and local businesses by addressing rising costs of doing business in the city, including the cost of commercial space. The city will consider strategies, regulations, policies or new programs to maintain a range of options to support a diverse workforce and employment base and take into account innovations and the changing nature of the workplace.

5.14 Responsive to Changes in the Marketplace

The city recognizes that development regulations and processes have an impact on the ability of businesses to respond to changes in the marketplace. The city will work with the local business community and residents to make sure the city's regulations and development review processes provide a level of flexibility to allow for creative solutions while meeting broader community goals. This could involve modifying regulations to address specific issues and make them more responsive to emerging technologies and evolving industry sectors.

7.01 Local Solutions to Affordable Housing

The city and county will employ local regulations, policies and programs to meet the housing needs of low, moderate and middle-income households. Appropriate federal, state and local programs and resources will be used locally and in collaboration with other jurisdictions. The city and county recognize that affordable housing provides a significant community benefit and will continually monitor and evaluate policies, processes, programs and regulations to further the region's affordable housing goals. The city and county will work to integrate effective community engagement with funding and development requirements and other processes to achieve effective local solutions.

10.01 High-Performing Government

The city and county strive for continuous improvement in stewardship and sustainability of financial, human, information and physical assets. In all business, the city and county seek to enhance and facilitate transparency, accuracy, efficiency, effectiveness and quality customer service. The city and county support strategic decision-making with timely, reliable and accurate data and analysis.

Project Timeline

	NOV				DEC				JAN				FEB				MARCH				APRIL				MAY				JUNE			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Project scoping																																
Internal staff scoping and research	█	█	█	█	█	█	█	█	█	█	█	█																				
Drafting																																
Initial draft									█	█	█	█	█	█	█	█																
CAO review													█	█	█	█	█	█	█	█	█	█	█	█								
External review																																
Stakeholder meetings													█																			
Planning Board review																																
PB matters													1/16																			
PB public hearing																													5/7			
City Council review																																
CC 1 st reading																																
CC 2 nd reading																																
Implementation																																
... Effective date 6/2																																

Background Research | Q4 2023 | Planning

- Develop initial scope of work for process streamlining based on council retreat discussion
- Interview internal stakeholders to identify issues and opportunities for process streamlining: planners, permit specialists
- Analyze land use applications: type, Planning Board call ups, average time of approval
- Meet with interested stakeholders as requested

Deliverables

- Project charter
- Application data
- New website

Project Scoping and Initial Drafts | Jan/Feb 2023 | Shared Learning & Options

- Present data and potential changes as Matters item to Planning Board to refine scope
- Continued internal staff stakeholder engagement

- Develop project website
- External engagement – stakeholders
- Begin drafting changes

Deliverables

- *Project website*
- *Planning Board Matters memo*
- *Summary of stakeholder input*
- *Initial draft*

Draft Ordinance and Adoption | March 2023 | Decision

- Draft ordinance of process streamlining changes
- Engagement – feedback on draft ordinance
- Public hearings at Planning Board and City Council

Deliverables

- *Draft ordinance*
- *Planning Board memo*
- *City Council memos*

Engagement & Communication

Level of Engagement

The City of Boulder has committed to considering four possible levels when designing future public engagement opportunities (see chart in the appendix). For this project, the public will be **Informed** about any proposed changes to processes and stakeholders will be **Consulted** on potential changes. Public feedback will be obtained on the changes to simplify the code and increase efficiency.

Who Will be Impacted by Decision/Anticipated Interest Area

- **Applicants** who submit development review applications.
- **Residents and neighborhoods** who may be impacted from procedural changes in the neighborhoods where they live/work/play.
- **Under-represented groups** that may be unfamiliar with the methods to offer input.
- **City staff, City boards, and City Council** who will administer any updated processes.

Overall Engagement Objectives

- Model the engagement framework by using the city’s decision-making wheel, levels of engagement and inclusive participation.
- Involve people who are affected by or interested in the outcomes of this project.
- Be clear about how the public’s input influences outcomes to inform decision-makers.
- Provide engagement options.

- Remain open to new and innovative approaches to engaging the community.
- Provide necessary background information in advance to facilitate meaningful participation.
- Be efficient with the public’s time.
- Show why ideas were or were not included in the staff recommendation.

Engagement Strategies

STAKEHOLDER MEETING

Purpose: While the majority of this project will focus on an “inform” level of engagement, this consultation is vital to the work. City staff will develop a list of potential interested residents, current and former development review applicants to discuss areas of process improvement.

A hybrid stakeholder meeting will be held virtually to introduce the project, present initial recommendations, receive feedback, and brainstorm additional improvements. This offers a way for interested stakeholders to hear options for proposed changes, ask questions of staff, and suggest modifications prior to the formal adoption process. Staff is already aware of feedback from customers about difficulties with application processing; the meeting will attempt to draw out potential improvements that would have the greatest impact.

Logistics: One meeting will be held. The meeting will be hybrid with an online option and in-person option for attendees. The meeting will include time for presentation and questions and answers. Staff will ensure that the invited attendees provide a balanced composition of perspectives including applicants of large, medium, and small projects who may have a varying level of experience with submitting development applications in Boulder. Staff will also engage the Planning Board at their Matters meeting in January about any particular feedback they are interested in hearing.

Project Team & Roles

Team Goals

- Follow City Council and Planning Board direction regarding changes to code language and application processes.
- Seek community feedback on proposed standards or criteria and incorporate relevant ideas.
- Solution must be legal, directly address the purpose and issue statement, and must have application citywide.

Critical Success Factors

- Conduct a successful public engagement process.
- Improve process timelines and customer satisfaction.

Expectations

Each member is an active participant by committing to attend meetings; communicate the team’s activities to members of the departments not included on the team; and demonstrate candor,

openness, and honesty. Members will respect the process and one another by considering all ideas expressed, being thoroughly prepared for each meeting, and respecting information requests and deadlines.

Potential Challenges/Risks

The primary challenge of this project is making sure that proposed code changes minimize unintended consequences and over-complication of the code.

Administrative Procedures

The core team will meet regularly throughout the duration of the project. An agenda will be set prior to each meeting and will be distributed to all team members. Meeting notes will be taken and will be distributed to all team members after each meeting.

CORE TEAM		
Executive Sponsor	Brad Mueller	
Executive Team	Brad Mueller, Charles Ferro, Karl Guiler	
Project Leads		
Project Manager	Lisa Houde	
Other Department Assistance		
Legal	Hella Pannewig & David Gehr	
Comprehensive Planning	Kathleen King	Principal planner
Communications	Cate Stanek	Communications specialist
I.R.	Sean Metrick	Mapping analysis assistance
Community Vitality	TBD	
Public Engagement	Vivan Castro-Wooldridge	Engagement strategist

Executive Sponsor: The executive sponsor provides executive support and strategic direction. The executive sponsor and project manager coordinates and communicates with the executive team on the status of the project, and communicate and share with the core team feedback and direction from the executive team.

Project Manager: The project manager oversees the development of the Land Use Code amendment. The project manager coordinates the core team and provides overall project management. The project manager will be responsible for preparing (or coordinating) agendas and notes for the core team meetings, coordinating with team members on the project, and coordinating public outreach and the working group. The project manager coordinates the preparation and editing of all council/board/public outreach materials for the project, including deadlines for materials.

Other Department Assistance: Staff from other departments coordinate with the project manager on the work efforts and products. These staff members will assist in the preparation and editing of all council/board/public outreach materials including code updates as needed.

Project Costs/Budget

No consultant costs have been identified for this project at this time. The project will be undertaken by P&DS staff.

Decision-Makers

- **City Council:** Decision-making body.
- **Planning Board:** Will provide input throughout the process, and make a recommendation to council that will be informed by other boards and commissions.
- **City Boards and Commissions:** Will provide input throughout process and ultimately, a recommendation to council around their area of focus.

Boards & Commissions

City Council – Will be kept informed about project progress and issues; periodic check-ins to receive policy guidance; invited to public events along with other boards and commissions. Will ultimately decide on the final code changes.

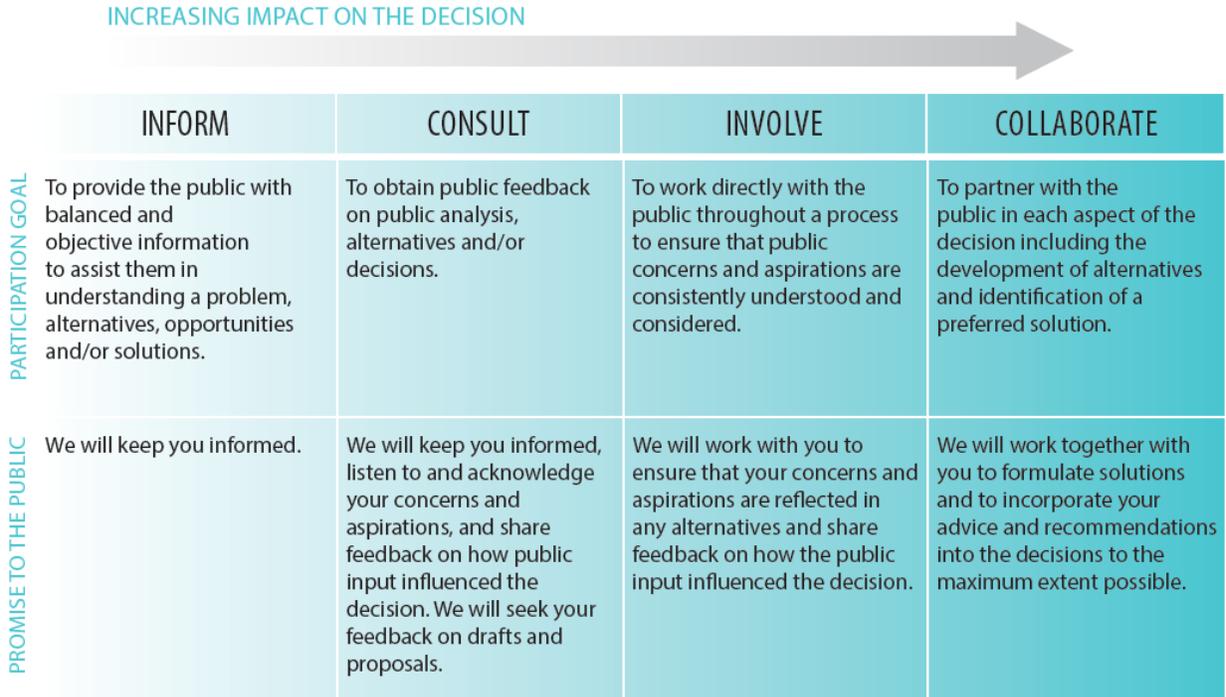
Planning Board – Provides key direction on the development of options periodically. Will make a recommendation to City Council on the final code changes.

Appendix: Engagement Framework

City of Boulder Engagement Strategic Framework

BOULDER'S ENGAGEMENT SPECTRUM

The city will follow a modified version of IAP2's engagement spectrum to help identify the role of the community in project planning and decision-making processes.



Boulder's Decision Making Process

